
(2021) 11 KL CK 0171

In the High Court Of Kerala

Case No : Writ Petition (C) No. 11915 Of 2021

Shilpa S. Jayadev

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 24-11-2021

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(1), 15(4), 16(1), 16(4), 30(1), 46, 338, 338A

Citation : (2021) 11 KL CK 0171

Hon'ble Judges : P.V.Kunhikrishnan, J

Bench : Single Bench

Advocate : T.N.Jayadevan, D.Jothikumar, J.Vishnu Devaraj, Titus Mani Vettom, P.Sreekumar

Final Decision : Dismissed

Judgement

P.V.Kunhikrishnan, J

1. This writ petition is filed in the year 2021 for getting admission for MBBS course based on an application submitted by the petitioner for the academic year 2018-2019. The petitioner is a member of the Scheduled Caste community. The short point raised by the petitioner is that the reservation of seats available to the Scheduled Castes/Scheduled Tribes Community for the professional degree course is to be computed based on the total number of seats available for the course. I will briefly state the case of the petitioner in the following paragraphs.

2. The petitioner submitted an application for getting admission as per Ext.P9 prospectus KEAM for the academic year 2018-2019. In the 1st phase of allotment as per the prospectus, the petitioner obtained BDS seat in Dental College, Pariyaram, Kannur. The petitioner submitted a representation on 24.7.2018 and thereafter filed WP(C) No.27190 of 2018 before this Court. The above writ petition was filed before the 2nd phase of allotment started. In the 2nd phase of allotment on 16.8.2018 also the petitioner was denied MBBS seat but allotted BDS seat in Government Dental College, Thrissur. WP(C) No.27190

of 2018 was disposed by this Court as per Ext P1 judgment recording the submission of the Government Pleader that the prospectus provides for 8% reservation on a State wide basis and the reservation is being strictly adhered to on the State wide basis. The Government Pleader also submitted that on the strength of the petitioner's rank, the petitioner will be allotted a seat if her rank falls within the 8% reserved seats. After recording the above submission, this Court directed the Government to take up and consider Ext P4 representation produced in that writ petition. Based on the direction in Ext P1 judgment, the Government passed Ext P2 order on 17.11.2018. As per Ext P2, the request of the petitioner was rejected observing that the allotment of seat was strictly in accordance to clause 4.1.5 of the approved prospectus. Ext P3 is the order passed by the Kerala State Commission for Scheduled Caste and Scheduled Tribe. According to the petitioner, communal reservation to Scheduled Castes and Scheduled Tribes (for short SCST) and Other Backward Classes (OBC) are vertical reservation under Article 15(4) of the constitution of India, while the reservation in favour of Government of India Nominees (for short Nominees), Persons With Disability (for short PWD) and Special Reservations (for short SR) are Horizontal Reservations under Article 15(1). Horizontal Reservations cut across the Vertical Reservations and the same is called Interlocking reservations. The counsel submitted that in the light of the judgment of the apex court in *Indra Sawhny and others v. Union of India and others* (1992) Supp (3) SCC 217, *Anil Kumar Gupta and Ors v. State of UP and Ors* (1995) 5 SCC 173 and *Saurav Yadav & Ors v. State of Uttar Pradesh & Ors* decided on 18.12.2020 (MANU/SC/0960/2020), even after providing the Horizontal Reservations the percentage of backward class of citizens remain and should remain the same is the settled law. According to the petitioner, the proper and correct course is to first fill up the State merit of 60% on the basis of merit, secondly to fill up each of the social reservation quota i.e, OBC 13% and SCST 10%. Thereafter it is to be find out how many candidates belonging to PWD and SR categories have been selected on the above basis. According to the petitioner, If the quota fixed for PWD and SR categories is already satisfied in the case and if it is an overall Horizontal Reservations, no further question arises. It is further submitted that if it is not so satisfied, the requisite number of these reservation candidates shall have to be taken and adjusted and accommodated against open category, OBC, SCST as the case may be by deleting the corresponding number of candidates therefrom. The petitioner submitted that the reservation of 10% to SCST should remain at 10% even after providing these Horizontal Reservations. It is the case of the petitioner that as per clause 6.1.(i),(ii)(d) of prospectus, Nominees will be considered against State Merit seats and they will not be eligible for Communal/ SR/PWD reservation or any fee concession. It is also submitted by the petitioner that mandatory reservation in the sanctioned in take of seats in Government Medical Colleges (other than Government Medical College, Palakkad) is as per G.O.Ms.131/71/Edn. Dtd 6.8.1971. As far as the Government Medical College, Palakkad is concerned, the Government Order is GO(Kai.)No.45/2014/SCSDD dated 19.7.2014. According to the petitioner, the number of seats available in

