

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

WP(C).No. 2943 of 2014 (P)

PETITIONER:

KOCHERIES FOUNDATION
REPRESENTED BY ITS CHAIRMAN, NIZAR KOCHERY
KOCHERIL HOUSE, KANJIRAMATTOM, ERNAKULAM.

BY ADVS. SRI P.V. JAYACHANDRAN
SMT. P.M. SAJITHA

RESPONDENT(S):

1. THE STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY
HIGHER EDUCATION DEPARTMENT, SECRETARIAT ANNEXE
THIRUVANANTHAPURAM -695 001.
2. THE REGISTRAR
MAHATMA GANDHI UNIVERSITY, PRIYADARSHINI HILLS P.O.
KOTTAYAM- 686 560.
3. BAR COUNCIL OF INDIA REPRESENTED BY ITS CHAIRMAN
21 ROUSE AVENUE, INSTITUTIONAL AREA
NEW DELHI -100002.

R1 BY GOVT. PLEADER SRI. RAFAEEK V.K.
R2 BY ADV. SRI. VARUGHESE M. EASO, SC, M.G. UNIVERSITY
R3 BY ADV. SRI. RAJIT, SC, BAR COUNCIL OF INDIA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 2943 of 2014 (P)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 : TRUE COPY OF THE APPLICATION DATED 06/12/2012 WITH
PRESCRIBED FEES FOR AFFILIATION.
EXHIBIT P2 : TRUE COPY OF THE LETTER NO. AC.A1/1/2409/2013 DATED 20/06/2013.
EXHIBIT P3 : TRUE COPY OF THE APPLICATION DATED 21/06/2013
EXHIBIT P4 : TRUE COPY OF THE ORDER NO. 22212/C1/13/H.EDN. DATED
17/01/2014.
EXHIBIT P5 : COPY OF ORDER GO(MS)NO.31/2012/H.EDN. DT.28.1.2012.
EXHIBIT P6 : COPY OF ORDER GO(MS)NO.89/2012/G.EDN. DT.12.3.2012.

RESPONDENT(S)' EXHIBITS

EXT.R1(A): COPY OF LETTER NO.28845/C1/2012/H.EDN. DT.8.4.13.
EXT.R1(B): COPY OF GOVERNMENT LETTER DT.17.1.14.

TRUE COPY

P.S.TO JUDGE

dsn

ANIL K.NARENDRA, J

W.P.(C.)No. 2943 Of 2014

DATED THIS THE 14th DAY OF SEPTEMBER, 2015

JUDGMENT

The petitioner is a Public Charitable Trust having the object of establishing educational institutions. It has approached this Court in this Writ Petition seeking a writ of certiorari to quash Exts.P4 and P6 and seeking a writ of mandamus commanding the 1st respondent to grant No Objection Certificate (NOC) for starting a Self Financing Law College, in terms of Ext.P2 NOC granted by the 2nd respondent University.

2. Going by the averments in the Writ Petition, the petitioner, in order to start a new Self Financing Law College, submitted Ext.P1 application before the Registrar of the 2nd respondent University seeking NOC. Based on the said application, the petitioner was granted NOC by Ext.P2 communication dated 20.6.2013 of the 2nd respondent University, for starting LLB three year degree course and BA LLB five year Integrated course with an annual intake of 60 each under Self Financing sector, for the academic year 2013-14.

3. On obtaining Ext.P2 NOC, the petitioner submitted Ext.P3

request before the 1st respondent for grant of NOC for starting a new Self Financing Law College during the academic year 2013-14. The said request was turned down by the 1st respondent in Ext.P4 order dated 17.1.2014 stating that, in order to ensure the quality of legal education in the State, the Government have decided to consider only applications from educational trusts from those districts where no legal educational institutions exist now and that more than two self financing law colleges will not be sanctioned in a District in future. In view of the so called policy stated in Ext.P4 order, Ext.P3 application submitted by the petitioner for grant of NOC was rejected by the 1st respondent.

4. The petitioner would contend that the reasoning of the 1st respondent in Ext.P4 for rejecting the request made by the petitioner for grant of NOC is legally unsustainable and that no such restrictions are there either in Exts.P5 or P6. It is in such circumstances, the petitioner has approached this Court in this Writ Petition seeking various reliefs.

5. A counter affidavit has been filed on behalf of the 1st respondent, justifying the stand taken in Ext.P4. Along with the counter affidavit, the 1st respondent has produced Ext.R1(a)

communication dated 8.4.2013 of the Additional Chief Secretary, General Education (T) Department, addressed to the Registrar of various Universities in the State informing that in the matter of sanctioning of new Self Financing Law Colleges, the Government will consider only applications from educational trusts from those educational districts where no legal educational institutions exist now and that more than two Self Financing Law Colleges will not be sanctioned in a district in future.

6. I heard arguments of the learned counsel for the petitioner, the learned Government Pleader appearing for the 1st respondent, the learned Standing Counsel for the 2nd respondent and also the learned Standing Counsel for the 3rd respondent.

