



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

THURSDAY, THE 2ND DAY OF NOVEMBER 2023 / 11TH KARTHIKA, 1945

WP(C) NO. 30510 OF 2023

PETITIONER:

MAHESH MOHAN, S/O MOHANDAS,
AGED 36 YEARS
THONNATH HOUSE, ERANHIKODE P.O. CHALIPPADAM,
MALAPPURAM DISTRICT, KERALA., PIN - 676505

BY ADV SRI K.A.SALIL NARAYANAN

ADV SRI MKS MENON

RESPONDENTS:

- 1 INDIAN INSTITUTE OF MANAGEMENT KOZHIKODE;
REPRESENTED BY THE DIRECTOR, INDIAN INSTITUTE OF
MANAGEMENT KOZHIKODE, IIM CAMPUS POST, KUNNAMANGALAM,
KOZHIKODE, PIN - 680503
- 2 UNION OF INDIA
REPRESENTED BY THE SECRETARY, MINISTRY OF EDUCATION,
GOVERNMENT OF INDIA, SHASTRI BHAWAN,
NEW DELHI, PIN - 110001
BY SRI S. MANU, DSG OF INDIA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
20.10.2023, THE COURT ON 02.11.2023 DELIVERED THE FOLLOWING:



T.R. RAVI, J.

W.P.(C)No.30510 of 2023

Dated this the 2nd day of November, 2023

JUDGMENT

The petitioner applied for the Ph.D. Practice Track Programme [Ph.D. (PT)] at the Indian Institute of Management, Kozhikode in Humanities and Liberal Arts in Management Areas after completing his Master of Business Administration from the same Institute in the Other Backward Classes-Non-Creamy Layer (OBC-NC) category. His grievance is that by an erroneous application of the reservation policy, the 1st respondent has denied admission to the petitioner. The Ph.D. (PT) itself is a non-residential Ph.D. Programme and is intended to enrich academic knowledge and research skills for working executives. The course does not have a pre-determined number of seats at the time of notification and a final decision regarding the number of candidates to be selected is always made by the Institute depending on the availability of the candidates and the facilities available at the 1st respondent Institute. Ext.P1 is the admission notification. Ext.P2 is the copy of the online application submitted by the petitioner. Ext.P3 is the OBC-NC certificate



issued to the petitioner. Ext.P4 is the copy of the notice for the interview received by the petitioner. The petitioner submits that on enquiry at the office, the petitioner came to know that the reservation policy will not be applied and admissions will be purely on merit alone. The petitioner has thereupon sent an e-mail as Ext.P5 wherein he had requested the 1st respondent to ensure compliance with the constitutional provisions governing reservations. The petitioner submits that he came to know that the respondent had decided to adopt a 10% cut-off mark system, and the petitioner thereupon sent another e-mail on 22.8.2023, a copy of which is produced as Ext.P6. The petitioner points out that the fixing of cut-off marks had already been invalidated by the Hon'ble Supreme Court by its judgment in **P.V.Indiresan v. Union of India & Ors. [(2011) 8 SCC 441]**. The 1st respondent released the results officially on 07.09.2023, and the petitioner was not included in the list of persons selected. The petitioner submits that he visited the office of the 1st respondent and came to know that a cut-off mark of 40 was fixed for OBC candidates in the interview, and the petitioner had obtained 37.5 marks in the interview and did not meet the cut-off mark criteria for selection. The petitioner has given details of the students from the SC, ST, and OBC categories who had been admitted for



the course between 2018 and 2022 and submits that admission is being denied to deserving candidates from socially and economically disadvantaged groups. The petitioner relies on the provisions of the Central Educational Institutions (Reservation and Admission) Act, 2006 ('the 2006 Act' for short), which lays down reservation of 15% to SC, 7.5% to ST, and 27% for OBC-NC candidates for admission. Section 3 of the Act reads as follows;

“3. Reservation of seats in Central Educational Institutions.—The reservation of seats in admission and its extent in a Central Educational Institution shall be provided in the following manner, namely:—

- (i) out of the annual permitted strength in each branch of study or faculty, fifteen per cent. seats shall be reserved for the Scheduled Castes;
- (ii) out of the annual permitted strength in each branch of study or faculty, seven and one-half per cent. seats shall be reserved for the Scheduled Tribes;
- (iii) out of the annual permitted strength in each branch of study or faculty, twenty-seven per cent. seats shall be reserved for the Other Backward Classes:

Provided that the State seats, if any, in a Central



Educational Institution situated in the tribal areas referred to in the Sixth Schedule to the Constitution shall be governed by such reservation policy for the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes, as may be specified, by notification in the Official Gazette, by the Government of the State where such institution is situated:

Provided further that if there are no State seats in a Central Educational Institution and the seats reserved for the Scheduled Castes exceed the percentage specified under clause (i) or the seats reserved for the Scheduled Tribes exceed the percentage specified under clause (ii) or the seats reserved for the Scheduled Castes and the Scheduled Tribes taken together exceed the sum of percentages specified under clauses (i) and (ii), but such seats are—

- (a) less than fifty per cent. of the annual permitted strength on the date immediately preceding the date of commencement of this Act, the total percentage of the seats required to be reserved for the Other Backward Classes under clause (iii) shall be restricted to the extent such sum of percentages specified under clauses (i) and (ii) falls short of fifty percent of the annual permitted strength;
- (b) more than fifty per cent. of the annual



permitted strength on the date of immediately preceding the date of commencement of this Act, in that case no seats shall be reserved for the Other Backward Classes under clause (iii) but the extent of the reservation of seats for the Scheduled Castes and the Scheduled Tribes shall not be reduced in respect of Central Educational Institutions in the specified north-eastern region. "

It is hence submitted that a total number of 24 students have been admitted for the course during this year, and 18 of them belong to the general category, 3 of them belong to the SC category, and 3 of them belong to the OBC category. The petitioner submits that if the total number of 24 is to be taken as the annual permitted strength as per Section 3, then the OBC candidates will be entitled to 6 seats, being 27% of 24 seats. It is hence submitted that there is a violation of the statutory prescription and the constitutional mandate regarding reservation.

2. Heard Sri M.K.S.Menon and Sri Salil Narayanan K.A. for the petitioners and Sri S.Manu, DSGI, for the respondents.

3. The 1st respondent has filed a counter affidavit, wherein it is stated that a total number of 80 candidates became



eligible by applying the cut-off mark, and out of 74 general candidates, 18 candidates were given offers. It is submitted that all the eligible OBC candidates and SC candidates, numbering 3 and 3 in each of the categories, were also given offers. It is stated that even going by the the decision in **Indiresan (supra)**, there is nothing wrong in fixing the qualifying mark in the entrance examination at 10% less than the qualifying mark from the general category, and in the case at hand, what has been done is very much in accordance with the finding of the Hon'ble Supreme Court. It is stated that 45 marks were fixed as the cut-off mark for the general category, and hence, 40 marks were fixed as the cut-off mark for the OBC candidates. It is further submitted that since the petitioner did not meet the criterion of 40% in the interview, he was not treated as eligible to be admitted. Hence, the question that arises for consideration is whether fixing a cut-off mark at the stage of the interview was proper and whether by fixing a mark at the stage of the interview, the requirement of the Act for providing 27% reservation for OBC candidates can be defeated. In the above circumstances, this Court directed the counsel for the respondents to get instructions as to whether the candidates were alerted before the interview regarding the fixing of the cut



off marks and the counsel on instructions submits that such a procedure was not followed. The notification inviting applications also does not contain any such provision regarding fixing a cut-off mark for the interview. The counsel for the respondents relied on the decision in **Municipal Corporation of Delhi v. Surender Singh & Ors. [(2019) 8 SCC 67]** to submit that a candidate cannot challenge the selection process after participation therein and finding that he has failed to get selected. The judgment is also relied on to submit that it is not permissible to interfere with the fixation of cut-off marks by the Executive Agency. The Hon'ble Supreme Court has in **K.Manjusree v. State of Andra Pradesh & Anr. [(2008) 3 SCC 512]** held that the rules of the game cannot be changed after the entire game is over and results are awaited. The Court considered the decisions in **P.K.Ramakrishna Iyer v. Union of India [(1984) 2 SCC 141]**, **Umesh Chandra Shukla v. Union of India [(1985) 3 SCC 721]**, **Durgacharan Misra v. State of Orissa [(1987) 4 SCC 646]** and **Maharashtra SRTC v. Rajendra Bhimrao Mandve [(2001) 10 SCC 51]**, which are all cases where a minimum qualifying mark was fixed for the viva voce. The facts before the Supreme Court were that after the entire process of selection, a minimum mark was fixed for the



