

(1996) 12 KL CK 0021

In the High Court Of Kerala

Case No : O.P. No's. 10254, 10835, 11047, 12055, 13336, 14019 and 16203 etc. etc. of 1996 and W.A. No's. 1238, 1307 and 1408 etc. etc. of 1996

Relly Susan Mathew

APPELLANT

Vs

Controller of Entrance Examinations, Trivandrum and Others

RESPONDENT

Date of Decision : 13-12-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 162, 166, 166(1), 226
General Clauses Act, 1897 — Section 21

Citation : AIR 1997 Ker 218 : (1997) 2 ILR (Ker) 489

Hon'ble Judges : U.P. Singh, C.J.; S. Sankarasubban, J

Bench : Division Bench

Advocate : T.R. Ramachandran Nair, for the Appellant; K.K. Ravindranath, Govt. Pleader and M.V.S. Nampoothiry, for the Respondent

Judgement

Sankarasubban, J.—The subject-matter of these cases is selection to the Engineering and allied courses and M.B.B.S. and allied courses in the colleges in Kerala for the year 1996. Separate prospectus is issued for the Engineering and allied courses and M.B.B.S. and allied courses. The admission is made on the basis of the rank obtained in the Entrance Examination conducted by the Controller of Entrance Examinations.

2. For our convenience, we have grouped the cases into three groups. We heard learned counsel for the petitioners, the Advocate General and other counsel appearing for the respondents. A number of counsel entered appearance. The matter was argued threadbare. We are disposing of these cases on the main disputes raised. We have not considered the individual questions raised. According to us, they are to be looked into by the authorities.

Group No. I

O. P. Nos. 12291, 12364, 12828, 12833, 12986, 13338, 13340, 13424, 13543, 13571, 13619, 13865, 13870, 13950, 14019, 14038, 14140 of 1996.

3. Admissions to the various Professional Colleges in Kerala, viz. Engineering, Medicine, Agriculture etc. are done on the basis of an entrance examination conducted by the Controller of Examinations. Previously, separate entrance examinations were conducted for Engineering and allied courses and for M.B.B.S. and allied courses. From the year 1996-97, Government have adopted a scheme of common entrance examination for both Engineering and Medicine. The subjects in which the examinations were conducted are Physics and Chemistry, Mathematics, Biology. The prospectus is issued by the Director of Technical Education Department in the case of Engineering and allied courses and Director of Medical Education in the case of M.B.B.S. and allied courses. The prospectus detailed the courses offered and also catalogued various other informations necessary for the admission. Among other things, the candidate has to indicate choice of college and course in the application. In the case of persons entitled to reservation, they have to produce community certificate. In the case of Backward Classes, in addition to the community certificate, they have to produce income certificate showing that the annual income of the parents is not more than Rs. 42,000/-. There were many other prescriptions. The prospectus also stated that the candidates will not be allowed to change the option regarding the college or course subsequently and also that they will not be allowed to produce certificates subsequently.

4. The common entrance examinations for Engineering, Medicine and Agriculture and allied courses for the year 1996-97 were conducted on 18th and 19th of May, 1996. Subsequently, a common rank list was published on 24-6-1996. In the meantime. Government felt the necessity to change the policy with regard to admissions to the self-financing Engineering Colleges in the State. The question that came up for consideration by the Government was regarding the payment seats available in the above colleges. Government was of the view that 50% of the seats in the self-financing colleges should be made free seats in the interest and welfare of meritorious students who found it difficult to get admissions due to financial strains. Hence, pending final decision on the issue, a direction was issued on 6-7-1996 to the Commissioner for Entrance Examinations to postpone the interview and admission to the courses and to fix fresh dates. Subsequently, in the meeting convened on 16-7-1996, Government decided that the interview would commence on 25-7-1996 and admissions would be made to all the Government Engineering Colleges, Engineering Colleges run by the Institute of Human Resources Development in Electronics (IHRDE) and Lal Bahadur Sastri Centre for Science and Technology (LBSC) and free seats in aided Engineering Colleges, Sri Chithira Thirunal Engineering College and Muslim Educational Society, Valancherry and Mahatma Gandhi University, B.Tech. course. It was further decided that in the colleges run by IHRDE and LBSC at Chengannur, Adoor and Kasa-ragod, 50% of the seats would be free seats. By virtue of this new policy the number of free seats in the Engineering Colleges was increased by 450. Government also found that in several cases candidates could not obtain necessary certificates including the income and community certificates before the

last date for submission of the application, even though they were legally entitled for the benefit of reservation. Hence the Government also decided to provide a fresh opportunity to produce the certificates. Thus, as a result of the decision of the Government, candidates were allowed to exercise fresh options regarding colleges and courses and also given an opportunity to produce the certificates at the time of interview.

