

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

WP(C). No.21585 of 2013 (W)

PETITIONER(S):

**MALABAR HOTEL MANAGEMENT & CATERING PROMOTION TRUST,
VALLEY VIEW, LAKKIDI, WAYANAD DISTRICT,
KERALA-7673 576
REPRESENTED BY ITS MANAGING TRUSTEE.**

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY,
DEPARTMENT OF SC/ST WELFARE AND DEVELOPMENT,
THIRUVANANTHAPURAM-695 001.**
- 2. THE DEVELOPMENT OFFICER,
S.C DEVELOPMENT OFFICE, KALPETTA,
WAYANAD DISTRICT-673 576.**

R1 & R2 BY GOVERNMENT PLEADER SMT. LALY VINCENT

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21.1.2015, THE
COURT ON 30-01-2015 DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXHIBIT P1. A TRUE COPY OF THE LETTER DATED 12/6/2008 ISSUED BY THE PRINCIPAL, ORIENTAL SCHOOL OF HOTEL MANAGEMENT.**
- EXHIBIT P2. A TRUE COPY OF THE REPRESENTATION DATED 21/10/2008 SUBMITTED BY THE PRINCIPAL, ORIENTAL SCHOOL OF HOTEL MANAGEMENT.**
- EXHIBIT P3. A TRUE COPY OF THE LETTER DATED 18/4/2009 ISSUED BY THE PRINCIPAL, ORIENTAL SCHOOL OF HOTEL MANAGEMENT.**
- EXHIBIT P4. A TRUE COPY OF THE ITEMIZED BREAKUP OF THE AMOUNTS DUE BY WAY OF REIMBURSEMENT OF TUITION FEES OF RESERVED CATEGORY STUDENTS.**
- EXHIBIT P5. A TRUE COPY OF THE GOVERNMENT ORDER DATED 11/1/2007.**
- EXHIBIT P6. A TRUE COPY OF THE ORDER DATED 16/7/2013 OF THE RESPONDENTS.**

RESPONDENT(S)' EXHIBITS:- NIL

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**/True Copy/
P.A to Judge**

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No. 21585 of 2013

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Dated this the 30th day of January, 2015

JUDGMENT

Aggrieved by the non-reimbursement of tuition fees of reserved category students of Hotel Management and Catering Science for whom, the petitioner had imparted training in the aforesaid course, the petitioner has come up before this Court.

2. The petitioner is a trust which is conducting two educational institutions at Wayanad. These institutions are conducting undergraduate courses in Bachelor of Hotel Management (BHM) and B.Sc Hotel Management and Catering Science. The petitioner alleges that admissions to the educational courses are as per rules and regulations stipulated by the Calicut University and all reserved category students are admitted through entrance examinations conducted by the University and on merit quota.

3. It is further alleged that the institute expended considerably huge amounts on infrastructural facilities, daily operations, salaries, students' training, library and job placements. It was pointed out that the Government of Kerala have granted

orders for sanctioning refund of tuition fee to reserved category students of various professional colleges having courses like Engineering, Ayurveda, Nursing etc., from the SC/ST department. The said self financing colleges, especially in Wayanad district, were started much later than the petitioner's institutions. However, the reimbursement of tuition fees of reserved category students of Hotel Management and Catering Science has now been rejected by the Government by Ext.P6 order. Thus, the petitioner has come up before this Court.

4. In the counter affidavit filed by the first respondent it was contended that the reputation of the institution is not a criteria for granting educational concession to the students undergoing professional studies there. It was further contended that no entrance test is conducted by the Calicut University for B.Sc. Hotel Management and Catering Science course and the entrance test is conducted only for Bachelor of Hotel Management course. It was further pointed out that admission to B.Sc Hotel Management and Catering Science is made directly by the authorities of the institution.

5. According to the first respondent, the course for which tuition fees at the rates prescribed by Justice K. T. Thomas Commission are admissible, are specified in the G.O(MS) No.28/05/SCSTDD dated 2.7.2005. According to them, as far as the Bachelor of Hotel Management course is concerned, it is not included in the list.

