

Presented on: .11.2020

SUBJECT: Challenging part of the Graduate Medical Education Regulations (Amendment) 2019 – Seeking MBBS/BHMS/DHMS admission under NEET, 2020 and KEAM, 2020

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM  
W.P(C)No. of 2020

Nimmi Alphonsa Joseph : Petitioner

v/s

State of Kerala.

& Ors.

: Respondents

**MEMORANDUM OF WRIT PETITION (CIVIL) FILED UNDER ART.226 OF THE  
CONSTITUTION OF INDIA**

Adv. Thulasi K. Raj (T-363) (Enrolment No. K-814/2015)  
Adv. Maitreyi S. Hegde (M-1351) (Enrolment No. K-139B/2015)

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Kaleeswaram Raj & Associates,  
"Dharma", 69/3277A, Peediyakkal Road,  
Ernakulam, Kochi-18, Kerala State.  
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Counsel for the petitioner

## APPENDIX

### PETITIONER'S EXHIBITS:

Exhibit P1 - True copy of the result obtained from the official website of the petitioner in NEET (UG) 2020.

Exhibit P2 - True copy of the relevant pages of the prospectus of NEET 2020 (Information Brochure)

Exhibit P3 - True copy of the KEAM Prospectus

Exhibit P4 - True copy of the Standing Disability Assessment Board Certificate issued by the District Hospital, Kannur bearing UID No. 018 dated 19.12.2009

P4(a): A copy of the certificate issued by the eye specialist at Nayanam opticals dated 11.11.2020

P5: A copy of the certificate date 26.08.2020 issued by the Government Medical College Hospital, Kannur

Exhibit P5(a) - True copy of the application submitted by the petitioner dated 04.11.2020

Exhibit P6- True copy of the SSLC certificate of the petitioner

Exhibit P7- True copy of the Higher Secondary School Certificate of the petitioner

Exhibit P8- True copy of the document declaring the petitioner as ineligible' obtained from the Website of KEAM

Exhibit P9 - True copy of the article titled 'Medical Council of India's new guidelines on admission of persons with specified disabilities: Unfair, discriminatory and unlawful' authored by Satendra Singh in Indian Journal of Medical Ethics

Exhibit P10- True copy of the judgment of the Madras High Court in State of Tamil Nadu v. J. Vibin, W.A.(MD)No.1481 of 2018 in which the impugned regulations are found to be arbitrary and violative of the constitutional provisions.

Exhibit P11- True copy of the judgment of the apex court in Dr. Kamlesh Virumal Purswani v. Union of India reported in 2018 SCC OnLine SC 1717



13	<b><u>Exhibit P8</u></b> - True copy of the document declaring the petitioner as ineligible' obtained from the Website of KEAM	
14	<b><u>Exhibit P9</u></b> -True copy of the article titled 'Medical Council of India's new guidelines on admission of persons with specified disabilities: Unfair, discriminatory and unlawful' authored by Satendra Singh in Indian Journal of Medical Ethics	
15	<b><u>Exhibit P10</u></b> - True copy of the judgment of the Madras High Court in <u>State of Tamil Nadu v. J. Vibin,</u> W.A.(MD)No.1481 of 2018	
16	<b><u>Exhibit P11</u></b> - True copy of the judgment of the apex court in <u>Dr. Kamlesh Virumal Purswani v. Union of India</u> reported in 2018 SCC OnLine SC 1717	

Dated this the 11<sup>th</sup> day of November, 2020.

Counsel for the petitioner

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM  
W.P(C) No. of 2020

Nimmi Alphonsa Joseph : Petitioner  
Vs  
State of Kerala and others : Respondents

SYNOPSIS

The petitioner is a person with visual disability, having low vision. The petitioner is also from OBC category. It is submitted that the petitioner applied for admission to the Undergraduate Medical Course (Medical/Dental/BAMS/BSMS/DHMS/BHMS Course). The petitioner came out successfully for the NEET Examination. The overall rank obtained by the petitioner was 553689. The category rank of the petitioner under OBC is 240758. The PH category rank number of the petitioner is 1226. This writ petition is filed aggrieved by the action of the respondents in not providing admission and reservation for persons with disabilities such as the petitioner and thus denying equal opportunity to the petitioner for the Undergraduate Medical Courses under The National Eligibility cum Entrance Test (Undergraduate) (NEET), 2020 and Kerala Engineering Architecture Medical (KEAM), 2020.

As per The Rights of Persons with Disability Act 2016 (RPWD Act) and the Rights of Persons with Disability Rules 2017 (RPWD Rules), the petitioner is entitled to both admission and reservation in the undergraduate courses. However, according to the Appendix H-1 of The Graduate Medical Education Regulations (Amendment) 2019, as annexed in Exts. P2 NEET prospectus and P3 KEAM prospectus, persons who are visually impaired with a benchmark disability of 40% and above are ineligible to be admitted in the undergraduate courses. The said Regulations are violative of the 2016 parent Act, the 2017 Rules and Articles 14 and 15 of the Constitution. Hence, this writ petition.

Decisions referred:

Purswani Ashutosh (Minor) through Dr.Kamlesh Virumal Purswani Vs Union of India , 2018 SCC OnLine SC 1717, The State Of Tamil Nadu vs J.Vibin (W.A.(MD)No.1481 of 2018), State of Tamil Nadu & Anr. v. P. Krishnamurthy & Ors. (2006) 4 SCC 517 and Dr. Syed Abdul Wahab Abdul Aziz vs State of Maharashtra (WP/3197/2011).

Chronology of events:

Dates	Events
	Relevant pages of the prospectus of NEET 2020 (Information Brochure)
19.12.2009	Standing Disability Assessment Board Certificate issued by the District Hospital, Kannur bearing UID No. 018
04.11.2020	Application submitted by the petitioner
	Higher Secondary School Certificate of the petitioner

Dated this the 11<sup>th</sup> day of November, 2020.

Counsel for the petitioner

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM  
(Special Original Jurisdiction)

W.P(C) No.                      of 2020

PETITIONER:

Nimmi Alphonsa Joseph  
Aged 19 years  
D/o Nirmal Joseph  
Anna Cottage, Jayanthi Road  
P.O.Chalad,  
Kannur -14.

Vs

RESPONDENTS:

1. State of Kerala, represented by  
The Secretary to Government,  
Department of Health & Family Welfare,  
Secretariat, Thiruvananthapuram-695001.
2. Director of Medical Education,  
Thiruvananthapuram-695001.
3. Commissioner for Entrance Examination,  
5th Floor KSHB Building, SS Kovil Rd,  
Santhi Nagar, Thiruvananthapuram -695001
4. District Hospital,  
Represented by District Medical Officer,  
Ayikkara Government Hospital Road,  
Kannur - 670017
5. District Medical Officer,  
District Hospital  
Ayikkara Government Hospital Road,  
Kannur – 670017
6. The Assessment Board for assessing Disability,

- Represented by Chairperson  
Government Medical College Hospital,  
Pariyaram, Medical College P.O.,  
Kannur - 670 503
7. Government Medical College Hospital,  
Represented by its Principal  
Medical College PO,  
Thiruvananthapuram - 695 011
8. National Medical Commission,  
Represented by its Chairman  
(formerly Medical Council of India),  
Pocket- 14 , Sector – 8,  
Dwarka Phase -1, New Delhi – 110077
9. The Convenor, NEET,  
Central Board of Secondary Education,  
Siksha Kendra, 2-Community Centre,  
Preet Vihar,  
Delhi – 110092
10. Senior Director, NEET (UG) Unit,  
NTA of Higher Education,  
Ministry of Human Resource Development,  
Government of India West Block-1, wing No.-6,  
2nd Floor, R K Puram,  
New Delhi-110066
11. Union of India,  
Represented by Secretary to government  
Ministry of Human Resources Development,  
(Department of Higher Education)  
Central Secretariat, New Delhi- 110001
12. Central Council of Homoeopathy  
Represented by its Secretary  
Jawaharlal Nehru Bhartiya Chikitsaavum  
Homoeopathic Anusandhan Bhawan  
61-65, Institutional Area, Opp. 'D' Block  
Janak Puri , New Delhi- 110058



Address for service of all notices and process to the petitioner is that of her counsel, **Ms. Thulasi K. Raj & Ms.Maitreyi S. Hegde** Advocates,` Kaleeswaram Raj & Associates, "Dharma", 69/3277A, Peediyakkal Road, Kochi-18 and that of the respondents are as shown above.

