

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

WA.No. 1161 of 2015 () IN WP(C).3672/2015

**AGAINST THE ORDER/JUDGMENT IN WP(C) 3672/2015 of HIGH COURT OF KERALA
DATED 08-04-2015**

APPELLANT(S)/PETITIONERS:

- 1. MARIYAM SHAHANAYI K., MINOR, K AGED 47 YEARS
REPRESENTED BY HER FATHER, BASHEER KURUNIYAN
KURUNIYAN HOUSE, OTHUKKUNGAL P.O., MALAPPURAM DISTRICT
PIN:676 528.**
- 2. POURNAMI M.
MINOR, REPRESENTED BY HER FATHER, RAMACHANDRAN M.
MANTHODY HOUSE, KUTTIPPURAM P.O., KOTTAKKAL
MALAPPURAM DISTRICT, PION:676 503.**
- 3. HASNA SHEREEN.,
MINOR REPRESENTED BY HER FATHER, MUHAMMED HANEEFA A.
ARUVEETIL HOSUE, KOORIYAD, INDIANOOR P.O.
KOTTAKKAL, MALAPPURAM DISTRICT, PIN:676 503.**
- 4. ANAGHA M.
MINOR REPRESENTED BY HER FATHER RAVEENDRAN M.
MANTHODY HOUSE, KUTTIPPURAM P.O., KOTTAKKAL
MALAPPURAM DISTRICT, PIN:676 503.**
- 5. FAIZA RAHMAN C.
MINOR REPRESENTED BY HER FATHER ABDUL RAHMAN
CHEKIDAPPURAM HOUSE, KADAMPUZHA P., THADAMPARAMBA
MALAPPURAM DISTRICT, PIN:676 553.**
- 6. VARSHA S
MINOR REPRESENTED BY HER FATHER, SUBRAMANNYAN K.
KAVUNGAL HOUSE, INDIANOOR P.O., KOTTUR
MALAPPURAM, PIN:676 503.**

7. HENNA K.,
MINOR REPRESENTED BY HER FATHER ABDULLA K.
KUNDIL HOUSE, CHEENAMPATHUR, KOTTAKKAL P.O.
MALAPPURAM DISTRICT, PIN:676 503.
8. AFIYA MACHINCHERI
MINOR, REPRESENTED BY HER FATHER SAIDALAVI
MACHINCHERY HOUSE, KADAMPUZHA P.O., MARAVATTAM
MALAPPURAM DISTRICT, PIN:676 503.
9. RAYEESAH N
MINOR REPRESENTED BY HER FATHER MUHAMMAD NO.
NECHIKKADAN HOUSE, CHENGOTTUR P.O., KOLKALAM
MALAPPURAM, PIN:676 503.
10. SHIBILI SUHAIBA N.
MINOR REPRESENTED BY HER FATHER MOIDEEN N.
NONDATH HOSUE, INDIANOOR P.O., KOORIYAD
MALAPPURAM DISTRICT, PIN:676 503.

BY ADV. DR.GEORGE ABRAHAM

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695001.
2. DIRECTOR OF PUBLIC INSTRUCTIONS
THIRUVANANTHAPURAM-695001.
3. DEPUTY DIRECTOR OF EDUCATION, MALAPPURAM-676505.

BY SR GOVERNMENT PLEADER SRI.P.J.DAVIS

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 26-06-2015, ALONG
WITH WA. 1162/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

APPELLANTS' EXHIBITS

ANNEXURE A1: TRUE COPY OF THE ENGLISH TRANSLATION OF EXT.P2.

ANNEXURE A2: TRUE COPY OF ENGLISH TRANSLATION OF THE
RELEVANTCLAUSE IN EXT.P4.

RESPONDENTS' EXHIBITS: NIL

Rp

//TRUE COPY//

PA TO JUDGE

ASHOK BHUSHAN, CJ

“C.R.”

&

A.M. SHAFFIQUE, J.

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W.A. Nos. 1161 & 1162 of 2015

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Dated this, the 26th day of June, 2015

J U D G M E N T

Ashok Bhushan, CJ

These two writ appeals have been filed against common judgment dated 8th April, 2015 by which judgment, learned Single Judge dismissed the writ petitions filed by the appellants. The facts in both the writ appeals are almost similar and it shall be sufficient to refer to the facts in WA No.1161/2015 for deciding both the appeals.

2. WA No.1161/2015 arises out of the judgment of the learned Single Judge in W.P (C) No. 3672/15. Petitioners appeared from Malappuram District in item Oppana. The appellants were not selected at the District level. An appeal was filed in which an order was passed permitting the appellants also to participate in the State level competition. The appellants thereafter participated in the State level competition but since the appellants were not given the A grade certificate and grace marks, the appellants filed

the writ petition where the following prayers were made;

“(a) To declare that Clause 11 of Chapter XII of Exhibit P4, Kerala School Kalolsavam Manual, to the extent of denying grace marks to the students who participated in the state level competition, is unconstitutional.

