

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN
FRIDAY, THE 19TH DAY OF AUGUST 2022 / 28TH SRAVANA, 1944
WP(C) NO. 5503 OF 2022

PETITIONER:

FATHIMA THAZKIYA O
AGED 21 YEARS
D/O. MOHAMMED ABDUL SLAM OVUNGAL, OVUNGAL HOUSE,
KIZHAKKETHALA, MANJERI COLLEGE P.O., MALAPPURAM-676 122

BY ADVS.
ASHIK K.MOHAMED ALI
KURIAN JOSEPH (ARAKKUNNAM)
SAJNA T.UMMER
VISHNU V. NAIR

RESPONDENTS:

- 1 NATIONAL MEDICAL COMMISSION
POCKET 14, PHASE I, DWARAKA , SECTOR 8, NEW DELHI-110 077,
REPRESENTED BY ITS SECRETARY-GENERAL
- 2 MINISTRY OF HEALTH AND FAMILY WELFARE,
GOVERNMENT OF INDIA, "A" WING, NIRMAN BHAVAN, NEW DELHI-110
011 , REPRESENTED BY ITS SECRETARY
- 3 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001
- 4 HEALTH AND FAMILY WELFARE DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001,
REPRESENTED BY ITS PRINCIPAL SECRETARY
- 5 DIRECTORATE OF MEDICAL EDUCATION,
MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM-695 011 ,
REPRESENTED BY ITS DIRECTOR
- 6 THE COMMISSIONER OF ENTRANCE EXAMINATIONS,
5TH FLOOR, KSHB BUILDING, SS KOVIL ROAD, THIRUVANANTHAPURAM-
695 001
- 7 KERALA UNIVERSITY OF HEALTH SCIENCES,
MEDICAL COLLEGE P.O., THRISSUR-680 596, REPRESENTED BY ITS

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

REGISTRAR

- 8 THE TRAVANCORE-COCHIN MEDICAL COUNCIL (KERALA STATE
MEDICAL COUNCILS),
COMBINED COUNCIL BUILDING, RED CROSS ROAD,
THIRUVANANTHAPURAM-695 035, REPRESENTED BY ITS
REGISTRAR
- 9 KERALA STATE LEGAL SERVICES AUTHORITY,
HIGH COURT COMPOUND, ERNAKULAM-682 0-31,
REPRESENTED BY ITS MEMBER SECRETARY

BY ADVS.

TITUS MANI

MANU S., ASG OF INDIA()

ADVOCATE GENERAL OFFICE KERALA

P.SREEKUMAR

N.RAGHURAJ

GANGESH K B

SRI.P.G.PRAMOD, GOVERNMENT PLEADER(GP-50)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
19.08.2022, ALONG WITH WP(C).5851/2022, 24112/2022, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY, THE 19TH DAY OF AUGUST 2022 / 28TH SRAVANA, 1944

WP(C) NO. 5851 OF 2022

PETITIONERS:

- 1 KERALA CHRISTIAN PROFESSIONAL COLLEGE MANAGEMENT
FEDERATION, REPRESENTED BY THE MANAGING TRUSTEE,
RAJAGIRI VALLEY P.O, KOCHI 682 031
- 2 THE DIRECTOR, JUBILEE MISSION MEDICAL COLLEGE &
RESEARCH INSTITUTE, TRICHUR 680 006
- 3 THE DIRECTOR, AMALA INSTITUTE OF MEDICAL SCIENCES,
AMALA NAGAR P.O, THRISSUR 680 555
- 4 THE SECRETARY, MALANKARA ORTHODOX SYRIAN CHURCH
MEDICAL COLLEGE, KOLENCHERRY, ERNAKULAM 682 311
- 5 THE DIRECTOR
PUSHPAGIRI INSTITUTE OF MEDICAL SCIENCES, TIRUVALLA 689
191

BY ADVS.
KURIAN GEORGE KANNANTHANAM (SR.)
TONY GEORGE KANNANTHANAM
THOMAS GEORGE

RESPONDENTS:

- 1 UNION OF INDIA

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

REPRESENTED BY ITS SECRETARY, HEALTH & FAMILY WELFARE
DEPARTMENT, MINISTRY OF HEALTH & FAMILY WELFARE,
NIRMAN BHAVAN, NEW DELHI 110011.

