

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 6TH DAY OF DECEMBER 2021 / 15TH AGRAHAYANA, 1943

WP(C) NO. 18027 OF 2017

PETITIONERS:

PRETTY RACHAL KOSHY
AGED 40 YEARS, D/O. KOSHY C DANIEL,
H2, BLOCK NO.2, JEWEL CROWN APARTMENT,
PALARIVATTOM,KOCHI- 25

BY ADV SMT.SANDHYA RAJU

RESPONDENTS:

- 1 SOCIAL JUSTICE DEPARTMENT
REPRESENTED BY THE PRINCIPAL SECRETARY,
GROUND FLOOR,SECRETARIAT, STATUE,
THIRUVANANTHAPURAM-695 001.
- 2 STATE OF KERALA
REPRESENTED BY THE DIRECTOR
OFFICE OF THE DIRECTOR OF SOCIAL WELFARE
VIKAS BHAVAN, VTH FLOOR, TRIVANDRUM-33
- 3 THE SECRETARY
COCHIN CORPORATION, PARK AVE,
MARINE DRIVE, ERNAKULAM DISTRICT- 682011
- Addl.4 THE DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT
REPRESENTED BY THE SECRETARY.

[IS IMPEADED AS ADDITIONAL R4 AS PER ORDER
DATED 06/07/2018 IN WPC]

BY ADVS.
STATE ATTORNEY

R1, 2 & 4 BY SRI. K.R.RANJITH, GOVT. PLEADER
SRI.S.CHANDRASENAN
R3 BY SRI.D.G.VIPIN, SC COCHIN CORPORATION

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 06.12.2021, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

J U D G M E N T

Dated this the 6th day of December, 2021

S. Manikumar, CJ.

Instant public interest litigation is filed for the following reliefs:

“a) To issue a writ in the nature of mandamus or any other appropriate writ or order directing respondents to conduct an enquiry into the functioning of illegal day care centres/creches.

b) To issue any other writ, declaration or order directing the respondents to take emergent steps to ensure regulation and monitoring of the Daycare Centres/Creches.”

2. Having regard to the averments and the material on record, this Court has passed orders periodically. On 6.7.2018, the following order was passed:

“The petitioner is a child rights activist and has filed this Public Interest Litigation (PIL) expressing concern on account of the absence of day care centres/creches for children as also the failure of the State Government to provide for regulatory measures to monitor the already functioning day care centres/creches. Smt. Sandhya Raju, the learned counsel for the petitioner submits that while some attention has been paid to those in the municipal areas, there is utter failure of the

Government to address the issue, in the interior areas of the State.

2. The learned counsel specifically refers to the Ext.P1 and Ext.P2 formulated by the Government of India, providing for the Rajv Gandhi National Creches Scheme for the children of working mothers as also the National Early Childhood Care and Education Policy and she states that the Government of Kerala is yet to take necessary steps in line with the national policy.

3 Representing the respondents, Sri.K.V. Sohan,the State Attorney firstly submits that a new Department i.e., the Department of Women and Child Development was constituted with effect from 31.08.2017and this is the Nodal Department to address the concern raised by the petitioner

4. In view of the above, the impleadment of the Department of Women and Child Development, represented by the Secretary is ordered in this case.

5. Sri. K.V.Sohan takes notice for all the respondents. The matter is admitted. The respondents should file their counter affidavit in four weeks.”

3. Pursuant to the directions, Department of Women and Child Department, represented by the Secretary/respondent No.4 has filed a statement dated 2.12.2021, which reads thus:

2. It is submitted that this Hon'ble Court by Interim Order dated 03.11.2021 emphasized the need for a detailed

legislation with respect to 'Early Childhood Care and Education' and also ordered to take a policy decision on the legislation for Early Childhood Care and Education. To bring in a regulation for the day care centres, pre schools and kindergarten 'ECCE Early Childhood Care and Education' need to be incorporated as a subject under the purview of Women and Child Development Department. For this purpose a draft for the amendment of Rules of Business was prepared and forwarded to General Administration (SS) Department for making necessary amendments in the Rules of business. General Administration (SS) Department has opined to furnish fresh proposal after re Examination with the General Education Department since the Subject 'Early Childhood Care and Education (ECCE)' includes 'Pre-primary Education' also. Accordingly, the matter has been taken up with the General Education (U) Department for their remarks. Action in this regard will be taken immediately on the receipt of the file from that department with necessary Concurrence for the amendment of the Rules of business. A detailed note at Principal Secretary level has also been forwarded to General Education Department informing the direction of the Hon'ble High Court and again requested for Concurrence for the amendment of the Rules of Business.

