



W.P. No.33532 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: 09.03.2023

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

**W.P. No.33532 of 2018
and WMP.Nos.38920 & 38923 of 2018**

Sri Manakula Vinayaga Educational Trust,
Rep. by its Chairman,
M. Dhanasekaran
Kalitheerthalkuppam,
Madagadipet,
Puducherry - 605 107.

.....Petitioner

VS.

1. The Union of India,
Rep. by Chief Secretary,
Government of Pondicherry,
Chief Secretariat,
Pondicherry.

2. The Secretary to Government,
Department of Higher Education,
Chief Secretariat,
Government of Puducherry,
Puducherry — 605 001.

3. The The Under Secretary to Government,
Department of Higher and Technical Education,
Chief Secretariat,
Government of Puducherry,
Puducherry 605 001.

4. The Director,



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Directorate of Higher Technical Education
Government of Puducherry,
Puducherry — 605 001

5. University Grants Commission,
Bahadur Shah Zafar Marg,
New Delhi – 110 002.
(R5 impleaded vide order dated 08.03.2019
made in WMP.No.7371 of 2019 in WP.No.
33532 of 2018 by this Court)

6. Union of India,
Represented by its Secretary to Government,
Ministry of Human Resource Development,
Shastri Bhavan, New Delhi.
(R6 impleaded vide order dated 08.08.2019
made in WMP.No.20360 of 2019 in WP.No.
33532 of 2018 by this Court)

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue an order or direction or Writ and in particular Writ in the nature of a Writ of Certiorari or Mandamus to call for the records pertaining to the impugned Government Order passed by the 3rd respondent vide G.O Ms. No. 40. CHIEF SECRETARIAT (HIGHER & TECH EDUCATION) dated 14.11.2018 and Quash the same, and direct the respondents 1 to 4 to process the Application / Proposal and accord sanction to the Petitioner Trust for establishment of Private State University in the name and style " Sri Manakula Vinayagar University" comprising of the institutions namely Sri Manakula Vinayagar Engineering College, Sri Manakula Vinayagar



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Medical College and Hospital, Sri Manakula Vinayagar Nursing College, and Venkateswara College of Education, in pursuant to the compliance made by the Petitioner Trust as directed by the respondents, to the Policy and Guidelines for the establishment and incorporation of private university in the Union Territory of Puducherry, as set out by the respondents in G O Ms No. 56 dated 11.09.2015; and pass necessary orders and render Justice.

For Petitioner : Mr. G.Sankaran, Senior Counsel

For Respondents : Mr.A.Tamilvanan, AGP
Pondicherry RR1 to 4
Mr.S.S.Palani Raaja, CGSC

ORDER

The petitioner has filed this petition seeking to quash the impugned Government Order passed by the 3rd respondent vide G.O Ms. No. 40. dated 14.11.2018 and direct the respondents 1 to 4 to process the Application / Proposal and accord sanction to the Petitioner Trust for establishment of Private State University in the name and style " Sri Manakula Vinayagar University" comprising of the institutions namely Sri Manakula Vinayagar Engineering College, Sri Manakula Vinayagar Medical College and Hospital, Sri Manakula Vinayagar Nursing College, and Venkateswara College of Education, in pursuant to the compliance made by the Petitioner Trust as directed by the respondents, to the Policy and Guidelines for the

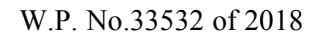


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establishment and incorporation of private university in the Union Territory of Puducherry, as set out by the respondents in G O Ms No. 56, dated 11.09.2015.

2. The case of the petitioner is that the petitioner Trust was formed in the year 1998 and has established several Educational Institutions in and around the State Pondicherry and Tamil Nadu. The petitioner Trust submitted application on 30.01.2014 for approval for the private State University as per the UGC Regulation 2003 with the respondents. For establishment of the State University, the petitioner paid a sum of Rs.1,00,000/- through demand draft to the 4th respondent towards processing fee for the application.

3. The impugned G.O Ms No. 40 dated 14.11.2018 issued by the respondents is in complete violation of the earlier GO's. The impugned GO reveals complete non application of mind. As the Application / proposal submitted by the Petitioner Trust for establishing Private State University for four of its Institution was under process, the first GO was issued on



4. Thereafter, G O Ms 56 dated 11,09.2015 was issued by the Government of Puducherry, formulating "Policy and Guidelines" for the establishment and incorporation of private university in the Union Territory of Puducherry". The said respondents have admitted to the fact about the importance of establishing Private State University, and have discussed the development could be achieved by the State. It is predominant to state here that the Donor Trust has already submitted the application / proposal for establishing the private university, complying with all the conditions and pending. In pursuant to the said GO 56, those conditions stipulated as



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new policies and guidelines were also complied with and a fresh proposal has been submitted by the Petitioner Trust, pending the earlier one. The later one was also considered by the respondent in accordance with the conditions stipulated in GO 56 and the application / proposal was processed, Having complied with all condition and all clarification made for the queries raised by the respondent, and waiting for approval, the present impugned GO. No.40 has been issued and the application has been returned.