5. In this context, it is relevant to note the following facts. In the prospectus issued by the Director of Technical Education, it mentions the names of 13 Engineering Colleges of which three are private colleges aided by the State. Three colleges are run by the Institute of Human Resources Development in Electronics, one by Lal Bahadur Sastri Centre for Science and Technology, one by Kerala State Road Transport Corporation and another by a private self-financing College at Valancherry. After the publication of the prospectus, Mahatma Gandhi University started a School of Technology. This was also included subsequently as an institution for which admission was made through the common entrance examination. Of the above institutions the Colleges at Chengannur and Adoor are run by IHRDE, College at Kasaragod run by LBSC, College at Pappanamoodu run by K.S.R.T.C. and College at Valancherry is run as a private self-financing college. In the Colleges at Adoor, Chengannur and Kasaragod, 80% of the seats are payment seats for which admission is done through entrance examination, 10% seats are reserved for S.C. and ST. candidates and the balance 10% seats are reserved for nonresident Indians. Similarly, among the Medical Colleges, there is one self-financing College at Paryaram.

6. The Government conveyed its decision taken on 16-7-1996 to the Controller of Examinations. Accordingly, the Controller of Examinations issued a notification on 18-7-1996, which is produced as Ext.R1(a) along with the counter-affidavit filed in O.P. No. 12986 of 1996. This notification mentions about the decision taken by the Government and also the detailed programme for interview. In paragraph 3 of Ext.R1(a), it is mentioned that the Government have decided to include the free seats in IHRDE and LBSC and also in the School of Technology and Applied Sciences under Mahatma Gandhi University on the basis of the common entrance examination. The details of the seats are given. It also mentions that even though the candidates have not applied separately for IHRDE/LBSC/Sree Chithiru Thirunal Engineering Colleges, they can participate in the interview. It is further stated that the candidates can exercise fresh option regarding college or course. The notification also enables the candidates to bring the community certificate and other certificates at the time of interview. As a result of the Government decision, certain candidates who were included in the rank list felt that they will not get admissions as they wanted. Hence original petitions were filed challenging the re-option given to the candidates with regard to college or course and also the fresh opportunity given for producing the certificates at the time of interview. Petitioners originally contended that it was the Controller of Examinations who had deviated from the principles laid down in the prospectus. Hence the ground of attack was that the Controller of Examinations had no

jurisdiction to alter the conditions regarding admission. Subsequently, when the Government filed the counter-affidavit, they came to know about the order passed by the Government on 16-7-1996. Further, the Government also produced Ext.RI(d), G.O.(MS) No. 162/96, dated 3-9-1996 which reiterated the decision taken by the Government on 16-7-1996.

7. Petitioners are those who have applied for admission to Engineering and Medicine courses and they have raised the following points: (1) There is no power to amend the prospectus (Prospectus for M.B.B.S. course gives an express power to amend the same). (2) The amendment can only be done by the Government. (3) The amendment cannot apply to the petitioners since the amendment was made after their names were included in the list for admission. (3a) The orders of amendment are not in accordance with Article 166(1) of the Constitution of India. (4) The conversion of payment seats in the self-financing Colleges at Chengannur, Adoor and Kasaragod is contrary to the decision of the Supreme Court reported in Institute of Human Resources Development and others etc. Vs. T.R. Rameshkumar and others etc., and in any event such seats cannot be converted into free seats without the sanction of the Supreme Court. (5) Opportunity should not have been given to the candidates to produce the certificates at the time of interview. (6) There is violation of the principles of natural justice.

8. The prospectus laid down the criteria with regard to the selection of the candidates seeking admission in the various professional colleges in Kerala. The conditions are laid down as per the power of the State Government under Entry 25, List III of the Seventh Schedule to the Constitution. That Entry reads as follows:

"Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

Learned Counsel for the petitioners contended that once an order is issued exercising the power under the above Entry for a particular year, it cannot be amended. So far as the prospectus for admission to the M.B.B.S. course is concerned, it is stated in the preface itself that the prospectus is subject to further modification, addition or deletion as are deemed necessary by the Government and will be issued as executive orders or notifications. Such a clause is absent in the prospectus issued for admission to B.Tech. course in Kerala. Counsel for petitioners highlighted this aspect and said that in any event, the prospectus for Engineering course cannot be accepted. We do not find any merit in this contention. These orders are issued by virtue of the powers on the Executive under Article 162 of the Constitution which says that the executive power extends to the same "extent as the power of the Legislature with regard to the subject-matter. If the argument of the petitioners is accepted, the Executive will be helpless to modify the order, once it has been issued. This cannot be the intention. Article 367 of the Constitution lays down that unless the

context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. Thus the General Clauses Act is made applicable for the interpretation of the provisions of the Constitution of India. Section 21 of the General Clauses Act reads as follows:--

"Where by any Central Act or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

