

Principal Vs. Admission Supervisory Committee

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Court : Kerala

Decided On : Jan-06-2015

Judge : Honourable Mr.Justice Antony Dominic

Appellant : Principal

Respondent : Admission Supervisory Committee

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE ANTONY DOMINIC & THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS TUESDAY, THE 6^H DAY OF JANUARY 2015 16TH POU SHA, 19361 WP(C).No. 122 of 2015 (M)
----- PETITIONER: ----- PRINCIPAL, NOORUL ISLAM COLLEGE OF DENTAL SCIENCE, NIMS MEDICITY, ARALUMMOODU.P.O., NEYYATTINKARA THIRUVANANTHAPURAM-695 123. BY ADVS.SRI.KURIAN GEORGE KANNANTHANAM (SR.) SRI.T.B.HOOD SMT.M.ISHA
RESPONDENTS: ----- 1. ADMISSION SUPERVISORY COMMITTEE FOR PROFESSIONAL COLLEGES OF KERALA, PRASANTHI BUILDINGS, M.P.APPAN ROAD, VAZHUTHACAUD, THIRUVANANTHAPURAM-695 014 REPRESENTED BY ITS MANAGER.

2. KERALA UNIVERSITY OF HEALTH SCIENCES MEDICAL COLLEGE.P.O., THRISSUR-680 596 REPRESENTED BY ITS REGISTRAR.

3. STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT HEALTH AND FAMILY WELFARE DEPARTMENT, SECRETARIAT THIRUVANANTHAPURAM-695 001. R2 BY ADV. SRI.P.SREEKUMAR, SC, KERALA UTILITY HEALTH & R BY SPL. GOVERNMENT PLEADER, SRI. ROSHEN D. ALEXANDER R1 BY SMT. MARY BENJAMIN, SC R BY SRI. BECHU KURIAN THOMAS, SC, UNIVERSITY OF KERALA THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 0601-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 122 of 2015 (M) ----- APPENDIX PETITIONER(S)' EXHIBITS ----- EXT.P1: TRUE COPY OF THE RELEVANT PAGES OF THE DENTAL COUNCIL OF INDIA REVISED BDS COURSE REGULATIONS, 2007. EXT.P2: TRUE COPY OF THE DENTAL COUNCIL OF INDIA REVISED BDS COURSE (5TH AMENDMENT) REGULATIONS, 2007. EXT.P3: TRUE COPY OF THE AGREEMENT DATED 2006.2014 EXECUTED BETWEEN THE GOVERNMENT AND THE COLLEGE. EXT.P4: TRUE COPY OF THE NOTICE DATED 0611.2014 SENT BY THE 1ST RESPONDENT TO THE PETITIONER. EXT.P5: TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT. EXT.P6: TRUE COPY OF THE NOTICE DATED 1811.2014 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER. EXT.P7: TRUE COPY OF THE

ORDER

DATED 1812.2014 ISSUED BY THE 1ST RESPONDENT. EXT.P8: TRUE COPY OF THE STUDENT REGISTRATION DETAILS FOR BDS COURSE ISSUED BY THE 2D RESPONDENT UNIVERSITY FOR THE ACADEMIC YEAR 201415. EXT.P9: TRUE COPY OF THE LETTER DATED 1011.2014 SENT BY THE PETITIONER TO VICE CHANCELLOR OF 2D RESPONDENT UNIVERSITY. EXT.P10: TRUE COPY OF THE RELEVANT PAGES OF THE PROSPECTUS FOR ADMISSION TO THE PROFESSIONAL COURSES 2014 RESPONDENT(S)' EXHIBITS NIL ----- //TRUE COPY// PA TO JUDGE ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

----- W.P.(C)No.122 OF 2015- -
----- Dated this the 6th day of

January, 2015

JUDGMENT

Antony Dominic, J.

This writ petition has been filed by a self financing Dental College challenging Ext.P7, order passed by the first respondent and Ext.P8, communication from the University declining registration to the students whose names are mentioned in Ext.P7.

