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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 22ND DAY OF JANUARY 2020 / 2ND MAGHA, 1941

WP(C).No.15436 OF 2017(S)

PETITIONERS:

1 SEEMA LAL
AGED 40 YEARS, W/O.SUNUMON PONMELIL, CONVENOR KOCHI - TOGETHER WE CAN, 4D, SERENE ORCHARD, MATHER APARTMENT, VIDYANAGAR, KADAVANTHRA, KOCHI-682020.

2 ANOOP SIVARAMA MENON
S/O.N.S.SIVARAMAN, AGED 38 YEARS, MUTRRA 79, SREESAILAM, ARIPPIL LANE, PETTAH, ERNAKULAM-682038.

3 PADMA PILLAI
W/O.SANJU PILLAI, PADMARADHA, PADMASHRI MERRA, 55 MENON PARAMBU ROAD, EDAPALLY, COCHIN-682024.

BY ADVS.
SRI.SANTHOSH MATHEW
SRI.ARUN THOMAS
SRI.ANIL SEBASTIAN PULICKEL
SRI.JENNIS STEPHEN
SMT.KARTHIKA MARIA
SMT.MARIA ROY
SRI.VIJAY V. PAUL
SMT.VEENA RAVEENDRAN

RESPONDENTS:

1 STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY, DEPARTMENT OF SOCIAL WELFARE, GROUND FLOOR, SECRETARIAT, TRIVANDRUM-695001.

2 DEPARTMENT OF HEALTH AND FAMILY WELFARE
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY, 6TH FLOOR, ANNEXE-II, SECRETARIAT, THIRUVANANTHAPURAM-695001.

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3 LOCAL SELF GOVERNMENT DEPARTMENT
REPRESENTED BY THE PRINCIPAL SECRETARY, 4TH FLOOR,
SECRETARIAT ANNEX, ROOM NO.403, TRIVANDRUM-6950001.

4 THE DISTRICT COLLECTOR
ERNAKULAM, CIVIL STATION, KAKKANAD-682030.

5 THE SECRETARY
COCHIN CORPORATION, PARK AVENUE, MARINE DRIVE,
ERNAKULAM DISTRICT-682011.

R1-R4 BY SRI.K.V.SOHAN, STATE ATTORNEY
R5 BY ADV. SRI.P.FAZIL,SC, COCHIN CORPORATION

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22.01.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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"C.R"

JUDGMENT

S.MANIKUMAR, CJ

Instant public interest writ petition is filed for a writ of mandamus directing State of Kerala, represented by the Principal Secretary, Department of Social Welfare, Thiruvananthapuram, respondent No.1, and Department of Health and Family Welfare, represented by the Additional Chief Secretary, Thiruvananthapuram, respondent No.2, to implement Exhibit-P5 order of the State Commission for Protection for child rights.

2. Petitioner has sought for a further direction to respondents 1 and 2 to take emergent steps to establish Therapy Centers for children with Autism Spectrum Disorder and other neurological disabilities in line with Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 2016 (49 of 2016), (hereinafter called 'Act, 2016'), which came into force with effect from 19.4.2017, .

3. A counter affidavit has been filed on behalf of State of Kerala, Represented by the Principal Secretary, Department of Social Welfare, Secretariat, Trivandrum, 1st respondent, to the effect that the Act, 2016 was enforced on 19.4.2017. As per section 49 of the Act, the State Government have to appoint a competent authority for registration of institutions for persons with disabilities. Section 101 of the Act, 2016 provides for framing of

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rules for carrying out the provisions of the Act. Section 101(2)(c) empowers the State Government to frame rules for the form and manner for making an application for obtaining certificate of registration and section 101(2) (d) speaks about the facilities to be provided and the standards to be met out by the institutions for grant of certificate of registration.

4. Going through the affidavit filed on 11.9.2018, a Hon'ble Division Bench of this Court has observed that the guidelines for certification for Therapy Centers should be in conformity with the requirement under Chapter IX of the Act.

5. Counter affidavit dated 25.6.2019 states that Government of Kerala have framed draft guidelines prescribing the minimum standard for registration of Therapy centres in Kerala. It is further stated that, as regards draft guidelines sought to be finalised, the Law Department has pointed out that without the support of a rule in force, a guideline issued as an executive order will not have the force of law. Reference has been made to a decision of the Hon'ble Supreme Court in ONGC Limited v. Petroleum, Coal, Labour Union and Others [2015 KHC 4307:[(2015) 6 SCC 494). Counter affidavit also states that, in the light of the objection raised by the Law Department, Government of Kerala, the guideline could not be issued as an executive order having the force of law.

