

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

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

WP(C).No.3060 of 2014 (F)

PETITIONER:

**THE MANAGER,
LOWER PRIMARY GIRLS SCHOOL (LPGS) VELIYAM,
KOTTARAKKARA,KOLLAM DISTRICT - 691 540.**

BY ADV.SRI.S.SHAJI

RESPONDENT'S:

- 1. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. DIRECTOR OF PUBLIC INSTRUCTION (GENERAL EDUCATION),
DIRECTORATE OF PUBLIC INSTRUCTION,
JAGATHY,THIRUVANANTHAPURAM - 695 014.**
- 3. DEPUTY DIRECTOR OF EDUCATION,
OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION,
KOLLAM - 691001.**
- 4. THE ASSISTANT EDUCATION OFFICER,
OFFICE OF THE ASSISTANT EDUCATION OFFICER,
VELIYAM,KOLLAM - 691512.**

R1-R4 BY SRI.K.A.JALEEL (ADDITIONAL ADVOCATE GENERAL)

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 15.06.2015 ALONG WITH W.P(C) NO.10896/2014 AND CONNECTED
CASES THE COURT ON 18-06-2015, DELIVERED THE FOLLOWING:**

pk

WP(C).No.3060 of 2014 (F)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P-1:TRUE COPY OF THE G.O(MS) NO.154/2013/G.EDN DATED 3.5.2013.

**EXT.P-2:TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONER
BEFORE THE FIRST RESPONDENT DATED 16.12.2013.**

**EXT.P-3:TRUE COPY OF THE APPLICATION SUBMITTED IN FORM NO.III
DATED 10.1.2014 AND THE RECEIPT ISSUED BY THE 4TH RESPONDENT
DATED 13.1.2014.**

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

'C.R.'

A.K.JAYASANKARAN NAMBIAR, J.

**W.P.(C).NOS.3060, 10896 & 13334 OF 2014,
W.P.(C).NOS.11908, 11940, 12479, 14814, 14833, 14878,
14894, 14895, 14902, 14908, 14928, 14933, 14934, 14935,
14941, 15048, 15049, 15054, 15071, 15075, 15078, 15079,
15080, 15081, 15082, 15083, 15085, 15096, 15097, 15099,
15219, 15244, 15245, 15246, 15247, 15258, 15259, 15281,
15302, 15303, 15377, 15492, 15498, 15515, 15525, 15560,
15613, 15621, 15622, 15745, 15763, 15795, 15823, 15829,
15834, 15848, 15860, 15942, 16046, 16047, 16050, 16154,
16155, 16160, 16272, 16287, 16369, 16443, 16809, 17286
& 18080 OF 2015**

Dated this the 18th day of June, 2015

J U D G M E N T

In this batch of writ petitions, the petitioners are the Managers and Parent Teacher Associations of various aided schools within the State of Kerala. Consequent to the enactment of the Right of Children to Free and Compulsory Education Act, 2009 [hereinafter referred to as the 'RTE Act'], and in exercise of the powers conferred on it under the said Act, the State Government has framed the Right of Children to Free and Compulsory Education Rules, 2011 [hereinafter referred to as the 'RTE Rules']. The petitioners seek a direction to the State Government to pass orders upgrading their existing schools so as to bring within their fold additional classes (Standard V in the case of existing Lower Primary Schools and Standard 8 in the case of existing Upper Primary Schools). It is revealed from the pleadings in the writ petitions that the petitioners have all preferred applications before

the State Government for the said purpose and that the said applications, though in the form prescribed under the RTE rules, do not contain the recommendation/countersignature of the educational authority concerned, which is a mandatory requirement under the Rules to maintain an application.

2. Rather than disposing these writ petitions with a direction to the State Government to consider and pass orders on the individual applications preferred by the various applicants, I feel it would be prudent to first examine the basic obligations that are required of the State Government under the RTE Act and Rules and ascertain the steps that the State Government has taken thus far to comply with its obligations under the Act. I am of the view that unless the State Government puts in place the necessary machinery that is required for the purposes of implementing the provisions of the Act and Rules, it would be an exercise in futility to direct the State Government to process the individual applications seeking upgradation of existing schools. The endeavour of this court therefore, is to first ascertain the steps that are to be taken by the State Government in terms of the Act and Rules, then to ascertain what steps have been taken thus far, and

then to determine the time required for completing the said exercise. Needless to say, a time limit will have to be set for attaining the various stages up to completion of the entire exercise of setting up the necessary machinery so that the State will be in a position to consider the applications for upgradation immediately thereafter, at any rate before the commencement of the next academic year.

