

**(2003) 04 KL CK 0014**  
**In the High Court Of Kerala**  
**Case No : W.A. No"s. 864 and 985 of 2002**

Dr. Jayakumar, E.K.

APPELLANT

Vs

Director of Medical Education and Others

RESPONDENT

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**Date of Decision :** 30-04-2003

**Acts Referred:**

**Citation :** (2003) 04 KL CK 0014

**Hon'ble Judges :** Cyriac Joseph, J;A.K. Basheer, J

**Bench :** Division Bench

**Advocate :** George Cherian, for the Appellant; P.V. Lonachan, Government Pleader for Respondent 2 and 4, C.P. Sudhakara Prasad, for 2nd Respondent and K.A. Abraham, for 3rd Respondent, for the Respondent

**Final Decision :** Allowed

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## Judgement

Cyriac Joseph, J.—Since a common question arises in these appeals they were heard together and they are being disposed of through a common Judgment.

2. Three original petitions, namely O.P. Nos. 39230 of 2001, 38900 of 2001 and 35487 of 2001 were disposed of by the learned Single Judge through a common Judgment, dated 25th February 2002. W.A. No. 864 of 2002 is filed by Dr. Jayakumar, E.K. who was the Petitioner in O.P. No. 39230 of 2001. W.A. No. 985 of 2002 is filed by Dr. K.P. Udayamma who was the Petitioner in O.P. No. 38900 of 2001.

3. Dr. Jayakumar, E.K. Appellant in W.A. No. 864 of 2002 was appointed as Lecturer in Nephrology in the Medical College, Kozhikode on the advice of the Kerala Public Service Commission on 25th May 1999. Satisfactory completion of his probation was declared on 28th June 2001. When the first Respondent Director of Medical Education issued the Prospectus for Postgraduate Degree/ Diploma Courses, 2002, the Appellant applied for admission to M.D., General Medicine Course in the Lecturer quota. Since the Appellant was a regular Lecturer in Medical Education Service in the State and since he had completed

two years of service as Lecturer in Nephrology he was eligible to apply for admission to M.D. General Medicine Course in the Lecturer quota.

4. Dr. K.P. Udayamma the Appellant in W.A. No. 985 of 2002 was appointed as Lecturer in Medicine in the Medical College, Alappuzha on the advice dated 11th March 1999 of the Kerala Public Service Commission. She joined service on 6th May 1999. Satisfactory completion of her probation Was declared on 6th May 2001. When the first Respondent Director of Medical Education issued the Prospectus for Postgraduate Degree/Diploma Courses, 2002 the Appellant applied for admission to M.D. General Medicine Course. Since the Appellant was a regular Lecturer in Medical Education Service in the State and since she had completed two years of service as Lecturer in Medicine she was eligible to apply for admission to M.D. General Medicine Course in the Lecturer quota.

5. According to the Prospectus for P.G. Degree/Diploma Courses, 2002, some seats were reserved for Service candidates. Such Service candidates included Lecturers, Assistant Surgeons, Medical Officers in Municipal Service and Medical Officers in Insurance Medical Service. The distribution of seats for the Postgraduate Degree Courses was shown in Annexure III to the Prospectus. As per Annexure III, three seats in M.D. General Medicine were reserved for Lecturers in Medical Education Service in the State.

6. Clause x(i) of the Prospectus read as follows:

X Reservation of Seats among Service candidates. -- ....

(i) Lecturer Quota. -- The seats as specified in Annexure III are reserved for regular Lecturers in Medical Education Service in the State. Lecturers who have completed two years of service in the speciality in which they are working will be eligible to apply under Lecturer quota. Selection to these seats will be on the basis of seniority in service based on the first effective advice by the Kerala Public Service Commission in the post. Applicants applying under this category shall attach service certificate from the Director of Medical Education indicating their date of commencement of regular service and date and number of Kerala Public Service Commission advice Lecturers who have undergone P.G. Course under Tutor/Lecturer trainee scheme once will not be eligible for selection under Lecturer quota for a second time. Lecturers under the Medical Education Department who are selected for P.G. Course under Lecturer quota and who fail to join the course/discontinue the course after joining, other than on Medical grounds, will not be eligible for applying to the course under Lecturer reservation quota for 3 consecutive years after the year of selection.