7. The sole issue that arises for consideration in this Writ Petition is as to the legality or otherwise of Ext.P4 order issued by the 1st respondent by which the request made by the petitioner in Ext.P3 to grant NOC to start a new Self Financing Law College was turned down stating that no Self Financing College can be permitted in districts where there are more than two Self Financing Law Colleges.

8. The issue raised in this Writ Petition is covered in

favour of the petitioner by the judgment of a learned Judge of this Court in **Sree Dharma Paripalana Yogam v. State of Kerala** (judgment dated 4.8.2015 in W.P.(C)No.15593/2014). In that judgment, this Court after considering the rival contentions, concluded that there is no rationale behind the policy of the Government in limiting the number of self financing colleges to 2 in a district or in refusing NOC on the ground of deterioration in quality of legal education and the same can only be termed arbitrary and baseless. This Court has also held that in effect it curtails the right to establish an educational institution of legal education simultaneously curtaining the right of aspirants for pursuing legal education. After making such findings, this Court has also set aside Ext.P8 order in that Writ Petition (which is similarly worded to Ext.P4 in this Writ Petition) and the Government was directed to reconsider the matter in the correct perspective in the light of the observations contained in the judgment and pass orders afresh treating the application of the petitioners therein as one for NOC for the year 2015-16. The Government was directed to pass appropriate orders within a period of two months from the date of receipt of a copy of the

judgment. Paras.11 to 14 of the judgment read thus:

“11. Having considered the contentions on either side and in view of the judgment of the Supreme Court in Shivaji University (Supra) and of the Madras High Court (supra), I am of the view that the decision taken by the Government is not on the basis of relevant considerations. On the other hand it is on considerations on matters which are irrelevant. The Government has decided not to sanction any more self financing college in the District on the assumption that it will affect the quality of legal education. There is no reason for such an assumption. The quality of legal education cannot be said to be a factor depending upon the number of educational institutions or availability of institutions in a particular district. Moreover there is a statutory body viz. Bar Council of India as well as Bar Council of Kerala for monitoring the standard and quality of legal education and of the institutions imparting legal education. Government cannot have any say over that aspect except on instructions by those competent statutory bodies. Even on grant of NOC by Government, the College can start functioning only after getting clearance from the Bar Council, which is duty bound to ensure quality and standard of legal education to be imparted. There is no reason for the Government to transgress its limit entering upon the areas where there are competent authorities to guide.

12. Over and above all, it is pertinent to note that the admissions to these institutions are made on the basis of

centralised allotment. Therefore admission will not be limited to those in Ernakulam district alone.

13. In this context it is relevant to note the observations of Madras High Court in para 28 of the judgment (supra), while directing the Government of Tamilnadu to accord sanction for starting law college in similar circumstances, as follows:

“The establishment of new colleges in the state is very much required for catering to the needs of the students who aspire to become law graduates, for which efforts have to be taken by the state government, either by itself or through some agencies, which are interested in that field. If the government itself is interested to establish more number of new colleges, it can, otherwise, it should read with the agencies, which are willing, subject to satisfying the requirement, taking note of the standard of legal education, infrastructure and other essential ingredients. In other words the state should endeavour to encourage such agencies and give approval. Instead it is seen that the state is not taking such an interest and is rejecting the permission again and again, negating the claim of the petitioner, even though the power to determine the establishment and location of law college is vested with the bar Council of India. In view of the specific provision under Rule 8 (1), a law college should be located at a place where there is at least a district court or a circuit district court or within such distance thereof as Bar Council of India permits. When the intention of the legislature is that , the Bar Council of India alone has the power to permit the starting of a law college at a particular location and the distance, the state has no other option except to grant no objection certificate to the petitioner.”

Further in paragraph 29 of the judgment, relying on T. M.A. Pai Foundation and others V State of Karnataka and others reported in (2002) 8 SCC 481, it was held that the right to establish and administer educational institutions is guaranteed

under the Constitution to all citizens under Article 19(1)(g) of the Constitution of India.

14. Therefore it is clear that there is no rationale behind the policy of the govt in limiting the number of self financing colleges to 2 in a district or in refusing NOC on the ground of deterioration in quality of legal education, and the same can only be termed arbitrary and baseless. In effect it curtails the right to establish an educational institution of legal education simultaneously curtailing the right of aspirants for pursuing legal education.”

In view of the law laid down in the judgment of this Court dated 4.8.2015 in W.P.(C)No.15593/2014, this Writ Petition is disposed of setting aside Ext.P4 order passed by the 1st respondent, thereby directing the said respondent to reconsider the request made by the petitioner in Ext.P3 for grant of NOC to start a new Law College under Self Financing Sector, in the light of the observations contained in the judgment in W.P.(C)No. 15593/2014, treating it as an application for NOC for the year 2015-16. Necessary orders in this regard shall be passed as expeditiously as possible, at any rate within a period of two months from the date of receipt of a certified copy of this judgment, with notice to the petitioner. In the event of the

Government granting NOC for the academic year 2015-16, it is for the petitioner to approach the 2nd respondent University for renewal of Ext.P2 NOC for the academic year 2015-16.

Sd/-
ANIL K.NARENDRAN,
JUDGE

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