

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 16TH DAY OF MARCH 2021 / 25TH PHALGUNA, 1942

WP(C).No.4993 OF 2021(S)

PETITIONER/S:

DEVASHRAYAM CHARITABLE SOCIETY,
REG.NO.209/96, THEKKETHARA, MARUTHARODE, PALAKKAD-
678 007, KERALA, INDIA, REPRESENTED BY ITS
SECRETARY, MR.M.N.GOVIND, S/O.LATE N.K.NARI, AGED
58 YEARS, RESIDING AT 22/720, VISRAM, M.P.MENON
ROAD, KUNNATHURMEDU, PALAKKAD-678 013.

BY ADV. SHRI.VINOD VALLIKAPPAN

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY THE ITS SECRETARY, HEALTH AND FAMILY
WELFARE, SECRETARIAT, THIRUVANANTHAPURAM, PIN-695
001.
- 2 THE DIRECTOR OF HEALTH SERVICES,
DIRECTORATE OF HEALTH SERVICES, GENERAL HOSPITAL
JUNCTION, THIRUVANANTHAPURAM, PIN-695 035.

R1-2 BY SRI. TEK CHAND, SENIOR GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
16.03.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

Dated this the 16th day of March, 2021

S. Manikumar, C.J.

Devashrayam Charitable Society represented by its Secretary Mr. M. N. Govind, has filed the instant Public Interest Litigation, seeking for a mandamus, directing the respondents to immediately direct the convening of Special Medical Boards in the State, so as to assess the disability of Special Need Children, and the issuance of disability certificate to them.

2. Short facts leading to the filing of the writ petition are as follows:-

According to the petitioner, Devashrayam is a non-political, non-religious and non-sectarian Charitable Society, with the main thrust to wipe away the stigma attached to mental illness and intellectual disability. The Society is presently the Convener of the Local Level Committee, Palakkad, under The National Trust Act,

1999, catering to the needs of special needs children.

It has come to the notice of the petitioner that, due to the Covid - 19 pandemic, the District Medical Boards, which assess the disability and issues certificates to these children, are not functioning regularly. As such, many of these children are unable to access the benefits of grants, scholarships, and attendant benefits, due to them from the State and Central Governments. Petitioner submitted that most of the parents of the children come from very poor backgrounds, with no proper knowledge or financial status, and are unable to approach the authorities with their grievances.

Petitioner, though involved in its service within the District of Palakkad, seeks intervention of this Court to issue directions to the respondents, to instruct convening of District Medical Boards, in all districts of the State, with specific dates set apart specifically for children with special needs, both physically and mentally retarded, as they are in urgent need of the certificates of disability.

3. In support of the prayers sought for, petitioner has raised the following grounds:-

A. The convening of Medical Boards is necessary, as the special needs and handicapped children, as they are entitled to governmental grants, and supports only on production of disability certificates from the concerned Medical Boards. Acknowledging the fact that the Covid - 19 pandemic has cast an ominous shadow, and restricted the functioning of hospitals, and consequently the convening of Medical Boards, the respondents may be directed to convene special Medical Boards, for assessing the disability of Special needs and handicapped persons, and setting apart specific dates.

B. The absence of disability certificate adversely affects even the studies of children, who are entitled to have assistance in writing exams. The specific case represented by Ext. P4 shows the plight of a parent, who in the absence of a disability certificate, was unable to get assistance of a scribe for her child, to take part in the exams.

4. When the matter came up for admission on 09.03.2021, on instructions, Mr. Tek Chand, learned Senior Government Pleader,

made submissions. Recording the same, we passed the following order:-

“On instructions, Mr. Tek Chand, learned Senior Government Pleader, submitted that due to COVID-19 pandemic, convening of Medical Board is suspended. Thereafter, instructions have been issued to convene Medical Board and to consider pending applications for issuance of disability certificates. Documents have been produced to substantiate the contentions. But they are in vernacular language.

