

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

FRIDAY, THE 7TH DAY OF JANUARY 2022 / 17TH POUSHA, 1943

WP(C) NO. 24614 OF 2021

PETITIONERS:

- 1 DR.SREEPARVATHY.N.S
AGED 25 YEARS
D/O NARAYANAN.K, SRI.NRA 26,
NANTHAN NAGAR, NANTHANCODE,
TRIVANDRUM-695033.
- 2 DR.HARIPRASAD RAMANATHAN,
AGED 24 YEARS
S/O.N.P.RAMANATHAN, VASANTH TC 37/1322,
NEAR SREEVARAHAMKOVIL, FORT.P.O,
TRIVANDRUM.PO, PIN-695023.
- 3 DR.ADITHYA JAYARAJAN,
AGED 25 YEARS
S/O.P.K.JAYARAJAN, SRA 66, 'DIVYA' SASTHA
NAGAR, PANGODE, THIRUMALA.P.O,
THIRUVANANTHAPURAM-695006.
- 4 DR.JOSE V SIJU,
AGED 25 YEARS
S/O SIJU V JOSE, VALIYAKULANGARA HOUSE,
KOOTHATTUKULAM.P.O,
ERNAKULAM-686662.
- 5 DR.ANUPAMA.C,
AGED 25 YEARS
D/O.SURESH KUMAR, KRISHNASREE, HOUSE NO.T 51 TC
7/7647(5), MKP NAGAR,
MARUTHANKUZHY, KANJIRANPARA.P.O,
THIRUVANANTHAPURAM-695030.
- 6 DR.MANUEL DAVIS,
S/O DAVIS U THOMAS, UKKEN HOUSE,
KOTTAMURY.P.O,MALA, THRISSUR,
KERALA-680732.
- 7 DR.SANDRA.T.D,
AGED 25 YEARS
D/O.SHERLY JOSEPH, THOMPUNNAYIL HOUSE,
PADIYLOOR.P.O, IRITTY,
KANNUR, KERALA-670703.

- 8 DR.GAYATHRI ANIL,
AGED 26 YEARS
D/O ANILKUMAR, SAKETHAN HOUSE NO.34/907, PRESS
CLUB COLONY,
MAMANGALAM, EDAPPALLY.P.O, PIN-682024.
- 9 DR.ARAVIND MANOJ,
S/O DR.MANOJKUMAR.P, SIVAKRIPA, KONNAMANKARA,
ADOOR.P.O,
PATHANAMTHITTA.
- 10 DR.ARCHANA KS,
AGED 25 YEARS
D/O.SURESH BABU, SREESADAN, AMBAZHAKODE,
VIYYAKURISSI.P.O,
POTTASSERY, PALAKKAD-678593.
BY ADV S.SUJIN

RESPONDENTS:

- 1 THE COMMISSIONER FOR ENTRANCE EXAMINATIONS
5TH FLOOR, KSHB BUILDING, SS KOVIL ROAD,
SANTHI NAGAR, THIRUVANANTHAPURAM-695001.
- 2 STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO
GOVERNMENT,
GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM-695001.
- 3 ADDL.R3.DR.HRIDYA.A.K,
AGED 24 YEARS
D/O.BINDU M.R, GANDHAVATHY, T.C 2/1150(6),
KOONAMKULAM LANE, MURINJAPALAM, MEDICAL COLLEGE
P.O, THIRUVANANTHAPURAM, KERALA-695 011.

(ADDL R3 IS IMPEADED AS PER ORDER DATED
08-12-2021 IN IA 1/2021 IN WP(C) 24614/2021)

BY ADVS.
SHRI.T.SANJAY, SC, NBEMS)
SRI.P.G.PRAMOD, GOVERNMENT PLEADER
SRI.T.R.RAJESH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 07.01.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

N. NAGARESH, J.

.....
W.P.(C) No.24614 of 2021
.....

Dated this the 7th day of January, 2022

J U D G M E N T

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The petitioners, who are MBBS Graduates and who have appeared for NEET PG Examination-2021, are aggrieved by the revision of number of seats for various reserved categories. According to the petitioners, the revision has reduced the merit seats available to general candidates to 38%.

2. The petitioners state that they have appeared in the NEET PG-2021 Examination. The total number of seats in PG Courses is 833. From it, 427 seats are to be filled up by the Commissioner of Entrance Examination, based on the Rank List prepared by the National Board of Examinations (NBE). The remaining All India Quota will be filled up by the

Director General of Health Services, Government of India. All the conditions stipulated in the Prospectus will be applied to All India Quota also.

3. In Ext.P1 Prospectus, the quota earmarked for Socially and Educationally Backward Communities (SEBC) has been increased from 9% to 27%. Service Quota for in-service candidates of 10% has been introduced. The revised reservation pattern as prescribed by Ext.P1 Government Order is as follows:

SC	8%	
ST	2%	
SEBC	27%	
EWS	10%	
PD	5%	Horizontal
Service Quota	10%	Horizontal
Total	47% (excluding PD and Service Quota)	

Thus, 62% seats are kept apart for various reserved categories and only 38% is available to General candidates.

