

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

WP(C) .No. 8925 of 2012 (M)

PETITIONER:

SREENARAYANA GURUKULAM COLLEGE OF
ENGINEERING, KADAYIRIPPU,
KOLENCHERY, REPRESENTED BY ITS MANAGER,
T.A.VIJAYAN.

BY ADVS.SRI.T.K.VENUGOPALAN
SRI.V.V.VARGHESE

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO
GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

2. THE SECRETARY,
AIKKARANADU GRAMA PANCHAYATH, KADAYIRUPPU,
KOLENCHERRY - 682 311.

R1 BY GOVERNMENT PLEADER SRI.T.J. MICHAEL
R2 BY ADV. SRI.N.K.POULOSEKUTTY
ADV. SRI.C.Y.VINOD KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 18-11-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

W.P. (C) NO.8925 OF 2012

APPENDIX

PETITIONER(S) EXHIBITS

EXT.P-1 TRUE COPY OF LETTER DATED 6/2/2012 ISSUED BY
THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P-2 TRUE COPY OF REPLY DATED 23/2/2012 SUBMITTED BY
THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P-3 TRUE COPY OF LETTER DATED 15/3/2012 ISSUED BY
THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P3(a) TRUE COPY OF FORM OF RETURN.

RESPONDENTS' EXHIBITS

NIL

//true copy//

P.S. to Judge

“C.R.”

K. HARILAL, J.

W.P. (C) No.8925 of 2012

Dated this the 18th day of November, 2015

JUDGMENT

The question that emerges for consideration in this writ petition is, whether the grant of exemption from property tax under Sec.207 of the Kerala Panchayat Raj Act, 1994, to the buildings, used for educational purpose or allied purpose and its hostel buildings owned by the Government, aided or functioning with the financial assistance of the Government alone, in exclusion of similar buildings and hostels owned by other private management of self-financing Educational Institutions, is discriminatory and violative of Art.14 of the Constitution of India.

2. The petitioner/Engineering College is a self-

financing college, affiliated to the Mahatma Gandhi University, recognised and controlled by the Kerala Professional Colleges or Institutions (Prohibition of Capitation Fees, Regulation of Admission, Fixation of Non-exploitative fee and other measures to ensure equity and excellence in professional Education) Act, 2006 (for short 'the Act'). It is needless to say, the admission, fixation of fees and allied matters are controlled by the authorities under the said Act. But solely on the reason that the buildings and hostels are not owned by the Government or not aided or functioning with the financial assistance of the Government, it cannot be discriminated, in violative of Art.14 of the Constitution of India, by imposing property tax, unlike the buildings and hostels owned or financed by the Government which stand exempted under Sec.207 of the Kerala Panchayat Raj Act, the learned counsel argued.

3. Before embarking an enquiry on the said

question, the scope and extent of the constitutional requirements under Art.14 of the Constitution of India, for declaring a law or provision discriminatory and unconstitutional, deserves consideration. “Equality before law and equal protection of laws within the territory of India” is a cardinal principle enshrined under Art.14 of the Constitution of India. 'Equality before law' only means that 'amongst equals' the law should be equal and should be equally administered and that like should be treated alike. It can be said that the principle of equal treatment requires that individuals be treated similarly to the extent that they are same and be treated differently to the extent that they are different. In *T. Devadasan v. Union of India* [AIR 1964 SC 179], the Supreme Court has interpreted the scope and extent of Art.14 in this way. “The principle of equality before law does not require absolute equality or an equality amongst unequals. Mere differentiation or inequality of treatment does

not per se amount to discrimination and before considering inequality treatment, the object of legislation has to be considered. The principle of reasonable classification is permissible to the limited extent on grounds such as comity of nations, public interest etc.” According to 'Constitution of Laws of India' by H.M. Servai 4th Edition, the doctrine of equal protection of laws mean, the protection of equal laws for all persons similarly situated and a law based on permissible classification fulfils the guarantee of equal protection of laws and is valid, but a law based on impermissible classification violates guarantee under Art.14 of the Constitution of India and is void. In Mohammed Shejat Ali v. State of A.P. (AIR 1974 SC 1631), the Supreme Court held as follows:

“The fundamental guarantee is of equal protection and the doctrine of classification is a subsidiary rule evolved by Courts to give practical content to that guarantee by

accommodating it with the practical needs of the society and it should not be allowed to submerge and drown the precision guarantee of equality”.

4. In *Venugopala Ravi Varma Rajah v. Union of India* (AIR 1969 SC 1094) the Supreme Court held as follows:

“Equal protection clause does not enjoin equal protection of the laws as abstract propositions. Protection of equality does not predicate a mathematically precise or logically complete or symmetrical classification. It is not a condition of the guarantee of equal protection that all transactions, properties, objects or persons of the same genus must be affected by it or none at all. It is for the legislature to determine the objects on which tax is to be levied and the rates thereof”.

5. In *Royappa v. State of Tamil Nadu* [(1974) 4 SCC 3], the Supreme Court held as follows:

“Both Articles 14 and 16 deal with equality and inhibits against discrimination. It was declared that principle of equality should not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activity magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be “cribbed, cabined and confined” within traditional and doctranise limits”.

6. In *Bondu Ramaswamy v. Bangalore Development Authority* [(2010) 7 SCC 129], the Supreme Court held that Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf.