6. It is stated that draft rules were already published in the Government gazette on 19.7.2019 calling for objections and suggestions from the public.

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After obtaining the suggestions from the public and other stake holders, rules have to be placed before the Law Department and to be approved by the Subject Committee of Legislative Assembly, as per the rules of procedure and conduct of business. Counter affidavit further states that rules cannot be finalised without the approval of the Subject Committee. However, states that if specific directions are issued by the court, by practice, rules can be finalised and published subject to the ratification of the Subject Committee. It is further stated that, in other circumstances, it may require a minimum period of three months to finalise draft rules [Ext.R1(a)] and immediately after finalisation of the draft rules, the guidelines have already produced in court, if necessary with modifications, could be published as an executive order. It is further stated the delay in finalisation of the rules and guidelines, has occurred due to the procedure, to be followed for public hearing, hearing of other stake holders and also obtaining the opinions of Doctors and Specialists.

7. Sub-sections 2(c), (d) and (e) of Section 101 of Act, 2016 and Sections 49, 50 and 51 of Act, 2016 relevant for the adjudication of the case, read thus:

> "101. Power of the State Government to make rules.-(1) The State Government may, subject to the condition of previous publication, by notification, make rules for carrying out the provisions of this Act, not later than six months from the date of commencement of this Act.
> (2) In particular, and without prejudice to the generality of foregoing powers, such rules may provide for all or any of the

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following matters namely.-

(a) x x x x x x x x x x x x x x x x x x x x x x x x x x x x x

(b) x x x x x x x x x x x x x x x x x x x x x x x x x x x x x

(c) the form and manner of making an application for certificate of registration under sub-section (1) of section 51.

(d) the facilities to be provided and standards to be met by institutions for grant of certificate of registration under sub-section (3) of section 51.

(e) the validity of certificate of registration, the form of, and conditions attached to, certificate of registration under sub-section (4) of section 51.

49. **Competent authority.-**The State Government shall appoint an authority as it deems fit to be a competent authority for the purposes of this Chapter.

This clause seeks to empower the State Government to appoint a competent authority for the purpose of registration of institutions for persons with disabilities. (Notes on Clauses).

50. **Registration.**-Save as otherwise provided under this Act, no person shall establish or maintain any institution for persons with disabilities except in accordance with a certificate of registration issued in this behalf by the competent authority:

Provided that an institution for care of mentally ill persons, which holds a valid licence under section 8 of the Mental Health Act, 1987 (14 of 1987) or any other Act for the time being in force, shall not be required to be registered under this Act.

This clause seeks to provide for the requirement of registration for establishment of any institution of persons with disabilities. (Notes on Clauses).

51. **Application and grant of certificate of registration.**-

(1) Every application for a certificate of registration shall be made to the competent authority in such form and in such manner as may be prescribed by the State Government.

(2) On receipt of an application under sub-section (1), the competent authority shall make such enquiries as it may deem fit and on being satisfied that the applicant has complied with the requirements of this Act and the rules made thereunder, it shall grant a certificate of registration to the applicant within a period of ninety days of receipt of application and if not satisfied, the competent authority shall, by order, refuse to grant the certificate applied for:

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Provided that before making any order refusing to grant a certificate, the competent authority shall give the applicant a reasonable opportunity of being heard and every order of refusal to grant a certificate shall be communicated to the applicant in writing.

(3) No certificate of registration shall be granted under sub-section(2) unless the institution with respect to which an application has been made is in a position to provide such facilities and meet such standards as may be prescribed by the State Government.

(4) The certificate of registration granted under sub-section (2),--

(a) shall, unless revoked under section 52 remain in force for such period as may be prescribed by the State Government;

(b) may be renewed from time to time for a like period; and

(c) shall be in such form and shall be subject to such conditions as may be prescribed by the State Government.

(5) An application for renewal of a certificate of registration shall be made not less than sixty days before the expiry of the period of validity.

(6) A copy of the certificate of registration shall be displayed by the institution in a conspicuous place.

(7) Every application made under sub-section (1) or sub-section (5) shall be disposed of by the competent authority within such period as may be prescribed by the State Government.

This clause seeks to provide for procedure for grant of certificate of registration of the institutions for the persons with disabilities by the State Government. (Notes on Clauses).