4. The petitioners argued that the Apex Court has considered constitutionality of reservations in the Post Graduate and Super Specialty Courses. The Apex Court held that the level of specialised Post Graduate reservations has to be minimum. At the undergraduate level, however, the extent of reservation can be liberal but still within the other constitutional limitations. The decision of the State Government as reflected in Ext.P1 goes against the spirit and content of the judgments of the Apex Court.

5. The Apex Court in ***Dr. Preeti Srivastava and another v. State of Madhya Pradesh and others*** [(1999) 7 SCC 120] has held that at the level of super specialisation, there cannot be any reservation because any dilution of merit at this level would adversely affect the national goal of having the best possible people at the highest levels of professional and education training. It is in public interest that we promote these skills. Such high degree of skill and expert knowledge in highly specialised areas cannot be acquired by anyone or everyone. It is for this reason that it

would be detrimental to the national interest to have reservations at this stage. Opportunities for such training are a few and it is in the national interest that these are made available to those who can profit from them the most.

6. When the Government of India introduced 27% reservation for the backward classes in the year 1990, the Hon'ble Apex Court held that merit alone must prevail in specialities and super specialities in Medicine and that there should not be any reservation. By the increase of reservation for various categories, the merit seats are sidelined and virtually reduced to the minimum of 38%. It is the basic rule of reservation that the quantum of reservation should not cross 50% limit. By Ext.P1, the total reservation is increased to 62%. Ext.P1 therefore cannot stand the scrutiny of law, contended the petitioners.

7. The 2nd respondent opposed the writ petition. The learned Government Pleader representing the 2nd respondent submitted that the apprehension that the percentage of reservation would exceed 50%, is misplaced

and incorrect. The 5% seats reserved for physically disabled persons and the 10% seats reserved for service quota, are horizontal reservations which will cut across the vertical reservations. The 10% of the total seats are set apart for economically weaker sections as per Article 15(6) of the Constitution of India. The seats reserved for economically weaker section can be in addition to the existing reservation. The 10% seats which is specially reserved for in-service candidates will apply horizontally. So, the three reservations such as 5% PD (horizontal), 10% in-service quota (horizontal) and 10% for economically weaker section cannot be reckoned with while calculating the 50% ceiling fixed by the Apex Court.

8. Article 15(5) of the Constitution enables the State to make any special provision for the advancement of any Socially or Educationally Backward Classes of citizens or for the Scheduled Caste or Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions. Therefore, there is no Constitutional bar or

embargo for the State to bring in a special provision for the advancement of any Socially and Educationally Backward Class of citizens or for the Scheduled Caste or Scheduled Tribes in the matter relating to their admission to educational institutions. Therefore, the writ petition is devoid of any merit, contended the learned Government Pleader.

9. The learned Senior Counsel assisted by the counsel for the petitioners, relied on the judgment of the Apex Court in ***M. Nagaraj and others v. Union of India and others*** [(2006) 8 SCC 212] in which it has been held that the ceiling limit of 50% is a constitutional requirement without which the structure of equality of opportunity in Article 16 would collapse. In the judgment in ***M. Nagaraj*** (Supra), the Hon'ble Apex Court has made it clear that even if the State has compelling reason as stated above, the State will have to see that its reservation provision does not lead to excessive reservation so as to breach the ceiling limit of 50% or obliterate the creamy layer or extend the reservation indefinitely.

10. In the judgment in **S.V. Joshi and others v. State of Karnataka and others [(2012) 7 SCC 41]**, the Hon'ble Apex Court held that reservation exceeding 50% could be made only on the basis of quantifiable data before the Government. Relying on the judgment of the Apex Court in **Jarnail Singh and others v. Lachhmi Narayan Gupta and others [(2018) 10 SCC 396]**, the learned Senior Counsel submitted that in the case of reservation to SC and ST, the principle of quantifiable data on backwardness, cannot be applied.

11. Citing the judgment of the Apex Court in **Chebrolu Leela Prasad Rao and others v. State of Andhra Pradesh and others [2020 (6) SLR 558 (SC)]**, the learned Senior Counsel submitted that the unconstitutionality of any reservation exceeding 50% is now well settled. The Hon'ble Apex Court has held in the judgment in **Dr. Jaishri Laxmanrao Patil v. The Chief Minister and others [2021 (3) KLT 465]** that the principles laid down in paragraph 808 (**Indra Sawhney**) with respect to Article 16(4) are clearly

applicable to Article 15(4) also. Therefore, the reservation in Medical PG seats exceeding 50% provided in Ext.P1 is clearly unconstitutional, contended the Senior Counsel.

