



2024:KER:70469

WA NO. 1480 OF 2024 & Conn.Cases

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

FRIDAY, THE 20TH DAY OF SEPTEMBER 2024 / 29TH BHADRA, 1946

WA NO. 1480 OF 2024

AGAINST THE JUDGMENT DATED 09-09-2024 IN WP(C) NO.29803

OF 2024 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENT NO.4& 7 IN WP(C):

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
SECRETARIAT, THIRUVANANTHAPURAM DISTRICT,
PIN - 695001.
- 2 THE COMMISSIONER OF ENTRANCE EXAMINATION
OFFICE OF THE COMMISSIONER OF ENTRANCE EXAMINATION,
5TH FLOOR, HOUSING BOARD BUILDING, SHANTHI NAGAR,
THIRUVANANTHAPURAM DISTRICT, PIN - 695001.

BY ADVS.
SRI.P.G.PRAMOD, GOVERNMENT PLEADER
PUBLIC PROSECUTOR

RESPONDENTS/PETITIONER & RESPONDENT NO.1 TO 3, 5, 6 AND 8:

- 1 ADWAITHA. S
AGED 18 YEARS



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D/O SUNIL KUMAR R, SUSHAMMA VILASAM (H),
ULIKKAL PO, IRITTY TALUK, KANNUR DISTRICT,
PIN - 670705.

- 2 UNION OF INDIA
REPRESENTED BY ITS SECRETARY,
MINISTRY OF EDUCATION, SHASTRI BHAVAN, NEW DELHI,
PIN - 110001.
- 3 SECRETARY
MINISTRY OF HEALTH AND FAMILY WELFARE,
GOVERNMENT OF INDIA, NIRMAN BHAVAN, NEW DELHI,
PIN - 110001.
- 4 NATIONAL MEDICAL COMMISSION
REPRESENTED BY ITS CHAIRMAN (FORMERLY MEDICAL
COUNCIL OF INDIA), POCKET -14, SECTOR-8, DWARAKA
PHASE-1, NEW DELHI, PIN - 110077.
- 5 NATIONAL TESTING AGENCY
REPRESENTED BY ITS DIRECTOR GENERAL,
DEPARTMENT OF HIGHER EDUCATION, MINISTRY OF HUMAN
RESOURCES DEVELOPMENT, R.K PURAM, NEW DELHI,
PIN - 110066.
- 6 MEDICAL BOARD FOR DISABILITY (DESIGNATED DISABILITY
CENTRE),
MEDICAL COLLEGE, REPRESENTED BY ITS CHAIRMAN,
MEDICAL COLLEGE HOSPITAL, THIRUVANANTHAPURAM
DISTRICT, PIN - 695011.
- 7 THE STATE COMMISSIONER
STATE COMMISSIONERATE FOR PERSONS WITH
DISABILITIES, ANJANEYA, TC -9/1023(1),
GROUND FLOOR, SASTHAMANGALAM, THIRUVANANTHAPURAM
DISTRICT, PIN - 695010.



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SRI. K.S. PRENJITH KUMAR, SC, NMC.
SRI. P. DEEPAK, SR.
SRI. DEEPAK RAJ

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
20.09.2024, ALONG WITH WA.1481/2024, 1482/2024, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:



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WA NO. 1480 OF 2024 & Conn.Cases

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

FRIDAY, THE 20TH DAY OF SEPTEMBER 2024 / 29TH BHADRA, 1946

WA NO. 1481 OF 2024

AGAINST THE JUDGMENT DATED 09-09-2024 IN WP(C) NO.28507

OF 2024 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS NOS 1 TO 3 AND 5 IN W.P.(C):

- 1 STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001.
- 2 DIRECTOR OF MEDICAL EDUCATION,
DIRECTORATE OF MEDICAL EDUCATION, MEDICAL COLLEGE,
MEDICAL COLLEGE KUMARAPURAM RD, CHALAKKUZHI,
THIRUVANANTHAPURAM, PIN - 695011.
- 3 COMMISSIONER FOR ENTRANCE EXAMINATION,
5TH FLOOR, KSHB BUILDING, SS KOVIL RD, SANTHI
NAGAR, THIRUVANANTHAPURAM, PIN - 695001.
- 4 GOVERNMENT MEDICAL COLLEGE,
REPRESENTED BY ITS PRINCIPAL, NEAR SAT HOSPITAL
MEDICAL COLLEGE JUNCTION, CHALAKKUZHI,
THIRUVANANTHAPURAM, PIN - 695011.



