

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY ,THE 21ST DAY OF FEBRUARY 2019 / 2ND PHALGUNA, 1940

WP(C).No. 14319 of 2018

PETITIONER/S:

- 1 ANJITHA K JOSE
AGED 20 YEARS, D/O.JOSE THOMAS,
KUNNATH HOUSE, EDAVAKA POST,
MANANTHAVADY, WAYANAD.
- ADDL.P2 RINSA THASNI M
AGED 20 YEARS
MAKKAPPARAMBAN, VATTALLOOR PO,
VATTALLOOR, MALAPPURAM.
(ADDL.2ND PETITIONER IS IMPLEADED AS PER THE ORDER
DATED 14/01/2019 IN IA.NO.01/2018)
- BY ADVS.
SRI.MANU SEBASTIAN
SMT.SURYA BINOY
SMT.SURYA BINOY
SRI.LEGITH T.KOTTAKKAL

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF HIGHER EDUCATION,
SECRETARIAT, THIRUVANANTHAPURAM,
PIN-695001.
- 2 UNIVERSITY OF CALICUT
REPRESENTED BY ITS REGISTRAR,
THRISSUR- CALICUT ROAD, THENHIPALAM,
MALAPPURAM DISTRICT, PIN-673635.
- 3 UNIVERSITY GRANTS COMMISSION UGC
BAHADUR SHAH ZAFAR MARG, NEW DELHI,
INDIA, PIN-110002.
- 4 PRINCIPAL SREE KERALA VARMA COLLEGE
KANATTUKARA P.O. ,
THRISSUR DISTRICT, PIN-680011.

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5 COCHIN DEVASWOM BOARD
REPRESENTED BY ITS SECRETARY,
COCHIN DEVASWOM BOARD,
THRISSUR DISTRICT, PIN-680011.

BY ADVS.

SRI.K.P.SUDHEER, SC, COCHIN DEVASWOM
BOARD

SRI.S.KRISHNAMOORTHY, CGC

SRI.S.KRISHNAMOORTHY, CGC

S KRISHNAMOORTHY,CGC;K P SUDHEER SC
CDB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 21.02.2019, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

Petitioners are the students in Sree Kerala Varma College, Thrissur. Sree Kerala Varma College is having hostel facilities for both boys and girls. The petitioners approached this Court, challenging certain instructions issued by the College authority in regard to the maintenance of discipline in hostel. The petitioners challenge certain specific instructions to be followed by the students contending that it is discriminatory and anti-women. The petitioners refer to the University Grants Commission (hereinafter referred to as "the UGC") Regulations, 2015. The clause 3.2(13) under the UGC (Prevention, Prohibition and Redressal of Sexual harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015 reads as follows:

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“3.2.(13) Concern for the safety of women students must not be cited to impose discriminatory rules for women in the hostels as compared to male students. Campus safety policies should not result in securitization, such as over monitoring or policing or curtailing the freedom of movement, especially of women employees and students.”

2. In the light of the above regulation, the learned counsel for the petitioner submitted that apart from certain instruction are violative of fundamental rights. It is also violative of UGC regulation.

3. It is appropriate to refer the instructions issued by the College;

“17. The boarders should not remain in the hostel during working hours of the college without the previous sanction of the warden or resident tutors. Application for leave shall be made in writing to the Principal through the Warden.

22. No member of the hostel shall take active part in political meetings, processions or propaganda.

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25. Boarders may be permitted to attend pictures or other entertainments only on the day notified by the warden. No boarder shall be permitted to go for the first and second show pictures.

28. Any inmates reported to be mischievous in the college or to be irregular to unpunctual in her attendance or neglecting her studies is liable to suspension or dismissal from the hostel.

4. Before examining the instructions, it is appropriate to examine the nature of power exercised by the College in regard to maintaining the discipline. The supreme authority to impose discipline in a College is its management. Students cannot dictate the management that decision shall be in a particular manner. The fundamental right of a management to administer and manage cannot be overlooked while considering the issues. When there are competing fundamental rights involved, the Court has to uphold

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the fundamental right of the management. However, while doing so Court will have to find out such measures imposed by the management are measures for to secure the object for which such power is conferred upon. If such measures have no correlation with object for which power is conferred, Court will have to strike down holding it is arbitrary. Therefore, instruction will have to be viewed and consider in the above background. The very purpose of issuing instruction is to maintain the discipline and decorum in the College hostel. The Clause 17 referred as above, it can be found that it is the part of the authority of the management to impose. It only says that boarders should not remain in the hostel during working hours of the College, without previous sanction of warden. The college hostel cannot be a

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shelter for such students to remain away from the College. Therefore, with a previous sanction of the Warden for any valid reason, such student can remain in the hostel. Therefore, I do not find any scope for interfering with the instruction 17. Instruction No.22, states that no member of the hostel shall take active part in the political meetings, processions or propaganda. This instruction have nothing to do with any discipline in the hostel. It is the fundamental right of every citizen to have its own political views as part of the freedom of expression. That can be only reasonably restricted for securing any objectives of the management of the hostel. Since it has no relation with power conferred with the management, I find this instruction has to be struck down as violative of fundamental rights of the