### STATEMENT OF FACTS

1. The petitioner is a person with visual disability, having low vision. The Petitioner is also from OBC category. This writ petition is filed aggrieved by the action of the respondents in not providing admission and reservation for persons with disabilities such as the petitioner and thus denying equal opportunity to the petitioner for the Undergraduate Medical Courses under the National Eligibility cum Entrance Test (Undergraduate) (NEET), 2020 and Kerala Engineering Architecture Medical (KEAM), 2020.
2. It is submitted that the Petitioner applied for admission to the Undergraduate Medical Course (Medical/Dental/BAMS/BSMS/DHMS/BHMS Course) for the year 2020. The admission to the said courses takes place through the National Eligibility-cum-Entrance Examination (NEET) 2020. For admission to these courses in the colleges in Kerala, the NEET score is taken into account by the Commissioner for Entrance Examinations, Kerala.
3. The NEET exam was conducted on 13.09.2020. The petitioner has appeared for the exam. The roll number of the petitioner was 2804016191. The application number of the petitioner was 200410073081. The result of the examination was published on 16.10.2020. The petitioner came out successfully for the NEET Examination. A copy of the result obtained from the official website of the petitioner in NEET (UG) 2020 is produced herewith

and marked as **Exhibit P1**. From Ext.P1, it can be seen that the total marks obtained by the Petitioner were 189 out of 720. The overall rank obtained by the petitioner was 553689. The category rank of the petitioner under OBC is 240758. The PH category rank number of the petitioner is 1226. It can also be seen that in the OBC-PH category, according to the cut off marks given, the petitioner has qualified for admission and is entitled to get admission in the category of both OBC and Physically handicapped category (OBC -PH). This is also in accordance with the prospectus issued by the concerned NEET 2020. A copy of the relevant pages of the prospectus of NEET 2020 (Information Brochure) is produced herewith and marked as **Exhibit P2**.

4. It is submitted that in page 21 of Ext.P2 under the 'Reservation policy for PWD candidates' it is stated that the admission of persons to disability will take place according to Appendix IXB attached to Ext.P2. It was further stated that the Rights of Persons with Disability Act 2016 (RPWD Act) and the Rights of Persons with Disability Rules 2017 (RPWD Rules) are the relevant statutes and rules and the admission shall be determined in accordance with these laws. In page 37, of Ext.P2 it is stated that for candidates with Benchmark Disabilities specified under the RPWD Act, the minimum marks in qualifying examination in Physics, Chemistry and Biology/Biotechnology taken together must be 45% instead of 50% for Unreserved category & GEN-EWS candidates and 40% for SC/ST/OBC-NCL candidates. The petitioner is an OBC candidate and the minimum mark required is 40 percentage. The petitioner is qualified under this requirement. It is further stated in Ext.P2 that persons with disability shall be entitled to a 5% reservation. In page 22 of Ext.P2, it states that the PwD candidates who want to avail 5% reservation have to get their Certificate of Disability as per the format in Appendix IX of Ext.P2 which is made in accordance with the RPWD Act and Rules. The said certificate will be available in the centres listed in page 74 of Ext. P2.

5. It is submitted that in addition to Ext. P2, a 2020 Prospectus was released by respondent No. 3 which gives complete information regarding admission to Kerala Engineering, Architectural and Medical Courses (KEAM). A copy of the KEAM Prospectus is produced herewith and marked as **Exhibit P3**. Clause 5.3 of the Ext P3 states that 5% of seats will be allocated for persons with benchmark disabilities for all courses in Govt./Aided Colleges as stipulated in Section 32, Chapter VI of the RPWD Act. As per Clause 2 (r), Chapter I of the Act, 'Person with benchmark disability' means a "person with not less than 40% 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.' For PwD candidates seeking admission under medical courses except BHMS Course, the eligibility criteria is laid out by the Medical Council of India (Respondent 8) and those seeking admission under the BHMS Course are eligible as per the criteria laid out by the Central Council of Homoeopathy (Respondent 12).
  
6. Under Ext. P2, Appendix H-1 (available at inner page 80) which lays out the guidelines regarding specified disabilities under the RPWD Act with regard to MBBS Course is in fact the regulation issued by the 8<sup>th</sup> respondent, (formerly, Medical Council of India) namely "The Graduate Medical Education Regulations (Amendment) 2019." Appendix H-1 gives a range of disability, divided into three categories, i.e. (a) eligible for medical course, not eligible for PwD quota; (b) eligible for medical course, eligible for PwD quota and (c) not eligible for medical course. It can be seen that persons with locomotor disability including specified disabilities, are considered as eligible for the medical course but not eligible for PwD quota if the disability is less than 40%. They will be eligible for the medical course and the eligibility

quota, only if their locomotor disability ranges between 40-80% and if it is above 80%, then they are not considered eligible for Medical Course. This categorisation is vastly different for persons with visual impairment. For persons with visual impairment, only the first category of disability range is allowed, i.e. Eligible for Medical course but not eligible for PwD quota for which the disability is less than 40%. If a person has equal to or more than 40% of disability, then such persons are categorised under not eligible for medical courses. It is further submitted that the note provided on the same page states that Persons with Visual impairment / visual disability of more than 40% may be made eligible to pursue MBBS Course and may be given reservation, subject to the condition that the visual disability is brought to a level of less than the benchmark of 40% with advanced low vision aids such as telescopes / magnifier etc. Similar provisions for disability range are provided for the BHMS Course as given in Annexure XXIV(ii) - CCH Guidelines regarding admission of students with specified disabilities under the Rights of Person with Disabilities Act 2016 with respect to admission in BHMS course available in Ext. P3. Even in this Annexure, a specific note states that Persons with Visual impairment / visual disability of more than 40% may be made eligible to pursue Graduate Medical Education and may be given reservation, subject to the condition that the visual disability is brought to a level of less than the benchmark of 40% with advanced low vision aids such as telescopes / magnifier etc. Relevant parts are extracted below:

**Appendix "H - 1"**

**Guidelines regarding admission of students with "Specified Disabilities" under the Rights of Persons with Disabilities Act, 2016 with respect to admission in MBBS Course.**

- Note: 1. The "Certificate of Disability" shall be issued in accordance with the Rights of Persons with Disabilities Rules, 2017 notified in the Gazette of India by the Ministry of Social Justice and Empowerment [Department of Empowerment of Persons with Disabilities (*Divyangjan*)] on 15th June 2017.
2. The extent of "specified disability" in a person shall be assessed in accordance with the "Guidelines for the purpose of assessing the extent of specified disability in a person included under the Rights of Persons with Disabilities Act, 2016 (49 of 2016)" notified in the Gazette of India by the Ministry of Social Justice and Empowerment [Department of Empowerment of Persons with Disabilities (*Divyangjan*)] on 4th January 2018.
3. The minimum degree of disability should be 40% (Benchmark Disability) in order to be eligible for availing reservation for persons with specified disability.
4. The term 'Persons with Disabilities' (PwD) is to be used instead of the term 'Physically Handicapped' (PH).

S. No.	Disability Type	Type of Disabilities	Specified Disability	Disability Range				
				Eligible for Medical Course, Not Eligible for PwD Quota	Eligible for Medical Course, Eligible for PwD Quota	Not Eligible for Medical Course		
1.	Physical Disability	A. Locomotor Disability, including Specified Disabilities (a to f).	a. Leprosy cured person*	Less than 40% disability	40-80% disability Persons with more than 80% disability may also be allowed on case to case basis and their functional competency will be determined with the aid of assistive devices, if it is being used, to see if it is brought below 80% and whether they possess sufficient motor ability as required to pursue and complete the course satisfactorily.	More than 80%		
			b. Cerebral Palsy**					
			c. Dwarfism					
			d. Muscular Dystrophy					
			e. Acid attack victims					
			f. Others*** such as Amputation, Poliomyelitis, etc.					
		<p>* Attention should be paid to loss of sensations in fingers and hands, amputation, as well as involvement of eyes and corresponding recommendations be looked at.</p> <p>** Attention should be paid to impairment of vision, hearing, cognitive function etc. and corresponding recommendations be looked at.</p> <p>*** Both hands intact, with intact sensations, sufficient strength and range of motion are essential to be considered eligible for medical course.</p>						
		B. Visual Impairment (*)	a. Blindness	Less than 40% disability	-	Equal to or More than 40% Disability		
			b. Low vision					
		C. Hearing impairment@	a. Deaf	Less than 40% Disability	-	Equal to or more than 40% Disability		
b. Hard of hearing								
<p>(*) Persons with Visual impairment / visual disability of more than 40% may be made eligible to pursue MBBS Course and may be given reservation, subject to the condition that the visual disability is brought to a level of less than the benchmark of 40% with advanced low vision aids</p>								

7. In essence, a bare reading of these provisions shows that though under the RPWD Act, persons with benchmark disabilities are defined to be those with 40% disability and above, in the instant case persons with visual impairment who are eligible for PwD quota are not given any seat or reservation in a medical course, whether MBBS or BHMS. Therefore, as a result, students with benchmark disability of more than 40% visual impairment are declared ineligible for being considered under any of the undergraduate course under NEET. This is in violation of the provisions and scheme of the RPWD Act.

