
(2013) 01 KL CK 0158

In the High Court Of Kerala

Case No : Writ Petition (C) No. 22726 of 2012

Sreeja S. and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 01-01-2013

Acts Referred:

Constitution of India, 1950 — Article 162, 166, 367, 372
General Clauses Act, 1897 — Section 21

Citation : (2013) 1 KHC 230 : (2013) 1 KLJ 540

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : Kaleeswaram Raj, for the Appellant; Sareena George, Elvin Peter P.J., T.G. Sunil and K.R. Ganesh, for the Respondent

Final Decision : Allowed

Judgement

T.R. Ramachandran Nair, J.—The petitioners herein are applicants for admission to Post B.Sc. Degree Course 2012-2013 under service quota. An amendment of the prospectus as per Ext. P3 Government Order and its validity is the issue to be decided in the writ petition. The case of the petitioners, apparently is that going by para 8.3.1 of Ext. P1 prospectus, the rank list for service candidates has to be prepared according to their rank in the Entrance Examination and it is not in terms of any seniority in service. Going by the same, the first petitioner is rank No. 4 in Ext. P2 rank list and she would be No 13 in the list published by the Director of Medical Education. The second petitioner is rank No. 8 in Ext. P2, but since she is working under the Director of Health Services, in the list published by the Director of Health Services, she would be rank No. 2. The third petitioner is rank No. 1 in Ext. P2 and the fourth petitioner is rank No. 2 in Ext. P2. Both of them will be rank Nos. 1 and 2 in the list published by the Director of Medical Education. It is submitted that after the publication of the rank list, there cannot be any change of the rules of the game which is a well accepted principle laid down by the Apex Court in various decisions, viz. K. Manjusree Vs. State of A.P. and Another, and other cases. Thus, it is submitted that the amendment

proposed to the prospectus cannot be justified.

2. Additional respondents 6 to 9 have opposed the contentions of the petitioners by pointing out that going by the date of the effective advice under Rule 27C of the KS & SSR they are seniors to the writ petitioners. The details of their dates of advice and the dates of joining service have been stated in para 3 of the counter affidavit. Additional respondents 6 to 9 also submitted applications seeking admission under the service quota. It is their contention that during all these years admissions to Post Basic Degree Course, M.Sc. Nursing Degree Course, Medical Post Graduate Degree Course and Medical Super Specialty Course including Dental Degree Courses under service quota were being made on the basis of the seniority of the employees in service subject to their passing of the entrance examination. The omission to provide seniority in service as a criteria in Ext. P1 is a mistake. The Government has now amended the relevant clauses of Ext. P1 prospectus and the Government is fully empowered to do so in the light of clause 1.6 itself. The same is in tune with the executive power under Article 166 of the Constitution of India read with Section 21 of the General Clauses Act and Article 367 of the Constitution of India. The additional respondents have also produced Exts. R6(a) to R6(c) which are the relevant extracts of the prospectus for Post Basic B.Sc. Nursing degree course for the year 2011-2012, for admission to Medical Postgraduate degree and diploma courses for the year 2011-2012 and M.Sc. Nursing degree course for the year 2011. It is pointed out that in all these, the terms are similar that preparation of rank list for service candidates will be according to their service seniority subject to passing of the Entrance Examination. Ext. R6(d) is the circular dated 3.1.2012 issued by the Indian Nursing Council directing that admission to B.Sc. Nursing Course as well as for M.Sc. Nursing Course shall be made only by an entrance examination and marks for the qualifying examination shall not be considered. Accordingly, for the first time the entrance examination was introduced to the B.Sc. Nursing course as well as for M.Sc. Nursing course. Ext. R6(e) is the order passed by the Government amending the prospectus. The same is dated 27.9.2012.