9. In fact, the question before, the Supreme Court in *Sampat Prakash Vs. The State of Jammu and Kashmir and Another*, was whether any orders issued by virtue of the powers under Article 367 of the Constitution and Section 21 of the General Clauses Act can be modified or amended, and on a reading of Article 367 of the Constitution along with Section 21 of the General Clauses Act, the Supreme Court held that the power to modify in clause (d) of Article 370(1) also includes the power to subsequently vary, alter, add to or rescind such an order by reason of the applicability of the rule of interpretation laid down in Section 21 of the General Clauses Act. It was further held that if the power of amendment is not available, the rules issued under Articles 77(3) 166(3) and 309 of the Constitution cannot be amended. Thus, by virtue of the above decision, it cannot be said that the order issued by the Executive of the State cannot be amended. In spite of the absence of any express provision for any amendment in the prospectus for modification, Government has got the power to amend the same. To the above effect is the decision of this Court in *Alex Saji v. University of Kerala* (1996) 2 K LT 588.

10. The next argument made by the learned Counsel for the petitioners is that if at all an amendment can be made to the prospectus, it can be made only by the Government. According to them, the variations have been made by the Controller of Examinations without any authority. The Controller of Examinations has no power to vary the prospectus. It is now clear from the counter-affidavit that the Controller of Examinations incorporated the above variations as per the directions of the Government taken on 16-7-1996. Further, it is also clear from Ext. RI(d) that the Government have issued the order incorporating certain changes in the prospectus. In the above view of the matter, it cannot be said that the Government have not amended the prospectus.

11. A further contention was raised that if an order is passed by the Government, it should be in accordance with Article 166(1) of the Constitution of India. According to the learned Counsel for the petitioners, a mere direction or decision cannot be treated as an order of the Government. Article 166(1) of the Constitution directs that all executive orders of the Government of a State shall be expressed to be taken in the name of the Governor and here no order is formed in conformity with Article 166(1) of the Constitution. Learned Counsel

submits that the order is not valid in law. This submission is not correct. It has been held by the Supreme Court repeatedly that a formal requirement of an order under Article 166(1) of the Constitution is only directory and that the non-compliance will not invalidate any order. The only consequence of such a non-compliance will be that the order may not be immune from challenge. It will be open to the State by the production of files or by a statement in the counter-affidavit that the Government has actually passed the order in compliance with the rules of business transactions. In this case, in the counter-affidavit, it has been clearly stated that the Government passed an order on 16-7-1996 ordering certain alteration of conditions in the prospectus. Further, the relevant files were produced and we are satisfied that such orders were taken on 16-7-1996. Besides, Ext. R1(d) is an order passed in the name of the Governor in compliance with Article 166(1) of the Constitution. In the above view of the matter, we do not find any illegality or invalidity in the order passed by the Government amending the prospectus. The observations of the Supreme Court in paragraph 40 of the decision *State of Kerala Vs. Smt. A. Lakshmikutty and others*, , are not applicable to the facts of these cases. Here we find the decision taken on 16-7-1996 is signed by the Minister for Education and Commissioner and Secretary for Higher Education. The order has been communicated to the Controller of Examinations for implementation. Further, Ext. R1(d) is passed in accordance with the requirements of Article 166(1) of the Constitution of India.

12. The next submission made by the learned Counsel was that the prospectus originally issued directed that all certificates which are required to be produced should be produced along with the application. It was further submitted that the prospectus itself shows that any late submission of the certificates will not be entertained. It is also submitted that in respect of option for College or courses, the prospectus is clear that the option should be exercised at the time when the application is made. By virtue of Exts. R1(a) and R1(d), now a fresh option is given to the candidates to exercise their choice of College or courses and they are also given a liberty to produce the certificates. They particularly relied upon the clauses in the prospectus stating that the change of branch/institution not specified in the option forms will not be allotted to any candidate and that no opportunity will be given to incorporate any details or certificate after the submission of the filled-in application. Since now the prospectus has been amended, the petitioners cannot say that the conditions mentioned in the original prospectus should be complied with. As per the conditions in the original prospectus, admissions have not been made. Before the admissions were actually effected, the prospectus was amended, giving certain advantages to the candidates. As a result of the new directions, the primacy given to merit is not done away with. Government felt it necessary to give the candidates fresh option regarding College or courses, because certain payment seats in the self-financing Colleges at Adoor, Chengannur and Kasara-god were converted into ordinary seats. 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 filing of the application, the candidates could not opt for such seat. Hence it became necessary to give a fresh option. By giving fresh option, the position in the rank list is not changed. A candidate of higher rank may change his option which may result adversely with regard to the option exercised by the 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. This also will not be said to be illegal, because these are all procedural requirements. These procedural requirements can be complied with even at the time when the actual admissions are going to be effected. According to us, even in the absence of such an amendment, the certificates could have been allowed to be produced so long as the applicants have claimed the benefit of reservation in (he application itself. In AIR 1980 SC 1230 (Charles K. Skaria v. C. Mathew), speaking for the Supreme Court, Krishna Iyer, J. held as follows (para 23):--

"A method of convenience for proving possession of a qualification is merely directory. Moreover, the prospectus itself permits Government to modify the method, as the learned single Judge has pointed out. In this view, we see nothing objectionable with the Government directive to the Selection Committee, nor in the communication to the Selection Committee by the University, nor even in their taking into consideration and giving credit for diplomas although the authentic copies of the diplomas were not attached to the application for admission."

