



WA NO. 158 OF 2025

-:1:-

2025:KER:7933

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

WEDNESDAY, THE 29TH DAY OF JANUARY 2025 / 9TH MAGHA, 1946

WA NO. 158 OF 2025

AGAINST THE JUDGMENT DATED 19.12.2024 IN WP(C) NO.37369 OF
2024 OF HIGH COURT OF KERALA

APPELLANTS/PETITIONERS 1,6,12,14,19,23,62,67,70,71,74 AND 187:

- 1 DIVYA.K.S
 AGED 36 YEARS
 D/O SOMAN K. NAIR, KAVUNGAL HOUSE,
 PUTHANANGADI P.O. PARIYAPURAM,
 MALAPPURAM, PIN - 679321
- 2 PRAJITHA T.P
 AGED 41 YEARS
 D/O PRAKASAN T.P. CHAKKUM PARAMBATH (H) ,
 VENGARI P.O, KOZHIKODE, KERALA, PIN - 673010
- 3 SHILPA SIVADAS K
 AGED 30 YEARS
 D/O SIVADAS K, ARANAPURATHU CHALIL (H) ,
 MALIKATHADAM NAYARKUZHI P.O. ,
 KOZHIKODE, PIN - 673601
- 4 SIBILA. U
 AGED 32 YEARS
 SIBILA U, D/O SIVANANDAN U,
 VYSHNAVAM (H) , KONNARIMOOLA,
 KANDAMKULAGARA, ERANHIKKAL P.O. ,
 KOZHIKODE, PIN - 673303
- 5 DEEPA G



AGED 42 YEARS
D/O GOPALAKRISHNAN NAIR V.R.
PILATHOTTATHIL (H), ELETTEL P.O. KODUVALLY,
KOZHIKODE, KERALA, PIN - 673572

- 6 VRINDA M.V
AGED 27 YEARS
D/O RAJEEVAN M.V. MANGLASSERY (H),
MEETHEL,
NELLIKODE P.O. KOZHIKODE,
PIN - 673016
- 7 ANSINA A.S
AGED 31 YEARS
D/O ABDUL AZEEZ, VADAKKE ATTATTHU KALEELIL (H),
PALACKAL, THEVALAKKARA P.O. KOLLAM, PIN - 690524
- 8 ANJU SUSAN JOHN
AGED 29 YEARS
D/O JOHN JACOB, NELLIMALA KIZHAKKETHIL (H),
KUMBANAD P.O. THIRUVALLA,
PATHANAMTHITTA, PIN - 689547
- 9 SHERRY
AGED 27 YEARS
D/O SABU K.J. KONDATTUMALIYIL (H),
MALLOOSSERY P.O. KOTTAYAM DIST. KERALA,
PIN - 686041
- 10 JITHIN JOSE
AGED 37 YEARS
S/O JOSEPH P.K. PUNNAKKUZHIYIL (H),
KURAVILANGAD P.O. KOTTAYAM DIST. KERALA,
PIN - 686633
- 11 SHYNI SCARIA
AGED 43 YEARS
D/O P.K. SCARIA, KAVUMKAL (H),
KARIKKATTOOR CENTRE P.O. MANIMALA,
KOTTAYAM, PIN - 686544
- 12 REMY VARGHESE
AGED 34 YEARS
D/O E.D.VARGHESE, ADHIYUNDHAN (H),
CHENGATTUMURY ROAD,



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KADUPPASSERY P.O, THRISSUR, PIN - 680683

BY ADVS.
NISHA GEORGE
GEORGE POONTHOTTAM (SR.)
SILPA SREEKUMAR

RESPONDENTS/RESPONDENTS :