2. Mr.Vindo Vallikappan, learned counsel for petitioner, submitted that special children require medical certificates and there will be some difficulty in taking them to district centres. He prayed for a direction to convene Medical Board at Taluk Centres or such other places, where special children could be brought for examination. It is also his contention that respondents may be directed to have a special drive for examining special children on a given day, so as to avail the benefit of the welfare scheme.

3. Learned Senior Government Pleader is directed to discuss the matter, with the concerned and file a statement along with the supporting documents, translated in English.”

5. Reverting, on the basis of the statement dated 15.03.2021 filed by the Director of Health Services (in-charge), and the supporting documents, Mr. Tek Chand, learned Senior Government

Pleader submitted that, a meeting has been convened by the Principal Secretary (Health) with the Secretary (General Education), Government of Kerala, and that it has been decided to conduct Medical Boards for the children. Statement of facts filed on behalf of respondent No. 2 and the supporting documents are reproduced hereunder:-

**“STATEMENT FILED ON BEHALF OF THE SECOND
RESPONDENT AS PER THE DIRECTION OF THIS
HONOURABLE COURT DATED 09.03.2021**

“1. The above Writ Petition is filed to issue a Writ of Mandamus or any other appropriate Writ, Order or Direction, directing the respondents to immediately direct the convening of Special Medical Boards in the State so as to assess the disability of Special Need Children and the issuance of disability certificate to them. The foundation for seeking such a relief is that pursuant to Covid-19 pandemic issuance of Disability Certificate by medical boards have been temporary suspended and that has resulted in non-production of certificate before the Educational Authorities so as to get assistance of a scribe for the differently abled children.

2. It is respectfully submitted that as per communication dated 10.12.2020 issued by this respondent to all the District Medical Officers, it was directed that since large number of applications are received in all the District for Medical Board

Certificates, medical board could be convened after observing Covid-19 protocol. A true copy of the communication dated 10.12.2020 is produced herewith and marked as Annexure R2(a).

3. It submitted that the Director of Public Instruction as per communication dated 01.02.2021 sent to this respondent mentioned the number of children that were short listed for examination and selection by clinical Psychologist and for further evaluation by the Medical Board of those who are selected. Further it was stated therein that if a panel of Government Clinical Psychologist in the District level is constituted, time bound IQ test can be conducted and certificates could be issued. A true copy of the communication of the Director of Public Instructions dated 00.00.2021 is produced herewith and marked as Annexure R2(b). To Annexure R2(b), a communication dated 28.01.2021 was issued by this respondent. A true copy of the communication dated 28.01.2021 is produced herewith and marked as Annexure R2(c). It is stated in Annexure R2(c) that the 13 clinical Psychologist with the Health Department would not be sufficient to examine 22545 children enlisted and that going by number of children that are needed to be examined it would take 1700 children to be examined by one clinical Psychologist alone. Therefore, it was pointed out therein that the services of the empaneled clinical Psychologist can be used for the purpose as decided in the meeting convened by the Director of Public Instructions. To draw up a panel of Clinical Psychologists, the Additional Director of the Department was nominated. It was also stated therein that after the preliminary

proceedings and IQ test, the list of eligible children could be forwarded to the District Medical Officer and Medical Board could be convened.

4. It is submitted that pursuant to Annexure R2(c) letter, a meeting was convened on 02.02.2021 by the Principal Secretary (Health) with the Secretary (General Education) and this respondent. In the meeting it was decided to conduct Medical Boards for the children selected by the Clinical Psychologist. Thereupon, as per communication issued to the all the District Medical Officers it was directed that Special Medical Board should be conducted to issue certificate to the deserving examination going students as per Right of Persons with Disabilities Act at the earliest. A true copy of the e-mail communication dated 02.02.2021 is produced herewith and marked as Annexure R2(d). It is therefore clear that the department has taken to pro active measures to issue the certificates to children having special learning disabilities. As stated hereinbefore, directions have already been given to conduct Special Medical Board to all the District Medical Officers so as to enable the children with learning difficulty to produce the certificate before the authorities for further action.”