8. Interim order granted by this Court on various dates are extracted hereunder:

Interim order dated 10th day of August, 2018

" Appearing for the petitioners in this Public Interest Litigation, the learned counsel Sri.Santhosh Mathew refers to the *recommendations* made on 8.8.2016 (Ext.P5) by the *Kerala State Child Rights Protection Commission* and points out that the direction regarding registration and nomination of the competent authority,

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under *the Rights of Persons with Disabilities Act, 2016* (hereinafter referred to as the '*2016 Act*') is yet to be complied by the State Government. It is further submitted that the guidelines for the functioning of the therapy centres for the children with autism spectrum disorder and other neurological disabilities, in line with the *2016 Act* have not been formulated and this has resulted in the abuse of the children by the under-qualified staff in those centres. The anxiety expressed is the vulnerability of the children and the lack of awareness of those providing treatment for such children, in those therapy centres. We are also concerned with the fact that there is no regulatory authority which can ensure that the treatment to this segment of children is being provided by competent medical professionals as it is alleged that very often, untrained people are in charge of those centres.

2. To respond to the above projection of the petitioners, the learned Government Pleader prays for and is granted three weeks' time to file affidavit. Such an affidavit be filed positively within three weeks. Post on 5.9.2018.

Handover."

Interim order dated 5th day of September, 2018

"The learned Government Pleader Sri. Surin George Ipe has produced an order dated 28.8.2018 of the Social Justice (D) Department to show that in pursuance of the proposal for Comprehensive Program for Children with Autism Spectrum Disorder under Anuyatra named as "SPECTRUM" and following the approval in the working group meeting held on 4.7.2018, the administrative sanction is accorded for an amount of Rs.3,55,16,600/- (Rupees Three Core Fifty Five Lakhs Sixteen Thousand and Six Hundred only), for the year 2018-19.

To place those developments in the form of an affidavit, the

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matter be relisted on 11.9.2018."

Interim order dated 3rd day of January, 2019

"The learned Government Pleader seeks a weeks' time to ascertain the present status pertaining to the directions issued in the order dated 14.9.2018."

Interim order dated 26th day of March, 2019

"Heard the learned counsel Sri.Santhosh Mathew appearing for the petitioners. The State authorities are represented by the learned Senior Government Pleader Sri.Aravindakumar Babu.

2. The petitioners' counsel refers to *Section 101* of *the Rights of Persons with Disabilities Act, 2016* (hereinafter referred to as the *2016 Act)* to project that the State Government is obliged to make Rules not later than six months from the date of commencement of the *Act,* for carrying out the provisions of the *Act*. As the *2016 Act* was brought to force on 19.4.2017, it is pointed out that the State has already failed to adhere to the statutory time-line. The net result of the State's default is that the vulnerable *autistic* children are put to avoidable harm since the care centres are currently operating without any Regulatory measures.

3. Responding to the above contention, the learned Government Pleader submits that the draft Guidelines towards framing Rules was notified on 23.1.2019 and around 161 objections were received by the State authorities. Thereafter a meeting of the stakeholders was convened on 2.2.2019 and through due consultation the Rules will be notified soon after disposal of the claims and objections.

4. Insofar as the Rs.3,55,16,600 sanctioned by the Government on 28.8.2018 (Ext.R1(b)) for the SPECTRUM Project which would be addressing the issues of quality of *therapy* service in the *autism* centres, the Government Pleader would submit that the sanctioned fund is carried over through the E-Ledger process and the earmarked

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money will not lapse but will be available, for next year's spending.

5. Having considered the above, this case is adjourned with the expectation that the Government in the meantime will frame the Rules, in terms of the *2016 Act.* List accordingly on 3.6.2019. By the next date, a further response in the matter should be filed by the respondents."

Interim order dated 26th day of March, 2019

"Heard the learned counsel Sri.Santhosh Mathew appearing for the petitioners. The State authorities are represented by the learned Senior Government Pleader Sri.Aravindakumar Babu.

2. The petitioners' counsel refers to *Section 101* of *the Rights of Persons with Disabilities Act, 2016* (hereinafter referred to as the *2016 Act)* to project that the State Government is obliged to make Rules not later than six months from the date of commencement of the *Act,* for carrying out the provisions of the *Act*. As the *2016 Act* was brought to force on 19.4.2017, it is pointed out that the State has already failed to adhere to the statutory time-line. The net result of the State's default is that the vulnerable *autistic* children are put to avoidable harm since the care centres are currently operating without any Regulatory measures.

