

**BEFORE THE HONOURABLE HIGH COURT OF KERALA
AT ERNAKULAM**

WP(C) No. /2020

(Special Original Jurisdiction)

PETITIONERS :-

1. Akshay Krishnan,

2. Krishnendhu

RESPONDENTS: -

1. Employees State Insurance Corporation represented by its Director General, Headquarters Office, Panchadeep Bhawan, New Delhi – 110 002.
2. Union of India represented by its Secretary, Ministry of Labor and Employment, Social Security Division, Shram Shakthi Bhavan, Rafi Marg, New Delhi- 110 001
3. Director General of Health Services, Ministry of Health and Family Welfare, Government of India, Nirman Bhawan, New Delhi- 110 001
4. National Medical Commission, (Erstwhile MCI) represented by its Secretary, Pocket 14, Sector-18, Dwaraka, Phase-1, New Delhi- 110 077

(All notices to the Petitioners may be served in the address of – C.Unnikrishnan, Johnson Gomez, Indira A.V., Sanjay Johnson, Liya Elza Alex, Gajendra Singh Rajpurohit, Ananda Padmanabhan, Mahesh Chandran, Vijay Krishna Menon, Sreedevi S, John Gomez, L Expertians, JRV Complex, Market Road, North end – 682018. All notices to the Respondents may be served in the afore-mentioned address.)

**MEMORANDUM OF WRIT PETITION FILED UNDER ARTICLE 226
OF THE CONSTITUTION OF INDIA**

1. The petitioners are applicants for Wards of Insured Persons (IP) Quota seats in ESIC Medical/Dental colleges Employees State Insurance Corporation for academic session 2020-21 and are highly aggrieved by the notice dated 28.09.2020 issued by the 1st respondent informing that seats filled up in previous years

under IP quota in ESIC Medical/Dental colleges would be filled up by DGHS, Government of India as All-India quota seats for 2020-21. Thereafter, vide notice dated 30.09.2020, it is further informed that the decision to cancel IP Quota, was taken in view of the common order dated 07.06.2019 of the Hon'ble High Court of Madras in W.P 35853/2016 and 17948/2017 and the judgement dated 06.08.2019 in W.A No.2274/2019 and 2304/2019 and also the order dated 15.07.2019 of the Hon'ble Supreme Court of India in S.L.P (C) Diary No's 24032/2019. A true copy of the Notice No. L-11/12/3/UG-Adm./2020-21/MEC dated 28.09.2020 issued by the 1st respondent is produced herewith and marked as **Exhibit P1**. A true copy of the Notice No. L-11/12/3/UG-Adm./2020-21/MEC dated 30.09.2020 issued by the 1st respondent is produced herewith and marked as **Exhibit P2**.

2. It is humbly submitted that none of the above referred orders of the High Court or Supreme Court enables the 1st respondent to cancel or abolish the IP Quota in ESIC Medical/ Dental colleges.
3. The judgment of the learned single judge of the Madras High Court in WP.35853/2016 and 17948/2017 declared that the reservation policy of ESIC providing 20% reservation to the Wards of Insured Persons as unconstitutional and illegal. A true copy of the common order dated 07.06.2019 of the Hon'ble Madras High Court is produced herewith and marked as **Exhibit P3**.
4. Against Exhibit P3 order, W.A No.2274/2019 and W.A. No. 2304/2019 were preferred by the Director General of ESIC before the division bench and Exhibit P3 Order was stayed on 18.07.2019. While so, some aggrieved persons directly approached the Hon'ble Supreme Court against Ext.P3 order of the single bench in S.L.P (C) Diary No. 24032/2019 and the Hon'ble Supreme Court dismissed that S.L.P. on 15.07.2019 finding no merit and with an observation that in case any clarification is required, it is open for the petitioners to file a necessary application before the High Court. A true copy of the order dated 15.07.2019 in S.L.P. © No.Diary No.s 24032/2019

of the Hon'ble Supreme Court is produced herewith and marked as **Exhibit P4**.