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WA NO. 1480 OF 2024 & Conn.Cases

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BY ADVS.
SRI.P.G.PRAMOD, GOVERNMENT PLEADER
PUBLIC PROSECUTOR

RESPONDENTS/PETITIONER AND RESPONDENT NOS 4 AND 6 IN W.P.(C):

- 1 NIRANJANA ANEESH,
AGED 18 YEARS
D/O.ANEESH KUMAR V.K, VALIYA VEETTIL,
VELLARANGAL, P.O.CHERUKUNNU R.S KANNUR,
PIN - 670301.
- 2 THE ASSESSMENT BOARD FOR ASSESSING DISABILITY
REPRESENTED BY CHAIRPERSON, GOVERNMENT MEDICAL
COLLEGE, NEAR SAT HOSPITAL MEDICAL COLLEGE
JUNCTION, CHALAKKUZHI, THIRUVANANTHAPURAM,
PIN - 695011.
- 3 NATIONAL MEDICAL COMMISSION,
REPRESENTED BY ITS CHAIRPERSON, (FORMERLY MEDICAL
COUNCIL OF INDIA) POCKET 14, SECTOR 8, DWARAKA
PHASE I, NEW DELHI, PIN - 110077.

SRI. K.S. PRENJITH KUMAR, SC.
SRI. P. DEEPAK, SR.
SRI. DEEPAK RAJ

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
20.09.2024, ALONG WITH WA.1480/2024 AND CONNECTED CASES, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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WA NO. 1480 OF 2024 & Conn.Cases

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

FRIDAY, THE 20TH DAY OF SEPTEMBER 2024 / 29TH BHADRA, 1946

WA NO. 1482 OF 2024

AGAINST THE JUDGMENT DATED 09-09-2024 IN WP(C) NO.29723

OF 2024 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENT NOS.4 AND 7 IN W.P(C) :

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
SECRETARIAT, THIRUVANANTHAPURAM DISTRICT,
PIN - 695001.

- 2 THE COMMISSIONER OF ENTRANCE EXAMINATION,
OFFICE OF THE COMMISSIONER OF ENTRANCE EXAMINATION,
5TH FLOOR, HOUSING BOARD BUILDING, SHANTHI NAGAR,
THIRUVANANTHAPURAM DISTRICT, PIN - 695001.

BY ADVS.
SRI.P.G.PRAMOD, GOVERNMENT PLEADER
PUBLIC PROSECUTOR



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RESPONDENTS/PETITIONER & RESPONDENT NO.1 TO 3, 5, 6
AND 8 IN WP(C):

- 1 KSHITHI P.V
AGED 18 YEARS
D/O RANJITH KUMAR P V, AISHWARYA, AYATHRAVAYAL,
KARIVELLUR, PAYYANNOOR, KANNUR DISTRICT,
PIN - 670521.
- 2 UNION OF INDIA
REPRESENTED BY ITS SECRETARY, MINISTRY OF
EDUCATION, SHASTRI BHAVAN, NEW DELHI,
PIN - 110001.
- 3 SECRETARY,
MINISTRY OF HEALTH AND FAMILY WELFARE,
GOVERNMENT OF INDIA, NIRMAN BHAVAN, NEW DELHI,
PIN - 110001.
- 4 NATIONAL MEDICAL COMMISSION,
REPRESENTED BY ITS CHAIRMAN (FORMERLY MEDICAL
COUNCIL OF INDIA), POCKET -14, SECTOR-8, DWARAKA
PHASE-1, NEW DELHI, PIN - 110077.
- 5 NATIONAL TESTING AGENCY
REPRESENTED BY ITS DIRECTOR GENERAL,
DEPARTMENT OF HIGHER EDUCATION, MINISTRY OF HUMAN
RESOURCES, DEVELOPMENT, R.K PURAM, NEW DELHI,
PIN - 110066.
- 6 MEDICAL BOARD FOR DISABILITY (DESIGNATED DISABILITY
CENTRE),
MEDICAL COLLEGE, REPRESENTED BY ITS CHAIRMAN,
MEDICAL COLLEGE HOSPITAL, THIRUVANANTHAPURAM
DISTRICT, PIN - 695011.
- 7 THE STATE COMMISSIONER
STATE COMMISSIONERATE FOR PERSONS WITH
DISABILITIES, ANJANEYA, TC -9/1023(1),



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GROUND FLOOR, SASTHAMANGALAM, THIRUVANANTHAPURAM
DISTRICT, PIN - 695010.

SRI. K.S. PRENJITH KUMAR, SC.
SRI. P. DEEPAK, SR.
SRI. DEEPAK RAJ
SRI.T.C.KRISHNA

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
20.09.2024, ALONG WITH WA.1480/2024 AND CONNECTED CASES, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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T.R. RAVI & M.B. SNEHALATHA, JJ.

