

IN THE HIGH COURT OF KERALA AT ERNAKULAM
Present:

THE HONOURABLE MR. JUSTICE K. T. SANKARAN

&

THE HONOURABLE MR. JUSTICE M. L. JOSEPH FRANCIS

Tuesday, the 27th day of August 2013/5th Bhadra, 1935

IA. 11538/2013 IN WP(C) No. 20041/2013(E)

PETITIONERS/PETITIONERS 2, 4, 5, 6, 8, 9, 10 & 11

1. DR. ANNA RAJAN, AGED 27 YEARS, W/O. DR. SUJITH THAMPY, RESIDING AT KOORANTHAZHATHU PARAMBIL HOUSE, PEECHANIKAD, PULIYANAM P.O., ANGAMALY-683 572.
2. DR. INDU R., AGED 28 YEARS, D/O. A. P. RAGHAVAN, RESIDING AT ANAKUZHICKAL HOUSE, PALAKUZA P.O., KOOHATTUKULAM, ERNAKULAM DISTRICT-686 686.
3. DR. KEERTHI PREMCHANDRAN, AGED 27 YEARS, D/O. PREM CHANDRAN C.T., RESIDING AT "PREETHIKA", AMANDAN ROAD, ALAVIL, KANNUR-670 008.
4. DR. NISHA G. NAIR, AGED 27 YEARS, D/O. C. GOPINATHAN NAIR, RESIDING AT "USHA MALAR", KUNNATHUKAL, KARAKKONAM P.O., THIRUVANANTHAPURAM-695 504.
5. DR. SABARI JAYARAM, AGED 28 YEARS, S/O. DR. K. JAYARAM, RESIDING AT "GAUTHAMA", RAILWAY STATION ROAD, PETTAH P.O., THIRUVANANTHAPURAM-695 024.
6. DR. VIVEK OOMMEN VARGHESE, AGED 27 YEARS, S/O. DR. N. D. VARGHESE, RESIDING AT "SEONPURATHIL", CHEKKALAMUKKU, SREE KARIYAM P.O., THIRUVANANTHAPURAM-695 017.
7. DR. VISHNU M.S., AGED 27 YEARS, S/O. LATE DR. S. V. SATHEESAN NAIR, RESIDING AT "VISALA", DHANUVACHAPURAM P.O., THIRUVANANTHAPURAM-695 503.
8. DR. SMITHA NAIR P.G., AGED 33 YEARS, D/O. GOPINATHAN NAIR V.P., RESIDING AT 93, BALJIUM, CHEMPAKA NAGAR SOUTH, THIRUVANANTHAPURAM.

RESPONDENTS/RESPONDENTS & ADDL. RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.
2. THE COMMISSIONER OF ENTRANCE EXAMINATIONS, THIRUVANANTHAPURAM-695001.
3. THE DIRECTOR, DIRECTORATE OF MEDICAL EDUCATION, THIRUVANANTHAPURAM-695011.
4. SREE GOKULAM MEDICAL COLLEGE AND RESEARCH FOUNDATION, VENJARAMOODU P.O., THIRUVANANTHAPURAM - 695 607 REPRESENTED BY ITS PRINCIPAL.
5. THE ACADEMY OF MEDICAL SCIENCES, PARIYARAM, KANNUR - 670 503 REPRESENTED BY ITS PRINCIPAL.

Application praying that in the circumstances stated in the affidavit filed therewith the High Court be pleased to issue a direction granting permission to the petitioner herein to exercise his option in respect of seats likely to fall vacant in the Government/Self Financing Colleges in Kerala in different specialties in Post Graduate Course in all further allotments and admissions including spot admissions and relieve them from the present colleges with NOC and all documents, without insisting on liquidated damages.

p. t. o.

This application coming on for orders upon perusing the application and the affidavit filed in support thereof, and this Court's order dated 19/08/2013 in IA.11193/13 and upon hearing the arguments of SRI.K.RAMAKUMAR, Senior Advocate along with SRI.S.M.PRASANTH, M.MANOJKUMAR (CHELAKKADAN), ASHA BABU, AMMU CHARLES & G.ASHWINI, Advocates for the petitioners in IA/WPC, GOVERNMENT PLEADER for R1 to R3 in IA/WPC, and of SRI.P.V.SURENDRANATH, Advocate for Addl.R5 in IA/W.P(C)., the court passed the following:-

p.t.o.

**K.T.SANKARAN &
M.L.JOSEPH FRANCIS, JJ.**

IA.NO.11479/2013 IN WP(C) NO.18839/2013,
IA.NO.11604/2013 IN WP(C) NO.19941/2013,
IA.NO.11480/2013 IN WP(C) NO.20001/2013,
IA.NO.11481/2013, IN WP(C) NO.20041/2013,
and IA. no. 11538/2013

W.P.(C)NOS.19824,20005,20367 &20984/2013

Dated this the 27th day of August, 2013

ORDER

K.T.Sankaran, J.

All these Writ Petitions pertain to admission to Post Graduate Medical Courses. The main grievance voiced in the Writ Petitions relate to the Note appended to the Notification No.4079/PGM2013/2012/TA3/CEE dated 29.7.2013, which provides that the third phase of allotment would be the last phase of allotment to Self Financing Medical Colleges and the students allotted to these colleges are bound to join the course/college allotted. The Note further provides that otherwise, they will be liable to pay liquidated damages as per the relevant clause of the prospectus for admission to Post Graduate Medical Courses, Kerala, 2013.

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2. In W.P.(C) No.18839 of 2013, we passed a detailed interim order dated 1.8.2013. The present order shall be read in continuation of the order dated 1.8.2013.

