

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

WP(C) .No. 29302 of 2015 (K)

PETITIONER(S) :

AISWARYA S.P. AGED 19 YEARS
D/O.M.K.PURUSHOTHAMAN, RESIDING AT SREENILAYAM HOUSE
VARANAM PO, CHERTHALA, ALAPPUZHA-688 555.

BY ADVS.SRI.A.JAYASANKAR
SRI.C.V.MANUVILSAN
SRI.MANU GOVIND
SRI.S.SABARINADH

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY
DEPARTMENT OF HOME AFFAIRS, SECRETARIAT
THIRUVANANTHAPURAM-695 001.

2. COMMISSIONER FOR ENTRANCE EXAMINATIONS
FIFTH FLOOR, HOUSING BOARD BUILDINGS, SANTHI NAGAR
THIRUVANANTHAPURAM-695 001.

BY GOVERNMENT PLEADER SRI ROSHAN D. ALEXANDER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
30-09-2015, ALONG WITH WPC. 29303/2015, WPC. 29342/2015,
WPC. 29346/2015, WPC. 29510/2015, WPC. 29747/2015, 29788/2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kkj

APPENDIX

PETITIONER(S) ' EXHIBITS

P1 : A TRUE PHOTOCOPY OF THE PASS CERTIFICATE AND MARKS STATEMENT OF THE PETITIONER ISSUED BY COUNCIL FOR INDIAN SCHOOL CERTIFICATE EXAMINATION, NEW DELHI.

P2 : A TRUE PHOTOCOPY OF THE ADMIT CARD FOR KEAM -15 ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT.

P3 : A TRUE PHOTOCOPY OF THE DATA SHEET EVIDENCING THE RANK OF THE PETITIONER ISSUED BY THE OFFICE OF 2ND RESPONDENT.

P4 : A TRUE PHOTOCOPY OF THE ALLOTMENT MEMO ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER DATED 9-9-2015

P5 : A TRUE PHOTOCOPY OF THE ADMISSION REPORT OF THE PETITIONER DT 14-9-2015.

P6 : A TRUE PHOTOCOPY OF THE DOCUMENTS EVIDENCING THE AMOUNTS AS STIPULATED BY EXT P4.

P7 : A TRUE PHOTOCOPY OF THE OPTIONS RENDERED BY THE PETITIONER IN 2ND - 5TH PHASE OF COMMON ALLOTMENT PROCESS

P8 : A TRUE PHOTOCOPY OF THE NOTIFICATION NO.CEE/4383/2014/KEAM-2015/TA1 ISSUED BY THE 2ND RESPONDENT DT 19-9-2015.

P9 : A TRUE PHOTOCOPY OF THE MEDIA REPORT STARTING THAT NEARLY 480 SEATS WOULD COME IN TO THE POOL OF ALLOTMENT IMMEDIATELY IN THE NEXT PHASE OF CAP.

P10 : A TRUE PHOTOCOPY OF THE RELEVANT PORTIONS OF THE PROSPECTUS ISSUED BY THE 2ND RESPONDENT FOR KEAM-15.

P11: A COPY OF ORDER NO.CEE/4383/2014/KEAM-2015/TA1 DATED 15.09.2015

RESPONDENT(S) ' EXHIBITS

NIL

// TRUE COPY //

PA TO JUDGE

**K.SURENDRA MOHAN &
SHAJI P. CHALY, JJ.**

**W.P.(C) Nos.29302,29303,29342,29346
29510,29747 & 29788 of 2015**

Dated this the 30th day of September, 2015

J U D G M E N T

Surendra Mohan, J.

These Writ Petitions are all filed by students who have been allotted to various Private Self Financing Dental Colleges for BDS Degree Course for the academic year 2015-2016 by the Commissioner for Entrance Examinations, Thiruvananthapuram. The allotments have been made on the basis of the ranks allotted to each candidate by the Commissioner of Entrance Examinations who had conducted the Kerala Entrance Examinations for Admission to Medical Colleges ('KEAM-2015' for short). The allotments were made at different stages. The last allotment was made on 19.09.2015. The complaint of the petitioners is that, though they have all been allotted to Private Self-financing Colleges on the basis of the ranks obtained by them in KEAM-2015, persons who had obtained

ranks lower to them have obtained allotments to Government Colleges during the last and final allotment. On the strength of their higher ranking, it is contended that, the petitioners are entitled to be allotted to the Government Colleges in preference to those with lower ranks. It is pointed out that, in view of the higher options indicated by them while applying for admission, they were under the legitimate belief that wherever seats were available, allotments on the basis of their higher options would be made giving them admissions to seats available in the Government Colleges. However, contrary to their expectations, the Commissioner of Entrance Examinations by the issue of a notification dated 19.09.2015 has made it clear that, the higher options of students who were already allotted and admitted to Self- financing Colleges would not be considered for filling up the vacancies that were remaining unfilled, during the final phase of allotment on 19.09.2015. The above notification which has been