8. It is submitted that the disability certificate in possession of the petitioner belongs to the year 2009. She has not yet received a new disability assessment certificate. Due to COVID-19 and the subsequent lockdown related difficulties, the Medical Board has not been constituted, and as such the petitioner has not been able to obtain a disability certificate in accordance with the requirements of NEET/KEAM admissions. Therefore, reliefs for granting issuance of a certificate are also sought in the writ petition. A copy of the Standing Disability Assessment Board Certificate issued by the District Hospital, Kannur bearing UID No. 018 dated 19.12.2009 is produced herewith and marked as **Exhibit P4**. In Ext.P4 it is stated that the petitioner has 75% visual disability (Peters anomaly bilateral corneal opacities). It is submitted that the disability of the petitioner in the right eye can be brought down to 40% with the help of adequate visual aid. In the left eye, the petitioner has no vision. A copy of the certificate issued by the eye specialist at Nayanam opticals dated 11.11.2020 is produced herewith and marked as **Exhibit P4(a)**. It is stated in Exhibit P4(a) that with the help of glasses, the visual acuity is 40 per cent for the right eye. In the left eye, she has total blindness. In this way, the petitioner can satisfy the requirement under the note in the Appendix of the Regulations. A copy of the certificate date 26.08.2020 issued by the Government Medical College Hospital, Kannur is produced herewith and marked as **Exhibit P5**. In the same also, visual acuity is recorded as 6/18 for the right eye. For the left eye, complete blindness is recorded.
9. In the meanwhile, it is also submitted that the petitioner has applied before the District Medical Officer, Kannur District Hospital for constituting the disability board and for issuing the certificate to certify the disability of the petitioner. However, due to restriction imposed for controlling COVID-19 spread in the State of Kerala, the said Board is not been constituted, due to which the petitioner is also unable to secure a certificate to show this aspect.

The Rights of Persons with Disabilities (Kerala) Rules, 2020 are also relevant in this regard. A copy of the application submitted by the petitioner dated 04.11.2020 is produced herewith and marked as **Exhibit P5(a)**. Therefore, a further prayer is also sought in the writ petition to direct the Medical Board to convene, examine the disability certificate to the petitioner and issue the certificate at the earliest. In page 74 of Ext. P2, Government Medical College, Thiruvananthapuram is stated as the concerned centre and hence, the said college is arrayed as a respondent herein. It is the duty of the above Board to examine the disability of the petitioner. Otherwise, this will result in denial of the protection and benefits promised to the petitioner in the RPWD Act. Thus, the refusal on the part of the respondents to convene the Medical Board for examining the disability of the petitioner is totally unjust, illegal and arbitrary.

10. It is submitted that the petitioner is a person who passed the 10<sup>th</sup> standard and the 12<sup>th</sup> standard and examination with flying colours. A copy of the SSLC certificate of the petitioner is produced herewith and marked as **Exhibit P6**. In the said certificate it can be seen that the petitioner has secured A+ in all subjects except Mathematics. A copy of the Higher Secondary School Certificate of the petitioner is produced herewith and marked as **Exhibit P7**. In Ext.P7 again, it can be seen that the petitioner has obtained excellent score as follows: English – A Grade, Malayalam – A+, Physics – A grade, Chemistry – A grade, Biology – A grade, Mathematics – B+. Therefore, it is undisputed that she is competent and eligible person for Undergraduate Course considering the excellence that she has achieved in the science subject in her school as well as the NEET result. It is submitted that the petitioner is eligible to be admitted undergraduate courses of MBBS/BHMS/DHMS under NEET 2020 as per the relevant provisions of the RPWD Act.

11. As part of the admission process, the petitioner was called upon to appear before the Medical Board, Kannur Medical College which conducted an assessment on 26.08.2020. To the knowledge of the petitioner, the centre at Thiruvananthapuram was unable to conduct it due to COVID-19 difficulties. So, the assessment was conducted at Medical Hospital, Kannur.
12. However, later, to the utter dismay of the petitioner, the petitioner was issued with a document from the official website of KEAM showing that the petitioner is not eligible for B.Pharm course as per the Assessment. A copy of the document declaring the petitioner as ineligible obtained from the Website of KEAM is produced herewith and marked as **Exhibit P8**. Ext.P8 is also under challenge in this writ petition.
13. The RPWD Act gives a list of measures to be taken by the Educational Institution and State Instrumentalities in General for the benefit of Persons with disabilities and to avoid discrimination against them. Section 2(r) of the Act defines a “person with benchmark disability” 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”. Under the schedule of the RPWD Act, visual impairment is specified under clause B. When such provisions have been made, the guidelines of eligibility to medical course laid down by the National Medical Commission via the impugned regulations, as followed by the Commissioner of Entrance Examinations, Kerala for persons with visual impairment is squarely against the provisions of RPWD Act.
14. Excluding persons who are having more than 40% visual impairment from the ambit of both reservation and the admission to the Undergraduate



Courses under NEET is illegal, untenable and unsustainable. There is no valid reason as to why a person with visual disability of 40% or more, such as the petitioner, who has low vision, cannot get reservation for any of the undergraduate medicine courses. Therefore, the exclusion of persons with visual impairment from the purview of admission with reservation to undergraduate courses referred above is a clear instance of discrimination under Article 14 and 15 of the Constitution.

15. It is submitted that the impugned regulations have been widely criticised for discriminating against persons with disability. A copy of the article titled 'Medical Council of India's new guidelines on admission of persons with specified disabilities: Unfair, discriminatory and unlawful' authored by Satendra Singh in Indian Journal of Medical Ethics is produced herewith and marked as **Exhibit P9**.

16. Various High Courts and the apex court have considered similar issues. A copy of the judgment of the Madras High Court in State of Tamil Nadu v. J. Vibiin, W.A.(MD)No.1481 of 2018 which the impugned regulations are found to be arbitrary and violative of the constitutional provisions is produced herewith and marked as **Exhibit P10**. In view of Ext. P10, the regulations no longer have the force of law. A copy of the judgment of the apex court in Dr. Kamlesh Virumal Purswani v. Union of India reported in 2018 SCC OnLine SC 1717 is produced herewith and marked as **Exhibit P11**. The petitioner is entitled to similar reliefs.

17. The prescription that persons with disability above 40% are ineligible for medical courses is not rational and is made without application of mind. The impugned regulations and the eligibility criteria in Ext P2 & Ext. P3 are liable to be quashed.

18. Urgent reliefs are sought in this writ petition since the allotment under NEET 2020, round 1 has already commenced for MBBS Course and is expected to start at any moment for the BHMS Course as per the notifications released by the AYUSH Admissions Central Counselling Committee (AACCC), Ministry of AYUSH, Government of India. Hence, this writ petition may be considered expeditiously.
19. Due to the unclear instructions in the impugned Regulations, it was not clear to the petitioner, until now, as to in what manner will the Regulations be implemented. Hence, there is no delay in challenging the said Regulations.
20. It is submitted that the petitioner aspires for MBBS/ BHMS/DHMS courses under NEET.
21. Aggrieved by the difficulties and the discrimination posed by the eligibility criteria in Ext. P2 & Ext. P3 for persons with visual impairment, the petitioner is filing this Writ Petition. In the above circumstances, the petitioner does not have any equal and efficacious remedy than approaching this Hon'ble Court under the following and other:

### **GROUND**

- A. It is submitted that the Graduate Medical Education Regulations (Amendment) 2019 contained in Ext. P2 to the extent to which it excludes visually impaired persons having a disability of 40% or more from admission and reservation to undergraduate courses disability range mentioned for visually impaired persons & Ext. P3, adopting the same, respectively is illegal,

arbitrary and liable to be set aside. They are in violation of the provisions of the Rights of Persons with Disabilities Act (RPWD Act), the Rules there under, the disability discrimination jurisprudence as well as the principles of equality espoused in the Constitution of India under Articles 14,15 and 21.