The candidates applying under this category shall send the application and required certificates to the Director of Medical Education, along with one set of photocopies of application and certificates.

Lecturers in a particular subject/speciality shall be eligible to be considered for the P.G. Course in the same subject only except the Lecturers in the following

subjects who will be considered for the P.G. Course as detailed below:

Sl. No. Category Degree Course for which eligible to apply 1 Lecturer in Neurology M.D. General Medicine 2 Lecturer in Gastroenterology " 3 Lecturer in Cardiology " 4 Lecturer in Nephrology " 5 Lecturer in Infectious diseases " 6 Lecturer in Endocrinology " 7 Lecturer in Haematology " 8 Lecturer in Neuro Surgery M.S. General Surgery 9 Lecturer in Paediatric Surgery " 10 Lecturer in Plastic Surgery " 11 Lecturer in Genito Urinary Surgery " 12 Lecturer in Thoracic Surgery " 13 Lecturer in Traumatic Surgery " 14 Lecturer in Blood Bank M.D. Pathology/M.D. Microbiology 15 Lecturer in Nuclear Medicine M.D. Radiotherapy

It can be seen that as per the Prospectus, apart from Lecturers in General Medicine, Lecturers in Neurology, Gastroenterology, Cardiology, Nephrology, Infectious Diseases, Endocrinology and Haematology also were eligible to apply for admission to M.D. General Medicine Course.

7. The second Respondent Dr. Anilakumari is a Lecturer in Nuclear Medicine in Medical College, Kozhikode. The third Respondent Dr. Jayakumar, S is a Lecturer in Nuclear Medicine in Medical College, Thiruvananthapuram. According to the above-mentioned Prospectus Respondents 2 and 3 were eligible to apply for admission only to M.D. Radiotherapy Course and they were not eligible to apply for admission to M.D. General Medicine Course.

8. On 17th December 2001 the first Respondent Director of Medical Education published a provisional rank list of Lecturers applied for Medical Post-graduate admission under Lecturer quota. For M.D. General Medicine Dr. Anilakumari (Respondent No. 2) and Dr. Jayakumar, S. (Respondent No. 3) were given rank Nos. 1 and 2 respectively, Dr. K.P. Udayamma (Appellant in W.A. No. 985 of 2002) was given rank No. 4 and Dr. Jayakumar, E.K. (Appellant in W.A. No. 864 of 2002) was given rank No. 6. Complaint, if any, against the said provisional rank list was to be submitted to the first Respondent on or before 20th December 2001. Dr. Jayakumar, E.K. submitted a complaint to the first Respondent on 20th December 2001 stating that Respondents 2 and 3 being Lecturers in Nuclear Medicine were not eligible for admission to M.D. General Medicine Course and hence their names should be excluded from the rank list for M.D. General Medicine. Dr. K.P. Udayamma also submitted a similar complaint on 19th December 2001. After considering the complaints received against the provisional rank list the first Respondent along with his letter dated 20th December 2001 forwarded to the Principals of the Medical Colleges the provisional select and wait list of candidates who applied for Medical Post-graduate Course under Lecturer quota. In the said provisional select list for M.D. General Medicine Course, Dr. Mohammed Shakeel, Dr. Udayamma, K.P. and Dr. Jayakumar, E.K. were included as rank Nos. 1, 2 and 3 respectively. Respondents 2 and 3, Dr. Anilakumari and Dr. Jayakumar, S., were not included either in the select list or in the wait list. However, they were included in the wait list for M.D. Radiotherapy Course. Thereafter on 24th December 2001 the first Respondent issued a final select and wait list of Lecturers applied for Medical Post-graduate

Admission under Lecturer quota. As per the said list Respondents 2 and 3 were given rank Nos. 1 and 2 in the select list and the Appellants Dr. Udayamma, K.P. and Dr. Jayakumar, E.K. were given rank Nos. 1 and 2 in the wait list. In the said final select and wait list, against the names of Respondents 2 and 3 and the Appellants it was written in the remarks column: "Selection Committee decision".

