

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

&

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

W.A.No. 96 of 2015 () IN WP(C).25623/2011

AGAINST THE JUDGMENT IN W.P.(C) NO. 25623/2011 of HIGH COURT OF KERALA DATED 22-05-2014

APPELLANT(S)/RESPONDENTS IN THE W.P.(C):

1. THE STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
2. THE PRINCIPAL SECRETARY TO GOVERNMENT,
DEPARTMENT OF GENERAL EDUCATION,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
3. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM-69 5001.
4. THE DEPUTY DIRECTOR OF EDUCATION,
KANNUR-673 001.
5. THE ASSISTANT EDUCATIONAL OFFICER
TALIPARAMBA SOUTH SUB DISTRICT, KANNUR-673V001.

BY SPL. GOVERNMENT PLEADER, SRI.T.T.MOHAMMUD

RESPONDENT(S)/PETITIONERS IN WPC:

1. THE MANAGER, BHAGAVATHI VILASOM A.L.P SCHOOL,
MANIYOOR, CHEKKIKULAM P.O., KANNUR DISTRICT - 670 592.
2. K.SREESANITH,
KUNDUKARI HOUSE, MANIYOOR, P.O.CHEKKIKULAM,
KANNUR DISTRICT - 670 592.

R1 & 2 BY ADV. SRI.P.M.PAREETH

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 18-06-2015, ALONG WITH W.A. 960/2015 & CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.T.O.

**ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.**

**W.A Nos. 96 & 960 of 2015 &
W.P.(C) Nos.13792, 13822, 14514,
14531, 14532 & 14533 of 2015**

Dated this the 18th day of June, 2015

JUDGMENT

Antony Dominic, J.

Writ Appeal Nos.96 & 960 of 2015 are filed by the State of Kerala and others, aggrieved by the judgment of the learned Single Judge in W.P.(C) Nos.25623 of 2011 and 24671 of 2014. W.P.(C) No.25623 of 2011 was filed by the 1st Respondent, Manager Bhagavathi Vilasam A.L.P. School, Maniyoor in Kannur District, seeking a direction to the appellants to take effective steps to upgrade the school in terms of the provisions contained in Act 35 of 2009. In the judgment under appeal, the learned Single Judge held that though the request made by the Manager cannot be entertained in terms of the provisions of the Kerala Educational Act & Rules, having regard to the provisions of Act 35 of 2009, it would be open to the Manager to make an application in the prescribed format under the said Act and if such an application

is made, the same would be dealt with.

2. In so far as W.A.No.960 of 2015 arising out of the judgment in W.P.(C) No.24671 of 2014 is concerned, that writ petition is filed by the Manager of National Lower Primary School, Manali, Thrissur. There also a direction for the upgradation of the school based on Ext.P10 application made by the Manager was sought for. In the judgment under appeal, the learned Single Judge directed that Ext.P10 application should be considered in accordance with the provisions of Act 35 of 2009, if necessary, after giving opportunity to rectify the deficiencies. By the appeals filed by the State, they are challenging these judgments, primarily contending that in the absence of having completed the other proceedings contemplated under Act 35 of 2009, which are required to be completed prior to the consideration of requests for upgradation, the learned Single Judge ought not have issued the impugned directions.

3. In so far as the remaining writ petitions are concerned, those are also filed by Managers of different Schools where requests have been made for upgradation/opening of higher classes in the respective schools, again in terms of the provisions contained under Act 35 of 2009.

4. When these cases were taken up for hearing today, the judgment rendered by the learned Single Judge, disposing of Writ Petition (C) No.3060 of 2014 and connected cases, where identical issues were considered at length, was brought to our notice. On such consideration, the learned Single Judge has issued the following directions:

"Accordingly, I direct the State Government to ensure that the necessary steps required for processing applications for opening new schools/upgradation of existing schools, in accordance with the provisions of the RTE Act, is put in place within four months from today i.e. on or before 31.10.2015. Thereafter, the State Government shall complete the process of calling for applications for sanction of new schools/upgrading existing schools, considering them and taking an appropriate decision thereon, within a further period of two months, so that the said process is completed on or before 31.12.2015. It will be open to the petitioners herein to respond to any notice inviting applications that is published by the State Government pursuant to the directions in this judgment. In view of the directions issued above, I am of the view that till such time as the process of consideration of applications is completed by the State Government, existing schools need not be permitted to admit students to standards which have not been sanctioned in the said schools through a formal process of upgradation."

5. We have gone through the judgment and having regard to the fact that the issues arising in the present cases are similar to the issues that were considered by the learned Single Judge and also the fact that the required steps for processing applications for obtaining new Schools/upgradation are yet to be completed by the Government, we feel that these cases also can be disposed of directing that the appellants and the petitioners herein shall also be governed by the directions contained in the common judgment of the learned Single Judge mentioned above.

6. Accordingly, these writ appeals and writ petitions are disposed of directing that the aforesaid directions in the common judgment in W.P.(C) No.3060 of 2014 and connected cases will govern the appellants and the petitioners in these cases also.

The writ appeals and the writ petitions are accordingly disposed of.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI .P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-