

**(2020) 11 KL CK 0064**

**In the High Court Of Kerala**

**Case No :** Writ Petition (Civil) No. 25637, 25725 Of 2020(D)

Cisly Grashious And Ors

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

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**Date of Decision :** 23-11-2020

**Acts Referred:**

**Citation :** (2020) 11 KL CK 0064

**Hon'ble Judges :** P.V. Asha, J

**Bench :** Single Bench

**Advocate :** Pranoy K. Kottaram, George Mathews, Vineetha B., K.M. Faisal, Stiya Sivan

**Final Decision :** Dismissed

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## **Judgement**

1. Both these Writ Petitions are filed by the students, who got admission in Law Colleges on the basis of allotment based on the rank in the entrance

examination for 3 year LLB course in Kerala. The first option of both the petitioners was Government Law College, Ernakulam. Smt.Cisly Grashious,

petitioner in WP(C) No.25637 of 2020 was rank no.249 who got admission in a self finance College at Poothotta and Smt.Shabana Yasmin, petitioner

in WP(C) No.25725 of 2020 was rank no.416 who got admission in the Muslim category in Government Law College, Thrissur. Both of them

appeared in the spot admission conducted on 27.10.2020 against the seats which were vacant after the process of allotment.

2. Subsequent to the said spot admission, additional seats were sanctioned to the extent of 10% in the Government Law Colleges. The Commissioner

for Entrance Examination issued a notification dated 16.11.2020 (Ext.P9 in WP(C) No.25637/2020)) directing the respective Principals of the Law

Colleges to conduct spot admission as against the 10% seats additionally sanctioned by the Bar Council provided they received approval from the Bar

Council as well as orders from the Government. In Ext.P9 order it was ordered that only those candidates who are included in the rank list published

by the Commissioner for Entrance Examination but have not got admission in any Law Colleges so far, shall be considered against the 10% seats

additionally sanctioned. Consequent to Ext.P9, Principal, Government Law College, Ernakulam issued Ext.P10 notification dated 19.11.2020 (produced

along with I.A.No.1 of 2020) announcing that spot admission would be conducted on 24.11.2020 against the seats remaining vacant under the EWS

quota and against the 10% seats additionally sanctioned by the Bar Council. This notification also contained the very same condition that only those

who are included in the rank list and who have not been admitted so far alone would be considered in the spot admission. The petitioners are

challenging this condition in Exts.P8 and P9 notifications.

3. According to the petitioners there is already a rank list(Ext.P7 in W.P.C.No.25637/2020) for the spot admission conducted on 27.10.2020 and

therefore only after exhausting that list the Principals shall make further admissions. It is their contention that the merit will be sacrificed in case only

those who are not given admission so far are admitted. The learned counsel also pointed out that spot admission cannot be conducted against the

additionally sanctioned seats unlike the seats which remained vacant after conducting allotment in the regular process.

4. According to the learned Government Pleader, a decision has been taken not to permit those who already got admission in order to see that there is

a finality in the process of admission. In case those who already got admission are allowed to participate and they are admitted, the seats which are

presently occupied by them would have again to be filled up and the process would go on. Relying on the judgment in Arvind Kumar Kankane v. State

of U.P. and others : 2001 (8) SCC 355 = 2001 KHC 1650 and judgment in WP(C) No.35202 of 2018 and the Division Bench judgment of this Court in

W.A.No.2230 of 2018, affirming the same, Smt.B.Vinita,learned Government Pleader argued that there is no illegality in fixing the condition. In the

judgment in Arvind Kumar Kankane vs. State of U.P. and others the apex court, while considering the validity of similar condition contained in an

order issued by Government, held as follows:

4. We have carefully examined the contentions put forth before the High Court and before us and we are of the view that the finding recorded by the

Division bench and Delhi High Court in Dr.Veena Gupta's case (AIR 1994 Delhi 108 (supra) and the High Court of Punjab and Haryana in Anil Jain's

case (1198 (3) ESC 2016) (supra) is in accordance with the reason and stands the test of rationality. It is clear that once an option is exercised by a

candidate on the basis of which he is allotted the subject and thereafter that candidate is allowed to participate in subsequent counseling and his seat

becomes vacant, the process of counseling will be endless and, as apprehended by the High Court, it may not be possible to complete the academic

course within the stipulated period.