3. In the counter affidavit filed on behalf of the second respondent also, it is pointed out that the Government has only corrected a mistake. Ext. R2(a) is the circular issued by the Indian Nursing Council providing for admission only on the basis of an entrance examination and that the marks for the qualifying examination cannot be considered as criteria for admission. It is averred in para 2 that following the said circular, permission was granted by the Government as per Ext. R2(b) order to conduct entrance examination and Ext. P1 prospectus was issued. In para 3, it is explained that the third respondent published the rank list based on the entrance examination conducted by it. In para 4 it is stated that certain service quota candidates represented before the second respondent that selection under service quota is to be done on the basis of seniority as was done in previous years. It is further explained that this aspect escaped the attention while preparing and publishing Ext. P1 prospectus and the second respondent immediately brought this omission to the attention of the

Government for suitable modification and the Government passed appropriate orders thereafter on 27.9.2012. Reliance is placed on the exercise of the said power under para 1.6 of Ext. P1.

4. Heard learned counsel for the petitioners Shri Kaleeswaram Raj, Shri Elvin Peter learned counsel appearing for additional respondents 6 to 9 and learned Govt. Pleader Smt. Sareena George.

5. Some of the relevant dates are also important to consider the contentions. Ext. P1 prospectus is issued based on the approval granted by the Government as per G.O. (Ms.) No. 233/2012/H&FWD dated 21.7.2012. Clause 8 concerns preparation of rank lists. Sub clauses 8.1 and 8.3.1 which are relevant, are extracted below:

8.1. Rank lists of candidates shall be prepared according to the marks scored by the candidates in entrance examination. 8.3.1. Provisional Rank list for service candidates shall be prepared according to their rank in the Entrance Examination.

Therefore, the marks in the entrance examination are relevant in preparing the rank list for service candidates. Ext. P2 rank list is dated 19.9.2012. The amendment to the prospectus is issued as per Ext. R2(c) order which is dated 27.9.2012. The same is after the publication of the rank list. Clause 1.6 of the prospectus reads as follows:

1.6 This prospectus or any part of it is subject to modification/addition/deletion as may be deemed necessary by Government.

As regards the power to amend the prospectus is concerned, evidently, clause 1.6 provides for modification/addition/deletion.

6. Shri Elvin Peter, learned counsel appearing for additional respondents 6 to 9 relied upon the following decisions of this Court recognising the power to amend the prospectus: *Nazar v. State*, 1996 (2) KIT 518, *Relly Susan Mathew Vs. Controller of Entrance Examinations, Trivandrum and Others*, . A decision of the Apex Court in *Rajiv Kapoor and Others Vs. State of Haryana and Others*, is also relied upon in that context. The decision of a Division Bench of this Court in *Mohammed Riaz Vs. State of Kerala*, was relied upon to explain that this Court while interpreting Section 5(4) of the Medical Officer's Admission to Post Graduate Courses under Service Quota Act, 2008, held that the select list shall be in terms of strict seniority and depending upon the minimum marks obtained in the entrance test. In that context, the decision of the Apex Court in *The State of Madhya Pradesh and Others Vs. Gopal D. Tirthani and Others*, was also relied upon. The decision of this Court in *V. V. Prakasini Vs. K. P. S. C. and others.*, was relied upon in support of the plea that a public authority has got power to correct apparent mistakes even in the absence of any specific provision.

7. Shri Kaleeswaram Raj relied upon the following decisions to contend that a change in the prospectus cannot be made at the final stage, especially after the selection process is over: *Dr. Jayakumar, E.K. Vs. Director of Medical Education*

and Others , Charles K. Skaria and Others Vs. Dr. C. Mathew and Others, , K. Manjusree Vs. State of A.P. and Another, , Hemani Malhotra Vs. High Court of Delhi, , Dr Preeti Srivastava and Another Vs. State of M.P. and Others, , P.V. Indiresan Vs. Union of India (UOI) and Others, and Parmender Kumar and Others Vs. State of Haryana and Others, .

8. Therefore, mainly two questions arise for consideration: (i) whether the prospectus could be amended; and (ii) whether the amendment can be brought in after the rank list is published resulting in change of the rules of the game in the midstream and that too at the final stage.