5. Thereafter the Division Bench of the High Court on 06.08.2019, disposed off the writ appeal preferred by the Director General of ESIC recording the undertaking of the Additional Solicitor General of India that the ESIC shall immediately undertake the admission process in accordance with the relevant rules provided by the reservation of 20% of seats to the Wards of Insured Persons in the medical colleges established by the ESIC. A true copy of the Judgment dated 06.08.2019 in W.A. No. 2274 & W.A. No. 2304 of 2019 of Hon'ble Madras High Court is produced herewith and marked as **Exhibit P5**.
6. The Exhibit P5 judgment in W.A. has become final since the same has not been challenged before the Apex Court nor it has been reviewed by the Hon'ble Madras High Court thus Exhibit P3 order of the learned single bench is not in existence as of now since the same is merged with the Exhibit P5 judgment of the learned Division Bench. Therefore the legal position as of now is that none of the judgment and orders referred to by the 1st respondent in Exhibit P2 has any impact on the decision taken to cancel/abolish IP Quota as per Exhibit P1 notice. Therefore, Exhibit P1 and P2 are liable to be quashed.
7. The petitioners herein are Wards of Insured Persons under the ESI Corporation and are anticipated beneficiaries of 20% reservation policy and are highly aggrieved by the decision of the 1st respondent in scrapping the reservation policy without any basis. True copies of the hall tickets of the petitioners who are appearing for NEET 2020-21 are produced herewith and marked as **Exhibit P6**.
8. The beneficiaries of the reservation policy being highly aggrieved, sought for the help and intervention of Member of Parliament Shri. N,KPremachandran and Shri. Elamaram Kareem by which they made representations before the 1st respondent requesting to withdraw Exhibit P1 and P2 notices, however no action has been taken upon it till date. True copies of the representations dated 29.09.2020 and 30.09.2020

respectively made by the Members of Parliament is produced herewith and marked as **Exhibit P7**.

- 9.** Since no reason is stated in Exhibit P1 to cancel or abolish IP Quota in ESIC Dental/Medical college, the order is cryptic and non-speaking coupled with the fact that Exhibit P2 notice issued in continuation with Exhibit P1 notice is also not supporting the decision informed in Exhibit P1. Therefore, on that ground also Exhibit P1 is liable to be quashed.
- 10.** It is submitted that ESIC Educational Institutions are entirely funded and run by the contribution made on behalf of the insured persons and thus in that manner the ESIC colleges are self-financing colleges which also has management quota just like any other self-financing college apart from Government Quota. Unlike other self-financing colleges who charge huge capitation and allot management seats to persons from affluent classes, it was allotting the seats predominantly to the wards of industrial laborers whose income is not beyond Rs. 21,000/- per month (till 31.12.2016 it was Rs. 15,000/-) for a fees equivalent to the fees of the students allotted a seat in government quota. The allotment of seats to ESIC management quota is only to the Wards of the Insured Persons and thus it was only extending the benefit to the economically weaker sections of the Wards of Insured Persons by who's funds the educational institutions were running thus its policy were not discriminatory and violative of any provisions of law and had introduced this policy after the approval of the government. Therefore the 1st respondent cannot casually abolish the medical seats under IP quota to his whims and fancies because the beneficiaries of that scheme are the downtrodden working class and the ESI medical institutions were established with the funds of these employees.
- 11.** In fact, these ESI medical institutions were established on the basis of the mandate under S.59B of the Employees State Insurance Act, 1948 wherein it is stated as follows: - "The Corporation may establish Medical Colleges Nursing Colleges and Training Colleges for its Para Medical Staff and other employees with a view to improve the quality of services

provided under the ESI Scheme”. Once such a medical college is established utilizing the funds of the employees and employers exclusively and without obtaining any aids from the government, it will get the status of a self financing medical college and its 20% seats are earmarked as management quota. Here, that quota has been given to the meritorious candidates, whose names are figured in NEET rank list and who are Wards of Insured Persons under ESI Act. This is a beneficial arrangement to the poor and downtrodden class of employees under the ESI Act, which is a beneficial legislation enacted by the Parliament. Therefore the 1st respondent should not have taken such a harsh decision to the detriment of the beneficiaries of the beneficial legislation.

12. 1st respondent has filed an affidavit in the above lines before the Hon’ble Madras High Court in the WAs culminated in Ext.P5 judgments. In fact the Now, the 1st respondent through Exhibit P1 and Exhibit P2 has taken a contrary stand to that of stand taken in Writ Appeals before the Hon’ble Madras High Court by which it has acted in violation to Exhibit P5 judgment.