W.P.(C) Nos.29302 of 2015 & Conns.

produced as Exhibit P8 in WP(C) No.29302 of 2015 is arbitrary and violative of the Principle of Equality enshrined under Article 14 of the Constitution of India, it is contended. Therefore, all the petitioners seek the interference of this Court with Exhibit P8 to set right matters.

2. According to Sri Manu Govind, who appears for the petitioners in WP(C) 29302 and 29303 of 2015, the petitioners have a right to claim allotment to Government Colleges on the strength of their higher ranking in KEAM-2015. Our attention is drawn to the fact that, the petitioner in WP(C) No.29302 of 2015 is a person who is entitled to admission under the seats reserved for Ezhavas. Her ranking in KEAM-2015 is No.3480. As per the final allotment list published by the Commissioner for Entrance Examinations today, 30.09.2015, the last candidate who has been allotted under the Ezhava Quota is Rank No.4291. Similarly, the candidate in W.P.(C) No.29303 is rank No.2725 in the state merit, whereas the last candidate who

has been allotted is rank No.3573. In other words, persons who have been ranked lower in KEAM-2015 have been allotted seats in Government Colleges whereas persons like the petitioners who are more meritorious and who have obtained higher ranks in KEAM-2015 have ended up with allotments to private Self-financing Colleges. The consequence is that, they are at present compelled to undergo the course at a considerably higher financial expenditure which could have been avoided, had merit been the primary consideration in the matter of allotment.

3. It is the further contention of Sri. Manu Govind that, Exhibit P8 notification contains an unreasonable classification that groups students into persons who had not exercised any options, who had exercised options to both Government Colleges as well as Private Self-financing Colleges, persons who had exercised options only with respect to Government Colleges and persons who have not taken admission in a Self-financing Private College. There

W.P.(C) Nos.29302 of 2015 & Conns.

is absolutely no justification for making the above classification, instead of making the allotment solely on the basis of merit, depending on the ranks obtained by a student in KEAM-2015. The Counsel has a further contention that, no stipulation that a student would lose, his/her higher option upon being allotted and granted admission to a private Self-financing College on the basis of a lower option indicated by him/her was available in the prospectus of KEAM-2015. The counsel also contends that, the classification is bad for the vice of over inclusion. For the above reasons, it is contended that, the allotment would have to be directed to be made strictly in accordance with merit, enlarging the time limit stipulated by the Supreme Court which is expiring today, 30.09.2015. The issue of appropriate directions to the Commissioner to make admissions properly and in accordance with the merit is necessary to do justice to the students, it is contended. Advocates Justin KP, Siju Kamalasanan, T.C.Suresh Menon

as well as Sreekumar G. Chelur who appear for the petitioners in the other writ petitions have also put forward similar contentions and have sought for the interference of this Court with the process of allotment of seats conducted by the Commissioner for Entrance Examinations.

4. Per contra, Advocate Roshan Alexander, the learned Senior Government Pleader places reliance on the Prospectus of KEAM-2015 to point out that, the terms thereof had indicated in sufficiently clear terms that, notifications and announcements that were to be issued from time to time, would be published in the website of the Commissioner for Entrance Examinations. Therefore, the candidates have been requested to visit the official website regularly so as to keep themselves abreast of the notifications that are issued from time to time. The Prospectus has also made it clear that, it contains only the general conditions relating to the process of admissions and that, the same was subject to modification/addition/deletion

as deemed necessary by the Government. The definition of Government Seats contained in paragraph 2.1.1 includes not merely seats available in Government Colleges but also Government seats in Self-financing Colleges run by institutions under Government control and other private self financing Colleges whose details were to be notified separately. Therefore, according to the learned Senior Government Pleader, the Prospectus related to admissions to be made to a composite category of seats that were available not only with the Government Colleges but also with the Government controlled Self-financing Colleges as well as private Self-financing Colleges. The Government seats available for allotment in private Self-financing colleges are obtained under consensual agreements entered into between such colleges and the Government. Therefore, allotment of students to such seats are governed by the terms of the said agreement. Our attention has been drawn to paragraph 2.1.1(b) of the Prospectus to contend that, the