- 1 STATE OF KERALA
REPRESENTED BY ITS HON'BLE CHIEF SECRETARY,
GOVT. OF KERALA, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 2 DEPARTMENT OF HEALTH AND FAMILY WELFARE
REPRESENTED BY ITS ADDITIONAL CHIEF SECRETARY,
DIRECTORATE OF HEALTH SERVICES,
GENERAL HOSPITAL JUNCTION,
KERALA STATE GOVERNMENT OFFICE,
THIRUVANANTHAPURAM, KERALA, PIN - 695035
- 3 SMT. VEENA GEORGE
MINISTER OF HEALTH AND FAMILY WELFARE,
GOVERNMENT OF KERALA, 701, 7TH FLOOR, ANNEXE - 2,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 4 THE COMMISSIONER FOR ENTRANCE EXAMINATIONS
7TH FLOOR, KSRTC BUS TERMINAL COMPLEX, THAMPANOR,
THIRUVANANTHAPURAM, PIN - 695001
- 5 DIRECTORATE OF HEALTH SERVICES
REPRESENTED BY ITS DIRECTOR, GENERAL HOSPITAL JUNCTION,
KERALA STATE GOVERNMENT OFFICE, THIRUVANANTHAPURAM,
KERALA, PIN - 695035
- 6 DIRECTORATE OF MEDICAL EDUCATION
REPRESENTED BY ITS DIRECTOR, MEDICAL COLLEGE P.O,
THIRUVANANTHAPURAM, PIN - 695011
- 7 KERALA UNIVERSITY OF HEALTH AND SCIENCE
REPRESENTED BY ITS REGISTRAR, MEDICAL COLLEGE, P.O,



THRISSUR, KERALA, PIN - 680596

- 8 KERALA NURSES AND MIDWIVES COUNCIL
REPRESENTED BY ITS REGISTRAR, RED CROSS ROAD,
THIRUVANANTHAPURAM, PIN - 695035
- 9 THE INDIAN NURSING COUNCIL
REPRESENTED BY ITS SECRETARY, COMBINED COUNCILS
BUILDING, KOTLA ROAD, TEMPLE LANE, OPP. MATA SUNDRI
COLLEGE, NEAR I.T.O, NEW DELHI, PIN - 110002
- 10 NATIONAL MEDICAL COMMISSION
REPRESENTED BY IT'S DIRECTOR, SATARKTA BHAWAN, G.P.O.
COMPLEX, BLOCK A, INA, NEW DELHI, PIN - 110023
- 11 GOVERNMENT COLLEGE OF NURSING
THIRUVANANTHAPURAM, REPRESENTED BY ITS PRINCIPAL,
ULLOOR - AKKULAM RD, NEAR SAT HOSPITAL MEDICAL COLLEGE
JUNCTION, CHALAKKUZHI, THIRUVANANTHAPURAM,
KERALA, PIN - 695011
- 12 GOVERNMENT COLLEGE OF NURSING ALAPPUZHA
REPRESENTED BY ITS PRINCIPAL, MEDICAL COLLEGE P.O.,
VANDANAM, ALAPPUZHA, KERALA, PIN - 688005
- 13 GOVERNMENT COLLEGE OF NURSING KOTTAYAM
REPRESENTED BY ITS PRINCIPAL, GANDHI NAGAR, KOTTAYAM,
ARPOOKARA, KERALA, PIN - 686008
- 14 GOVERNMENT COLLEGE OF NURSING THRISSUR
REPRESENTED BY ITS PRINCIPAL, MULAMKUNNATHU KAVU,
THRISSUR, KERALA, PIN - 680596
- 15 GOVERNMENT COLLEGE OF NURSING KOZHIKODE
REPRESENTED BY ITS PRINCIPAL,
MEDICAL COLLEGE JUNCTION - 17, MAVOOR RD,
NEAR POLICE STATION, KOZHIKODE,
KERALA, PIN - 673008
- 16 GOVERNMENT COLLEGE OF NURSING KANNUR
REPRESENTED BY ITS PRINCIPAL,
GOVERNMENT MC KANNUR CAMPUS RD,
PARIYARAM, KANNUR, KERALA, PIN - 670503



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BY ADVS.

Binny Thomas

VIVEK MENON

ABRAHAM P.MEACHINKARA PAILY MEACHINKARA

P.SREEKUMAR (SR.) (K/410/1994)

SUNILKUMAR KURIAKOSE, GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 23.01.2025, THE
COURT ON 29.01.2025 DELIVERED THE FOLLOWING:



J U D G M E N T

"C.R."

Dated this the 29th day of January 2025

A.Muhamed Mustaque, J.

