

W.P.(C) No.24355/2020

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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

FRIDAY, THE 28TH DAY OF MAY 2021 / 7TH JYAISHTA, 1943

WP(C) NO. 24355 OF 2020

PETITIONER/S:

JUSTINE PALLIVATHUKKAL
AGED 43 YEARS
S/O JOSEPH, PALLIVATHUKKAL HOUSE, PUTHUPARIYARAM P.O.PALAKKAD.
BY ADVS.
RAJU JOSEPH (SR.)
SRI.J.JULIAN XAVIER
SRI.FIROZ K.ROBIN
SRI.ROY JOSEPH
SRI.JOSE. V.V. (THENGATHARA)
SMT.AANNIES MATHEW
SRI.E.HARIDAS

RESPONDENT/S:

- 1 STATE OF KERALA
REP BY ITS SECRETARY, GENERAL ADMINISTRATION (MINORITY WELFARE)
DEPARTMENT, THIRUVANANTHAPURAM-695 001.
- 2 KERALA STATE COMMISSION FOR MINORITIES,
REP BY ITS SECRETARY, MANGALA LANE, JAWAHAR NAGAR, SASTHAMANGALAM
P.O.THIRUVANANTHAPURAM, KERALA-695 010.
- 3 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF MINORITY AFFAIRS, ROOM
NO 1110 INT 306, PANDIT DEENDAYAL ANTYODAYA BHAWAN, LODHI ROAD,
NEW DELHI-110003.

BY ADVS.
GOVERNMENT PLEADER
SRI.K.V.SOHAN, STATE ATTORNEY
SHRI.P.VIJAYAKUMAR, ASG OF INDIA
HARIS BEERAN
SMT.O.A.NURIYA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28.05.2021,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CR

JUDGMENT

SHAJI P.CHALY,J

This is a Public Interest Litigation filed by an Advocate who is also claiming to be a public spirited person acting for the common cause of the society, particularly related to minorities in the State of Kerala. Petitioner is a member of Roman Catholic community, which is one of the minority communities. The grievance highlighted by the petitioner is that while most of the socio, economic and educational empowerment schemes and programmes of the Central Government are meant for the socio economically poor and downtrodden sections of the society including the six centrally notified minorities, while implementing various schemes in the State of Kerala there is marked discrimination favouring one minority against other minority communities without any rationale.

2. According to the petitioner, in order to translate the intention of the framers of the constitution and to safeguard the minority communities and to protect them from discrimination and deprivation of their rights, the Union Government had set up the National Commission for Minorities under the National Commission for Minorities Act, 1992, hereinafter called, 'Act, 1992'. It is the case of the petitioner that, as per section 20 of the said Act, minority

community for the purpose of the Act means, communities notified as such by the Central Government. Therefore, according to the petitioner, six religious communities viz., Muslims, Christians, Sikhs, Buddhists, Zoroastrians (Parsis) and Jains have been notified in the gazette of India as minority communities by the Union Government.

3. It is further submitted that the functions of the National Commission in contemplation of section 9 of Act, 1992 make it clear that it should govern the overall development of the minority communities without any undue favour to any particular community. Thereafter, on 9.3.2005, a notification was issued by the Central Government for the constitution of a High Level Committee to prepare a report on the social, economic and educational status of the Muslim community of India known as "the Prime Minister's High Level Committee", chaired by Justice Rajindar Sachar.

4. The Committee consisted of 7 members and it has submitted a report to the Prime Minister on 17.11.2006 with various recommendations and findings. The recommendations include; (1) set up an equal opportunity commission to look into the grievances of the deprived groups like minorities; (2) create a nomination procedure to increase participation of minorities in public bodies; (3) establish a determination procedure that does not reserve constituencies with high minority population for scheduled castes; (4) increase employment share of

Muslims, particularly where there is great deal of public dealing. Work out mechanisms to link Madrasas with Higher Secondary School Board; and (5) recognise degrees from Madrasas for eligibility in defence, civil and banking examinations.

5. Anyhow, in 2006, the Union Government under the Prime Minister's New 15 point programmes for the welfare of minorities announced scholarship schemes for minority students from minority communities. On the basis of the scheme formulated, the Union Government is providing scholarships to students belonging to minority communities to promote pre-matric and post-matric financial assistance. Scholarships are also given on merit cum means basis. According to the petitioner, nowhere it is stated that scholarships shall be provided to any particular minority community in preference to other minority communities.