candidates had been informed in advance that they would be bound by the terms of such agreement and that they would be deemed to have accepted such conditions. Therefore, according to the learned Senior Government Pleader, the petitioners herein are also bound by the terms of such consensual agreements entered into by the Government with the Self -financing Professional Colleges. As per the terms of such agreements, the final allotment of students to the Government seats were to be completed before 20.09.2015. Seats that remain vacant after the said date, would as per the terms of the agreement revert back to the Management, to be filled up by the Colleges by admitting students ranked either in KEAM-2015 or in other examinations of which reference has been made in the Prospectus. In view of the above clause, it was absolutely necessary for the Government to have completed the process of allotment on or before 20.09.2015. The fees charged in respect of Government seats is much lower than

the fees charged in respect of Management seats. The endeavor of the Government has therefore been to admit eligible students to all the available seats so as to extend the benefit of studying in a Government seat to as many meritorious students as possible. It was with the above objective that the Centralized Allotment Process (CAP) has been stipulated by the Prospectus. Accordingly, students were allotted to available seats in the first allotment, and the seats that had remained vacant after the first allotment due to non-joining of the allotted candidates, were taken up during the second allotment. During the third phase of the allotment, students were allotted to whatever seats were remaining vacant with the Government so as to ensure that, no seat would be left unfilled after the cut off date of 20.09.2015. The candidates were expected to indicate their options regarding the colleges to which they would prefer to be allotted in the event of obtaining admission. The options were directed to indicated in the order of their preferences.

Accordingly, it is admitted that all the petitioners had indicated their preferences. The petitioners were allotted to one of the choices of preference indicated by them. They have all accepted the allotments, have got themselves admitted to the respective colleges to which they were allotted, after paying the entire fees. Therefore, during the final phase of allotment such persons were excluded so as to ensure that, their admissions were not disturbed. The persons who had been ranked lower to the petitioners were the candidates who were allotted during the final phase of allotment. The fact that, they had been allotted to one or other of the colleges preferred by the petitioners herein, is only a fortuitous circumstance that cannot be taken advantage of to attack the entire allotment process as being arbitrary and unsustainable. During the current year, according to the learned Senior Government Pleader, two Government Dental Colleges as well as one Dental College in the private sector became available additionally, for

allotment of students. The said colleges were initially not available for the reason that, they had not obtained all the necessary approvals. However, pursuant to directions issued by this Court, admissions to the said colleges were also made. At the time of allotting students to the said new colleges, since the petitioners had all obtained admissions in the previous allotments by virtue of their higher ranking, they had not been considered. It is true that, consequently, persons ranked below them have obtained admissions to Government Colleges. Though it would have been more advantageous for the petitioners to have obtained admissions to the Government Colleges, it is pointed out by the learned Senior Government Pleader that, the existence of such colleges had not been in the contemplation of either the Government or the candidates at any earlier point of time. Therefore, the candidates have also not indicated their preferences in respect of the said colleges. The fact that, persons ranked below the petitioners had been allotted to

Government Colleges, while they had been allotted to Private Self-financing colleges was the consequence of the above peculiar situation that arose during the current year. The same cannot be attributed to any calculated action on the part of the Government. The petitioners having got admission to one of the Colleges of preference indicated by them, it is contended that, absolutely no prejudice has been caused to their rights.

5. We have heard the counsel appearing for the respective parties, at length. We have been taken through the provisions of the Prospectus of KEAM-2015, the notification issued as well as the decisions in support of the various contentions advanced. We have bestowed our anxious consideration to the contentions advanced before us.

6. What is necessary to be noticed in the first place is that, the scenario in this State in the matter of admissions to private Colleges is peculiar in many ways. Apart from

the Government Professional Colleges, there are at present a number of private Self-financing colleges functioning in the State. There are also Government Controlled Professional Colleges. There are seats available in each of these professional colleges to which the Government is entitled to admit students. The entitlement of the Government to admit students to Self-financing Private Colleges is controlled by the terms of the consensual agreements entered into by such colleges with the Government. As per the terms of such seat sharing agreements, 50% of the seats in such Self-financing professional Colleges are set apart for allotment of candidates by the Government. Therefore, the Government in the present scenario allots candidates not merely to Government Colleges but also to the Government Controlled Private Colleges as well as Private Self Financing Colleges. The allotments are made on the basis of the ranks obtained by each candidate at the KEAM-2015 conducted by the

Commissioner of Entrance Examinations. As rightly contended by the learned Senior Government Pleader, the expression "Government Seats" contained in the prospectus of KEAM-2015 encompasses all the categories of seats to which the Government is entitled to make allotments. The candidates have also been informed in advance that, they would be bound by the terms of the Consensual agreements entered into by the Self-financing Professional Colleges with the Government. They are also deemed to have accepted the terms of such agreements.

