

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

WP(C). No. 4254 of 2013 (F)

PETITIONER(S):

**THE MANAGER AIDED UPPER PRIMARY SCHOOL,
PALAT, P.O.THIRUVANNUR, KOZHIKODE DISTRICT.**

**BY ADVS.SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI**

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
TRIVANDRUM-695001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTIONS
TRIVANDRUM-695014.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION
KOZHIKODE, PIN-673004.**

BY GOVERNMENT PLEADER

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C). No. 4254 of 2013 (F)

APPENDIX

PETITIONER(S) EXHIBITS:

**EXHIBIT P1: TRUE COPY OF THE ORDER NO.L.DIS. NS2/12518/2008/DPI DT.3-2-2012
ISSUED BY R2.**

**EXHIBIT P2: TRUE COPY OF THE REVISION PETITION DT.23-3-2012 FILED BY THE
PETITIONER BEFORE R1 UNDER RULE BB OF CHAPTER V K.E.R.**

**EXHIBIT P3: TRUE COPY OF THE JUDGMENT DT.25-6-2012 OF THIS HON'BLE COURT
IN WPC 14604/2012.**

**EXHIBIT P4: TRUE COPY OF THE ARGUMENT NOTE DT.20-11-2012 SUBMITTED BY
THE PETITIONER BEFORE R1.**

EXHIBIT P5: TRUE COPY OF THE GO(RT) 6206/12/G EDN, DT.29-12-2012 ISSUED BY R1.

**EXHIBIT P6: TRUE COPY OF THE REPORT NO.NS(2)/41741/2518/DPI DT.4-6-2009
SUBMITTED BY R2 TO R1.**

**EXHIBIT P7: TRUE COPY OF THE YEAR WISE STATEMENT OF THE STUDENTS
STRENGTH, TEACHERS AND SALARY PAID FROM 2001-02 TO 2010-11 IN
RESPECT OF THE PETITIONER SHOOOL PREPARED BY THE
HEAMISTRESS IN 2011.**

**EXHIBIT P8: TRUE COPY OF THE ORDER NO.NS4/2071/2007/DPI DT.14-2-2007 ISSUED
BY R2.**

RESPONDENTS' EXHIBITS:- NIL

KRJ

/True Copy/

P.A to Judge

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.4254 of 2013

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Dated this the 19th day of January, 2015

JUDGMENT

Ext.P5 order is under challenge in this writ petition.

2. The petitioner is the manager of an Aided Upper Primary School functioning with exemption from minimum strength. When the strength of students became nominal with the huge financial burden of maintaining five teaching and one non-teaching staff, petitioner sent a notice for closure of the school on 19.10.2007. However, after a long lapse of 5 years and ultimately after a direction given by this Court in W.P(C) No.16020 of 2011 on 1.10.2011, the second respondent issued Ext.P1 order rejecting the request. Aggrieved by Ext.P1, the petitioner filed a statutory revision petition before the first respondent invoking Rule 23BB of Chapter V KER as evidenced by Ext.P2 on 22.3.2012.

3. The petitioner alleges that the present strength of student is only 10 and there is no scope of further increase in the number of students as evident from Exts.P6 and P7. Notwithstanding the huge financial liability in maintaining the school for the petitioner as well as the Government, Ext.P5 order was issued rejecting the revision filed by the petitioner. According to the petitioner, Ext.P5 is illegal and unsustainable.

4. In the detailed counter affidavit filed by the State, they have justified Ext.P5.

5. Arguments have been heard.

6. The learned Senior Counsel for the petitioner invited my attention to the decision of this Court in **Gopinathan** v. **State of Kerala** [2001 (3) KLT 472] wherein it was held that the manager has got the right to close down the school after the period of one year of the notice under Section 7(6). In ***Gopinathan's case (supra)*** the learned single Judge placed reliance on the decision of the Full

Bench of this Court in **Balakrishnan v. Ramaeshan** [1993 (1) KLT 519] which affirmed the reasoning in **Krishnakumar v. State of Kerala** [1972 KLT 496] and **Subramanian v. State of Kerala** [1986 KLT 359] and held that the action taken under Section 7(6) of the Act by the manager cannot be treated as an act of neglect within the meaning of Section 14(1) of the Act.

7. Recently, a Full Bench of this Court in W.A No.653 of 2011 (**State of Kerala v. T.P.Muneera & another**) affirmed the aforesaid decision. In view of the same, the petitioner is entitled to succeed.

In the result, the writ petition is allowed. Exts.P1 and P5 are quashed. It is declared that the petitioner has every right to close down the school in view of the notice issued on 19.10.2007. The respondents shall do the needful to enable the petitioner to close down the petitioner's school.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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