This writ appeal was filed by some students who enrolled in the M.Sc Nursing Degree Course at various Government Nursing Colleges in the State during the academic year 2022-23 and 2023-24. They challenged a Government Order dated 11.07.2024 in the writ petition, which mandated a compulsory one-year teaching internship upon the execution of a bond. By the said order, the Government decided to engage students who enrolled from the academic year 2022-23 onwards and successfully completed the M.Sc. Nursing course as bonded lecturers, with a stipend of ₹25,000/-. According to them, this is a violation of the Indian Nursing Council directives.

2. It is appropriate to refer to the relevant portion of the guidelines issued by the Indian Nursing Council regarding bond system for the M.Sc. Nursing programme, which state as follows:



"Bond System

Taking service bonds from students and forcefully retaining their Original Certificates is viewed as an unethical practice by the Indian Nursing Council. If any such practice comes to the notice of the Indian Nursing Council, appropriate action under Section 14 of the Indian Nursing Council Act, 1947 will be taken against the erring institution."

3. The learned Single Judge was not persuaded by the argument of the writ petitioners and, taking note of the judgment of the Apex Court in **Association of Medical Super Speciality Aspirants and Residents and Ors. v. Union of India and Others [(2019) 8 SCC 607]** and the judgment of the Division Bench of this Court in **Aiysha Beegum(Dr.) and others v. State of Kerala and others [2018 (2) KLT 471]**, repelled the challenge. The impugned judgment of the learned Single Judge is challenged in this appeal by some of the writ petitioners.

4. We note that the instructions of the Nursing Council regarding the bond system were explained by the Nursing Council in the counter affidavit filed by them before this Court. It is stated by them that these guidelines were issued to stop the practice of some nursing institutions forcefully engaging students to work as nurses in



the hospital by retaining their original certificates. We also note that various High Courts have considered the legality of the bonded service; and the Apex Court in the **Association of Medical Super Speciality Aspirants and Residents** case (supra) declared that such compulsory bonds in Government institutions are not in violation of any law in force.

5. However, we note that the Government in this matter neither insisted on the execution of the bond at the time of enrolment nor asked the students to execute such bonds within a reasonable time.

6. M.Sc Nursing is a two-year programme. There are two groups of students before us: those enrolled in the academic year 2022–23 and those enrolled in the academic year 2023–24. In regard to the students of 2022-23 batch, they completed their course in the month of November, 2024.

7. The prospectus for admission to Post Graduate Degree 2022 was issued only on 21/7/2022. It is stipulated in the prospectus regarding compulsory service as follows:



“(f) **Compulsory Service** - Compulsory Service will be optional to the students admitted for M.Sc Nursing course in Govt. College of Nursing. If the Government desires to implement Compulsory Service, every student is bound to do the same.”

A similar prospectus was also issued for the academic year 2023-24 on 30/5/2023. The stipulation about compulsory service is the same. The Government was not sure if compulsory service should be insisted on students at the time of the issuance of the prospectus. The Government kept the option alive to insist on students to execute bonds for compulsory service. Is it possible for the Government to leave any room for uncertainty regarding the students’ future? We do not doubt the legality of insisting on compulsory bond. Every legal relationship, in whatever sphere, is constituted by **legal certainty**. Legal certainty is the aspect of the rule of law. That means one should be certain about the legal consequence of the fallout of non-adherence to the law. In governance, the Government’s actions must be effectuated on pre-established rules with certainty on the coercive measures that would follow on breach of such rules. (*emphasis supplied*)



8. In an article, "Legal nature of the principle of legal certainty as a component element of the rule of law" authored by *Oksana Shcherbanyuk*, *Vitalii Gordieiev*, and *Laura Bzova*, "legal certainty" is explained as follows:

"Legal certainty must be understood through the following components: clarity, unambiguity of law; the right of a person in his actions to rely on reasonable and predictable stability of existing legislation and the ability to predict the consequences of the application of the law (legitimate expectations). Thus, legal certainty implies that the legislator must strive for clarity and clarity in the wording of the law. Each person, according to the specific circumstances, should be guided by which rule of law applies in a particular case, and have a clear understanding of the specific legal consequences in the relevant legal relationship given the reasonable and anticipated stability of the law (paragraphs four to six of subparagraph 4.1 of paragraph 4 motivating part of the decision of the Constitutional Court of Ukraine of June 20, 2019 № 6-r/2019)."¹