colleges should be taken as four separate units for the purpose of computing mandatory reservation. It is the case of the petitioner that the total number of seats allotted to SCST in these colleges shall not be taken as together as a single unit so as to satisfy the 10% reservation for SCST on a State wide basis. According to the petitioner, the State authorities violated the Horizontal Reservation principles laid down by the apex court and consequently the number of reservation seats of SCST was drastically reduced. Hence the petitioner filed WP(C) No.16171 of 2019 on 12.6.2019. Subsequently that writ petition was withdrawn with liberty to file a fresh writ petition. Ext P4 is the judgment. According to the petitioner, the mandatory reservation for SCST is as per Ext P5 & P6 Government Orders. It is submitted by the petitioner that reservation to Nominees, PWD and SR categories referred to in clause 4.1.(ii), 4.1.(iii) and 4.1.(iv) of prospectus are Horizontal Reservations which should be applied as per the Horizontal Reservation principle laid down by the apex court. The petitioner submitted that as per Ext P7 Government Order, 70 seats are reserved for Scheduled Caste at Government Medical College, Palakkad since the college was set up with the funds allotted to the Scheduled Castes Development Department. It is also the case of the petitioner that the Kerala Medical Education (Regulation and Control of Admission to Private Medical Educational Institutions) Act, 2017 (for short the Act, 2017) provides for reservation of seats to students belonging to SCST and OBC in Private Medical Education Institutions other than those referred to in clause 1 of the Article 30 of the Constitution. Ext P8 is the gazette notification by which Act 2017 was promulgated. It is the case of the petitioner that as per clause 4.1.1 of Prospectus KEAM, 2018 provides for reservation of 15% of total sanctioned seats for All India Quota (for short AIQ) clause 4.1.2 reservation for Nominees, clause 4.1.3 reservation for 3% seats for PWD and clause 4.1.4 for SR category. It is the case of the petitioner that the above clauses do not postulate that AIQ, PWD and SR seats are set apart for the categories other than SCST. According to the petitioner, as per Clause 4.1.5, leaving the seats apart for AIQ, Nominees, PWD and SR the remaining seats will be distributed as per mandatory reservation principles as contemplated in the relevant Government Orders. Ext P9 is the relevant extract of the prospectus. According to the petitioners, Exts P5, P6, P7 & P8 are outside the terms of reference of Ext P9. The counsel also relied Ext P10 judgment in which it is stated that the reservation of 10% for SCST to be strictly complied with in respect of the entire seats available taken as a whole without excluding the other reservation categories. The petitioner also submitted that in Ext P13 judgment, this Court held that the quantum of seats on which the percentage of reservation has to be applied is on the total number of seats available in the course without excluding the 13 seats reserved for cadets of Indian Navy in that case. According to the petitioner, the reservation of 10% seats for SCST are in addition to the reservation of seats in Government Medical College, Palakkad and in Private Self financing Medical Colleges referred to in clause (1) of Article 30. The petitioner submitted that as per Ext P14 list of allotted candidates in KEAM 2018, the seats available with the 3rd respondent was 989 in Government Medical Colleges other

than Government Medical Colleges, Palakkad. According to the petitioner, in the light of Ext P4 read with the apex court decisions, SCST are entitled 10% of 989 seats. It is the case of the petitioner that without excluding Nominees, the total seats available will be 1060 (989+27 Nominee seats) and the SCST entitled 10%, i.e, 102 seats. But as per Ext P14 only 94 seats are allotted including PWD and SR and thereby leaving a short fall of 5 to 8 MBBS seats to SCST.

3. It is the case of the petitioner that the number of seats available for allotment in Private Self Financing Colleges, just other than those referred to in Clause (1) of Article 30 of the Constitution for the year 2018-19 was 600. Section 10 of the Act 2017 provides mandatory reservation to SCST and OBC categories. It is the case of the petitioner that SCST categories are allotted only 51(SC 41 + ST 10) seats instead of 60 thereby leaving a shortfall of 9 more MBBS seats. The petitioner submitted that the computation of mandatory reservation seats in these colleges was in violation of the provisions of the Act.

4. The petitioner also submitted that in the light of Mop-up counseling dated 5.9.2018, the petitioner was allotted MBBS seat in SRM Medical College and Research Centre, Varkala, Thiruvananthapuram as evident by Ext P16. This admission was cancelled by the apex court because these colleges had not met the necessary guidelines of the Medical Council of India and hence the petitioner was admitted to BDS Course in Government Dental College, Thrissur. According to the petitioner, seat allotment was in total violation of the reservation rules and hence this writ petition was filed with the following prayers.

(i) quash Exhibit P2 which is arbitrary, illegal and is in violation of horizontal reservation principles settled by the Apex Court in *Indra Sawhny and Others vs. Union of India and Others* ((1992) Supp (3) SCC 217), *Anil Kumar Gupta and Ors vs. State of UP and Ors* (1995) 5 SCC 173) and *Saurav Yadav & Ors v State of Uttar Pradesh & Ors* decided on 18.12.2020 (MANU/SC/0960/2020).

(ii) Issue a writ of mandamus or any other appropriate writ, order or direction commanding the 1st and 3rd respondents to allot MBBS seat to the petitioner as the rank of the petitioner falls within the quota reserved under Exhibit P5 read with the law settled by the Apex Court.

