

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

TUESDAY, THE 11TH DAY OF JANUARY 2022 / 21ST POUSHA, 1943

WP(C) NO. 21885 OF 2021

PETITIONERS:

- 1 SUMITH V KUMAR
AGED 18 YEARS
S/O. VINOD KUMAR P. P., 'VARADAM',
ROZHENCHERI THAZHAM, PIPELINE ROAD,
KOTTOOLI, PIN - 673016.
 - 2 SANDRA SANJITH
AGED 18 YEARS
D/O. DR. SANJITH M. S., SREEDHAM HOUSE,
MORIKARA P. O., KAKKODI, CALICUT - 673611.
- BY ADVS.
K.SIJU
S.ABHILASH
ANJANA KANNATH

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
- 2 SECRETARY
HEALTH AND FAMILY WELFARE DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
- 3 PRINCIPAL SECRETARY TO GOVERNMENT
SCHEDULED CASTE & TRIBES DEVELOPMENT
DEPARTMENT, 3RD FLOOR, SOUTH BLOCK,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

- 4 DIRECTOR
SCHEDULED CASTE & TRIBES DEVELOPMENT
DEPARTMENT, NANDAVANAM, VIKAS BHAVAN P. O.,
THIRUVANANTHAPURAM - 695 003.
- 5 DIRECTOR OF MEDICAL EDUCATION
DIRECTORATE OF MEDICAL EDUCATION,
THIRUVANANTHAPURAM - 695 001.
- 6 COMMISSIONER OF ENTRANCE EXAMINATIONS
VTH FLOOR, HOUSING BOARD BUILDINGS,
SANTHI NAGAR, THIRUVANANTHAPURAM - 695 001.
- 7 NATIONAL MEDICAL COMMISSION
REPRESENTED BY ITS SECRETARY (FORMERLY MEDICAL
COUNCIL OF INDIA), POCKET 14- SECTOR 8,
DWARAKA, NEW DELHI - 110077.

BY ADVS.

SRI.P.G.PRAMOD, GOVERNMENT PLEADER
SRI.TITUS MANI FOR R7

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 11.01.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

N. NAGARESH, J.

.....
W.P.(C) No.21885 of 2021
.....

Dated this the 11th day of January, 2022

J U D G M E N T

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The petitioners participated in the NEET Examination, 2021 conducted by the 6th respondent for admission to Medical Courses in Kerala. The petitioners belong to Scheduled Caste community and they are entitled for reservation under SC/ST category. As per the Prospectus and various Government Orders, 10% of the Government seats in Government Medical Colleges is reserved for SC/ST candidates.

2. In Clause 4.1.5 of Ext.P2 Prospectus, the 6th respondent imposed a condition that the SC/ST candidates shall be allotted seats after leaving the seats set apart for All India quota, Government of India Nominees, Special

reservations, Persons with Disabilities, all types of supernumerary seats sanctioned and management quota. Clause 4.1.3 provided that Persons with Disabilities shall be given 5% of the seats only after leaving the seats set apart under Clauses 4.1.1 and 4.1.2. Therefore, the two classes entitled for reservation are discriminated among them and such adoption of criteria lead to the marginal decrease in the available seats for the SC/ST candidates and therefore the petitioners seek to quash Clause 4.1.5 of Ext.P2 Prospectus by filing this writ petition.

3. The learned counsel for the petitioners argued that the condition prescribed in Clause 4.1.5 of Ext.P2 Prospectus leaving the seats set apart for All India Quota, Government of India nominees, Special Reservations, Persons with Disabilities, all types of supernumerary seats sanctioned and management quota and the distribution of remaining Government seats to the candidates belongs to SC/ST is highly arbitrary, unreasonable and violative of the principle of equality enshrined in Article 14 of the Constitution

and hence liable to be interdicted.

4. The reservation for persons with disabilities was introduced after granting of special status to Scheduled Castes and Scheduled Tribes and also the Constitution of India provides special status for the Scheduled Castes and Scheduled Tribes. Article 46 provides that “the State shall promote with special care, the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.” While providing reservation to persons with disabilities, the 6th respondent adopted a criteria to reserve 5% of the seats available after leaving the seats set apart under Clauses 4.1.1 and 4.1.2. However, while granting reservation to Scheduled Castes and Scheduled Tribes, the 6th respondent adopted a different criteria by reserving seats leaving the seats set apart under Clauses 4.1.1, 4.1.2, 4.1.3 and 4.1.4 resulting in marginal reduction of number of seats reserved for Scheduled Castes and

Scheduled Tribes. The above criteria adopted by the 6th respondent is highly arbitrary, illegal and unconstitutional. The constitutional mandates available for the Scheduled Castes and Scheduled Tribes are taken away by the 6th respondent by introducing Clause 4.1.3 in such a style permitting to grant reservation of 5% of seats after leaving the seats set apart under Clauses 4.1.1 and 4.1.2 and therefore Clauses 4.1.3 and 4.1.5 are liable to be declared as unconstitutional.