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petitioners. Accordingly, instruction No.22 is struck down. Next instruction 25 is with regard to the boarders attending movies and pictures. It stipulated boarders can attend such movies only on the day notified by the Warden. It is also further stated that no boarder shall be permitted to go for the first and second show films. It appears that moral choice of the management is attempted to be imposed upon the Boarders. The moral paternalism is something to be frowned upon. A girl is having equal freedom similar to a boy. There are no similar restriction in the boy's hostel. It is for the students to decide whether they should go for first or second show movies or not. This is an activity outside the hostel activity. The College can fix timing for return in the evening, but that timing should also be reasonably

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fixed. It is only for the purpose of securing the discipline in the hostel, such timing can be fixed. That is to say that on account of late return, it shall not affect the conducive atmosphere in the hostel. The management has every power to fix the timing for the return to hostel. As already said, it must be reasonable and it is only to secure the purpose of discipline in hostel, nothing else. In the light of facts that this moral choice of the college cannot be imposed on others, this clause has to be struck down. Accordingly, it is struck down. In regard to the challenge to the instruction No.28, I find no reason to interfere with. The learned counsel for the petitioner submits that this instruction is vague and would give a chance for arbitrary action. The instruction itself would say that only the mischievous

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conduct would be subject to disciplinary action. It is a matter to be appreciated in a context. If any person aggrieved by such action, she is at liberty to challenge the same. This clause can be read down to state that only such action, which is mischievous amounting to breach of hostel discipline alone would call for an action. Therefore, I do not find any reason to interfere with instruction No.28.

The learned counsel for the College would argue that these hostel instructions were signed by the parents of the students. The petitioner is an adult. Her right to question cannot be compromised based on parental consent. Even if the parent had signed, instruction cannot be violative of fundamental rights. The petitioner also has a challenge in regard to instruction No.21. It states that ordinarily, the

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boarders shall not be permitted to go home during weekly holidays, except in special case with permission of the warden. That itself safeguard the interest of the students. If they have any valid reason, the warden will have to grant such permission to such students. I do not find that instruction is arbitrary or invalid. Therefore, that challenge must fail.

The petitioner would urge that the timing to return to hostel 6.30 may be refixed. It was argued that such fixation of time cause undue hardships in to the students. It is for the Principal to College to decide, after taking into account of the hardships that may likely to be caused to the students. If the petitioner makes a representation in this regard, the Principal shall consider the matter, after taking into

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reality of the circumstances.

In this circumstances, this writ petition is disposed of striking down instruction Nos.22 and 25.

No cost.

Sd/-

A.MUHAMED MUSTAQUE

JUDGE

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APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF 'INSTRUCTIONS TO STUDENTS' CIRCULATED BY THE 4TH RESPONDENT.
- EXHIBIT P2 TRUE COPY OF THE UGC (PREVENTION, PROHIBITION AND REDRESSAL OF SEXUAL HARASSMENT OF WOMEN EMPLOYEES AND STUDENTS IN HIGHER EDUCATIONAL INSTITUTIONS) REGULATIONS, 2015 [NO.F.91-1/2013(TFGS)]
- EXHIBIT P3 TRUE COPY OF UGC STUDENT ENTITLEMENT GUIDELINES.
- EXHIBIT P4 TRUE COPY OF UGC (PROMOTION OF EQUITY IN HIGHER EDUCATIONAL INSTITUTIONS) REGULATIONS, DATED 25.01.2013.
- EXHIBIT P5 TRUE COPY OF THE RELEVANT ARTICLES OF CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, 1979.
- EXHIBIT P6 TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE THE 4TH RESPONDENT DATED 20.09.2017.
- EXHIBIT P7 TRUE COPY OF THE RECEIPT DATED 15.11.17 OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE RESPONDENTS 2 AND 3.
- EXHIBIT P8 TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE THE PRESIDENT OF THE 5TH RESPONDENT DATED 15.01.2018.

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EXHIBIT P9 TRUE COPY OF THE PROCEEDINGS OF THE
4TH RESPONDENT DATED 17.03.2018.

EXHIBIT P10 TRUE COPY OF THE REPRESENTATION DATED
21.04.2018 FILED BY THE PETITIONER
BEFORE THE 3RD RESPONDENT.

RESPONDENT'S EXHIBITS:

EXHIBIT R5 (a) TRUE COPY OF APPLICATION FOR
ADMISSION TO SREE KERALA VARMA
COLLEGE WOMEN'S HOSTEL, THRISSUR

EXHIBIT R5 (b) TRUE COPY OF THE APPLICATION FOR
ADMISSION TO KERALA VARMA COLLEGE
BOYS HOSTEL, THRISSUR.