interview. The Court found that the introduction of a requirement of a minimum mark for the interview after the entire selection process consisting of written examination and interview was completed would amount to changing the rules of the game after the game was played. In the case on hand, the applications were invited from 14.5.2023. The last date for submission of the online application was 9.7.2023. The tentative date for the interview was during the 2nd week of August 2023, as per Ext.P1. The petitioner was interviewed on 9.8.2023, as seen from Ext.P4. The counsel for the respondent has placed before the Court the minutes of the meeting of the Executive Committee of the DPM of the Indian Institute of Management, Kozhikode, held on 17.8.2023, wherein the cut-off mark was fixed at 40 for OBC NC. It is thus evident that the cut-off marks were fixed after the interview and while the candidates were awaiting the results. In view of the decision in **Manjusree (supra)**, this was clearly impossible. Regarding the adoption of the reservation policy, the proviso to Section 8 of the Indian Institute of Management Act, 2017, says that every Institute shall be a Central Education Institution for the purposes of the Central Educational Institutions (Reservation and Admission) Act, 2006. Section 3 of the 2006 Act, which has been extracted above, clearly lays down that 27%



of the annual permitted strength in each branch of study or faculty should be reserved for other backward classes. There can hence be no dispute that the 2006 Act will apply insofar as the admissions to the Indian Institute of Management are concerned. The counsel for the respondent sought to argue that Section 3 of the 2006 Act applies only to cases where there is an annual permitted strength, which is identified earlier and will not apply in the case of Ph.D.(PT) for which there is no annual permitted strength prescribed. It is submitted that the number of seats to be filled up is decided on a year-to-year basis depending on the capacity of the Institute to provide the facilities for study and on the number of candidates who are applying. It is submitted that, unlike other Ph.D courses, these are courses where students have to pay to undergo the Course. It is hence submitted that the provisions of the Section will not apply to the case. I do not think that such an argument can be sustained. The requirement of reservation under the enactment cannot be defeated by not prescribing the number of seats that are permitted to be filled up for a particular course in a particular year. If there is no annual permitted strength as contended, the only manner in which the provision can be understood is the total number of seats that are sought to be filled up in a particular year is the annual permitted



strength. Admittedly, 24 seats were filled up during this year. If 24 seats are to be filled up, then necessarily, the general candidates can aspire only for 50.5% of the seats, and 15%, 7.5%, and 27.5% will have to be reserved for candidates belonging to SC, ST, and OBC. As such, the process of selection is not in accordance with the requirement of the Statute.

4. In view of the above findings, there are two defects noticed in the selection process: (i) that the reservation policy has not been followed and (ii) that the selection criteria were sought to be changed after the entire selection was over. In the usual course, the selection has to be set aside in its entirety. However, I do not think such a course of action is required in this case. This Court had, after the hearing of the case, sought information from the counsel as to whether any person who is ranked above the petitioner in the OBC category is available who would be entitled to admission before the petitioner. The counsel, on instructions submits that there are no other candidates who have secured more marks than the petitioner in the OBC NC category. In such circumstances, instead of unsettling the entire selection process, I am of the opinion that the grievance of the petitioner can be solved by directing the respondents to admit the petitioner for the course.



The writ petition is hence allowed. There will be a direction to the 1st respondent to admit the petitioner to the Ph.D.(PT) Programme. Necessary orders shall be issued within two weeks from the date of receipt of a certified copy of this judgment.

Sd/-
T.R. RAVI
JUDGE

dsn

**APPENDIX OF WP (C) 30510/2023**

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF THE ADMISSION NOTIFICATION PUBLISHED IN THE OFFICIAL WEBSITE OF THE RESPONDENT NO.1
- Exhibit P2 A TRUE COPY OF THE ONLINE APPLICATION SUBMITTED BY THE PETITIONER ON 26.06.2023 TO PHD PT PROGRAMME.
- Exhibit P3 A TRUE COPY OF THE OBC-NC CERTIFICATE ISSUED TO THE PETITIONER BY THE TAHSILDAR ERNAD TALUK ON 20.06.2023.
- Exhibit P4 TRUE COPY OF THE INTERVIEW INVITATION LETTER TO PETITIONER IN HLAM AREA BY THE RESPONDENT NO. 1
- Exhibit P5 TRUE COPY OF THE EMAIL REPRESENTATION DATED 11.08.2023 TO THE RESPONDENT NO.1 REQUESTING HIS INTERVENTION
- Exhibit P6 A TRUE COPY OF THE EMAIL REPRESENTATION DATED 22.08.2023 TO THE RESPONDENT NO.1 REGARDING THE FLAWS ADMINISTERED BY THE RESPONDENT NO. 1 IN RESERVATION RULES OF PHD PT PROGRAMME
- Exhibit P7 A TRUE COPY THE OFFICE MEMORANDUM BY RESPONDENT NO. 2 FORWARDED TO ALL CEI'S INCLUDING RESPONDENT
- Exhibit P8 A TRUE COPY OF THE RELEVANT PAGES OF QUESTION NO. 346 TABLED IN THE RAJYA SABHA ON JULY 20, 2022.