3. This Hon'ble Court observed that having regard to the time normally consumed in the matter of legislation and the legislative power of the Government to issue appropriate Government orders under Article 162 of the Constitution of India, issuing directions under Article 162 of the Constitution of

India will be an immediate requirement and accordingly directed the Government to take a decision in that regard having regard to the parameters already contained in the National Scheme and with modification if any required, taking care also of local needs.

4. Hence, as legislation would take time, Director, Women and Child Development Department has been directed to prepare and submit draft guidelines to regulate day care centres, play Schools and kindergartens on the basis of the National Creche Scheme and Anganwadi Scheme. In order to complete the of process of policy decision and examination and approval of draft guidelines, at least two months time would be required so as to complete the administrative procedures and to issue order under Article 162 of the Constitution of India. It is respectfully submitted that there is no willful negligence or laches on the part of the respondent in issuing orders as directed by this Hon'ble Court. Since different Departments of the Government are involved in the matter, there is unavoidable procedural delay in the matter. Hence, it is most humbly prayed that this Hon'ble Court may be pleased to grant atleast two months' time for issuing appropriate orders in this regard."

4. Inasmuch as the Government have assured to issue an order under Article 162 of the Constitution of India, within two months, with reference to the prayers sought for, placing on record the same, we

dispose of the writ petition directing the Principal Secretary to the Government, Social Justice Department, Thiruvananthapuram/ respondent No.1 to complete the process of finalising the policy decision and issue guidelines under Article 162 of the Constitution of India, within two months from the date of receipt of a copy of this judgment. It is made clear that this writ petition is pending from the year 2017 onwards and hope that there may not be any administrative delay in issuing the guidelines.

Sd/-
S. Manikumar,
Chief Justice

Sd/-
Shaji P. Chaly,
Judge

SOU.

APPENDIX OF WP(C) 18027/2017

PETITIONER EXHIBITS

- EXHIBIT P1 COPY OF THE RAJIV GANDHI NATIONAL CRECHE SCHEME FOR CHILDREN OF WORKING MOTHERS
- EXHIBIT P2 A COPY OF THE NATIONAL EARLY CHILDHOOD CARE AND EDUCATION (ECCE)
- EXHIBIT P3 A COPY OF A SERIES OF NEWSPAPER REPORTS HIGHLIGHTING THE INSTANCES OF NEGLECT OF CHILDREN

RESPONDENTS' EXHIBITS

- EXHIBIT R4 (a) A TRUE COPY OF THE NATIONAL CRECHE SCHEME FOR THE CHILDREN OF WORKING MOTHERS PUBLISHED BY THE GOVERNMENT OF INDIA, MINISTRY OF WOMEN AND CHILD DEVELOPMENT, NEW DELHI.
- EXHIBIT R4 (b) TRUE COPY OF THE RELEVANT PAGES OF GUIDELINES FOR CONSTITUTION OF MONITORING & REVIEW COMMITTEE AT DIFFERENT LEVEL TO REVIEW PROGRESS IN IMPLEMENTATION OF ICDS SCHEME ISSUED BY THE GOVERNMENT OF INDIA, MINISTRY OF WOMEN AND CHILD DEVELOPMENT DATED 31.3.2011
- ANNEXURE 1 GO(MS) NO.35/2017SJD DATED 9.8.2017- GRANTING ADMINISTRATIVE SANCTION FOR TAKING OVER 571 CRECHES ALONG WITH ENGLISH TRANSLATION
- ANNEXURE 2 LIST OF CRECHES RUN BY KERALA STATE COUNCIL FOR CHILD WELFARE.
- ANNEXURE 3 G.O(RT)NO.326/2020/SJD DATED 12.7.2020 - GRANTING ADMINISTRATIVE SANCTION FOR STARTING NEW MOBILE CRECHES FOR CHILDREN OF MIGRANT WORKERS

- ANNEXURE 4 GAZETTE NOTIFICATION G.O (MS) .288/
2017/GAD DATED 31.8.2014- AMENDMENT
RULES OF BUSINESS CREATING A SEPARATE
DEPARTMENT NAMED WOMEN AND CHILD
DEVELOPMENT DEPARTMENT
- ANNEXURE 5 LETTER NO.WCD/E5/12106/2020 DATED
4.11.2020 OF HE DIRECTOR, WOMEN AND
CHILD DEVELOPMENT DEPARTMENT,
THIRUVANANTHAPURAM ALONG WITH ENGLISH
TRANSLATION
- ANNEXURE 6 LETTER NO.ICDS/B7/32521/19 DATED
10.11.2020 OF THE DIRECTOR , WOMEN AND
CHILD DEVELOPMENT THIRUVANANTHAPURAM
ADDRESSED TO THE SECRETARY, WOMEN AND
CHILD DEVELOPMENT DEPARTMENT,
THIRUVANANTHAPURAM ALONG WITH ENGLISH
TRANSLATION