



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE MOHAMMED NIAS C.P.

THURSDAY, THE 7TH DAY OF MARCH 2024 / 17TH PHALGUNA, 1945

WP(C) NO. 24607 OF 2023

PETITIONER:

DR. M. GANESHKUMAR
AGED 29 YEARS
S/O MANICKAM, KANISHKA APARTMENTS,
KANNAMPARIYARAM, WEST YAKKARA,
PALAKKAD, PIN - 678001
BY ADVS.
GEORGE VARGHESE (PERUMPALLIKUTTIYIL)
MANU SRINATH
SREELAKSHMI R.NAIR
NIMESH THOMAS

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
HEALTH AND FAMILY WELFARE DEPARTMENT,
GOVERNMENT SECRETARIAT,
TRIVANDRUM, PIN - 695001
- 2 THE DIRECTOR OF MEDICAL EDUCATION
DIRECTORATE OF MEDICAL EDUCATION,
MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM,
KERALA, PIN - 695011
- 3 POSTGRADUATE COURSE SELECTION COMMITTEE
REPRESENTED THROUGH ITS CHAIRMAN- SECRETARY TO
GOVERNMENT, HEALTH AND FAMILY WELFARE
DEPARTMENT, GOVERNMENT SECRETARIAT,
TRIVANDRUM, PIN - 695001
- 4 GOVERNMENT MEDICAL COLLEGE, PALAKKAD
(ALSO KNOWN AS INSTITUTE OF INTEGRATED MEDICAL
SCIENCE, PALAKKAD),
REPRESENTED THROUGH ITS DIRECTOR,
GOVERNMENT MEDICAL COLLEGE,
PALAKKAD, EAST YAKKARA,
KUNNATHURMEDU P.O.,
PALAKKAD, PIN - 678013



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5 COMMISSIONER OF ENTRANCE EXAMINATIONS
 HOUSING BOARD BUILDINGS,
 SANTHI NAGAR,
 TRIVANDRUM, PIN - 695001
 BY ADVS.
 SUMAN CHAKRAVARTHY
 SRI.P.G.PRAMOD, GOVERNMENT PLEADER(GP-50)

 THIS WRIT PETITION (CIVIL) HAVING COME UP FOR FINAL
HEARING ON 05.02.2024, THE COURT ON 07.03.2024 DELIVERED
THE FOLLOWING:



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“C.R.”

MOHAMMED NIAS C.P., J.

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Dated this the 7th day of March, 2024

JUDGMENT

The petitioner, a graduate of the MBBS course from Dr MGR Medical University, Chennai, is a permanent Medical Officer working in the Department of General Medicine, Medical College, Palakkad, which the SC-ST Department, Government of Kerala, directly administers. He is a native of Tamil Nadu and has filed this writ petition challenging the nativity clause 4.2 in Ext.P9 Prospectus, which prevents the petitioner's participation in the Medical PG admission under the service quota as he is not a native of the State of Kerala.

2. The petitioner submits that, though, under the provisions of Act 29 of 2008, the petitioner is qualified. The relevant clause in the prospectus, viz. 4.2 bars him from applying as his native place is in Tamil Nadu. The petitioner had earlier approached this Court challenging the



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restrictions in the prospectus, which this Court directed the government to consider in Ext.P5 judgment, pursuant to which Ext.P6 order is passed, which is challenged in this writ petition.

3. The reason given in Ext.P6 is that on account of the provision in the prospectus, which disables persons like the petitioner who are natives of other States, as allowing them would enable those from Tamil Nadu to get admissions in the State of Kerala. If such students are admitted here, the less meritorious Kerala students will not get admission, which, Ext.P6 says, is a “cruelty”. It is also stated that students who get admission in the service quota category/other students of completed MBBS from Institutes like AIIMS from outside Kerala will not perform compulsory service in Kerala, and if nativity condition is relaxed, the objectives of the same will be defeated. It is also stated that the issue of inclusion of the Lecturers in IIMS Palakkad under the service quota for Medical PG Admission for the Academic year 2022-2023 is pending before the Supreme Court.

4. A counter affidavit has been filed on behalf of the 1st respondent, which reiterates the contentions stated in the impugned order. It is also stated that Act 29 of 2008 provides for fixing appropriate eligibility conditions, and it is the prospectus that decides the criteria for admission. Since the admissions are made on the terms of the prospectus, which must be treated on par with the Statute, the restrictions placed in that would apply to the petitioner who applied



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under the terms of the prospectus.

