

**(2022) 01 KL CK 0057**

**In the High Court Of Kerala**

**Case No : Writ Petition (C) No. 12332 Of 2021**

Volga K

APPELLANT

Vs

State Of Kerala

RESPONDENT

**Date of Decision : 11-01-2022**

**Acts Referred:**

Constitution of India, 1950 — Article 15, 16

**Citation : (2022) 01 KL CK 0057**

**Hon'ble Judges : N.Nagaresh, J**

**Bench : Single Bench**

**Advocate : T.N.Jayadevan, D.Jothikumar, Minu Siby Roy, N.Manoj Kumar, P.G.Pramod, P.Sreekumar, Robson Paul, Aysha Youseff**

**Final Decision : Dismissed**

## Judgement

N. Nagaresh, J

1. The petitioners are eligible for KEAM-2021 and NEET-UG 2021. The petitioners have registered for KEAM-2021. The petitioners state that

Clause 4.1.5 of Ext.P1 KEAM Prospectus provides for reservation of 15% for All India Quota. These seats are allotted following reservation

principles. Reservation of 5% seats for PWD is applied horizontally.

2. Clause 4.1.5 of Ext.P1 Prospectus reads as follows:

Mandatory Reservation: Leaving the seats set apart for All India Quota, Government of India Nominees, Special reservations, Persons with

Disabilities, all types of supernumerary seats sanctioned and Management Quota, the remaining Government seats for each course in

Govt./Aided/KAU/KVASU/KUFOS Colleges will be distributed as per the mandatory reservation principle as contemplated in G.O. (P)

208/66/Edn.Â Dated 02.05.1966, G.O.(Ms) No.95/08/SCSTDD dated 06.10.2008, G.O.(Ms) No.10/2014/BCDD dated 23.05.2014 and as modified

from time to time.â??

3. The petitionersâ?? grievance is that enforcing Clause 4.1.5 of Ext.P1 without applying horizontal reservation principles settled by the Apex Court

is arbitrary and violate the petitionersâ?? right to equality.

4. The learned Government Pleader entered appearance and resisted the writ petition. The Government Pleader argued that the writ petition is filed

inter alia challenging Clause 4.1.5 of the KEAM-2021 Prospectus. The point urged by the petitioners seems to be that leaving the seats set apart from

All India Quota, which comes to 15%, the principle of mandatory reservation shall be applied in the remaining number of seats. In this regard, only

Clause 4.1.5 of the Prospectus is brought under challenge in this writ petition. Clauses which provides for setting apart of seats in favour of nominees

of the Government of India, nominees from Union Territories of Andaman Nicobar Islands, nominees from Lakshadweep and nominees from Jammu

and Kashmir namely Clause 4.1.11 of the Prospectus are not under challenge. Likewise, Clause 5.3 of the Prospectus which provides for reserving

seats for candidates with bench mark disabilities as stipulated in Section 32 of Persons With Disabilities Act, 2016 is also not under challenge. The

principle of reservation can be applied only in respect of seats which are at the disposal of the State Government/Commissioner of Entrance

Examinations. As can be seen from Clause 4.1.11 of the Prospectus, the seats mentioned therein are not at the disposal of the Government.

5. In the present case, the classification of Persons with Disabilities candidates and providing a separate quota is feasible under law and the principles

of communal reservation need not be applied in that quota. There is nothing wrong in the State Government setting apart a definite percentage of

educational seats exclusively for Persons with Disabilities candidates.

6. I Have heard the learned counsel for the petitioners and the learned Government Pleader representing the respondents.

7. Regarding Persons with Disabilities quota, it is settled law that the State can identify classes of persons who are having distinct characteristics or

disadvantages and treat them separately under law. Persons having disability form a homogenous class by itself where disability is not on the basis of

social backwardness but on the basis of physical disability. It is relevant to point out that the claim of the petitioners for reservation is traceable to

Article 15 which is an enabling right. The claim of the PWD persons traces to a statute promulgated for the purpose of implementation of a

Constitutional mandate. Therefore, it is by virtue of the statute, Persons with Disability are treated as a homogenous class irrespective of social

classification. Such a valid classification cannot be sought to be impeached by way of linking it with Article 16 or Article 15 which does not apply.

8. Now, the next question is that whether it is possible to provide a separate quota for Persons with Disabilities candidates. It is settled principle of law

that the State can provide for different channel in the matter of admission. In *K.Duraisamy v. State of Tamil Nadu* [(2001) 2 SCC 538], the Apex

Court held as follows:

i) The Government possesses the right and authority to decide from what sources the admissions in educational institutions or to particular disciplines and courses

therein have to be made and that too in what proportion;

ii) That such allocation of seats in the form of fixation of quota is not to be equated with the usual form of communal reservation and therefore, the constitutional and

legal considerations relevant to communal reservations are out of place while deciding the case based on such allocation of seats;

iii) That such exclusive allocation and stipulation of a definite quota or number of seats between in-service and non-service or private candidates provided two

separate channels of entry and a candidate belonging to one exclusive quota cannot claim to steal a march into another exclusive quota by advancing a claim based

on merit. Inter se merit of the candidates in each quota shall be determined based on the merit performance of the candidates belonging to that quota;

iv) That the mere use of the word "reservation" per se is not decisive of the nature of allocation. Whether it is a reservation or an allocation of seats for the

purpose of providing two separate and exclusive sources of entry would depend on the purpose and object with which the expression has been used and that would

be determinative of the meaning, content and purport of the expression. Where the scheme envisages not a mere reservation but is one for classification of the

sources from which admission are to be accorded, fixation of respective quota for such classified groups does not attract applicability of considerations relevant to reservation simpliciter.

In the above circumstances, the writ petition is devoid of any merit and it is dismissed.