2. We heard the senior counsel appearing for the petitioner and the respective Standing Counsel appearing for respondents 1 and 2 and the learned Government Pleader appearing for the third respondent.

3. The petitioner states that admissions to the BDS Course were regulated by Ext.P1 Regulations published by Dental Council of India. Clause 5 of Ext.P1, the procedure for selection to BDS course, prescribed minimum of 50% marks for general candidates and 40% marks for SC/ST and OBC candidates. It also prescribed 50% marks in the competitive entrance examinations for admission to the course. It is stated that the said regulation was amended by the W.P.(C)No.122 OF2015:

2. : Dental Council of India by Ext.P2 notification, dated 31st May 2012 where the Clause 5 of Ext.P1 was deleted and was substituted in the manner as stated in Ext.P2.

4. According to the petitioner, Ext.P2 was quashed by the Apex Court in its judgment in Christian Medical College, Vellore and others v. Union of India and others (2014) 2 SCC305 It is contended that the quashing of Ext.P2 by the judgment in Christian Medical College's case (supra) will not result in revival of Ext.P1 Regulations and that therefore the prescription of 50% in the entrance examination contained in Ext.P1 notification is no longer in force.

5. Petitioner states that Ext.P3 is the agreement entered into by them with the Government of Kerala on 20.06.2014, which provided for sharing the seats in the

college in the manner as stated therein. To the extent it is relevant, it is relevant to note that in conditions 1, 7 and 9 of Ext.P3 agreement it is provided that, 50% of the total seats are merit seats, to be filled up from the list of candidates furnished by the Commissioner for Entrance Examination, that 35% seats are to be filled up by the management from the list furnished by the Commissioner for Entrance Examination and that 15% are to be filled up in the Non Resident Indians quota. W.P.(C)No.122 OF2015:

3. :

6. It is stated that accordingly, in the year 2014-15, the management admitted 24 students in the merit quota, 25 students in the management quota and 1 student in the NRI quota. Petitioner points out that after the admission process was thus completed, the first respondent issued Ext.P4 notice to them calling for the details in respect of the admissions made in the year 2014-2015. To this, petitioner replied by Ext.P5. Thereafter, the petitioner was again issued by Ext.P6 calling for further details, which were also furnished. Subsequently, they were heard and the Committee thereafter issued Ext.P7 order. The relevant portion of this order reads thus: "In clause 7 of the agreement dated, 20.06.2014 it is stated that 35% management seats shall be filled from the list furnished by the CEE. 25 students, as stated above, are from KEAM rank list. The candidates who secured 50% marks in the general merit category and who secured 40% marks in the SEBC category are entitled for admission to BDS course of 2014-15. In answer to the letter No.ASC/100/14/BDS/NICDS dated 06/11/2014 the dental college has raised various contentions in its letter no.NICDS/BDS/03/2014-15 dated 10/11/2014. Relying on the DCI regulation II(5)(ii) of 2007 and the findings of the Hon'ble Supreme Court of India in Christian Medical College Vellore Vs Union of India (2014 (2) SCC305 emphasized that there is no provision for fixing 50% qualifying marks in the entrance examination for admitting BDS students as the original regulation of the DCI will not get automatically revived. W.P.(C)No.122 OF2015:

4. : The learned counsel J.Harikumar appeared before the committee on 20/11/2014 and argued that the students admitted from the KEAM list, though have not secured 50% marks in the entrance examination conducted by CEE,

