

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE SMT. JUSTICE P.V.ASHA**

**TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937**

**WP(C).NO. 15593 OF 2014 (Y)**  
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**PETITIONER(S):**  
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- 1. SREE DHARMA PARIPALANA YOGAM  
SREE NARAYANA NAGAR, PALLURUTHY  
KOCHI-682006 REPRESENTED BY ITS PRESIDENT  
SRI.C.P.ANIL KUMAR.**
- 2. C.P.ANIL KUMAR, AGED 52 YEARS  
SON OF PURUSHOTHAMAN, PRESIDENT  
SREE DHARMA PARIPALANA YOGAM  
RESIDING AT THANEPARAMBIL HOUSE, SANTO GOPALAN ROAD  
CHULLICKAL, KOCHI-682005.**

**BY ADV. SRI.V.JOHN MANI**

**RESPONDENT(S):**  
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- 1. STATE OF KERALA  
REPRESENTED BY ITS PRINCIPAL SECRETARY  
HIGHER EDUCATION DEPARTMENT, SECRETARIAT ANNEX  
THIRUVANANTHAPURAM-695001.**
- 2. MAHATMA GANDHI UNIVERSITY,  
REPRESENTED BY ITS REGISTRAR  
PRIYADARSHINI HILLS.P.O., KOTTAYAM-686560.**
- 3. THE REGISTRAR,  
MAHATMA GANDHI UNIVERSITY, PRIYADARSHINI HILLS.P.O.  
KOTTAYAM-686560.**

**R2,R3 BY SRI. VARUGHESE M.EASO, SC, M.G.UNIVERSITY  
R1 BY SRI.K.A.JALEEL, ADDL. ADVOCATE GENERAL  
R1 BY GOVERNMENT PLEADER SRI.NOUSHAD THOTTATHIL  
BY SRI.JOICE GEORGE, SC, KSPC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-08-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**WP(C).NO. 15593 OF 2014 (Y)**  
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**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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**P1: COPY OF THE CERTIFICATE OF REGISTRATION ISSUED IN RESPECT OF THE 1ST PETITIONER.**

**P2: COPY OF THE APPLICATION SUBMITTED BY THE 1ST PETITIONER.**

**P3: COPY OF THE ORDER NO.U.O.NO.3000(A)/A1/2013/ACAD DATED 31/05/2013.**

**P4: COPY OF THE EXTRACT OF THE MINUTES OF THE MEETING OF THE SYNDICATE STANDING COMMITTEE ON AFFILIATION HELD 11/04/2013.**

**P5: COPY OF THE LETTER NO.AC A1/1/2409/2013 DATED 14/06/2013 ISSUED BY THE 3RD RESPONDENT.**

**P6: COPY OF THE ORDER NUMBERED AS G.O.(P)NO.89/2012/H.EDN. DATED 12/3/2012.**

**P7: COPY OF THE REPRESENTATION SUBMITTED BY THE K.BABU, MINISTER OF FISHERIES, PORTS AND EXCISE TO THE CHIEF MINISTER DATED 20/12/2013.**

**P8: COPY OF THE ORDER NO.21060/C1/13/H.EDN DATED 5/9/2013 ISSUED BY THE 1<sup>ST</sup> RESPONDENT.**

**RESPONDENTS EXHIBITS:   NIL**  
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**/TRUE COPY/**

**P.A. TO JUDGE**

**SKV**

P.V.ASHA, J.

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W.P.(C). No.15593 OF 2014

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Dated this the 4<sup>th</sup> day of August, 2015

JUDGMENT

Shree Dharma Paripalana Yogam, Palluruthy (SDPY) which is a society registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, along with its President, have filed this writ petition challenging Ext.P8 order issued by the Government, by which their application for NOC for starting a Self Financing Law College was rejected on the ground that the Government has taken a decision to consider only the applications from educational trusts from those districts where no legal educational institutions exist and further that more than two self Financing Law colleges would not be sanctioned in a district in order to ensure the quality of legal educational institutions in the State.

2. The petitioners challenge this order on the ground that the same is arbitrary. It is contended that sanctioning of more than two colleges in a district will not in any way

affect the quality of legal education. It is also submitted that the right of an aspirant to legal education is curtailed on account of such decision of the Government. It is also pointed out that the Government is imposing restrictions in the case of law colleges alone, while no such restrictions are imposed in respect of medical colleges and engineering colleges.

3. The petitioners submitted an application –Ext.P2 for starting a Self Financing Law College in Palluruthy in Ernakulam District. The subject for the course was mentioned as LLB (3 year regular course), LLB (3 years evening class) (LLB 5 years). The application was submitted before the Mahatma Gandhi University (hereinafter referred to as 'University') and on receipt of the same the University constituted an inspection Committee as per Ext.P3 on 31.5.2013, as provided under Section 10(17) of the M.G. University Act, 1985. Accordingly, Professor Satheesh Kochuparambil (Member Syndicate) and Gifty Umman

(Government Law College, Ernakulam) were constituted an Inspection Committee for the self financing law college under the petitioner for conducting the courses of LLB (3 year) evening classes and BA LLB. Thereafter on the basis of Ext.P4 order Syndicate Standing committee on affiliation in its meeting held on 11.4.2013 decided to recommend sanction for starting self financing law colleges for the academic year 2013-2014, after getting the view of Government on the necessity and feasibility of starting them. Thereafter the University forwarded the files to the Government for clearance/NOC as per Ext.P5 letter dated 14.6.2013. Thereafter as per Ext.P8 letter dated 5.9.2013, the Government rejected the application for the reasons mentioned earlier.

