

(PART HEARD)

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).12681/2006

(From the judgement and order dated 29/07/2006 in WA No. 1367/2006 of The
HIGH COURT OF KERALA AT ERNAKULAM)

STATE OF KERALA & ANR

Petitioner(s)

VERSUS

MANAGER, M.O.S.C.MEDICAL COLLEGE & ANR

Respondent(s)

(With appln(s) for permission to file addl.documents and impleadment and i
mpleament and
intervention and with prayer for interim relief and office report)

WITH

SLP(C) NO. 12697 of 2006

(with appln(s) for exemption from filing c/c of the impugned judgment an
d permission to file
additional documents and with prayer for interim relief and office report)

SLP(C) NO. 12706 of 2006

(with appln(s) for exemption from filing c/c of the impugned judgment and with prayer for inte
rim
relief and office report)

SLP(C) NO. 12707 of 2006

(with appln(s) for exemption from filing c/c of the impugned judgment and with prayer for inte
rim
relief and office report)

SLP(C) NO. 13097 of 2006

(with appln(s) for exemption from filing c/c of the impugned judgment and permission to file

additional documents and with prayer for interim relief and office report)

SLP(C) NO. 13099 of 2006

(with appln(s) for exemption from filing c/c of the impugned judgment and with prayer for interim

relief and office report)

SLP(C) NO. 13100 of 2006

(with appln(s) for exemption from filing c/c of the impugned judgment and with prayer for interim

relief and office report)

SLP(C) NO. 13103 of 2006

(with appln(s) for exemption from filing c/c of the impugned judgment and with prayer for interim

relief and office report)

SLP(C) NO. 13106 of 2006

(With appln.(s) for exemption from filing c/c of the impugned judgment and with prayer for

interim relief and office report)

Date: 25/08/2006 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN

HON'BLE MR. JUSTICE D.K. JAIN

For Petitioner(s)

SLP 12681/2006

Mr. K.K. Venugopal, Sr. Adv.

Mr. C.S. Vaidyanathan, Sr. Adv.

Mr. T.L. Viswanatha Iyer, Sr. Adv.

Mr. P.V. Dinesh, Adv.

Mrs. Sindhu T.P., Adv.

Mr. Jogy Scaria, Adv.

For applicant/
impleadment

Mr. U.U. Lalit, Sr. Adv.

Ms. Sumita Hazarika, Adv.

For Respondent(s)

SLP 12681/2006 &
12706/2006

Mr. Harish N. Salve, Sr. Adv.

Mr. Arun Jaitley, Sr. Adv.

Mr. Mukul Rohtagi, Sr. Adv.

Mr. Dushyant A. Dave, Sr. Adv.

Mr. S. Udaya Kumar Sagar, Adv.

Ms. Bina Madhavan, Adv.

For M/S. Lawyer'S Knit & Co.

SLP 13099/2006

Mr. M.K.S. Menon, Adv.

Mr. Elias M. Cherian, Adv.

Mr. M.K. Michael, Adv.

SLP 13100/2006

Mr. George Poonthotham, Adv.

Mr. Ajay K. Jain, Adv.

Mr. Dileep Pillai, Adv.

Mr. M.P. Vinod, Adv.

SLP 12697/2006

Mr. L. Nageshwara Rao, Sr. Adv.

Mr. Romy Chacko, Adv.

Mr. A.K. Jha, Adv.

SLP 13097/2006

Mr. T.R. Andhyarujuna, Sr. Adv.

Mr. Romy Chacko, Adv.

Mr. A.K. Jha, Adv.

SLP 12707/2006 &
13103/2006

Mr. Romy Chacko, Adv.

Mr. A.K. Jha, Adv.

Mr. L. Nageshwara Rao, Sr. Adv.

Mr. Fazlin Anam, Adv.

Mr. E.M. S. Anam, Adv.

Mr. T.L. Viswanatha Iyer, Sr. Adv.

Ms. Malini Poduval, Adv.

Mr. Deepak Prakash, Adv.

SLP 12697/2006

Mr. P. Sureshan, Adv.

(for R.No. 3)

Mr. Anil K.Chopora, Adv.

UPON hearing counsel the Court made the following

O R D E R

Applications for impleadment and intervention in Special Leave

e

Petition (C) No. 12681 of 2006 are allowed.