6. Therefore, the legal contention advanced by the petitioner is that the scheme formulated by the Union Government is in accordance with the constitutional principles as well as the provisions of Act, 1992 and the Kerala State Commission for Minorities Act, 2014. Exhibit P1 produced by the petitioner is a scheme published by the Union Government for the years 2017-2020 for pre-matric scholarship for students belonging to minority communities. It seems similar schemes are formulated in regard to post-matric students as well as on

the basis of merit cum means. The sum and substance of the contention is that a perusal of Exhibit P1 would clearly show that the criteria is "minority status" as a whole and not individual religions forming part of minority communities.

7. Anyhow the State Government has formed a 11 member committee for submitting proposals necessary for implementing the recommendations of Justice Rajindar Sachar Commission report in Kerala, headed by Paloly Muhammed Kutty, the then Minister for Local Self Government. The said committee also submitted a report on 21.2.2008 after considering various proposals and representations. As part of implementing the said report, the State Government established a minority cell and thereafter, various orders have been issued as part of implementing the report. One of the orders issued on 16.8.2008 by the State Government is Exhibit P2. As per Exhibit P2, it is clear that the Government approved the report of the Pololy Muhammed Kutty Committee and a Minority Cell was started in the Secretariat. Accordingly, 5000 scholarships have been set apart for degree and post graduate professional courses for Muslim women per year and 14 posts of clerks have been created in 14 districts. An amount of Rs.10 Crores was set apart for the implementation of the above scholarships. Thereafter, 1st respondent extended the benefit given in Exhibit P2 to Latin Catholics and other Converted Christians as per Exhibit P3 Government Order dated 22.2.2011 bearing G.O.(Rt.)No.57/2011/GAD. In

Exhibit P3 it is only stated that the benefits given to the Muslim students in regard to the scholarships and hostel stipend shall also be given to Latin Catholic Christians and Converted Christian students.

8. The predominant contention advanced by the petitioner in that regard is that, contrary to what is stated in Exhibit P3, without any rationale, the State Government issued Exhibit P4 order bearing G.O.(Rt.)No.3427/2015/GAD dated 8.5.2015 that reservation among the Muslims and other minority communities will be in the ratio of 80:20 i.e., 80% to Muslim Community and 20% to Latin Christians and Converted Christians. It is further stated that 30% of the seats shall be reserved for girls. Therefore, it is contended that the fixation of ratio in Exhibit P4 is arbitrary, unjust and illegal and accordingly violative of Articles 14 and 15 of the Constitution of India. It is to be noted that the State Government passed the Kerala State Commission for Minorities Act, 2014 with an intention to constitute a State Commission for the comprehensive educational advancement, welfare, protection and empowerment of minorities in the State of Kerala and to provide for matters connected therewith or incidental thereto, which Act has come into force w.e.f. 15.05.2013.

9. Minorities is defined under section 2(d) of the Act to mean, " a community notified by the Central Government under the Act, 1992". Section 9 of the Act, 2014 deals with the functions of the Commission, the details of the

same would be discussed hereafter. It is further contended by the petitioner that as per the 2011 census, in the State of Kerala 54.73% are Hindus, 26.56% are Muslims and 18.38% Christians and rest of the religious minorities are 0.33%. Thus, the total population of the minority communities in Kerala is 45.27% and out of which, 58.67% is Muslims and 40.6% is Christians and 0.73% constituted other minority communities. However, studies conducted by the Vital Statistics Division, Department of Economics and Statistics, Government of Kerala, regarding the percentage of birth analysis for the year 2017 shows that there are 14.96% Christians, 43% Muslims and 41.70% Hindus, and there is a drastic decrease of the Christian population. Consequent to the said development, complaints have been submitted before the Kerala State Commission for Minorities – the 2nd respondent and Exhibit P5 memorandum was submitted by the Catholics Bishops Conference of India Council for Laity regarding the sufferings of Christian Minority in India. Likewise, other memorandums were also submitted but according to the petitioner, the discrimination of granting largesse to one section of the minority community is still continuing without any legal backing and in total disregard to the available data on the subject. To highlight the same, petitioner has produced Exhibit P7 information dated 14.10.2009 issued by the Public Information Officer under the State Government, wherein it is stated that the ratio of 80:20 is continued in the

light of Exhibit P3 order dated 22.2.2011, and the case of the petitioner is that, the said ratio has no basis and formulated without conducting any study. Therefore, according to the petitioner, it is clear that under the cover of minority rights, the respondents are supporting a particular section.

10. Matters being so, petitioner has submitted Exhibit P8 representation before the State Government on 3.10.2020 with copy to the 2nd and 3rd respondents viz., State Minority Commission as well as the Union of India. Therefore, the grievance highlighted by the petitioner is that, in spite of the earnest efforts made by the other minority community in the State viz., Christians, the same is not attended to by the State or the Minority Commission, which persuaded the petitioner to file this writ petition.