9. Since the inclusion of the names of Respondents 2 and 3 in the select list for M.D. General Medicine Course was against the provisions contained in the Prospectus issued by the first Respondent and since the Selection Committee had no power to take a decision against the provisions in the Prospectus, the Appellants filed O.P. Nos. 38900 of 2001 and 39230 of 2001 praying for quashing the abovementioned final select list for M.D. General Medicine Course and for a direction to the first Respondent to include the Appellants' names in the final select list for admission to M.D. General Medicine Course, 2002 and also for a further direction to remove the names of Respondents 2 and 3 from the final select list.

10. In the year 2001 the third Respondent Dr. S. Jayakumar had approached the High Court for a direction to include Nuclear Medicine as a feeder category for M.D. General Medicine so that Lecturers in Nuclear Medicine could apply for admission to M.D. General Medicine Course in the Lecturer quota. W.A. No. 234 of 2001 and O.P. No. 6567 of 2001, both filed by Dr. S. Jayakumar, were disposed of by a Division Bench of this Court through a common Judgment dated 12th June 2001. As per the said Judgment this Court directed the Government to look into the grievance raised by Dr. S. Jayakumar in his representations and to consider whether the post of Lecturer in Nuclear Medicine also should be included as feeder category for admission to M.D. General Medicine. Thereafter, the Government issued G.O. (Rt.) No. 2255/01/H and FWD, dated 17th August 2001 which read as follows:

In exercise of the powers conferred in Government as per Clause XVIII of the prospectus read as first paper above, the Government are pleased to order that the Lecturers in Nuclear Medicine are also eligible to be considered for the M.D. General Medicine Course.

The Prospectus read as first paper stands modified to the above extent.

The Prospectus read as first paper in the said Government Order was the Prospectus for Medical Post-graduate Degree/Diploma Course, 2001.

11. According to the averments in the counter affidavit filed by the second Respondent Dr. Anilakumari, in view of the Government Order dated 17th August 2001 she applied for M.D. General Medicine Course in the year 2002. Taking note of the Government Order and the seniority of the second Respondent, her name was included in the final select list for M.D. General Medicine Course, 2002. The second Respondent received a memo dated 4th January 2002 from the first Respondent informing her that she had been provisionally selected for admission to Post-graduate Course in M.D. General Medicine and directing her to report

before the Principal, Medical College, Kozhikode on or before 9th January 2002. It was also stated in the memo dated 4th January 2002 that those who were found eligible on scrutiny of the original certificates, etc. would be given provisional admission subject to the result of the original petition, if any pending in the High Court. The second Respondent reported before the Principal, Medical College, Kozhikode on 8th January 2002. But the Principal told her that she could not be admitted since there was a stay order in O.P. No. 39230 of 2001. Thus, in spite of the memo dated 4th January 2002 issued by the first Respondent the second Respondent was not admitted to the M.D. General Medicine Course.

12. In the impugned Judgment the learned Single Judge rejected the contention of Respondents 2 and 3 that G.O. (Rt.) No. 2255/01/H and FWD, dated 17th August 2001 applied to the Prospectus for the year 2002 also. According to the learned Single Judge the amendment or modification mentioned in the said Government Order applied only to the Prospectus for the year 2001. The learned Single Judge also held that in the absence of any amendment to the Prospectus for the year 2002 making Lecturers in Nuclear Medicine also eligible for admission to M.D. General Medicine Course, the inclusion of the names of Respondents 2 and 3 in the final select list for M.D. General Medicine Course was contrary and opposed to the Prospectus for the year 2002. However, the learned Single Judge has directed the Government to consider whether an amendment to the Prospectus for the year 2002 exercising the power under Clause XVIII of the Prospectus is necessary. The Government is also directed to consider whether the Lecturers in Nuclear Medicine should be considered for admission to M.D. General Medicine Course on a regular basis while issuing Prospectus for the coming years as well. The learned Single Judge has further directed that the illegality or otherwise of Exts. P-2 and P-5 (provisional rank list and final select list) in O.P. No. 39230 of 2001 shall depend upon the Orders to be passed by the Government based on the directions in the Judgment. Aggrieved by the above directions in the impugned Judgment the Petitioners in the original petitions have filed these writ appeals.