13. In this context, we refer to the decision reported in V. Premanand Vs. The State of Tamil Nadu and others, , where the Division Bench of the Madras High Court considered the question whether a candidate could produce his certificates, which entitled him to reservation at the time of admission. The Division Bench observed as follows (Para 5):--

"The procedure is intended to facilitate enforcement of substantial right and not to defeat the substantive right. Procedure is hand-maid of justice and not to defeat justice. Therefore, the Selection Committee acted arbitrarily when it rejected the application, even though it had before it the certificate produced by the petitioner to the effect that he satisfied the category of children born of inter-caste marriage between S.C., S.T. and Forward Community. As long as the application was filed in time and the applicant was able to satisfy the requirement of production of certificate from the appropriate authority, before his application was considered for selection, it was not at all open to the Selection Committee to refuse to consider the application only on the ground that such a certificate had not been produced along with the application."

Hence, we do not find anything illegal in granting an opportunity to the candidates to produce the necessary certificates at the time of interview.

14. The next contention by some of the counsel for the petitioners is that the Government has no power to convert payment seats into free seats. So far as the self-financing Colleges at Chengannur, Adoor and Kasaragod are concerned, the Colleges at Chengannur and Adoor are conducted by IHRDE while the College at Kasaragod is conducted by LBSC. Originally, the scheme was that 75% of the seats were to be filled up by payment seats. For payment seats, a refundable deposit was to be made and also a tuition fee at the enhanced rate compared to the ordinary seats was also to be made. Regarding the balance 25% seats, 15% seats are reserved for non-resident Indians and 10% seats are reserved for S.C./S.T. candidates. This Court did not approve the above scheme as it was opposed to Unnikrishnan P.J. and Others Vs. State of A.P. and Others, . The matter was taken up before the Supreme Court and the Supreme Court disposed of the matter by the judgment reported in Institute of Human Resources Development and others etc. Vs. T.R. Rameshkumar and others etc., . The contention before the Supreme Court was that according to Unnikrishnan's case, the maximum payment seats can only be 50% whereas in the self-financing Colleges the payment seats were 75%. But the Supreme Court distinguished the case from that of Unnikrishnan and taking the circumstances with regard to the fact that the Colleges were being managed by the Government, allowed payment seats. The only alteration made was that the seats to non-resident Indians were reduced from 15% to 10%. With the result, the payment seats became 80%. The present conversion of payment seats into free seats is in no way opposed to the scheme approved by the Supreme Court in the decision reported in Institute of Human Resources Development and others etc. Vs. T.R. Rameshkumar and others etc., . Government have only reduced the number of payment seats so that now the payment seats in these Colleges are only 40%. We have gone through the judgment in the above cases and we find nothing against the present amendment made by the Government. We also feel that there was no necessity to get any permission from the Supreme Court. In this view, we do not find any reason to uphold the contention.

15. The next contention raised is that before the amendment was effected an opportunity should have been given to the candidates. Hence the argument is that there has been violation of the principles of natural justice. We find that there is no need to give an opportunity. Candidate does not get a right to get admission on the basis of the prospectus. Government is free to amend the prospectus and in all these cases, the candidates have not been admitted to the courses before the amendments were made. Hence, actually there was no right that was taken away by the impugned amendment. As already stated, the Government has not gone back from the basic condition that admission should be on merits. Hence, there is no question of any violation of the principles of natural justice in this case.

Group No. II

O.P. Nos. 10254, 10835, 11047, 11662, 12055, 12695, 13833, 16203, 11427,

11633, 12061, 12829, 13336 and 13833 of 1996

16. The petitioners in the above original petitions have claimed seats which are reserved for persons proficient in sports and games and in the N.C.C. The prospectus gives the guidelines regarding the filling up of the above seats. So far as the Engineering Course is concerned, clause 3.1.1 of the Prospectus deals with reservation in Sports Quota. It is stated as follows :-

"The candidates seeking admission under Sports Quota must take the Entrance Examination. They should submit the original copy of application to the Controller of Entrance Examinations, Thiruvananthapuram and a photostat copy of the same to the Kerala Sports Council, Thiruvananthapuram before the last date of submission of applications. The Sports Council will allot marks to these candidates according to their proficiency in Sports. Maximum marks under this item will be fixed as 100. The Sports Council will forward the list of marks for the candidates to the Controller of Entrance Examinations. The Controller of Entrance Examinations will add these marks to the marks obtained by the respective candidates in the Entrance Examination and the rank list under the Sports Quota will be published based on the inter se merit of the candidates fixed as above. For selection under merit/communal quota, the benefit of bonus mark for sports proficiency will not be considered. This clause is subject to the High Court order in this regard."