- B. The RPWD Act was enacted with a view to reflect the principles of equality of opportunity, accessibility, non-discrimination, inclusion, inherent dignity and autonomy inherent as prescribed in the United Nations Convention on the Rights of Persons with Disabilities. The RPWD Act under Section 3(5) states that the appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities. Reasonable accommodation is defined under Section 2(y) as necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others. In the present case, there has not been any reasonable accommodation provided for persons with visual impairment with regard to their eligibility to undertake the UG course in medicine.
- C. It is submitted that the RPWD Act specifically promotes inclusive education and this ensures inclusivity in higher education. By not allowing a person with visual disability to even apply for the medical course, the impugned regulations are going against the tenets of the RPWD Act and discriminating against a person specifically due to their disability. It specifically distinguishes persons with visual disability and restricts their freedom to choose and get access to a higher education option.
- D. In Purswani Ashutosh (Minor) through Dr.Kamlesh Virumal Purswani Vs Union of India , 2018 SCC OnLine SC 1717, the Supreme Court considered

this very question of whether “a person with benchmark disability of low vision, within the meaning of Section 2(r), read with Clause 1B of the Schedule, of the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as the ‘2016 Act’) can be denied the benefit of reservation for admission to the MBBS Medical Course.” The said judgment is produced as Ext. P11. It was held:

*“Be that as it may, as mentioned hereinabove, it is not necessary for this Court to adjudicate the question of whether Section 32 of the 2016 Act is attracted or not, in view of the admission that the Medical Education Regulations which incorporate the provisions of the 2016 Act in relation to reservation to higher educational institutions, have statutory force and are binding on the MCI. The regulations have not yet been amended by the MCI in the light of the recommendations made by its Committee and the decision taken at the Secretariat level. No amendment in the 2016 Act or in the regulations framed by the MCI have been made so far. For the reasons discussed above, this Court holds that the petitioner cannot be denied admission to the MBBS course if he qualifies as per his merit in the category of Persons with Disability. In the event, the petitioner is found to be entitled to admission, he shall be given admission in the current academic year 2018-19.”*

The petitioner in the present case is similarly situated and is entitled to similar reliefs.

E. It is further submitted that a similar issue was also considered by the Madras High Court in The State Of Tamil Nadu vs J.Vibin (W.A.(MD)No.1481 of 2018). It held as follows:

*“18. Now the question that arise for consideration is whether the 2019 amendment to the Medical Education Regulations suggested by the Expert Committee is applicable to the case of the first respondent/petitioner ?*

19. *In the light of the right of PWD Act, 2016 and the United Nations Convention on the Rights of Persons with Disabilities, the recent guidelines of MCI are unfair, discriminatory and unlawful. The United Nations Convention on the Rights of Persons with Disabilities, 2007 was accepted and ratified by India, as per which, it was mandatory to harmonize all its existing legislations in line with its provisions. Accordingly, PWD Act was passed in 2016 and brought to force in 2017. The intention of the legislature was to move from a charity approach to a right-based approach and safeguard the human rights of the Persons with Disabilities. As per the Act, any person with benchmark disability, i.e., minimum of 40% of a specified disability, is entitled, as a matter of right, to avail the benefits under the PWD Act including 5% reservation in higher education.*

20. *The first respondent/petitioner, armed with the legislation and amendments, appeared for NEET-UG to seek admission in Medical Education. Though he has qualified, as per the guidelines, despite having benchmark disability, the visual impairment was considered as an ineligibility for the disability quota in the Medical Course. The criteria for eligibility/ineligibility as per new MCI Guidelines for visual impairment is low vision and blindness - equal to or more than 40% disability. The first respondent/petitioner already made him eligible by competing with others and attended online counselling and secured a seat also. Therefore, rejecting him on the basis of percentage of disability is abhorrent to the principles enshrined in the Constitution of India and the provisions of the PWD Act.*

...

24. *Therefore, the MCI regulations denying reasonable accommodation is discriminatory. The MCI guidelines did not foresee the emotional impact of studying medicine with disabilities. Candidates with learning disabilities or any other disability should not be barred from entering the field of medicine. The principles of*

*the United Nations Convention on the Rights of Persons with Disabilities and PWD Act should be followed in their letter and spirit.*

*25. The arbitrary sudden and unreasoned amendment to the notification is violative of Articles 14 and 16 of the Constitution of India and also the doctrine of legitimate expectation. The subsequent amendment should not operate to the prejudice of the persons with disabilities, particularly, when the person had qualified and cleared the eligibility criteria."*

The impugned regulations are therefore liable to be set aside.

F. In the instant case, denying admission to the petitioner in the undergraduate courses under NEET is not a proportionate means of achieving a legitimate aim. The possible stand of the Medical Council would be that persons with disability of 40% or above are unable to perform their duties as a doctor or pharmacist, dentist as a result of the undergraduate courses. However, this claim is not substantiated with expert evidence or scientific research. In fact, when the Act holds that persons who hold benchmark disability are entitled to reservation, the impugned regulations cannot say otherwise. In State of Tamil Nadu & Anr. v. P. Krishnamurthy & Ors. (2006) 4 SCC 517, it was held that a subordinate legislation can be challenged under any of the following grounds :-

- "a) Lack of legislative competence to make the sub-ordinate legislation.*
- b) Violation of Fundamental Rights guaranteed under the Constitution of India.*
- c) Violation of any provision of the Constitution of India.*
- d) Failure to conform to the Statute under which it is made or exceeding the limits of authority conferred by the enabling Act.*
- e) Repugnancy to the laws of the land, that is, any enactment .*

*f) Manifest arbitrariness/unreasonableness (to an extent where court might well say that Legislature never intended to give authority to make such Rules)."*

The impugned regulations violate not only the provisions of equality under the Constitution of India, but also fail to conform to the RPWD Act and are unreasonable. It cannot contradict or violate the parent legislation enacted for the welfare of the disabled. On this ground alone, the impugned regulations are liable to be quashed.

G. The petitioner who has a 75% disability, which can be brought down to 40% disability for the left eye is entitled for admission to any of the undergraduate courses as she can easily undergo the rigours of the courses, as she has done in the past by clearing all her exams till Class 12 with flying colours. Denying admission and reservation to the petitioner as per person with disability is in violation of provisions of Section 32 of the RPWD Act. The respondents who are bound to protect those rights of the petitioner are now clearly discriminating against her.

H. As per Section 32 of the RPWD Act, (1) *"All government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five percent seats for persons with benchmark disabilities."* The Act within its scope admittedly includes visually impaired persons under the ambit of persons with benchmark disabilities. In these circumstances, the attempt of the Respondents to deny visually impaired persons the benefit of both admission and reservation is completely in violation of Section 32 of the RPWD Act. The impugned regulations cannot make prescriptions contravening the provisions of the parent Act. They can also not make rules denying the benefit of reservation to persons like the petitioner who are entitled to reservation under the Act.

- I. It is a fact that various persons with visual disabilities above 40% successfully work as doctors and allied professions. The same has also endorsed by the courts in numerous occasions. For illustration, the Bombay High court had observed in Dr. Syed Abdul Wahab Abdul Aziz vs State of Maharashtra (WP/3197/2011) pertaining to the disabled person therein who had 45% visual disability: *“31. Here, as we have already noted, the petitioner in the face of visual impairment was found not possessing any major visual problem and was, therefore, given admission to M.B.B.S. course. He successfully passed out, competed internship and thereafter also started serving in the Public Dispensary. He appeared in a competitive examination conducted by M.P.S.C. and became a permanent Medical Officer. This, his visual impairment, stated to be 45%, has not disabled him in any way either in education or performance of his duties. He has not been found disqualified at any point of time. “*
- J. The said eligibility criteria contravene the principle of equality as stated in Articles 14 and 15 of the Indian Constitution. It distinguishes between different categories of PwD and states that persons with visual impairment are ineligible to apply for MBBS or BHMS Course. There is no reason for this specific classification in the disability range. Article 14 requires that for classification of objects, persons, things etc. a nexus between the object to be achieved and the said classification is shown, i.e. there must be a reasonable classification. However, in the instant case, the petitioner is an eligible candidate who has consistently proven her capabilities in education through her marks, and yet, she is deprived of her entitlement. In these circumstances, the presumption by the Medical Commission that persons with visual impairment of above 40% are incapable and admission to medical courses is without substance, application of mind or proportionate aim.