11. The State Government have filed a counter affidavit stating that the Paloli Committee relied on statistics from Justice Sachar Committee report and Kerala Padana report for finalizing its report, which reveals Muslims are far behind Christian in the college enrolment (and even behind scheduled castes and scheduled tribes) i.e. 8.1% for Muslims and 28.1, 20.5, 16.7, 11.8 and 10.3 for forward Hindus, Christians, backward Hindus, Scheduled Tribes and Scheduled Castes respectively. It is also stated that the unemployment percentage is 55.2 among Muslims, while it is 31.9 among Christians and 40.2 among backward Hindus. With regard to land ownership, there are only 3% Christians is landless

while it is 37.8% among Muslims. In the matter of poverty also, there is a wide gap between Muslims and Christians. The reality is that the Muslims in Kerala stand far behind than the other communities in the social economic and educational fields and the standard of education of the Kerala Muslims stands too low to that of Christians. Hence, the issue is that Muslims in Kerala are 'in toto' a backward community and included in OBC category by the State Government while in other religious minorities including Christians, the Roman Catholics and some other sects among Christians are not backward communities in toto. Besides, the Sachar committee report clearly emphasized on the backwardness of Muslims in the education field and the necessity of their upliftment and improving their educational conditions. Hence, based on the Committee report, the Government took affirmative action like granting of separate scholarships schemes for the development of backward Muslim Community.

12. It is further stated that the Petitioner himself has quoted in the writ petition the main recommendations of the Prime Minister's High level committee, chaired by Justice Rajindar Sachar, in which it is clearly stated to increase employment share of Muslims particularly where there is great deal of public dealing and work out mechanism to link Madrasas with higher secondary school board and even to recognize degree from Madrasas for eligibility in defence, civil

and banking examinations. According to the 1st respondent, it is a well known fact that, if there is no opportunity for education and training, there will be no chance for employment. In addition to that, there is a positive correlation between education and employment and more higher education means a chance for more employment. In order to increase the chance of employment, the Government should increase accessibility to education. Hence, the Government gave due consideration to weaker and under privileged groups of religious minorities while envisaging its programmes, as in the case of Scheduled Castes and Scheduled Tribes.

13. It is stated that the Justice Sachar Committee was constituted only to study and report the status of Muslims and it is to safeguard the spirit of Sachar Committee, the Government are implementing special programmes and packages for the most weakest sections of the Minority communities from Muslims, Latin and Converted Christians and SC/ST from the Hindu communities. At the same time, if there are any other underprivileged and unrepresented groups, they also to be considered, and included. On the other hand, if there is any ineligible among the group of Muslims, Christians or others, they should be eliminated and that portion too should be distributed among other eligible groups.

14. It is also stated that the Central Government and State Governments have their own policy to implement the programmes and Projects using the respective funds. The pre-matric, post-matric and merit-cum means scholarships under Exhibit P1 Scheme are distributed directly by the Central Government and the State Government is only the Nodal agency. The State Government is providing about 13 Vidhya Samunnathi Scholarships/programmes to forward caste students through Kerala State Welfare Corporation for forward Communities, which is not available in Central Government Schemes. The State Government have different schemes to meet different requirements. Just like Minority Scholarship for Muslims, the State Government spends nearly Rs.9,33,92,000/- per annum for payment of Scholarships for forward caste students including Christians. Further, financial aid is provided for undertaking coaching for competitive examinations to forward caste students including Christians, evident from Exhibit R1(b).

15. It is further stated that the State Government is free to implement such scholarships or other educational supports as per the need of the hour. According to the 1st respondent, the 80:20 ratio, evidently based on the rough population ratio of respective communities, is neither arbitrary nor unjust or illegal and this action does not violate Articles 14 and 15 as contended and the accessibility to education for the weakest sections of the community is the

prime objective of the Prime Minister's 15 Point Programme.

16. Additional 4th respondent viz., an organisation called Minority Indians Planning and Vigilance Commission Trust, has also filed an affidavit justifying the stand adopted by the State Government in Exhibit P3 order fixing 80:20 ratio by and between the Muslims and the Latin Catholic Christians and other Converted Christians. The Union of India have filed a statement contenting as follows;

"2. The Pre-Matric Scholarship Scheme for students of the Minority Communities was initially approved on 30th January, 2008. It is a Central Sector Scheme with 100% Central Government funding. The students studying in India in a government/ recognised private school, in Class I to X, who secure 50% marks in the previous examination and whose parents / guardians' annual income does not exceed Rs.1 lakh, are eligible for award of the Pre-Matric scholarship under the scheme. Under the scheme, 30 lakh fresh scholarships are awarded every year in addition to the renewals. 30% of the scholarships are earmarked for girl students. Scholarship ranging from Rs. 1,000/- to Rs. 10,700/- is awarded to every selected student.