With regard to the M.B.B.S. Course, it is contained in Clause IV(c) of the Prospectus. It states as follows :--

"(c) Sports Quota (M.B.B.S., B.D.S., B.Pharm) and B.Sc. Nursing Courses.

Five seats for MBBS, one seat each for BDS and B.Pharm course will be reserved for outstanding sports person. Two seats for B.Sc. Nursing course will be reserved for outstanding sports women. Five seats in the I MBBS course will be distributed one each among the five Medical Colleges. Allotment of College will be based on rank and nativity."

17. According to the conditions in the Prospectus, the candidates who opt for consideration in the Sports Quota shall attach with the application a certificate of eligibility for selection under the quota issued by the Kerala Sports Council as per the guidelines published by them. The copy of the application has to be sent to the Kerala Sports Council. The Sports Council will allot marks to these candidates according to their proficiency in sports. Maximum marks under this item will be fixed as 100. The Sports Council will forward the list of marks for the candidates to the Controller of Entrance Examinations. The Controller of Entrance Examinations will add these marks to the marks obtained by the respective candidates in the Entrance Examination and the select and wait lists under the Sports Quota will be published based on the inter se merit of the candidates. Thus, the Sports Council will give marks taking into account the proficiency of the candidates in sports. The marks given by the Sports Council will be added to the marks obtained by the candidate in the Entrance Examination. The

contentions raised in the original petitions are that proficiency in sports alone should be taken into consideration and the marks obtained in the Entrance Examination should not be taken into consideration. Even accepting that both the marks can be taken into consideration, 100 marks allotted for proficiency in games is negligible to the 1440 marks which is the maximum marks obtained in the Entrance Examination. The contention is that the proportion is very negligible and there is every possibility of a person less proficient in games getting a seat in the Engineering and Medical Colleges because of his proficiency in studies. According to the petitioners, while selecting persons in the Sports Quota, excellence in studies should be realistically evaluated with the excellence in sports.

18. The Sports Council has filed a counter-affidavit wherein they have produced the norms prepared by them to evaluate the candidates in sports on the basis of the proficiency. Ext. R4(a) filed along with O.P. No. 11622/96 states that 100 marks will be awarded in the descending order for items 1 to 100 mentioned in the norms prepared by the Sports Council. The Government has filed a counter, along with Ext. R3(a) in O.P. No. 10835 of 1996. Ext. R3(a) is a G.O. by which the Government has made it clear that the maximum marks awarded by the Sports Council will be 500 instead of 100. Thus as matters stand at present, the Sports Council will have to award marks out of 500 and those marks will be added to the marks obtained by the candidates in the Entrance Examination.

19. Regarding the first contention that the proficiency in sports should alone be taken into consideration, a Division Bench of this Court in Writ Appeals Nos. 152, 159 and 169 of 1996 rejected such a contention and said thus:--

"Selection by the Sports Council only shows the merits in sports. Ranking in the entrance examinations shows merits at studies. Hence the outstanding sports persons with a better rank in the entrance examination will certainly have preference over the outstanding sports persons with a lesser rank."

20. The second contention is that the selection to the Sports Quota is made without giving due importance to the achievements in sports. The petitioners contend that as per the prospectus as amended, the maximum marks that can be obtained for proficiency in sports is 500. The maximum marks for the entrance examination is 1440. The selection is made on the basis of totality of marks awarded for proficiency in sports and in the entrance examination and at all events the choice will fall on the person who obtains high marks in the entrance examination. We do not think we can go into the reasonableness or otherwise of the guidelines. There is no contention that the guidelines are arbitrary. The idea is only to make good engineers and good doctors. Hence it cannot be said that the achievements in the academic field are not relevant.

21. In, this context, we refer to the decision of the Supreme Court reported in Sandeep Barar and another Vs. State of Punjab and others, , wherein it is stated as follows (Para 7):--

"the methodology for admission to the reserve seats for sportsmen/sportswomen in Medical Colleges is the function" of "State" and has to be decided by the State Government. It is the function of Executive to lay down procedure for admission to reserve categories."

We do not find anything arbitrary or illegal in fixing 500 marks for proficiency in Sports. Further, the Sports Council, which is the expert body to fix the order of priority has fixed the same and nothing has been brought to our notice to unsettle the norms prescribed by the Sports Council.

22. Learned Council for some of the petitioners brought to our notice the decision of the Supreme Court in *Gurdeep Singh Vs. State of Jammu and Kashmir and others*, wherein the Supreme Court has held (Para 6 of AIR):

"Both at the time of sending up their applications for entrance examination as well as at the time the candidates offered themselves for selection before the Sports Council, the candidates were to set out the specific basis of their claims for inclusion in the sports category and furnish the requisite certificates. 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."

That case is distinguishable in the facts and circumstances of these cases and the Supreme Court has not laid down anything contrary to the decision reported in *Sandeep Barar and another Vs. State of Punjab and others*, .

