**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR**

**&**

**THE HONOURABLE MR. JUSTICE SHAJI P.CHALY**

**FRIDAY, THE 04TH DAY OF DECEMBER 2020 / 13TH AGRAHAYANA, 1942**

**WA.No.1537 OF 2020**

**AGAINST THE JUDGMENT IN WP(C) 24900/2020(J) OF HIGH COURT OF KERALA**

**APPELLANT/PETITIONER:**

**ABHIMANUE PRINCE,**
**AGED 18 YEARS**
**S/O. PRINCE R., UDYAGIRI, ALUKUNNAM, PULIPPARA P.O., KADAKKAL, KOLLAM-691 536.**

**BY ADVS.**
**SRI.P.B.SAHASRANAMAN**
**SRI.T.S.HARIKUMAR**

**RESPONDENTS/RESPONDENTS:**

1 **THE STATE OF KERALA**
**REPRESENTED THE SECRETARY, DEPARTMENT OF HIGHER EDUCATION, SECRETARIAT, THIRUVANANTHAPURAM-695 001.**

2 **THE COMMISSIONER FOR ENTRANCE EXAMINATIONS**
**5TH FLOOR, HOUSING BOARD BUILDING, SANTHI NAGAR, THIRUVANANTHAPURAM-695 001.**

**SRI.V.MANU, SENIOR GOVERNMENT PLEADER FOR RESPONDENTS**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 04.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**JUDGMENT**

**S. MANIKUMAR, CJ**

This writ appeal is fled by the petitioner in the writ petition challenging the judgment of the learned Single Judge in W.P.(C) No.24900 of 2020 dated 16th November, 2020, whereby a learned Single Judge has dismissed the writ petition as follows:

> *"4. Having considered the contentions on either side it is seen that the documents to be uploaded for claiming special reservation is as provided in Clause 5.2 of Ext.P1 prospectus. Clause 5.2 of Ext.P1 prospectus deals with claim for special reservation. Clause 5.2.1 relates to Ex-servicemen quota (XS) which is available to son/daughter of Ex-serviceman as well as Ex-serviceman himself. Clause 5.2.2 relates to dependent of defence personnel killed/missing /disabled in action. The candidates claiming the same should have uploaded a certificate obtained from the Zilla Sainik Welfare Officer, as shown in Annexure XIII(a) to their online application. As per Clause 5.22 the petitioner ought to have uploaded a certificate as contained in Ext.P5 which was issued only on 06.11.2020. Though it is seen that the District Sainik Welfare officer is the culprit in issuing a certificate that petitioner is the son of Ex-serviceman, petitioner also should have verified the certificate either before uploading the same. The innumerable opportunities made available to the candidates by the Commissioner for Entrance Examination and notifications alerting the candidates from time to time issued by the 2nd respondent are already explained in my judgments in*

*similar cases (see judgment in W.P.(C) No. 247124 of 2020, 23660 of 2020, etc). The petitioner also should have been vigilant. In this case the 2nd respondent would not have been able to find out any defect in the application or certificate when the petitioner claimed reservation as XS and uploaded Ext.P2 certificate which was in tune with the same. Confirmation page which is to be kept by the candidate was available with the petitioner and he could have made correction at the relevant time. The relevant portions of the prospectus produced by the petitioner himself would show that the 2nd respondent had given sufficient instructions for claiming reservation. As pointed out by the learned Government Pleader, this court has to be consistent in its view. Therefore, though the learned counsel for the petitioner submitted that out of the 5 seats which are available for the category of DK only one candidate is available and the remaining seats are lying vacant, no relief can be granted in this writ petition. Therefore the Writ Petition is dismissed. "*

2. The subject issue relates to admission to I Year MBBS course, for the year 2020 as against the seats earmarked for Ex-Servicemen/defence personnel (XS)/dependent of defence personnel killed/missing/disabled in action (DK) guided by clause 5.2.1. and 5.2.2. of the Exhibit-P1 prospectus and they read thus:

***5.2.1*** *Ex-serviceme Quota (EX): Applicants to this category should invariably upload to the online application, a certificate in Annexure XIII (a) obtained not earlier than six months from the last date of application from the Zilla Sainik Welfare Officer concerned to the effect that he/she is the son/daughter of ex-serviceman or an ex-serviceman himself/herself. The certificate should clearly show that the benefit of reservation has not been granted earlier to any member in the family. In*

*the absence of the certificate, the claim will not be considered.*

***5.2.2:*** *Dependent of Defence Personnel Killed / Missing / Disabled in action (DK): This benefit will be available to one person only from the family concerned in respect of each defence person killed in action/missing in action/disabled either during war hostilities or in peace time circumstances of which are identical to activities during operational engagements. They should invariably upload a certificate in Annexure XIII (a) to the online application obtained not earlier than six months from the last date of application from the Zilla Sainik Welfare Officer concerned to the effect that he/she is the son/daughter/widow of the defence person who was killed in action or missing in action or disabled in action. In the case of disabled personnel, the certificate should specify that the concerned person was/is in receipt of disability pension. The certificate should clearly show that the benefit of reservation has not been granted earlier to any member in the family. In the absence of the certificate, the claim will not be considered.*

*If no suitable candidate under this category is available for the concession, as per the existing order/rules, the seats reserved for them will be given to the son/daughter/widow of the defence personnel who died in harness (HR), if they are otherwise eligible as per Clause 6. They should upload a certificate in Annexure Xlll (a) to the online application obtained not earlier than six months from the last date of application from Military Authority/Zilla Sainik Welfare Officer to the effect that the defence personnel had died while in service. The certificate should clearly show that the benefit of reservation has not been granted earlier to any member in the family. In the absence of the certificate, the claim will not be considered.*

*If there are still no suitable candidates under this category, the seats reserved for the children/widow of defence personnel killed in action/missing in action/disabled will be given to children of Serving Defence personnel or in their absence to ex-servicemen/children of ex-*

*servicemen."*

3. Brief facts for the disposal of writ appeal are as follows; appellant is a ward of an Ex-Serviceman and entitled to get special reservation under the category of dependent of defence personnel killed/missing/disabled in action (DK) for the MBBS course – 2020. Father of the appellant was boarded out of defence service with disability sustaining severe injury during military duty. Appellant, in terms of the prospectus, uploaded the certificate issued by the Zilla Sainika Welfare Officer, Kollam, but it was not shown therein that the father of the appellant was disabled in action while in defence service. Appellant qualified for the NEET – 2020 with All India rank as 11786 with 620 marks and his Kerala State Medical rank is 1688. Appellant belongs to Other Backward Community category and, his category rank is 4472.

4. Five seats of MBBS course in the State of Kerala are set apart for special reservation under the category of dependent of defence personnel killed/missing /disabled in action (DK). The appellant came to know about the mistake in the certificate issued by the Zilla Sainika Welfare Officer, Kollam, only when the Commissioner for Entrance Examinations, Thiruvananthapuram, 2nd respondent, published the category-wise list of eligible candidates. Only one candidate is included as an eligible candidate for the special reservation in the category-wise list of dependent of defence personnel killed/missing /disabled in action (DK). Appellant having realised the mistake, immediately got the

certificate corrected from the Zilla Sainika Welfare Officer, Kollam, on 6.11.2020 by establishing that he is eligible for the special reservation under the category of dependent of defence personnel killed/missing/disabled in action(DK). Though the appellant has forwarded Exhibit-P5 certificate dated 6.5.2020 on that day itself to the 2nd respondent through e-mail, as well as through registered post dated 7.11.2020, along with a covering letter, the certificate was not accepted. The Zilla Sainika Welfare Officer has also forwarded Exhibit-P8 certificate dated 11.11.2020 to the 2nd respondent stating that the appellant is entitled to secure admission to MBBS course, in the reservation quota for wards of the disabled in service and boarded out with disability attributable to military service and, therefore, eligible for special reservation under disabled in action (DK) quota.