Leave granted.

The Appeals are disposed of in terms of the signed order.

(Rajesh Dham)

(Veera Verma

)

Court Master

Court Master

(signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3735 OF 2006

(arising out of S.L.P. (Civil) No(s).12681 of 2006)

STATE OF KERALA & ANR.

Appellant(s)

VERSUS

MANAGER, M.O.S.C.MEDICAL COLLEGE & ANR.

Respondent(s)

W I T H

CIVIL APPEAL NO.3736 of 2006

(arising out of SLP(C) NO. 12697 of 2006)

CIVIL APPEAL NO.3738 OF 2006

(arising out of SLP(C) NO. 12706 of 2006)

CIVIL APPEAL NO.3739 OF 2006

(arising out of SLP(C) NO. 12707 of 2006)

CIVIL APPEAL NO.3740 OF 2006

(arising out of SLP(C) NO. 13097 of 2006)

CIVIL APPEAL NO.3741 OF 2006

(arising out of SLP(C) NO. 13099 of 2006)

CIVIL APPEAL NO.3743 OF 2006

(arising out of SLP(C) NO. 13100 of 2006)

CIVIL APPEAL NO.3745 OF 2006

(arising out of SLP(C) NO. 13103 of 2006)

CIVIL APPEAL NO.3746 OF 2006

(arising out of SLP(C) NO. 13106 of 2006)

O R D E R

Applications for impleadment and intervention in Special Leave

Petition (C) No. 12681 of 2006 are allowed.

Leave granted.

These Appeals are directed against the interim order, dated

29.07.2006, passed by the Division Bench of the High Court of Kerala in

a series of Writ Appeals filed before it.

These matters relate to admissions to the professional colleges,

namely, medical, engineering, nursing and B.Ed. In the State of Kerala,

on enactment of the Kerala Self-Financing Professional Colleges

(Prohibition of Capitation Fees and Procedure for Admission and Fixation

of Fees) Act, 2004 (hereinafter referred to as 'the 2004 Act') admissions in

various private unaided professional colleges for the academic years

2004-05 and 2005-06 were regulated as per the provisions of the 2004

Act. As per the scheme of the 2004 Act, private unaided professional

colleges were allowed to fill up 50% of the total seats and the rest of the

50% were to be the Government seats, to be filled up on the basis of the

result of the common entrance examination conducted by the State.

It is not in dispute that for admissions for the academic year

2006-07, the State as well as various private unaided professional colleges initiated steps as per the scheme of the 2004 Act. The State notified the conduct of the entrance examination and issued prospectus in January 2006 and examinations were held on 18/19 May, 2006. It is averred that the private unaided professional colleges had also taken steps for conducting the entrance examinations as per the past practice.

The State of Kerala enacted The Kerala Professional Colleges (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and other Measures to Ensure Equity and Excellence in Professional Education) Act, 2006 (hereinafter referred to as 'the 2006 Act') which received the assent of the Governor and was published in the Extraordinary Gazette on 2nd July, 2006.

As per the provisions contained in the 2006 Act, there are drastic changes in the mode of admission and also in the determination of the minorities status of the institutions. As regards seat sharing, as per the provisions of the 2006 Act, 70% of the seats are to be filled up by the State Government, which are earmarked for various categories. 15% of the

seats are treated as 'privileged seats' and the remaining 15% seats are to be filled by NRI candidates. Thus, the private unaided professional colleges have been given the right to make admissions for 30% of the total number of seats available.

When the 2006 Act came into force, some of the private unaided professional colleges filed Writ Petitions before the High Court by which they challenged the constitutional validity of the 2006 Act. They also prayed that they may be permitted to admit students on the basis of the 2004 Act. The State contested the stand of the petitioners, inter alia, contending that by 2nd July, 2006 when the 2006 Act had been notified, the private unaided professional colleges had not conducted the entrance test and, therefore, the students could not be admitted on the basis of the 2004 Act. It was also pleaded that if at all any entrance test was to be conducted on the basis of the observations made by this Court in P.A. Inamdar & Ors. vs. State of Maharashtra & Ors. [2005] 6 SCC 537, (Paragraphs 136 and 137) it was only the Consortium of Colleges alone which had the right to conduct entrance test but the applications were

received by individual colleges. It was also alleged that the test conducted by the Consortium was not fair and transparent.

