IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE SMT. JUSTICE P.V.ASHA

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

WP(C).No.26948 OF 2020(P)

PETITIONER:

ANAND KRISHNA
AGED 20 YEARS
S/O KRISHNA T A,
THAZHEKAPPIL HOUSE,
MOOZHIMALA VELIYAMBAM P O, PULPALLY,
WAYANAD DISTRICT,
KERALA, PIN-673579.

BY ADVS.
SRI.N.ANILKUMAR
SMT.T.P.SINDHUMOL
SRI.SINU.G.NATH
SHRI.TONY GEORGE THOMAS
SHRI.ARJUN S.
SHRI.APPU T.S.

RESPONDENTS:

1 **STATE OF KERALA**
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF HIGHER EDUCATION,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695001.

2 **COMMISSIONER FOR ENTRANCE EXAMINATIONS**
5TH FLOOR, KSHB BUILDING,
S S KOVIL ROAD, SANTHI NAGAR,
THIRUVANANTHAPURAM, PIN-695001.

OTHER PRESENT:

SPL GP.SRI.M.A.ASIF

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

Petitioner submitted application for appearing in the National Eligibility cum Entrance Test (NEET) (UG) as well as Kerala Engineering/Pharmacy/ Architechture/Medical and Allied Courses (KEAM) 2020 for admission to undergraduate professional courses. As per Ext.P3 report he secured percentile score of 97.5599 with 575 marks in the NEET (UG) with All India rank of 32874. As per Ext.P4 published by the 2nd respondent, his Kerala State medical rank is 3946 and he is included in the General category. It is stated that petitioner belongs to Hindu Wayanadan Chetty community which is an OBC and it is a community eligible for educational concession. Producing Ext.P1 conformation page of NEET (UG)-2020, it is stated that he was included in the category of OBC (NCL). Similarly it is stated that in Ext.P2 conformation page of KEAM-2020 he is shown as BH-EC-Wayanadan

Chetty. It is stated that petitioner had uploaded Ext.P5 Non-Creamy Layer certificate (State Employment Purpose) issued on 09.05.2019 along with his application for KEAM-2020, in support of his claim for reservation. It is stated that on enquiry as to his inclusion in the general category, petitioner was informed that the caste certificate submitted by him contained the endorsement "State Employment Purpose" which is contrary to the provisions contained in clause 5.4.2(b) of the prospectus. He thereafter obtained Ext.P8 non-creamy layer certificate for 'State Educational Purpose' on 10.11.2020 and thereafter submitted Ext.P9 representation before the 2nd respondent on 10.11.2020 requesting to consider the same.

2. Learned counsel for the petitioner submitted that petitioner was under the impression that he will be getting admission in the second allotment. Since there was no allotment, petitioner

has filed this writ petition challenging the provisions contained in Clause 5.4.2(b) of KEAM-2020 Prospectus and step 5(a)(i) and (iii) of the guidelines regarding uploading of the documents by those who require community reservation stating that right to reservation cannot be taken away on technical grounds. It is alleged that those provisions are unlawful, unsustainable and ultravires.

3. I heard the learned Counsel for the petitioner and the learned Special Government Pleader.

4. Petitioner could have submitted an application for appearing in the KEAM 2020 examination only on the basis of notification issued by the 2nd respondent inviting applications for the same which is issued in terms of the prospectus. The documents which are to be uploaded for claiming reservation; the officer who is to issue the

documents; the Government order under which such documents are called for, etc., are given in the prospectus. The 2nd respondent has issued the notification inviting application in accordance with the provisions in the prospectus which is approved by Government as per order dated 31.01.2020. It is relevant to note that Ext.P2 conformation page contains a declaration by the petitioner which read as follows:

> "I hereby declare that I have downloaded and read various Clauses in the Prospectus for Admission to Professional Degree Courses 2020 carefully and I agree to abide by them. I also declare that all the statements made in online application are true, complete and correct to the best of my knowledge and belief and that in the event of any information being found false or incorrect or ineligible being detected, action can be taken against me by the Commissioner for Entrance Examinations.

5. This writ petition is filed at a stage when the first allotment to medical courses are over. The petitioner is estopped from raising any contention over the provisions contained in the

prospectus after he submitted such a declaration as early as on 04.02.2020, and at a time when the allotments reached more than half way, by filing a writ petition in December 2020.