9. First I will consider the power conferred for amending the prospectus. In Nazar's case, 1996 (2) KIT 518, a Division Bench of this Court examined the very same question. Therein, reference was made to Section 21 of the General Clauses Act. The Division Bench in para 7, has held thus:

Section 21 of the General Clauses Act gives power to the Government to amend, vary or rescind any notification issued by the Government. Counsel for the respondent contended that there cannot be any retrospective effect to the rescission or modification. Here, the notification was not amended retrospectively. Admission to the courses was not over and it was during the course of admission to these courses the amendment was made by the authorities.

After holding that there is power, it was noticed that the admission to the courses was not over and it was during the course of admission the amendment was made by the authorities.

10. In Relly Susal Mathew's case, ILR 1997 (2) Ker 489, the power to amend the prospectus was recognised under Articles 162 and 367 of the Constitution of India read with Section 21 of the General Clauses Act. It was held therein as follows:

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 petitioner 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.

11. In Rajiv Kapoor and Others Vs. State of Haryana and Others, , apart from the stipulations in the prospectus, certain Government Orders have been issued providing the procedure other than those contained in the prospectus. The

question was whether both will have to be acted upon for completing the admission to Postgraduate courses in the reserved category of service candidates. In para 11, the issue was considered thus:

We are unable to appreciate this reasoning. The Government orders dated 21-5-1997 did not introduce, for the first time, either the constitution of a Selection Committee or evolving the system of interview for adjudging the merits of the candidates in accordance with the laid down criteria. They merely modified the pattern for allotment of marks under various heads from the total marks. Therefore, even if the modified criteria envisaged under the order dated 21-5-1997 is to be eschewed from consideration, the earlier orders and the criteria laid down therein and the manner of assessment of merit by the Selection Committee after interview, were still required to be complied with and they could not have been given a complete go-by.

12. Herein, para 1.6 of Ext. P1 provides that the prospectus or any part of it is subject to modification/addition/deletion as may be deemed necessary by the Government. The said power has been invoked obviously. Going by the dictum laid down by this Court in Nazar's case, 1996 (2) KLT 518 and Relly Susan Mathew Vs. Controller of Entrance Examinations, Trivandrum and Others, such a power could be traced out to the relevant provisions of the Constitution" apart from Section 21 of the General Clauses Act. Therefore, it cannot be doubted that there is power available to the Government to modify or alter the terms of the prospectus.

13. The next question is whether the exercise of the said power could be justified and whether the prospectus could be amended at any time even after the admission process has proceeded considerably and after the publication of the rank list.

14. Shri Kaleeswaram Raj, learned counsel for the petitioners submitted that the contention that there was a mistake in Ext. P1 prospectus, cannot be accepted at all. Herein, clause 8 gives the method with regard to the preparation of rank list and it was stipulated under clauses 8.1 and 8.3.1 that the result of the entrance examination is the basis for preparation of the rank list. The Government approves a prospectus normally based on the clauses in the prospectus for the earlier years. The relevant clauses in the prospectus for the earlier years were within the knowledge of the Director of Medical Education and the Government. Therefore, when Ext. P1 is issued, they have consciously taken the stand that the rank list will be prepared in terms of the result of the entrance examination and the marks scored by the candidates. It is submitted that the plea that there was a mistake in the prospectus also cannot be justified. It is submitted that going by the counter affidavit filed by additional respondents 6 to 9, it can be seen that they had also participated in the entrance examination and had not challenged the clauses in the prospectus at any time before the results were published. Even the initiation of the steps for amendment of the prospectus was only as a result of their representation which is clear from the averments in the counter affidavit