3. Responding to the above contention, the learned Government Pleader submits that the draft Guidelines towards framing Rules was notified on 23.1.2019 and around 161 objections were received by the State authorities. Thereafter a meeting of the stakeholders was convened on 2.2.2019 and through due consultation the Rules will be notified soon after disposal of the claims and objections.

4. Insofar as the Rs.3,55,16,600 sanctioned by the Government on 28.8.2018 (Ext.R1(b)) for the SPECTRUM Project

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which would be addressing the issues of quality of *therapy* service in the *autism* centres, the Government Pleader would submit that the sanctioned fund is carried over through the E-Ledger process and the earmarked money will not lapse but will be available, for next year's spending.

5. Having considered the above, this case is adjourned with the expectation that the Government in the meantime will frame the Rules, in terms of the *2016 Act.* List accordingly on 3.6.2019. By the next date, a further response in the matter should be filed by the respondents."

Interim order dated 3rd day of June, 2019

"The learned Government Pleader Sri.Aravindakumar Babu prays for and is granted further two weeks time to file an affidavit on the current stage of Rule framing exercise, under the Rights of Persons with Disabilities Act, 2016 as also the steps taken by the Government under the SPECTRUM Project for the ensuring quality service in the State's autism management centres."

Interim order dated 27th day of June, 2019

"The State has filed their response on 18.6.2019 where, it is indicated that the draft guidelines to regulate the autism therapy centres, was expected to be finalised on 25.6.2019. However, Sri.Aravindakumar Babu, the learned Government Pleader has no instruction on the developments on 25.6.2019.

2.In view of above, the case be listed on 09.7.2019 to enable the Government Pleader to produce the draft guidelines, that were to be finalised on 25.6.2019."

Interim order dated 12th day of July, 2019

"The *draft guidelines* prescribing the minimum standards for

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registration of *autism therapy centres* in Kerala is now formulated and the *Rules* are is now to be notified under the *Rights of Persons with Disabilities Act, 2016.* The learned counsel for the petitioner however, points out that the targeted date for the State, for notifying the rules is stipulated as 1.1.2020 but he questions whether so much time will be needed for completing the simple exercise more so when, the State has already breached its commitment incorporated in this court's order dated 26.3.2019.

2. The learned Senior Government Pleader Sri. Aravindakumar Babu, in his turn submits that consultation with various departmental heads as also the Advocate General will have to be carried out and only thereafter, the Rules can be finalised.

3. Accordingly the matter is adjourned to 20.9.2019 to take stock of the steps taken. "

Interim Order dated 24th day of October, 2019

"It is the grievance of Mr. Santhosh Mathew, learned counsel for the petitioner/public interest litigant that appropriate guidelines/ regulations have not been framed for establishment of autism therapy centres and persons who manage such centres. However, Mr. Surin George Ipe, learned Government Pleader submits that draft guidelines/regulations have been framed for registration of the therapy centres and that as per the business rules, same have to be approved by the Legislative Department. Such exercise taken up, is expected to be completed by 11.11.2019.

Learned Government Pleader is directed to report. Post on 12.11.2019."

Interim Order dated 10th day of January, 2020

"Writ petition has been filed in the year 2017 for framing guidelines for regulation of therapies for children with neurological

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disabilities. Record of proceedings show that draft guidelines have been framed but the same have not been approved by the Legislative Department. Hence placing on record the above, on 24.10.2019, we directed that such exercise should be taken up and completed by 11.11.2019.

2. When the matter was taken up for further hearing, Mr. Surin George Ipe, learned Senior Government Pleader reiterates the same position. Government is directed to ensure completion of approval by the Legislative Department within ten days from today, failing which, this court will be constrained to pass appropriate orders.

Post in the petition list on 22.1.2020."