5. The 6th respondent-Commissioner of Examinations opposed the writ petition. The 6th respondent stated that the enabling provisions contained in the Constitution enable the State from making any special provisions by law for the advancement of socially and economically backward citizens or for the Scheduled Castes or Scheduled Tribes in the matter of admission to educational institutions. As it is evident, it is for the State to decide as to how the principle of reservation is to be applied. The petitioners cannot maintain a prayer seeking a direction to adopt different criteria from

that adopted by the State. In the given context, the persons with disabilities form a distinct and homogenous class and the quota reserving seats to persons having disabilities in the educational institutions are absolutely valid. There arises no question of arbitrariness in not extending the principles of vertical reservation in the homogenous class of persons with disabilities like it is implemented in the case of other seats. The State has sufficient authority to decide how the principle of vertical reservation should be applied. Therefore, the contention that the principle of communal reservation is not applied in the homogenous class of persons with disabilities will not hold good.

6. The Constitution contains enabling provisions for the State for making any special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes. Article 15(5) says that “Nothing in this Article or in Sub-clause (g) of Clause (1) of Article 19 shall prevent the State from making any special provision, by law,

for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in Clause (1) of Article 30”.

7. I have heard the learned counsel for the petitioners and the learned Government Pleader representing the respondents.

8. The State can identify classes of persons who are having distinct characteristics or disadvantages and treat them separately under law. Persons having disability form a homogenous class by themselves where disability is not on the basis of social backwardness but on the basis of physical disability. It is relevant to point out that the claim of the petitioners for reservation is traceable to Article 15 which is an enabling right, the claim of the PWD persons traces to a statute promulgated for the purpose of implementation of a

Constitutional mandate. Therefore, it is by virtue of the statute, persons with disability are treated as a homogenous class irrespective of social classification. Such a valid classification cannot be sought to be impeached by way of linking it with Article 16 or Article 15 which does not apply. There is no violation of Article 14, as Article 14 postulates equal treatment for equally placed persons that is to say unequals can be treated unequally. To be more precise, differential treatment is permissible when it comes to unequals. Persons claiming social reservation fall in one compartment and persons with disabilities who are included in the quota fall on a different distinct compartment so there arises no question of violation of Article 14 of the Constitution.

9. Reservation itself is not a matter of right. The Constitutional provision is only enabling in nature. Same principle will be applicable if the petitioners claim for social reservation in the persons with disabilities quota. Article 15(5) of the Constitution does not mandate but enables the

State to provide for reservation to those who are socially backward.

10. The State can provide for different channel in the matter of admission. In ***K. Duraisamy v. State of Tamil Nadu*** [(2001) 2 SCC 538], the Apex Court held as follows:

i) The Government possess the right and authority to decide from what sources the admissions in educational institutions or to particular disciplines and courses therein have to be made and that too in what proportion;

ii) That such allocation of seats in the form of fixation of quota is not to be equated with the usual form of communal reservation and therefore, the constitutional and legal considerations relevant to communal reservations are out of place while deciding the case based on such allocation of seats;

iii) That such exclusive allocation and stipulation of a definite quota or number of seats between in-service and non-service or private candidates provided two separate channels of entry and a candidate belonging to one exclusive quota cannot claim to steal a march into another exclusive quota by advancing a claim based on merit. Inter se merit of the candidates in each quota shall be determined based on the merit performance of the candidates belonging to that quota;

iv) That the mere use of the word “reservation” per se is not decisive of the nature of allocation. Whether it is a reservation or an allocation of seats for the purpose of providing two separate and exclusive sources of entry would depend on the purpose and object with which the expression has been used and that would be determinative of the meaning, content and purport of the expression. Where the scheme envisages not a

mere reservation but is one for classification of the sources from which admission are to be accorded, fixation of respective quota for such classified groups does not attract applicability of considerations relevant to reservation simpliciter.

11. The State can provide for separate and exclusive channels of entry or sources of admission, the validity whereof cannot be determined on the constitutional principles applicable to communal reservations. Such two channels of entry or two sources of admission are valid provisions, when the classification is based on an intelligible differentia with a laudable object sought to be achieved.

In the circumstances, the writ petition is devoid of any merit and the same is dismissed.

Sd/-

N. NAGARESH, JUDGE

aks/07.01.2022

APPENDIX OF WP(C) 21885/2021

PETITIONER'S EXHIBITS

Exhibit P1	THE ADMISSION TICKET ISSUED TO THE 1ST PETITIONER BY THE NATIONAL TESTING AGENCY.
Exhibit P2	THE COPY OF RELEVANT PAGES OF PROSPECTUS FOR KEAM 2021 FROM PAGE NO.1 TO 31 AND AGE NO.79 TO 82.
Exhibit P3	A TRUE COPY OF THE GO(P) NO.1/2020/P&ARD DATED 03.01.2020.