K. It is submitted that as per the parent Act and the Rules, the petitioner is entitled to be issued with a disability certificate by the medical board prescribed as per law. Without the certificate, she is unable to claim any benefits to prove her disability. The non-issuance of the certificate is due to no fault of her own and it is due to reasons beyond her control such as COVID-19 outbreak. Due to the same, her valid rights may not be defeated. Therefore, she is entitled to have the disability certificate issued to her.

#### PRAYER

Hence it is respectfully prayed that this Hon'ble Court may be pleased:

- i. To declare that Graduate Medical Education Regulations (Amendment) 2019 (contained in Appendix H-1 of Ext. P2) to the extent to which it excludes visually impaired persons having disability of 40% or more from admission and reservation to undergraduate courses under NEET 2020 and KEAM 2020 and Ext. P3, adopting the same to the extent impugned are unjust, illegal and arbitrary;
- ii. To issue a writ of certiorari quashing that Graduate Medical Education Regulations (Amendment) 2019 (contained in Appendix H-1 of Ext. P2) to the extent to which it excludes visually impaired persons from admission and reservation to undergraduate courses under NEET 2020 and KEAM 2020 as unjust, illegal and arbitrary;
  - a) In the alternative, declare that a harmonious reading of the impugned regulations with the RPWD Act, 2016 would mean that persons with visual impairment of 40% and above are entitled to be considered for both admission to undergraduate medical courses and 5% reservation under the category of persons with disabilities;

- iii. To issue a writ of certiorari quashing Ext. P3 to the extent to which it adopts the provisions in Appendix H-1 of the Graduate Medical Education Regulations (Amendment) 2019 contained in Ext. P2 impugned in prayer no. ii as unjust, illegal and arbitrary.
- iv. To issue a writ of certiorari quashing Ext. P8 as unjust, illegal and arbitrary;
- v. To issue a writ of mandamus directing the respondents No.6 and 7 to constitute a Disability Medical Board as required under the Persons with Disabilities Act, 2016 r/w Persons with Disabilities Rules, 2017, and examine the petitioner and grant a disability certificate as prescribed under the law;
- vi. To declare that the petitioner is a person with benchmark disability and is eligible and entitled to be admitted to MBBS/BHMS/DHMS course under NEET-2020 according to the OBC-PH rank obtained by the petitioner;
- vii. To direct the respondents to grant admission to the petitioner to MBBS/BHMS/DHMS course under NEET-2020 according to the OBC-PH rank obtained by the petitioner;
- viii. To issue such other orders, directions or writs as may be prayed for and that this Hon'ble Court may deem fit under the facts and circumstances of the case.

Dated this the 11<sup>th</sup> day of November, 2020.

Counsel for the petitioner

Petitioner

INTERIM RELIEF

For the reasons stated in the accompanying Writ Petition, it is respectfully prayed that this Hon'ble Court may be pleased:

- i. To keep one seat vacant and unfilled in the allotment process for admission to MBBS/BHMS/DHMS courses under NEET-2020 and KEAM-2020 provisionally and subject to the result of the writ petition, and;
- ii. To direct respondents no. 6 and 7 to constitute a Disability Medical Board as required under the Persons with Disabilities Act, 2016 r/w Persons with Disabilities Rules, 2017, examine the petitioner and grant a disability certificate before completion of the allotment to the above said courses;

Dated this the 11<sup>th</sup> day of November, 2020.

Counsel for the petitioner

Petitioner





Presented on: 9.12.2020

ok

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

I.A.No. f 2020

in  
W.P(c) No. of 2020

Nimmi Alphonsa Joseph  
Vs  
State of Kerala and others

: Petitioner/Petitioner

: Respondents/Respondents

PETITION FOR DIRECTION

Adv. Maitreyi S. Hegde (M-1351) (Enrolment No. K-139B/2015)

Kaleeswaram Raj & Associates,  
"Dharma", 69/3277A, Peediyakkal Road,  
Ernakulam, Kochi-18, Kerala State.

Counsel for the petitioner

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

I.A.No. of 2020

in

W.P(c) No. of 2020

Nimmi Alphonsa Joseph

: Petitioner

Vs

State of Kerala and others

: Respondents

I N D E X

Sl.No.	Particulars	Pages
1.	Affidavit	1-3
2.	<u>Exhibit P13</u> : A copy of the certificate of disability issued	-4-
4	<u>Exhibit P14</u> : a copy of the allotment memo	5-6
5	<u>Exhibit P15</u> : A copy of the document showing allotment schedule for BHMS	7
6.	Petition for direction	8-10
7	Petition to receive document	11-13

Dated this the 9<sup>th</sup> day of December, 2020.

Counsel for the petitioner

ERNAKULAM

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

I.A.No.

f 2020

in

W.P(c) No.

of 2020

Nimmi Alphonsa Joseph

: Petitioner

Vs

State of Kerala and others

: Respondents

AFFIDAVIT

I, Nimmi Alphonsa Joseph, Aged 19 years, D/o Nirmal Joseph, Anna Cottage, Jayanthi Road, P.O.Chalad, Kannur -14,, do hereby solemnly affirm and state as follows:

1. I am the Petitioner in the above W.P(c) and petitioner herein. I am the Petitioner in the above W.P(c) and petitioner herein. The above writ petition was filed inter alia challenging the relevant clauses in the Graduate Medical Education Regulations (Amendment) 2019 and seeking admission and reservation to the petitioner in certain undergraduate medical courses.
2. During the pendency of the above proceedings, the petitioner now has been allotted a seat in the Government Homeopathic Medical College, Kozhikode in BHMS course in the All India quota along with 4 other students. When the petitioner approached the authorities of the college, they demanded disability certificate issued by the Government Medical College, Thiruvananthapuram as the said college is the only college included in the prospectus as authority to issue certificate. The petitioner has been given time till 12.12.2020 to furnish the same. Though this Hon'ble Court declined the interim order on 19.11.2020 in the above writ petition and the same was confirmed through the order dated 30.11.2020 in Writ Appeal No.1563/20, the same cannot refrain this Hon'ble Court from granting this relief since this seat is allotted in All India quota and is a fresh cause of action.
3. It is submitted that, as per the prospectus, Govt. Medical College, Thiruvananthapuram is the designated centre in Kerala for assessing eligibility of

  
Nimmi Alphonsa Joseph



disabled candidates. However, due to the Covid situation, petitioner was permitted/asked to go to Pariyaram Medical College for assessment on 26.08.2020, at an earlier point of time. The petitioner is till date kept in darkness as to what the level of disability is since she was not given the copy of the certificate. She was only informed that she is not eligible.

4. Therefore, when the petitioner was now allotted a seat in the Government Homeopathic Medical College, Kozhikode, the petitioner went to District Medical Board, Kannur for assessing her disability. A copy of the certificate of disability issued to the petitioner from two specialists at District Hospital, Kannur is produced herewith and marked as Exhibit P13.

5. A reading of Ext. P13 would show that, the petitioner is stated to have 40% disability. It is not clear from the said assessment whether this is a disability of the petitioner without aid or with aid. Such an assessment was also not done. It is submitted that, as per Ext. P14 certificate, the petitioner is having specified disability of low vision of 40%. As per Ext. P2 regulations, Appendix H-1 and Clause 4(1)(B) of Homeopathy (Degree Course) Amendment Regulations 2019, "Persons with Visual impairment / visual disability of more than 40% may be made eligible to pursue MBBS Course and may be given reservation, subject to the condition that the visual disability is brought to a level of less than the benchmark of 40% with advanced low vision aids." Therefore, there has to be an assessment of visual disability of the petitioner without advanced low vision aids and with advanced low vision aid. If an assessment is done at the Designated Centre that is Government Medical College, Thiruvananthapuram, the petitioner is confident that she will be found eligible for admission.

6. The petitioner is willing to appear before the Government Medical College, Thiruvananthapuram. The last date for admission is 12.12.2020 under first round. 12.12.2020 is a second Saturday and a holiday. Therefore, the assessment of the

*Alph*  
Nimmi Alphonse Joseph.

petitioner by the Medical Board at Govt. Medical College Thiruvananthapuram may be done at least tomorrow, i.e. on 10.12.2020. Otherwise, it will cause serious prejudice and hardships to the petitioner. I am filing a separate affidavit and petition to implead, Medical Board for assessing Disability ( Designated Disability Centre), represented by its Chairman, Govt. Medical College, Thiruvananthapuram, 695 011.

