

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN
Monday, the 4th day of April 2022 / 14th Chaithra, 1944
WP(C) NO. 11885 OF 2022(S)

PETITIONERS:

1.BIBIN K B, AGED 16 YEARS, SON OF BALAN K K, KADUKAPARAMBIL HOUSE,
CHITTISSERY POST, NENMANIKKARA VILLAGE, ERAVAKKAD,
THRISSUR DISTRICT. PIN- 680 301

MINOR REPRESENTED BY NEXT FRIEND AND FATHER MR. BALAN K K,
KADUKAPARAMBIL HOUSE, CHITTISSERY POST, NENMANIKKARA VILLAGE,
ERAVAKKAD, THRISSUR DISTRICT. PIN- 680 301

2.VINEETH M, AGED 16 YEARS, SON OF R MUTHUKRISHNAN, PUTHURKARA HOUSE,
ARATTUPUZHA VILLAGE AND POST, PALLISSERY DESOM,
THRISSUR DISTRICT. PIN- 680 562

MINOR REPRESENTED BY NEXT FRIEND AND FATHER MR. R MUTHUKRISHNAN,
PUTHURKARA HOUSE, ARATTUPUZHA VILLAGE AND POST, PALLISSERY DESOM,
THRISSUR DISTRICT. PIN- 680 562

3.SAYANTH KRISHNA, AGED 15 YEARS, SON OF JEEVANKUMAR, ELANKATH HOUSE,
HARINANDANAM, AVINISSERY VILLAGE, DESOM AND POST OFFICE,
THRISSUR DISTRICT. PIN-680 306

MINOR REPRESENTED BY NEXT FRIEND AND FATHER MR. JEEVANKUMAR,
ELANKATH HOUSE, HARINANDANAM, AVINISSERY VILLAGE, DESOM AND POST OFFICE,
THRISSUR DISTRICT. PIN-680 306

RESPONDENTS:

1.THE UNION OF INDIA, REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF DISABILITY AFFAIRS,SHASTRI BHAVAN,
DR.RAJENDRA PRASAD ROAD,NEW DELHI. PIN - 110001

2.THE STATE OF KERALA,REPRESENTED BY ITS CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM,KERALA, PIN - 695001

3.THE PRINCIPAL SECRETARY,GENERAL EDUCATION,ROOM NO.138,
FIRST FLOOR,NORTH BLOCK, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM,KERALA PIN 695 001

4.THE SECRETARY,MINISTRY OF SOCIAL JUSTICE OF GOVERNMENT OF INDIA,
SHASTRI BHAWAN,C-WING, DR.RAJENDRA PRASAD ROAD, NEW DELHI. PIN- 110 011

5.THE SECRETARY,SOCIAL JUSTICE DEPARTMENT OF KERALA STATE,
ROOM NUMBER 620,1ST FLOOR,SOUTH BLOCK,SECRETARIAT,
THIRUVANANTHAPURAM. PIN- 695 001

6.THE DIRECTOR OF GENERAL EDUCATION,OFFICE OF THE DGE,
JAGATHI,THIRUVANANTHAPURAM.PIN- 695 014

7.THE KERALA BOARD OF PUBLIC EXAMINATION, REPRESENTED BY ITS SECRETARY,
OFFICE OF THE COMMISSIONER FOR GOVERNMENT EXAMINATIONS,
PAREEKSHABHAVAN, POOJAPPURA, THIRUVANANTHAPURAM.PIN- 695 012

8.THE CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES,
SAROJINI HOUSE- 6, BHAGWAN DAS ROAD, BHAGWAN DAS LANE,
MANDI HOUSE, NEW DELHI, DELHI, PIN-110 001

9.THE STATE COMMISSIONER,STATE COMMISSIONERATE
FOR PERSONS WITH DISABILITIES,ANJANEYA, T.C.-9/1023 (1),GROUND FLOOR,
SASTHAMANGALAM,THIRUVANANTHAPURAM,PIN- 695 010

10.THE DISTRICT MEDICAL OFFICER,THE OFFICE OF DMO,
DISTRICT HOSPITAL,THRISSUR.PIN- 680 001

11.THE HEAD MASTER,CNN BOYS HIGHER SECONDARY SCHOOL,
CHERPU,THRISSUR,KERALA STATE.PIN- 680 561

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct the 2nd, 5th and 6th respondents to allow the petitioners and other similarly placed children to avail the additional facilities available to the disabled persons in the forthcoming SSLC Examination 2022 as per Exhibit P5 office Memorandum, pending final disposal of this WP(Civil).