13. According to the Appellants the learned Single Judge rightly held that as per G.O. (Rt.) No. 2255/01/H and FWD, dated 17th August 2001 only the Prospectus for the year 2001 was amended and that the Prospectus for the year 2002 was not amended. The learned Single Judge was also right in holding that in the absence of any amendment to the Prospectus for the year 2002 making Lecturers in Nuclear Medicine also eligible for admission to M.D. General Medicine Course the inclusion of Respondents 2 and 3 in the provisional rank list as well as final select list for M.D. General Medicine Course was contrary and opposed to the Prospectus for the year 2002. However, it is contended by the Appellants that the learned Single Judge seriously erred in directing the Government to consider whether the Prospectus for the year 2002 should be amended in exercise of the power under Clause XVIII of the Prospectus. According to the Appellants, Clause XVIII did not confer any power on the Government to amend the eligibility criteria for admission to the course after the commencement of the process of

admission. They also contend that since the learned Single Judge found that inclusion of Respondents 2 and 3 in the final select list was contrary and opposed to the Prospectus the learned Single Judge ought to have allowed the prayer of the Appellants for including them in the final select list for M.D. General Medicine Course.

14. Having considered the pleadings in the two cases and the submissions made by the learned Counsel for the parties, we agree with the finding of the learned Single Judge that G.O. (Rt.) No. 2255/01/H and FWD, dated 17th August 2001 applied only to the Prospectus for the Postgraduate Degree/Diploma Courses, 2001 and that it has no general application. The learned Single Judge was right in holding that, by the said Government Order, only the Prospectus for Postgraduate Degree/Diploma Courses, 2001 stood modified and that on the basis of the said Government Order dated 17th August 2001. Lecturers in Nuclear Medicine could be considered for M.D. General Medicine Course only for the year 2001 In G.O. (Rt.) No. 2255/01/ H and FWD, dated 17th August 2001 the Abstract of the order is given as "Academic-Prospectus for P.G. Degree/ Diploma Courses, 2001-inclusion of Nuclear Medicine as a feeder category to M.D. (General Medicine) modified-Orders issued". The first reference in the order is to "Prospectus for Medical Post-graduate Degree/Diploma Courses, 2001". The second paragraph of the order specifically stated: "The Prospectus read as first paper stands modified to the above extent". Hence there cannot be any doubt that the modification of the Prospectus to make Lecturers in Nuclear Medicine eligible to be considered for M.D. General Medicine Course was confined to the year 2001. It may also be noted that the Prospectus for the P.G. Degree/Diploma Courses, 2002 had been finalised by the first Respondent on 7th May 2001 and that the Government had granted approval to the said Prospectus as per Government letter No. 16581/S3/01/H and FWD, dated 26th June 2001. Hence, while issuing G.O. (Rt) No. 2255/01/H and FWD, dated 17th August 2001, the Government was aware of the fact that the Prospectus for the year 2002 had already been issued; If the Government wanted to make Lecturers in Nuclear Medicine eligible for admission to M.D. General Medicine Course in 2002, nothing prevented the Government from doing so and including the same in the Government Order dated 17th August 2001. Since the Government did not do so, the Respondents cannot contend that by the Government Order dated 17th August 2001 the Prospectus for the year 2002 also stood modified and that the Lecturers in Nuclear Medicine also are eligible for admission to M.D. General Medicine Course in the year 2002.

15. The learned Single Judge rightly held that in the absence of any amendment to the Prospectus for Post-graduate Degree/Diploma Courses, 2002 the inclusion of Respondents 2 and 3 in the select list for M.D. General Medicine Course was contrary to the Prospectus. Since the admissions during the year are governed by the provisions contained in the Prospectus for the year concerned, Respondents 2 and 3 were not eligible to be included in the select list for the year 2002 and consequently the Appellants were entitled to be included in the

select list as rank Nos. 2 and 3 as shown in the provisional select and wait list of Lecturers applied for Medical P.G. Admission under Lecturer quota 2002 forwarded along with letter No. B2/24031/2001/DME, dated 20th December 2001 of the first Respondent. It would appear that Respondents 2 and 3 were included in the final select list as per the decision of the Selection Committee. However, there is no indication as to the basis for such a decision by the Selection Committee. At any rate, the Selection Committee was not competent to take a decision contrary to what was provided in the Prospectus. Any decision taken by the Selection Committee contrary to the provisions contained in the Prospectus is illegal and is liable to be quashed.