9. It is a fundamental principle of the rule of law that individuals in relationships governed by it should not be subjected to unforeseen obligations that were not contemplated when the relationship was established. In the prospectus, it was stated that

¹Shcherbanyuk, O., Gordieiev, V. and Bzova, L., 2023. Legal nature of the principle of legal certainty as a component element of the rule of law. *Juridical Tribune-Review of Comparative and International Law*, 13(1), pp.21-31.



the Government reserved the authority to implement compulsory service. However, this does not grant the Government the right to act arbitrarily or exercise that power at its sole discretion. The Government could have required the execution of such compulsory service agreements before admitting students to the program. Possessing authority and exercising it are two distinct concepts and should not be conflated. The power to enforce compulsory government service is different from the way that power is wielded. While the authority may be lawful, its exercise is not automatically justified. Confusing the existence of power with its manner of execution can create misconceptions about the nature of authority and its relationship with those governed by it. All power must be exercised responsibly, with accountability, and through thoughtful consideration and application of mind. It must also respect the rights of others and adhere to a fair and transparent procedure. Consequently, the exercise of such power is open to challenge. Exercise of such power in a context becomes arbitrary if such exercise results in an unanticipated outcome of pre-established relations on defined norms.



10. The Apex Court in **State of Punjab v. V.K. Khanna [(2001) 2 SCC 330]** has elaborated the concept of fairness and reasonableness of administrative action as follows:

"2. The concept of fairness in administrative action has been the subject-matter of considerable judicial debate but there is total unanimity on the basic element of the concept to the effect that the same is dependent upon the facts and circumstances of each matter pending scrutiny before the court and no strait-jacket formula can be evolved therefor. As a matter of fact, fairness is synonymous with reasonableness: And on the issue of ascertainment of meaning of reasonableness, common English parlance referred to as what is in contemplation of an ordinary man of prudence similarly placed it is the appreciation of this common man's perception in its proper perspective which would prompt the court to determine the situation as to whether the same is otherwise reasonable or not."

Thus, the test of arbitrariness lies on the effects and consequences of the power exercised, and not necessarily on the power itself.

11. It is to be highlighted that even during the appeal before this Court, the Government did not provide any quantification regarding the amount to be paid in case of breach of such bonds by the students. This highlights the absence of a proper policy framework for implementing compulsory service. Since compulsory



service is enforced through the execution of bonds, there must be clear and specific guidelines regarding the consequences of breaching these obligations. Without a well-defined policy in place before the admission of students—particularly concerning the enforcement of compulsory service and penalties for bond breaches—the Government cannot reasonably require the execution of bonds midway through the course. It is also important to recognize that students have the option to enroll in private institutions instead of Government colleges. By failing to disclose its intent to mandate compulsory service before student enrollment, the Government's demand for bond execution during the course is arbitrary, unjust, and contrary to the principle of legal certainty, which is a fundamental aspect of the rule of law.

12. However, it is an option for the students to execute the bond or not. The students cannot be compelled to execute the bond. If none of the appellants have executed the bond, and they are not prepared to execute the bond, they shall not be compelled to execute the bond in the light of the law laid as above.



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The appeal, therefore, stands allowed. The impugned judgment is set aside. We order the release of certificates retained by the colleges to the students, who have completed the course and have not executed the bond for compulsory service, forthwith.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

Sd/-

P. KRISHNA KUMAR, JUDGE

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APPENDIX OF WA 158/2025

PETITIONERS ANNEXURES

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| Annexure I | A TRUE COPY OF THE RELEVANT PAGES OF THE SYLLABUS FOR COURSES AFFILIATED WITH THE KERALA UNIVERSITY OF HEALTH SCIENCES, 2016. |
| Annexure II | TRUE COPY THE LETTER NO. DME/7164/2024-B9 DATED 22.12.2024 ISSUED BY THE 6TH RESPONDENT |
| Annexure III | A TRUE COPY OF THE UNDERTAKING PROVIDING FOR THE DRAFT BOND CIRCULATED |