Annexure R2(a)

MH1-76686/2020/DHS

Dated 10.12.2020

From

The Director of Health Services

To

The District Medical Officer

Thiruvananthapuram,kollam, Pathnamthitta ,Alappuzha ,
Idukky, kottayam,Ernakulam,Thrissur,Palakkad,
Malappuram,Kozhikode, kannur,Wayanad,Kasargod

Sir,

Sub: HSD- Reconstitution of Medical Boards in District level :-

Ref: Lr No D1-21717/20/DMOH Dated 23.09.2020

Attention to the Reference cited above . Since there is large number of requests been received for the application of Medical Board Certificate in the District ,it has been advised to conduct the medical boards following Covid 19 Protocol followed in the state.

Yours faithfully

S/d

For Director Of Health Services

Annexure R2(b)

IED/213221/2020/DGE

Dated : 1.2021

From

Director
Directorate of Public Instruction
Thiruvananthapuram.

To,

Director
Directorate of Health Services
Thiruvananthapuram.

Sir,

Sub: DGE- **Learning disability**-2021 March SSLC Examination- reg.

Ref: G.O.(RI)No.3095/2019/DGE dated 30.7.2019.

As per the Government Order referred above guidelines had been produced to find out children with learning disability and to give Medical Board Certificate for them. With the help of Resource Teachers and Class Teachers screening has been done and about 22545 children were identified with learning disabilities through out the State. The district wise details are given below.

Sl.No	District	No.of Children with learning disability
1	Thiruvananthapuram	500
2	Kollam	300
3	Pathanamthitta	700
4	Alappuzha	721
5	Kottayam	1691
6	Idukki	900
7	Ernakulam	2000
8	Thrissur	3015
9	Palakkad	2255
10	Malappuram	4300
11	Kozhikode	2451
12	Wayanad	510
13	Kannur	1554
14	Kasargod	1648
	Total	22545

Government has decided to conduct SSLC Exam from March 17 to 30th of 2021. In this context the children with learning disabilities must be given benefits to write their exam. Hence after Primary screening these children may be assessed their IQ test by the Government Psychologist and the selected children may be given Medical Board Certificate every week and it will take time till February 15th to complete the process to select students with learning disabilities.

At present there is shortage in clinical Psychologist in several Government Hospitals. Hence under Health Service Department it is requested to form Panel of Clinical Psychologist (5 people) to conduct the IQ test and to give SLD certificate.

Yours Faithfully

Sd/-

Director of Public Instruction

Annexure R2(c)



DIRECTORATE OF HEALTH SERVICES
Vanchiyoor.P.O., Thiruvananthapuram, Pin – 695035
Ph:0471-2302490 Fax:0471-2303025/2303080
Email: dhskerala@gmail.com
Website: www.dhs.kerala.gov.in

No. MH1-1602/21/DHS Dated: 28.01.2021

To
The Director
Directorate of Public Instruction
Thiruvananthapuram

Sir,

Sub:- HSD- Learning Disability-2021 March SSLC Examination – reg-
Ref:- IED/213221/20/DGE dated, 01/2021

As per RPWD Act primary screening of children shall be by teachers. Students if on such screening if found differently abled is examined by Paediatrician and Paediatrician may direct such children to qualified Clinical Psychologist (those with RCI registration) if necessary for IQ assessment. At present there are only 13 clinical psychologists in Kerala. There are 22545 children to be examined. Each clinical psychologists will have to see about 1700 children. Examining each child will take about 2-3 hours. Examining 1700 children will take about 500 days. It was decided in a meeting held by Education Department Director that qualified clinical psychologists may be empanelled.

Since Health Service Department is actively involved in covid related activities and covid vaccination activities Education department has taken an upper hand in preparing panel of qualified clinical psychologists. Additional Director of Health Services (Medical), Directorate of Health Services is nominated to identify qualified psychologists for empanelment.