9. Mr.K.V.Sohan, learned State Attorney, submitted that establishment of setting out of Therapy Centers, is being done. Government have taken a decision and issued an order dated 17th July, 2019, publishing a draft rule called "Right of Persons with Disability (Kerala) Rules, 2019, and notice was given that the said draft rules will be taken up for consideration on or after 30 days from the date of publication of the draft rules and that, suggestions or objections, if any, in respect of the said draft rules, which may be received from any person before the date specified above will be considered by the Government and suggestions or objections, if any, on the said draft rules shall be addressed to the Secretary to the Government, Social Justice Department, Secretariat, Thiruvananthapuram. The said draft rules contains 10 chapters which includes; short tile and commencement,

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definitions, State Committee for research and disability, Granting limited guardianship, who may apply for limited guardianship, who may be appointed as a limited guardian, matters to be considered by the court or designated authority for appointing limited guardian, qualification of person to be appointed as limited guardian, term of appointment of limited guardian, consultation by limited guardian with person with disability, competent authority, procedure for registration, constitution of team for inspection, renewal of registration certificate, appeal, appellate authority, allowances for the nominated members of the State Advisory Board, rules of procedure for transaction of business in the meetings of State Advisory board, Presiding Officer, quorum, minutes, the District Level Committee, functions of District Level Committee, allowances to be paid to nominated members of the District Level Committee, meetings, notice of meetings, adjournment of meetings, chair of the meeting, quorum, maintenance of the minutes of the meetings, business to be transacted at meeting, decision by majority, qualification for appointment of Sate Commissioner, method of appointment of the State Commissioner, salary and allowances of the State Commissioner, other terms and conditions, service of the State Commissioner, resignation and removal, procedure to be followed by State Commissioner, Advisory Committee to assist the State Commissioner, submission of annual and special report, salaries, allowances, conditions of

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service of officers and staff of the State Commissioner for persons with disabilities, special Public Prosecutor, State fund for persons with disabilities, management of State fund, utilisation of State fund and accounts of State fund and its audit. Article 162 of the Constitution of India is relevant to the context, read thus:

> "162. Extent of executive power of State.- Subject to the provisions of the Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:
>
> Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."

10. As per Article 162 of the Constitution of India, subject to the provisions of the Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws.

11. Section 101 of the Act, 2016 empowers the State Government to make rules. Registration has to be done by the State Government.

12. In the case on hand, the Act has come into force on 19.4.2017 and rules have not been framed by State of Kerala, which has also taken note of by the Hon'ble Division Bench of this Court. Draft guidelines have been

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finlalised as early as on 25.6.2019. The contention advanced by the Government that the guidelines issued as an executive order will not have the force of law, is not correct in the light of proposition of law laid down by the Hon'ble Supreme Court in **State of Madhya Pradesh and another v. Thakur Bharat Singh** [AIR 1967 SC 1170]. Paragraph 6 relevant to the context read thus:

> "6. Counsel for the State relied upon the terms of Art.162 of the Constitution, and the decision of this Court in Ram Jawaya Kapur v. State of Punjab,1955-2 SCR 225: (AIR 1955 SC 549), in support of the contention that it is open to the State to issue executive orders even if there is no legislation in support thereof provided the State could legislate or the subject in respect of which action is taken. Article 162 provides that subject to the provisions of the Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws. But Art.162 and Art.73 are concerned primarily with the distribution of executive power between the Union on the one hand and the States on the other, and not with the validity of its exercise. Counsel for the State, however, strongly relied upon the observations of Mukherjea, C.J., in Ram Jawaya Kapur's case, 1955-2 SCR 225:(AIR 1955 SC 549).
>
> "<u>They do not mean, that it is only when the Parliament or the State Legislature has legislated on certain items appertaining to their respective lists, that the Union or the State Executive, as the case may be, can proceed to function in respect to them. On the other hand, the language of Art.162 clearly indicates that the powers of the State Executive do extend to matters upon which the State Legislature is competent to legislate and are not confined to matters over which legislation has been passed already.</u>"

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13. So also in **Bharat Coking Coal Ltd v. State of Bihar**[(1990)4 SCC 557], paragraph 19 is relevant to the context, read thus:

> "19. Article 162 prescribes the extent of executive power of the State, it lays down that the executive power of a State shall extend to the matters with respect to which the legislature of the State has power to make laws. Thus, the executive power of the State Government is co-extensive with the legislative power of the State legislature. If the State legislature has power to enact laws on a matter enumerated in the State List or in the Concurrent List the State has executive power to deal with those matters subject to other provisions of the Constitution. If a subject matter falls within the legislative competence of State legislature, the exercise of executive power by the State Government is not confined, as even in the absence of a law being made, the State Government is competent to deal with the subject matter in exercise of its executive power."