3. Subsequent to the order dated 1st August, 2013, another interim order dated 19.8.2013 was passed by a Division Bench of this Court.

4. It is submitted by the learned counsel appearing for the petitioners as well as the learned Government Pleader that the Supreme Court extended the period for admission till 31.8.2013. It is submitted that after the central allotment, some seats have lapsed and they have reverted to the State quota. It is submitted by the learned Government Pleader that there are other vacancies also in the Government quota. It is also submitted by the learned Government Pleader that in the light of the order passed by the Supreme Court, the Medical Council of India issued a Notice dated 24th August, 2013 to the State Government by publishing the same in the web site, which reads as follows:

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“All States and Union Territories are hereby informed that the Hon'ble Supreme Court has been pleased to permit counseling for postgraduate seats which have lapsed in favour of State Government/Ut Governments after the fourth round of counseling of All India Quota. The Hon'ble Supreme Court was further pleased to extend the said benefit to leftover postgraduate seats in Government Medical Colleges of States/Union Territories. All admission process is required to be completed by 31.8.2013. This Order has been passed on 23.8.2013 in Writ Petition No.433 of 2013 titled Dr.Farz Naseem v. Union of India. A copy of the Order would be posted on MCI website as soon as it is placed on the website of the Hon'ble Supreme Court.”

5. Thereafter, the Government passed G.O.(Rt) No.3006/2013/H&FWD dated 26th August, 2013 with respect to the last and final counselling for the unfilled Government quota seats, State quota seats which became vacant consequent to the fourth round of All India Counselling and surrendered All India quota seats.

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The operative portion of the Government Order reads as follows:

"2. Government have examined the case in detail and are pleased to issue the following orders for the last and final round of counseling to Post Graduate Medical Degree/Diploma Courses 2013.

(i) The Commissioner for Entrance Examinations is authorised to conduct a last and final online/Manual counseling as the case may be, on 29th and 30th August 2013 for filling up of the unfilled Government Quota seats, State quota seats which became vacant consequent to the fourth round of All India Counselling and Surrendered All India Quota seats in Government/Self Financing Medical Colleges.

(ii) The candidates who have already taken admission under All India Quota and holding All India Quota seat at present are not allowed to attend the counseling.

(iii) The Director of Medical Education will furnish the details of the vacant seats to the Commissioner for Entrance Examinations on or before 27th August, 2013.

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(iv) *The Self Financing Medical Colleges will furnish the details of vacant Government merit quota seats in the institutions to the Commissioner for Entrance Examinations so that the seats can be filled through the Counseling.*

(v) *The candidates coming from the Self Financing Medical Colleges to attend the counseling shall produce all their original certificates, NOC and necessary affidavits stating that the Self Financing Medical College Management is willing to admit candidates from the Government Merit list in the resultant vacancies.*

(vi) *The candidates who are allotted a subject in the counseling and do not join the course on any reason shall be liable to pay the liquidated damages as per the conditions in the Prospectus.*

(vii) *No candidates who have already admitted in Government Medical Colleges are allowed to move to another Government Medical College in the same subject.*

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(viii) No transfer from one Self Financing Medical College to another shall be allowed."

(Copy of the Notes issued by the Medical Council of India and copy of the Government Order dated 26th August, 2013 were made available by the learned Government Pleader and they are taken on file.)

6. Arguments were advanced by the counsel for the petitioners with reference to the subsequent events and with reference to the Government Order dated 26th August, 2013. The petitioners raised the contention that they are entitled to participate in the final round of allotment and their rights cannot be defeated in any manner whatsoever. The learned counsel appearing for the Managements pointed out their grievance that if students who are admitted in the Self Financing Colleges leave the institution under the pretext of final counselling, the Managements should suffer to a great extent.

7. Considering the rival submissions and taking into account the various clauses in the Government Order dated 26th August, 2013

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as well as the subsequent events, we issue the following interim directions:

- i) The petitioners and similarly placed persons would be entitled to participate in the final round of counselling for the unfilled Government quota seats, State quota seats which became vacant consequent to the fourth round of All India Counselling and surrendered All India quota seats.
- (ii) The Managements shall issue NOC and other necessary documents to the candidates who participate in the final round of counselling, as mentioned in clause (v) in the Government Order dated 26th August, 2013.
- (iii) If a candidate who quits a Self Financing College under the guise of final counselling and allotment, but who subsequently does not avail the same and join in any college, will be liable to be dealt with for realisation of liquidated damages as per the prospectus and Government Orders, if any.
- (iv) It is made clear that in so far as the Self Financing Colleges are concerned, the Government Order dated 26th August, 2013 would be applicable only in respect of candidates who were

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admitted in the Government quota allotted by the Commissioner for Entrance Examinations.

- (v) A candidates who opts for the final round of counselling pursuant to the Government Order dated 26th August, 2013 (who had already secured admission in a Self Financing College) shall make a declaration that his/her allotment and admission was to the Government quota as allotted by the Commissioner for Entrance Examinations.
- (vi) If any candidate who was admitted in a Self Financing College in the Government quota secures admission in another institution in the last and final round of counselling and a vacancy arises resultantly, allotment will be made to the said vacancy by the Government.
- (vii) Since all the Self Financing Colleges are not parties in these Writ Petitions, there will be a direction to the Government to forward a copy of this order and the Government Order dated 26th August, 2013 to all the Self Financing Colleges in the State without any delay.

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Handover copy of this order to all the counsel appeared and to
the Government Pleader.

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K.T. SANKARAN

[Judge]

sd-

M.L. JOSEPH FRANCIS

[Judge]

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True copy



Assistant Registrar

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