3. On a perusal of the provisions of the RTE Act and Rules framed thereunder, it is clear that for the satisfactory discharge of its obligations under the Act, the State Government is obliged to do the following in connection with the setting up of the necessary infrastructure for imparting elementary education:

(i) Collect data regarding children up to the age of 14 years within the State of Kerala.

(ii) Identify an authority that will analyse the said data so as to earmark the areas where the children reside. The demarcation of areas would have to be aligned with the territorial limits of a local authority, and the number of children who are beneficiaries under the Act, and who reside in the said area, would represent the educational need of that area.

(iii) An inventory will then have to be drawn up, of the existing schools within each demarked area, and a study done to ascertain the infrastructural availability in the said schools. Any deficit noticed in servicing the educational need of a particular area, using the existing infrastructural availability, would then have to be remedied through the introduction of new infrastructure brought about either by establishing new schools or by upgrading existing schools in that area.

(iv) Necessary yardsticks/criteria will have to be formulated so as to determine the manner of choosing an existing school in a given area that will be considered for upgrading. While formulating the said criteria, due consideration must be given to the aspects noted in Rule 6 of the RTE Rules. These criteria will then have to be published so as to ensure transparency in the selection process of schools for upgradation. The chosen schools must also be those that adhere to the norms and standards prescribed for schools under the Schedule to the Act.

(v) Government has to constitute an academic authority, by notification, so as to draw up the curriculum and evaluation procedure for elementary education.

(vi) Government has also to constitute a State Advisory Committee to advise the State Government on implementation of the provisions of the Act in an effective manner.

4. As against the above obligations of the State Government under the RTE Act, the State Government has already taken the following legislative/executive measures:

- i. Through G.O(P) No.100/2011/G.Edn dated 30.04.2011, the State Government has framed the Right of Children to Free and Compulsory Education Rules, 2011, for implementing the provisions of the Act.
- ii. The State Council for Educational Research and Training (SCERT) has been constituted as the academic authority for the purposes of Section 29 of the RTE Act.
- iii. As required by Section 34 of the RTE Act, a State Advisory Council has been constituted through Rule 25 of the 2011 Rules.
- iv. By G.O.(P) No.256/11/G.Edn dated 28.12.2011, Head Teachers in Lower Primary and Upper Primary

schools were relieved from holding charge of classes.

- v. By G.O(MS) No.9/2012/G.Edn dated 09.01.2012, the Government stipulated that children should attain the age of 6 years at the time of admission to class I in schools in the State. This was in order to align the entry age requirements with that of the RTE Act.
- vi. By G.O(P) 98.12/G.Edn dated 28.03.2012 the Government granted in-principle approval to the sanctioning of new government schools to function as neighbourhood schools for the purposes of the RTE Act and Rules.
- vii. By G.O.(MS) 136/2013/G.Edn dated 16.04.2013 a 7 member RTE Implementation Committee was constituted for holding quarterly review meetings on the progress of RTE implementation in the State.
- viii. G.O.(MS) 154/2013/G.Edn dated 03.05.2013 took note of the fact that the age of admission of a child to class I in Kerala is 5 and that by the age of 13, the students are generally out of class VIII. To align the ages of children with the purport of the RTE Act, a child, for the purposes of the RTE Act in the State was defined as one between the ages of 5 and 14 years. The elementary education cycle was declared as one from class I to VIII wherein class V and class VIII

would function in the existing premises in the Upper Primary and High Schools respectively. The Upper Primary schools with class V were to be re-designated as Lower and Upper Primary Schools and those High schools with class VIII were to be re-designated as Upper Primary and High Schools under the RTE Act.

- ix. By G.O.(MS) 184/2013/G.Edn dated 10.06.2013, guidelines were published for the purposes of regulating the grant of recognition under the RTE Act to unrecognized schools that were following the State syllabus.
- x. By G.O. (P) No.313/2013/G.Edn dated 29.11.2013, the reduced Pupil Teacher Ratio (PTR) of 30:1 for LP Schools (classes I to V) and 35:1 for UP Schools (classes VI to VIII) was made applicable school-wise ie. taking the total strength of students in a school and not on the basis of divisions. It was envisaged that additional posts would be sanctioned based on the school wise PTR. Further, the State Government directed a change in the manner of staff fixation, from the erstwhile procedure under the KER to an UID based staff fixation in schools, from the academic year 2013-14.
- xi. By G.O.(P) 192/2014/G.Edn dated 20.09.2014 the State Government has notified the local authorities

that are to discharge the duties and functions specified in S.9 of the RTE Act.

- xii. Through G.O.(P) 60/2015/G.Edn dated 26.02.2015, the State Advisory Council was re-constituted to include the Chairperson of the Kerala State Commission for Protection of Child Rights.