14. Merely because, there is delay in issuing the Rules as contemplated under section 101 of the Act, 2016, enforcement of the provisions of the Act cannot be delayed. It is well settled principle of law that in the absence of a rule executive powers can be exercised under Article 162 of the Constitution of India. Guidelines have been finalised. Government have decided to give effect to the guidelines from 1.1.2020. Though in the matter of issuance of guidelines by way of an executive order, State Government, at paragraph 6 of the counter affidavit dated 22.1.2020 have taken a stand on the basis of the judgment reported in ONGC Limited stated supra, State Government have also accepted to implement the rules if direction is issued by this court, subject to the ratification of the Subject Committee.

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15. Mr.Santhosh Mathew, learned counsel for petitioner, pointed out that the guidelines issued, do not contain a specific form, to be submitted by the institutions for the purpose of obtaining certificate of registration. Having regard to the omission in the guidelines, State Government, while issuing the executive orders, is directed to make a specific mention about the form, required to be submitted by the applicant for the purpose of obtaining the certificate of registration. State Government is directed to issue the guidelines in the form of an executive order and publish in the official gazette. State Government is directed to create awareness about the issuance of the said Government Order, so as to enable the institutions to approach the competent authority, for obtaining certificate of registration. Publication of the guidelines and the rules, subject to ratification of the Subject Committee, as averred be done within 10 days from the date of receipt of a copy of this judgment.

16. In so far as the second prayer made in the writ petition is Concerned Government of Kerala have submitted that a sum of Rs.3,55,16,600/-has been allocated for setting out Therapy centers and also to maintain the same. Relevant portion of the affidavit dated 7.9.2018 is extracted below:

> "4. It is respectfully submitted that Kerala State Social Security Mission a special purpose vehicle under the Social Justice Department was authorised to prepare a detailed proposal to

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establish model therapy centres for providing assistance to children with neurological disorders. It was also decided to establish those centres under the (PPP) Private Public Partnership Model. The Kerala Social Security Mission was directed to establish atleast one such centres in each Taluk with financial assistance of the Government. A true copy of the minutes of the meeting dated 12-06-2018 is produced herewith and marked as Exhibit -R1(a)

5. It is submitted that pursuant to the decisions in the Exhibit R(a) minutes the Kerala Social Security Mission had submitted detailed proposal providing assistance to children with Autism and Spectrum Disorder and the Government was pleased to grant administrative sanction of the project with an outlay of Rs.3,55,16,600/-. The project proposal submitted by the Kerala Social Security Mission includes.

i) Ensuring of Quality Therapy Services across the State through approved and standardized therapy centres.

ii) Strengthening of Autism centres in Government Medical Colleges and at IMHANS, Kozhikode,

iii) Regional Autism Rehabilitation Centre at National Institute of physical Medicine & Rehabilitation at Iringalakuda, Thrissur,

iv) and for enhancing the number of psychiatrists.

6. The aforesaid four proposals submitted by the Kerala Social Security Mission was approved in the working group meeting held on 04-07-2018. Further proposals put forth by the Kerala Social Security Mission includes Developing, Promoting and Disseminating Augmentative and Alternative Communication Interface for persons with Autism Spectrum Disorder. A true copy of the order granting Administrative Sanction for comprehensive programme with Autism Spectrum Disorder under Anuyatra-SPECTRUM dated 28-08-2018 is produced herewith and marked as Exhibit RI(b).

7. Thus it can be seen that Government acted promptly and

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positively to the recommendation of Kerala State Child Rights Protection Commission. As regards formulation of guidelines for regulating the therapy centres a further period of 3 more months is required as all relevant inputs has to be scrupulously verified so as to draw an effective and efficient regulatory mechanism. ”

17. Taking note of the averments contained in the affidavit dated 07.09.2018, a Hon'ble Division Bench of this Court has passed an order on 14th September, 2018 and thereafter on 8th March, 2019, which are extracted hereunder:

Interim order dated 14th day of September, 2018:

“The 1st respondent has filed an affidavit in the case in pursuance to our earlier order dated 10.08.2018. The affidavit shows that the Government has already decided to establish the special *therapy centres,* under the Private Public Partnership Model, and such centre has been directed to be established in each Taluk, by the *Kerala Social Security Mission*. That apart administrative sanction has been accorded with an outlay of Rs.3,55,16,600/- [Rupees Three Crores Fifty Five Lakhs Sixteen Thousand and Six Hundred only], and it is submitted by the learned Government Pleader that the State will need three months' time to formulate the *guidelines* for regulating the *therapy centres*.

2. In this connection, we also take note of the concern of the petitioners that it is important to ensure that since the Children with *Autism Spectrum Disorder* are vulnerable to exploitation, the *therapy centres* must be managed by competent medical professionals.