23. Hence we do not find anything wrong in the guidelines prescribed for filling up the seats reserved for Sports Quota.

24. The next batch relates to the seats reserved for N.C.C. quota. Here also for proficiency in N.C.C. a maximum of 500 marks is fixed. The Director of N.C.C. will scrutinise the applications and send a panel of names to the Controller of Examinations on the basis of marks. The marks awarded by the Director will be added with the marks obtained in the entrance examination and select list will be prepared on the basis of the total marks.

25. The first contention of the petitioners is that the marks in the entrance examination should not be taken into consideration. For the reasons given and discussed in regard to the Sports Quota, we reject this contention as well. The next attack is that no importance is given to the proficiency in N.C.C. Subsequent to the filing of the original petitions, Government have passed an order, which is produced as Ext. R1(a) filed along with O.P. No. 11633 of 1996. According to this, marks for proficiency -- Sports/N.C.C. will be awarded by concerned authorities. The maximum marks under this item will be fixed as 500. The Controller of Entrance Examinations will publish the rank under the N.C.C. Quota by adding marks awarded under 500 to the marks obtained in the Entrance Examination. The modalities for awarding the marks under the N.C.C. Quota will be decided by the authorities concerned. We do not find anything wrong in Ext.

R1(a) which gives more importance to proficiency in N.C.C. than what is given in the past years. Hence, we do not find any illegality in the procedure drafted for selecting the persons under the N.C.C. quota. It was contended by the petitioner in one of the original petitions, that he was highly proficient in N.C.C. and as a matter of fact, he was assured a seat in the Medical College. We do not think that we can take that into consideration. So far as admissions to professional colleges are concerned, admissions are to be made strictly in accordance with the condition laid down in the prospectus.

26. Some of the petitioners contended that their applications for reservation quota for N.C.C. has not been properly considered by the Director of N.C.C. We do not think that this Court can go into that question. We have only considered the validity of the procedure adopted for selecting persons from N.C.C. quota. Individual complaints have to be filed for consideration before the concerned authorities.

Group No, III

W.A. Nos. 1238, 1294, 1325, 1326, 1366, 1367, 1375 and 1408 of 1996

27. Original Petitions 11369, 11506, 11712, 11721, 11852, 11868, 11942 and 12253 of 1996 were filed alleging corruption in the conduct of the Entrance Examination which was conducted for the admission to the professional courses in the year 1996. Various allegations were made in the original petitions. The allegations range from copying to manipulation in the results. The learned single Judge has pin-pointed the contention raised in the O.Ps. in paragraph 2 of the judgment, (i) the question papers in one of the Kottayam Centres contained lesser number of questions than given to other candidates and, therefore, it was contended that the examination is discriminatory and illegal; (ii) Question booklet contained wrong answers for certain questions; (iii) Organised copying in the Entrance Examination with the assistance and connivance of certain coaching centres in Trivandrum and Kottayam; (iv) Candidates of Malabar and Wayanad Districts are discriminated; (v) Extraordinary delay in publication of the results and postponement of interviews.

28. The learned single Judge considered all these allegations and in fact, has taken pains to consider each one of these contentions in seriatim. It is also seen from the judgment that the learned single Judge summoned the answer papers and verified them. After analysing the entire matter, including the contentions raised in the counter-affidavit, the learned single Judge has not found any basis for the allegations made in the original petitions. In this context, we would like to point out that no specific allegations are raised regarding corruption or mal practice. The original petitions were filed merely on the basis of the reports coming in the press. A perusal of the original petitions show that the allegations were made on mere surmises. In spite of there being no specific allegations, the learned single Judge has even gone into these allegations and found them to be untrue. Learned Counsel appearing in O.Ps., who filed the appeals, W.A. Nos.

1375, 1366, 1408 and 1367/96 could not add anything further to prove their case. Hence we do not find any infirmity in the judgment of the learned single Judge rejecting their contentions. W.A. Nos. 1375, 1366, 1408 and 1367 of 1996 are dismissed.

29. The learned single Judge in paragraph 19 of the judgment declared the selection of 9 persons mentioned therein as illegal and directed the authorities to cancel their selection or admission to the engineering course. Of the 9 persons mentioned therein, 4 of them have filed W.A. Nos. 1294, 1238, 1325 and 1326 of 1996. They sought leave from the court as they were not parties in the O.Ps. and have filed the appeals. These appellants did not appear for their Mathematics Examination for the reasons stated in the appeal memorandum. But, they have got high rank in the rank list on the basis of the marks obtained by them for Physics and Chemistry. Since ranks are given according to the total marks obtained in Physics, Chemistry and Mathematics for the purpose of Engineering Course, the appellants got higher ranks for the Engineering Course on the basis of the marks obtained by them in Physics and Chemistry. It is seen that the appellant in W.A. No. 1294/96 was assigned rank No. 1570, the appellant in W.A. 1238/96 got the rank 1755, the appellant in W.A. 1325 obtained the rank 2142 and the appellant in W.A. 1375 got the rank 1673. It does not appear from the original petitions whether the petitioners therein had obtained ranks anywhere nearer to these appellants. The learned single Judge directed the cancellation of their selection on the ground that these persons did not appear for the Mathematics Paper. The condition in the Prospectus is that the candidates for admission to the Engineering Course should appear for examinations in Physics, Chemistry and Mathematics. The Controller of Examinations cannot whittle down this condition by admitting persons who have not appeared for one of the papers in the entrance examination. The reasoning of the learned single Judge is that the candidate should be put to test in all the two papers and if a candidate fails to appear in one paper, he will lose his right to be selected. The learned single Judge held as follows :--