there being no specific provisions of cut off marks, they are entitled to be admitted. The learned counsel relied on the points raised in the letter of the Dental College dated 10/11/2014, stated above. The committee has carefully appreciated the arguments raised by the learned counsel. It is true that, as per clause II(5)(ii) of the regulation no.DE222007 dated 25/02/2007 of DCI it was stipulated that a candidate must be in the merit list of the competitive examination by securing not less than 50% marks in physics, chemistry, Biology taken together. Subsequently through another notification no.DE-22- 2012 dated 31/05/2012, regulation II(5), the 50% marks have been amended as 50th percentile in the National- Eligibility-Cum-Entrance Test [NEET] to BDS course of the said academic year. But in Christian medical college case, cited above, the apex court set aside the amendment in relation to the principle of percentile. In firm A.T.B. Mehtab Majid co Vs State of Madras (1963 SUPP (2) SCR435, Zile Singh Vs. State of Hariyana [(2004) 8 SCC] as well as in Joined Action Committee of Airlines Pilots Association of India Vs. Director General of Aviation [2011 (5) SCC435] it was laid down by apex court that when the substitution effected is struck down, the original position cannot be revived. It is basing on the above position that the Dental College urged that the students need not obtain a minimum of 50% marks in the entrance examination for admission to dental course. W.P.(C)No.122 OF2015:

5. : Though the principle of 50th percentile instead of 50%, brought in by DCI during 2012 was set aside in Christian medical college case, cited above, in the All India Entrance Examination for the academic year 2014-15, the qualifying cut off mark for MBBS and BDS courses was fixed at 50% for preparation of rank list. This has not been challenged by any candidate or institution before any court of law or authority and all the candidates throughout India got admission basing on the 50% qualifying marks position. All the institutions and colleges on Medical and Dental streams also accepted this legal position in admitting the students. The candidates took admissions and the academic activities have progressed throughout India based on the rank list so prepared by the authorities who controlled the admissions in all the states of India accepting the qualifying cut off mark as 50%. In the state of Kerala also, where there is a separate commission to conduct entrance examination called Commissioner for Entrance Examination (CEE), for medical, dental, agriculture, engineering etc, has fixed the qualifying

marks at 50% except for the eligible SEBC and SC ST candidates where it is 40% as ordered by the government. There is no challenge to this condition by any candidate or any of the institutions. The academic activities have already commenced and 50% cut off marks for general category and 40% cut off marks in respect of SEBC, SC/ST have been accepted. In the KEAM prospectus the qualifying marks for the entrance examination of general category is prescribed as 50% except for SEBC where it is 40%. Noorul Islam College of Dental Science also has not challenged this position. The admission of candidate to the 50% of the total intake, i.e. 25 seats, is accepting the 50% cut off mark principle as contained in the said prospectus. Hence the same colleges cannot turnaround and argue that in the case of the 35% management quota seats alone, the 50% principle is inapplicable. Therefore, the argument of the learned counsel that the students admitted by the dental college in the W.P.(C)No.122 OF2015:

6. : management quota of 35% seats, with less than 50% to general category and 40% to SEBC category is unacceptable as it is against the stand of the dental college, as above, and the stipulations contained in KEAM prospectus 2014-15. Thus the contentions of the college and the arguments of the learned counsel are unsustainable. In view of the above facts and findings the Committee hold that only the qualified candidates with 50% marks or those eligible candidates with 40% marks, but establishing, their caste or community with income, as per the government order, can alone be approved for admission by the Dental College and Registration by KUHS." 7. On the basis of the above conclusions, the Committee disqualified 23 students admitted in the management quota and the reason stated is that they were not qualified for admission. In the meanwhile, the University issued Ext.P8, declining registration to the students whose names are mentioned in Ext.P7. It is in these circumstances, the writ petition has been filed by the Management seeking the following prayers: (i) Issue a writ in the nature of certiorari or any other writ, order or direction calling for the records leading to Exts.P7 order issued by the first respondent Committee and quash the same in so far as it rejects the admission of 23 candidates admitted in the petitioner's College for BDS Course under Management Quota during the academic year 2014-15. (ii) Issue a writ in the nature of certiorari or any other writ, order or direction calling for the records leading to Exts.P8 issued by the 2nd respondent University and quash

the same in so far as it rejects registration of 22 candidates W.P.(C)No.122 OF2015:

7. : admitted in the petitioner's College for BDS Course under Management Quota during the academic year 2014-15. (iii) Declare that it is not mandatory to secure 50% marks in the entrance examination conducted by the Commissioner of Entrance Examinations for BDS admission under Management Quota in self financing colleges. (iv) Issue a writ in the nature of mandamus or any other appropriate writ, order or direction commanding 2nd respondent to grant registration to all the students admitted in the petitioner's College for BDS Course under Management Quota during the academic year 2014-15.