3. It is also necessary to point out that while formulating the *guidelines*, the Government should ensure that the procedure for *certification/registration* of the *therapy centres* are in accordance with the requirement prescribed in *Chapter IX* of the *Rights of Persons with*

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Disabilities Act, 2016.

4. Noting the above, the Government is granted three months' time to do the needful in the matter."

Interim order dated 8th March, 2019

"The learned Government Pleader Sri.Tek Chand submits that since the *guidelines* for the *therapy centers* will have to be formulated in consultation with different Departments, the final decision will require about three months time.

2. The counsel for the petitioner however refers to the administrative sanction of Rs.3,55,16,600/- and the possibility that the earmarked sum may lapse due to delay in formulation of the *guidelines*. Accordingly earlier posting is prayed by him.

3. The matter be re-listed accordingly on 26.03.2019."

18. In the light of the specific stand of the Government that Government is intending to establish Therapy Centers with an allocation of fund for the same, a duty is cast upon the Government to adhere to the decisions taken and that the amount allocated to be spent exclusively for the said purpose. In this context, Ext.R1(a) minutes of the meeting held on 12.6.2018 and Ext.R2(b) Government Order dated 28.8.2018 produced along with the affidavit dated 7.9.2018 read thus:

Ext.R1(a) minutes of the meeting

Minutes of the meeting held on 12.6.2018 to regulate therapy practices for Children with disabilities and formulate best practice guidelines

The meeting started at 3 PM with the Special Secretary in chair,

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List of Participants

1. Smt. Sheeba George IAS, Director, Women and Child Development Department
2. Smt. Vijayasree.S, Under Secretary, Law Department
3. Smt. P.EUsha, Kerala Mahila Samakhya Society, Thiruvananthapuram.
4. Smt.Seema Lal , 'Together We Can', Ernakulam
5. Smt. Anitha Pradeep, 'Together We Can', Ernakulam
6. Sri. Anil Sebastian, 'Together We Can', Ernakulam
7. Adv.J. Sandhya, former Member, State Council for Protection of Child Rights
8. Dr.Anandi. T.K, Gender Advisor, Government Secretariat, Thiruvananthapuram
9. Smt.Kairali.M.P, Member,State Advisory board on disability

The representatives of 'Together We Can' explained the unethical and unsafe therepy practices of private therepy centres for children with disabilities and requested to take steps for regulating therapy practices.

After detailed discussion, the following decisions were taken:-

1. As per Section 49 of Rights of Persons with Disabilities Act, 2016, the State Government shall appoint an authority as it deems fit to be a competent authority for the purposes of registration of Institutions for Persons with Disabilities and issue grants to such institutions. Accordingly, the Director, Social Justice Department shall be the competent authority for granting certificate of registration to the institutions for persons with disabilities including therapy centres, bud schools etc.

(Action-SJD)

2. It has been decided to prepare guidelines for regulating all therapy centres for persons with disabilities and periodical inspection needs to be done. The Government is competent to issue notifications prescribing the regulations for the various institutions from time to time. The Director, Social Justice Department has to submit proposals for the regulations.

(Action-Director,Social Justice Department)

3. There is a large scale of exploitation in therapy services across Kerala, instances of parents being over charged, complaints of abuse, violation of child right are also being reported. In order to bring down the rates and serve as a model for such centres, it is decided that the Government ought to step in by establishing model centres across Kerala. Since Finance Department has put restrictions on providing necessary human resources even on contract basis, it is suggested that these centres could be set up on PPP Model, The Kerala Social Security

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Mission shall formulate schemes to establish at least one such centre in each taluk with financial support from Government and aims at income generation at the centres.

(Action-KSSM)

The meeting came to a close at 4.15 PM,

sd/-
BIJU PRABHAKAR IAS
Special Secretary to Govt.

Ext.R2(b) Government Order dated 28.8.2018

GOVERNMENT OF KERALA
Abstract

Social Justice Department-Comprehensive Programme for Children with Autism Spectrum Disorder under Anuyatra-SPECTRUM-Administrative sanction accorded - Orders issued.