itself and the counter affidavit filed by the second respondent. It is therefore submitted that it is only to satisfy the plea of the contesting respondents that the steps were taken. Therefore, the plea of mistake cannot hold good. It is submitted that the rules of the game cannot be changed in a matter like this, especially after the rank list was published. The candidates are liable to be put to notice of the conditions as regards the eligibility for selection. The possibility of persons who did not apply as per the earlier condition is also there. Herein, the process of admission was to be over and at that time the order Ext. R2(c) was issued. Learned counsel expanded the arguments by relying upon various decisions of the Apex Court. It is also submitted by relying upon the principles stated by the Apex Court in *Dr Preeti Srivastava and Another Vs. State of M.P. and Others*, that merit alone would govern the admission process and therefore the concept of considering the service seniority as introduced by the amendment also cannot be justified. He further relied upon the recent decision of the Apex Court in *P.V. Indiresan Vs. Union of India (UOI) and Others*, in this context. It is submitted that the matter will have to be considered in the light of the various legal principles.

15. First I will consider the question whether the rules can be changed midstream, especially after the selection process is over. In *K. Manjusree Vs. State of A.P. and Another*, a three Judge Bench of the Apex Court, in a matter of recruitment, invoked the said principle and held that an additional requirement cannot be made during the selection process. It will result in change of criteria altogether. In para 33, the principle was explained thus:

The resolution dated 30.11.2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, stated above. But if the Selection Committee want to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the selection committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview.

Therefore, their Lordships were of the view that the change in criteria after completion of the selection process will not be justified. The said principle has been reiterated in P.V. Indiresan Vs. Union of India (UOI) and Others, which was a case of admission in Central Educational Institutions. The Apex Court in para 45, was of the view that the factor which was not known to the candidate cannot be re-introduced at the final stage to defeat the rights of the candidate who is otherwise entitled for admission. Para 45 reads thus:

45. No candidate who fulfills the prescribed eligibility criteria and whose rank in the merit list is within the number of seats available for admission, can be turned down, by saying that he should have secured some higher marks based on the marks secured by some other category of students. A factor which is neither known nor ascertained at the time of declaring the admission programme cannot be used to disentitle a candidate to admission, who is otherwise entitled for admission. If the total number of seats, in a course is 154 and the number of seats reserved for OBCs is 42, all the seats should be filled by OBC students in the order of merit from the merit list of OBC candidates possessing the minimum eligibility marks prescribed for admission (subject to any requirement for entrance examination). When an eligible OC candidate is available, converting an OBC reservation seat to general category is not permissible.

In paragraphs 43 and 44 also, it was held that such a procedure to introduce a new criteria adopted in the final stage will be arbitrary and discriminatory. The said findings are extracted below:

The appellant canvasses the continuance of the procedure adopted by JNU during 2008-2009 and 2009-2010. During the said year, JNU would not say what was the minimum eligibility marks for OBC candidates, but would decide the same only after all the general category seats were filled, by fixing a band of marks up to 10% below the marks secured by the last candidate admitted under the general category. Such a procedure was arbitrary and discriminatory, apart from being unknown in regard to admissions to educational institutions. The minimum eligibility marks for admission to a course of study is always declared before the admission programme for an academic year is commenced. But the "cut-off" procedure followed by JNU during those days had the effect of rewriting the eligibility criteria, after the applications were received from eligible candidates.

16. Recently, in a batch of cases in W.P. (C) No. 22187/2012 and connected cases, I had occasion to consider the very same issue and after referring to various decisions of the Apex Court and this Court, it was held thus:

Therefore, it is well settled that the introduction of such a requirement after the entire selection process is over, will amount to change in the rules of the game after the game was played, which is clearly impermissible according to the Apex Court in K. Manjusree Vs. State of A.P. and Another, .

Therefore, as far as the admission process in educational institutions as well as for recruitment process for any category it is a well accepted principle that rules

of the game cannot be changed after the game is over. The said principle is well settled. Therefore, even if the Government has got the power to amend the prospectus that should have been exercised well in time, not to affect the rights of the candidates and cannot be done at the fag end of the entire process especially in a matter where the rank list was published as per Ext. P2 which is dated 19.9.2012 whereas Ext. R2(c) is dated 27.9.2012.