3. The Post Matric Scholarship Scheme was launched in November, 2007. It is a Central Sector Scheme. Post Matric Scholarship is awarded for studies in a Government/recognized private higher secondary schools/colleges/Universities including residential higher secondary schools/colleges of India.

4. Students who secure 50% marks in the previous year's final examination and whose parents'/ guardians' annual income does not exceed Rs. 2.00 lakh are eligible for award of scholarship under the Post

Matric Scholarship scheme. Five lakhs Fresh scholarships are awarded every year in addition to the renewals. 30% of scholarships are earmarked for girl students. In case sufficient numbers of girl students are not available, then eligible boy students are given these scholarships. Scholarship ranging from Rs. 2,300/- to Rs. 15,000/- is awarded to every selected student. The details related to rate of Scholarship are given below:

Rate of Scholarships:

Pre-Matric Scholarship scheme

S.No	Item	Hostell	Day Scholars
1	Admission fee from class VI to X	Rs.500/- per annum subject to actual	Rs.500/- per annum subject to actual
2	Tuition fee from class VI to X	Rs.350/- per month subject to actual	Rs.350/- per month subject to actual
3	Maintenance allowance is payable for a period not exceeding 10 months in an academic year		
	(i) Class I to V	Nil	Rs.100/- per month
	(ii) Class VI to X	Rs.600/- per month subject to actual	Rs.100/- per month

Post Matric Scholarship scheme

S.No	Item	Hostell	Day Scholars
1	Admission and tuition fee from class XI to XII	Actual subject to a maximum ceiling of Rs.7,000 per annum	Actual subject to a maximum ceiling of Rs.7,000 per annum
2	Admission and course/tuition fee for technical and vocational courses of XI and XII level (Includes fees/charges for raw materials, etc.)	Actual subject to a maximum ceiling of Rs.10,000 per annum	Actual subject to a maximum ceiling of Rs.10,000 per annum
3	Admission and tuition fee for under graduate, post graduate	Actual subject to a maximum ceiling of Rs.3,000 per annum	Actual subject to a maximum ceiling of Rs.3,000 per annum

4	Maintainance allowance for 10 months only in an academic year (includes expenses for study material, etc.)	Rs.380 per month	Rs.230 per month
	(i) Class XI and XII including technical and vocational courses of this level		
	(ii) Courses other than technical and professional courses at under-graduate and post graduate level.	Rs.570 per month	Rs.300 per month
	(iii) M.Phil and Ph.D (For those researchers who are not awarded any fellowship by university or any other)	Rs.1200 per month	Rs.550 per month

5. It is respectfully submitted that, to improve transparency in the implementation of the scholarship schemes, a new and revamped version of National Scholarship Portal (NSP) has been launched by the Government during 2015-16 for various Ministries of Government of India including Ministry of Minority Affairs. All the above Scholarship Schemes of this Ministry are implemented through this portal. The scholarships are transferred into the bank accounts of students through Direct Benefit Transfer (DBT) mode. The details of Community-wise scholarships sanctioned under Pre-Matric and Post Matric Scholarship Schemes for Minorities in respect of Kerala State for the last six years, 2014-20, are produced as Annexure R3 (a).

6. As per the Scheme guidelines, a total of thirty (30) lakh scholarships and five lakh scholarships are targeted to be distributed as Fresh' Scholarships under Pre-Matric and Post Matric Scholarship Schemes respectively. These are besides Renewal scholarships. The distribution of scholarship among the States/Union Territories, under Fresh category, including Kerala, are made on the basis of community-wise population of minorities in the States/Union Territories as per Census 2001 (for 2014-15

to 2017-18) and as per the population of minorities in the States/Union Territories of Census 2011 (for 2018-19 and 2019-20). Thus, it is stated that there is an annual community-wise target for Kerala under each of the schemes. However, under some communities, the number of sanctioned scholarships is less due to non-availability of sufficient eligible applicants, while under some communities it is more due to re-allocation of unfilled quota from other States/communities by the Ministry of Minority Affairs.

7. It is further stated that the 3rd Respondent (Ministry of Minority Affairs) has enacted the National Commission for Minority Act, 1992 to ensure the safeguards to six notified minority communities viz. Buddhist, Christian, Jain, Muslim, Parsi and Sikh and also to protect them from discrimination and from the deprivation of their rights. Admittedly, Christians and other religious minorities are similarly situated and the statutory functions of the Commission do not provide for any undue favour to any particular minority community."

