

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

WP(C) .No. 30483 of 2015 (I)

PETITIONER(S) :

SARASWATHY AGED 36 YEARS
KAKKARAIAKKAL HOUSE, MOOLANKAVE PO, PALAKKARA
SULTHANBATHERY.

BY ADVS.SRI.TONY THOMAS (INCHIPARAMBIL)
SRI.P.THOMAS GEEVERGHESE

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY
INFORMATION TECHNOLOGY (C) DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
2. THE DIRECTOR
AKSHAAYA, THIRUVANANTHAPURAM-695 001.
3. THE DISTRICT COLLECTOR, WAYANAD.
4. SUVARNA SANKAR
POONVANCHIYIL VEEDU, KALLADI PO, SULTHANBATHERY
WAYANAD.

R4 BY ADV. SRI.C.A.CHACKO
R1 TO R3 BY GOVERNMENT PLEADER SRI.MANOJ KUNJACHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
03-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1 : TRUE COPY OF ORDER OF GO(MS)NO.17/2008/ITD DT 31-7-2015

EXT.P2 : TRUE COPY OF AGREEMENT

EXT.P3 : TRUE COPY OF ORDER OF GO(MS)NO.16/2015/ITD DT 20-6-2015.

EXT.P4 : TRUE COPY OF ORDER OF GO(MS)NO.42/2015/ITD DT 23-9-2015.

EXT.P5 : TRUE COPY OF ORDER OF GO(RT)NO.210/2014/ITD DT 7-9-2014.

RESPONDENT(S) ' EXHIBITS

EXT.R4 (a) : TRUE COPY OF COMMUNITY CERTIFICATE OF 4TH RESPONDENT.

EXT.R4 (b) : TRUE COPY OF STATEMENT OF GRADES ISSUED FROM
PONDICHERRY UNIVERSITY.

EXT.R4 (c) : TRUE COPY OF COMMUNICATION DATED 28/9/2015 ISSUED BY
ASSISTANT DISTRICT CO-ORDINATOR, WAYANAD.

//TRUE COPY//

P.A TO JUDGE

vdv

A.MUHAMED MUSTAQUE, J.

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W.P(C)No.30483 of 2015

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Dated this the 3rd day of December, 2015

JUDGMENT

Petitioner has been appointed as Akshaya Entrepreneur as per Ext.P2 agreement dated 12.09.2013. This was after undergoing an open competition process. The Akshaya Center has been established at Gandhi Junction at Sulthan Bathery in Wayanad District.

2. The 4th respondent, a Scheduled Tribe community member, approached the Government to obtain sanction for a new Akshaya Center at Kallady, Sulthan Bathery. This was sanctioned as per Ext.P3 dated 20.06.2015. Thereafter, she again approached the Government to permit an Akshaya Center at Gandhi Junction instead of Kallady. This was granted as per Ext.P4.

3. The petitioner approaches this Court challenging the decision of the Government. According to the petitioner, distance between petitioner's Akshaya Center and the Akshaya Center proposed to be established by the 4th respondent is less than 2 Km. and therefore, Government's decision to sanction new Akshaya Center within the 2 Km. is illegal. Petitioner further

submits that 4th respondent has been selected without following any procedure.

4. Learned counsel for the 4th respondent would submit that 4th respondent belongs to Scheduled Tribe and there is reservation of 10% for the Scheduled Tribes. It is further submitted that Government granted sanction by relaxing existing Government order.

5. In the agreement entered by the Government with the petitioner it has been agreed by the Government as follows:

“iv. The minimum distance between two Akshaya Centers shall ordinarily be 2 Km. which shall also be followed during any reallocation or shifting of Akshaya center.”

6. Subsequent to the agreement, Government also issued Ext.P5 Government Order prescribing distance between two Akshaya centers as 2 Km. Certainly, Government would have thought while stipulating so that an Akshaya Center already in existence shall not be affected by starting another Akshaya Center in the same place. Government has relaxed the norms perhaps taking note of the fact that 4th respondent belongs to Scheduled Tribe.

7. However, any variation of the petitioner's agreement can be based only on valid reasons. Government by allotting a new Akshaya Center in fact violated the agreement entered with the petitioner wherein it is stated that the minimum distance between two Akshaya Centers shall ordinarily be 2 Kms and same Rule has to be followed even for reallocation. Government can depart from normal Rule in certain circumstances like public interest. Government cannot bypass the distance Rule without any valid reasons. It can be varied only after hearing the objections of the petitioner. Government cannot take its own decision to grant a new Akshaya Center within 2 Kms. without giving opportunity of hearing to the petitioner. In that view of the matter, this Court is of the view, Ext.P4 shall be re-considered after hearing the petitioner. Appropriate decision in this regard shall be taken within six weeks after hearing the petitioner as well as the 4th respondent.

Writ petition is disposed of.

Sd/-
A.MUHAMED MUSTAQUE,
JUDGE