8. First contention raised by the learned Senior Counsel for the petitioner is that the conclusion of the Committee that the students did not satisfy the conditions in Ext.P10, the Prospectus for admission to Professional Degree Courses, 2014 is erroneous. According to the learned counsel, Clause 1.5 read with Clause 9.7.5 of Ext.P10 show that to qualify in the Entrance Examination and thereby become eligible to figure in the rank list for admission to Engineering/Medical/Ayurveda courses, a candidate has to score a minimum of 10 marks each in Paper I and Paper II of the concerned Entrance Examination. It is contended that as per Clause 7 of Ext.P3 agreement, the only obligation of the management is that the 35% of the seats in the management quota shall be filled up from the list furnished by the Commissioner for Entrance Examination, Government of Kerala. It is stated that once a candidate W.P.(C)No.122 OF2015:

8. : has secured the minimum prescribed 10 marks each in Paper I and Paper II of the concerned Entrance Examination and has become qualified in the Entrance Examination, and since the obligation of the management is to admit students from among those qualified in the Entrance Examination and that as the candidates admitted had secured more than 10 marks in the entrance examination, the students were eligible to be admitted in terms of Clause 7 of Ext.P3 agreement. Therefore, according to counsel, the conclusion of the Committee that since the candidates did not secure 50% marks, they were not eligible for admission is erroneous and illegal.

9. Having considered the submission made by the learned Senior Counsel, we confess our inability to accept the same. Clause 1.5 of Ext.P10 prospectus only provides that rank lists shall include all candidates qualified in the entrance examination conducted by the Commissioner. Clause 9.7.5 of Ext.P10 provides the qualifying standards in the Entrance Examination for admission to various courses such as Engineering, Medical and allied courses. However, in so far as eligibility for admission is concerned that is separately provided in Ext.P10 and is governed by following provisions contained in Clause 6.2.1 and 9.7.5.(i): W.P.(C)No.122 OF2015:

9. : "6.2.1 Medical & Allied Courses: Only those candidates who secure 50% marks in the Medical Entrance Examination (Paper I & II taken together) of KEAM-2014 will be considered for admission to MBBS/BDS Courses. Candidates belonging to SC/ST/SEBC will be considered for admission to these courses only if they have scored a minimum of 40% marks in the Medical Entrance Examination (Paper I & II taken together). Candidates with Locomotory disability of lower limbs between 40% to 70% will be considered for admission to MBBS course only if they have scored a minimum of 45% marks in the Medical Entrance Examination (Paper I & II taken together).
. . . 9.7.5 Qualifying Standards in the Entrance Examination for admission to various courses: To qualify in the Entrance Examination and thereby become eligible to figure in the rank list for Engineering/Medical/Ayurveda, a candidate has to score a minimum of 10 marks each in Paper I and Paper II of the concerned Entrance Examination. The candidates who do not score the minimum stipulated marks will not find a place in the Rank list. Such candidates will be shown as 'Disqualified'. Candidates disqualified in Medical Entrance Examination are not eligible for admission to the Medical & Allied courses and candidates disqualified in Engineering Entrance Examination are not eligible for admission to the Engineering Courses. (i) Qualifying Standards as stipulated by the MCI for admission to MBBS/BDS courses: Only those candidates who score 50% marks in the Medical Entrance Examination (Paper I & II taken together) will be considered for admission to MBBS/BDS courses. Candidates belonging to SEBC with annual income stipulation as given in Clause 5.4.2 and SC/ST, will be considered for admission to MBBS/BDS courses only if they have scored a minimum of 40%

marks in the Medical Entrance Examination (Paper I & II taken together)."
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10. :

10. Therefore, the mere fact that a candidate qualified in the Entrance Examination does not in any manner making him eligible for admission to MBBS or BDS and eligibility for admission is attained only if the standards prescribed in the aforesaid two provisions in the Prospectus are satisfied. This therefore means that only those general candidates who have secured 50% marks and only those SC/ST and OBC candidates who have secured 40% marks in the entrance examination are eligible for admission to MBBS or BDS, even if they qualify in the entrance examination. Therefore, we are unable to accept the contention raised by the learned Senior Counsel.