7. The allotment process adopted is substantially merit based. The candidates are permitted to indicate their choice of preferences in the matter of allotment to the various colleges. The allotments are made taking into account the merit as well as the choice of institutions indicated by each candidate. It is true that, in many cases a candidate may not get an allotment to his or her choice of first preference. The contention of the counsel appearing

for the petitioners is that, a candidate who has been admitted to an institution of lower preference is entitled to be considered when seats are available in one of the institutions of higher preference. That is the procedure adopted during this year also. However, at the time of final phase of allotment, as per the impugned notification, candidates who have been admitted to Self-financing Colleges in accordance with the preferences indicated by them have been excluded from exercising their higher preferences. It is the said action that has been attacked as arbitrary in these cases.

8. It is true that, by excluding the persons who have already got themselves admitted to other Self-financing Professional Colleges on the basis of one of the preferences indicated by them, candidates who are ranked below them in the rank list of KEAM -2015 have been allotted to the seats that were remaining vacant in such colleges. However, according to learned Senior Government Pleader,

such a procedure had to be adopted in order to complete the allotment process before the cut off date of 20.09.2015, after which, all the seats remaining vacant would revert back to the Management. Such a decision has not been taken with the object of helping the Managements of Self-financing Professional Colleges, as alleged by the counsel for the petitioners. Such a decision was taken with the object of ensuring that the Government seats do not get lapsed or reverted to the Management by virtue of their remaining unfilled on the cut off date. If the seats were permitted to revert back to the Management, the end result would have been that, students who would be eligible to get admission to Government seats, would have to pay fees at the higher rates stipulated by the Management. On the contrary, when students are allotted by the Government before the cut-off date, they get the benefit of lower fees that is stipulated in respect of the Government seats. Therefore, the procedure adopted is to the benefit of the

students and has in fact only benefited them. The students have been allotted from the KEAM rank list of 2015, though they are candidates ranked below the petitioners in these cases.

9. According to the counsel for the petitioners, this is a case where the State has made a classification that has to be held to be illegal, for the vice of over inclusion, in view of the decision of the Supreme Court in **State of Gujarat v. Ambica Mills Ltd.** [1974(4) SCC 656]. A classification according to the said decision is over inclusive when it includes not only those who are similarly situated but also others who are not so situated. For the above reasons, according to the learned counsel, the impugned notification that has classified the students as above requires to be set aside. We are not satisfied that, the notification has sought to classify the students in the manner sought to be made out by the counsel for the petitioners. As already noted above, the Centralized Allotment Process is one that has

been formulated with the object of ensuring allotment of candidates to all the seats that are available to the Government for being filled up through allotment by the Commissioner of Entrance Examinations. Experience during the previous years shows that, many candidates allotted during the first allotment could not join for the reason that they would have got admissions in other colleges either outside or inside the State or by allotment on the basis of their ranking in the All India Entrance Examinations. The seats that remain vacant after the first allotment are filled up through the second allotment. It is only the seats that remain vacant after the second allotment also, that figure for the purpose of the final allotment. In view of the time limit stipulated by the consensual agreement, the time limit of 20.09.2015 is also required to be adhered to. Within the time constraints of the allotment process, if a further option were to be given to the candidates who have already secured admissions to other

professional colleges, and an option made available to them to decide whether to shift to one of the seats available for final allotment, the result would be that provision would have to be made for another allotment to such of those seats that may remain vacant, after the exercise of such an option. The possibility of candidates who have already secured admissions to other professional colleges not wanting to forgo such admissions also cannot be ruled out. That would create a situation where the seats would remain unfilled even on the cut-off date of 20.09.2015. It is to avoid the said eventuality that, at the time of final allotment, the persons who have already got admissions on the basis of their preferences have been excluded. The figures produced before us by the counsel appearing for the respective petitioners no doubt show that persons ranked below them have obtained admissions to Government Colleges. The situation during the current year is partly the result of sanction of three additional Dental Colleges in the

