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

**PRESENT**

**THE HONOURABLE MR.JUSTICE N.NAGARESH**

**TUESDAY, THE 30TH DAY OF JANUARY 2024 / 10TH MAGHA, 1945**

**WP(C) NO. 2680 OF 2024**

**PETITIONERS:**

1 DR. TOMY ANTONY,
AGED 55 YEARS,
S/O ANTONY, PRINCIPAL,
YUVAKSHETRA INSTITUTE OF MANAGEMENT STUDIES,
EZHAKKAD P.O,
MUNDUR, PALAKKAD, PIN - 678631

2 FR. MATHEW GEORGE VAZHAYIL,
AGED 55 YEARS,
S/O VARKEY, DIRECTOR,
YUVAKSHETRA INSTITUTE OF MANAGEMENT STUDIES
UNDER YUVAKSHETRA CHARITABLE TRUST,
EZHAKKAD P.O, MUNDUR,
PALAKKAD, PIN - 678631

3 YUVAKSHETRA CHARITABLE TRUST,
AGED 58 YEARS,
REP. BY ITS PATRON,
MAR PETER KOCHUPURAKKAL ALIAS BABY
KOCHUPURAKKAL,
S/O MANI, NOORANI AT NOORANI BISHOPS HOUSE,
PIRAYIRI AMSOM AND DESOM,
PALAKKAD, PIN – 678004

BY ADVS.
J.JULIAN XAVIER
FIROZ K.ROBIN
ROY JOSEPH
ANIES MATHEW
NIRMAL KURIEN EAPEN

**RESPONDENTS:**

1 STATE OF KERALA
REP. BY ITS SECRETARY (EXCISE),
TAXES (A) DEPARTMENT,
GOVT. SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001

2 DISTRICT COLLECTOR,
PALAKKAD KENATHUPARAMBU,
KUNATHURMEDU,
PALAKKAD, PIN - 678013

3 THE EXCISE COMMISSIONER,
COMMISSIONRATE OF EXCISE,
EXCISE HEAD QUARTERS, NANDAVANAM,
THIRUVANANTHAPURAM, PIN - 695033

4 THE DEPUTY EXCISE COMMISSIONER,
EXCISE DIVISION OFFICE, CIVIL STATION,
PALAKKAD, PIN - 678001

5 MUNDUR GRAMA PANCHAYAT,
REP. BY ITS SECRETARY,
MUNDUR P.O, PALAKKAD, PIN - 678592

6 A. RADHAKRISHNAN,
PROPRIETOR ARK HOTEL & CONVENTION CENTRE REP.
BY ITS MANAGING DIRECTOR, EZHAKKAD P.O,
PALAKKAD, PIN – 678631

BY ADVS.
SRI. SREEJITH V.S., GOVERNMENT PLEADER
SRI. U. BALAGANGADHARAN, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

Dated this the 30th day of January, 2024

Petitioners challenge the illegal recommendation given by the 4th respondent to start a Bar Hotel (FL13 (3)) to the 6th respondent in a building which is separated with the educational institution by a single retaining wall.

2. The 1st petitioner is the principal of Yuvakshetra Institute of Management Studies (YIMS) at Mundur, in Palakkad District, which is an unaided institution having affiliation to the University of Calicut. The National Assessment and Accreditation Council under the UGC has accredited the Institute YIMS with B+ Grade as per Ext.P9.

3. The 2nd petitioner is the Manager of YIMS and the 3rd petitioner is a Trust under which the Institute is functioning. For the present academic year (2023-'24), the total strength of students in various discipline is 2506. The Institute was started as early as in the year 2005.

4. The 6th respondent is the proprietor of ARK Hotel and Convention Centre, which started functioning in the year 2021 without any Bar Licence. The educational institution, ARK Hotel and Convention Centre are situated on the northern side of Palakkad-Kongad State Highway. The boundaries between the two properties (property of ARK Hotel, Convention Centre and that of the education institution) is common. Therefore, there is no question of any distance rule and the recommendation given by the 4th respondent, is illegal.

5. According to the 4th respondent, the distance from the gate of the ARK Hotel and Convention Centre to the gate of the educational institution is 70 meters. The above measurement was taken without notice to the petitioners. In the report it is stated that the boundary of the educational institution and the hotel is one and same. Therefore, the recommendation of the 4th respondent to grant FL13 (3) license to the 6th respondent is without any legal justification and against the spirit of the Distance Rule.

6. On coming to know about the illegal action including the recommendation, the petitioners filed representations before all the respondents including the Hon'ble Governor and the Chief Minister. The 3rd respondent-Excise Commissioner is the competent authority before whom the petitioners have filed Ext.P10 and thereafter Ext.P14. Before taking any decision on the application submitted by the 6th respondent for FL13 (3) licence, the 3rd respondent is duty bound to consider the objection in accordance with law considering the ground reality, with notice to the petitioners.