6. Eventhough petitioner is challenging only the clause 5.4.2(b), it is relevant to note clause 5.4.2(a) also which provides for the Government orders under which the certificates are directed to be uploaded. 5.4.2(a) and (b) read as follows.

> "(a)Candidates belonging to Socially and Educaionally backward classes as per G.O. (P)208/66/Edn. Dated 02.05.2015, G.O. (MS).No.10/2014/BCDD dated 23.05.2014, G.O. (P).No.1/2015/BCDD dated 01.01.2015, GO(MS).No.4/2015/H.Edn.dated 05.01.2015 and GO(MS).No.15/2015/H.Edn. Dated 19.01.2015 should upload to the online application.
> A certificate to the extent that the candidate belongs to the community which is designated as Socially and Educationally Backward Classes and does not belong to the category of creamy layer, in the proforma given as Annexure V of the G.O. (P) No. 1/2015/BCDD dated 01.01.2015. <u>The names of caste and communities which are included in SEBC are given in Annexure XI</u>. Only the claims of the candidates of those communities that are included in the list as incorporated in the respective Annexure of the Prospectus 2020 will be considered. Claims by candidates belonging to other communities, which are not included in the

> list as incorporated in the respective Annexure, will be rejected even if certificates from the concerned Revenue Officers have been obtained and uploaded to the online application.
> (b)Candidates belonging to Ezhava, Muslim, other Backward Hindus, Latin Catholic & Anglo Indians, Dheevara and related communities, Viswakarma and related communities, Kusavan and related communities, Other Backward Christian and Kudumbi communities, claiming reservation under SEBC Quota should invariably upload Non-Creamy Layer certificate in the prescribed format for State Government Education purpose obtained from the Village Officer concerned."

7. When clause 5.4.2(a) provides that the certificate to be uploaded should be one as prescribed in the proforma given in Annexure V to G.O.(P) No.1/2015 there is no independent existence for clause 5.4.2(b) which only gives a further explanation to what is given in sub clause (a). Petitioner does not however challenge the provisions contained in 54.2(a) or the Government order which provides for the form in which certificates are to be issued.

8. The further challenge is against the provisions contained in Clause (a)(i)&(iii) of the

Guidelines in the prospectus (produced as Ext.P7) which provides for the procedure for uploading the documents by those claiming communal reservation. The guidelines are issued in order to guide the candidates at each step. It is not understood how the guidelines which provide that they should upload the certificate issued by the village officer in the proforma for State Education purpose, which is already provided in the prospectus becomes illegal or unsustainable. Similar is the case with step a(iii) which provides that the candidates belonging to OEC have to upload the non-creamy layer certificate for state education purpose obtained from the village officer.

9. The petitioner challenges the aforesaid provisions alleging that insisting to State the purpose of issuance on the Non-creamy Layer Certificate by the village officer, as 'Educational purpose under State Government', is illegal,

unsustainable, ultravires, contrary to settled law, takes away the right of the petitioner to avail caste reservation and fee concession. According to the petitioner, the steps in the guidelines for uploading documents for claiming reservation are also unsustainable and ultravires; it results in the denial of his legitimate right of petitioner to have reservation in education, right to get fee concession and therefore it is illegal and ultravires. The condition for accepting the said certificate for claiming caste reservation is also illegal and arbitrary. He claims that Ext.P5 Non-creamy Layer Certificate is valid and sufficient for the purpose of considering him for reservation or otherwise a privilege conferred on him under the Constitution for caste reservation would be taken away on the basis of unsustainable condition. However apart from stating that it is unsustainable and unreasonable and illegal, it is not stated in

the Writ petition how these provisions takes away his rights and how the guidelines for uploading application and documents become illegal or unsustainable.

10. From the declaration in Ext.P2 conformation page, submitted by the petitioner as early as on 04.02.2020 it is evident that petitioner has declared that he has downloaded and read various clauses in the prospectus and agreed to abide by them. The 2nd respondent has been alerting the candidates from December 2019 onwards, that is even before inviting applications, that they should got ready with all the relevant certificates for claiming reservation. Even after 29.02.2020, the last date for submitting application, the 2nd respondent has given multiple opportunities to the candidates for curing the defects upto 28.09.2020 at various spells and also issuing defect memos in the candidates' portal. Apart from that press releases

as well as notifications were being issued by the Commissioner for Entrance Examination asking the candidates to be vigilant and to visit the website frequently. The procedure followed by the 2nd respondent is explained in various judgments including the one in W.P.(C).No.21474/2020, which was upheld in the judgment in W.A.1404/2020, when candidates approached this Court after the time granted was over. However in those cases they had not challenged these provisions. Petitioner has chosen to approach this Court still later in December 2020 assailing the provisions contained in the prospectus as unreasonable. It is settled law that a person who subjected himself for the selection cannot be heard to challenge the selection after he became unsuccessful. The same principle is applicable in this case also. Petitioner who is supposed to be fully aware of the conditions contained in the prospectus cannot be heard to

challenge the provisions once he becomes unsuccessful in getting reservation. Ext.P2 itself is sufficient to dismiss the writ petition and for repelling all the contentions raised by the petitioner.

