(2025) 03 KL CK 1324

In the High Court Of Kerala

Case No : Writ Petition (C) No. 9961 Of 2019

Martin Paul APPELLANT

Vs

State Of Kerala RESPONDENT

Date of Decision : 28-03-2025

Acts Referred:

Citation : (2025) 03 KL CK 1324

Hon'ble Judges : Nitin Jamdar, CJ;S. Manu, J

Bench : Division Bench

Advocate : Santhosh Mathew, Arun Thomas, Jennis Stephen, Vijay V. Paul, Karthika Maria, Anil Sebastian Pulickel, Divya Sara George, Jaisy Elza Joe, Issac M.Perumpillil, Varghese C.Kuriakose, G.Santhosh Kumar, Dinesh Mathew J.Muricken, Anoop.V.Nair, K.S.Arun Kumar, V.A.Vinod, Babu Karukapadath, Mathew B. Kurian, K.T.Thomas, M.A.Vaheeda Babu, Justine Jacob, P.G.Jose, V.P.Poulose, Nikitha Antony, Resmi Thomas, P.U.Vinod Kumar, A.P.Beelamma, Avinash P Raveendran, Amrutha K P, Arya Raghunath, Amrutha P S, V. Tekchand

Final Decision : Dispose Of

Judgement

Nitin Jamdar, CJ

1. The State of Kerala, on 22 September 2015, formulated a policy to address the issues faced by the persons with disabilities. The policy included establishing an integrated management system for co-ordination across the Government sectors, developing capacity-building strategies to enhance policy implementation, formulating a comprehensive action plan with public education to challenge societal prejudices, and creating State-level structures like the Department of Disability Affairs and the Kerala State Disability Council for operational planning across sectors.

2. In furtherance of the policy, on 3 April 2017, the State of Kerala issued a Government Order formulating guidelines in respect of the scheme and welfare measures to be implemented by various Local Self Government Institutions (LSGIs). In the 13th Five-Year Plan (2017-2022) prepared by the Local Self

Government Department (LSGD), the State of Kerala issued guidelines for the LSGIs. Clause 10 of the guidelines deals with grants for persons with physical and mental disability, especially students. Under Clause 10, LSGDs are required to maintain and renew the database of persons with disabilities, in consultation with the Social Security Department. The database management has to be done by the Social Security Department. Clause 10.1 deals with the distribution of items given free of cost. There are further benefits to be given in respect of instruments and materials. This Petition concerns the scholarship to be given to the students with disabilities.

3. By Circular dated 16 August 2018, the Joint Secretary of LSGD issued directions to all District Planning Officers, Panchayats, Corporations, and Municipalities that there shall not be any default in the distribution of scholarship to the students with disabilities (henceforth referred to as eligible students). Further, by Circular dated 25 January 2019, again a direction was issued to the LSGIs, to ensure that sufficient funds are reserved, so that scholarships can be given without interruption, as it is noticed that amounts are not being given to eligible students for lack of sufficient funds. It was further directed that the scholarship/batta is to be given on a monthly basis without fail.

4. Guidelines on Subsidies and Financial Assistance were issued on 28 May 2020. In paragraph 7.1.6(e) of the guidelines, it was directed that LSGIs have to undertake projects to ensure that all eligible children receive their scholarships and allowances without delay, every month. The LSGIs were directed to allocate funds as per the guidelines and transfer them to Grama Panchayats for implementation of the scholarship project. The list of eligible beneficiaries is to be prepared by the Integrated Child Development Services (ICDS) and Supervisor of the Women and Child Development Department. They are required to update the beneficiary list annually. It was made clear that the eligible students are not required to formally submit an application to be considered for the scholarship programme, as the implementing officer was required to update the beneficiary list annually.

5. Another Government Order was issued on 19 April 2022 laying down guidelines for Rural Local Governments. In paragraph 6.4(b)(2) of the said guidelines, it was stated that the LSGIs should provide eligible students with the permissible scholarship and allowance as per the Subsidy Guidelines. The necessary funds for this are to be allocated in the ratio of 60:30:10 among Grama Panchayats, Block Panchayats, and District Panchayats, respectively. In cases where the LSGD cannot raise the amount in this ratio, funds from other tiers of local bodies were permitted to be utilized to cover the shortfall. A corresponding provision was included in the Government Order dated 19 April 2022.