"As a matter of fact, the candidate if he applies for writing only for Physics and Chemistry without Mathematics for Engineering and without Biology for Medicine should not have been permitted to write the Entrance Examination."

The above observations of the learned single Judge are not correct. Neither the application nor the prospectus gives any choice to the applicants to write only one paper. The prospectus is clear that the candidates should take examination in both the papers. None of the appellants applied for permission to write only one paper.

30. The question for consideration is whether such a candidate who has not appeared in one of the papers in the Entrance Examination can be allowed or admitted in the Engineering Course on the ground of the marks obtained by him in the other paper. For this purpose, we have to look into the prospectus and Brochure issued by the Controller of Examinations. In these cases, since only

admissions of candidates who are selected for the Engineering Course were cancelled, we are only dealing with the Prospectus for Engineering Degree admissions. (According to us, the same reasoning will apply for admission to the other professional courses also). Clause 2.2.1 gives the academic qualification required for a candidate to be admitted in the Engineering Course. Clause 2.2.1 says that the candidate should obtain a pass in Pre-Degree Examination of the Universities in Kerala State or examinations considered equivalent thereto with Mathematics, Physics and Chemistry as optional subjects with a minimum of 50% marks in Mathematics and 50% marks in Mathematics, Physics and Chemistry put together. It also gives the details of other equivalent qualification. Thus, only the candidates who have obtained the basic qualifications will be admitted for the course. It is not disputed that the appellants before us, whose selection was directed to be cancelled, have got all the basic qualifications. In the prospectus clause 4 deals with selection of candidates. Clause 4.1 states as follows :--

"Selection to all seats except those reserved for nominees of Government of India and seats reserved under reciprocal quota (from Tamil Nadu and Karnataka) will be made from the rank list for engineering degree admission published by the Controller of Entrance Examinations on the basis of a common entrance examination be conducted by the Controller of Entrance Examinations. The common Entrance Examination Will be of the standard of the Pre-Degree examination of Universities in Kerala."

Thus, according to this clause, selection has to be made on the basis of the rank list prepared by the Controller of Examinations on the basis of the common Entrance Examination to be conducted by him. It also fixes the standard for examination as that of Pre-Degree. Clause 4.2 is relevant in this context. It states as follows:--

"Rank list for Engineering Admission will be prepared on the basis of the total marks secured by the candidates in Mathematics, Physics and Chemistry in the common Entrance Examination."

The totality of the marks secured in Mathematics, Physics and Chemistry is the basis for selection. Clause 4.4 of the Prospectus says that candidates seeking admission to Engineering Courses should appear for two papers: (1) Physics and Chemistry and (2) Mathematics. With regard to candidates seeking admission to Architecture, it is stated that they should appear for an Aptitude Test in Architecture in addition to the above papers. Clause 4.5 of the Prospectus is important inasmuch it says that those who want to get admission to the Architecture course, should secure a minimum of 35% marks in the Aptitude Test in Architecture. Thus, a perusal of the Prospectus will show that selection is to be made on the basis of a common entrance examination. The common entrance examination is to be conducted by the Controller of Examinations. It should be of the Pre-Degree standard. The candidate should appear in two papers ; (1) Physics and Chemistry and (2) Mathematics. Those who are desirous of joining

the Architecture course, should pass the Aptitude Test in Architecture securing a minimum of 35% marks in Architecture.