- 2 THE NATIONAL MEDICAL COMMISSION (N.M.C.),
REPRESENTED BY ITS SECRETARY, POCKER 4, PHASE I,
DWARAKA, SECTOR 8, NEW DELHI - 110001
- 3 ADDL.R3: STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT
HEALTH & FAMILY WELFARE DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM - 695001.
- 4 ADDL.R4: FEE REGULATORY COMMITTEE FOR MEDICAL
EDUCATION IN KERALA,
REPRESENTED BY ITS MEMBER SECRETARY, M.P.APPAN ROAD,
VAZHUTHAKKAD, TRIVANDRUM - 695014 ADDL.R3 & R4 ARE
IMPLEADED AS PER ORDER DATED 08.03.2022 IN NO.1/2022.

BY ADVS.
MANU S., ASG OF INDIA
TITUS MANI
MARY BENJEMIN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
19.08.2022, ALONG WITH WP(C).5503/2022 AND CONNECTED CASES, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY, THE 19TH DAY OF AUGUST 2022 / 28TH SRAVANA, 1944

WP(C) NO. 24112 OF 2022

PETITIONERS:

- 1 KERALA PRIVATE MEDICAL COLLEGE MANAGEMENT ASSOCIATION, REG. NO. ER-188/07, MALABAR MEDICAL COLLEGE CAMPUS, MODAKKALLUR.P.O., ATHOLI, CALICUT - 673 315, REPRESENTED BY SECRETARY.
- 2 THE PRINCIPAL, KARUNA MEDICAL COLLEGE, VILAYODI.P.O., CHITTOOR, PALAKKAD - 678004.

BY ADVS.

KURIAN GEORGE KANNANTHANAM (SR.)

P.M.SANEER

TONY GEORGE KANNANTHANAM

RESPONDENTS:

- 1 THE UNION OF INDIA, REPRESENTED BY ITS SECRETARY, HEALTH & FAMILY WELFARE DEPARTMENT, MINISTRY OF HEALTH & FAMILY WELFARE, NIRMAN BHAVAN, NEW DELHI - 110 011.
- 2 THE NATIONAL MEDICAL COMMISSION (N.M.C), REPRESENTED BY ITS SECRETARY, POCKET 4, PHASE I, DWARAKA, SECTOR 8, NEW DELHI - 110001.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19.08.2022, ALONG WITH WP(C).5503/2022 AND CONNECTED

CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

C.R

JUDGMENT

Dated this the 19th day of August, 2022.

The National Medical Commission is enlivened by an Act of Parliament, namely, the National Medical Commission Act, 2019. The pivotal aim of the Commission, *inter alia*, is to improve access to quality and affordable medical education in India; to which end, it has been statutorily vested with the competence to guide the modus and manner of fixing of fees and other charges in Private Medical Institutions and Deemed-to-be-Universities.

2. Among the three writ petitions above, two

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

have been filed by Associations/Federations of Managements of Self Financing Private Medical Colleges in Kerala, impugning an Office Memorandum (hereinafter referred to as the "OM", for short) issued by the National Medical Commission (hereinafter referred to as the "NMC", for ease) stipulating guidelines for the determination of fees in such institutions; while, W.P. (C)No.5503/2022 has been filed by a student of Medicine, seeking that the said "OM" - produced as Ext.P7 therein - be directed to be implemented in Kerala and it be ordered to be published.

3. I have heard Sri.Kurian George Kannanthanam - learned Senior Counsel, instructed by Sri.P.M.Saneer - learned counsel for the petitioners in W.P. (C)Nos.5851/2022 and 24112/2022,; Sri.Ashik

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

K.Mohamed Ali - learned counsel for the petitioner in W.P. (C)No.5503/2022; Sri.Titus Mani Vettom - learned Standing Counsel for the NMC; Sri.N.Raghuraj - learned Standing Counsel appearing for the Travancore-Cochin Medical Council; Sri.S.Manu - Assistant Solicitor General for the Union of India; Smt.Mary Benjamin - learned Standing Counsel for Admission and Fee Regulatory Committee (AFRC) in Kerala; Sri.K.B.Gangesh - learned counsel appearing for the Kerala State Legal Services Authority and Sri.P.G.Pramod, learned Government Pleader for the State of Kerala and its functionaries.

