

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. S. MANIKUMAR

&

THE HONOURABLE MR. JUSTICE MURALI PURUSHOTHAMAN

FRIDAY, THE 8TH DAY OF APRIL 2022 / 18TH CHAITHRA, 1944

WA NO. 485 OF 2022

AGAINST THE JUDGMENT IN WP(C) 10536/2022 DATED 04.04.2022
OF HIGH COURT OF KERALA

APPELLANT/PETITIONER IN W.P. (C) :

KERALA PRIVATE MEDICAL COLLEGE MANAGEMENT ASSOCIATION
HAVING ITS REGISTERED OFFICE AT MALABAR MEDICAL COLLEGE
CAMPUS, MODAKKALLUR, ATHOLI P.O., KOZHIKODE-673315,
REPRESENTED BY ITS GENERAL SECRETARY, ANIL KUMAR V.

BY ADVS. SRI. GEORGE POONTHOTTAM (SR.),
SRI. ARUN CHANDRAN,
SMT. NISHA GEORGE,
SRI. VISHNU J.,
SRI. VISHNU B. KURUP,
SRI. A.L. NAVANEETH KRISHNAN,
SMT. CHITHRA P. GEORGE,
SRI. LUKE J. CHIRAYIL,
SRI. REGINALD VALSALAN,
SRI. H.K. MADONA CYRIL AND
SRI. ANSHIN K. K.

RESPONDENTS/RESPONDENTS IN WPC:

- 1 STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
HIGHER EDUCATION (G, J AND P) DEPARTMENT, 3RD FLOOR,
ANNEX-II, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM -695001.
- 2 ADDITIONAL CHIEF SECRETARY TO GOVERNMENT,
HEALTH AND FAMILY WELFARE DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM -695001.
- 3 THE COMMISSIONER FOR ENTRANCE EXAMINATIONS,
5TH FLOOR, HOUSING BOARD BUILDINGS, SANTHI NAGAR,
THIRUVANANTHAPURAM -695001.
- 4 ADMISSION SUPERVISION/FEE REGULATORY COMMITTEE FOR
PROFESSIONAL COLLEGES, KERALA, T.C. 15/1553-4, PRASANTHI
BUILDINGS, M P APPAN ROAD, VAZHUTHACAUD, THIRUVANANTHAPURAM,
REPRESENTED BY ITS CHAIRMAN, PIN-695014.

SRI. P.G. PRAMOD, GP

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 08.04.2022 ALONG
WITH WA 488 OF 2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN
FRIDAY, THE 8TH DAY OF APRIL 2022 / 18TH CHAITHRA, 1944
WA NO. 488 OF 2022
AGAINST THE JUDGMENT IN WP(C) 10536/2022 OF HIGH COURT OF
KERALA DT 4.4.22

APPELLANTS/3RD PARTY:

- 1 THE CHAIRMAN,
AL-AZAR MEDICAL COLLEGE & SUPER SPECIALITY HOSPITAL,
EZHALLLOOR P.O., THODUPUZHA - 685 605.
- 2 KARUNA MEDICAL COLLEGE,
REPRESENTED BY ITS PRINCIPAL,
VILAYODI, CHITTOOR, PALAKKAD - 678 103.

BY ADVS. SRI. KURIAN GEORGE KANNANTHANAM (SR)
SRI. P.M.SANEER
SRI. TONY GEORGE KANNANTHANAM

RESPONDENTS/PETITIONER & RESPONDENTS:

- 1 KERALA PRIVATE MEDICAL COLLEGE MANAGEMENT
ASSOCIATION, HAVING ITS REGISTERED OFFICE AT
MALABAR MEDICAL COLLEGE CAMPUS, MODAKKALLUR,
ATHOLI (PO), KOZHIKODE
REPRESENTED BY ITS GENERAL SECRETARY,
ANIL KUMAR V., PIN - 673 315.
- 2 STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
HIGHER EDUCATION (G, J AND P) DEPARTMENT,
3RD FLOOR, ANNEX-II, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001.
- 3 ADDITIONAL CHIEF SECRETARY TO GOVERNMENT,
HEALTH AND FAMILY WELFARE DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001.
- 4 THE COMMISSIONER FOR ENTRANCE EXAMINATIONS,
5TH FLOOR, HOUSING BOARD BUILDINGS,
SANTHI NAGAR, THIRUVANANTHAPURAM, PIN - 695 001.

5 ADMISSION SUPERVISORY / FEE REGULATORY
COMMITTEE FOR PROFESSIONAL COLLEGES, KERALA,
T.C. 15/1553-4, PRASANTHI BUILDINGS,
M.P. APPAN ROAD, VAZHUTHACAUD
THIRUVANANTHAPURAM,
REPRESENTED BY ITS CHAIRMAN., PIN - 695 014.