6. They would further contend that no assurance regarding reimbursement of tuition fees to the SC/ST/OBC students of Bachelor of Hotel Management and B.Sc. Hotel Management and Catering Science courses of the petitioner's institution was given by the Government prior to the admission of the students and, therefore, the Government is in no way responsible for the hardship experienced by the petitioner. Therefore, according to them, as per the existing Government order, the SC/ST students who got admission through merit/reservation seats from the list prepared by Government agencies/Universities/Government or Common Admission Test, management Aptitude Test, Joint Entrance Examination, Joint Management Entrance Text, Xavier Aptitude Test, AIMS Test for management admission TMA etc., only are eligible for fee concessions. According to them, in this case, the

admission was given directly by the institution itself.

7. Arguments have been heard.

8. Now, reimbursement is denied to the petitioner's institution mainly for two reasons. Firstly, it was pointed out that Hotel Management and Catering Service has been left out of the relevant Government orders for reimbursement of reserved category students' tuition fee. The second contention is that the admission was not based on any entrance test or without prescribing any criteria for admission and, therefore, the Government order has no applicability to the petitioner's case.

9. The specific averment in the writ petition that the petitioner's institution has given due consideration to all reserved category students even though it has not received any tuition fee from the SC/ST Development Department was not denied by the respondents. The petitioner has made various representations to the authorities concerned. Ext.P1 is the copy of the letter dated 21.10.2008 issued by the Principal, Oriental School of Hotel Management to the Development Officer, S.C Development Office, Kalpetta. Ext.P2 is the copy of the representation submitted by the Principal of Oriental School of Hotel Management to the Minister of

SC/ST Welfare and Development, Government of Kerala.

10. As the petitioner institution has understood that the reserved students of the State Institute of Hospitality Management, Calicut conducted by the Ministry of Tourism, Government of Kerala has received tuition fee reimbursement, they approached this Court with W.P(C) No.24804 of 2009 which was disposed of directing the Government to consider the claim of the petitioner for reimbursement.

11. It is crucial to note that the Government had issued an order on 11.1.2007 providing fee concession and other benefits to the reserved category students in self financing institutions run by the Universities, IHRD, LBS Centre and Co-operative Societies, as evidenced by Ext.P5. Ext.P5 has retrospective operation from 2004-2005. It is relevant to note that the respondents have no case that the petitioner's institution is not a recognised institution. The respondents could not point out a genuine reason for treating the students of the petitioner's institution differently for not extending the benefit of fee concession.

12. The reimbursement of tuition fee claimed by the petitioner was rejected by Ext.P6. The petitioner points out that

the same has been granted to other institutions which were in the self financing sector.

13. Our nation has adopted the concept of a welfare State and the constitutional mandate emanating from the directive principles of State Policy provides for the upliftment of SC/ST categories. It is with this objective that the State provides educational concessions to reserved category students. The constitutional provisions make no distinction between Government, private or self financing colleges. Therefore, this Court is of the view that the denial of the benefit to the students coming under self financing colleges is unconstitutional and the same calls for an interference of this Court.

14. The Government have sanctioned tuition fee reimbursement to SC/ST students in courses like Ayurveda, Nursing etc. There is no convincing reason why SC/ST students of Hotel Management courses should not be granted such reimbursement particularly when tourism is a sector in which much importance is stressed as per Government Policy. If reimbursement is not allowed to the petitioner's institution, the students belonging to marginal sector studying in the petitioner's institution would be compelled to

pay tuition fee and the same would be against the purpose sought to be achieved by our constitution. The failure of the Government to reimburse the tuition fees of reserved category students studying in the petitioner's institution is discriminatory since such students pursuing similar courses in other institutions are granted such reimbursement. Therefore, this Court is of the view that the petitioner is entitled to succeed.

In the result, the writ petition is allowed. Ext.P6 is quashed. The respondents are directed to reimburse the tuition fee of reserved category students in the institutions run by the petitioner with effect from 2004-2005.

sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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