

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

THURSDAY, THE 4TH DAY OF AUGUST 2022 / 13TH SRAVANA, 1944

WP(C) NO. 7763 OF 2022

PETITIONER:

SACRED HEART CLARIST PROVINCE CHARITABLE SOCIETY
REG.NO.(ER) 110/92, ALUVA-683101, REPRESENTED BY ITS
PRESIDENT.

BY ADVS.

K.JAJU BABU (SR.)

SACHIN RAMESH

BRIJESH MOHAN

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ADDITIONAL CHIEF SECRETARY TO
GOVERNMENT, HIGHER EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 2 MAHATMA GANDHI UNIVERSITY
REPRESENTED BY ITS REGISTRAR, PRIYADARSINI
HILLS.P.O,
KOTTAYAM-686 560.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04.08.2022, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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JUDGMENT

Dated this the 4th day of August, 2022.

The petitioner is stated be a registered Charitable Society and that they decided to open an Aided College for the hearing impaired, particularly because such students who come out successful after Higher Secondary Course drop out solely because they do not obtain necessary opportunities for College education.

2. The petitioner says that, even though they made an application for such purpose before the 2nd respondent - Mahatma Gandhi University (University for short), it has not been yet considered and that this is presumably because the University goes by a Policy decision of the Government not to open any new Aided

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Colleges in the State.

3. The petitioner alleges that this is egregiously improper because the institution that they intend to start cannot be construed to be a mere "Aided College", but is to foster social engineering, by providing imperative opportunities to the more vulnerable. They therefore, pray that University be directed to consider Ext.P2 *de hors* Ext.P3 proceedings of the Government, within a time frame to be fixed by this Court.

4. Sri.Jaju Babu, learned Senior Counsel, instructed by Sri.Brijesh Mohan - learned counsel for the petitioner, added to the afore submissions explaining that his client is already running a Higher Secondary School with hostel facility and that unless they are able to open an Aided College, the students passing out will have no other option, but to drop out from further

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education. He submitted that, when the proposed institution is intended to cater education to those sections of students who are entitled to be constitutionally protected under the ambit of Articles 15 and 16, the Government cannot stand in the way merely saying that this will incur expenditure. He added that, in any event, the proposed Aided College is not a large one and hence that the expenditure would only be to the minimum.

5. I had earlier heard the learned Senior Counsel on the afore lines on 10.06.2022, when this matter had been listed, and I passed the following interim order:

Sri.Jaju Babu - learned Senior Counsel, instructed by Smt.Praseetha Pradeep - learned counsel appearing for the petitioner, argues that Ext.P3 General Policy of the Government against starting of new Aided Colleges, even

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if it is found to be correct, cannot stand in the way of Special Colleges being granted premium, particularly because, it caters the education of students whose faculties are impaired.

Certainly, this is a matter that the Government should look into and inform this Court.

List on 27/06/2022; within which time, the learned Government Pleader will obtain instructions in this matter.

6. Today, Smt.Resmi Thomas - learned Government Pleader, reiterated that the sole reason why the Government has refused to sanction new Aided Colleges in the State is because of the anticipated financial burden. She submitted that this is a policy decision of the Government and therefore, that petitioner cannot seek the same to be interdicted by this Court through this writ petition.

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7. When I evaluate the afore submissions of the learned Government Pleader, it is irrefragable that, normally, this Court cannot enter into the policy decision making realm of the Government. It is without doubt that Government has issued Ext.P3, recording their inability to accede to the establishment of any new Aided Colleges and it is luculent from that this is solely on account of the financial burden which they anticipate in such event.

8. However, I am drawn to the firm conclusion that the case of the petitioner cannot be treated as being any other Aided College, because their objective is to offer a hand to a very vulnerable section of the society who, as rightly argued by their learned Senior Counsel, are entitled to full constitutional protection under Articles 15 and 16.

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9. Ineluctably, therefore, the policy of the Government - not to allow any Aided Colleges - cannot be mechanically applied to the case of the petitioner, especially when the students who they intend to cater education certainly deserve the empathy and support of the society at large. **They may be hearing impaired, but their prayers cannot be allowed to fall on deaf ears.**

10. In the afore circumstances, I am certain that the Government must reconsider their stand singularly with reference to the application made by the petitioner, though I clarify that the directions herein cannot apply to any other person or entity, since I am guided by the specific factual circumstance impelled herein.

Resultantly, I order this writ petition and direct the Government to reconsider the request of the petitioner

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for starting an Aided College, however, only to cater education to the students with disability; and this shall be done with the empathy that the cause deserves. The Government will hear the petitioner and test their credentials for the afore purpose; and the resultant order will be issued within a period of two months from the date of receipt of a copy of this judgment.

Needless to say, on the Government taking a decision as afore, the University will proceed to consider Ext.P2 application and issue apposite orders on it without any avoidable delay thereafter.

Sd/-

**DEVAN RAMACHANDRAN
JUDGE**

Raj.
04.08.2022.

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APPENDIX OF WP(C) 7763/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE APPLICATION DATED 04.08.2021 SUBMITTED BY THE PETITIONER TO THE GOVERNMENT ALONG WITH ENGLISH TRANSLATION
- Exhibit P2 TRUE COPY OF THE COVERING LETTER DATED 31.8.2021 SUBMITTING THE APPLICATION ALONG WITH DOCUMENTS BY THE PETITIONER BEFORE THE 2ND RESPONDENT AND THE ENGLISH TRANSLATION OF COVERING LETTER.
- Exhibit P3 TRUE COPY OF THE LETTER VIDE NO.B3/141/2021/H.EDN DATED 22.10.2021 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER ALONG WITH ENGLISH TRANSLATION.
- Exhibit P4 TRUE COPY OF THE GOVERNMENT ORDER GO(MS)NO.567/2021/HEDN DATED 29.11.2021.
- Exhibit P5 TRUE COPY OF THE GOVERNMENT ORDER GO(MS)NO.566/2021/HEDN DATED 29.11.2021.
- Exhibit P6 TRUE COPY OF THE LETTER DATED 22.2.2022 POINTING OUT SOME DEFECTS AND DIRECTING TO FURNISH ADDITIONAL PARTICULARS ISSUED BY THE 1ST

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Exhibit P7

RESPONDENT TO THE PETITIONER

TRUE COPY OF THE ORDER OF THE 2ND
RESPONDENT VIDE NO.7468/ACA7/2021/MGU
DATED 29.12.2021 ALONG WITH ENGLISH
TRANSLATION.