11. We also should take note of the fact that the prospectus in question was undoubtedly issued by the Government of Kerala in exercise of its power under Entry 25 of the Concurrent List. None of the parties, viz, the Management or the students, challenged the prospectus conditions. Therefore, having accepted the prospectus, this argument now raised is only to be rejected.

12. Learned Senior Counsel then contended that Ext.P7 order passed by the first respondent is beyond its powers. The first respondent is constituted under Section 4 of The Kerala Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of W.P.(C)No.122 OF2015:

11. : Admission, Fixation of Non-Exploitative Fee and Other Measures To Ensure Equity and Excellence In Professional Education) Act, 2006. Sections 4, (6) and (7) reads thus: "4. Admission Supervisory Committee- (1) The Government shall constitute an Admission Supervisory Committee to supervise and guide the process of admission of students to unaided professional colleges or institutions consisting of the following members, namely:- (i) A retired Judge of the Supreme Court or a High Court : Chairperson (ii) The Secretary to Government, Higher Education Department (ex-officio) : Member Secretary (iii) The Secretary to Government, Health and Family Welfare Department (ex-officio) : Member (iv) The

Secretary to Government, Law Department, (ex-officio) : Member (v) The Commissioner for Entrance Examinations, Kerala (ex-officio) : Member (vi) An Educational Expert belonging to the Scheduled Caste or Scheduled Tribe Community : Member (6) The Admission Supervisory Committee shall supervise and guide the entire process of admission of students to the unaided professional colleges or institutions with a view to ensure that the process is fair, transparent, merit-based and non-exploitative under the provisions of this Act. (7) The Admission Supervisory Committee may hear complaints with regard to admission in contravention of the W.P.(C)No.122 OF2015:

12. : provisions contained herein. If the Admission Supervisory Committee after enquiry finds that there has been any violation of the provisions for admission on the part of the unaided professional colleges or institutions, it shall make appropriate recommendation to the Government for imposing a fine upto rupees ten lakhs and the Government may on receipt of such recommendation, fix the fine and collect the same in the case of each such violation or any other course of action as it deems fit and the amount so fixed together with interest thereon shall be recovered as if it were an arrear of public revenue due on land. The Admission Supervisory Committee may also declare admission made in respect of any or all seats in a particular college or institution to be de-hors merit and therefore invalid and communicate the same to the concerned University. On the receipt of such communication, the University shall debar such candidates from appearing for any further examination and cancel the results of examinations already appeared for."

13. Reading of these provisions show that where the Committee is satisfied that the admission is made de-hors merit, it is entitled to declare the same invalid and communicate the same to the concerned University. This power of the Committee has also been upheld by this Court in Kerala Private Medical College Management Association v. Admission Supervisory Committee For Professional Colleges (2013 (3) KLT316).

14. Learned counsel then contended that Ext.P7 order has been passed by two members of the Committee and that since the Committee constituted in terms of Section 4(1) is having 6 members, it could not W.P.(C)No.122 OF2015:

13. : have passed such an order with 2 members alone signing the order. Admittedly, no provision of this Act prescribe quorum of the Committee. In such a situation, we cannot see how this order could be invalid for the reason that it has been signed only by two members. Even apart from that, the petitioner does not have a case that such a contention was raised before the Committee. If that be so, having submitted to the committee, it is not permissible for the petitioner to now raise this contention for the first time before this Court. The above being the contentions raised before this Court and since we have rejected the same, the writ petition merits only to be dismissed and we do so. Sd/- ANTONY DOMINIC, Judge
Sd/- ALEXANDER THOMAS, Judge jes

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