

**Akhil P. Pushkar and Others Vs. State of Kerala, Represented by the Principal Secretary to Government Scheduled Castes and Scheduled Tribes Development Department, Secretariat and Others**

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**Court :** Kerala

**Decided On :** Sep-07-2012

**Judge :** Thottathil B. Radhakrishnan & K. Vinod Chandran

**Appeal No. :** WP(C). Nos. 22484 of 2008-B, 31703 of 2008-Y, 25645 of 2009-A, 34535 of 2009-J, 22774 of 2010-V, 5577 of 2010-V, 19011 of 2010-B & 9909 of 2011-K

**Appellant :** Akhil P. Pushkar and Others

**Respondent :** State of Kerala, Represented by the Principal Secretary to Government Scheduled Castes and Scheduled Tribes Development Department, Secretariat and Others

**Judgement :**

Thottathil B. Radhakrishnan, J.

1. These writ petitions are before the Division Bench following an order of reference made by the learned single Judge in four of them. The others are tagged along.

2. The short issue arising for decision is as to whether SC/ST and OEC students undergoing courses of study for MBBS in Self Financing Colleges are eligible for educational concessions without reference to their source of admission, to wit, whether they were admitted through competitive entrance examination conducted by the Commissioner of Entrance Examinations under the Government of Kerala or through entrance examination conducted by the Association of the Managements of the Self Financing Colleges. By judgment dated 21st August, 2009 in WP(C).No.27905 of 2008 [copy of which is Ext.R2(d) in WP(C). No.34545 of 2009], the learned single Judge had taken the view that the benefits of educational concessions extended to those communities would not be available if the admission is against management seat. In the reference order dated 11th June, 2010, that learned Judge has doubted his earlier view and has hence made the reference.

3. The learned senior advocates and the other advocates appearing for the different petitioners argued that in terms of the constitutional direction contained in Article 46 of the Constitution, there can be no classification on the basis of the source of recruitment since benefits are extended to the communities as a homogeneous group and there cannot be any intelligible differentia to classify them either on the basis of financial considerations or source of recruitment. Reference was made to the judgment of the Hon'ble Supreme Court in Avinash Singh Bagri v. IIT Delhi [2009) 8 SCC 220] to state that SCs and STs are a class by themselves and the creamy layer principle is not applicable to them. In that precedent, Their Lordships noted that Article 46 of the Constitution enjoins upon the State to promote, with special care, the educational and economic interests of the weaker sections of the people and protect them from social injustice and all forms of exploitation and, that those socially and economically backward categories are to be taken care of at every stage, even in the specialized institutions and State must take all endeavour to bring them up at par with general category students.

4. Per contra, the learned Special Government Pleader points out that the educational concessions extended, are confined to those who are admitted against the merit quota seats and also against seats which are reserved for the

SC/ST and OEC candidates. It is pointed out that the allotment is made to those seats from the list prepared by the Commissioner of Entrance Examinations of the Government of Kerala and only students included in that list would be eligible to such benefit.

5. That SC/ST and OEC students enjoy the benefits of fee concessions and other benefits as sought for by the petitioners is not in dispute. The only issue is as to whether those who were admitted to the Self Financing Colleges, otherwise than from the list prepared by the Commissioner of Entrance Examinations, would be entitled to such concession.

6. The development programmes for SCs, as available in the official website of the State of Kerala [Ext.P2 in WP(C).No.34535 of 2009] show, among other things, that the SC/ST students in self- financing/autonomous institutions get all high-rated fee concessions and other assistance as well. The SC/ST students in parallel colleges get all the financial assistance enjoyed by them in regular colleges. The fact of the matter remains that all the self-financing educational institutions, where the petitioners are undergoing courses for MBBS, are within the State of Kerala and they are institutions, either affiliated to one or the other Universities in the State of Kerala, or deemed to be University under lawful declarations by the competent legislative authority; the Parliament or the State Legislature, as the case may be. The course of study is approved by the Medical Council of India and no distinction whatsoever is made or shown in the imparting of instructions by those institutions.

7. Issue of seat sharing between the State Government and the managements in the Self Financing Medical Colleges led to a legislation which was struck down by this Court in *Lisie Medical and Educational Institutions v. State of Kerala* [2007(1) KLT 409].

8. The fee concession provided by the State Government to SC/ST students is a concession by way of an affirmative action in tune with Articles 15 (4), 15(5), 16(4) and 46 of the Constitution. As held in *Avinash Singh Bagri (supra)*, rendered after noticing *Ashoka Kumar Thakur v. Union of India* [(2008) 6 SCC 1], SCs and STs are a separate class by themselves and the creamy layer principle is not

applicable to them. The benefits extended to them by way of concessions cannot be denied by making an in-house classification among SCs and STs, based on any principle; be it financial conditions or source of recruitment, etc. This is so because, the object sought to be achieved by Article 46 of the Constitution is to ensure promotion of the educational and economic interests of those weaker sections of the people by providing special care and protection from social injustice and all source of exploitation. It is not essentially a financial push. It is a wholesome preventive mechanism to insulate that section of the people from social injustice and from all forms of exploitation. Such protective cover is the constitutional mandate. It is aimed at providing all necessary support and protection to energize and nurture that section of the people from the status of being a "weaker section" to join the mainstream in totality, the blooming of which, the Nation, "We, the People of India", is yet to experience in its wholesomeness. Therefore, looking from the angle of Articles 14, 15, 16 and 46, we do not see any justifiable reason, on the face of the Constitution to authorize the classification of SC/ST students, for the reason that they belong to such communities, to extend the benefits declared and made available to them. We, therefore, answer the reference overruling the judgment in WP(C). No.27905 of 2008.

9. OEC having been equated to SC/ST for the purpose of benefits, they would also enjoy those concessions at par with the SC/ST candidates. In the result, these writ petitions are ordered directing that SC/ST and OEC students in the Self Financing Institutions in the State of Kerala shall be extended all benefits as are available to members of SCs, STs and OECs, without reference to whether they were admitted in the merit quota or management quota and also without insisting that they should have been admitted from the list prepared by the Commissioner of Entrance Examinations. Such benefits shall be extended to the writ petitioners in terms of the aforesaid direction. Writ petitions ordered accordingly. No costs.

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