5. A reply affidavit has been filed on behalf of the petitioner stating that the Special Leave Petition preferred by the State against Ext.P11 judgment has been dismissed. It is also pointed out that similarly situated Lecturers in the 4th respondent college have secured admission under the service quota for PG Medical courses, and the petitioner is denied admission solely on the grounds of his nativity, which is a clear case of discrimination. Since he is a Medical Officer, going by the Act, he cannot be prevented from appearing in the test under the service quota. However, it is the prospectus that imposes a nativity clause. The petitioner also states that he is domiciled in Kerala and is employed in the State services, and he is prepared to abide by all the conditions the other service quota candidates who get admission have to comply with. The petitioner thus challenges the selection under the service quota insofar as it imposes a nativity clause on the prospective PG aspirant.

6. Heard Sri. Manu Srinath, the learned counsel for the petitioner, Sri. P.G. Pramod, the learned Senior Government Pleader for the respondents and Sri.Suman Chakravarthy for the 4th respondent college.

7. The learned counsel for the petitioner, Sri. Manu Srinath cites the judgments reported in **Abdul Haleem P.P. v. State of Kerala and others. (WA NO.1423/2021 dated 8.4.2022) D.P. Joshi v. State of**



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Madhya Pradesh (AIR 1955 SC 334) Dr.Pradeep Jain and others v. Union of India and others [(1984) 3 SCC 654]. The learned Government Pleader, on the other hand, relies on the judgments in **Saurabh Chaudri and others v. Union of India [(2003) 11 SCC 146], Dinesh Kumar Dr. v. Motilal Nehru Medical College, Allahabad and others [(1985) 3 SCC 22], Tanvi Be v. Shrey Goel and others [(2020) 13 SCC 675].**

8. The Kerala Medical Officers' Admission to Post Graduate Courses Under Service Quota Act, 2008, Act 29 of 2008 (for short 'the Act') itself was brought to provide for a quota of seats among Medical Officers of the State of Kerala and to have a selection procedure for admission to various Post Graduate Course in the Medical Colleges under the service quota, considering their service under the Government and for matters connected therewith or incidental thereto. The petitioner, as a Medical Officer, is coming within the meaning of Section 2(d) of the Act, rendering service that comes under Section 2(j) of the Act. Service quota is also defined to mean the number of seats allotted for the Medical Officers in the service of the State, and "State" in the Act means the State of Kerala. It is undisputed that the petitioner squarely comes within the meaning of all the definitions mentioned above being a Medical Officer in service under the State and that the service quota is meant for such Medical Officers. Even the procedure for selection mentioned in the Act is for the selection of Medical Officers under the service quota,



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considering their service under the Government. Purportedly, invoking power under Section 5(3) of the Act, the details of eligibility for admission, duration of course and such other details are published in the Prospectus. Rules were also framed, which are called “the Kerala Medical Officers' Admission to Post Graduate Medical Courses Under Service Quota Rules, 2009” (for short, 'the Rules'). There is no ineligibility at all for the petitioner, even under the Rules.

9. However, the offending clause came in the Prospectus, Ext.P9, in particular, 4.2 nativity, which is extracted hereunder:-

“4.2 Nativity:

Applicants should have satisfied any of the following conditions:

4.2.1 Indian Citizens of Kerala Origin

4.2.2: Persons of Indian Origin (PIO)/Overseas Citizens of India (OCI) will be considered only for the NRI seats as per Gazette of India dated 4/3/2021. They will not be eligible for the general merit seats of any type of reservation other than NRI quota.

4.2.3: Candidates who are sons/daughters of Non-Keralite parents, who have obtained MBBS degree from any of the Medical Colleges in the State of Kerala. But they will not be eligible for Communal/Special/PD reservation benefits.”

Clause 4.2.1 states that Indian Citizens of Kerala Origin as, one of the conditions and candidates who are sons/daughters of non-Keralite



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parents and who have obtained MBBS degrees from any of the States of Kerala. A reading of the above shows that only Indian citizens of Kerala origin are permitted to apply, and those candidates who are sons/daughters of non-Kerala parents should have obtained an MBBS degree from any of the Medical Colleges in the State of Kerala. The reason for turning down the request, as is seen from Ext.P6, is again the condition in clause 4.2 of the Prospectus. It is in the above background that the petitioner seeks a declaration that the nativity clause in the prospectus, namely clause 4.2, cannot apply as long as the prospective candidate is a Medical Officer defined under the Act and also that the clauses violating Articles 14, 15 and 19 of the Constitution of India besides being against the provisions of the Act.