BY SRI. P. G. PRAMOD, SR. GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
08.04.2022 ALONG WITH WA 485/2022, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

JUDGMENT

Murali Purushothaman, J.

The Kerala Private Medical College Management Association, an association stated to be formed to champion the cause of Private Medical Colleges in the State, approached the writ court seeking directions to respondents 3 and 4 to grant time for fresh registration in the NRI quota to the eligible students before commencement of the Mop-Up counselling. The learned Single Judge dismissed the writ petition and the association has come up in intra court appeal. I. A. No. 1 of 2022 in W. A. No. 488 of 2022 is filed by one of the member college of the said association and its Chairman, seeking leave to file the writ appeal. Leave has been granted and both the writ appeals are heard and disposed of by this common judgment.

2. The brief facts leading to the writ petition are as follows:-

3. In the Medical Colleges owned by the association members, MBBS courses as well as various Post Graduate Courses are conducted by the National Testing Agency. Pursuant to the

publication of the result of National Eligibility cum Entrance Test (NEET), the 3rd respondent published the results/rank list for the State Quota based on the NEET i.e., KEAM 2021 for the Academic year 2021-2022. Immediately thereafter, Exhibit P2 rank list for eligible candidates in the NRI quota was published. The said rank list, consisting of about 618 rank holders, got exhausted after two rounds of counseling. Despite the exhaustion of the Rank List, about 57 seats in the NRI quota are lying vacant in the member colleges.

4. The fees for the various Medical Colleges conducted by the members of the petitioner association is fixed by the 4th respondent after taking into account the fee receivable from the NRI Quota as well. If the NRI seats remain vacant after counseling, the said seats would revert to the State Merit Quota seats resulting in huge financial loss to the members of the association.

5. The petitioner contends that numerous eligible candidates were unable to exercise their option due to the restrictions imposed due to the pandemic. In the said circumstances, the petitioner submitted Ext.P3 representation requesting to invite fresh applications to fill up vacant seats in the NRI Quota before the Mop up allotment. However their request was not heeded to.

6. According to the petitioner, this Court as well as the Apex Court held that the fee prescribed and collected from NRIs, in excess of the fee prescribed for non-NRI candidates, are to be utilized for benefiting the students from economically weaker sections of the society. In view of the above salutary reason, it is only just and proper that the entire NRI Quota seats are filled up or else, it would be financially disastrous for all the member colleges. Accordingly the petitioner association preferred the writ petition seeking the following reliefs:

“(i) Issue a writ of mandamus or such other writ, order or direction directing the respondents 3 and 4 to grant time for fresh registration in NRI Quota to the eligible students before commencement of the Mop-up counseling.

(ii) Issue a writ of Mandamus or such other writ, order or direction directing the 3rd Respondent to consider and pass orders in Exhibit P3 representation within a time limit to be fixed by this Hon;ble Court.

(iii) Permit the members of the Petitioner association to admit NEET qualified eligible students who produce the necessary documents in NRI Quota before the cut of date stipulated by the Kerala University of Health Sciences vide Exhibit P4, in the event the Respondents does not invite fresh applications in the NRI Quota.

(iv) Permit the members of the petitioner Association to

collect fees at the rate prescribed for NRI Quota from students admitted in the vacant NRI Quota seats in the event the respondent Nos. 3 and 4 does not grant time for fresh registration in NRI Quota to the eligible students before commencement of the Mop-up counseling.”

7. When the writ petition came up for consideration before the learned Single Judge on 29.03.2022, the learned Single Judge passed the following order and the relevant portion reads as follows:-

“3. The learned Senior counsel submitted that the KUHS has issued a circular fixing the cut off date for admission for undergraduate courses as 04.04.2022. According to the learned counsel, in view of COVID-19 pandemic, several eligible candidates from other countries were unable to submit the required documents for admission to the NRI quota. According to the learned counsel, during previous years, this Court taking note of the fact that the amount received from the candidates under the NRI quota has to be utilised for the purpose of subsidising the fees for weaker sections of the community had directed the Government to consider the extension of time for candidates who could not presently apply under the NRI quota since there are unfilled seats and directions were issued to consider the extension of time before the 3rd allotment. According to the learned counsel, if the NRI seats remain unfilled, the same would be converted to State merit quota seats and that would be financially disastrous to the Private Medical Colleges.

4. In response, the learned Senior Government Pleader submits that even as per the category list for the NRI quota seats published by the Commission of Entrance Examination, the total number of NRI quota seats is 614. The total NRI seats in the State of Kerala is 358 out of which 300 seats have been filled up prior to the second allotment. All that remains is 58 seats. It is further submitted that about 314 students still remain and they would be able to exercise their option from 27.03.2022 to 30.03.2022. A clear picture would be available only thereafter.