5. The case projected by the appellant before the learned Single Judge was that the Commissioner for Entrance Examination has given time to rectify the defects in the nativity proof of the online application till 08.11.2020. Moreover, the Commissioner for Entrance Examination has issued notification dated 11.11.2020 inviting online options and an opportunity was given to the candidates to submit the documents till 14.11.2020, for those whose results were withheld. Other contentions are also raised to canvass that in the facts and circumstances of the case interference is required to the judgment of the learned Single Judge. Mr. Manu, learned Senior Government Pleader made

submissions to sustain the impugned judgment.

6. We have heard Mr.T.S.Harikumar, learned counsel for appellant and Mr.V.Manu, learned Senior Government Pleader for respondents.

7. Going through the material on record, *prima facie* we could deduce that Zilla Sainika Welfare Officer, Kollam, has described the appellant as one falling under the category Ex-servicemen quota (XS) instead of dependent of defence personnel killed/missing/disabled in action quota (DK). Had the Zilla Sainik Welfare Officer, who issued Exhibit-P2 certificate dated 13.02.2020, properly described as to which category he belongs, the appellant in his application, would have made the claim for admission to the seats earmarked under DK category. Appellant has been made to believe that he belongs to Ex-serviceman (XS) category and that is why, the Zilla Sainik Welfare Officer himself, realising his mistake has made a representation to the Commissioner for Entrance Examinations, Thiruvananthapuram, 2nd respondent, stating that the appellant ought to have been included in defence personnel killed/missing/disabled in action (DK) category. Because of the certificate issued by the Zilla Sainika Welfare Officer, Kollam, the appellant, as against the column, has mentioned that he belongs to Ex-serviceman (XS) category and therefore, the mistake is not on the part of the appellant. Five seats are reserved against the defence personnel killed/missing/disabled in action (DK) category exclusively.

8. Taking note of the fact that the defence person has suffered injury during the course of his military service and that consequently granted disablement pension, intention and policy of the Government to provide special reservation to the children of such persons, who have served the country and suffered disablement, we are of the view that the special provision enabling their children to get admission should be implemented. This we say because, in view of clause 5.2.2, the appellant is entitled to get reservation, which is an undisputed fact and the only disqualification suffered by the appellant was due to the incorrect certificate issued by the Sainik Officer.

In such a view of the matter, we deem it fit to set aside the impugned judgment dated 16/11/2020 in W.P.(C) No.24900/2020, accordingly we do so. Taking note of the submission of the learned Senior Government Pleader that there is no other qualified candidate available for admission against the seats earmarked for defence personnel killed/missing/disabled in action (DK) category, except the appellant and another candidate, who has already been admitted, and also taking note of the fact that there are four seats remaining vacant, we permit the appellant to submit the required certificates and that he be admitted to the 1st year MBBS course, according to his merit. Respondents are directed to communicate the copy of the judgment passed in this appeal, so as to enable the appellant to submit the document online. Respondents are further directed to send appropriate intimation to the appellant to comply with

the judgment of this Court and make suitable arrangements to open the portal, for this specific purpose.

Writ appeal is allowed as above.

**Sd/-**

**S.MANIKUMAR**

**CHIEF JUSTICE**

**Sd/-**

**SHAJI P.CHALY**

smv **JUDGE**

# APPENDIX

**PETITIONER'S EXHIBITS:**

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| **ANNEXURE A1** | **TRUE PHOTOSTAT COPY OF THE NOTIFICATION ISSUED BY THE 2ND RESPONDENT, DATED 28.9.2020.** |
| **ANNEXURE A2** | **TRUE PHOTOSTAT COPY OF THE NOTIFICATION ISSUED BY THE 2ND RESPONDENT, DATED 24.9.2020.** |
| **ANNEXURE A3** | **TRUE PHOTOSTAT COPY OF THE NOTIFICATION ISSUED BY THE 2ND RESPONDENT DATED 29.9.2020.** |