4. Before I proceed with the evaluation and assessment of the syllogistic contentions of the rival parties, it will do well to be aware that the fixation of fees in Private Medical Colleges in Kerala is governed by the

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

Kerala Medical Education (Regulation and Control of Admission to Private Medical Educational Institutions) Act, 2017 (to be referred to as the 'Kerala Medical Education Act' henceforth). Under the mandate of this Act, an Admission and Fee Regulatory Committee (AFRC) has been constituted, statutorily vested with the power of fixing fees for medical education in the Private Sector, within the purlieus of various well established imperatives, including averting of profiteering and usurious charging.

5. The AFRC has been, admittedly, functioning under the sanction of the 'Kerala Medical Education Act', ever since it came into force; and it thus fixes fees in Kerala for all Private Medical Colleges, after assessment of their individual educational facilities and such other

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

requirements as are stipulated therein; and the amount so fixed is common for every institution - though perhaps different from each other - it being edified on the differences in infrastructural and other facilities offered.

6. At this juncture, it must also be borne in mind that, in Kerala, after the year 2017 - when the 'Kerala Medical Education Act' came into force - there is no longer 'Government Quota' and 'Management Quota', as far as students in the private Medical Colleges are concerned; and that all the students to such institutions are allotted by the Commissioner for Entrance Examinations of the Government of Kerala, through a common Entrance Examination and Counselling process.

7. I have indited the afore preface because, the

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

proceedings of the NMC impugned and sought to be implemented - as the case may be, is its "OM" dated 03.02.2022, which mandates that certain enumerated guiding principles be followed for determining the fee and other charges in Private Medical Colleges and Deemed Universities by the competent Authorities.

8. When one examines the aforementioned 'OM', though it essentially catalogues the Guidelines/Parameters to be followed by the Authorities vested with the power to determine the fee in Private Medical Colleges, there is one limb - which appears in its first page itself - mandating that 50% of the seats in such Colleges "*should be at par with the Fee in the Government Medical Colleges of a particular State.*" (sic). It then goes on to explicate that "*the benefit of this fee*

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

structure would be first made available to those candidates who have availed Government quota seats, but limited to the extent of 50% of total sanctioned strength of the respective medical college/deemed university.” (sic).

9. The "OM" has been assailed by the Associations of Managements of Private Colleges through W.P.(C)Nos.24112/2022 and 5851/2022; while, the petitioner in W.P.(C)No.5503/2022, as said above, seeks the same to be implemented and that the “NMC” be directed to publish it adequately.

10. Sri.Kurian George Kannanthanam - learned Senior Counsel, began his submissions pointing out that the “OM” of the “NMC” suffers from two fundamental flaws: namely, that it could not have fixed a fee for any

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

percentile of the seats, even going by the provisions of the National Medical Commission Act, 2009 ('NMC Act', for short), and that it could have only stipulated “guidelines” for the same; and secondly, because it appears to have proceeded on an incorrect assumption that, in Kerala, there are even now two streams for allotment of students, namely 'Government Quota' and 'Management Quota'.

11. The learned Senior Counsel expatiated his arguments, drawing my attention to Section 10(1)(i) of the 'NMC Act' to show that, at the best, the “NMC” can only frame guidelines for determination of fees to fifty percent of the seats in a Private Medical Institution or Deemed University, but cannot fix the same on its own, particularly when there are Statutory mechanisms

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

available to each State in India, vested with the power to do so. He argued that, in that sense, the action of the "NMC" in having brought out the "OM", fixing a particular fee for 50% of the seats, is in excess of the powers conceded to them under the afore statutory provisions; then adding that, in any event, Section 10(1)(i) of the 'NMC Act' is unconstitutional, since the Union of India does not obtain any nomothetic competence to have legislated such a provision.