State, one in the private sector and the other two in the Government sector. Six private Medical Colleges have also obtained permission to admit students. The marginal violations noticed above, cannot and does not vitiate the entire Centralized Allotment Process for the reasons indicated above. A fair, transparent and merit based procedure has been formulated on the basis of which allotments have been made. The petitioners are all persons who have got admissions to various professional Colleges on the basis of the individual preferences indicated by each one of them. Their complaint is that, their higher preferences could have been satisfied, had they been given a further option at the time of final allotment. We are not satisfied that, the decision not to grant them such an opportunity has vitiated the admission process. We certainly understand their heart burn, which to a certain extent would have to be suffered, when the totality of the entire situation is taken into account. Had the petitioners been

granted one of their higher choices of preference, it would have been possible for them to reduce the expenditure for their studies. However, for the purpose of securing to them the said benefit, the entire process of admission would have had to be upset with the possibility of a large number of Government seats remaining unfilled and getting lapsed looming large. The lesser evil is to sustain the admission process and the allotments already made.

10. The counsel for the petitioners has placed reliance on the decision of this Court in **Asha v. Pt.B.D Sharma University of Health Sciences** (2012) 7 SCC 389] to contend that, even the last date for completion of admissions stipulated by the Supreme Court which is 30.09.2015, today, is capable of being modified and enlarged to ensure that a merit based selection is maintained. As already noticed, we are not satisfied that there are any exceptional circumstance in these cases, justifying an enlargement of the said time limit

or modification thereof. Considering the question as to whether the cut-off date of 30.09.2015 could be modified or not, the Supreme Court has answered in paragraph 36 of the above decision in the following words:-

36. Now, we shall proceed to answer the questions posed by us in the opening part of this judgment.

ANSWERS

- a) The rule of merit for preference of courses and colleges admits no exception. It is an absolute rule and all stakeholders and concerned authorities are required to follow this rule strictly and without demur.
- b) 30th September is undoubtedly the last date by which the admitted students should report to their respective colleges without fail. In the normal course, the admissions must close by holding of second counseling by 15th September of the relevant academic year [in terms of the decision of this Court in Priya Gupta (supra)]. Thereafter, only in very rare and exceptional cases of unequivocal discrimination or arbitrariness or pressing emergency, admission may be permissible but such power may preferably be exercised by the courts. Further, it will be in the rarest of rare cases and where the ends of justice would be subverted or the process of law would stand frustrated that the courts would exercise their extraordinary jurisdiction of admitting candidates to the courses after the deadline of 30th September of the

current academic year. This, however, can only be done if the conditions stated by this Court in the case of Priya Gupta (supra) and this judgment are found to be unexceptionally satisfied and the reasons therefor are recorded by the court of competent jurisdiction.

c) and d) Wherever the court finds that action of the authorities has been arbitrary, contrary to the judgments of this Court and violative of the Rules, regulations and conditions of the prospectus, causing prejudice to the rights of the students, the Court shall award compensation to such students as well as direct initiation of disciplinary action against the erring officers/officials. The court shall also ensure that the proceedings under the Contempt of Courts Act, 1971 are initiated against the erring authorities irrespective of their statute and empowerment.

Where the admissions given by the concerned authorities are found by the courts to be legally unsustainable and where there is no reason to permit the students to continue with the course, the mere fact that such students have put in a year or so into the academic course is not by itself a ground to permit them to continue with the course.

11. The present Centralized Allotment Process and its validity has been considered by another Division Bench of this Court in **Hanna Thasnim, K.V. v. State of Kerala** [ILR 2014(2) Kerala 388]. After an elaborate consideration

of the various processes involved, it has been held by this Court that the allotment process is not based solely on the merit, but also on the preferences indicated by each candidate. Here, the candidates have indicated their preferences and joined the respective Colleges to which they have been allotted. Therefore, they have ceased to be candidates available for further allotment at the time of third allotment. This Court considering a similar contention rejected the same in the following words:-

The principle of equality does not mean that every law or administrative decision must have universal application for all persons who are not by nature or circumstances in the same position, as the varying needs of different classes of persons often require separate treatment. It would be inexpedient and incorrect to think that all laws or administrative decisions have to be made uniformly applicable to all people in one go. In the sphere of legal and contractual relations, the State, its instrumentalities and public authorities are enjoined in a manner that is fair, just and equitable, after taking objectively all the relevant options into consideration and in a manner that is reasonable, relevant and germane to effectuate the purpose for public good. The action must

W.P.(C) Nos.29302 of 2015 & Conns.

be in the interest of general public and it must not take any irrelevant or irrational factors into consideration or appear arbitrary in its decision.

For the foregoing reasons, these writ petitions fail and are accordingly dismissed.

Sd/-
K.SURENDRA MOHAN,
JUDGE

Sd/-
SHAJI P.CHALY
JUDGE

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