4. According to the petitioners, they have submitted their application in terms of the guidelines issued by Government, for starting new self financing law colleges, as provided in G.O.No.89/2012/H.Edn. dated 12.3.2012

(Ext.P6), along with consent letter received from University, letter of undertaking etc. As per these guidelines, on receipt of this application, the Government have to accord administrative sanction to start the college under self financing stream. After administrative sanction is issued the files are to be forwarded to the law department. Thereafter on scrutiny by the law department they have to execute an agreement. After executing the agreement the NOC for starting college is issued by submitting the files to Minister for Education. It is provided that NOC shall be granted up to the end of the academic year. The educational agency is permitted to admit the students from the list published by the Commissioner for Entrance Examination till the last allotment process is over. It is also provided that the affiliation would be temporary and there will be no claim for permanent affiliation and Government or University can withdraw the NOC for affiliation on breach of conditions.

5. Though the Government refused sanction/NOC, intimation was received by the petitioner only after approaching this court. Petitioners are challenging the same on various grounds. He relies on the judgment in Shivaji University V Bharti Vidyapeeth AIR 1999 SC 1762, wherein the apex court, in an identical situation held that the refusal to grant permission to start Law College on the ground of a policy decision not to grant such permission in districts where there is already a law college was arbitrary and held that it is not the number of colleges that should be counted but the population which the existing law college serves and hence whether there is any need for a law college. Therefore the need for additional self financing college should be considered with reference to the population which the existing law colleges satisfy. According to the petitioners there is no other college in or near their Head Quarters viz i.e, Palluruthy in West Kochi and it is very near to the adjacent District, ie. Alappuzha, where also there is no law

College. The petitioners decided to commence the law college at the place of their head quarters to see that there is at least one professional college in that area, seeing the dearth of educational institutions there, for the students completing higher secondary classes. It is pointed out that since admission is by centralised allotment, there is no question of any student losing opportunity to undergo studies in the college and there will not be any situation where students belonging to any particular area, alone getting admission.

6. Petitioners further submit that they satisfy all the conditions and that the Bar Council will consider their application, only if Government accords sanction.

7. The Government has filed a counter affidavit stating that Standing Committee on affiliation of M.G. University for granting affiliation, resolved to recommend to sanction for the courses in the college of petitioners without properly considering the guidelines issued by the

Government and forwarded the files to Government for NOC. It is stated that the Government has given NOC to more than two self financing law colleges in Ernakulam District. There are already 2 colleges in Self Financing sector functioning in Ernakulam District. Apart from that there are Government Law College, NUALS and CUSAT in Ernakulam District itself imparting legal education. It is further stated that the Government granted NOC to 5 self financing law colleges in Ernakulam District, out of which one has already been cancelled. This is over and above the existing law college and it is further stated that self financing college must not be concentrated in one district as there are other districts in which there are no self financing law colleges.

8. Sri. John V. Mani, the learned Counsel for the petitioners also relied on the judgment dated 23.9.2011 of the Madras High Court in Vanniyar Educational Trust v The State of Tamil Nadu in writ petition 7279/2011, where a

similar case regarding starting of a private law college was the issue considered. Relying on the judgment in Shivaji University v Bharati Vidyapeeth, AIR 1999 SCC 1762 Madras High Court directed grant of permission/NOC for starting the law college.

9. Learned Government Pleader pointed out that it is the policy of the Government to spread legal education in all districts to see that nobody who is desirous of pursuing legal education is losing their opportunity by confining law colleges to certain districts alone. It is pointed out that only 9 out of 14 districts in the State are having self finance law colleges. There are no self financing law colleges in Kannur, Wayanad Kasaragod, Alappuzha and Thrissur. Therefore it is further stated that the number of law colleges will affect the quality of legal education in case more Law colleges are allowed to run in a particular district.

10. Learned Government Pleader points out that the petitioners did not have any right to start a self financing

law college. In the absence of any right they cannot validly challenge the decision of the Government, which is taken in the larger interest of the persons who are aspirants of legal education. He also stated that merely because the University accorded sanction, the petitioners do not get any right to conduct any course in law and Government have taken a policy decision to see that institutions are not confined to limited areas and in case such institutions are started in districts where there are no law colleges, it will enable easy accessibility to students of that area.

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.

Under the above circumstances, Ext.P8 order is quashed and Government is directed to re-consider the matter in the correct perspective in the light of the above observations and to pass orders afresh treating the application of petitioners as one for NOC for the year

2015-16. The orders shall be passed within a period of two months from the date of receipt of a copy of the judgment.

In the event of Government granting NOC, the University shall consider the question of grant of affiliation to the proposed institution of the petitioners for the relevant academic year, without any further delay.

Accordingly, this writ petition is disposed of.

Sd/-  
P.V.ASHA, JUDGE

SKV