17. The decision of the Apex Court in *Parmender Kumar and Others Vs. State of Haryana and Others*, has again reiterated the principles in para 28 thus:

29. As has also been pointed out hereinbefore, this Court in *Rajiv Kapoor and Others Vs. State of Haryana and Others*, took notice of the fact that the Full Bench, on whose decision the High Court had relied, ultimately directed that the selections for admission should be finalised in the light of the criteria specified in the government orders already in force and the prospectus, "after ignoring the offending notification introducing a change at a later stage". (emphasis supplied). In fact, this is what has been contended on behalf of the appellants that once the process of selection of candidates for admission to the postgraduate and diploma courses had been commenced on the basis of the prospectus, no change could, thereafter, be effected by government orders to alter the provisions contained in the prospectus. If such government orders were already in force when the prospectus was published, they would certainly have a bearing on the admission process, but once the results had been declared and a select list had been prepared, it was not open to the State Government to alter the terms and conditions just a day before counselling was to begin, so as to deny the candidates, who had already been selected, an opportunity of admission in the aforesaid courses.

The principles stated above will squarely support the argument of the learned counsel for the petitioner. It was a case of admission to Post Graduate Medical Courses. Therein, the initial condition in the prospectus regarding the eligibility for reservation for members of Civil Medical Services to get NOC from Government, was that the doctors should have three years regular service with successful completion of the period of probation out of which two years service is essential in rural areas. A common entrance examination was conducted on 6.1.2011. The appellants' names were published in the merit list dated 3.3.2011. On 31.3.2011 the Government of Haryana issued a revised instruction which was circulated in the website on 5.4.2011 by which, instead of three years, it was prescribed as five years regular service out of which three years service should be in one of the District Hospitals or a sub-divisional hospital and two years in rural area institutions. It was contended that the change of such conditions one day prior to the counselling as to the discipline to be pursued, was to the prejudice of the appellants who have been selected on the basis of the unamended prospectus.

18. In fact, Shri Elvin Peter relied upon the decision of a Division Bench of this Court in *Relly Susan Mathew Vs. Controller of Entrance Examinations, Trivandrum*

and Others, and that of the Apex Court in *Rajiv Kapoor and Others Vs. State of Haryana and Others*, to contend that the change in the criteria can be applied, especially according to him a mistake is sought to be corrected. Therefore, those decisions require a detailed consideration.

19. The facts of the case in *Relly Susan Mathew's case* (supra) show that common entrances examination for Engineering, Medicine and Agriculture and allied courses for the year 1996-97 were conducted on 18th and 19th of May 1996. A common rank list was published on 24.6.1996. The Government later issued a direction on 6.7.1996 to the Commissioner of Entrance Examinations to postpone the interview and admission to the courses and to fix fresh dates. This direction was issued in the light of the fact that 50% of the seats in self financing colleges should be made free seats. Later, it was decided by the Government on 16.7.1996 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 other aided Engineering Colleges. It was further decided that in the colleges run by IHRDE and LBSC at Chengannur, Adoor and Kasaragod, 50 per cent of the seats would be free seats. Thus, the number of free seats in the Engineering Colleges was increased by 450. This was conveyed to the Controller of Examinations who issued a notification on 18.7.1996. This was based on the Government Order dated 16.7.1996. Both the orders were under challenge in the writ petition. After upholding the power of the Government to amend the prospectus, the Division Bench significantly held in para 12 with regard to the timing of the amendment, as follows:

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.....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.

These observations are of great significance to understand the timing of the amendment. Obviously, the Bench accepted the amendments in the light of the fact that the primacy given to the merit was not affected and the candidates got fresh opportunity to opt for 450 additional seats in certain colleges. The said process was effected before the admission started.