(iii) Issue a writ of mandamus or any other appropriate writ, order or direction commanding the 1st and 3rd respondents to admit the petitioner to MBBS Course 2018-19 since the course for the first year of both, BDS and MBBS, is more or less the same, with instructions to hold additional classes to the petitioner as held by the Apex Court in *Asha vs Pt.B.D.Sharma University of Health Sciences and Others* [(2012)7SCC 389).

Or

issue a writ of mandamus or any other appropriate writ, order or direction commanding the 1st and 3rd respondents to admit the petitioner to MBBS Course for the academic year 2019-20, with instructions to hold additional

classes to the petitioner.

(iv) appropriate direction to the State Government to award proper and adequate compensation to the petitioner for mental agony, expenses of litigation and valuable period of life that stands wasted due to the failure on the part of respondents.

(v) appropriate direction to the State Government to strictly adhere to Exhibit P5 along with the horizontal reservation principles held by the Apex Court. Exclusion of the other reservation categories and the mandatory reservation on the remaining seats as stated in Exhibit P9 shall not be enforced against SCST to the extent that dilute the mandatory reservation of 10% under Exhibit P5. Declare that enforcing Exhibit P9 against SCST without applying the horizontal reservation principles of the Apex Court is illegal.

(vi) to award costs of the proceedings to the petitioner.

and

(vii) grant such other reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case of this Writ Petition (Civil).

5. Heard the counsel for the petitioner and the Senior Government Pleader V.Manu.

6. The counsel for the petitioner reiterated his contentions in the writ petition and also relied several judgments of the apex court. The counsel submitted that even though the admission of 2018 -19 are over, taking this as a rarest of rare case as held by the apex court, the petitioner may be allotted a seat in this academic year. The counsel also submitted that the denial of seats to the petitioner was because of the wrong reservation policy adopted by the respondents and therefore, the petitioner is also entitled compensation in the light of the several judgments of the apex court which she relied.

7. On the other hand, the Senior Government Pleader defended the contentions of the petitioner. The Senior Government Pleader submitted that the writ petition is highly belated and for that simple reason itself, the petitioner may be non suited. Senior Government Pleader takes me through the averments in the statement filed on behalf of 3rd respondent on 26.10.2021. The Government Pleader submitted that in the light of the statement filed by the 3rd respondent, the petitioner is not entitled any reliefs.

8. I considered the contentions of the petitioner and the respondents. Admittedly, the petitioner is claiming an MBBS seat based on his application submitted for the academic year 2018-2019. According to the petitioner, the reservation of seats available to SCST students were not properly computed by the respondents in that academic year and hence the petitioner was denied a seat. The petitioner relies several judgments of the apex court to strengthen her contentions. First I will consider the decisions cited by the petitioner, based on

which she claims right to get an MBBS seat in 2021 based on her application submitted in 2018-19 academic year.

9. In Indra Sawhny's case (supra) the apex court observed like this.

95. We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16(4). A little clarification is in order at this juncture : all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes (under Article 16(4) may be called vertical reservations whereas reservations in favour of physically handicapped (under clause (1) of Article 16) can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations - what is called inter-locking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to S.C.category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (O.C.) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains - and should remain - the same This is how these reservations are worked out in several States and there is no reason not to continue that procedure.

10. The counsel relies the above judgment and submitted that even after the Horizontal reservation, the percentage of reservation in favour of backward class of citizens remains - and should remains - the same. The counsel submitted that, this is how these reservations are worked out and respondents had not followed the same. Then the counsel relied Anil Kumar Gupta's case (supra) and Saurav Yadav's case (supra) for the same principle.

11. The counsel also relied the judgment of the apex court in Jaishri Laxmanrao Patil v. The Chief Minister(2021(3) KLT 465 (SC). The counsel relied clause 3 and 12 of the concluding portion in paragraph 444 of the above judgment which is extracted hereunder:

xxx

xxx

xxx

xxx

(3) We are of the considered opinion that the cap on percentage of reservation as has been laid down by Constitution Bench in Indra Sawhney is with the object of striking a balance between the rights under Article 15(1) and 15(4) as well as Articles 16(1) and 16(4). The cap on percentage is to achieve principle of equality and with the object to strike a balance which cannot be said to be arbitrary or unreasonable.

xxx

xxx

xxx

xxx

(12) What was held by the Constitution Bench in *Indra Sawhney* on the relevance and significance of the principle of *stare decisis* clearly binds us. The judgment of *Indra Sawhney* has stood the test of the time and has never been doubted by any judgment of this Court. The Constitution Bench judgment of this Court in *Indra Sawhney* neither needs to be revisited nor referred to a larger Bench for consideration.

12. The counsel also relied a Full Bench decision of this Court in *Saurabh Jain v. State of Kerala* (2011(1) KLT 888(F.B) in which it is stated that estoppel is not a defence available to the State when its action is challenged on the ground of violation of the fundamental rights or the provisions of the Constitution. This Court in the above judgment observed that there is a distinction between non suiting of a petitioner approaching the legal forum on the ground of either waiver of a legal right or estoppel by conduct and declining to interfere in the matter where the jurisdiction is discretionary on some well recognised principles governing such exercise of discretionary jurisdiction.

