

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

WA.No. 927 of 2015 () IN WP(C).33768/2014

AGAINST THE ORDER/JUDGMENT IN WP(C) 33768/2014 of HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS::

1. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.
2. THE DISTRICT EDUCATIONAL OFFICER,
NEYYATTINKARA, THIRUVANANTHAPURAM - 695 001.

BY SENIOR GOVERNMENT PLEADER SRI. M.A. FAYAZ

RESPONDENT(S)/PETITIONER::

MADHUVAN SAI VIDYASHRAM SCHOOL,
GOVERNED BY MADHUVAN SAI VIDYASHRAM TRUST
MADHUVANAM, PULIYARAKONAM
THIRUVANANTHAPURAM - 695 573 REPRESENTED BY ITS MANAGER
KRISHNA KARTHA, MADHUVAN SAI VIDYASHRAM SCHOOL
MADHUVANAM, PULIYARAKONAM
THIRUVANANTHAPURAM - 695 573.

BY ADV. SRI. P. MARTIN JOSE

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 26-05-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

APPELLANTS' ANNEXUES:

- AI : PHOTOCOPY OF THE ORDER IN CC(C) NO.613/2015.
- AII : TRUE COPY OF THE GOVT. ORDER GO(MS) NO.202/2011/G.EDN. DATED 7.10.2011.
- AIII : TRUE COPY OF THE ORDER DATED 10.05.2013 IN SLP(C) NO.10297 & 10298/2013
- AIV : TRUE COPY OF THE GOVT. ORDER GO(MS) NO.384/2012/G.EDN DATED 07.12.2012.

RESPONDENT'S ANNEXURES : NIL

// TRUE COPY//

P.A. TO JUDGE

smv

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

W.A. No.927 of 2015

Dated this the 26th of May, 2015

JUDGMENT

Antony Dominic,J.

This writ appeal is filed by the respondent in Writ Petition No.33768 of 2014. The said writ petition was filed by the respondent herein seeking to quash Ext.P3, a communication issued by the second appellant rejecting their application for NOC for getting affiliation from ICSE, on the ground that the number of students in the school was only 147 which was below the minimum 300 prescribed in Clause xiv of Annexure - All, G.O.(MS) No.202/11/G.Edn. dated 7.10.2011.

2. In the writ petition, the respondent relied on the Division Bench judgment of this Court in **State of Kerala v. Mythri Vidya Bhavan English Medium School** [2012(4) KHC 321], where this Court had set aside the aforesaid condition contained in Annexure - All mentioned above. When the writ petition came up for consideration, a learned Single Judge of this Court passed an interim order dated 20.12.2014 directing that in the light of

the Division Bench judgment mentioned above, there shall be a direction to the appellants to issue provisional NOC to the respondent subject to the outcome of an SLP that was filed by the appellants challenging the above decision of the Division Bench. It is aggrieved by the aforesaid order of the learned Single Judge dated 20th December, 2014 that this writ appeal is filed.

3. We heard the learned Government Pleader appearing for the appellants and also the learned Senior Counsel appearing for the respondent.

4. The learned Government Pleader submitted that under Annexure - AII, minimum number of students required for the issuance of NOC is 300 and that the said number was later reduced to 240 upto standard VIII, as per Annexure - AIV. According to the learned Government Pleader, in the school of the respondent, there were only 147 students and that therefore, the appellants did not satisfy the requirement prescribed. Although the Government Pleader also pointed out that the school did not have the required extent of land, since such a reason is not mentioned in Ext.P3 order impugned in the writ petition, we decline to consider that plea now raised.

5. He has also invited our attention to Annexure - AIII, the

order passed by the Apex Court in SLP No. 10297 - 10298/2013 where the Division Bench judgment of this Court relied on by the respondents has been stayed by the Supreme Court. Therefore, according to the Government Pleader, there is no justification for the learned Single Judge to pass an interim order requiring the appellants to issue a provisional NOC. He also placed reliance on Division Bench Judgment in **Special Deputy Tahsildar (RR), KSFE Ltd. and Another v. K.P. Rajan and Another** [2013 (3) KHC 232] to support of his contention that when the Division Bench judgment has been stayed by the Supreme Court, the learned Single Judge ought not have passed the interim order.

6. However, on behalf of the respondent, the learned Senior Counsel not only placed reliance on the Division Bench Judgment referred to above but also referred us the principles laid down by this Court in **Abdu Rahiman v. District Collector, Malappuram** [2009(4) KLT 485] and contended that the stay order passed by the Supreme Court did not in any manner dilute the precedent value of the Division Bench Judgment but only relieved the parties to the judgment from their obligation to comply with the same. According to him, the Division Bench judgment was binding on the learned Single Judge and it was

therefore that the learned Single Judge has passed an interim order, which also protected the interests of the appellants by ordering that the NOC shall be provisional and that validity of the same would depend upon the ultimate outcome of the SLP now pending in the Apex Court.

7. We have considered the submissions made. As we have already stated the challenge in writ petition is against Ext.P3, an order issued by the second appellant rejecting the application of the respondent for NOC on the ground that the number of students in the school was less than the number prescribed in Annexure - AII. It is true that the said condition prescribed in Annexure - AII was directly in challenge before the Division Bench in the case of **Mythri Vidya Bhavan** (supra), where the said provision of the Government order was vacated by this Court. Appeals were filed against this judgment of the Division Bench. Special Leave Petitions are admitted and the Supreme Court has also granted the stay of the judgment as per Annexure - AIII order.

8. An interim order, in a writ petition, is a discretionary one and that when such an order is passed, this Court is certainly required take into account the pendency of the appeal and the interim order that is passed by the Supreme Court. In so far as

this case is concerned, the learned Single Judge has ordered that provisional NOC be issued to the respondent. If provisional NOC is so issued, the appellants will be entitled to seek affiliation on the strength of that provisional NOC. The validity of the provisional NOC being depend on the outcome of the SLPs that are now pending before the Apex Court, if the ultimate decision of the Apex Court is one disapproving the judgment of this Court, that will necessarily affect the validity of the NOC also. In such a situation, schools would lose its affiliation and the students' future in the school is in uncertainty. In such a factual situation, we do not think that this was a case where an interim order was warranted.

9. It is true that the learned Senior Counsel referred us Ext.P2 order in the writ petition and pointed out that when 34 ineligible schools have been granted NOC and that therefore there is no reason to deny NOC to the respondent.

10. We have gone through Ext.P2 order. We find from this order that these schools were also parties to the earlier Division Bench judgment. Before the judgment was stayed by the Apex Court, these 34 schools had filed Contempt of Court petitions before this Court. It was under those circumstance, the Government, despite its reservations, granted NOC subject to

the result of the SLP. Therefore, respondent's claim for NOC cannot be equated to the cases of those 34 grantees nor can the respondent claim parity with them.

11. In our view, the aforesaid considerations should have persuaded the learned Single Judge against the passing of the interim order and instead, in the circumstances of the case, we feel that the appropriate course was to have awaited the outcome of the SLP now pending before the Apex Court. For that reason, we are inclined to think that the interim order of the learned Single Judge cannot be sustained.

12. Accordingly, we vacate the interim order dated 20.12.2014 passed in Writ Petition No.33768 of 2014 and allow the appeal. The writ petition will be posted in due course for disposal before the learned Single Judge.

Appeal is disposed of accordingly.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**SHAJI P. CHALY
JUDGE**

//true copy//

P.A. to Judge

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