12. In response to the afore submissions of Sri.Kurian George Kannanthanam, Sri.Titus Mani Vettom - learned Standing Counsel for the "NMC", began, relying upon a statement filed by him on behalf of the 2nd respondent, which is accompanied by several documents and materials. He also brought to my

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

attention that he has, in addition, filed a "Skeletal Argument Note" dated 19.08.2022; and pointed out that the impugned "OM" is not one confined to 50% of the seats in Private Medical Colleges alone, but to all of them, namely 100%. He then showed me that the "OM" has two parts - the first one applying to 50% of the seats; and the other applying to 100% of them, in every Private Medical College and Deemed University.

13. Sri.Titus Mani Vettom then argued that the "OM" encompasses the principles to be followed by the Competent Fee Determining Authority while assessing and computing the fee and another charges for 100% of the seats; but affirms, as far as the first 50% of the seats is concerned, that the students allotted against it shall be charged only that fee which is fixed for Government

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

Medical Colleges by the respective State or Union Territory. He justified the "OM" contending that Section 10(1)(i) of the "NMC Act", has been legislated by the Parliament with incontestable constitutional Authority; and that this is true for both of its aforementioned limbs, which, he vehemently argued, is solely for the benefit of the students and to make available affordable medical education, which is *sine qua* non for a healthy nation. He then pointed out that the statement filed by him on behalf of the 2nd respondent details the reasons which persuaded the "NMC" to issue the "OM"; asserting that the said exercise was not merely statutorily authorised and sanctioned, but constitutionally mandated, since higher education is a vehicle for Social Engineering, especially in the medical sector.

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

14. Sri.Titus Mani Vettom then explained that the recommendations made by the "NMC" in the "OM" was based on an Expert Committee Report, which had meticulously evaluated the intricacies of Medical Education and its unexpendable requisites in India; and that, therefore, it adopts a Pan-India approach, rather than a parochial one.

15. Pertinently, the learned Standing Counsel for the "NMC" concluded his submissions saying that, though the "OM" contains general criteria and guidelines - which are to be followed in the case of all Private Medical Colleges and Deemed Universities in India - it certainly can be modified or modulated by the respective Statutory Fee Determination Authorities, taking note of the specific social and educational fabric of the individual

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

States and Union Territories.

16. Smt.Mary Benjamin - learned Standing Counsel for the "AFRC", submitted that, though her client does not want to join issue against the "OM" of the "NMC", the fact remains that they have been fixing fee for Private Medical Colleges and Deemed Universities in Kerala, from the year 2017, for all the seats of every private college - there being no "Government quota" or "Management quota" in Kerala from the year 2017 - taking note of and evaluating the infrastructural facilities and other requirements as are legally and statutorily mandated; thus ensuring that there is no profit making or usurious charging on any student. She added that, therefore, if the first limb of the "OM" of the "NMC" is now implemented in 50% of the seats in the Private Medical

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

Colleges and Deemed Universities, axiomatically, the additional requirement of resources will have to be found from the balance 50% seats, leading to an escalation of the fee structure *qua* it, and burdening such students. She submitted that, therefore, she leaves it to this Court to take an apposite decision in this regard.

17. Sri.Ashik K.Muhamed Ali - learned counsel for the petitioner in W.P.(C).No.5503 of 2022, adopted and supported the contentions of Sri.Titus Mani Vettom - learned Standing Counsel for the NMC, saying that the "OM" must be seen to be in furtherance of the laudable objective of providing protection to students from unreasonably high charges for pursuing education, which is his/her constitutional right. He asserted that, therefore, the "OM" not merely requires to be

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

implemented, but also has to be brought to the notice of all, through proper publication, by the "NMC".

18. Sri.S.Manu, learned Assistant Solicitor General and Sri.N.Reghuraj, appearing for the Union of India and the Travancore Cochin Medical Council, respectively, submitted that their respective clients have no specific comment to make on the controversy impelled in these cases at this time and that they will abide by any decision to be taken by this Court.

19. Sri.S.Manu, however, submitted that Section 10(1)(i) of the "NMC Act" is not only constitutionally competent, but is a necessary legislation because, without such powers being vested with the "NMC", Private Medical Colleges and Deemed Universities will be emboldened to fix any fee that they may deem. He

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

submitted that, however, since Kerala already has a statutory mechanism to arrest and check unreasonable and arbitrary fees, the guidelines of the "NMC" will have to be treated as being supplementary - to be followed by the AFRC appositely; adding that, if this is done, there would be a perfect synergy between the statutory scheme and the principles evolved by the said Commission.