6. The primary grievance of the Petitioner is regarding the non-disbursal of scholarships to eligible students. The Petitioner calls upon the Respondent – State Authorities, to take effective steps to disburse the amounts of scholarship

on a monthly basis starting from April 2019 in a continuous manner. The Petitioner has sought implementation of the guidelines under the Five-Year Plan in respect of the subsidiary related projects for eligible students as above, and enforcement of Exts. P4 and P5 Circulars.

7. During the hearing, we found that, apart from the apathy of the LSGIs, the officers of the State in the LSGD also showed disinterest and indifference. This was clear when a statement was made on oath by one Ms. Gopika Udayan, Under Secretary, in the counter affidavit dated 24 October 2024 that the State had identified and enlisted eligible students for extension of financial assistance and scholarships, and strict directions had been given to the LSGIs for scrupulous implementation. Based on this statement, when we directed that the data of eligible students of at least the last twelve months be placed on record, the learned Senior Government Pleader, upon instructions received from the Principal Secretary, submitted that the data of eligible students, who had been granted scholarships in the last twelve months, was not available and it would take some time to collect the data. Thus, the statement made by the Under Secretary on oath was incorrect and misleading. It was only out of indulgence that we did not proceed to take action against this Under Secretary and placed a warning on record to be careful in future. Thus, there was no data with the State as to how many eligible students had been awarded scholarships, even for the last twelve months, let alone from the inception when the policy was introduced. Thus, this is the state of affairs in the LSGD as well, which is responsible for ensuring the proper implementation of the policy. Apart from the administrative discipline, even Exts. P4 and P5 Circulars place responsibility on the officers of the LSGD of the State to maintain and renew the database in consultation with the Social Security Department.

8. Therefore, by order dated 11 December 2024, we directed that copy of the orders of the Court and the case papers be placed before the Additional Chief Secretary, so that the issue can be viewed with seriousness and instructions can be issued for maintenance of the data in respect of the benefits of the policy received by eligible students. It was also directed that the data should also include the number of applications received, how many applications are allowed, how many were rejected, and whether any information is maintained regarding the grounds for rejection. We also called upon the Additional Chief Secretary to issue necessary instructions to ensure that Exts. P4 and P5 Circulars are scrupulously implemented, as directed by the State in respect of the 13th Five-Year Plan, which, in principle, would also apply to the 14th Five-Year Plan.

9. It also needs to be noted that initially, when the matter came up for consideration, the learned Senior Government Pleader stated that the scheme annexed to the Petition, which was a five-year plan, had lapsed. We had observed in the order dated 10 October 2024 that if the plan had lapsed, the State is under duty to continue the scholarship, keeping in mind its objective. In the affidavit dated 30 January 2025, the State has committed before us that

similar to the 13th Five-Year Plan period, the State Government is dedicated to continuing its policy of providing scholarships to eligible students in the 14th Five-Year Plan period as well. The State has placed on record that the Government has issued detailed guidelines to the Local Self Governments for formulating their annual plans and projects during the 14th Five-Year Plan period. It is pointed out that directions are included in the 14th Five-Year Plan guidelines for mobilizing and aggregating funds for the welfare of the people with disability, including a scholarship scheme for eligible students, among various tiers of the Local Self Government Institutions. We were informed that the State has now issued a Circular on 19 January 2025, which is placed on record by way of an affidavit dated 30 January 2025.

10. The affidavit dated 30 January 2025, explains the methodology adopted. The methodology stated is as follows. The ICDS Supervisor serves as the implementing officer for scholarship projects in Grama Panchayats and is responsible for preparing and annually updating the beneficiary list of eligible students. This process involves inputs from Kudumbashree Neighbourhood Groups, Anganwadi workers, Asha workers, and further verification through appropriate means. The ICDS Supervisor ensures the inclusion of the project in the annual plan of the Grama Panchayat. Eligible students are not required to apply for the scholarship. If any eligible student is omitted or a new request is made, the ICDS Supervisor can verify their eligibility and include them in the list. The beneficiary list has to be published on the website of the LSGI. At the Block Panchayat level, the Child Development Project Officer (CDPO) of the Women and Child Development Department is the implementing officer, while at the District Panchayat level, it is the District Social Justice Officer (DSJO) of the Social Justice Department. The details of the beneficiaries and the expenditure have to be uploaded on the software "Sulekha", maintained by the Information Kerala Mission, to create a centralized database. In the affidavit dated 30 January 2025, the State admits that the LSGIs are not fully implementing the scholarship project for the eligible students and there are many cases of failure at the ground-level implementation. It is stated that to address this, a Circular is issued on 19 January 2025, mandating uninterrupted and full disbursement of scholarships to all eligible students.