13. The counsel thereafter relied on the judgment of the Apex Court in *Dr (Major) Meeta Sahai v. State of Bihar and others* [2019 (20) SCC 17]. The counsel relied paragraph 17 of the above judgment which is extracted hereunder :

"17. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process."

14. The counsel submitted that the candidate by agreeing to participate in the selection process only accept the prescribed procedure and not the illegality in it and hence, the delay in challenging the reservation policy after participating in the selection process is not a ground to dismiss the legitimate claim of the petitioner.

15. Then, the counsel relied the judgment of the Apex Court in *Union of India and others v. Tarsem Singh* [2008 (8) SCC 648]. The counsel relied paragraph 7 of the above judgment, which is extracted hereunder:

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the

date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches / limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition." (underline supplied)

The above decision is relied to substantiate the case that delay alone is not a reason to deny a legitimate claim. But the exception in those cases are also mentioned by the apex court in the above underlined portion.

16. The next decision relied by the counsel for the petitioner is Narsingh Pal v. Union of India and others [2000 (3) SCC 588]. Based on the above decision, the counsel submitted that the fundamental rights under the constitution cannot be bartered away. The counsel submitted that there cannot be any compromise nor can there be any estoppel against the exercise of fundamental rights available under the Constitution.

17. Then, the counsel relied the judgment of the Apex Court in S.Nihaal Ahamed v. Dean, Velammal Medical College Hospital and Research Institute and others [2016 (1) SCC 662]. In the above judgment, the Apex Court relied an earlier judgment and held that if a candidate is not selected during a particular academic year due to the fault of the institutions/authorities and in this process, if the seats are filled up and the scope for granting admission is lost due to eclipse of time schedule, then under such circumstances, the candidate should not be victimized for no fault of his/her and the court may consider grant of appropriate compensation to offset the loss caused, if any. In that case, the Apex Court restored the judgment of the Single Judge of the High Court by which a sum of Rs. 3 lakhs was fixed as compensation payable by the authority concerned.

18. The counsel also relied the judgment of the Apex Court in Krina Ajay Shah and others v. Secretary, Association of Management of Unaided Private Medical and Dental Colleges, Maharashtra and others [2016 (1) SCC 666]. The counsel relied paragraph 11 of the above judgment and the same is extracted hereunder :

"11. In the circumstances, though the relief such as the one sought by the petitioners cannot be granted at this stage in view of the long lapse of time but we are of the opinion that the petitioners are certainly entitled to public law

damages. State of Maharashtra is directed to pay an amount of Rs. 20 lakhs to each one of these petitioners towards public law damages and such payment should be made within a period of four weeks from today. We also deem it appropriate to direct the State of Maharashtra to identify the officers who are responsible for the inaction on the report of the Monitoring Committee dated 11th January, 2013 and take appropriate action against those officers including the recovery of the amount (to be paid pursuant to this order, by the State) from those officers."

19. Thereafter, the counsel relied the judgment of the Apex Court in *Krishna Sradha S. v. State of Andhra Pradesh and others* [2020 (1) KHC 633]. The counsel relied paragraph 9 of the above judgment and the same is extracted hereunder :

"9. In light of the discussion / observations made herein above, a meritorious candidate / student who has been denied an admission in MBBS Course illegally or irrationally by the authorities for no fault of his / her and who has approached the Court in time and so as to see that such a meritorious candidate may not have to suffer for no fault of his / her, we answer the reference as under:

(i) That in a case where candidate / student has approached the Court at the earliest and without any delay and that the question is with respect to the admission in medical course all the efforts shall be made by the concerned Court to dispose of the proceedings by giving priority and at the earliest.

(ii) Under exceptional circumstances, if the Court finds that there is no fault attributable to the candidate and the candidate has pursued his / her legal right expeditiously without any delay and there is fault only on the part of the authorities and / or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule prescribed - 30th September, is over, to do the complete justice, the Court under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time, i.e., within one month from 30th September, i.e., cut off date and under no circumstances, the Court shall order any Admission in the same year beyond 30th October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more meritorious candidate who has been denied admission illegally, would not have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled.

(iii) In case the Court is of the opinion that no relief of admission can be granted

to such a candidate in the very academic year and wherever it finds that the action of the authorities has been arbitrary and in breach of the rules and regulations or the prospectus affecting the rights of the students and that a candidate is found to be meritorious and such candidate / student has approached the Court at the earliest and without any delay, the Court can mould the relief and direct the admission to be granted to such a candidate in the next academic year by issuing appropriate directions by directing to increase in the number of seats as may be considered appropriate in the case and in case of such an eventuality and if it is found that the management was at fault and wrongly denied the admission to the meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning thereby the student / students who was / were denied admission illegally to be accommodated in the next academic year out of the seats allotted in the management quota.