List of Children may be prepared as per guidelines in RPWD act (including preliminary examination and IQ assessment). Such children may be directed to medical board. Necessary medical boards shall be constituted by DMOHs. Boards thus constituted shall follow covid protocols. Director, Education department may make available, the list of such children as early as possible.

In the coming years necessary steps may please be initiated to identify children early, give corrective treatment and issue SLD certificates. So that the rush of children may be avoided during 10th standard.

Yours faithfully

for DIRECTOR OF HEALTH SERVICES

Annexure R2(d)

Gmail Dr.Sarita.R.L Director of Health Services <dhskerala@gmail.com>

SPECIAL MEDICAL BOARD-REG

Dr.Sarita.R.L Director of Health Services <dhskerala@gmail.com> Tue, Feb 2, 2021 at 5:57 PM
 To: "09. DMOH MALAPPURAM" <dmoesttmlpm@gmail.com>, DMO ALPY <dmohalppy@yahoo.co.in>, DMO EKM <dmohekm@gmail.com>, DMO IDKY <dmohik@gmail.com>, DMO KKD <dmohkozhikode@gmail.com>, DMO KNR <dmohkannur@gmail.com>, DMO Kollam <dmohkollam@gmail.com>, DMO KSD <dmohksd@gmail.com>, DMO KTM <dmohktm@yahoo.co.in>, DMO MLPM <dmomalappuram@gmail.com>, DMO PKD <palakkaddmo@gmail.com>, DMO PTA <dmohpathanamthitta@gmail.com>, DMO TSR <dmohtrs@gmail.com>, DMO TVPM <dmohealthvm@gmail.com>, DMO WYD <dmowayanad@gmail.com>, dmo.wayanad@kerala.gov.in, DMO ekm <dmohekmoffice@gmail.com>

Dear All,

All District Medical Officers are hereby directed to conduct Special Medical Board and issue certificates to the deserving exam going students as per the Rights of Persons With Disabilities act, at the earliest.

Dr.Sarita.R.L
 Director of Health Services
 Thiruvananthapuram
 Kerala, India - 695035

Tele Fax (O) : 0471-2303025
 Mobile: 9447139266
 email: dhskerala@gmail.com
 web site: www.dhs.kerala.gov.in

Break the chain
 #breakthechain

For up to date guidelines, advisories and media bulletins regarding COVID-19 please visit www.dhs.kerala.gov.in
 For videos regarding COVID-19 subscribe to the YouTube channel <https://www.youtube.com/c/keralahealthonlinelearning>
<https://www.facebook.com/keralahealthservices/>

6. In addition to the above, Mr. Tek Chand, learned Senior Government Pleader also submitted that, in respect of issuance of SSLC Learning Disability Certificate, special drives / camps were conducted in Palakkad, Ottappalam, Pattambi, Mannarkad and Alathur on various days, and 2782 certificates were issued to the children. Added further, at the District Hospital, Palakkad, on every Wednesday, camps are conducted for issuance of SSLC LD Certificates. Details of such camps conducted at the District Hospital, Palakkad, are as follows:-

1. December, 2020 – 2 camps
2. January, 2021 - 4 camps
3. February, 2021 – 4 camps

About 150 students have been issued with SSLC LD Certificates in the camps conducted at District Hospital, Palakkad.

7. Though Mr. Vinod Vallikappan, learned counsel for the petitioner, prayed for a direction that, special drives for examining the students be conducted on specific day in a week, as per the details furnished by the learned Senior Government Pleader, in so far as

issuing SSLC LD Certificate is concerned, such camps are being conducted on various dates in Palakkad District, and taking note of the recent Covid – 19 pandemic, fixing a specific date for all the children to be assembled at a place, and the number of doctors and supporting staff to be engaged by the Government for treatment of Covid – 19 patients, we are of the view that, it would not be advisable for us, to fix any specific date, for conducting special drive for examination, for issuance of appropriate certificates, and in the said circumstances, it would be desirable to leave it to the Directorate of Health Services, Thiruvananthapuram, the 2nd respondent, to fix any date / dates, for examination of children, and issuance of necessary certificates.