17. We have heard Senior Adv. Sri.Raju Joseph, assisted by Adv. Julian Xavier for the petitioner, Assistant Solicitor General of India Sri.P.Vijayakumar for the Union of India and O.A.Nuriya for the additional 4th respondent and perused the pleadings and materials on record.

18. In the backdrop of the above contentions petitioner seeks to quash Exhibits P2 to P4 orders issued by the State Government dated 16.8.2008, 22.2.2011 and 8.5.2015. In Exhibit P2, the General Administration Department (Minority Cell) states that on the basis of the study conducted by Paloly

Muhammed Kutty Committee regarding the implementation of Justice Rajindar Sachar Commission report in Kerala, a minority cell formed and started functioning in the Secretariat. Paragraph 4 thereto states that 5000 scholarships of Rs.3,000/-, Rs.4,000/- and Rs.5,000/- each per year will be allotted to Muslim girl students, who are undergoing degree, Post-graduate professional courses on merit-cum-means basis, which would be executed by the Department of Collegiate Education, and paragraph 6 specifies that a clerk post each in 14 districts will be created under the Deputy Collector (General) for the purpose and an amount of Rs.10 Crores is set apart for Minority Welfare Programme as allotted in the supplementary request made in July 2008 budget.

19. Exhibit P3 order specifies that on the basis of the report of the committee specified above, Government have considered the matter elaborately and have decided to give scholarships and hostel stipends to Latin Catholics and Converted Christians as given to Muslim girl students. It further denotes that criteria for getting scholarship and hostel stipends for Muslim girl students will be applicable to the above category as well. However, it is significant to note in the said order that the Latin Catholics and Converted Christian girl students are only permitted to get 20% of the total number of scholarships/hostel stipends, which are given to Muslim girl students and further that, the number of scholarships/hostel stipends, which are given to Muslim girl students will

continue as Rs.5000/- and Rs.2000/- respectively. Exhibit P4 Government order is in regard to scholarship scheme for minority students pursuing courses such as Chartered Accountancy (C.A) and Works Accountancy (I.C.W.A) and Company Secretaryship, wherein after specifying the nature of the scheme it is categorically stated that the selection will be based on merit and income basis having 60% marks in B.Com/other graduation and students having annual income below Rs.6 lakhs are eligible for scholarship and preference will be given to BPL candidates. The crucial aspect therein is that the reservation among Muslims and other minority communities is in the ratio 80:20 and 30% of seats will be reserved for girl students. Thus, altogether an amount of Rs.1,80,00,000/- is provided towards scholarship 1) to the students undergoing coaching for intermediate 2) to the students undergoing coaching for final and 3) foundation course, at the rate of Rs.12,000/-, Rs.12,000/- and Rs.6,000/- distributed among 500, 500 and 1000 students respectively.

20. It was in the said background that the Catholic Bishops Conference of India and the petitioner submitted Exhibits P5 and P8 representations respectively. These are the basic background facts available before us to decide the issues raised by the petitioner in regard to the distribution of the merit cum means scholarship to the students belonging to the minority communities. Basically the rights available to minority communities stems out from Article 29

of the Constitution of India dealing with protection of interest of minorities. Clause 1 thereto clearly specifies that any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same and clause 2 thereunder specifies that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. Article 30 of the Constitution deals with the right of minorities to establish and administer educational institutions .

21. A conjoint reading of Articles 29 and 30 makes it clear that while granting any aid by the State to educational institutions the State shall not discriminate against any educational institution on the ground that it is under the management of a minority whether based on religion or language, which in fact clearly translates the true intention of the framers of the Constitution of India.

22. Viewed in that background we are proceeding to understand the provisions of the National Commission for Minorities Act, 1992. The statements of objects and reasons of Act, 1992 states that the Minorities Commission was set up in January, 1978 for providing an institutional arrangement for evaluating the safeguards provided in the constitution for the protection of the minorities

and to make recommendations for ensuring implementation of the safeguards and the laws. It was also found that the Minorities Commission with statutory status would infuse confidence among the minorities about the working and the effectiveness of the Commission and it would also carry more weight with the State Governments/Union Territory Administrations and the Ministries/Departments and the other organisations of the Central Government. That is how the Commission was constituted consisting of a Chairperson and six members.