(iv) Grant of the compensation could be an additional remedy but not a substitute for restitutorial remedies. Therefore, in an appropriate case the Court may award the compensation to such a meritorious candidate who for no fault of his / her has to lose one full academic year and who could not be granted any relief of admission in the same academic year.

(v) It is clarified that the aforesaid directions pertain for Admission in MBBS Course only and we have not dealt with Post Graduate Medical Course."

20. Based on the above judgments, the counsel submitted that there is great injustice done by the respondents which resulted in denial of an MBBS seat to the petitioner. The sum and substance of the contention of the petitioner is that the reservation of seats earmarked to SC/ST candidates is wrongly computed in the academic year in which the petitioner applied and therefore, the petitioner may be given a seat in this academic year and the respondents may be directed to pay compensation for the denial of a legitimate claim of the petitioner. For a proper understanding of the facts in this case, it will be better to extract the table reproduced in the statement filed by respondent No.3 about the dates and events. The same is extracted hereunder :

TABULAR COLUMN SHOWING A BRIEF TIME LINE OF THE PROCESS OF MEDICAL ADMISSIONS IN THE STATE OF KERALA, UNDERTAKEN BY THE COMMISSIONER FOR ENTRANCE EXAMINATIONS, FOR THE ACADEMIC YEAR 2018-2019

DATES

EVENTS

30.01.2018

G.O. (MS) NO.39/2018/H.Edn dated 30.01.2018

(Annexure-R3(a)) issued by the Government approving the Prospectus for

Admission to Professional Degree Courses for the academic year 2018-2019. The Prospectus was immediately uploaded in the Website of the third respondent Commissioner of Entrance Examinations.

23.06.2018

The allotment process for Professional Degree Courses for the year 2018-2019 commenced on 23.06.2018, as per Annexure-R3(b) notification.

04.07.2018

The first phase allotment for medical and allied courses was published by the third respondent Commissioner of Entrance Examination on 04.07.2018, as per Annexure-

R3(c) notification.

24.07.2018

First representation by the petitioner

12.08.2018

The second phase allotment to medical and allied courses were published by the third respondent Commissioner of Entrance Examinations as per

notification dated 12.08.2018 (Annexure R3 (d))

18.08.2018

The last date for making admissions by the Commissioner of Entrance Examinations, as per Appendix F of Regulations on Graduate Medical

Education (as discernible from Annexure (e))

31.08.2018

Under no circumstances, the date admission will not be extended beyond 31.08.2018 (as discernible from

Annexure-R3(f)).

27.08.2018

Because of the flood situation which prevailed in the State of Kerala then, the Hon'ble Apex Court was pleased to extend the time period of medical admissions up to 10.09.2018, as per Annexure-R3(g) order dated

27.08.2018

08.09.2018

The mop up admission to MBBS Courses in the State were completed.

14.09.2018

The Mop up admissions to BDS Courses in the State were completed.

12.06.2019

The petition filed Writ Petition (Civil) No.16171 of 2019, challenging the admission process for the year 2018- 2019 on 12.06.2019, after the commencement of next

academic year (2019-2020).

11.10.2019

W.P.(C.) No.16171/2019 was amended and the amended writ petition was filed.

23.03.2020

W.P.(C.) No. 16171/2019 was amended as per order dated 13.3.2020 and the amended writ petition was filed.

26.03.2021

The said writ petition was dismissed as withdrawn with liberty to file a fresh writ petition.

15.05.2021

The petitioner filed the captioned writ petition.

21. Since, the petitioner filed two earlier writ petitions, I called for the judges' papers in those cases [(W.P.(C.) Nos.27190/2018 & 16171/2019]. It will be better to extract the prayer of the first writ petition filed by the petitioner as W.P. (C.) No. 27190/2018.

"(i) Call for the records connected with the case;

(ii) Issue a writ of mandamus or any other appropriate writ, order or direction directing the 2nd respondent to follow the mandatory reservation quota of 8% on the total number of seats;

(iii) Issue a writ of mandamus or any other appropriate writ, order or direction to the 1st Respondent to consider Exhibit P4 within a time frame to be fixed by a this Hon'ble Court and to declare that the Petitioner is eligible to get the admission to the MBBS Course 2018-19 under the mandatory reservation;

(iv) Declare that violation of mandatory reservation of quota of 8% on the total number of seats is illegal and arbitrary;

(v) Issue such other Writ, Order or Direction that this Honourable Court may deem fit and proper in the nature and circumstances of the case."

22. Thereafter, W.P.(C.) No. 16171/2019 was filed on 12.6.2019 with following prayers :

(i) call for the records leading to the admission to MBBS Course for the academic year 2018-19 allotted by the 3rd respondent and quash the admissions, to the extent the petitioner was denied admission, by issuance of a writ of certiorari or any other appropriate writ, order or direction.

(ii) quash Exhibit P9 which is arbitrary and illegal.

(iii) issue a writ of mandamus or any other appropriate writ, order or direction commanding the 1st and 3rd respondents to admit the petitioner to MBBS Course 2018-19 since the course for the first year of both, BDS and MBBS, is more or less the same .Except one paper of Anatomy, rest of the subjects are and papers are or less similar particularly for the first six months.