20. In the decision of this Court in *Dr. Jayakumar, E.K. Vs. Director of Medical Education and Others* the above decision was considered and explained by a later Division Bench. Therein also, the clauses in the prospectus were amended to include Lecturers in Nuclear Medicine also for admission to Postgraduate studies in Medicine. It was held that after the process of admission is over, the

prospectus cannot be amended. The detailed facts of this case will show that as per the prospectus for the year 2002, with regard to the seats in General Medicine, apart from Lecturers in General Medicine, Lectures in certain other disciplines were also eligible. But as far as Lecturers in Nuclear Medicine are concerned, they were eligible to apply only for M.D. Radiotherapy. But when the rank list was published on 17.12.2001, for M.D. General Medicine, as rank Nos. 1 and 2, two Lecturers in Nuclear Medicine were included, against which complaints were filed pointing out that Lecturers in Nuclear Medicine were not eligible for admission to M.D. General Medicine course. It appears that this was on the basis of an amendment of the prospectus for the year 2011, which Government Order was sought to be applied again. The Division Bench in para 14 observed thus:

Hence, while issuing G.O. (Rt) No. 2255/01/H and FWD dated 17th August, 2001, the Government was aware of the fact that the Prospectus for the year 2002 had already been issued. If the Government wanted to make Lecturers in Nuclear Medicine eligible for admission to M.D. General Medicine Course in 2002, nothing prevented the Government from doing so and including the same in the Government Order dated 17th August 2001. Since the Government did not do so, the respondents cannot contend that by the Government Order dated 17th August 2001 the Prospectus for the year 2002 also stood modified and that the Lecturers in Nuclear Medicine also are eligible for admission to M.D. General Medicine Course in the year 2002.

While considering the effect of a clause in the prospectus providing for modification/addition, the Bench in para 16 held thus:

.....Clause XVIII of the Prospectus cannot be construed as to confer power on the Government to change the criteria for eligibility for admission to the course even after the last date for submission of the application. At least on the last date for submission of application the candidates should know definitely the criteria for eligibility for admission to the course. Neither the Director of Medical Education nor the Government can be permitted to change the criteria for eligibility for admission after the last date for submission of the application. If they are permitted to do so, it would lead to arbitrary exercise of power to favour or to prejudice particular candidates depending on the whims and fancies of the authority concerned. To provide equal opportunity to the candidates and to maintain fairness and to provide arbitrariness in the matter of selection of candidates for admission, it is absolutely necessary that the criteria for eligibility for admission to the course are not changed after the last date for submission of application. If at all Clause XVIII quoted above empowered the Government to change the eligibility criteria for admission by issuing executive orders/notification, the said power can be exercised by the Government only before the last date for submission of application and not thereafter.

It was further held as follows:

This will strike at the root of the principle of fairness and equality of opportunity

in the matter of selection of candidates for admission to the course.

Therefore, the Bench was of the view that even if the power to amend the prospectus had to be exercised by the Government, it shall be done before the last date for submission of the application and not thereafter. The said conclusions are significant as far as the facts of this case are also concerned. The said view was again reiterated in para 17 that the eligibility criteria for admission cannot be changed after the last date for submission of the application. It was also held that it will result in denial of equal opportunity to compete of the other Lecturers in Nuclear Medicine who did not apply for admission to M.D. General Medicine and finally in para 21 the following principles were laid down:

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

The Bench noted that such an amendment will have the effect of changing the conditions in the prospectus retrospectively which is the contention raised by the learned counsel for the petitioner Shri Kaleeswaram Raj herein also. The Bench in para 22 explained the decision in *Relly Susan Mathew Vs. Controller of Entrance Examinations, Trivandrum and Others*, in the following words:

Learned Counsel for the respondents relied on the judgment of a Division Bench of this Court in *Relly Susan Mathew v. The Controller of Entrance Examinations*, ILR 1997 (2) Ker. 489 to justify the direction of the learned Single Judge to the Government to consider modification of the prospectus. It is true that in the above case, the Division Bench upheld the amendment to the prospectus giving additional opportunity to the students to exercise their option and produce certificates. But in that case, there was no change of eligibility criteria for admission. The prospectus was amended only to give certain advantages to the candidates. The Government felt it necessary to give the candidates a fresh option regarding the College or Course because certain payment seats in the self Financing Colleges at Adoor, Kasaragode and Chengannur were converted to ordinary seats and in the result 450 additional free seats were available for the candidates in the general category. This was not in the contemplation when the prospectus was originally issued. At the time of submitting applications, the candidates could not opt for such seats. Hence, it became necessary to give a fresh option. By giving fresh option, the position in the rank list was not changed. A candidate of higher rank may change his option which may result adversely