12. Heard.

13. The issue arising for consideration is whether the respondents are justified in reserving more than 50% seats in Medical PG Courses in the State as per Ext.P1. There is no dispute that out of the 62% seats reserved for various categories, 47% is vertical reservation for SC, ST, SEBC and EWS and 15% is Horizontal reservation for Physically Disabled and Service Quota candidates.

14. The Hon'ble Apex Court considered the issue relating to reservation for persons with disabilities in the judgment in ***Union of India and another v. National Federation of the Blind and others*** [(2013) 10 SCC 772] and in paragraph 41 of the judgment held as follows:

“A perusal of Indra Sawhney (supra) would reveal that the ceiling of 50% reservation applies only to reservation in favour of other Backward classes under Article 16(4) of the Constitution of India whereas the reservation in favour of persons

with disabilities is horizontal, which is under Article 16(1) of the Constitution. In fact, this Court in the said pronouncement has used the example of 3% reservation in favour of persons with disabilities while dealing with the rule of 50% ceiling. Para 95 of the judgment clearly brings out that after selection and appointment of candidates under reservation for persons with disabilities they will be placed in the respective rosters of reserved category or open category respectively on the basis of the category to which they belong and, thus, the reservation for persons with disabilities per se has nothing to do with the ceiling of 50%. Para 95 is reproduced as follows:

“95.all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under Clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations - what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to Clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains - and should remain - the same.....”

The Apex Court categorically held that the reservation for persons with disabilities has nothing to do with the ceiling of 50% and hence, **Indra Sawhney** is not applicable with respect to the disabled persons.

15. The issue was considered in **Rajeev Kumar Gupta and others v. Union of India and others [(2016) 13 SCC 153]** and the Apex Court held that:

“The principle laid down in *Indra Sawhney* is applicable only when the State seeks to give preferential treatment in the matter of employment under State to certain classes of citizens identified to be a backward class. Article 16(4) does not disable the State from providing differential treatment (reservations) to other classes of citizens under Article 16(1) if they otherwise deserve such treatment. However, for creating such preferential treatment under law, consistent with the mandate of Article 16(1), the State cannot choose any one of the factors such as caste, religion etc. mentioned in Article 16(1) as the basis. The basis for providing reservation for PWD is physical disability and not any of the criteria forbidden under Article 16(1).”

16. Again, the issue was considered by the Apex Court in **Siddharaju v. State of Karnataka and others [2020 (1) KHC 609]**. The Apex Court held that:

“A perusal of Indra Sawhney would reveal that the ceiling of 50% reservation applies only to reservation in favour of other Backward classes under Article 16(4) of the Constitution of India whereas the reservation in favour of persons with disabilities is horizontal, which is under Article 16(1) of the Constitution. In fact, this Court in the said pronouncement has used the example of 3% reservation in favour of persons with disabilities while dealing with the rule of 50% ceiling. Para 812 of the judgment clearly brings out that after selection and appointment of candidates under reservation for persons with disabilities they will be placed in the respective rosters of reserved category or open category respectively on the basis of the category to which they belong and, thus, the reservation for persons with disabilities per se has nothing to do with the ceiling of 50%.”

17. The method of providing horizontal reservation was considered by the Apex Court in ***Rajesh Kumar Daria and others v. Rajasthan Public Service Commission and others*** [(2007) 8 SCC 785], in the context of special provision for women and the Apex Court held as follows:

“A special provision for women made under Article 15(3), in respect of employment, is a special reservation as contrasted from the social reservation under Article 16(4) The method of implementing special reservation, which is a horizontal reservation, cutting across vertical reservations, was explained by this Court in *Anil Kumar Gupta v. State of U.P.* [1995 (5) SCC 173] thus :

"...The proper and correct course is to first fill up the Open Competition quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., S.C., S.T. and B.C; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied - in case it is an overall horizontal reservation - no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom."

18. The conclusion that can be drawn from the judgments of the Apex Court is that the upper limit of 50% in reservations contemplated and laid down by the Apex Court would apply only to vertical reservation provided to SCs, STs and Backward Communities. The principle cannot be applied to horizontal reservations which cut across various communities, like reservation for Physically Disabled, Special provision for women, etc. The reservation provided to in-Service candidates will also fall within the ambit of horizontal reservation. In the present case, the reservation made in favour of various communities does not exceed

W.P.(C) No.24614/2021

: 15 :

50%. Therefore, Ext.P1 cannot be said to be illegal or unconstitutional, on that score.

The writ petition therefore fails and it is accordingly dismissed.

Sd/-

N. NAGARESH, JUDGE

aks/06.01.2022

W.P.(C) No.24614/2021

: 16 :

APPENDIX OF WP (C) 24614/2021

PETITIONER'S EXHIBITS

Exhibit P1	TRUE COPY OF NOTIFICATION (MS)NO.195/2021/H&FWD 20.10.2021.	NO.G.O. DATED
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