SOCIAL JUSTICE (D) DEPARTMENT

G.O(RI)No. S04/2018/SJD. Dated, Thiruvananthapuram 28.8 20018

Read: 1. Letter No.P3/6462/2017/KSSM dated 23.6.2018 from the Executive Director Kerala Social Security Mission
2. Minutes of the Working Group meeting held on 4.7.2016

ORDER

As per letter read as 1st paper above, Executive Director, Kerala Social Security Mission had submitted proposal, for Comprehensive Programme for Children with Autism Spectrum Disorder under Anuyatra named as "SPECTRUM for an amount of Rs.3,55,16,600/- (Rupees Three Crore, Fifty five lakh Sixteen thousand and six hundred only) under the Head of Account 2235-02-101-69(07)P for the year 2018-19 and transfer credit the same to the Plan STSB Account No.799012700000203 of Kerala Social Security Mission with District Treasury, Thiruvananthapuram as detailed below.

Sl.No.	Activity	Amount in Rupees
(i)	Ensuring Quality Therapy Services across the State through approved and standardized therapy centres	1,75,00,000
(ii)	Strengthening of Autism Centres-Recurring Expenditure for Autism Centres of Government Medical Colleges and IMHANS, Kozhikode(ongoing project)	57,96,000
(iii)	Regional Autism Rehabilitation Centre at National Institute of Physical Medicine and Rehabilitation, Iringalakkuda, Thrissur	68,04,600

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	(ongoing project)	
(iv)	Capacity Enhancement of Professionals: Capacity Enhancement of Psychiatrists and Physiatrists in Early Intervention of Autism Spectrum Disorder	13,35,000
(v)	Developing, Promoting and Disseminating Augmentative and Alternative communication interface for persons with Autism Spectrum Disorder.	16,60,000
(vi)	Skill Development of Children with Autism Spectrum Disorder in Association with Parental Groups (Autism Club)	24,21,000
	Total	3,55,16,600

2. The Working Group meeting held on 4.7.2018 approved the proposal detailed below:

(1) Item No. (i), (ii), (iii) & (iv) approved.
(II) Item No.(v) and (vi) approved subject to the condition that expression of interest should be called for from the agencies and the approval of Technical Committee is a must.

3. In the circumstances, Government are pleased to accord Administrative Sanction for the proposal for Comprehensive Programme for Children with Autism Spectrum disorder under Anuyatra named as "SPECTRUM' for an amount of Rs.3,55,16,600/- (Rupees Three Crore, Fifty five lakh Sixteen thousand and six hundred only) under the Head of Account 2235-02-101-69(07)P for the year 2018-19 subject to the condition that in the case of Item No.(v) and (vi), expression of interest should be called for from the agencies and the approval of Technical Committee should be obtained.

By order of the Governor,

BIJU PRABHAKAR IAS
Special Secretary

19. Considering the decision already taken in this regard for establishment of Therapy Centers, for which a specific sum has been allocated, we only direct the respondents to take steps to establish Therapy Centers, at the earliest and at any rate within three months from the date of receipt of a copy of this judgment. State Government is further directed to prescribe the time line for the submission of applications for the purpose of

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obtaining certificate of registration from the competent authorities and issuance thereof. The said exercise should be completed within four months from the date of issuance of the executive order.

With above directions, writ petition is disposed of.

Sd/-

S.MANIKUMAR
CHIEF JUSTICE

Sd/-
SHAJI P.CHALY
JUDGE

smv

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APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1-	A COPY OF THE COMPLAINT DATED 16TH MAY 2015 TO THE COLLECTOR.
EXHIBIT P2-	A COPY OF THE REPRESENTATION DATED 19TH MAY 2014.
EXHIBIT P3-	A COPY OF SERIES OF NEWSPAPER REPORTS IN TIMES OF INDIA DT.20/05/2015 AND 01/08/2015.
EXHIBIT P4-	A COPY OF THE REPRESENTATION DATED 1ST SEPTEMBER 2015.
EXHIBIT P5-	A COPY OF THE ORDER OF THE STATE COMMISSION FOR THE PROTECTION OF CHILD RIGHTS WITH ENGLISH TRANSLATION.

RESPONDENTS' EXHIBITS

EXHIBIT R1(a)	A TRUE COPY OF THE MINUTES OF THE MEETING DATED 12.6.2018.
EXHIBIT R1(a)	A TRUE COPY OF THE DRAFT RULE PUBLISHED IN THE GAZETTE DATED 19.7.2019.
EXHIBIT R1(b)	A TRUE COPY OF THE ORDER GRANTING ADMINISTRATIVE SANCTION FOR COMPREHENSIVE PROGRAMME WITH AUTISM SPECTRUM DISORDER UNDER ANUYATRA SPECTRUM DATED 28.8.2018.