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S SHIBIN K.F & SHOBY K.FRANCIS, Advocates for the petitioners and of SRI. K R RANJITH, GOVERNMENT PLEADER, the court passed the following:

P.T.0



S.MANIKUMAR, C.J. & MURALI PURUSHOTHAMAN, J.

W.P.(C)No.11885 of 2022

Dated this the 4th day of April, 2022

ORDER

S.MANIKUMAR, C.J.

Petitioners are students studying in Xth standard in CNN Boys Higher Secondary School, Cherpu in the State of Kerala. Petitioners have approached this court seeking for the following reliefs:

A. to issue a writ of mandamus or any other appropriate writ and/or order directing the respondents to consider issuance of Intellectual Disability Certificate in written examinations for children having IQ between 70 to 84 and allow such children to avail, additional facilities in written examinations.

B.To declare that exclusion of children having IQ 70 to 84 in Ext.P4 notification is arbitrary and unreasonable and not only is ultra vires to the Right of Persons with Disabilities Act 2016 but also violates Article 14 and 21 of the Constitution of India by issuing a writ of mandamus and/or any other appropriate writ, direction and/or order.

C. to issue a writ of mandamus or any other appropriate writ and/or order directing the respondents to frame scientific and reasonable diagnosis procedure to identify specific learning disability in children.

D. to issue a writ of mandamus or any other appropriate writ and/or order directing the respondents to implement Ext.P6 order.

E. To issue a writ of mandamus or any other appropriate writ or order directing the respondents to follow Section 17(a) of the Right of Persons with Disabilities Act 2016 and ensure that screening of children as per Clauses 21.2 and 22.2 of Ext.P4 is following in every schools in Kerala to identify all the disabled children and for that purpose to conduct special medical camp in schools and retain the date derived from it as strictly confidential and use only in the best interest of the child concerned.

W.P.(C)No.11885 of 2022

:: 2 ::

F. To issue a writ of mandamus directing the respondents to ensure publication of committee constituted under Clause 22.2 sub-clause (ii) in conspicuous part of the schools in Kerala.

G. To issue a writ of mandamus directing the respondents to publish the rights of disabled children in wide circulation especially in every school in Kerala at conspicuous part of the building.

H. To issue a writ of mandamus or any other appropriate writ or order directing the respondents to allow the children having IQ between 70 to 84 to avail additional facilities available to the disabled persons in the forthcoming SSLC examination 2022.

2. Pending disposal of the same, they have sought for the following interim order:

“to direct the 2nd, 5th and 6th respondents to allow the petitioners and other similarly placed children to avail the additional facilities available to the disabled persons in the forthcoming SSLC Examination 2022 as per Ext.P5 Office Memorandum, pending final disposal of this WP(Civil).”

3. Emphasizing on Ext.P6 proceedings of the State Commissioner for Persons with Disabilities, Kerala addressed to the Director of Health Services, Thiruvananthapuram, dated 5.3.2020, Mr.Shibin.K.F., learned counsel for the petitioner submitted that children whose I.Q. level is between 70-84 require assistance to take part in the SSLC examination.

4. He further submitted that this year's SSLC examination has already commenced and the next examination is scheduled on 6.4.2022.

W.P.(C)No.11885 of 2022

:: 3 ::

He also submitted that the words “Border line” have not been explained. Having regard to the difficulties expressed by the children having I.Q. between 70 to 84, learned counsel prayed for appropriate interim orders.

5. Mr.K.R.Ranjith, learned Government Pleader submitted that pursuant to Ext.P6 proceedings of the Sate Commissioner for Persons with Disabilities, Kerala addressed to the Director of Health Services, Thiruvananthapuram, instructions have been issued to all the District Medical Officers (Health) in the State. Submission of the learned Senior Government Pleader is placed on record.

6. Ext.P5 Office memorandum dated 8th February, 2019 wherein guidelines are prescribed for conducting written examination for persons with benchmark disabilities, which reads thus:

F. No. 34-02/2015-DD-III (pt)
Government of India
Ministry of Social Justice & Empowerment
Department of Empowerment of Persons with Disabilities
(Divyangjan)

Pt. Deendayal Antyodaya Bhawan,
C.G.O. Complex, New Delhi-110003
Dated the 8th February, 2019

Corrigendum

Sub:- Guidelines for conducting written examination for Persons with Benchmark Disabilities

This Department's OM. No.34-02/2015-DD.III dated 29/08/2018 prescribing the guidelines for conducting written examination for persons with disabilities is amended as under:

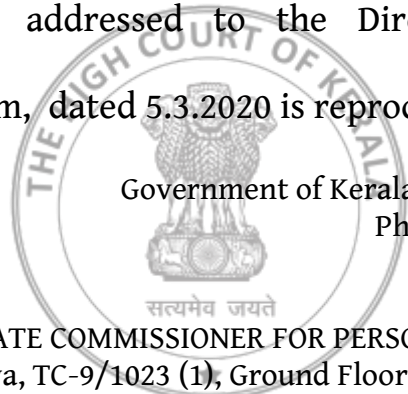
W.P.(C)No.11885 of 2022

:: 4 ::

Para XII on page 3 of the above guidelines may be substituted with the following-

"The word "extra time or additional time" that is being currently used should be changed to "compensatory time" and the same should not be less than 20 minutes per hour of examination for persons who are allowed use of scribe/reader/lab assistant. All the candidates with benchmark disabilities who are eligible for availing the facility of scribe in terms of guidelines IV may be allowed additional time of minimum of one hour for examination of 3 hours duration whether they use the facility of scribe or not. In case the duration of the examination is less than an hour, then the duration of additional time should be allowed on pro-rata basis. Additional time should not be less than 5 minutes and should be in the multiple of 5."

7. Ext.P6 proceedings of the Sate Commissioner for Persons with Disabilities, Kerala addressed to the Director of Health Services, Thiruvananthapuram, dated 5.3.2020 is reproduced hereunder:



Government of Kerala

Phone Office 0471-2720977

Fax No: 0471-2727704

COURT OF STATE COMMISSIONER FOR PERSONS WITH DISABILITIES
Anjaneya, TC-9/1023 (1), Ground Floor Sasthamangalam,
Thiruvananthapuram-695010

Dated 5/3/2020

No: 667/S.2/20/SCPWD

From

State Commissioner and Government Secretary (Ex-officio)

To

Director, Directorate of Health Services,
Thiruvananthapuram.

Sir,

Subject: SCPWD- For providing concession in examination to
the child coming under Slow Learner (IQ 70-84) Reg.

Ref: 1. Rights of the Persons With Disabilities Act, 2016
2. Letter Dated 14/2/2020 having number
448/S2/20/SCPWD issued by this office.

W.P.(C)No.11885 of 2022

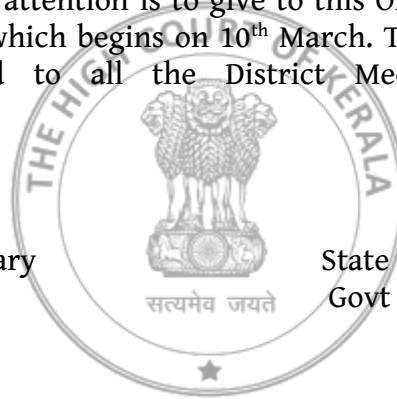
:: 5 ::

Inviting your attention to the above reference cited. The children whose IQ level is between 70-84 falls under the category of Slow Learners/Boarder Line Intelligent. This category of children neither comes under the category of Intellectual Disability (ID) or under Specific Learning Disability (SLD). But most of the children coming under this category deserves special consideration. On account of this the Commissionerate is receiving so many complaints complaining that the said children are not receiving any kind of benefits or concessions.

The Commissionerate examined the matter thoroughly. The Court of the State Commissioner for Persons with Disabilities hereby orders that, for the purpose of bringing the said children to forefront of the society, after also examining their functional capacity and if necessary, the doctors themselves must recommend to allow scribe/Reader/Lab Assistant/Additional Time, either singly or in addition to the other.

Urgent attention is to give to this Order in view of the SSLC Examination which begins on 10th March. The above direction shall be forwarded to all the District Medical Officers (Health) immediately.

By authority
Signature
Deputy Secretary



Your's faithfully
Dr. Harikumar
State Commissioner and
Govt Secretary (Ex-officio).

8. It is evident from Ext.P6 that children whose IQ level is between 70-84 would fall under the category of slow learners/border line intelligent. This category of children neither comes under the category of Intellectual Disability or under Specific Learning Disability. Most of the children coming under this category deserves special consideration. For the purpose of bringing the said children to the forefront of the society, such children would appear before the concerned courts for obtaining

W.P.(C)No.11885 of 2022

:: 6 ::

necessary certificate and other facilities as sought for in the interim prayer.