11. The Circular dated 19 January 2025 states that the LSGIs were allowed to provide scholarships and allowances to eligible students as part of the annual plan and the LSGIs were requested to undertake projects for this purpose. The State has acknowledged in the Circular that many LSGIs are not undertaking projects for this purpose, and even if they did, were only partially providing scholarships and allowances, and were not providing them without interruption. It was also stated that if sufficient funds were not available, the Block/District Panchayats should set aside funds for this purpose, as per the Circulars dated 16 May 2018, 25 January 2019, 24 December 2020, and 21 April 2021. It is also stated that Grama Panchayats and Urban Local Bodies were directed to undertake projects to provide scholarships and allowances to all eligible students

without interruption every month, as part of their annual plan, as per Government Order dated 28 May 2022 for the 14th Five-Year Plan period. The amount required to provide admissible scholarship and allowance should be allocated in the annual plan by Gram-Block-District Panchayats in the ratio of 60:30:10 in rural areas. If the amount cannot be found in the above ratio, the share of LSGIs at other levels can be used to address that shortage, as per Government Order dated 19 April 2022. In the case of Urban Local Bodies, the entire amount required to provide admissible scholarship and allowance to the eligible students should be allocated by the Urban Local Bodies in their annual plan, as per the Government Order dated 19 April 2022. The State has placed on record that even though such instructions exist, some LSGIs are failing and that some are still not paying the entire eligible amount.

12. The directions in the Circular dated 19 January 2025 issued pursuant to the proceedings in the Court are as follows:-

A. All Local Self-Government Institutions will undertake projects to provide scholarships and allowances to physically and mentally challenged children as part of their annual plans, and will provide scholarships and allowances to all eligible children in full, without interruption, in the respective month itself.

B. For this, the Development Fund (General), Fifteenth Finance Commission Grant (Basic Grant), or own Fund will be used. It will also be allocated from the SCSP/TSP share according to the number of Scheduled Caste/ Scheduled Tribe beneficiaries.

C. In the case of Panchayats, the amount required for this will be borne by the Gram-Block-District Panchayats in the ratio of 60:30:10 respectively. Urban local bodies will allocate sufficient funds on their own.

D. Scholarship and allowance will be provided to children facing 40 percent or more physical/mental disability, For that, it is sufficient to consider the disability certificate/Unique Identification Card (UDID) issued based on the Medical Board examination. There is no need to consider the annual income limit of the family or other factors.

E. Scholarship and allowance will be granted to children studying in BUDS schools irrespective of the extent of their disability.

F. Only the children of permanent resident parents in the respective Local Self-Government Institution are eligible for scholarship and allowance.

G. Applications will not be solicited from the beneficiaries to receive the scholarship and allowance. ICDS supervisors will identify the children eligible for scholarship and allowance with the help of Kudumbashree neighbourhood groups, Anganwadi workers, Asha workers, etc., and through other appropriate means, and collect their details and prepare and maintain a beneficiary list. The list will be updated every year before the next year's plan formulation. If, at any stage, it comes to attention that any eligible children have been left out or an application is submitted for inclusion in the list, their eligibility will be checked and they will be included in the list, and assistance will be provided from the next month onwards.

H. There is no need to obtain the approval of the Grama Sabha/Ward Sabha/ Ward Committee for the list of beneficiaries. However, the approval of the Grama Panchayat/Municipality will be obtained for the list of beneficiaries.

I. If the Department of Social Justice or any other departments are providing financial assistance to any of the components in the Government Order dated 28 May 2022, it will be ensured that there is no duplication in the financial assistance provided by the Local Self Government Institution.

J. The Child Development Project Officers will collect the list of beneficiaries to whom scholarship and allowance should be provided from the concerned Integrated Child Development Service supervisors before the next year's plan formulation. Based on that, the Block Panchayats will calculate the share to be allocated for this and inform the Block Panchayat Secretary every year. In the case of District Panchayats, the District Social Justice Officer will collect information from the CDPOs and calculate the share to be allocated by the District Panchayats for this and inform the District Panchayat Secretary.

K. The concerned Working Group convenors and implementing officers will ensure that draft project proposals for providing full scholarship and allowance to physically and mentally challenged children are included in their recommendations regarding their annual plan.

L. The Secretaries of the respective Local Self Government Institutions will ensure that the project for providing full scholarship and allowance to physically and mentally challenged children has been undertaken.

M. The monthly components in scholarship/allowance will be provided for all 12 months of the year.

N. The implementing officer will deposit the financial assistance amount into the joint bank account of the beneficiary (child) and their guardian in the respective month itself.