W.A. No.1480 of 2024 in W.P.(C) No.29803 of 2024,
W.A. No. 1481 of 2024 in W.P.(C) No.28507 of 2024
&
W.A. No.1482 of 2024 in W.P.(C) No.29723 of 2024

Dated this the 20th day of September, 2024

JUDGMENT

T.R. RAVI, J.

These appeals have been preferred against the common judgment in W.P.(C) No.29803 of 2024 and connected cases. The issue relates to the admission to the Medical and Allied courses for which a reservation is provided for persons with disabilities. Section 32 of the Persons with Disabilities Act, 2016 (for short 'the Act') provides for reservation in higher educational institutions and it says that all Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five per cent



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seats for persons with benchmark disabilities. Section 2(r) of the Act defines “person with benchmark disabilities” as a person with not less than forty per cent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority. The “certifying authority” as per Section 2(e) means an authority designated under Section 57(1) of the Act. Section 57(1) says that the appropriate Government shall designate persons, having requisite qualifications and experience, as certifying authorities, who shall be competent to issue the certificate of disability. The State Government has, in terms of Section 57, designated certifying authorities.

2. The writ petitioners are persons in whose favour the certifying authorities have issued certificates of disability. The prospectus for admission to the Medical and Allied courses, in addition to what is stated in the Statute says that the



applications which are to be uploaded need not annex the certificates which have been issued to show the physical disability status and all that is required is to indicate in the application that the benefit is being claimed. The prospectus further says that the State Medical Board constituted as per the Government Order dated 17.02.2020 will examine the degree of physical disability of the candidates, who are provisionally included in this category.

3. In the case of the writ petitioners, the State Medical Board so constituted, has taken a view that they are not eligible for applying under the category of physically disabled persons since their physical disability is less than forty per cent. It is aggrieved by such certification that the writ petitions were filed. The contention raised by the writ petitioners is that, when the Statute has prescribed the method of certifying a person with physical disability, an extra statutory method of assessment cannot be prescribed by the prospectus. It is pointed out that



under the Statute, a person aggrieved by the certificate issued by the certifying authority has a right of appeal, while such a right is not available to a person, whose eligibility is decided by the State Medical Board constituted under the prospectus. It is hence submitted that what is being done is a review of a certificate which is already issued by the certifying Authority by another Board which is also constituted by the State Government. It is also pointed out that while performing such an exercise, there is no reasoning stated as to why the State Medical Board constituted as per the prospectus has deviated from the certification which has been granted by the certifying authority appointed under the Statute.

4. The learned Single Judge after going into the provisions of the Statute and the Rules and the several judgments which have been cited, came to the conclusion that the writ petitioners are entitled to succeed and directed the Commissioner of Entrance Examinations to re-consider the



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eligibility of the writ petitioners on the basis of the certificates issued to them by the certifying authority as contemplated under Section 57 of the RPwD Act, 2016 and if they satisfy the criteria of benchmark disability as per the Act, to include them in the said category. Aggrieved by the judgment the State has preferred these appeals.

5. The contention raised in these appeals is that the judgment of the learned Single Judge is against the law laid down by a Division Bench of this Court in **Aswathy P. (Minor) v. State of Kerala and Others** [2011 KHC 2364]. It is also submitted that the judgment has virtually taken away the power of the State Government to have a uniform procedure for assessment of the degree of physical disability of a candidate and there will be no method for correcting a certificate, if there is a mistake going by the guidelines which have been issued by the National Medical Commission. The learned Single Judge has considered the judgment of the Division Bench and held that the



same will not be binding in view of the fact that there is a considerable change brought about by the 2016 Act.

6. We do not find any reason to take a different view from what has been stated in the judgment of the learned Single Judge as regards the law on the point. Unlike the earlier enactment, the 2016 Act specifically provides for certifying persons with physical disability and there is also an appellate remedy available for correction of a mistake, if any committed by the certifying authority. The person with physical disability itself is defined in terms of a certification by the designated Certifying Authority. The effect of the Statute cannot be taken away by certain conditions imposed in the prospectus. This does not mean that the State is powerless to adopt a uniform procedure when it comes to admissions to the Professional Colleges. It is always open to the State to declare that the certifying authority for the purpose of admission to Medical Colleges will be the State Medical Board which is to be constituted as per the prospectus.



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All that is required is a proper notification under Section 57. Such a process would also ensure uniformity since the very same Board will be considering the case of all the candidates, who are claiming benefit of reservation and the mischief caused by the subjectivity of the decisions by several certifying authorities can also be avoided.

These appeals are hence disposed of with the above observations.

Sd/-

**T.R.RAVI
JUDGE**

Sd/-

**M.B. SNEHALATHA
JUDGE**

mpm