16. In our view the Appellants are right in contending that the learned Single Judge seriously erred in directing the Government to consider amendment to the Prospectus for the year 2002 exercising power in terms of clause XVIII of the Prospectus. Clause XVIII of the Prospectus reads thus:

The Prospectus is published in advance to enable the candidates to make their applications in the proper manner on the basis of their eligibility and is subject to modification/addition as may be considered necessary by the Government and will be issued as executive orders/notification.

The Prospectus for the year 2002 was issued on 26th June 2001. The last date for submission of application was 30th November 2001. Clause XVIII of the Prospectus cannot be construed as to confer power on the Government to change the criteria for eligibility for admission to the course even after the last date for submission of the application. At least on the last date for submission of application the candidates should know definitely the criteria for eligibility for admission to the course. Neither the Director of Medical Education nor the Government can be permitted to change the criteria for eligibility for admission after the last date for submission of application. If they are permitted to do so, it would lead to arbitrary exercise of power to favour or to prejudice particular candidates depending on the whims and fancies of the authority concerned. To provide equal opportunity to the candidates and to maintain fairness and to provide arbitrariness in the matter of selection of candidates for admission, it is absolutely necessary that the criteria for eligibility for admission to the course are not changed after the last date for submission of application. If at all Clause XVIII quoted above empowered the Government to change the eligibility criteria for admission by issuing executive orders/notification, the said power can be exercised by the Government only before the last date for submission of application and not thereafter. On the date of the impugned judgment, not only the last date for submission of application was over but also the final select list for admission had been published. At that stage if the Government is asked to consider whether the eligibility criteria should be changed so as to make Lecturers in Nuclear Medicine also eligible for admission to M.D. General Medicine Course, the Government will in effect be considering whether two particular individuals (Respondents 2 and 3) whose identity is known should be given the

benefit of admission to the detriment of two individuals (Appellants herein) whose identity also is known. This will strike at the root of the principle of fairness and equality of opportunity in the matter of selection of candidates for admission to the course. Hence, the impugned judgment to the extent it directed the Government to consider amendment of the prospectus for the year 2002, is liable to be set aside. At the same time we do not find any illegality in the direction of the learned Single Judge that in order to avoid litigation in future the Government shall consider whether Lecturers in Nuclear Medicine should be considered for admission to M.D. General Medicine Course on a regular basis while issuing prospectus for the coming years. Any decision taken by the Government based on the above direction will have only prospective application and it cannot affect the admissions for the year 2002.

17. The learned Counsel for Respondents 2 and 3 contended that since the prospectus for the year 2001 had been amended making Lecturers in Nuclear Medicine also eligible for admission to M.D. General Medicine Course it would be unfair and discriminatory if Lecturers in Nuclear Medicine were not made eligible for admission to the M.D. General Medicine Course in the year 2002. It is not clear whether any Lecturer in Nuclear Medicine has been admitted to M.D. General Medicine Course in the year 2001 on the basis of G.O. (Rt.) No. 255/01/H and FWD, dated 17th August 2001. At any rate, we are of the view that admissions during the year 2002 should be made strictly in accordance with the provisions contained in the prospectus for the year 2002 and that the eligibility criteria for admission cannot be changed after the last date for submission of application. It is also to be noted that even according to the prospectus issued for the year 2003 Lecturers in Nuclear Medicine are not eligible for admission to M.D. General Medicine Course. Hence, there is no merit in the contention of Respondents 2 and 3 based on unfairness or discrimination.