10. On going through the Act, it is clear that the petitioner, being a Medical Officer, is entitled to participate in the selection process under the service quota. It is not in dispute that the petitioner was selected as a Medical Officer and is serving under the Government of Kerala. It is only because of the offending provisions in the prospectus that he is not able to participate in the selection process solely on account of his not being a native of the State of Kerala. At present, he is domiciled in Kerala. Though there can be restrictions placed based on domicile or any institutional preference, the objection of a person to participate in the selection process solely based on his place of birth is clearly hit by Article 15(1) of the Constitution of India. The moment the petitioner was



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selected as a Medical Officer, and he became entitled to participate in the selection process under service quota, his ancestry or place of birth recedes to insignificance. After he was appointed as a Medical Officer, which did not have any restriction as to the place of birth, and which could not have, citing the place of birth as a reason after he became a Medical Officer to deprive of his chance to participate in the selection process was hit by Articles 14 and 15 of the Constitution of India. The nativity clause in the instant case discriminates between persons born in the state of Kerala and those born outside the State, and such discrimination falls foul of Article 15(1) of the Constitution. In the instant case, the petitioner satisfies all the eligibility under the Act, the Rules and the prospectus except the nativity clause. The petitioner is also domiciled in Kerala being employed in the State service. What is permitted by the Act of 2008 could not have been taken away by the prospectus issued under the provisions of the said Act. The actions of the Government are thus clearly unconstitutional.

11. In matters of making classification, Courts do not interfere if the sources are properly classified on a reasonable basis, which can only mean that the basis is not arbitrary or fanciful but bears a just, rational and intelligible relation with the object sought to be achieved by the classification. The power of the State to identify the sources for admission cannot extend to violating the constitutional guarantees. At the same time, a candidate who gets more marks than another is entitled



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to preference for admission if merit is the test for choosing the best, more so when he reaches the higher levels of education like Post Graduate courses. To devalue merit at those levels can never be in the interest of the State. The offending clause in the instant case when judged on the touchstone of Articles 14 and 15 of the Constitution of India, the same must be held to be void. Though the classifications can be founded on different bases, there must be a nexus between the basis of classification and the object of the Act under consideration. Article 14 forbids discrimination not only by a substantive law but also by a law of procedure. As stated earlier, the makers of the Constitution make a distinction between the expressions “place of birth” and “domicile”, and they reflect two different concepts.

12. As stated earlier, Article 15(1) states that the State shall not discriminate against any citizen on account of religion, race, caste, sex, place of birth or any of them. In the facts of the case, the petitioner has been treated differently than the rest of the Medical Officers which forms a homogeneous group only based on the place of birth. The said classification cannot stand the test of law as it falls foul of the constitutional requirement of Article 15(1). The nativity clause, in effect, disqualifies the petitioner from the similarly situated Medical Officers. The said clause is violative of Article 14 as well, as it guarantees to every person's equality before law and equal protection. The ineligibility cast on the petitioner only based on his nativity cannot be imposed by the



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State, which is subject to the equality clauses in Article 14 of the Constitution of India. Though institutional preference or residence requirement can be a criterion, as held in **D.P.Joshi** (supra) and followed later, those clauses in the prospectus that deprive the petitioner, a medical officer, from participating in the selection process are totally illegal and cannot stand the test of law. The moment the petitioner was selected as a Medical Officer, his place of birth recedes into insignificance as his right flows from the Act and the Rules thereunder and a Prospectus which makes the provisions of the Act or the Rules nugatory cannot be sustained.

13. In the judgment of the Supreme Court in **Dr Pradeep Jain and others** (supra), the distinction between residence and place of work was considered, and it was held that they are two distinct concepts with different connotations both in law and in fact. The judgment of the Supreme Court in **D.P. Joshi** (supra) was also relied on, which found that a classification based on residence within a State can be relevant, but the reference to a place of birth offends under Article 15 of the Constitution of India. It is also to be noted that when it comes to postgraduate studies in Medical Education, the stand of the Government should always be the higher you go, the higher the merit. The Supreme Court again held in the decision reported in **Saurabh Chaudri and others** (supra) that the place of birth is not similar to the expression



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domicile, and both of them never reflect the same concept. Institutional preference was also held to be not contrary to Articles 15 and 16 of the Constitution of India. Under the aforesaid circumstances, the stand of the Government that the petitioner cannot be allowed to participate in the selection process for the reason that he is not a native of the State of Kerala cannot be accepted, and the same is rejected.