Or

issue a writ of mandamus or any other appropriate writ, order or direction commanding the 1st and 3rd respondents to admit the petitioner to MBBS Course for the academic year 2019-20.

(iv) declare that the Scheduled Castes and Scheduled Tribe candidates are legally entitled to 10% of the total number of seats for admission for all professional courses and Post Graduate courses where the allotment of the entire seats are carried out by common counselling by the 3rd respondent.

(v) direct the respondents to modify the prospectus effectively that the reservation of 10% for Scheduled Castes and Scheduled Tribes to be strictly complied with in respect of the entire seats available as a whole without excluding the other reservation categories.

(vi) declare that the 1st and 3rd respondents have no jurisdiction to reduce the percentage of reservation for Scheduled Castes and Scheduled Tribe candidates from 10% (8% for SC and 2% for STs) for admission to professional courses where the entire seats are allotted by the 3rd respondent.

(vii) to award costs of this Writ Petition (Civil) to the petitioner.

And

(viii) grant such other reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case of this Writ Petition (Civil)."

23. The above writ petition was amended and the amended writ petition was filed

on 11.10.2019 and the prayer in the amended writ petition is extracted hereunder :

"(i) call for the records leading to the admission to MBBS Course for the academic year 2018-19 allotted by the 3rd respondent and quash the admissions, to the extent the petitioner was denied admission, by issuance of a writ of certiorari or any other appropriate writ, order or direction.

(ii) quash Exhibit P9 which is arbitrary and illegal.

(iii) issue a writ of mandamus or any other appropriate writ, order or direction commanding the 1st and 3rd respondents to admit the petitioner to MBBS Course 2018-19 since the course for the first year of both, BDS and MBBS, is more or less the same. Except one paper of Anatomy, rest of the subjects are and papers are more or less similar particularly for the first six months.

Or

issue a writ of mandamus or any other appropriate writ, order or direction commanding the 1st and 3rd respondents to admit the petitioner to MBBS Course for the academic year 2019-20.

(iii)(a) direct the State Government to initiate appropriate disciplinary action against the erring officers who diverted the MBBS Seats due to the petitioner and similarly situated disadvantaged persons.

(iii)(b) direct the State Government to award proper and adequate compensation to the petitioner.

(iv) declare that the Scheduled Castes and Scheduled Tribe candidates are legally entitled to 10% of the total number of seats for admission for all professional courses Post Graduate courses where the allotment of the entire seats are carried out by common counselling by the 3rd respondent.

(v) direct the respondents to modify the prospectus effectively that the reservation of 10% for Scheduled Castes and Scheduled Tribes to be strictly complied with in respect of the entire seats available as a whole without excluding the other reservation categories.

(vi) declare that the 1st and 3rd respondents have no jurisdiction to reduce the percentage of reservation for Scheduled Castes and Scheduled Tribe candidates from 10% (8% for SC and 2% for STs) for admission to professional courses where the entire seats are allotted by the 3rd respondent.

(vii) to award costs of this Writ Petition (Civil) to the petitioner.

And

(viii) grant such other reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case of this Writ Petition (Civil)."

24. Thereafter, the writ petition was again amended and the amended writ petition was filed on 23.3.2020. The amended prayer is extracted hereunder :

"(i) call for the records leading to the admission to MBBS Course for the academic year 2018-19 allotted by the 3rd respondent and quash the admissions, to the extent the petitioner was denied admission, by issuance of a writ of certiorari or any other appropriate writ, order or direction.

(ii) quash Exhibit P9 which is arbitrary and illegal.

(iii) issue a writ of mandamus or any other appropriate writ, order or direction commanding the 1st and 3rd respondents to admit the petitioner to MBBS Course 2018-19 since the course for the first year of both, BDS and MBBS, is more or less the same. Except one paper of Anatomy, rest of the subjects are and papers are more or less similar particularly for the first six months.

Or

issue a writ of mandamus or any other appropriate writ, order or direction commanding the 1st and 3rd respondents to admit the petitioner to MBBS Course for the academic year 2019-20.

(iii)(a) direct the State Government to initiate appropriate disciplinary action against the erring officers who diverted the MBBS Seats due to the petitioner and similarly situated disadvantaged persons.

(iii)(b) direct the State Government to award proper and adequate compensation to the petitioner.

(iv) declare that the Scheduled Castes and Scheduled Tribe candidates are legally entitled to 10% of the total number of seats for admission for all professional courses Post Graduate courses where the allotment of the entire seats are carried out by common counselling by the 3rd respondent.

(v) direct the respondents to modify the prospectus effectively that the reservation of 10% for Scheduled Castes and Scheduled Tribes to be strictly complied with in respect of the entire seats available as whole without excluding the other reservation categories.

(vi) declare that the 1st and 3rd respondents have no jurisdiction to reduce the percentage of reservation for Scheduled Castes and Scheduled Tribe candidates from 10% (8% for SC and 2% for STs) for admission to professional courses where the entire seats are allotted by the 3rd respondent.

