

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

WP(C).No. 29881 of 2012 (I)

PETITIONER(S):

**SACHIN.S AGED 24 YEARS
K.SADANANDAN CHANDRODHAYAM WELFARE ROAD SOUTH JANATHA
ROAD PALARIVATTOM ERNAKULAM DISTRICT**

**BY ADVS.SRI.N.RADHAKRISHNAN
SRI.B.V.BALAKRISHNAN**

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVT. S.C/S.T
DEVELOPMENT DEPARTMENT, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM.**
- 2. THE DISTRICT OFFICER
ST/ST DEVELOPMENT DEPARTMENT, ERNAKULAM**
- 3. THE COMMISSIONER FOR ENTRANCE EXAMINATIONS
THIRUVANANTHAPURAM**
- 4. THE PRINCIPAL
MODEL ENGINEERING COLLEGE THRIKKAKARA**

GOVERNMENT PLEADER SRI.C.K.JAYAKUMAR

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S) EXHIBITS :

EXT.P1 TRUE COPY OF THE MARK SHEET AND DATA SHEET ISSUED BY THE COMMISSIONER FOR ENTRANCE EXAMINATION
EXT.P2 TRUE COPY OF THE GOVERNMENT ORDER INCLUDING THE DHEEVARA COMMUNITY IN THE LIST OF OTHER ELIGIBLE COMMUNITIES G.O(MS) NO 41/85/HWD DATED 29-06-1985
EXT.P3 TRUE COPY OF THE GOVERNMENT ORDER NO G.O(MS) NO 164/2000/H/EDN. DATED 2-11-2000 STATING THAT THAT NO FEE OR DEPOSIT TO BE COLLECTED FROM SC/ST/OEC STUDENTS ADMITTED IN SELF FINANCING COLLEGES
EXT.P4 TRUE COPY OF THE GOVT. ORDER DATED 30-09-95
EXT.P5 TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER.
EXT.P6 TRUE COPY OF THE COMMUNITY CERTIFICATE DATED 23-11-2004
EXT.P7 TRUE COPY OF THE COMMUNICATION NO A7/1130/2004/MEC DATED 13-06-2005
EXT.P8 TRUE COPY OF THE FEE RECEIPTS ISSUED BY THE 4TH RESPONDENT
EXT.P9 TRUE COPY OF THE REQUEST LETTER DATED 5-6-2010
EXT.P10 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC NO 22484/2008 DATED 7-09-2012
EXT.P11 TRUE COPY OF THE REPRESENTATION 10-10-2012

RESPONDENTS' EXHIBITS:

Ext.R2 (A) COPY OF THE GOVT. ORDER DTD.5.4.2005.

Ext.R2 (B) COPY OF THE GOVT. ORDER DTD.17.7.04.

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///True copy///

P.S. to Judge

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

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W.P.(C).No. 29881 of 2012

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Dated this the 5th day of March, 2015

J U D G M E N T

ANTONY DOMINIC, J.:

The petitioner belongs to Dheevera community. Ext.P-2 is the Government order, where Dheevera community has been included in the list of Other Eligible Communities (O.E.C). In the academic year 2004-05, the petitioner was admitted to an engineering course in the Model Engineering College, Thrikkakara, coming under the IHRD management, which is a society established by the Government of Kerala. The admission granted to the petitioner was in a payment seat and he was denied the concessions available to O.E.C. students on the ground that his father's income was above the ceiling limit of Rs.2.5 lakhs. Immediately after obtaining admission, the petitioner claimed the benefit of educational concessions and submitted Ext.P-5 application. By Ext.P-7, he was informed by the principal that his application was rejected and returned back by the then Harijan Welfare Department. In Ext.P-7, he was directed to remit the fees immediately in order to register for the ensuing semester.

Accordingly, the petitioner remitted the fee that was due from him, which is evidenced by Ext.P-8 series of receipts. Thereafter, his father again made Ext.P-9 representation claiming the benefit of fee concession and also for refunding the fee already paid. He did not get any reply to Ext.P-9. It was in these circumstances, the petitioner has filed this Writ Petition and his prayer is to direct respondents 1 and 2 to refund the fee remitted by him and to declare that he is eligible and entitled for all educational concessions applicable to O.E.C. students.

2. When the case was taken up for hearing, the learned counsel for the petitioner relied on a Division Bench decision of this Court in W.P.(C).No.22484/2008 and connected cases, a copy of which has been produced as Ext.P-10. In this judgment, the issue that arose for consideration was whether SC/ST and O.E.C. students undergoing courses of study in the self financing colleges are eligible for educational concessions without reference to their source of admission, to wit, whether they were admitted through competitive examinations conducted by the Commissioner of Entrance Examinations or through entrance examinations conducted by the Association of Managements of Self Financing Colleges. In

the judgment, this Court answered the issue by holding that SC/ST and O.E.C. students in the self financing institutions in the State shall be extended all benefits that are available to the members of SCs/STs, OECs, without reference to whether they were admitted in the merit quota or the management quota and also without insisting that they should have been admitted from the list of candidates prepared by the Commissioner of Entrance Examinations.

3. From the counter affidavit filed by respondents 1 and 2, it is seen that they have placed reliance on Ext.R-2(a) and (b), Government orders, providing for fee concessions to students belonging to SC/ST and O.E.C. categories. On this basis, it is contended that the students admitted in self financing institutions under management quota are not eligible for fee concession and that only those admitted in merit/reservation quota are eligible for educational concessions. This reasoning, based on which the claim of the petitioner was rejected, cannot be sustained in view of the ratio of Ext.P-10 judgment.

4. However, the learned Government Pleader argues that challenging Ext.P-10 judgment, the respondents have already filed SLP (Civil) Nos.8073/2013 and 8080/2013 and that the Supreme

Court has stayed the judgment of this Court. Though the Government Pleader may be justified in contending so, according to us, the fact that the judgment has been stayed by the Apex Court does not in any manner dilute the binding force of the judgment and the judgment continues to be a binding precedent. The interim order of stay is only that the concerned parties are not obliged to give effect to the judgment under appeal [see in this connection the judgment of the Division Bench in *Abdu Rahiman v. District Collector, Malappuram* reported in 2009 (4) KLT 485].

5. Further, according to us, the petitioner stands on a better footing than the petitioners in Ext.P-10 judgment. This is for the reason that in Ext.P-10 judgment the denial of fee concession was to the students, who came from the list of candidates prepared based on an entrance test conducted by the Association of Management of Private Self Financing Colleges and were admitted in the management quota seats in Self Financing Colleges. On the other hand, insofar as the petitioner in this case is concerned, though he was admitted in the management quota, that was on the basis of his inclusion in the rank list prepared by the Commissioner of Entrance Examinations, Government of Kerala and the 4th

respondent is a college, which also is owned and controlled by the Government of Kerala.

6. For all these reasons, we are unable to sustain the order of rejection of the petitioner's claim for fee concession and therefore, setting aside the rejection of the claim of the petitioner, this Writ Petition is disposed of directing that the 1st respondent shall reconsider the claim of the petitioner and fresh orders in the matter shall be passed at any rate within three months from the date of receipt of a certified copy of this judgment along with a copy of the Writ Petition.

Sd/-
ANTONY DOMINIC, JUDGE

Sd/-
ALEXANDER THOMAS, JUDGE

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///True copy///

P.S. to Judge