7. In *Deepak Sibval v. Punjab University* [AIR 1989 SC 904], the Supreme Court held as follows:

“9. It is now well settled that Art.14 forbids class legislation, but does not forbid reasonable classification. Whether a classification is a permissible classification under Art.14 or not, two conditions must be satisfied, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of that group, and (2) that the differentia must have a rational nexus to the object sought to be achieved by the statute in question”.

The principle that can be culled out from all these decisions is that like should be treated alike; unlike can be treated differently on the basis of reasonable classification.

8. In the instant case whether the buildings and hostels for the purpose of education and stay owned or financed by the Government and owned by the

private management of Self-financing Educational Institutions can be treated alike. Whether there is any intelligible differentia which distinguishes the buildings owned by the Government and owned by private management of self-financing institutions. The matter in issue involved in the instant case falls exclusively in the domain of taxation and has no connection with the academic affairs. Therefore, the extent of enquiry is confined to the fiscal status of institutions only. What is the basis of the classification? In my view, this classification is made, by granting exemption to the buildings owned or financed by the Government, on the basis that public money is utilised for the construction and maintenance of such buildings; whereas in the case of the buildings and hostels owned and maintained by private management of self-financing institutions, the public money has not been involved. Put it differently, this exemption is a privilege granted to the public

money and it can be said that buildings and hostels constructed and maintained by using public money is exempted from payment of property tax and the people, as a whole, is the beneficiary of this exemption. If property tax is imposed on buildings and hostels owned by the Government, that amount also will be taken from the public fund. More importantly, exemption is given to the institutions, functioning under the administrative control of the Government and to which Governmental auditing of funds and expenditure is made compulsory; whereas , the case of self-financing institutions, such control and auditing of funds are absent.

9. Secondly, the expression 'self financing' itself shows that such institutions are having their own fee structure, which cannot be compared with fees of a Government College. Though, it is regulated and controlled by the above referred statute, it is much higher than that of Government Colleges, wherein a

nominal fee alone is collected from the students and certain rooms are reserved for students from socially and economically backward classes, in the hostels owned by the Government. In my view, this classification on the aforesaid basis is a rational one and there is an intelligible differentia in this classification. Self-financing Educational Institutions form a separate class, different from the Educational Institutions owned and financed or aided by the Government and the discrimination made under Sec.207(b) of the Panchayat Raj Act is marked by intelligible differentia.

10. Thirdly, it is the case of the petitioner that the petitioner's institution is also governed and regulated by the the Kerala Professional Colleges or Institutions (Prohibition of Capitation Fees, Regulation of Admission, Fixation of Non-exploitative fee and other measures to ensure equity and excellence in professional Education) Act, 2006. The preamble of

the above Act says that it is an Act to provide for prohibition of capitation fee, regulation of admission, fixation of non-exploitative fee, allotment of seats to Scheduled Castes, Scheduled Tribes and other socially and economically backward classes and other measures to ensure equity and excellence in professional education and for matters connected therewith or incidental thereto. The said Act is a preventive legislation to curb illegality and exploitation in the functioning of the self-financing institutions. Merely on the reason that the receipt of capitation fee is prohibited and the admission and fixation of fee are regulated, it cannot be said that the self-financing colleges are owned or administered by the Government and the financial transactions are subjected to governmental scrutiny. So, such institutions are not entitled to get the privilege of the institution owned and administered by the Government. The petitioner institution is not the

creation of a statute; but the functioning of the institute alone is regulated by several statutes, covering different field of activity and the Kerala Professional Colleges or Institutions (Prohibition of Capitation Fees, Regulation of Admission, Fixation of Non-exploitative fee and other measures to ensure equity and excellence in professional Education) Act, 2006 is one among various such statutes and on that reason the self-financing Educational Institutions cannot be equated with the Educational Institutions owned and administered by the Government, having the privilege under Sec.207 of the Kerala Panchayat Raj Act, 1994. The concept of 'sovereign immunity' is the basis of this privilege of tax exemption granted to the institutions owned or aided and administered by the Government.

11. The learned counsel for the petitioner cited the decisions laid down by the Supreme Court in Mediwell Hospital and Healthy Care Pvt. Ltd., v. Union

of India [AIR 1977 SC 1623]; Deepak Sibal v. Punjab University and another [AIR 1989 SC 903] W.B. Hosiery Association v. State of Bihar [AIR 1988 SC 1814] and Kan Singh etc., v. State Transport Appellate Tribunal and others [AIR 1988 SC 18]. I have carefully gone through the decisions referred above; but found that the principle which I have relied on, in the light of the decisions referred by me and the principle that can be culled out from the decisions cited by the learned counsel for the petitioner are one and the same. So, I have tested the question of discrimination with the common proposition culled out from all the above decisions. But, I find that the case put forward by the petitioner fails in the test proposed by the petitioner himself. In other words, the proposition laid down in the decisions cited by the learned counsel for the petitioner would not persuade me to take a different view in favour of the petitioner's case, in the presence of intelligible differentia in the

classification; in the absence of discrimination, falling under Art.14 of the Constitution of India.

This writ petition is devoid of merits and dismissed.

Sd/-
(K. HARILAL, JUDGE)

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P.S. to Judge