13. The petitioners herein are wards of the insured persons and are thereby beneficiaries of the 20% reservation policy, however the action of the part of 1st respondent in scrapping away of the reservation quota is violative of the rights of the petitioners and others and also violate their fundamental rights guaranteed under article 14 and 21 of the Constitution of India.

GROUND

- A. Since no reason is stated in Exhibit P1 to cancel or abolish IP Quota in ESIC Dental/Medical college, the order is cryptic and non-speaking coupled with the fact that Exhibit P2 notice issued in continuation with Exhibit P1 notice is also not supporting the decision informed in Exhibit P1. Therefore, Exhibit P1 is liable to be quashed.
- B. The allotment of seats to ESIC management quota is only to the Wards of the Insured Persons and thus it was only extending

the benefit to the economically weaker sections of the Wards of Insured Persons by who's funds the educational institutions were running thus its policy were not discriminatory and violative of any provisions of law and had introduced this policy after the approval of the government. Therefore the 1st respondent cannot casually abolish the medical seats under IP quota to his whims and fancies because the beneficiaries of that scheme are the downtrodden working class and the ESI medical institutions were established with the funds of these employees.

- C. The action of the 1st respondent in scrapping of the 20% reservation policy for the wards of the insured without any reasoning and basis is arbitrary, illegal and irregular.
- D. The 1st respondent through Exhibit P1 and P2 has taken a contrary stand as against the stand taken before Hon'ble Madras High Court and has willfully misquoted the judgments in order to scrap the reservation extended to the wards of ESI insured beneficiaries despite aware of the fact that the division bench of the Hon'ble Madras High Court had directed the 1st respondent to undertake the admission process in accordance with the relevant rules providing the reservation of 20% of seats to the wards of insured persons to the medical colleges established by the ESI Corporations immediately.
- E. The petitioners herein are wards of the insured persons and are thereby beneficiaries of the 20% reservation policy, however the action of the part of 1st respondent in scrapping away of the reservation is violative of the rights of the petitioners and violate their fundamental rights guaranteed under article 14 and 21 of the Constitution of India.
- F. The Exhibit P1 and Exhibit P2 orders curtails the rights of the insured persons and contrary to the aim and mission of ESIC. The action of the respondent no.1 is in violation of section 59 B of the Employment State Insurance Act, 1948.
- G. The ESI medical institutions were established on the basis of the mandate under S.59B of the Employees State Insurance Act, 1948 wherein it is stated as follows:- "The Corporation may establish Medical Colleges Nursing Colleges and Training

Colleges for its Para Medical Staff and other employees with a view to improve the quality of services provided under the ESI Scheme". Once such a medical college is established utilizing the funds of the employees and employers exclusively and without obtaining any aids from the government, it will get the status of a self financing medical college and its 20% seats are earmarked as management quota. Here, that quota has been given to the meritorious candidates, whose names are figured in NEET rank list and who are Wards of Insured Persons under ESI Act. This is a beneficial arrangement to the poor and downtrodden class of employees under the ESI Act, which is a beneficial legislation enacted by the Parliament. Therefore, the 1st respondent should not have taken such a harsh decision to the detriment of the beneficiaries of the beneficial legislation.

RELIEFS

Therefore, it is most humbly prayed that this Hon'ble Court may be pleased to:-

- i. Call for the records relating to the Exhibit P1 and P2 impugned notice and issue a writ of Certiorari or other appropriate writ, order or direction quashing Exts.P1 & P2.
- ii. Declare that Exts.P1 & P2 are illegal, cryptic and non speaking and cannot be allowed to stand in the eye of law.
- iii. Issue a writ of Mandamus or other appropriate writ, order or direction commanding the respondents to allot Medical /Dental UG seats to the petitioners in the 20% seats of Wards of Insured Persons quota on the basis of their merit in the NEET ranked list-2020.
- iv. Grant any other relief as the Hon'ble court deems fit.

INTERIM RELIEF

For the reasons stated above and in the accompanying affidavit, this Hon'ble court may be pleased to stay all further proceedings pursuant to Exhibit P1 and P2 forthwith, pending disposal of the Writ Petition.

Dated this the 05th of October 2020

C.UNNIKRISHNAN
Counsel for the Petitioner