(b) to declare that the petitioners’ team, who participated in the state level competition in the event Oppana, is eligible and entitled to get grace marks based on their performance in the 55th State Level School Kalolsavam, held at Kozhikode.”

3. The appellants claim that they are also entitled to get grace marks based on performance in the 55th State Level School Kalolsavam held at Kozhikode. The learned Single Judge decided bunch of the writ petitions and following the Division Bench judgment of this Court in WA No.1843/2014 held that the candidates securing equal marks who came to perform in the State level competition are entitled to the grace marks and A grade. Learned Single Judge observed that petitioners had failed to prove their equivalence as of the regularly selected candidates and they could perform only at a lesser level. Hence, they were not entitled for grace mark and A Grade. Writ petitions were dismissed. Writ appeals have been filed by the petitioners whose

petitions were dismissed.

4. Adv.Dr.George Abraham, learned counsel appearing for the appellants submitted that in view of the order passed by the appellate authority, they became equal and the principle of merger will apply. He has placed reliance on the judgment of the Apex Court in **Kunhayammed v. State of Kerala** (2000 (3) KLT 354). He further submits that there was no material on record to indicate that petitioners received lesser mark than those who were given A Grade in the same District. He further submitted that the petitioners in fact had secured more marks than teams of other Districts but those teams from other Districts having lesser marks were awarded A grade. He submits that learned Government Pleader did not bring anything on record in the writ petitions to indicate that the petitioners had received lesser marks than the team who has been granted A Grade.

5. Learned senior Government Pleader Sri.P.I.Davis refuting the submission of the appellants contended that the petitioners did not receive equal marks to those who were granted A grade from each District. He submits that in view of the order of the appellate authority, the appellants were treated

equally to those who have already been selected at the District level but A grade has been granted on the basis of performance in the State level competition. He has produced the results of the State level competition 2014-2015 held from 15th January, 2015 to 21st January, 2015. He submits that in so far as WA No.1162/2015 is concerned. Sri.Nishad P. and his group secured only 234 marks, who represented Malappuram, whereas the team which were granted grace marks with A grade from Malappuram secured 241 marks. Hence, the appellants were not entitled.

6. In so far as WA No.1161/2015 is concerned, it is submitted that appellants' group received 226 marks and they represented Malappuram whereas team which was granted the grade and certificate from Malappuram secured 251 marks. Thus, the appellants did not secure equal marks to the team which has been granted A grade.

7. We have considered the submission of the learned counsel for the parties and perused the records.

8. The Division Bench of this Court has already by Ext.P7 judgment in WA No.1843/14 has read down the guidelines in the Clause (j) of Chapter 2 of guidelines in the Manual of State School

Science Work Experience Fair and held that the requirement that the candidates who appeared in State level Competition on the basis of an appellate order should secure more marks than the selected candidate is arbitrary and based on no valid classification. Division Bench held that those candidates who come up in the State competition by virtue of an appellate order are entitled to be treated similarly and if they secured equal marks, they are also entitled for A Grade. The judgment of the Division Bench has been referred to and relied on by the learned single Judge while deciding the writ petitions.

9. The first submission of the learned counsel for the appellants is that in view of the principle of merger, the appellants became equal in all respects with those candidates who were selected from Malappuram. There cannot be any dispute that the appellants who were directed to participate in the State level competition by virtue of the order has to be treated equally with regard to the team which was already selected and directed to represent in the State level competition. But the equivalence of the appellants' team and other teams which were already selected is only in respect of participation in the State

level competition. Grade and grace marks are granted to the participants on the basis of the outcome of the State level competition. Thus, the submission that they should also be treated equally to the team who secured more marks from them in the State level competition is baseless.

10. In so far as the statement of the learned counsel for the appellants that details of the marks were not produced in the writ proceedings, suffice to say that learned Government Pleader having produced the marks before us as noted above, the finding of the learned Single Judge that there was nothing to show that appellants secured equal marks to the candidates who have been granted grade is fully justified.

11. In so far as the submission that some candidates belonging to other Districts secured lesser marks and were granted grade is concerned, suffice it to say that appellants can compete in respect of the District level team of particular District from which they were selected. In so far as grant of certificate and grade in the State level competition is concerned, each District is a separate unit and appellants can compare with the marks secured by the team from the District from which they were

permitted to represent. There is no question of comparison of marks from teams of other Districts which participated in the State Level Competition which is as per the scheme of the State Level Competition.

In view of the above, we do not find any error in the judgment of the learned Single Judge. Both the writ appeals are dismissed.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

//True Copy//

PS to Judge