Taking into consideration the order passed by this Court on 29.05.2006 and the fact that the common entrance test had been conducted by the State pursuant to the prospectus issued on 05.01.2006; results had been published and the managements and the students had arranged their affairs in accordance with the prospectus and the said order of this Court, the learned single Judge passed an interim order permitting the private unaided professional colleges to fill up 50% of the seats. The remaining seats were directed to be filled up by the State.

This interim order was challenged by the State before the Division Bench of the High Court. The Division Bench approved the interim order passed by the learned single Judge. It is against that interim order passed by the Division Bench, the State of Kerala have filed these Appeals.

We have heard learned counsel for the State and also learned counsel who appeared for the private unaided professional colleges. We

have also heard learned counsel who appeared for those students who were denied admission in this process and who have filed application for intervention.

The main argument advanced on behalf of the State is that the entrance test stated to have been conducted by the Consortium of private unaided professional colleges was not in accordance with the mandate given by this Court. It is also alleged that in case of medical colleges, the admissions had not been made at the time when the 2006 Act came into force, though in some engineering, nursing and B-Ed. courses admissions were over. The learned senior counsel appearing for the State fairly conceded that those students who got admission in the engineering, nursing and B.Ed. courses prior to 02.07.2006 would be approved by the State. As regards the medical colleges, the stand taken by the State is that the entrance test was not conducted properly as there was no proper advertisement and there were lot of other manipulations in the process.

On a consideration of the entire matter, we are of the view that the

interim order passed by the learned single Judge and affirmed by the Division Bench does not call for interference. It may be noticed that when the State issued the prospectus in January 2006, and took steps for conducting the entrance examination, the State had the right to fill up only 50% of the seats. For regulating admissions in professional colleges in various States, legislations were enacted in advance. But in the State of Kerala it was notified only on 02.07.2006 when the process of admission had already been initiated in the colleges and by the State as well.

As

noted above, all concerned had arranged their affairs in accordance with the prospectus issued by the State. Having regard to the peculiar circumstances of the case, we approve the seat sharing ratio, as directed in the impugned order.

Mr. K.K. Venugopal, learned senior counsel appearing for the State, argued in extenso and alleged that various irregularities were committed in the entrance test conducted by the Consortium of private unaided professional colleges. This was strongly refuted by learned senior counsel appearing on behalf of the respondents, who, with equal vehemence, contended that the entrance test was conducted properly, after issuing

advertisements and at no stage any objection was raised either by the students or by the State.

As per the decision of this Court, in the State of Kerala an Admission Supervisory Committee has already been constituted under the Chairmanship of a retired Judge of the Kerala High Court and we are informed that Committee is already seized of the matter. On receipt of some complaints, the Committee has already issued notices to the private unaided professional colleges as well as to the State. In this view of the matter, we do not propose to go into the rival stands of the parties in regard to the conduct of the entrance test. Since, all the parties would be at liberty to put forward their cases before the Committee, we do not propose to incorporate all the contentions advanced by the learned counsel before us, but we make it clear that the State would be at liberty to raise these objections before the Committee. The Committee shall consider all the aspects and take a decision as to whether the entrance test conducted by the private unaided professional colleges in respect of

medical courses for the year 2006-07 was validly held in accordance with

the observations made by this Court in P.A. Inamdar & Ors (supra).

The Committee shall hear the parties who are before us and/or

those who have already preferred objections to the Committee. In view of

the urgency of the matter the Committee may hold day-to-day sittings and

take a final decision on or before 8th September, 2006. If the Committee

finds any irregularity in the process of admission and/or charging of fees,

it shall issue appropriate order/directions. The State would be at liberty

to take appropriate action if any irregularity is found by the Committee in

the process of entrance test in so far as medical courses are concerned.

If any fresh admissions are to be made and students find it difficult

to get admission in view of the time schedule fixed by the Medical Council

as per order dated 25th February, 2004, such students would be at liberty

to approach this Court for appropriate directions.

The Appeals are disposed of accordingly. No costs.

.....

...J.

[K.G. BALAKRISHNAN]

...J.

.....

[D.K. JAIN]

NEW DELHI ;

AUGUST 25, 2006.