18. Pursuant to the impugned judgment the Government issued G.O. (Rt.) No. 439/2002/H and FWD, dated 26th March 2002 ordering that the Lecturers in Nuclear Medicine in the State Medical Colleges are eligible to be considered for M.D. General Medicine Course under Lecturer quota and that the prospectus for Medical Postgraduate Degree/Diploma Courses, 2002 will stand modified to that extent. However, as per Order dated 8th April 2002 passed in C.M.P. No. 2314 of 2002 in W.A. No. 864 of 2002 this Court had Stayed the said Government Order dated 26th March 2002. Since we have taken the view that the Government cannot be allowed to change the eligibility criteria for admission to the course after the last date for submission of application and that the impugned judgment is liable to be set aside to the extent it directed the Government to consider amendment of the prospectus for the year 2002, G.O. (Rt.) No. 439/2002/H and FWD, dated 26th March 2002 cannot have any legal force and the said Government order cannot be made the basis for admission to the course during the year 2002. It is strange that even though as per their Order dated 26th March 2002 the Government modified the prospectus for the year 2002 to make Lecturers in Nuclear Medicine also eligible for admission to M.D. General Medicine

Course under Lecturer quota, as per the prospectus for the year 2003 Lecturers in Nuclear Medicine are not made eligible for admission to M.D. General Medicine Course. Approval to the prospectus for the year 2003 was granted by the Government as per their letter dated 26th June 2002, i.e. three months after the Government Order dated 26th March 2002 modifying the prospectus for the year 2002. In view of the fact that as per the prospectus for the year 2003 Lecturers in Nuclear Medicine are not eligible for admission to M.D. General Medicine Course, the Appellants cannot be blamed for alleging that the Government Order dated 26th March 2002 was issued only to favour Respondents 2 and 3.

19. It is necessary to note that in their letter No. 2769/S3/2002/H and FWD, dated 23rd March 2002 addressed to the Director of Medical Education, the Government had stated as follows:

I am to invite your attention to the reference cited. The Hon'ble High Court has directed to consider whether the Lecturers in Nuclear Medicine should be considered for the admission to M.D. Course in General Medicine on a regular basis, while issuing prospectus for the coming years. I am to request you to place the matter before the Medical P.G. Prospectus Committee Meeting, 2003.

The reference cited in the above letter was to the Judgment dated 25th February 2002 in O.P. No. 35487/2001 filed by Dr. Anilakumari. We were informed that the Medical P.G. Prospectus Committee consisted of the Principal Secretary to the Government, Health and Family Welfare Department, Director of Medical Education, Joint Directors of Medical Education (Medical and General), Director of Health Services, Director of Insurance Medical Service, Director of Municipal Administration and the Principals of all the Medical Colleges in the State. After the above-mentioned Government letter dated 23rd March 2002, the Medical P.G. Prospectus Committee met and issued the prospectus for the Postgraduate Degree/Diploma Courses, 2003. The said prospectus was approved by the Government as per their letter dated 26th June 2002. According to the prospectus for Postgraduate Degree/ Diploma Courses, 2003, the Lecturers in Nuclear Medicine are not eligible for admission to M.D. General Medicine. It means that in the light of the Judgment dated 25th February 2002 in O.P. No. 35497/2001, an expert body like the Medical Postgraduate Prospectus Committee considered the question whether Lecturers in Nuclear Medicine should be made eligible for admission to M.D. General Medicine Course, but they were not in favour of making the Lecturers in Nuclear Medicine eligible for admission to M.D. General Medicine Course. If the Medical Postgraduate Prospectus Committee was in favour of making the Lecturers in Nuclear Medicine eligible for admission to M.D. General Medicine Course, it would have been so provided in the prospectus for the year 2003. Thus it is clear that the Medical Postgraduate Prospectus Committees which prepared the prospectus for the years 2001, 2002 and 2003 were not in favour of treating the Lecturers in Nuclear Medicine as eligible for admission to M.D. General Medicine course. There is nothing to indicate that G.O. (Rt.) No. 2255/2001 /H and FWD, dated 17th August 2001 modifying the

prospectus for the year 2001 or G.O. (Rt.) No. 439/2002/H and FWD, dated 26th March 2002 modifying the prospectus for the year 2002, was based on any recommendation of the Medical Postgraduate Prospectus Committee. On the other hand, the available materials indicate that the Committee was against such modification of the prospectus to make Lecturers in Nuclear Medicine eligible for admission to M.D. General Medicine Course.