7. Heard the learned counsel for the petitioners and the learned Government Pleader representing the respondents.

8. The petitioners are aggrieved by the proposal to grant FL13 (3) licence to the 6th respondent. The petitioners have filed Exts.P10, P12 and P14 representations against such move. Taking into consideration the allegations made by the petitioners and

taking into consideration the fact that the licence has not been so far granted, it would be only appropriate that the 3rd respondent-Excise Commissioner considers Ext.P14 representation submitted by the petitioners in accordance with law.

The writ petition is therefore disposed of directing the 3rd respondent to consider Ext.P14 representation and pass appropriate orders thereon after giving an opportunity of hearing to the petitioners and the 6th respondent, within a period of one month.

Sd/-

**N. NAGARESH**

**JUDGE**

SR

**APPENDIX OF WP(C) 2680/2024**

**PETITIONER'S EXHIBITS:**

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| **Exhibit P1** | **TRUE COPY OF THE TRUST DEED DATED 26.03.2003 EXECUTED BY ITS PATRON** |
| **Exhibit P2** | **TRUE COPY OF THE SUPPLEMENTARY DEED OF TRUST EXECUTED ON 23.11.2020** |
| **Exhibit P3** | **TRUE COPY OF THE LAND TAX RECEIPT OF THE PROPERTY COMPRISED IN SY.NO.317/2 AND 411/2 DATED 23.06.2023 ISSUED BY THE VILLAGE OFFICER, MUNDUR II VILLAGE** |
| **Exhibit P3 (a)** | **TRUE COPY OF THE LAND TAX RECEIPT DATED 23.06.2023 ISSUED BY THE VILLAGE OFFICER, MUNDUR II VILLAGE, RELATED WITH PROPERTY IN SY.NO.411/14 AND 411/16** |
| **Exhibit P3 (b)** | **TRUE COPY OF THE TAX RECEIPT DATED 23.06.2023 RELATED WITH PROPERTY IN SY.NO.315/4, 317/4, 317/11, 317/7 AND 317/6 ISSUED BY THE VILLAGE OFFICER, MUNDUR II VILLAGE** |
| **Exhibit P3 (c)** | **TRUE COPY OF THE LAND TAX RECEIPT DATED 23.06.2023 WITH RESPECT TO PROPERTY IN SY.NO.315/4 AND 317/4** |
| **Exhibit P4** | **TRUE COPY OF THE LATEST PROVISIONAL AFFILIATION U.O. NO.6183/2023/ADMN. DATED 04/2023 TO THE PROGRAMS OFFERED BY YIMS (UN-AIDED), MUNDUR, PALAKKAD FOR THE ACADEMIC YEAR 2023-24 ISSUED BY THE REGISTRAR, UNIVERSITY OF CALICUT** |
| **Exhibit P5** | **TRUE COPY OF THE CERTIFICATE DATED 18.10.2022 ISSUED BY THE DIRECTOR, NATIONAL ASSESSMENT AND ACCREDITATION COUNCIL TO YIMS** |
| **Exhibit P6** | **PHOTO OF THE HOTEL AND THE YUVAKSHETRA COLLEGE (NEW BUILDING) SITUATED ON THE SOUTHERN SIDE OF THE PALAKKAD - KONGAD ROAD** |

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| **Exhibit P7** | **PHOTOS OF THE BOUNDARY WALL BETWEEN THE PROPERTIES OF THE PETITIONERS' AND THAT OF THE 6TH RESPONDENT** |
| **Exhibit P8** | **TRUE COPY OF THE PETITION DATED 06.01.2024 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 4TH RESPONDENT** |
| **Exhibit P9** | **TRUE COPY OF THE PETITION DATED 06.01.2024 SUBMITTED BEFORE THE CHIEF MINISTER, GOVERNMENT OF KERALA** |
| **Exhibit P9 (a)** | **TRUE COPY OF THE E-MAIL DATED 08.01.2024 FROM THE OFFICE OF THE CHIEF MINISTER** |
| **Exhibit P10** | **TRUE COPY OF THE PETITION DATED 06.01.2024 SUBMITTED BEFORE SRI. MAHIPAL YADAV, IPS, EXCISE COMMISSIONER, GOVERNMENT OF KERALA** |
| **Exhibit P11** | **TRUE COPY OF THE COMPLAINT BEFORE THE SECRETARY, MUNDUR GRAMA PANCHAYAT DATED 11.01.2024** |
| **Exhibit P12** | **TRUE COPY OF THE PETITION DATED 11.01.2024 FILED BY THE PRESIDENT OF PTA, YIMS** |
| **Exhibit P13** | **TRUE COPY OF THE REPORT NO.P6-9991/23 DATED 16.01.2024 OF THE 4TH RESPONDENT** |
| **Exhibit P14** | **TRUE COPY OF THE PETITION DATED 17.01.2024 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 3RD RESPONDENT THROUGH E-MAIL** |