7. Though the petitioner approached the Government Medical College, Thiruvananthapuram last year for issuance of disability certificate, no certificate was issued to the petitioner although assessment was conducted.

8. To show that the petitioner is allotted a seat, a copy of the allotment memo is produced herewith and marked as Exhibit P14. A copy of the document showing allotment schedule for BHMS showing last date of 1<sup>st</sup> round of allotment as 12<sup>th</sup> December (reporting dates are given as 5<sup>th</sup> to 12<sup>th</sup> December 2020) is produced herewith and marked as Exhibit P15.

9. Therefore, in the interest of justice, it has become necessary to direct Medical Board for assessing Disability represented by Chairperson, Govt. Medical College, Thiruvananthapuram conduct an examination of the petitioner under the said disability without advanced low vision aids and with advanced low vision aid according to the relevant Rules and issue a certificate on 10.12.2020, to enable her admission on 11.12.2020, which is a Friday.

In the above circumstances, it is respectfully prayed that this Hon'ble Court may be pleased to direct the Medical Board for assessing Disability represented by Chairperson, Govt. Medical College, Thiruvananthapuram to conduct examination of the petitioner with respect to her disability and assess her disability according to the relevant Rules and Ext. P14 without advanced low vision aids and with advanced low vision aid, and to issue certificate assessing her disability on 10.12.2020, enabling her to procure admission at Government Homeopathic Medical College, Kozhikode before 12.12.2020. It is further prayed that this Hon'ble Court may be pleased to accept the above documents as additional documents in the writ petition.

I have not filed any petitions earlier for the same relief.

The above facts are true and correct.

Dated this the 9<sup>th</sup> day of December, 2020.

*Alph*  
Nimmi Alphouse Joseph

8

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM  
I.A.No. f 2020

in  
W.P(c) No. of 2020

PETITIONER/PETITIONER:

Nimmi Alphonsa Joseph  
Aged 19 years  
D/o Nirmal Joseph  
Anna Cottage, Jayanthi Road  
P.O.Chalad,  
Kannur -14.

Vs

RESPONDENTS/RESPONDENTS:

1. State of Kerala, represented by  
The Secretary to Government,  
Department of Health & Family Welfare,  
Secretariat, Thiruvananthapuram-695001.
2. Director of Medical Education,  
Thiruvananthapuram-695001.
3. Commissioner for Entrance Examination,  
5th Floor KSHB Building, SS Kovil Rd,  
Santhi Nagar, Thiruvananthapuram -695001
4. District Hospital,  
Ayikkara Government Hospital Road,  
Kannur - 670017
5. District Medical Officer, represented by Medical Officer  
District Hospital  
Ayikkara Government Hospital Road,  
Kannur - 670017
6. The Assessment Board for assessing Disability,  
Represented by Chairperson  
Government Medical College Hospital,  
Pariyaram, Medical College P.O.,  
Kannur - 670 503

7. Government Medical College Hospital,  
 Represented by its Principal  
 Medical College PO,  
 Thiruvananthapuram - 695 011.
  
8. National Medical Commission,  
 Represented by its Chairman  
 (formerly Medical Council of India),  
 Pocket- 14 , Sector - 8,  
 Dwarka Phase -1, New Delhi - 110077
  
9. The Convenor, NEET,  
 Central Board of Secondary Education,  
 Siksha Kendra, 2-Community Centre,  
 Preet Vihar,  
 Delhi - 110092
  
10. Senior Director, NEET (UG) Unit,  
 NTA of Higher Education,  
 Ministry of Human Resource Development,  
 Government of India West Block-1, wing No.-6,  
 2nd Floor, R K Puram,  
 New Delhi-110066
  
11. Union of India,  
 Represented by Secretary to government  
 Ministry of Human Resources Development,  
 (Department of Higher Education)  
 Central Secretariat, New Delhi- 110001
  
12. Central Council of Homoeopathy  
 Represented by its Secretary  
 Jawaharlal Nehru Bhartiya Chikitsaavum  
 Homoeopathic Anusandhan Bhawan  
 61-65, Institutional Area, Opp. 'D' Block  
 Janak Puri , New Delhi- 110058

10

For the reasons stated in the accompanying affidavit, it is respectfully prayed that this Hon'ble Court may be pleased to direct the Medical Board for assessing Disability represented by Chairperson, Govt. Medical College, Thiruvananthapuram to conduct examination of the petitioner with respect to her disability and assess her disability according to the relevant Rules and Ext. P14, without advanced low vision aids and with advanced low vision aid, and to issue certificate assessing her disability on 10.12.2020, enabling her to procure admission at Government Homeopathic Medical College, Kozhikode before 12.12.2020.

Dated this the 9<sup>th</sup> day of December, 2020.

Counsel for the petitioner

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM  
I.A.No. f 2020

in  
W.P(c) No. of 2020

PETITIONER/PETITIONER:

Nimmi Alphonsa Joseph  
Aged 19 years  
D/o Nirmal Joseph  
Anna Cottage, Jayanthi Road  
P.O.Chalad,  
Kannur -14.

Vs

RESPONDENTS/RESPONDENTS:

1. State of Kerala, represented by  
The Secretary to Government,  
Department of Health & Family Welfare,  
Secretariat, Thiruvananthapuram-695001.
2. Director of Medical Education,  
Thiruvananthapuram-695001.
3. Commissioner for Entrance Examination,  
5th Floor KSHB Building, SS Kovil Rd,  
Santhi Nagar, Thiruvananthapuram -695001
4. District Hospital,  
Ayikkara Government Hospital Road,  
Kannur - 670017
5. District Medical Officer, represented by Medical Officer  
District Hospital  
Ayikkara Government Hospital Road,  
Kannur - 670017
6. The Assessment Board for assessing Disability,  
Represented by Chairperson  
Government Medical College Hospital,  
Pariyaram, Medical College P.O.,  
Kannur - 670 503

7. Government Medical College Hospital,  
Represented by its Principal  
Medical College PO,  
Thiruvananthapuram - 695 011

8. National Medical Commission,  
Represented by its Chairman  
(formerly Medical Council of India),  
Pocket- 14 , Sector - 8,  
Dwarka Phase -1, New Delhi - 110077

9. The Convenor, NEET,  
Central Board of Secondary Education,  
Siksha Kendra, 2-Community Centre,  
Preet Vihar,  
Delhi - 110092

10. Senior Director, NEET (UG) Unit,  
NTA of Higher Education,  
Ministry of Human Resource Development,  
Government of India West Block-1, wing No.-6,  
2nd Floor, R K Puram,  
New Delhi-110066

11. Union of India,  
Represented by Secretary to government  
Ministry of Human Resources Development,  
(Department of Higher Education)  
Central Secretariat, New Delhi- 110001

12. Central Council of Homoeopathy  
Represented by its Secretary  
Jawaharlal Nehru Bhartiya Chikitsaavum  
Homoeopathic Anusandhan Bhawan  
61-65, Institutional Area, Opp. 'D' Block  
Janak Puri , New Delhi- 110058

13

For the reasons stated in the accompanying affidavit, it is respectfully prayed that this Hon'ble Court may be pleased to accept Exts. P13, P14, and P15 as additional documents in the writ petition.

Dated this the 9<sup>th</sup> day of December, 2020.

Counsel for the petitioner



(4)

Presented on: 01. 12.2020

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

I.A.No. of 2020

W.P(c) No. <sup>in</sup> 24864 <sub>of</sub> 2020

Nimmi Alphonsa Joseph

: Petitioner/Petitioner

Vs

State of Kerala and others

: Respondents/Respondents

PETITION FOR AMENDMENT

Adv. Maitreyi S. Hegde (M-1351) (Enrolment No. K-139B/2015)

Kaleeswaram Raj & Associates,  
"Dharma", 69/3277A, Peediyakkal Road,  
Ernakulam, Kochi-18, Kerala State.

Counsel for the petitioner

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

I.A.No. of 2020

W.P(c) No. <sup>in</sup> 24864 of 2020

Nimmi Alphonsa Joseph

: Petitioner

Vs

State of Kerala and others

: Respondents

I N D E X

Sl.No.	Particulars	Pages
1.	Affidavit	1-3
2.	<u>Exhibit P2(a)</u> -True copy of the Homeopathy (Degree Course) Amendment Regulations 2019.	4-16
3.	Petition for amendment	17-21
4.	Petition to receive document	22-24

Dated this the 1st day of December, 2020.

