

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

WP(C).No. 28859 of 2015 (F)

PETITIONER(S):

**DR.SREEJA RANI T., SENIOR MEDICAL OFFICER (NC),
GOVERNMENT AYURVEDA DISPENSARY, ANAKKARA,
P.O. ANAKKARA, PALAKKAD, RESIDING AT SREE NILAYAM,
KANDANAKAM, P.O. KALADY, EDAPPAL VIA,
MALAPPURAM - 679 582.**

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF HEALTH AND FAMILY WELFARE DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**
- 2. THE COMMISSIONER OF ENTRANCE EXAMINATION,
HOUSING BOARD BUILDING, SANTHI NAGAR,
THIRUVANANTHAPURAM - 695 001.**
- 3. DIRECTOR,
INDIAN SYSTEMS OF MEDICINE, AROGYA BHAVAN, THAMPANOR,
THIRUVANANTHAPURAM - 695 001.**
- 4. DIRECTOR,
AYURVEDA MEDICAL EDUCATION DEPARTMENT,
THIRUVANANTHAPURAM - 695 001.**
- 5. MINISTRY OF AYUSH UNDER THE UNION OF INDIA,
REPRESENTED BY THE SECRETARY, DEPARTMENT OF AYUSH,
ROOM NO. 206, IRCS BUILDING, ANNEX,
I RED CROSS ROAD, C.P, NEW DELHI - 110 001.**
- 6. DR. MANJU JOSEPH, SENIOR MEDICAL OFFICER (NC),
GOVERNMENT AYURVEDA DISPENSARY, MATHUR AGRAHARAM P.O.,
PALAKKAD - 678 571.**

**R1-R4 BY GOVERNMENT PLEADER SRI.MANOJ KUNCHACHAN
R5 BY ADV. SMT.SREEKALA K.L., CGC
R6 BY ADV. SRI.P.NANDAKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 28859 of 2015 (F)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE APPLICATION DATED 20/08/2015 SUBMITTED BY THE PETITIONER.

EXHIBIT-P2-TRUE COPY OF THE PROSPECTUS FOR POST GRADUATE COURSE IN AYURVEDA VACHASPATI 2015-16.

EXHIBIT-P3-TRUE COPY OF THE ALLOTMENT CHART OF P.G. AYURVEDA FOR THE YEAR 2013-14.

EXHIBIT-P4-TRUE COPY OF THE ORDER CONTAINING LIST OF CANDIDATES REQUIRED TO APPEAR FOR THE INTERVIEW AS PER PROSPECTUS 2014-15.

EXHIBIT-P5-TRUE COPY OF THE LETTER DATED 31/07/2015.

RESPONDENT(S)' EXHIBITS:

EXT.R6(a): TRUE COPY OF PETITION DTD.27.11.2013.

EXT.R6(b): TRUE COPY OF LETTER DTD.22.6.2015.

EXT.R6(c): TRUE COPY OF NOTE FILES LEADING TO EXT.P5.

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.MUHAMED MUSTAQUE, J.

W.P(C)No. 28859 of 2015

Dated this the 9th day of October, 2015

J U D G M E N T

Petitioner is a candidate aspiring for P.G.Ayurveda course under the service quota. She challenges Ext.P5 communication of the Government enabling the party respondent to take part in the selection process for P.G.Admission.

2. According to the petitioner, Ext.P5 is contrary to the mandatory clause in Ext.P2 prospectus. The relevant clause (viii) relied on by the petitioner is as follows:-

“(vii) It is mandatory for the service quota candidates to join the course to which they are selected and if they do not join the course or discontinue the course after joining, they will not be considered for selection to Post Graduate Course under service quota in future.”

The party respondent, finding that the above clause is a hurdle to get admission, approached the Government. The Government, by Ext.P5, relaxed the above clause to permit the sixth respondent to take part in

the selection process. Petitioner assails stating that the Government has no such power to relax the prospectus clause.

3. If the sixth respondent is allowed, the right of admission to another candidate will be certainly denied. The prospectus is issued for providing fairness and transparency in the admission process. It cannot be diluted, after the prospectus has become final. No doubt, it is a hard case for the party respondent, as the fact would show that she requires some sympathetic consideration, but that cannot influence the Government to dilute the conditions in the prospectus to her advantage. Each candidate may have his own reasons for diluting the prospectus conditions, but that can not influence the Government. It is open for the Government to take into account such circumstances to enable the Government to exercise the powers in the prospectus to be issued in future, but not in the prospectus which is already issued. The party respondent admittedly was selected, though she has not joined the P.G.course on account of the reasons stated by her in a

representation leading to Ext.P5. In terms of the above clause in the prospectus, she has forfeited her right for selection in future. Therefore, the Government, by Ext.P5, cannot accede to such request of the party respondent.

4. Party respondent attempted to distinguish the prospectus conditions saying that she has not been admitted to the programme, and therefore, she is entitled for consideration. It is to be noted, the above clause categorically stated that it is not an admission, but it is a selection, that is a criteria to determine the forfeiture of seat. Once a candidate is selected, whether he joins the course or not, that right would be forfeited if he fails to join the course or discontinue the course. In that view of the matter, this Court is of the view that Ext.P5 is liable to be set aside. I do so. However, taking note of the facts and situations in the matter, this Court is of the view that the Government shall make suitable amendment in future prospectus to accommodate the candidates, like the sixth respondent. Needful shall be done by the

Government taking into account of the facts narrated in Ext.P5. It is for the party respondent to approach the Government to bring to the notice of the Government to issue future prospectus in the light of the observation.

With that liberty, this writ petition is disposed of as above.

A.MUHAMED MUSTAQUE,
Judge

MBS/

WP(C).NO.28859 OF 2015

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