23. The main task shouldered on the Commission shall be to evaluate the progress of the development of minorities, monitor the working of the safeguards provided in the constitution for the protection of the interests of minorities and in laws enacted by the Central Government besides looking into the specific complaints regarding deprivation of rights and safeguards of the minorities. It shall also cause studies, research and analysis to be undertaken on the issues relating to socio economic and educational development of the minorities and make recommendations for the effective implementation of the safeguards for the protection of interests of minorities by the Central Government or State Governments. Section 9 of the Act, 1992 deals with the functions of the Commission, which reads thus:

"9. Functions of the Commission.-[\(1\)](#) The Commission shall perform all or any of the following functions, namely:-

- (a) evaluate the progress of the development of minorities under the Union and States;
 - (b) monitor the working of the safeguards provided in the Constitution and in laws enacted by Parliament and the State Legislatures;
 - (c) make recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the Central Government or the State Governments;
 - (d) look into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities;
 - (e) cause studies to be undertaken into problems arising out of any discrimination against minorities and recommend measures for their removal;
 - (f) conduct studies, research and analysis on the issues relating to socio-economic and educational development of minorities;
 - (g) suggest appropriate measures in respect of any minority to be undertaken by the Central Government or the State Governments;
 - (h) make periodical or special reports to the Central Government on any matter pertaining to minorities and in particular difficulties confronted by them; and
 - (i) any other matter which may be referred to it by the Central Government.
- (2) The Central Government shall cause the recommendations referred to in clause (c) of sub-section (1) to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.
- (3) Where any recommendation referred to in clause (c) of sub-section (1) or any part thereof with which any State Government is concerned, the Commission shall forward a copy of such recommendation or part to such State Government who shall cause it to be laid before the Legislature of the

State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendation or part.

(4) The Commission shall, while performing any of the functions mentioned in sub-clauses (a), (b) and (d) of sub-section (1), have all the powers of a civil court trying a suit and in particular, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses and documents;
and

(f) any other matter may be prescribed.”

24. Section 10 makes it clear that the Central Government shall after due appropriation made by Parliament by law in that behalf pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilised for the purposes of the Act. It is significant to note that section 2(c) defines 'minority' for the purposes of the Act to mean a community notified as such by the Central Government. It is undisputed that the Central Government has notified six religious communities viz., Muslims, Christians, Sikhs, Buddhists, Zoroastrians (Parsis) and Jains, in the gazette of India.

25. Therefore, on a reading of section 9 and section 2(c) along with the notification so issued, it can be clearly seen that the functions of the Commission should govern the overall development of the minority communities as such without discriminating by and between the minority communities so identified. The Kerala State Commission for Minorities Act, 2014 was introduced with the intention to constitute a State Commission for the comprehensive educational advancement, welfare, protection and empowerment of minorities in the State of Kerala and to provide for matters connected therewith or incidental thereto, which has come into force on and w.e.f. 15.5.2013. Section 2(d) thereto defines 'minority' to mean, a community notified by the Central Government under the National Commission for Minorities Act, 1992. Section 9 of the Act deals comprehensively with the functions of the Commission which reads thus:

"9.Functions of the Commission.- The Commission shall perform the following functions, namely:-

- (a) to evaluate the progress of the development of minorities in the State;
- (b) to enquire and monitor the manner of functioning of various safeguards provided in the Constitution of India or under any other law or under any order of the Government, for the welfare, protection and empowerment of the minorities in Kerala;
- (c) to enquire into specific complaints about deprivation of social, economic, educational and linguistic rights, safeguards and benefits of the minorities, to bring such matters into the notice of authorities concerned, to suggest remedial measures and to monitor the follow-up actions thereon;

- (d) to participate in and give creative suggestions on, the planning programmes for the educational, social and economic development of the minorities;
- (e) to make recommendations as to the steps to be taken by the Government for the effective implementation of the measures and safeguards for the educational, social and economic development, welfare and protection of the minorities and to make report to the Government either annually or at such other time, as the Commission may deem fit and to monitor their timely implementation;
- (f) to cause studies to be undertaken into various problems arising out of discrimination towards minorities and recommend measures for their removal
- (g) to conduct studies, research and analysis and to organize seminars, symposium and awareness classes on the issues relating to social, economic and educational advancement of minorities;
- (h) to suggest appropriate measures to be adopted by the Government in respect of minority,
- (i) to submit report to the Government periodically or specially, on any matter pertaining to minorities, particularly in respect of difficulties being faced by them and their remedial measures;
- (j) to discharge such other functions in relation to the protection, welfare, development and advancement of the minorities, as may be prescribed:
- (k) to take necessary steps to ensure the representation of minorities proportionate to their population in various employment projects and social development projects;
- (l) to ensure the efficient functioning of the law and order system in communal conflict prone areas and to bring lapses to the notice of the Government;
- (m) any other matter pertaining to minorities, entrusted by the Government".