9. Instructions issued by the Director of Health Services, Thiruvananthapuram to the District Medical Officer (Health) dated 1.4.2022, translation of which, is reproduced hereunder:

DIRECTORATE OF HEALTH SERVICES

Vanchiyoor P.O/ Thiruvananthapuram/ Pin- 695035

Phone : 04712302490, 2519281 Fax: 04712303025/20303080

E-mail : dhskerala@gmail.com dhskerala.hlth@kerala.gov.in

No. MH1 – 23317/2022/D.H.S

Dated : 01/04/2022

To

District Medical Officer (Health)
Thiruvananthapuram/ Kollam/ Alappuzha/ Pathanamthitta/
Kottayam/ Idukki/ Ernakulam/ Thrissur/ Palakkad/
Malappuram/ Kozhikode/ Wayanad/ Kannur/ Kasaragod

Sir/Madam,

Sub:- D.H.S - Disability Certificate of children belonging to Border Line IQ – reg.

Ref : Letter from the State Commissioner for Persons with Disabilities No. OP(RPwD) No. 1205/S3/2022/S.C.P.W.D dated 01.04.2022

It has been held by the Hon'ble Supreme Court in Vikas Kumar Vs. Union Public Services Commission & others that while granting examination benefits to persons with disabilities as per Section 17(i) of RPwD Act, 2016, Bench Mark Disability is not necessary and it has to be based on 'Persons with Disability' and accordingly, the State Commissioner for Persons with Disabilities has issued Order No. OP (RPwD) No. 1205/S3/2022. The Director of General Education has issued an order approving the same that those students who have Border Line Intelligence and are appearing tenth standard examination in March-April 2022 are eligible for the said examination benefits. However, as the Medical Board is not issuing Special Disability/ Medical Certificate to children having Border Line Intelligence at present, and it has come to the notice of the Respected Commission for Persons with Disability that there has been widespread complaints that such children are not getting the aforementioned examination benefits and accordingly, it has been directed as per letter cited in the reference to initiate steps to issue certificates to those SSLC students who had been denied Disability Certificate/ Medical Certificate from the Medical Board before 30/03/2020 owing to the reason of Border Line Intelligence in IQ test. Accordingly, it has also been directed to convene urgent Medical Board to resolve the said problem. In these circumstances, directions shall be issued to all organizations concerned

W.P.(C)No.11885 of 2022

:: 7 ::

to convene urgent Medical Board and issue certificates to the said children for getting examination benefits. As the upcoming SSLC examination commences on 06/04/2022, urgent steps shall be initiated toady itself and a report regarding the steps initiated may be submitted in the return letter.

Sd/-

01/04/2022

Dr. Reena K.J

Director of Health Services I/c

Translated by : Radha Lakshmy S.A., Translator (Hr.Gr.)

Verified by : Assainar.A, Head Translator

10. Considering the case of the petitioners and taking note of Ext.P6 order issued by the Court of State Commissioner for Persons with Disabilities, Thiruvananthapuram and the proceedings of the Director of Health Services, Thiruvananthapuram dated 1.4.22, there shall be a direction to the respondents to permit the petitioners and other similarly placed children, whose IQ level is between 70-84, falling under the category of slow learners/boarder line intelligent, to avail the facilities available to the disabled persons in the forthcoming SSLC Examination 2022 as per Ext.P5, Ext.P6 and proceedings of the Director of Health Services, Thiruvananthapuram dated 1.4.22, pending disposal of the writ petition.

Learned Government Pleader submitted that today petitioners have appeared before the Medical Board – General Hospital, Thirssur. He is directed to communicate the order of this court to the respondents

W.P.(C)No.11885 of 2022

:: 8 ::

forthwith and also to the District Medical Officer, Thrissur for implementing the orders of this court.

Sd/-
S.MANIKUMAR
CHIEF JUSTICE

Sd/-
MURALI PURUSHOTHAMAN
JUDGE

jes



APPENDIX OF WP(C) 11885/2022

- EXHIBIT P4** A TRUE COPY OF THE RELEVANT PORTIONS OF THE GUIDELINES FOR THE PURPOSE OF ASSESSING THE EXTENT OF SPECIFIED DISABILITY IN A PERSON INCLUDED UNDER THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016 (49 OF 2016), DATED 04-07-2018.
- EXHIBIT P5** A TRUE COPY OF THE OFFICE MEMORANDUM ISSUED BY THE 1ST RESPONDENT DATED 29-08-2018.
- EXHIBIT P6** A TRUE COPY OF THE LETTER OF THE STATE COMMISSIONER FOR PERSONS WITH DISABILITIES, KERALA TO THE DIRECTOR OF HEALTH SERVICES, THIRUVANANTHAPURAM DATED 05-03-2020.

