

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.V. ASHA

THURSDAY, THE 10TH DAY OF SEPTEMBER 2015/19TH BHADRA, 1937

WA.No. 1306 of 2015 () IN WP(C).22358/2014

AGAINST THE JUDGMENT IN WP(C) 22358/2014 of HIGH COURT OF KERALA
DATED 10-04-2015

APPELLANT(S)/RESPONDENTS 1-3 IN WPC.:

1. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695001
2. THE DIRECTOR OF HIGHER SECONDARY EDUCATION
THIRUVANANTHAPURAM-695 001.
3. THE REGIONAL DEPUTY DIRECTOR,
HIGHER SECONDARY EDUCATION,
EDAPPALLY, ERNAKULAM.

BY SPL GOVERNMENT PLEADER SRI.T.T.MUHAMOOD

RESPONDENT(S)/PETITIONER IN WPC.:

THE CORPORATE MANAGER
CARMELITE CONGREGATION OF SISTERS, TRINITY CONVENT
KOLAZHY, THRISSUR DISTRICT-680 010

R BY SRI.S.MUHAMMED HANEEFF

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 10-09-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

W.A.No.1306 of 2015

Dated this the 10th day of September, 2015

JUDGMENT

Antony Dominic, J.

- 1.Respondents in W.P(C).22358/14 are the appellants.
The writ petition was filed by the respondent herein, a corporate manager, with a prayer to direct the appellants to permit them to commence Higher Secondary School in the Lady Immaculate Girls' High School, Choondal panchayat in Thrissur district.
- 2.In the judgment under appeal, mainly placing reliance on the educational need as reflected in Ext.P11, the report of the second appellant, the writ petition was disposed of holding that the respondent's school ought to have been included in the report of the six member committee appointed by the Government to make recommendations on the grant of plus two schools. Accordingly, learned single Judge directed that the respondent is entitled for higher secondary courses. It was also clarified that the respondent would be entitled to commence Higher Secondary courses from

the forthcoming academic year onwards. It is this judgment, which is under challenge before us.

3. We heard the special Government Pleader for the appellants and the learned counsel appearing for the respondent.

4. As is evident from the interim order passed by this Court in W.P(C).18176/14 and connected cases, which was confirmed in W.A.1163/14 and connected cases, this Court had directed that no plus two additional batches shall be granted outside the report submitted by the six member committee appointed by the Government to scrutinise the applications received in response to G.O(P).185/13.G.Edn. dated 11.6.2013. Above judgment in the writ appeals was confirmed by the Supreme Court in its order in Civil Appeal No.10283/13 and connected cases also. Subsequently, in the final judgment rendered on 20.8.2015 in W.P (C).24143/10 and connected cases, learned single Judge made the aforesaid interim order in W.P(C). 18176/14 and connected cases absolute. Accordingly,

the writ petitions were disposed of with the following further directions:

"11. While this Court would ordinarily be loath to making suggestions as regards the policy to be formulated by the State Government in the field of education, the observations above are deemed necessary taking note of the past experience that has seen a flood of litigation permeating this court every time the State Government comes out with a policy with regard to the sanctioning of higher secondary courses in the State. The State Government ought to remind itself that consistency and transparency go a long way in sustaining policy decisions, apart from inspiring confidence in the people, in matters of governance. Thus, while disposing these writ petitions, this Court also deems it necessary to issue the following directions to the State Government in the matter of consideration of applications for the grant of higher secondary courses;

(i) The State Government shall evolve and put in place suitable machinery to determine the educational need in each district in the State in the field of higher secondary education;

(ii) The machinery to be set up by the State Government must be one that determines such educational need on an ongoing basis so that the

educational need for any academic year is estimated at least a year in advance.

(iii) Based on the determination of educational need, the State Government must periodically call for applications from educational agencies in the district concerned and take steps to sanction higher secondary courses in such districts.

(iv) The criteria evolved by the State Government for sanctioning higher secondary courses must, inter alia, take into account the socially, educationally and economically backward areas in each district.

(v) While considering applications in areas where an educational need has been determined as existing, the State Government shall give preference to those applicants who have been recommended for the grant of higher secondary course in the past, either through Government Orders or through judgments of this Court, but were not sanctioned Higher Secondary Courses only because there was no policy decision then taken by the State Government to sanction Higher Secondary Courses in the State, or on account of the then Government facing financial constraints. Such cases would have to be considered favourably for a grant, subject to the applicant concerned complying with the infrastructural and other requirements mandated by the Kerala Education Act and Rules.

(vi) Insofar as I have directed that the State Government shall call for applications, based on the perceived educational need determined in any area, before considering a grant of higher secondary course to any educational agency in the said area, it would be open to the petitioners herein to respond to any call for applications by the Government, as and when made, and the fact that they have preferred applications in the past or that any such application preferred has been rejected in the past shall be of no relevance in a consideration by the State Government of the merit of the fresh applications so preferred by the petitioners.

(vii) The State Government shall endeavour to complete the above exercise by 31.03.2016 for the next academic year and thereafter, sanction courses based on educational need by 31st March of every succeeding year so that no student is prejudicially affected in the pursuit of his higher secondary education in the State during the academic year 2016-17 or thereafter. "

5. Admittedly, the respondent herein had submitted their application for grant of Higher Secondary courses in response to G.O(P).185/13/G.Edn. dated 11.6.2013. Though they were sanctioned Higher Secondary courses by G.O(P).143/14/G.Edn dated 31.7.2014, there is no

dispute on the fact that the school in question was not recommended by the six member committee. In such a situation, in the light of the interim order as confirmed by the Division Bench and the Apex Court and the final judgment in the writ petitions referred to hereinabove, the respondent could not have been granted plus two courses.

6. However, learned counsel for the respondent referred us to Ext.P11 order passed by the Director of Higher Secondary Education, which would show that the school of the respondent happened to be not included in the recommendation of the six member committee for the reason that there were certain mistakes in the data furnished to the committee. On this basis, counsel submits that the learned single Judge only meant rectification of the said mistake by ordering that Higher Secondary courses be granted to the respondent from the next academic year itself.

7. This contention of the learned counsel for the respondent is refuted by the learned Government Pleader by contending that the schools which are

granted by the Government are sufficient to take care of the educational need of the area. This fact again is also disputed by the learned counsel for the respondent.

8. In so far as this appeal is concerned, having regard to the orders and judgments of this Court, there could not have been any grant of plus two courses to any school which has not been recommended by the six member committee. Therefore, the direction of the learned single Judge to grant Higher Secondary School to the respondent cannot be sustained. However, if, as stated by the learned counsel for the respondent, there is educational need in the area justifying grant of Higher Secondary School to the respondent, that certainly is a matter which is to be taken into account by the appellants as and when educational need is ascertained in terms of the judgment of the learned single Judge.

In the aforesaid circumstances, this appeal is disposed of setting aside the judgment of the learned single Judge and directing that as and when

educational need is ascertained by the appellants and applications are invited for grant of Higher secondary Schools, it would be open to the respondent to submit their application, in which event, their claims would be considered in accordance with law.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
P.V.ASHA, Judge.

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PS to Judge