5. The grievance made is that if a choice subject like surgery and medicine is given up by a candidate and that seat becomes vacant it may go to a

candidate who is lower in rank in the merit list. This is only a fortuitous circumstance dependent on so many contingencies like the student, who has

been allotted seat in medicine, giving up the said seat and that seat falling vacant and thereafter the same is allotted to a candidate who is lower in

rank in the merit list. Such freak circumstances cannot be the test of reasonableness of the rule.

In the judgment of the Division Bench of this court in W.A.No.2230 of 2018 a similar issue was considered and it was held as follows:

3. The learned Single Judge took note of the relevant clause in Ext.P3 notification and found that, the mere fact that few seats fell vacant during the

spot allotment process on account of the release of seats from other quotas could not be a ground to hold that the interdiction in Ext.P3 with regard to

the transfer from one Law College to another Law College was unreasonable. While arriving at such a conclusion, the learned Single Judge took note

of the decisions of the Supreme Court in Arvind Kumar Kankane vs. State of U.P. and others (2001 KHC 1650) to opine that even under

circumstances where a seat becomes vacant after the allotments are complete, and is filled up by a candidate who is lower in rank in the merit list, the

same can be treated only as a fortuitous circumstance and that cannot be a test for examining the reasonableness of the rule.

4. xxxxxxxxxx We are at a loss to understand how Ext.P3 notification can govern

the allotment done in the case of the petitioner. The petitioner being a candidate, who secured allotment to the Government Law College, Trivandrum in the regular online allotment process, had her right to admission recognized through her allotment to the Government Law College in Trivandrum. Although she could have opted for the Government Law College, Ernakulam, which was her preferred choice of Government Law Colleges in the state, on account of there being no vacancy during the online allotment process, the petitioner could not join the said college. Spot allotment is a procedure prescribed to fill up vacancies that remain after the completion of the regular online allotment process. It is to govern such allotments that Ext.P3 guidelines were notified. While the petitioner is not a person, who would be governed by Ext.P3 notification, we note that there is a rationale for the differential treatment accorded to students who have already obtained admission in a Government Law College/Self Financing Law College when they choose a transfer to a Self Financing Law College/Government Law College. The said migrations, if opted for, would inevitably entail a change in the fee structure based on the choice of college opted by the student. The same cannot be said of persons who have been allotted to a Government Law College when they choose to opt for another Government Law College, since there is no change in the fee structure, and the preference for another Government Law College is purely a subjective one, not based on any objective criteria, as all the Government Law Colleges are at par in respect of educational standards. We, therefore, see no reason to interfere with the impugned judgment of the learned single Judge and dismiss this Writ Appeal. emphasis supplied)

5. Though the learned Senior Counsel as well as the learned counsel appearing for the petitioners in both the Writ Petitions vehemently argued that the admission has to be made from Ext.P7 rank list, I am of the view that the said rank list prepared for spot admissions ceased to exist on the spot when admissions were over and it cannot be said that it has to be operated in a subsequent process for which orders were issued only on 16.10.2020 and thereafter. Though the learned Counsel for the petitioners argued that as per clause 16 of the prospectus, all candidates included in the rank list are entitled to attend the spot admission, it is seen that the very same clause provides that Commissioner for Entrance Examination is empowered to issue

orders on that behalf and Ext.P16 is such an order. In the light of the judgment of the apex court as well as judgment of the Division Bench, it cannot be said that the decision taken by the Commissioner for Entrance Examination that the additional seats as well as vacancies shall be filled up only from among those who did not get admission, suffers from any illegality. Therefore I dismiss these Writ Petitions.