Counsel for the petitioner

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

I.A.No. of 2020

W.P(C) No. <sup>in</sup> 24864 of 2020

Nimmi Alphonsa Joseph  
Vs  
State of Kerala and others

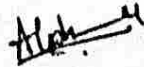
: Petitioner

: Respondents

AFFIDAVIT

I, Nimmi Alphonsa Joseph, Aged 19 years, D/o Nirmal Joseph, Anna Cottage, Jayanthi Road, P.O.Chalad, Kannur -14,, do hereby solemnly affirm and state as follows:

1. I am the Petitioner in the above W.P(c) and petitioner herein. The above writ petition was filed challenging the relevant clauses in the Graduate Medical Education Regulations (Amendment) 2019.
2. It is submitted that the Central Council for Homeopathy who is arrayed as respondent No.12 in the writ petition has also issued Homeopathy (Degree Course) Amendment Regulations 2019. The clauses in the said regulation as regarding visually impaired persons are identical to that of the regulations issued by the Medical Council of India. Therefore, it has become necessary to incorporate the above said regulation as well as in the writ petition. Hence the following amendments are proposed to be incorporated in the writ petition.

  
Nimmi Alphonsa Joseph

I. Under the head "Statement of Facts", after the present paragraph no. 4, below paragraph 4 the following may be added as paragraph 4(a):

"4(a). It is submitted that the Central Council for Homeopathy has issued Homeopathy (Degree Course) Amendment Regulations 2019. Annexure D of the said schedule deals with the guidelines regarding admission of students with specified disabilities. Clause 4(1)B of Annexure D of the Homeopathy (Degree Course) Amendment Regulations, 2019 is identical to the relevant clauses in the regulations issued by the Medical Council of India. Therefore, Clause 4(1)B under Annexure D of the Homeopathy (Degree Course) Amendment Regulations, 2019 is under challenge in the writ petition to the extent to which it excludes the persons of visual impairment for both admission and reservation to the BHMS Course. A copy of the Homeopathy (Degree Course) Amendment Regulations 2019 is produced herewith and marked as Exhibit P2(a)."

II. Under the head "Grounds," the following ground may be added after ground K as Ground L:

"L. Ext.P2(a) regulation makes it the case that for BHMS Course, persons with visual impairment above 40% are rendered ineligible for admission. The said restriction is impermissible and violative of the provisions of the RPWD Act, the relevant rules and the Supreme Court judgments on disability discrimination. Therefore, Clause 4(1)B of Annexure D of Homeopathy Regulations is liable to be struck down. Since the clauses of

*Alph*  
Nimmi Alphome Joseph

Ext.P2(a) are identical to those of the clauses in the Graduate Medical Education Regulations (Amendment) 2019, all the grounds made against the Graduate Medical Education Regulations (Amendment) 2019 may be treated as applicable to the impugned clause under Ext. P2(a) regulations as well ."

III. Under the head "Prayer", after the present prayer No.(iii), the following may be added as prayer No.(iii) (a) and (iii) (b):

"(iii)(a). To declare that Clause 4(1)B of Annexure D of the Homeopathy (Degree Course) Amendment Regulations 2019 to the extent to which it excludes visually impaired persons having disability of 40% or more for admission and reservation for BHMS Course as unjust, illegal and arbitrary;

(iii)(b). To issue a writ of certiorari quashing Clause 4(1)B of Annexure D of the Homeopathy (Degree Course) Amendment Regulations 2019 to the extent to which it excludes visually impaired persons having disability of 40% or more for admission and reservation for BHMS Course as unjust, illegal and arbitrary."

I have not filed any petitions earlier for the same relief.

The above facts are true and correct.

Dated this the 1<sup>st</sup> day of December, 2020.

Deponent

*Alph. Joseph*  
Nimmi Alphome Joseph

I solemnly affirmed and signed before me  
by the deponent who is personally known  
to me on the..... day of Dec. ....  
office at Ernakulam

17

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM  
I.A.No. of 2020

in  
W.P(c) No. 24864 of 2020

PETITIONER/PETITIONER:

Nimmi Alphonsa Joseph  
Aged 19 years  
D/o Nirmal Joseph  
Anna Cottage, Jayanthi Road  
P.O. Chalad,  
Kannur -14.

Vs

RESPONDENTS/RESPONDENTS:

1. State of Kerala, represented by  
The Secretary to Government,  
Department of Health & Family Welfare,  
Secretariat, Thiruvananthapuram-695001.
2. Director of Medical Education,  
Thiruvananthapuram-695001.
3. Commissioner for Entrance Examination,  
5th Floor KSHB Building, SS Kovil Rd,  
Santhi Nagar, Thiruvananthapuram -695001
4. District Hospital,  
Ayikkara Government Hospital Road,  
Kannur - 670017
5. District Medical Officer,  
District Hospital  
Ayikkara Government Hospital Road,  
Kannur - 670017

- 15
6. Medical Board,  
Government Medical College Hospital,  
Pariyaram, Medical College P.O.,  
Kannur - 670 503
  7. Government Medical College,  
Medical College PO,  
Thiruvananthapuram - 695 011
  8. National Medical Commission,  
(formerly Medical Council of India),  
Pocket- 14 , Sector - 8,  
Dwarka Phase -1, New Delhi - 110077
  9. The Convenor, NEET,  
Central Board of Secondary Education,  
Siksha Kendra, 2-Community Centre,  
Preet Vihar,  
Delhi - 110092
  10. Senior Director, NEET (UG) Unit,  
NTA of Higher Education,  
Ministry of Human Resource Development,  
Government of India West Block-1, wing No.-6,  
2nd Floor, R K Puram,  
New Delhi-110066
  11. Union of India,  
Ministry of Human Resources Development,  
Department of Higher Education  
Central Secretariat, New Delhi- 110001  
Through its Secretary

12. Central Council of Homoeopathy  
Jawaharlal Nehru Bhartiya Chikitsaavum  
Homoeopathic Anusandhan Bhawan  
61-65, Institutional Area, Opp. 'D' Block  
Janak Puri , New Delhi- 110058

PETITION FILED UNDER RULE 155 OF THE HIGH COURT RULES

For the reasons stated in the accompanying affidavit, it is respectfully prayed that this Hon'ble Court may be pleased to permit the petitioner to amend the writ petition in the following manner:-

- I. Under the head "Statement of Facts", after the present paragraph no. 4, below paragraph 4 the following may be added as paragraph 4(a):

"4(a). It is submitted that the Central Council for Homeopathy has issued Homeopathy (Degree Course) Amendment Regulations 2019. Annexure D of the said schedule deals with the guidelines regarding admission of students with specified disabilities. Clause 4(1)B of Annexure D of the Homeopathy (Degree Course) Amendment Regulations, 2019 is identical to the relevant clauses in the regulations issued by the Medical Council of India. Therefore, Clause 4(1)B under Annexure D of the Homeopathy (Degree Course) Amendment Regulations, 2019 is under challenge in the writ petition to the extent to which it excludes the persons of visual impairment for both admission and reservation to the BHMS Course. A copy of the Homeopathy (Degree Course) Amendment Regulations 2019 is produced herewith and marked as Exhibit P2(a)."



II. Under the head "Grounds," the following ground may be added after ground K as Ground L:

"L. Ext.P2(a) regulation makes it the case that for BHMS Course, persons with visual impairment above 40% are rendered ineligible for admission. The said restriction is impermissible and violative of the provisions of the RPWD Act, the relevant rules and the Supreme Court judgments on disability discrimination. Therefore, Clause 4(1)B of Annexure D of Homeopathy Regulations is liable to be struck down. Since the clauses of Ext.P2(a) are identical to those of the clauses in the Graduate Medical Education Regulations (Amendment) 2019, all the grounds made against the Graduate Medical Education Regulations (Amendment) 2019 may be treated as applicable to the impugned clause under Ext. P2(a) regulations as well."

III. Under the head "Prayer", after the present prayer No.(iii), the following may be added as prayer No.(iii) (a) and (iii) (b):

"(iii)(a). To declare that Clause 4(1)B of Annexure D of the Homeopathy (Degree Course) Amendment Regulations 2019 to the extent to which it excludes visually impaired persons having disability of 40% or more for admission and reservation for BHMS Course as unjust, illegal and arbitrary;

(iii)(b). To issue a writ of certiorari quashing Clause 4(1)B of Annexure D of the Homeopathy (Degree Course) Amendment Regulations 2019 to the

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extent to which it excludes visually impaired persons having disability of 40% or more for admission and reservation for BHMS Course as unjust, illegal and arbitrary."