14. In the light of the above discussion, the writ petition is allowed. It is declared that clause 4.2 of Ext.P9 prospectus (Nativity clause), to the extent it disqualifies the petitioner or other Medical Officers from applying under the service quota of the Act, is invalid and unconstitutional and, therefore, declared null and void. It is declared that the State cannot include any clause in the prospectus that prevents a Medical Officer under the Act from being considered under any service quota for admission to the Medical Post Graduate Degree Courses based on Nativity alone.

The writ petition is allowed as above.

Sd/-

MOHAMMED NIAS C.P.,

JUDGE

okb/dlk



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APPENDIX OF WP(C) 24607/2023

PETITIONER'S EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE DEGREE CERTIFICATE DATED 06.09.2017 ISSUED TO THE PETITIONER BY TN DR.MGR MEDICAL UNIVERSITY, CHENNAI
- EXHIBIT P1 (A) TRUE COPY OF THE CERTIFICATE OF REGISTRATION DATED 12.11.2018 OF THE PETITIONER WITH THE TRAVANCORE-COCHIN COUNCIL OF MODERN MEDICINE
- EXHIBIT P2 TRUE COPY OF THE REGULARISATION AND APPOINTMENT ORDER DATED 14.05.2020 ISSUED BY 4TH RESPONDENT WITH RESPECT TO PETITIONER
- EXHIBIT P3 TRUE COPY OF THE ORDER DATED 30.11.2020 ISSUED BY 4TH RESPONDENT DECLARING THE SATISFACTORY COMPLETION OF PROBATION OF PETITIONER
- EXHIBIT P4 A TRUE COPY OF THE REPRESENTATION DATED 17.01.2023 PREFERRED BY THE PETITIONER BEFORE THE RESPONDENTS 1 TO 3 ALONG WITH THE RECEIPT ISSUED BY THE DEPARTMENT OF POSTS AND THE CONSIGNMENT TRACKING EVIDENCING ITS RECEIPT
- EXHIBIT P5 TRUE COPY OF THE JUDGMENT DATED 21.02.2023 IN W.P.(C) NO. 4393 OF 2023 PASSED BY THE HON'BLE HIGH COURT
- EXHIBIT P6 TRUE COPY OF G.O.(RT)NO.644/2023/H&FWD DATED 18.03.2023
- EXHIBIT P7 TRUE COPY OF THE KERALA MEDICAL OFFICERS' ADMISSION TO POSTGRADUATE COURSES UNDER SERVICE QUOTA ACT, 2008
- EXHIBIT P8 TRUE COPY OF THE KERALA MEDICAL OFFICERS' ADMISSION TO POSTGRADUATE COURSES UNDER SERVICE QUOTA RULES, 2009
- EXHIBIT P9 TRUE COPY OF THE RELEVANT PAGES OF THE PROSPECTUS FOR ADMISSION TO MEDICAL POST GRADUATE DEGREE COURSES FOR THE ACADEMIC



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SESSION-2023-24 PUBLISHED BY THE 1ST
RESPONDENT

EXHIBIT P10 TRUE COPY OF THE ACKNOWLEDGMENT PAGE DATED
09.07.2023 ISSUED BY 5TH RESPONDENT

EXHIBIT P11 TRUE COPY OF THE JUDGMENT DATED 25.08.2022
IN W.A. NO. 764/2022 AND CONNECTED CASES
(NEUTRAL CITATION NO. :2022/KER/46990)
PASSED BY THE DIVISION BENCH OF THE
HONOURABLE HIGH COURT

EXHIBIT P12 A TRUE COPY OF THE ORDER DATED 21.11.2022
IN SLP NOS. 20326 - 20330/2022 PASSED BY
THE HONOURABLE SUPREME COURT

EXHIBIT P13 A TRUE COPY OF LIST OF LECTURERS FROM THE
4TH RESPONDENT-MEDICAL COLLEGE WHO HAS
OBTAINED PG ADMISSIONS THE IN-SERVICE
QUOTA IN 2022-23 AND 2023-24

RESPONDENTS EXHIBITS

EXHIBIT R1(A) TRUE COPY OF G.O. (RT).NO.644/2023/H AND
FWD DATED 18-13-2023