26. Therefore, the intention of constituting the National and State Commission is clear, to protect the interests of the minorities notified by the Union Government by taking into account various aspects including educational,

social and economic development of the minorities as such and not any particular minority. Which thus means, the National Commission and the State Commission are not entitled to segregate such backwardness among the minorities so as to protect the interests of any particular minority. It is clear from 2011 census that total population of minority communities in Kerala is 45.27% out of which 58.67% is Muslims and 40.6% is Christians and the balance 0.73% constituted other minority communities.

27. On an analysis of section 9 of Act, 1992 what we could gather is that the Commission itself was constituted to evaluate the progress of the development of minorities under the Union and States taking into account the constitutional safeguards and the laws enacted by Parliament and the State Legislatures and accordingly make recommendations for the effective implementation for the protection of the interests of minorities by the Union Government and the State Governments. Further, the said Commission has got a duty to look into any specific complaints regarding deprivation of rights and safeguards of the minorities and is also obliged under law to take up such matters with the appropriate authorities.

28. Here is a case where the Christian Minority community had made representations before the State Government and State Minority Commission regarding the discrimination meted out to the said community in the matter of

award of merit-cum-means scholarship, but no action was initiated. Likewise, section 13 of the State Commission for Minorities Act, 2014, encompasses a duty on the commission to look after the welfare of the minority communities within the State without any discrimination. However, the orders passed by the State Government viz., Exhibits P2, P3 and P4 show that clear discrimination is shown by favouring a particular minority community by providing scholarships in the ratio of 80:20 i.e., 80% to Muslims and 20% to the Latin Catholic Christians and Converted Christians, which is not the letter and spirit of the provisions of the Act, 1992 and the Act, 2014, formation of which is mandated by virtue of the Constitutional guarantee extended to the minority communities. Moreover, the mandates contained under Articles 14 and 15 of the Constitution of India are clearly violated by the State Government in the matter of the award of scholarships. It is also equally important to note that the Act, 1992 and the Act, 2014 envisions the Commission to treat the minority communities as a whole, and if at all the development of weaker sections among each of the minority communities is required, the Commission is to take into account the requirements of such weaker sections in each of the communities and divide the merit-cum-means scholarship equally by and between the members of the minority communities. However, in utter violation of the constitutional mandates contained under Articles 14, 15, 29 and 30, the State Government has issued

the impugned orders.

29. Article 14 clearly mandates that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India, whereas Article 15 (1) specifies that the State shall not discriminate against any citizen on grounds only on religion, race, caste, sex, place of birth or any of them, but at the same time we are conscious of the fact that the provisions of Article 15 would not stand in the way of the State from making any provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes in so far as such special provisions relate to admission of such classes of citizens to educational institutions including private educational institutions by virtue of Clauses (4) and (5) thereto, irrespective of the provisions of Articles 29 and 30 of the Constitution dealing with minorities.

30. It is also clear from clause (6) of Article 15 that nothing in the said Article or sub-clause (g) of clause 1 of Article 19 or clause (2) of Article 29 would stand in the way of the State from making, a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) ; and b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and 5 in so far as such special provisions relate

to their admission to educational institutions including private educational institutions whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30 etc.

31. On a reading together of Articles 14 and 15, it is clear that the State is endowed with a duty coupled with an obligation to look after the welfare and well being of the socially, educationally and economically weaker sections of citizens irrespective of the special provisions dealing with minorities. Therefore there is nothing wrong in the State Government providing facilities to weaker sections of the community, but when it comes to dealing with the notified minorities, it has to treat them equally, and it is not vested with any powers to treat them unequally, which is quite discernible from the provisions of the Constitution and the laws discussed above.

32. But here is a case where without taking into account the entitlement of the Christian Minority community within the State available from the population ratio, State is indulging in providing scholarship to the Muslim minority community at 80%, which according to us, is an unconstitutional act and unsupported by any law. Mere executive orders issued by the State Government cannot overreach the provisions of the Minority Commissions Acts, 1992 and 2014, and the imperatives contained under the provisions of the Constitution of India discussed above. Article 29 also casts a duty to protect the educational

interests of the minority community in equal measure and not in a discriminatory manner.

33. A five member Constitutional Bench of the Apex Court in **Chinnaiah v. State of A.P.** [(2005)1 SCC 394] had occasion to consider the issue with respect to sub-classification among the Scheduled Castes and Scheduled Tribes and held that except for a limited power of making an exclusion or inclusion in the list by an act of Parliament, there is no provision either to sub-divide, sub-classify or sub-group the castes which are found in the presidential list of Scheduled Castes. In our considered view, the Union Government in contemplation of section 2(c) of the Act, 1992 has notified six communities as minority communities in India which includes Muslims and Christians and therefore, the principles contained in the judgment in **Chinnaiah supra** would squarely apply to the facts and circumstances to the case at hand.