Dated this the 1<sup>st</sup> day of December, 2020.

Counsel for the petitioner

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BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

I.A.No. \_\_\_\_\_ of 2020

in  
W.P(c) No. 24864 of 2020

PETITIONER/PETITIONER:

Nimmi Alphonsa Joseph  
Aged 19 years  
D/o Nirmal Joseph  
Anna Cottage, Jayanthi Road  
P.O. Chalad,  
Kannur -14.

Vs

RESPONDENTS/RESPONDENTS:

1. State of Kerala, represented by  
The Secretary to Government,  
Department of Health & Family Welfare,  
Secretariat, Thiruvananthapuram-695001.
2. Director of Medical Education,  
Thiruvananthapuram-695001.
3. Commissioner for Entrance Examination,  
5th Floor KSHB Building, SS Kovil Rd,  
Santhi Nagar, Thiruvananthapuram -695001
4. District Hospital,  
Ayikkara Government Hospital Road,  
Kannur - 670017
5. District Medical Officer,  
District Hospital  
Ayikkara Government Hospital Road,  
Kannur - 670017

6. Medical Board,  
Government Medical College Hospital,  
Pariyaram, Medical College P.O.,  
Kannur - 670 503
7. Government Medical College,  
Medical College PO,  
Thiruvananthapuram - 695 011
8. National Medical Commission,  
(formerly Medical Council of India),  
Pocket- 14 , Sector - 8, Dwarka Phase -1,  
New Delhi - 110077
9. The Convenor, NEET,  
Central Board of Secondary Education,  
Siksha Kendra, 2-Community Centre,  
Preet Vihar,  
Delhi - 110092
10. Senior Director, NEET (UG) Unit,  
NTA of Higher Education,  
Ministry of Human Resource Development,  
Government of India West Block-1, wing No.-6,  
2nd Floor, R K Puram,  
New Delhi-110066
11. Union of India,  
Ministry of Human Resources Development,  
Department of Higher Education, Central Secretariat,  
New Delhi- 110001  
Through its Secretary
12. Central Council of Homoeopathy  
Jawaharlal Nehru Bhartiya Chikitsaavum  
Homoeopathic Anusandhan Bhawan, 61-65, Institutional Area,  
Opp. 'D' Block, Janak Puri , New Delhi- 110058.

PETITION FILED UNDER RULE 154 OF THE HIGH COURT RULES

For the reasons stated in the accompanying affidavit, it is respectfully prayed that this Hon'ble Court may be pleased to receive Ext.P2(a) as additional document in the above writ petition.

Dated this the 1<sup>st</sup> day of December, 2020.

Counsel for the petitioner

Presented on: 09. 12.2020

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

I.A.No. . . . . of 2020

in

W.P(c) No. 24864 of 2020

Nimmi Alphonsa Joseph

Vs

State of Kerala and others

: Petitioner/Petitioner

: Respondents/Respondents

PETITION FOR IMPEADING FILED UNDER  
RULE 152 OF THE HIGH COURT RULES.

Adv. Maitreyi S. Hegde (M-1351) (Enrolment No. K-139B/2015)

Kaleeswaram Raj & Associates,  
"Dharma", 69/3277A, Peediyakkal Road,  
Ernakulam, Kochi-18, Kerala State.

Counsel for the Petitioner

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM  
I.A.No. of 2020

In

W.P(c) No. 24864 of 2020

Nimmi Alphonsa Joseph

: Petitioner/Petitioner

Vs

State of Kerala and others

: Respondents/Respondents

I N D E X

Sl.No.	Particulars	Pages
1	Affidavit	1 - 2
2	Petition for Impleading.	3 - 5

Dated this the 9<sup>th</sup> day of December, 2020.

Counsel for the Petitioner

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

I.A.No. of 2020

In

W.P(c) No. 24864 of 2020

Nimmi Alphonsa Joseph

: Petitioner

Vs

State of Kerala and others

: Respondents

AFFIDAVIT

I, Nimmi Alphonsa Joseph, Aged 19 years, D/o Nirmal Joseph, Anna Cottage, Jayanthi Road, P.O.Chalad, Kannur -14, do hereby solemnly affirm and state as follows:

1. I am the Petitioner in the above W.P(c) and petitioner herein. The above writ petition was filed inter alia challenging the relevant clauses in the Graduate Medical Education Regulations (Amendment) 2019 and seeking admission and reservation to the petitioner in certain undergraduate medical courses.

  
Nimmi Alphonsa Joseph



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2. It is submitted that "The Assessment Board for assessing Disability, Represented by Chairperson, Government Medical College Hospital, Medical College PO, Thiruvananthapuram - 695 011" is not arrayed as a party in the writ petition. The Assessment Board at Kannur Medical College alone is arrayed as a party. The Assessment Board at Government Medical College Hospital, Thiruvananthapuram is a necessary party in the above writ petition. If the said party is not impleaded, immense hardship will be caused to the petitioner.

3. Hence, it is respectfully prayed that this Hon'ble Court may be pleased to implead "The Assessment Board for assessing Disability, Represented by Chairperson, Government Medical College Hospital, Medical College PO, Thiruvananthapuram - 695 011" as additional respondent no. 13 in the above writ petition in the interest of justice.

I have not filed any petitions earlier for the same relief.,

The above facts are true and correct.

Dated this the 9<sup>th</sup> day of December, 2020.

Deponent

I solemnly affirmed and signed before me by the deponent who is personally known to me on the 9<sup>th</sup> day of Dec 2020 in my office at Ernakulam

*Alph*  
Nimmi Alphonse Joseph

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

I.A.No. of 2020

in

W.P(c) No. 24864 of 2020

PETITIONER/PETITIONER:

Nimmi Alphonsa Joseph  
Aged 19 years  
D/o Nirmal Joseph  
Anna Cottage, Jayanthi Road  
P.O.Chalad,  
Kannur -14.

Vs

RESPONDENTS/RESPONDENTS:

1. State of Kerala, represented by  
The Secretary to Government,  
Department of Health & Family Welfare,  
Secretariat, Thiruvananthapuram-695001.
2. Director of Medical Education,  
Thiruvananthapuram-695001.
3. Commissioner for Entrance Examination,  
5th Floor KSHB Building, SS Kovil Rd,  
Santhi Nagar, Thiruvananthapuram -695001.
4. District Hospital,  
Ayikkara Government Hospital Road,  
Kannur - 670017.
5. District Medical Officer,  
District Hospital  
Ayikkara Government Hospital Road,  
Kannur - 670017.

6. The Assessment Board for assessing Disability,  
Represented by Chairperson  
Government Medical College Hospital,  
Pariyaram, Medical College P.O.,  
Kannur - 670 503.
7. Government Medical College Hospital,  
Represented by its Principal  
Medical College PO,  
Thiruvananthapuram - 695 011.
8. National Medical Commission,  
Represented by its Chairman  
(formerly Medical Council of India),  
Pocket- 14 , Sector - 8,  
Dwarka Phase -1, New Delhi - 110077.
9. The Convenor, NEET,  
Central Board of Secondary Education,  
Siksha Kendra, 2-Community Centre,  
Preet Vihar,  
Delhi - 110092.
10. Senior Director, NEET (UG) Unit,  
NTA of Higher Education,  
Ministry of Human Resource Development,  
Government of India West Block-1, wing No.-6,  
2nd Floor, R K Puram,  
New Delhi-110066.
11. Union of India,  
Represented by Secretary to government  
Ministry of Human Resources Development,  
(Department of Higher Education)  
Central Secretariat, New Delhi- 110001.

12. Central Council of Homoeopathy  
Represented by its Secretary  
Jawaharlal Nehru Bhartiya Chikitsaavum  
Homoeopathic Anusandhan Bhawan  
61-65, Institutional Area, Opp. 'D' Block  
JanakPuri , New Delhi- 110058

PETITION FILED UNDER RULE 152 OF THE HIGH COURT RULES

For the reasons stated in the accompanying affidavit, it is respectfully prayed that this Hon'ble Court may be pleased to allow the petitioner to implead "The Assessment Board for assessing Disability, Represented by Chairperson, Government Medical College Hospital, Medical College PO, Thiruvananthapuram - 695 011" as additional respondent no. 13 in the above writ petition in the interest of justice.

Dated this the 9<sup>th</sup> day of December, 2020.

Counsel for the petitioner