8. Going through the material on record, it could be seen that about 22545 children have to be examined, and having regard to the limited number of Clinical Psychologists, Additional Director of Health Department has been nominated, to draw up a panel of Clinical Psychologists, hold preliminary procedures and IQ tests, empanel the list of eligible children, so as to forward the same to the Medical Officer, and thereafter Special Medical Board have to be convened.

9. Directorate of Medical Health Services, in his letter dated

28.01.2021, addressed to the Director, Directorate of Public Instruction, Thiruvananthapuram, has also stated that, necessary Medical Boards to be constituted by the District Medical Officers, and that the Boards so constituted will follow Covid -19 protocol.

10. In the light of the discussions above, Directorate of Health Services, Thiruvananthapuram, the 2nd respondent, shall explore the possibility of fixing any specific date for convening Medical Boards, in each districts. This should be in addition to regular examination, which is being conducted on every Wednesday in a month, to be continued alongside the special drive so contemplated.

11. Judicial notice can also be taken that the public examinations for SSLC / +2 have been postponed. Therefore, the Directorate of Health Services, Thiruvananthapuram, the 2nd respondent, may consider issuing directions to the District Medical Officers, for examination of the students, preliminary proceedings and IQ test by the Clinical Psychologists / identify of qualified psychologists, for the purpose of examination and empanelment of the children for examination of the Medical Board.

Having regard to the plight of the differently abled children, their rights, and consequently issuance of certificates, so as to enable them to avail the benefits of any welfare measures, by the State / Central Governments, Directorate of Health Services, Thiruvananthapuram, the 2nd respondent, is directed to take appropriate decision and promptly too.

Accordingly, writ petition is disposed of.

Sd/-

S. MANIKUMAR

CHIEF JUSTICE

Sd/-

SHAJI P. CHALY

JUDGE

Eb

///TRUE COPY///

P. A. TO JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE REGISTRATION
CERTIFICATE 17.07.1996 OF THE
PETITIONER SOCIETY WITH ITS ENGLISH
TRANSLATION.
- EXHIBIT P2 TRUE COPY OF THE REGISTRATION
CERTIFICATE OF THE PETITIONER DATED
03.12.2005 FROM THE OFFICE OF THE
DIRECTOR OF SOCIAL WELFARE AS A
REHABILITATION CENTRE FOR THE MENTALLY
HANDICAPPED.
- EXHIBIT P3 TRUE COPY OF THE REPRESENTATION DATED
03.09.2020 SUBMITTED BY THE PETITIONER
TO THE DISTRICT MEDICAL OFFICER,
PALAKKAD ALONG WITH ITS ENGLISH
TRANSLATION.
- EXHIBIT P4 TRUE COPY OF THE UNDATED REPRESENTATION
TO THE DISTRICT MEDICAL OFFICER,
PALAKKAD WITH ITS ENGLISH TRANSLATION,
A COPY OF WHICH WAS SUBMITTED BEFORE
THE PETITIONER.

2ND RESPONDENTS' ANNEXURES

- ANNEXURE R2 (A) - A TRUE COPY OF THE COMMUNICATION DATED
10.12.2020 OF THE DIRECTOR OF HEALTH SERVICES.
- ANNEXURE R2 (B) - A TRUE COPY OF THE COMMUNICATION OF THE
DIRECTOR OF PUBLIC INSTRUCTIONS DATED 00.01.2021.
- ANNEXURE R2 (C) - A TRUE COPY OF THE COMMUNICATION DATED
28.01.2021 OF THE DIRECTOR OF HEALTH SERVICES.
- ANNEXURE R2 (D) - A TRUE COPY OF THE E-MAIL COMMUNICATION
DATED 02.02.2021.