20. Sri.P.G.Pramod - learned Government Pleader, submitted that the Government of Kerala has already ensured, through the "Kerala Medical Education Act", that the AFRC is vested with sufficient powers to fix and modulate the fee structure in the Private Medical education sector, ensuring that there is no profit making and other deleterious tendencies. He submitted that,

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

therefore, even without the "NMC" having brought out the "OM", every guideline/principle stipulated therein has already been followed and is being implicitly implemented by the AFRC.

21. I have given the afore dialectical contentions great amount of thought.

22. There can be little doubt that Section 10(1)(i) of the "NMC Act", grants power to the "NMC" to frame guidelines for determination of fees and all other charges in respect of 50% seats in Private Medical Institutions and Deemed Universities. Though the petitioners in W.P.(C).No.5851 of 2022 and W.P.(C).No.24112 of 2022 - being the managements of Private Institutions - challenge this section, I am of the firm view that it will not be necessary for this Court to consider it on its merits

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

because the same is intended to achieve a laudatory purpose, being to arrest pernicious tendencies within the educational system.

23. True, the afore provision only deals with the power of the "NMC" *qua* 50% of seats in Private Medical Institutions; but the "OM" in question proffers twenty five directives to be adopted and followed by the competent Authorities in fixing the fee as "general principles".

24. That being said, when one reads the "OM" in its full, it becomes apodictic that its contents are intended only as guidelines, within the mandate of the afore statutory provision; and, pertinently, its learned Standing Counsel - Sri.Titus Mani Vettom, affirms that it is upto the respective statutory fee determining Authorities of the States and Union Territories to adopt

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

and implement it, while completing their exercise as statutorily required.

25. However, the difficulty is with respect to the singular stipulation in the "OM", that the fees of 50% of the seats in Private Medical Colleges and Deemed Universities "should be at par" with the fee in the Government Medical Colleges. The problem with this seemingly inflexible stipulation is that the fee for Government Medical Colleges is fixed by the State of Kerala through its functionaries, and not by the AFRC.

26. That apart, as has been already pointed out, the "OM" then says that the benefit of the subsidised tuition fee be offered to those students allotted under the "Government Quota". Of course, the OM cannot be found fault with this sole account because, as indited earlier, it

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

is intended for a Pan-India operation and not specifically for Kerala alone. Therefore, there may be States or Union Territories where quotas for "Government" and the "Management" are still in vogue; but, as far as our State is concerned, admittedly from the year 2017, there are no such quotas and every student to all Private Medical Colleges and Deemed Universities is allotted only by the Commissioner for Entrance Examinations, through a common entrance test and counselling Program.

27. Ineluctably, therefore, the "OM", to the extent to which it relates to Kerala, cannot be applied in its toto and will require to be modulated and read down to the extent necessary.

28. I, therefore, enquired with Sri.Titus Mani Vettom on this aspect and he affirmed that since the

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

"OM" is intended for an all-India application, it may be necessary for it to be modified *qua* individual States or Union Territories, as and when it becomes so warranted, taking note of the specificities of the factual circumstances and inputs. He added that, therefore, he leaves it to the Court to take an apposite decision in this regard; however, affirming that the said stipulation must be followed by AFRC and other statutory bodies, as far as it is practically possible, since it is intended to promote social engineering, through education of all eligible students.

29. The afore explication of Sri.Titus Mani Vettom certainly clings the issue because, the "OM" is certainly not specifically designed for Kerala alone. When the State of Kerala no longer has different quotas and when

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

the AFRC fixes fees in every seat in Private Medical Colleges or Deemed Universities, ensuring that the indispensable and vital principles of non-profiteering and other nocuous and malignant tendencies are arrested, surely, the twenty five guidelines or parameters issued in the "OM" should be the guiding principles for the said committee; and I record that this has been affirmed by Smt.Mary Benjamin, their learned Standing Counsel.