34. True, taking into account various constitutional provisions and the aspects thereto, the judgment in **Chinnaiah supra** is referred to a Larger Bench of Seven Judges or more in the order in **State of Punjab and Others v. Davinder Singh and Others** [(2020)8 SCC 1]. Anyhow, as of now, the proposition of law guiding the field is the judgment in **Chinnaiah**, the constitutional provisions, and the provisions of the Act, 1992 and Act, 2014. That apart in **Davinder singh (supra)**, the Apex Court expressed its opinion

that the State Government has an obligation to undertake the emancipation of the deprived section of the community and eradicate inequalities and for that purpose it can make sub-classification within reserved castes within the SC and ST and adopt distributive justice method to redistribute and reallocate resources and opportunities to fulfil the very purpose of the Constitutional mandate of equal justice to all.

35. Therefore, even if the findings rendered in the reference order for revisiting the findings in **Chinnaiah** (*supra*) by a Larger Bench is taken into account, the sub-division envisaged can only be within minority communities and not by taking the weakness of a particular minority community alone. In our view, in order to protect the interest of the notified minority communities as such, adoption of such a course is the only alternative and not otherwise as is done by the State Government .

36. Therefore, deducing the facts, circumstances and the laws, we are of the considered opinion that the action of the State Government in sub-classifying the minorities by providing merit-cum-means scholarship at 80% to Muslim community and 20% to the Latin Catholic Christians and Converted Christians cannot be legally sustained. In that view of the matter, we quash Exhibits P2, P3 and P4 orders of the State Government deliberated above in detail, and hereby direct the Kerala State Government to pass requisite and

appropriate Government orders providing merit-cum-means scholarship to the members of the notified minority communities within the State equally and in accordance with the latest population census available with the State Minority Commission.

Upshot of the above discussion is that the writ petition is allowed to the extent specified above.

Sd/-

S.MANIKUMAR

CHIEF JUSTICE

Sd/-

SHAJI P.CHALY

JUDGE

smv

// true copy//

P.A. To Judge/

APPENDIX OF WP (C) 24355/2020

ANNEXURE/EXHIBITS

EXHIBIT P1	TRUE COPY OF THE SCHEME DOWNLOADED FROM THE WEBSITE OF MINISTRY OF MINORITY AFFAIRS
EXHIBIT P2	TRUE COPY OF GO(MS) NO 278/2008/GAD DATED 16.8.2008 ISSUED BY THE 1ST RESPONDENT
EXHIBIT P2 (a)	TRUE ENGLISH TRANSLATION OF EXT P2
EXHIBIT P3	TRUE COPY OF GO(MS) NO 57/2011 DAD DATED 22.2.2011 ISSUED BY THE 1ST RESPONDENT
EXHIBIT P3 (a)	TRUE ENGLISH TRANSLATION OF EXT P3
EXHIBIT P4	TRUE COPY OF THE GO (RT) NO 3427/2015/GAD DATED 8.5.2015 ISSUED BY THE 1ST RESPONDENT
EXHIBIT P5	TRUE COPY OF MEMORANDUM DATED 29.6.2019 SUBMITTED BY CATHOLIC BISHOPS CONFERENCE OF INDIA COUNCIL FOR LAITY BEFORE THE 2ND RESPONDENT
EXHIBIT P5 (a)	TRUE ENGLISH TRANSLATION OF EXT P5
EXHIBIT P6	COPY OF THE COMPLAINT DATED NIL SUBMITTED BEFORE THE 2ND RESPONDENT BY THE DIOCESE OF IDUKKI
EXHIBIT P6 (a)	TRUE ENGLISH TRANSLATION OF EXT P6
EXHIBIT P7	TRUE COPY OF THE INFORMATION DATED 14.10.2019 ISSUED BY THE PUBLIC INFORMATION OFFICER UNDER THE 1ST RESPONDENT
EXHIBIT P7 (a)	TRUE ENGLISH TRANSLATION OF EXT P7
EXHIBIT P8	TRUE COPY OF THE REPRESENTATION DATED 3.10.2020 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT WITH COPY OF RESPONDENTS 2 AND 3
EXHIBIT P8 (a)	TRUE COPY TO ACKNOWLEDGMENT CARD SIGNED BY 1ST RESPONDENT
EXHIBIT P8 (b)	TRUE COPY OF THE ACKNOWLEDGMENT CARD SIGNED BY THE 2ND RESPONDENT