(vii) declare clause 4.1.5 of the Prospectus (Exhibit P14) is in violation of Articles 14, 15, 46, 338 and 338A of the Constitution of India and quash the same to the extent that dilute the 10% (SC 8% & ST 2%) constitutional reservation of Scheduled Castes and Scheduled Tribes.

(viii) declare clause 4.1.5 is in violation of Exhibit P10(b) and Exhibit P16 and quash the same to the extent that dilute the 10% (SC 8% & ST 2%)

constitutional reservation of Scheduled Castes and Scheduled Tribes.

(ix) declare that the reservation under Exhibit P10(b) is the vested right of Scheduled Castes and Scheduled Tribes and appropriate direction may be issued to the respondents to enforce Exhibit P10(b) at source, incorporate and notify separately the number of reserved seats entitled for Scheduled Castes and Scheduled Tribes in the Exhibit P14.

(x) appropriate direction may be issued to the respondents to incorporate Exhibit P16 in the prospectus Exhibit P14 and notify the number of reserved seats entitled for Scheduled Castes and Scheduled Tribes.

(xi) appropriate direction may be issued to the respondents to declare that Scheduled Castes and Scheduled Tribes are out of terms of reference of Exhibit P20 and shall not be enforced against the Scheduled Castes and Scheduled Tribes in computing 10% (SC 8% & ST 2%) Constitutional reservation.

(xii) appropriate direction may be issued to the respondents to follow horizontal reservation principles for Government of India Nominees, Persons With Disability Special Reservations as held by the Constitution Bench of the Hon'ble Supreme Court in *Indra Sawhney v Union of India* and others (AIR 1993 SC 477).

(xiii) appropriate direction may be issued to the respondents to follow the principles in computing the constitutional reservation of 10% for the Scheduled Castes and Scheduled Tribes as laid down in *Anil Kumar Gupta v State of Uttar Pradesh and Others* (1995 KHC 1318) and *Ashish Sharma and Others v. State of Chhattisgarh and Others* (2004 KHC 3483 Chhattisgarh High Court-).

(xiv) to award costs of this Writ Petition (Civil) to the petitioner

and

(xv) grant such other reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case of this Writ Petition (Civil)."

25. The judgment in W.P.(C.) No. 27190/2018 is Ext.P1 in this writ petition. W.P. (C.) No. 16171/2019 which was filed in 2019 was amended twice and subsequently, in 2021, the same was withdrawn with liberty to file a fresh writ petition again. Accordingly, the present writ petition is filed and the prayer in this writ petition is already extracted. The contention of the petitioner is that the 10% reservation is not properly computed by the respondents and thereby, the petitioner was denied MBBS seat. Admittedly, the petitioner is a candidate applied for getting admission for the academic year 2018-19. The first representation submitted by the petitioner narrating his grievance was on 24.7.2018, which is clear from the table extracted above.

26. Ext.P1 judgment is dated 10.8.2018. That was before the 2nd phase of allotment as per Annexure R3(d) and after the first phase of allotment as per Annexure R3(c) notification. As directed by this Court in Ext.P1 judgment, Ext.P2 order was passed on 17.11.2018. Thereafter, the petitioner approached this

Court only on 12.6.2019 by filing W.P.(C.) No.16171/2019. The above writ petition was amended twice and thereafter, the writ petition was withdrawn with liberty to file it again on 26.3.2021. Thereafter, this present writ petition was filed on 15.5.2021. If we go through the dates and events in this case, it is clear that the contention of the respondents that the claim of the petitioner are highly belated, is justified. The petitioner challenged Ext.P2 order, which is dated 17.11.2018 only on 12.6.2019 by filing W.P.(C.) No. 16171/2019. Thereafter, that writ petition was amended twice and in year 2021, the same was withdrawn. Ext.P2 order was issued during the currency of the academic year 2018-19. Annexure R3(a), the prospectus for the academic year 2018-19 was approved on 30.1.2018. Centralised allotment process for professional Degree course for the year 2018-19 commenced on 23.6.2018 as evident by Annexure R3(b). The first phase of allotment for Medical and Allied courses were published on 4.7.2018 as evident by Annexure R3(c). The second phase of allotment was published as per Annexure R3(d) on 12.8.2018. As per Clause 7(6AAA) of the Regulation on Graduate Medical Education, 1997, the Universities and other authorities concerned shall organise admission process in accordance with the time schedule indicated in Appendix F thereto. Annexure R3(e) is the Regulations on Graduate Medical Education (Amendment) 2018. Annexure R3(f) is the amendment notification dated 18.5.2018. The Regulation on Graduate Medical Education as amended by Annexures R3(e) and R3(f), the time schedule therein was strictly adhered and the same was binding to the 3rd respondent in the matter of admission for the year 2018-19. As per the aforementioned schedule, the last date of joining for MBBS course for an academic year is 18th August in the case of State Counselling and 31st August in the case of Deemed Universities and Central Institutions. As discernible from Annexure R3(f), under no circumstances, the last date for admission/joining will be extended after 31st August. In view of the flood situation in Kerala during 2018, the last date for admission to the Medical College in the State of Kerala was extended by the Apex Court to 10.9.2018 as evident by Annexure R3(g). Mop-up counselling for MBBS was held on 8th and 9th September, 2018 as per the statement and the vacancies for MBBS in various Colleges in Kerala were filled up. As per the statement, the mop-up counselling for BDS was completed on 14.9.2018. Thereafter, the petitioner approached this Court with W.P.(C.) No. 16171/2019. The same was withdrawn after amending the same twice. According to me, the present writ petition is to be dismissed for the delay aspects itself. The petitioner has not approached this Court in time and this Court is not in a position to pass any orders in favour of the petitioner at this distance of time. I perused the judgment relied by the counsel for the petitioner. In all those cases, the Apex Court and this Court passed orders because of the fault of the institutions/authorities in giving admission to candidates. In this case, Ext.P2 order was passed on 17.11.2018 and the same was challenged after about 6 months. Therefore, according to me, the petitioner is not entitled any reliefs in this case for the simple reason that the petitioner has not approached this Court in time.