30. As I have already said above, the sole quandary in the "OM", as far as Kerala is concerned, is with respect to the fixing of fees in 50% seats in the Private Medical Colleges and Deemed Universities, to be "on par" with that fixed by the Government for the seats in the Government Medical Colleges. If the "OM" is directed to be enforced in such manner, it will

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

indubitably lead to a piquant predicament where the fees for the balance 50% seats in the said colleges will have to be escalated because, otherwise, the institutions cannot sustain, especially since, even as on today, the AFRC is fixing the minimum requisite fee for all students taking into account infrastructural investments, future prospects and such other criteria as are statutorily mandated, but ensuring that there is absolutely no leeway for profiteering in any manner.

31. Ironically, viewed from the correct perspective, the implementation of the afore mandate of the "OM" would be highly iniquitous in Kerala, because it expects the benefits of subsidisation to flow to the students in the "Government quota", presumably under the often presumed impression that such students are more

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

meritorious; but on our State there is no such quota and every student allotted to a Private Institution or Deemed University is "on par" with those allotted to the Government Colleges and all such allotments are made by the Commissioner of Entrance Examinations alone. Hence it would also be an impossibility in our state to enforce the "OM" to the aforementioned extent since all students in the Colleges and Deemed Universities are identically placed, it being even if possible - being arbitrary and discriminatory.

32. I am certain that the "NMC" never intended that their "OM" should be used to either cross-subsidise education -- which is expressly proscribed by the Hon'ble Supreme Court; or to burden one section of students at the cost of the other, though they are all similarly, if not

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

identically, situated and placed in Kerala, after the year 2017, when the "Kerala Medical Education Act" came into being.

In the afore circumstances,

(a) W.P.(C).No.5851 of 2022 and W.P.(C).No.24112 of 2022 are ordered, directing the AFRC to implicitly abide by all the "guidelines" postulated by the NMC in their Office Memorandum dated 03.02.2022, while fixing the fees for all seats in all Private Medical Colleges and Deemed-to-be Universities in Kerala except the stipulation therein for fixing the fee of 50% of the seats in the Private Medical Colleges or Deemed Universities on par with the seats in the Government Medical Colleges.

(b) Consequential to the declarations above, which

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

I reiteratingly clarify are in the context of the State of Kerala alone, W.P.(C).No.5503 of 2022 will also stand ordered, but to the afore extent.

(c) It is reiteratingly clarified that this Court has not struck down Section 10(1)(i) of the "NMC Act"; and therefore, that all contentions with respect to the same are left open to be impelled by any person or entity, including the petitioners herein, if it becomes so warranted in future.

**Sd/-
DEVAN RAMACHANDRAN
JUDGE**

AKV + Raj.
20.08.2022.

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

APPENDIX OF WP(C) 5851/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE PUBLIC NOTICE NO. NMC/SECY/2021/30/008252 DATED 25-05-2021 ISSUED BY THE 2ND RESPONDENT
- Exhibit P2 TRUE COPY OF THE DRAFT GUIDELINES FOR THE DETERMINATION OF FEES FOR MBBS AND POST GRADUATE (PG) COURSES
- Exhibit P3 TRUE COPY OF THE TRUE COPY OF THE RESPONSE DATED 4-6-2021 SUBMITTED ON BEHALF OF 4TH PETITIONER
- Exhibit P4 TRUE COPY OF THE OFFICE MEMORANDUM DATED 3-2-2022 ISSUED BY THE 2ND RESPONDENT
- Exhibit P5 TRUE COPY OF THE NOTIFICATION NO CEE/3600/KEAM 2021/TA4 DATED 24-1-2022 OF THE GOVERNMENT
- Exhibit P6 TRUE COPY OF THE CERTIFICATE DATED 21-6-2006 ISSUED IN RESPECT OF THE 4TH PETITIONER
- Exhibit P7 TRUE COPY OF THE SEAT MATRIX FOR MBBS ADMISSION DATED 26-1-2022 ISSUED BY THE DIRECTOR OF MEDICAL EDUCATION
- ANNEXURE R2 (A) COPY OF GAZETTE NOTIFICATION S.O 3263(E) DATED 24.09.2020