20. Moreover, it would appear that before issuing G.O. (Rt.) No. 439/ 2002/H and FWD, dated 26th March 2002 modifying the prospectus for the year 2002, the Government did not independently consider whether it was necessary to modify the prospectus to make the Lecturers in Nuclear Medicine also eligible for admission to M.D. General Medicine Course under the Lecturer quota. This is obvious from the said Government Order dated 26th March 2002 which read as follows:

As per the direction of the Hon''ble High Court in the judgment read as second paper above and in exercise of the powers conferred in Government as per Clause XVIII of the Prospectus read as first paper above, Government are pleased to order that the Lecturers in Nuclear Medicine in the State Medical Colleges are eligible to be considered for the M.D. (General Medicine) Course under lecturer quota.

2. The prospectus read as first paper above stands modified to the above extent.

The prospectus read as first paper in the said Government Order is the prospectus for Postgraduate Degree/Diploma Course, 2002. The Judgment read as second paper in the Government Order is the Judgment dated 25th February 2002 in O.P. No. 35487/2001 filed by Dr. Anilakumari. It appears that the Government proceeded on a wrong assumption that in the Judgment in O.P. No. 35487/2001 the High Court directed modification of the prospectus making the Lecturers in Nuclear Medicine eligible for admission to M.D. General Medicine Course. The High Court had not given any such direction. The High Court had only directed the Government to consider the request contained in the representation of Dr. Anilakumari. It is without consulting the Medical Postgraduate Prospectus Committee and without independently considering the need for or desirability of modifying the prospectus that the Government issued G.O. (Rt.) No. 439/2002/H and FWD, dated 26th March 2002 under a mistaken impression that in the Judgment in O.P. No. 25487/2002, the High Court had directed modification of the prospectus.

21. We are of the view that the prospectus issued by the Director of Medical Education with the approval of the Government binds the candidates who seek admission to the courses and unless any portion of the prospectus is held to be illegal, the Court cannot direct either amendment of the prospectus or consideration of the claim of a candidate in a manner otherwise than what has been provided in the prospectus. In the impugned Judgment dated 25th February 2002 in O.P. Nos. 39230/2001, 38900/2001 and 35487/2001, the learned Single

Judge did not hold any portion of the prospectus for Postgraduate Degree/ Diploma Course, 2002 to be illegal and hence the learned Single Judge should not have directed the Government to consider modification of the prospectus after the last date for submission of applications. In this context it is useful to refer to the Judgment of the Hon"ble Supreme Court in Gurdeep Singh Vs. State of Jammu and Kashmir and others, . It was a case in which the authorities concerned with the administration of medical admission in the State of Jammu and Kashmir issued a notification dated July 19, 1991 inviting applications for entrance examination for the medical courses. Three per cent of the intake was reserved for the candidates excelling in certain categories of sports specifically notified as approved sports. At the relevant time "mountaineering" was not one of them. The entrance examinations were conducted on September 14, 1991 and the results were published on September 26, 1991. There were controversies as to some of the questions not being within the syllabi and a fresh list of selected candidates was published on October 9, 1991. The eligibility in the sports category was determined by the Sports Council of Jammu and Kashmir. The Council invited applications on September 18, 1991 for the purpose, conducted interviews in that behalf on September 24, 1991 and declared 46 students as eligible under that category. The Appellant before the Supreme Court was one of the candidates considered eligible, but Respondent No. 6 was not included in the list of eligible candidates. When the selections were made by the Sports Council, "mountaineering" said to be the field of expertise of Respondent No. 6 was not included in the approved sports. But on November 7, 1991, long after the Sports Council had announced its selection, the Sports Council sought to recognise "mountaineering" as an additional sports activity. Upon such an exercise which had the effect of retrospectively introducing an additional eligibility criterion in the sports category, Respondent No. 6 was picked up and selected. The selection of the 6th Respondent was challenged by the Appellant before the High Court, but the High Court did not. uphold the challenge. Hence the Appellant filed appeal before the Honourable Supreme Court. The Honourable Supreme Court in the above-mentioned Judgment pointed out that the question was not the eligibility or quality of the sport -- "mountaineering" for inclusion or non-inclusion among the approved sports. According to the Supreme Court, the question was whether, having regard to the stage at which and the manner in which it came to be included, it was permissible. Both at the time of submitting the applications for entrance examinations as well as at the time the candidates offered themselves for selection before the Sports Council "mountaineering" was not included among approved sports. "Mountaineering" was included as an approved sporting activity only long after the Sports Council declared 46 students as eligible under the sports category. But for the decision of the Sports Council on November 7, 1991 to recognise "mountaineering" as an additional sporting activity, the 6th Respondent would not have been eligible to be considered under the sports category and the Appellant would have in the normal course got admission in the sports category. The Supreme Court upheld the claim of the Appellant and pointed out that the inclusion of mountaineering as an approved