with regard to the option exercised by a candidate of a lower rank. But it does not affect the admission of the student if he is otherwise entitled to. Similarly, the Government also thought to give another opportunity to persons claiming reservation to produce documents showing the community and income in order to enable them to get reservation. The court held that such procedural requirements could be complied with even at the time when the actual admissions were going to be effected. Hence the above-mentioned judgment of the Division Bench of this Court has no application to the facts of this case.

21. Therefore, it can be seen that even if there is a power to amend the prospectus it cannot be exercised at the final stage of the admission process and going by the decision of the Division Bench in Dr. Jayakumar's case (*supra*), it should have been exercised at least before the last date for submission of the application and the admission should be based on the conditions set out in the prospectus as it stood on the last date for submission of the application.

22. Of course the judgments relied upon by Shri Elvin Peter, viz. *The State of Madhya Pradesh and Others Vs. Gopal D. Tirthani and Others*, and *Mohammed Riaz's case*, 2011 (2) KLT 294 will show that apart from service seniority, the eligibility based on the entrance test also should be considered. But herein, such a clause concerning seniority was not there in the prospectus in the initial stages and the processes were allowed to progress and resulted in publication of Ext. P2 rank list: The decision in *Rajiv Kapoor and Others Vs. State of Haryana and Others*, relied upon by Shri Elvin Peter will show that that was not a case where a criteria was introduced for the first time. The Government Orders were in force apart from the terms of the prospectus and therefore the said method was accepted. But finally in para 17 the Apex Court also directed that in future the Government should publish the entire scheme even before inviting applications. The said view has been expressed clearly in the following words:

17. The mess that has occurred leading to the present litigation seems to be more on account of the inept drafting and publication of the prospectus by the University and not properly carrying out the binding orders of the Government and of too many orders passed from time to time, being allowed to stand piecemeal independently. The Government would do well in future to publish at the beginning of every academic year, even before inviting applications, a compendium of the entire scheme and basis for selection carrying out amendments up to date and the prospectus also specifically adopting them as part of the prospectus, to avoid confusion in the matter of selections, every year.

This is also significant. Of course, there will be a power to amend the prospectus and the power to correct a mistake available to a public authority can also be exercised, but it should be exercised sufficiently in advance and well in time not to interfere with the admission process which has culminated in a rank list.

23. Therefore, in this case, even though power was there, the exercise of the same is tainted as being violative of the well accepted principles reiterated by the

Apex Court as already discussed in K. Manjusree Vs. State of A.P. and Another, , P.V. Indiresan Vs. Union of India (UOI) and Others, , Parmender Kumar and Others Vs. State of Haryana and Others, , that of the Division Bench of this Court in Dr. Jayakumar's case, ILR 2003 (3) Ker. 46 and in W.P. (C) No. 22187/2012 and connected cases.

24. The counter affidavit of the second respondent will show that the last date of admission was extended till 31.10.2012. This Court had passed an interim order dated 28.9.2012 to keep four seats in Post Basic B.Sc. Nursing Degree Course 2012-2013 in the service quota vacant, which has been continuing. Therefore, even though the last date is over, in the light of the interim order which is in force, the admissions can be proceeded with. Accordingly, the petitioners are entitled to succeed. The writ petition is allowed. It is declared that Ext. P3, to the extent it has provided the new criteria for admission to Post Basic B.Sc. Nursing Course 2012-2013 cannot be applied for such admission. There will be a direction to the respondents to consider the claim of the petitioners for admission for the four seats kept vacant and depending upon their ranking and grant admission to eligible candidates among the petitioners. The said process will be finalised within two weeks from the date of production of a certified copy of this judgment. No costs.