31. In this context, it is relevant to note that the Prospectus does not prescribe a separate minimum for the papers in Physics and Chemistry and Mathematics. A reading of the Prospectus will further show that the modalities regarding the examinations are to be made by the Controller of Examinations. The prospectus does not deal with as to how the examinations are to be conducted -- the marks to be awarded or the type of questions to be put. These are all matters which are to be done by the Controller of Examinations. The Controller of Examinations has issued a Brochure with regard to the scheme for the Entrance Examination. Chapter II, clause 3 states that any candidate desirous of joining any of the professional courses will have to write the common Entrance Examination. Clauses 5, 6 and 7 state that candidates desirous of being considered for Medical and allied courses will have to write the Physics and Chemistry paper and the Biology paper. Candidates who wish to be considered for Engineering (including B.Tech. (Agrl. Engg.)) and B.Sc. under the Agricultural courses, will have to write the Physics and Chemistry paper and the Mathematics paper. Candidates desirous of obtaining admission to the Architecture courses will have to write the Aptitude Test for Architecture in addition to the two papers of Physics and Chemistry and Mathematics. Only those candidates who obtain marks not less than 35% in the Aptitude Test, will be considered for admission to the Architecture course. Clause 9 states that candidates desirous of being considered for both the Medical and, or Agricultural Courses and Engineering Courses will have to write the three papers of Physics and Chemistry, Biology and Mathematics. Chapter VII deals with the standard of the examination. The standard of the common Entrance Examination will be of the Pre-Degree Courses in Physics, Chemistry, Mathematics and Biology of the Universities in the State of Kerala. Chapter IX deals with the declaration of results. Clause (ii) states that the rank list for Engineering will be prepared on the basis of the total marks secured by the candidates in Mathematics, Physics and Chemistry papers in the Common Entrance Examination. The next relevant clause is 3(v) which states as follows:--

"In the case of candidates, who do not appear for any one or more of the relevant paper(s)/subject(s) for Engg. or Medical/ Agricultural courses, in the common Entrance Examination, then the score in that particular subject(s), will be taken as ZERO, and he/she will be ranked for the course, based on the total score in the other relevant subjects."

It is illustrated further by saying that if a candidate registered for the Medical/ Agricultural courses, has appeared for the Biology Paper but has not appeared for the Physics and Chemistry, then he/she will be ranked for the Medical Course based on the total score in Biology paper. Similarly, a candidate will be ranked for the Engineering course, with the total score in Physics and Chemistry Paper, i.e. a candidate without appearing for Mathematics Paper, can figure in the rank list for Engineering course.

32. Learned Counsel appearing for the petitioners in the O.Ps. contend that while the Prospectus states a candidate should appear for two papers, the Controller of Examinations cannot whittle down the importance of the same by giving Zero marks to the paper for which the candidates did not appear. According to them, if a candidate does not appear for any one of the papers, he will lose his chance of being considered for selection. On the other hand, learned Counsel for the appellants submitted that all the candidates had the intention of appearing for the examinations for all the papers. But, it was due to certain personal reasons that they could not appear for one of the papers. Further, they submit that even if a candidate appears for a paper and obtains Zero marks he will be entitled to be considered for selection, if he can come up in the rank list on the basis of his marks obtained in the other papers. According to us, Clause 4.4 of the Prospectus for Engineering Degree Admissions only states that candidates who are seeking admission to Engineering course will have to take examinations in two papers. The two papers are: namely (1) Physics and Chemistry and (2) Mathematics. The prospectus further says that, the rank list is prepared on the basis of the totality of the marks. Thus, no minimum mark is prescribed for a particular paper. As already stated a person who had obtained Zero mark in one paper will be entitled to admission, considering his marks in the other papers. Clause 4.4, according to us, does not lead to a conclusion that if a candidate failed to appear in one of the examinations, he will be debarred from being considered for selection. For taking this interpretation, we are strengthened by the requirement which is stated in Clause 4.5 of the Prospectus with regard to candidate seeking for admission to Architecture. It is stated that even if a candidate obtains a rank in the rank list, if he fails to secure a minimum of 35% in the Aptitude Test, he will not be considered for admission to Architecture. Thus, when ever the Government wanted to stress a minimum mark in the paper, that has been done. Hence, we could not uphold the reasoning of the learned single Judge that a candidate who has not appeared for one of the papers cannot be considered for selection.

33. In the result, we dispose of the above cases as follows :--

- (1) The amendment made to the Prospectus for Engineering and Medical Courses as evidence by Ext. R1(a) (Notification No. CEE/A/904/95 dated 18-7-1996) and Ext. R1(d) (G.O. (MS) No. 162/96/H.Edn. dated 3-9-1996) are valid.
- (2) There is no illegality in allowing the candidates to exercise fresh option with regard courses and colleges.
- (3) The order allowing candidates to produce the certificate at the time of interview is perfectly void.
- (4) The procedure prescribed for selecting persons in the seat reserved for sports, games and N.C.C. are valid and are not arbitrary.
- (5) The malpractice alleged with regard to the conduct of the Entrance Examination for the year 1996-97 is not proved.

(6) There is no illegality in selecting candidates for admission to the professional courses who have appeared for only one of the two papers in the Entrance Examination but who are ranked high in the rank list on the basis of the total marks obtained.

34. W.A. Nos. 1238, 1294, 1325 and 1326 of 1996 are allowed. The other original petitions are disposed of as per the above directions.

W.A. Nos. 1307, 1319 and 1324 of 1996:

35. All the above writ appeals were filed challenging the interim orders passed in the original petitions. By this judgment, we have disposed of the O.Ps. itself. These writ appeals have become infructuous. Hence, they are dismissed as infructuous.