5. The learned senior counsel submits that the submission made by the learned Government Pleader may not be entirely correct. It is contended that the entire list of students in the category list for NRI seats have been exhausted. According to the learned Senior counsel, for the time being, the petitioner would be satisfied if directions are issued to the 3rd respondent to consider Ext.P3 representation in the light of observations made by the Division Bench in Exts P5 and P6 and take a decision.”

8. Pursuant to the said direction, the 3rd respondent in W. A. 485 of 2022, Commissioner for Entrance Examinations, passed an order on 31.03.2022, which reads as follows:-

“As per the direction of the Hon’ble High Court, the Commissioner for Entrance Examination has examined your representation in the light of Exhibits P5 and P6 judgments of the Hon’ble High Court.

During this year, the applicants had been given sufficient time to apply for the NRI quota. After two phases of allotments

there are about 300 students remaining in the NRI category list and awaiting for allotment. The mop up counselling process is going on and the allotment is scheduled to be published on 02.04.2022. As per MCI schedule, the admission to MBBS course has to be completed before 05.04.2022.”

9. Before the writ court, it was submitted by the petitioner / appellant association that Ext. P2 rank list for eligible candidates in the NRI quota consisting of 618 rank holders got exhausted after two rounds of counselling. However, despite the exhaustion of the rank list, 57 seats in the NRI quota were lying vacant in the colleges under the association as on the date of filing the writ petition. It was contended that, since the money collected from the NRI students are utilized for benefiting students from economically weaker sections of the society, the respondents ought to have extended the period to fill up the vacant NRI quota seats.

10. Before the writ court, it was submitted on behalf of the respondents that, ample time was granted to the colleges to fill up the NRI quota seats. The online application for admission to medical courses was invited for the period from 01.06.2021 to 21.06.2021 and was later extended till 24.06.2021 and all qualified candidates including NRI quota candidates were permitted to exercise option. It

was further submitted on behalf of the respondents that, as per the guidelines issued by the National Medical Commission, the admissions will have to be completed before 05.04.2022 and the classes have already commenced. The learned Government Pleader also relied on clause No. 5.5.4 of the prospectus which provides that if any seat, in any special reservation quota including PwD quota, is left unavailed by the candidates belonging to that particular category, it will go to the mandatory reservation quota, unless otherwise stated.

11. The learned Single Judge, after considering the rival submissions, dismissed the writ petition and the relevant portion of the judgment reads as follows:-

“13. From the submissions advanced, I find that the total NRI seats in the State of Kerala is 358, out of which 300 seats were filled up prior to the second allotment. At the time of filing of the writ petition, about 57 seats in the NRI quota remain unfilled. After the passing of the interim order on 29.3.2022, a few more students have exercised their option. However, as on date, about 46 seats remain unfilled. That can only mean that no eligible NRI quota candidate is available to exercise the option. I find from the sequence of events that ample time was granted to the NRI quota candidates to exercise their option. Furthermore, the classes have commenced and as per the directions issued by the National Medical Commission, the closing date for admission

proceedings is 05.04.2022. In that view of the matter, clause 5.5.4 of the prospectus would come into play and the same being not under challenge, the respondents would be at liberty to fill up the seats in accordance with the provisions of the prospectus. Extending the time for fresh registration would only inure to disrupt the academic calendar. In view of the above discussion, the writ petition fails and the same will stand dismissed.”

12. Aggrieved by the judgment of the learned Single Judge, the association has filed W. A. No. 485 of 2022. As stated, the connected writ appeal is filed by one of the member college of the said association along with its Chairman.

13. Fifteen percent seats in professional colleges are earmarked as NRI seats. Total students included in Ext. P2 rank list of NRI candidates is 614. The total NRI seats in Kerala is 358 and as on the date of the impugned judgment, about 46 seats were remaining unfilled.

14. According to the appellant, the time for fresh registration in NRI quota has to be extended and shall not be converted into general category seats as per clause 5.5.4. According to the learned senior counsel for the appellants, clause 5.5.4 of the prospectus applies only in the case of special reservation quota and not NRI quota and the NRI

quota will not come within special reservation. It is also pointed out that the last date for admission process was not 05.04.2022 and the said date has been extended till today. It is also pointed out that, so far as the self financing dental colleges are concerned, the Commissioner for Entrance Examinations has by Annexure II letter dated 10.03.2022 in W. A. No. 488 of 2022 addressed to the Principals of the Self Financing Colleges, has sought the permission of the colleges to convert the vacant NRI seats to general category and the Commissioner of Entrance Examinations ought to have sought for permission of the members of the appellant association before converting the vacant NRI seats as per clause 5.5.4 of the prospectus. The contention of the petitioner is that clause 5.5.4 of the prospectus does not apply to NRI seats. Clause 5.5.4 reads as follows:-

“5.5.4 If any seat, in any special reservation quota including PwD quota, is left unavailed by the candidates belonging to that particular category, it will go to the Mandatory reservation quota, unless otherwise stated.”