27. Moreover, on merit also, I perused Annexure R3(i) judgment. Almost same point raised by the petitioner in this case was raised in that case also. The contention regarding calculation of mandatory seats for allocation of reservation was the point raised in that writ petition. This Court rejected the same. It will be better to extract the relevant portion of the judgment.

"It is stated that the petitioner was fully aware of the fact that the All India Quota seats and other reserved category of seats including the nominee seats are not available with the Commissioner of Entrance Examinations for conducting allotment and that the quota can be applied only with regard to such seats which are available for allotment with the Commissioner. It is stated that a reading of Ext.P7 judgment would itself make it clear that the finding therein is with regard to a situation where there was no provision either in the reservation policy of the State or in the prospectus of the University for exclusion of seats before the reservation was to be applied.

6. Relying on a decision of the Bombay High Court in *Vrushali v. State of Maharashtra* [1996 (5) Bom. C.R. 614], it was contended that the reservation was to be exercised only in respect of seats available for allotment by the State. In paragraph 20 of Ext.P9 judgment it was found that the Maharashtra Rules which were construed in *Vrushali's* case provided for application of reservations on the seats available for disposal with the competent authority. It was held that neither in the reservation policy of the State of Kerala nor in the prospectus of the University is such an exclusion provided and exclusion, if any, will have to be provided by the State and not by the University. It was in the above factual situation that the writ petition was allowed directing the application of the reservation as against the total number of seats.

7. In the instant case, Clause 4.1.5 of Ext.P11 prospectus specifies the method by which reservation is to be applied. It is the specific case of the respondents that the All India Quota seats and the nominee seats are not available with the State Government to make allotments even in the centralised allotment process. The provision in the prospectus is therefore to apply to the seats available with the allotting authority, that is, the 2nd respondent herein. In spite of the petitioner being aware of how the reservation is being worked out, I notice that there is no challenge raised as against Ext. P11 or the provision with regard to reservation as contained therein. As rightly pointed out by the learned Government Pleader, the judgments of the Apex Court on the point would indicate that the reservation quota provided by the State Government can only be implemented in respect of the seats available with the State Government for allotment.

In the above view of the matter, the reliefs sought for in this writ petition cannot be granted. The writ petition fails and the same is accordingly dismissed."

28. I think, in the light of the above finding, the point raised by the petitioner is covered against the petitioner. Moreover, the petitioner approached this Court

after a long time and this Court cannot give any direction to the petitioner, even if the contention of the petitioner is accepted because the petitioner was an applicant for getting admission to the Medical course for the academic year 2018-19 and we are now in the year 2021. No relief can be given to the petitioner at this distance of time.

29. The petitioner filed three writ petitions with almost similar prayers. One writ petition was amended twice and thereafter withdrawing the same the present writ petition is filed with almost same prayers. According to me this writ petition is to be dismissed with heavy cost because the petitioner is wasting the time of this court by filing writ petition after writ petition with various prayers and that also at belated stages. But I am reluctant to impose cost in this case treating it as an innocent attempt of an innocent girl to get admission for her dream course of MBBS. Petitioner ought to have spent time to study well in the ensuing academic year and get admission to her dream course instead of spending time for this legal battle. This is not the end of her educational carrier. I wish her all the best to get admission to her dream course by attempting in the qualifying examination in the next time if it is possible. Take it as a revenge and show the society that the medical science is safe in your hand. That will be the happiest day to the author of this judgement just like to you and to your loving parents. After describing the "Ramayana" of Thunjath Ezhuthachan, the legend of Malayalam Poet, Sri.Vallathol in his famous poetry "THONEEYATHRA" said like this: "????? ? ? ? ? ?". If the petitioner attain this goal, I will borrow the same words and will say like this: "????? ? ? ? ? ? ? ?"

God bless you!

This writ petition is devoid of any merit and the same is dismissed. No cost.