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

- ANNEXURE R2 (B) COPY OF GAZETTE NOTIFICATION S.O
3262(E) DATED 24.09.2020
- ANNEXURE R2 (C) COPY OF LETTER BY GOVERNMENT OFF
INDIA, MINISTRY OF HEALTH &FAMILY
WELFARE DATED 02.09.2019
- ANNEXURE R2 (D) COPY OF REPORT OF THE EXPERT GROUP
CONSTITUTED BY BOG-MCI FOR DETERMINING
THE FEES AND ALL OTHER CHARGES IN
RESPECT OF 50% OF SEATS IN PRIVATE
MEDICAL INSTITUTIONS/DEEMED TO BE
UNIVERSITIES
- ANNEXURE R2 (E) MEMORANDUM DATED 24.12.2020 ISSUED BY
NATIONAL MEDICAL COMMISSION
CONSTITUTING EXPERT GROUP
- ANNEXURE R2 (F) COPY OF REPORT OF "THE EXPERT GROUP
CONSTITUTED BY THE NATIONAL MEDICAL
COMMISSION"
- ANNEXURE R2 (G) COPY OF PUBLIC NOTICE DATED 25.05.2021
ALONG WITH THE DRAFT GUIDELINES
- ANNEXURE R2 (H) COPY OF COMPILATION OF RESPONSES
RECEIVED FROM GENERAL PUBLIC/ MEDICAL
INSTITUTIONS/ASSOCIATIONS ETC
- ANNEXURE R2 (I) COPY OF OFFICE DATED 21.10.2021
ISSUED BY NATIONAL MEDICAL COMMISSION

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

APPENDIX OF WP(C) 24112/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE LIST OF THE MEMBER OF KERALA PRIVATE MEDICAL COLLEGE MANAGEMENT ASSOCIATION.
- Exhibit P2 TRUE COPY OF THE NOTICE PUBLIC NO.NMC/SECY/2021/30/008252 DATED 25-5-2021 ISSUED BY THE 2ND RESPONDENT.
- Exhibit P3 TRUE COPY OF THE DRAFT GUIDELINES FOR THE DETERMINATION OF FEES FOR MBBS AND POST GRADUATE (PG) COURSES.
- Exhibit P4 TRUE COPY OF THE REPRESENTATION DATED 1-6- 2021 ISSUED TO THE 2ND RESPONDENT.
- Exhibit P5 TRUE COPY OF THE OFFICE MEMORANDUM DATED 3-2-2022 ISSUED BY THE 2ND RESPONDENT.
- Exhibit P6 TRUE COPY OF THE NOTIFICATION NO.CEE/3600/KEAM-2021/TA4 DT 24-1-2022.
- Exhibit P7 TRUE COPY OF THE SEAT MATRIX FOR MBBS ADMISSION DATED 26-1-2022 ISSUED BY THE DIRECTOR OF MEDICAL EDUCATION.

W.P.(C) No. 5503 of 2022
W.P.(C) No. 5851 of 2022
W.P.(C) No. 24112 of 2022

APPENDIX OF WP(C) 5503/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE APPLICATION FORM FOR THE NATIONAL ELIGIBILITY CUM ENTRANCE TEST (UG) 2021 SUBMITTED BY THE PETITIONER
- Exhibit P2 TRUE COPY OF THE ADMIT CARD- PROVISIONAL OF THE PETITIONER FOR THE NATIONAL ELIGIBILITY CUM ENTRANCE TEST (UG) 2021
- Exhibit P3 TRUE COPY OF THE CANDIDATE'S DATASHEET IN THE NAME OF THE PETITIONER
- Exhibit P4 TRUE COPY OF THE DOCUMENT SHOWING THE DETAILS OF THE NEET RANK OF THE PETITIONER
- Exhibit P5 TRUE COPY OF THE OPTION LIST IN THE NAME OF THE PETITIONER
- Exhibit P6 TRUE COPY OF THE LOCKED CHOICES IN THE NAME OF THE PETITIONER
- Exhibit P7 TRUE COPY OF THE GUIDELINES DATED 3.2.2022 ISSUED BY THE NATIONAL MEDICAL COMMISSION
- Exhibit P8 TRUE COPY OF THE RELEVANT PORTION OF THE MADHYAMAM DAILY DATED 10.2.2022