15. Clause 4.14 of the prospectus deals with special reservation and clause 4.1.5 deals with mandatory reservation and the break up of seats as per mandatory reservation. Clause 5 of the prospectus deals with 'claims for reservation and certificates to be uploaded'. The 'claim

for special reservation' is included in clause 5.2 of the prospectus.

Clause 5.7 of the prospectus coming under the head 'other general rules for special / mandatory reservation' provides as follows:-

“5.7 Candidates who seek admission under NRI quota in Private Self Financing Medical / Dental Colleges should upload documents / certificates as per G. O. (Rt) 375/2020/H&FWD dated 22.02.2020.”

16. The candidates who seek admission under NRI quota in private self financing medical colleges has to submit their application with required certificates under 'claim for special/ mandatory reservation'.

17. Clause 5.5.4 provides that, if any seat, in any special reservation quota including PwD quota is left unavailed by candidates belonging to that particular category, it will go to the mandatory reservation quota. Clause 5.5.4 is an inclusive clause which takes in all category including the NRI quota. Therefore the contention that the NRI quota will not come within the scope of special reservation cannot be accepted.

18. With regard to the contention that the Commissioner for Entrance Examinations has sought for prior permission of the Dental colleges to convert the vacant NRI seats and the same procedure has

to be followed for MBBS admissions, it is to be noted that, a perusal of Annexure II dated 10.03.2022 produced along with W. A. No. 488 of 2022 shows that the Commissioner for Entrance Examinations has by the said communication reminded the colleges about the provisions in the prospectus regarding conversion of unavailed seats. When there is a provision in the prospectus for conversion of unavailed seats to mandatory reservation quota, it is not necessary to seek prior permission of the colleges by the Entrance Commissioner.

19. The learned counsel for the appellants in W. A. No. 485 of 2022 referred to Annexure 4 judgment of the Hon'ble Supreme Court, wherein the Apex Court in order to avoid lapse of seats in NRI quota for want of production of domicile certificates by the concerned students directed the Commissioner for Entrance Examination to admit students without requiring domicile certificates. Annexure 4 order will not be of any help to the appellants as it has been rendered entirely on a different context where the students have exercised their option, but failed to produce domicile certificates.

Since it has been pointed out that the last date for admission for MBBS course is today 08.04.2022, as per the directions issued by the National Medical Commission, the appellants cannot be given liberty

to grant time for fresh registration in NRI quota. We find that sufficient time was granted to the NRI quota candidates to exercise their option. Ext. P2 list was published as early as on 24.12.2021. Therefore, the same can only mean that no eligible NRI candidate is available to exercise option. We are not inclined to grant any relief to the appellants.

Accordingly, the writ appeals are dismissed.

Sd/-

S. MANIKUMAR
CHIEF JUSTICE

Sd/-

MURALI PURUSHOTHAMAN
JUDGE

Eb

//TRUE COPY//

P.A. TO JUDGE

APPENDIX OF WA 485/2022

APPELLANT'S ANNEXURES:

- Annexure 1** TRUE COPY OF THE FINAL SCHEDULE FOR ONLINE UG COUNSELING MBBS/BDS/B.SC. NURSING ANNOUNCED BY THE MEDICAL COUNSELING COMMITTEE OF DIRECTORATE GENERAL OF HEALTH SERVICES.
- Annexure 2** TRUE COPY OF THE COMMUNICATION/ADVISORY FOR ALL STATE COUNSELLING AUTHORITIES DATED 12.2.2022 ISSUED BY THE DIRECTORATE GENERAL OF HEALTH SERVICES.
- Annexure 3** TRUE COPY OF THE ORDER PASSED BY THE APEX COURT IN WP(C) NO.267/2017 DATED 9.5.2017.
- Annexure 4** TRUE COPY OF THE ORDER PASSED BY THE APEX COURT DATED 11.9.2020 IN WP(C) NO.380 OF 2019.

RESPONDENTS' ANNEXURES:- NIL

APPENDIX OF WA 488 OF 2022

APPELLANTS' ANNEXURES:

ANNEXURE-I: COPY OF LETTER NO.A2/396/2022/CEE DATED 31.03.2022 ISSUED BY THE GOVERNMENT.

ANNEXURE-II: COPY OF LETTER DATED 10.03.2022 ISSUED BY THE 4TH RESPONDENT.

RESPONDENTS' ANNEXURES:- NIL