11. At any rate the petitioner, could not substantiate the contentions as to the illegality or unreasonableness in the provisions contained in the prospectus.

12. The entire proceedings for admission is conducted online. Lakhs and lakhs candidates apply and appear in the entrance examination. There would be various claims under various heads. It is for the authorities who are conducting the examinations to fix the parameters for identifying the applicants, their categorization, publication of results, etc. How the applications should be submitted, how the documents should be uploaded, which are the documents to be accepted, etc. are all matters

within the purview of the agency/authorities conducting the test, consisting of persons with expertise in the matter. It is settled law that in academic matters, unless there is a clear violation of statutory provisions, the regulations or the notification issued, the courts shall keep their hands off since those issues fall within the domain of the experts. (see University of **Mysore v. C.D. Govinda Rao** [AIR 1965 SC 491], **Tariq Islam v. Aligarh Muslim University** [(2001) 8 SCC 546], **Rajbir Singh Dalal v. Chaudhary Devi Lal University** [(2008) 9 SCC 284], **University Grants Commission v. Neha Anil Bobde** [(2013) 10 SCC 519], etc). This Court is not equipped with the expertise which the academic bodies/agencies are having and hence is not supposed to interfere with such matters under Article 226 of the Constitution of India.

13. Moreover the prospectus only provides for uploading those certificates which are required in

the Government Order. I do not find any illegality or unreasonableness in insisting a certificate for a particular purpose for the purposes of admission to the professional degree courses, as prescribed by Government that too when that Government order is not under challenge. The fact that petitioner missed the opportunities to cure the defect, since he was not vigilant enough, cannot be a reason for declaring the provisions in the prospectus illegal.

This writ petition is accordingly dismissed.

Sd/-
P.V.ASHA, JUDGE

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APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	**TRUE COPY OF THE APPLICATION CONFIRMATION PAGE-NEET (UG)-2020**
EXHIBIT P2	**TRUE COPY OF THE CONFIRMATION PAGE-KEAM-2020**
EXHIBIT P3	**TRUE COPY OF THE RESULT OF NEET (UG)-2020**
EXHIBIT P4	**TRUE COPY OF THE IMAGE OF RESULT PUBLISHED IN THE WEBSITE OF THE 2ND RESPONDENT**
EXHIBIT P5	**TRUE COPY OF THE NON-CREAMY LAYER CERTIFICATE SUBMITTED BY THE PETITIONER ALONG WITH APPLICATION.**
EXHIBIT P6	**TRUE COPY OF THE RELEVANT PAGE OF PROSPECTUS OF KEAM 2020 CONTAINING CLAUSE 5.4.2(B)**
EXHIBIT P7	**TRUE COPY OF THE RELEVANT PAGE OF PROSPECTUS OF KEAM 2020 CONTAINING STEP 5(A)(I) AND (III) OF THE GUIDELINES**
EXHIBIT P8	**TRUE COPY OF THE NEWLY OBTAINED NON CREAMY LAYER CERTIFICATE WITH ENDORSEMENT OF "STATE EDUCATIONAL PURPOSE" DATED 10.11.2020**
EXHIBIT P9	**TRUE COPY OF THE REPRESENTATION DATED 10.11.2020 FILED BEFORE THE 2ND RESPONDENT**
EXHIBIT P10	**TRUE COPY OF THE POSTAL RECEIPT DT.10.11.2020 SENDING REPRESENTATION AND NEWLY OBTAINED NON-CREAMY LAYER CERTIFICATE**

EXHIBIT P11	**TRUE COPY OF THE FRONT PAGE OF SSLC BOOK OF THE PETITIONER'S FATHER KRISHNAN T.A.**
EXHIBIT P12	**TRUE COPY OF THE FRONT PAGE OF SSLC BOOK OF THE PETITIONER'S MOTHER SATHYABHAMA M.D.**