5. On 29.01.2015 through GO. 03 the Government constituted a 12 member inspection / Scrutiny Committee headed by the 2nd respondent and inspection was done on 26.02.2015. Queries were raised after inspection and the same was duly complied with. Thereafter, GO 56 was passed by the Government, introducing new policy and guidelines for establishment of private Universities. Conditions as stipulated in GO 56 was duly complied with by the Petitioner Trust. Vide proceedings dated 06.11.2015, the 4th respondent raised queries on eleven issues, admitting to the fact that the proposal submitted is being processed as per GO 56. All the eleven queries raised were duly answered. On 15.02.2017 it was intimated by the 4th



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respondent that a meeting is so to be held on 22.02.2017 for examining the proposal of the Petitioner Trust. Accordingly meeting was also held on 22.02.2017. On 15.03.2017, the 4th respondent directed the Petitioner Trust to furnish certain documents. All were duly complied on 20.03.2017 as per clause 7 (iii) of the new regulation set out in GO. Ms. No. 56 which is force as on today. Having done all those process and with a fond hope of receiving approval from the Government, the present impugned GO has been passed citing a flimsy reason that, proposal shall be submitted as and when it is called for, since the Government is considering to formulate a Bill for establishing a Private University in the Union Territory of Puducherry by Private Educational Trust or as the case may be through legislation. The present stand of the respondent in the impugned GO is completely against the welfare of the State and completely contrary to Law. Challenging the said G.O.Ms.No.40, dated 14.11.2018, the present writ petition has been filed.

6. The learned Senior Counsel for the petitioner submitted that the stand of the Government in the present impugned GO 40, is completely



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arbitrary. The application / proposal submitted by the Petitioner Trust had been scrutinized and Government orders have been issued by the authorities, while processing the application, the Conditions as stipulated by the authorities were duly complied with by the Petitioner Trust. Now after all process has been duly completed, the Government has passed the present impugned GO.Ms.No.40, which is wholly arbitrary and unsustainable.

7. The learned Senior Counsel further submitted that the petitioner Trust had made application/proposal for establishing private University in the name and style Sri Manakula Vinayagar University comprising of the following institutions viz., Sri Manakula Vinayagar Engineering College, Sri Manakula Vinayagar Medical College and Hospital, Sri Manakula Vinayagar Nursing College and Venkateswara College of Education. The conditions stipulated by the respondent for granting sanction were all duly complied with, including certain mutual agreement to be entered and completed as per the Policy and Guidelines for the establishment and incorporation of private university as set out in G.O.No.56 pending grant of order of the present impugned G.O. has been passed, without giving due



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consideration to all the earlier actions on the petitioners application. Hence, the learned counsel prays to set aside the Government Order and allow this petition.

8. The learned Additional Government Pleader appearing for the Government of Puducherry submitted that the Government had issued policy and guidelines for the establishment and incorporation of private universities in the Union of Puducherry vide G.O.Ms.No.56 dated 11.09.2015. The Government Order specifies the procedure for submission of application for setting up of private universities, issue of in-principle approval, submission of compliance report and enactment of law for private universities. However, there is no legal backing for the Government to regulate the functioning of the private university, apart from the fact that this will result in separate Acts for each and every private university.

9. The learned counsel further submitted that the G.O.Ms.No.40 dated 14.11.2018 of the Chief Secretariat (Higher and Technical Education) Puducherry, the Department was directed to refund the huge amount of



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Rs.25 lakhs deposited by Sri Manakula Vinayagar Educational Trust, Puducherry along with the application. Since the writ petitioner has no legal right to constitute a University without an enactment being made by the Legislative Assembly of Puducherry or under any Central University, this Court may direct the petitioner to make an application before His Excellency the President of India and His Excellency the Lieutenant Governor of Puducherry for the establishment of Private University. After enactment is made and assent is granted by His Excellency the President of India and His Excellency the Lieutenant Governor of Puducherry for the establishment of Private University. Without the enactment and the assent of the constitutional functionaries, the application submitted by the petitioner cannot be processed.

10. Learned senior counsel for the petitioner agreed to make an application once assent is granted by His Excellency the President of India and His Excellency the Lieutenant Governor of Puducherry for the establishment of Private University in Puducherry.



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11. It is to be noted that without an Act, formation of a Private University is impermissible, as a legal framework has to be set in place, before the application is processed. G.O. No.40 reveals that the Government is in the process of formulating a Bill for the establishment of Private Universities. If any such Bill is formulated, it has to receive the assent of the President of India and the Lieutenant Governor of Puducherry. Therefore, the petitioner may file appropriate application after such enactment is made.

12. In view of the above stand taken by the learned counsel appearing on either side, this Court, without interfering with the order impugned herein, permits the petitioner to submit the requisite application upon enactment and assent of the His Excellency the President of India and His Excellency the Lieutenant Governor of Puducherry for the establishment of Private University and if such application is submitted, the respondents are directed to consider the same on merits and in accordance with law and pass orders as expeditiously as possible.



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13. With the above directions, the writ petition is disposed of. No

costs.

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Index : Yes / No

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2. The Secretary to Government,
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4. The Director,
Directorate of Highe4nd Technical Education
Government of Puducherry,
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5. University Grants Commission,

12/14



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Bahadur Shah Zafar Marg, New Delhi – 110 002.

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6. Union of India,
Represented by its Secretary to Government,
Ministry of Human Resource Development,
Shastri Bhavan, New Delhi.



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M.DHANDAPANI, J.
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