sporting activity at that stage denied the other candidates who might have had similar eligibility, an equal opportunity to compete; In the case before us, if amendment is allowed to be effected in the prospectus after the last date for submission of application, making the lecturers in Nuclear Medicine also eligible for admission to M.D. General Medicine Course, it could result in denial of equal opportunity to compete, to other lecturers in Nuclear Medicine who did not apply for admission to M.D. General Medicine, since they followed the directions in the Prospectus. Hence, it is not permissible to change the eligibility criteria for admission by modifying the prospectus after the last date for submission of applications. Such amendment to the Prospectus will have the effect of changing the conditions for admission retrospectively. Admissions should be based on conditions set out in the prospectus as it stood on the last date for submission of applications.

22. Learned Counsel for the Respondents relied on the Judgment of a Division Bench of this Court in *Relly Susan Mathew v. The Controller of Entrance Examinations and Ors.* ILR 1997 (2) Ker 489 to justify the direction of the learned Single Judge to the Government to consider modification of the prospectus. It is true that in the above case, the Division Bench upheld the amendment to the prospectus giving additional opportunity to the students to exercise their option and produce certificates. But in that case, there was no change of eligibility criteria for admission. The prospectus was amended only to give certain advantages to the candidates. The Government felt it necessary to give the candidates a fresh option regarding the College or Course because certain payment seats in the self Financing Colleges at Adoor, Kasaragode and Chengannur were converted to ordinary seats and in the result 450 additional free seats were available for the candidates in the general category. This was not in the contemplation when the prospectus was originally issued. At the time of submitting applications, the candidates could not opt for such seats. Hence, it became necessary to give a fresh option. By giving fresh option, the position in the rank list was not changed. A candidate of higher rank may change his option which may result adversely with regard to the option exercised by a candidate of a lower rank. But it does not affect the admission of the student if he is otherwise entitled to. Similarly the Government also thought to give another opportunity to persons claiming reservation to produce documents showing the community and income in order to enable them to get reservation. The court held that such procedural requirements could be complied with even at the time when the actual admissions were going to be effected. Hence the above-mentioned Judgment of the Division Bench of this Court has no application to the facts of this case.

23. In the above circumstances, we are of the view that the original petitions were liable to be allowed by quashing the final select list for M.D. General Medicine Course to the extent it included the names of Respondents 2 and 3 and by directing the first Respondent to include the names of the Petitioners in the final select list and to make admissions on that basis. We are also of the view

that the learned Single Judge erred in directing the Government to consider amendment of the prospectus for the year 2002 long after the last date for submission of application. Hence the Appellants are entitled to succeed in these appeals.

24. Therefore, the writ appeals are disposed of with the following orders and directions:

(a) The impugned Judgment is set aside to the extent it directed the Government to consider amendment of the Prospectus for Postgraduate Degree/Diploma Courses, 2002.

(b) The final select and wait list of Lecturers applied for Medical P.G. Admission under Lecturer quota 2002 circulated by the first Respondent -- Director of Medical Education -- is quashed to the extent it included the names of Respondents 2 and 3, namely Dr. Anilakumari and Dr. Jayakumar, S. in the select list.

(c) The first Respondent is directed to prepare a fresh final select list of Lecturers applied for M.D. General Medicine Course under the Lecturer quota 2002 including the names of the Appellants, namely Dr. K.P. Udayamma and Dr. Jayakumar, E.K. and excluding the names of Respondents 2 and 3.

(d) It is declared that G.O. (Rt) No. 439/2032/H. and FWD. dated 26th March 2002 will not have any application to the admission of candidates to M.D. General Medicine Course for the year 2002.

25. Writ appeals stand allowed in the above terms. No costs.