

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

WP(C).No. 546 of 2012 (P)

PETITIONER(S):

**P.AHAMMED KOYA,
S/O.ABDU RAHIMANKUTTY, MANAGER,
RAHMANIA SCHOOL FOR HANDICAPPED,
P.O. MEDICAL COLLEGE, CALICUT - 673 008.**

**BY SRI.P.RAVINDRAN, SENIOR ADVOCATE
ADV. SMT.APARNA RAJAN**

RESPONDENT(S):

- 1. DR.KUNH AHAMMED KUTTY,
S/O.KUNHIMOIDEEN KUTTY HAJI, THIRIKKOTT VEEDU,
V.K.K.MENON ROAD, PANNIYANKARA, KOZHIKODE - 673 001.**
- 2. GOVERNMENT OF KEARLA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF GENERAL EDUCATION,
THIRUVANANTHAPUARM - 695 001.**
- 3. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM - 695 001.**

R2 & R3 BY GOVERNMENT PLEADER SRI.K.K.SAIDALAVI

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
05-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 546 of 2012 (P)

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE ORDER OF THE DEO DATED 25/3/1977.**
- EXHIBIT P2 TRUE COPY OF THE ORDER DATED 10/1/2008.**
- EXHIBIT P3 TRUE COPY OF THE ORDER REJECTING THE APPEAL
DATED 16/7/2009.**
- EXHIBIT P4 TRUE COPY OF THE JUDGMENT IN WPC NO.33121/2010
DATED 14/12/2010.**
- EXHIBIT P5 TRUE COPY OF THE GOVERNMENT ORDER DATED 12/4/2011.**
- EXHIBIT P6 TRUE COPY OF THE ORDER REVISION PETITION ALONG WITH
THE COVERING LETTER DATED 4/6/2011.**
- EXHIBIT P7 TRUE COPY OF THE ORDER DATED 19/11/2011.**
- EXHIBIT P8 TRUE COPY OF THE ORDER DATED 1/12/2011.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V.RAMAKRISHNA PILLAI, J

WPC No.546 of 2012

Dated this the 5th day of March, 2015

JUDGMENT

Ext.P8 order passed by the Government is under challenge.

2. The petitioner is the Manager of the Rahmania School for the handicapped which was founded by the association for welfare of the handicapped which came into existence in the year 1973. The petitioner was appointed Manager of the School with effect from 15.2.1977 and his appointment was approved by the DEO as per Ext.P1. The first respondent was the elected President of the association for a term and during his tenure as President, disputes arose in the executive committee which resulted in a spate of litigations. The first respondent addressed the District Educational Officer, Kozhikode alleging that the executive committee has decided to change the Manager of the

school and in the place of the petitioner, the first respondent has been chosen as Manager. According to the petitioner, this was a misrepresentation and a foul play. At no point of time, the educational agency had taken a decision to change the Manager. The DEO, on receipt of the representation by the first respondent called for the files, examined the matter and found that the claim is false. Hence, the DEO rejected the request of the first respondent by Ext.P2. Against Ext.P2, the first respondent preferred an appeal before the DPI and the DPI after considering the issue rejected the appeal as per Ext.P3. Against that, the first respondent approached the Government by way of representation. Thereafter disputes arose between the executive committee which resulted in civil suit. In one of the I.A.'s filed before the Sub Court where the appeal suit was pending, the Sub Court passed an order directing the continuance in office of the old committee, the term of which stood expired. The

matter came up before this Court by WPC No.6562/2010 and connected cases. On 16.3.2010, this Court has disposed of the writ petition with the following directions.

- (i) A Receiver, preferably a retired District Judge, shall be appointed by the trial court to manage the affairs of the Association in the place of the existing Executive Committee forthwith.
- ii) The Receiver shall have the liberty to co-opt at the most, four persons of his choice to aid and assist him in the management of the affairs of the institutions of the Associations.
- iii) The remuneration for the receiver shall be fixed by the trial court.
- iv) The appellate court is directed to dispose of the appeals pending before it from the suits disposed of by the trial court as expeditiously as possible at any rate within a period of six months from the date of receipt of a copy of this judgment.
- v) Till then, the direction to conduct election by the trial court shall be kept in abeyance and the trial court will be at liberty to pass such orders as are necessary for the effective functioning of the Receiver as sought for or as found required by the court below.

3. Pursuant to the direction, a receiver was appointed and he assumed office. The first respondent, however, without disclosing the fact that a receiver in charge of the affairs filed a writ petition before this Court seeking a writ of mandamus to dispose of the appeal pending before the Government. Ext.P4 is the judgment in WPC No.33121 of 2010. The Government took up the appeal for consideration and taking note of the appointment of the receiver, has made it clear that there is no change of Manager. Thus, the Government rejected the appeal by Ext.P5. The first respondent again represented to the Minister as per Ext.P6 revision against Ext.P5. Though the same was not legally maintainable, the Government once again addressed the issue and issued an order as per Ext.P7. The grievance of the petitioner is that to the surprise of the petitioner, he has received a communication from the Government informing that the Government has kept in abeyance Ext.P7 until

further orders as per Ext.P8. According to the petitioner, Ext.P8 is without any authority of law. It is with this background, the petitioner has come up before this Court.

4. Arguments have been heard.

5. The learned senior counsel for the petitioner submitted that Ext.P5 order of the Government was rendered in exercise of the powers under Rule IV Chapter III KER. It was pointed out that this order has attained finality and there cannot be an order by the Government subsequently modifying and annulling this order. Therefore, a further review against the same was not maintainable. However, by Ext.P6, the first respondent attempted a review of Ext.P5. Though as a matter of fact, a review against Ext.P5 was not maintainable, the Government entertained Ext.P6 and rejected the same by Ext.P7.

6. As rightly submitted by the learned senior counsel, there cannot be another review against Exts.P5 and P7 orders. Therefore, Ext.P8 is vitiated

by total want of authority of law. The Government cannot review its own order rendered in exercise of the powers under Chapter III Rule IV. Once the Government exercised the said power, it becomes *factious officio* and in the said circumstances, Ext.P8 order is bereft of any legal sanction.

In the result, Ext.P8 is quashed.

**sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

CSS/

true copy

P.S.TO JUDGE