O. The list of those receiving financial assistance will be published on the website of the Local Self Government Institutions, and will be presented in the first Grama Sabha/Ward Sabha/Ward Committee meeting of each financial year.

P. All Local Self Government Institutions will collect and maintain information on the scholarships provided to the disabled students, and at the end of the financial year, the details of the beneficiaries who received financial assistance, along with the details of the amount granted, will be compulsorily recorded in the Sulekha software as the outcome of the concerned project. The Information Kerala Mission will take immediate steps to include the necessary facilities for this and for compiling information at the State-level, in the Sulekha software.

Q. The five percent amount that is mandatory to be set aside as per the Government Orders dated 19 April 2022 will not be used to find the share required to provide scholarship and allowance to physically and mentally challenged children.

This Circular now has to be mandatorily followed by all concerned.

13. The issue of non-implementation of this beneficial scheme in several cases is a matter of serious concern. Even the State does not have a complete data with it. Without the basic data, there cannot be effective monitoring by the LSGD of the policy. The Circular dated 19 January 2025 places obligation on the officers of the LSGD to monitor and call for the data. It is apparent from the affidavit and the Circulars that the LSGIs are not taking sincere efforts to execute the Scheme, defeating its purpose. There is no proper supervision in many cases by the LSGD also. The eligible students continue to face obstacles due to the lapses in identification, lack of monitoring, and inefficiencies at the local-level. Financial assistance is often delayed for months. This deprives the eligible students the support they need for their education and well-being. This is despite the beneficial policy framed by the State and the financial allocation. The situation has not improved despite the issuance of circulars. No deterrent action is being taken for breach of circulars, since the LSGD itself lacks proper data.

14. The benevolent policy of the State, extending assistance to eligible students, cannot be allowed to be defeated by the reluctance and apathy of ground-level implementation officers. The State is also duty bound to ensure implementation of its own policies and take deterrent action for the failure. Thus, it is necessary to direct the State to ensure strict compliance with the Government Circulars and provide for consequences, place responsibilities, and take disciplinary action. The LSGIs are required to be held responsible for the timely disbursal of scholarships and allowances. It is essential to enforce monitoring with periodical verification and updating lists of the eligible students. The scheme does not require filing of any applications and it should be ensured that no eligible student is denied the benefits due to the inaction or oversight by the implementing officers. Transparency in implementation has to be achieved by making it mandatory to publish the beneficiary list and financial disbursements on official website. A mechanism has to be put in place to identify and rectify instances of non-compliance by Panchayats, so that failures in implementation can be immediately addressed.

15. Accordingly, we issue the following directions:

(a). All Local Self Government Institutions in the State will scrupulously follow the Circular dated 19 January 2025 issued by the Special Secretary, Local Self-Government (DA) Department, Government of Kerala. If there is failure to comply with the directions in the said Circular, the State will be entitled to take deterrent and punitive action against the defaulting officers, including the Secretaries of the LSGIs, in accordance with the law.

(b). The Principal Secretary, LSGD, will nominate one senior officer / Secretary in the Local Self Government Department to ensure that the directions contained in the Circular dated 19 January 2025, as mandated above, are complied with by the LSGIs, and if not, to recommend necessary deterrent action and the concerned officer / Secretary will ensure compliance.

(c). The Deputy Director of the LSGD at the district-level will act as a Nodal Officer to ensure that the directions in the Circular dated 19 January 2025, the policy of the State Government under the 14th Five-Year Plan as regards the scholarship, are complied with by the LSGIs in his jurisdiction.

(d). If there is any failure on the part of the Panchayats or LSGIs, the Deputy Director, LSGD, the district-level Nodal Officer,, will report the said fact to the State-level Nodal Officer.

(e). The Deputy Director, LSGD, the district-level Nodal Officer, will address the issues of non-receipt of the scholarship as per the Scheme, and issue necessary directions to the LSGIs to resolve the same, if he is legally competent to do so; otherwise forward the same to the State-level Nodal Officer for necessary directions.

(f). The State shall issue orders for the creation / designation of Nodal Officers at the State and district levels within four weeks and circulate the same amongst all the LSGDs.

(g). The order of the district-level Nodal Officer as above to look into the grievance of non-receipt of scholarships will be given publicity to enable eligible students to approach the district-level Nodal Officer at the first instance.

16. Issuing the above directions, and placing responsibility on the concerned officers, we dispose of this Writ Petition.