5. On a consideration of the steps taken by the State Government thus far, in the light of its obligation to give effect to the provisions of the RTE Act in the State, I find that the State Government will now need to complete the following tasks so as to put itself in a position where it will be able to effectively consider the applications preferred by the petitioners herein for upgradation of their schools.

(i) The data with regard to children up to the age of 14 years will have to be gathered and analysed, and a report drawn up showing the educational need of each area within the territorial limits of the various local authorities in the State.

(ii) Based on a comparison of the aforesaid data, with the data obtained with regard to the current infrastructural facility available in the said areas, a decision will have to be taken as regards the

sanctioning of new schools/upgradation of existing schools in the area concerned. The progress report dated 13.05.2015 prepared by the State Project Director, SSA, Kerala indicates that steps are well underway towards collection of the aforesaid data and preparation of the necessary software that will process the same. Specific time schedules between June 15th and July 15th, 2015 have also been indicated for completing the process.

(iii) The State Government will also need to evolve suitable criteria that will determine which, among the many applications for sanction of new schools/upgradation of existing schools, will be preferred for the said grant.

(iv) It is only thereafter, that the State Government can call for and consider the applications for the grant of new schools/upgradation of existing schools in each area.

6. When queried on the time that would be required by the State Government for completing the aforesaid exercise, the learned Additional Advocate General would submit that the State would require eight months time for the same. On a consideration of the task that the State Government is expected to undertake, I am of the view

that the time of eight months, requested for by the State Government, is excessive. In my view, taking into account the time frame indicated by the State Project Director, SSA, Kerala in the progress report referred to above, as well as the time required for incidental activities, a time frame of four months from today should suffice for the State Government to put itself in a position to call for applications for sanction of new schools/upgradation of existing schools. 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 ie. 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. This observation is made in the light of I.A.No.7592/2015, preferred in W.P (C) No. 14814/2015, wherein the petitioner seeks permission to admit students in Standard V in his school where, currently, only classes upto standard IV have been sanctioned. To similar effect are the prayers in W.P.(C). No.14833/2015 and W.P.(C).No.15219/2015 where the petitioners seek a direction to the Educational Authorities to sanction Standard V and VIII respectively in their Schools which, at present, have only classes up to Standard IV and VII respectively. My findings above would necessitate a dismissal of I.A.No.7592/2015 in W.P.(C). No.14814/2015 and W.P.(C).Nos.14833/2015 and 15219/2015. I do so.

7. Before parting with these cases, I might also observe that, the RTE Act has been enacted pursuant to the insertion of Article 21-A in the Constitution by the Eighty Sixth Amendment Act, 2002 which received assent on 12.12.2002. In fact, even before that, the Supreme

Court in **Unnikrishnan J.P v. State of A.P – [(1993) 1 SCC 645]** had, relying on Article 45 of the Constitution, observed that children up to the age of 14 years have a fundamental right to free education. Article 45 of the Constitution before its substitution with effect from 1.4.2010 by the Constitution (Eighty-sixth Amendment) Act, 2002, read as follows:

“45. Provision for free and compulsory education for children:- The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.”

8. The judgment of the Supreme Court in **Unnikrishnan’s case [Supra]**, clearly indicated that no further time was to be lost in making the fundamental right to free education a reality. Paras 172, 175 and 176 in **Unnikrishnan's case [Supra]** contained the following observations:

172. Right to free education for all children until they complete the age of fourteen years. (Art. 45). It is noteworthy that among the several articles in Part IV, only Article 45 speaks of a time-limit; no other article does. Has it no significance? Is it a mere pious wish, even after 44 years of the Constitution? Can the State flout the said direction even after 44 years on the ground that the article merely calls upon it to "endeavour to provide" the same and on the further ground that the said article is not enforceable by virtue of the declaration in Article 37.

Does not the passage of 44 years - more than four times the period stipulated in Article 45 - convert the obligation created by the article into an enforceable right? In this context, we feel constrained to say that allocation of available funds to different sectors of education in India discloses an inversion of priorities indicated by the Constitution. The Constitution contemplated a crash programme being undertaken by the State to achieve the goal set out in Article 45. It is relevant to notice that Article 45 does not speak of the "limits of its economic capacity and development" as does Article 41, which inter alia speaks of right to education. What has actually happened is - more money is spent and more attention is directed to higher education than to - and at the cost of - primary education. (By primary education, we mean the education, which a normal child receives by the time he completes 14 years of age). Neglected more so are the rural sectors, and the weaker sections of the society referred to in Article 46. We clarify, we are not seeking to lay down the priorities for the government - we are only emphasising the constitutional policy as disclosed by Articles 45, 46 and 41. Surely the wisdom of these constitutional provisions is beyond question. This inversion of priorities has been commented upon adversely by both the educationists and economists.

175. Be that as it may, we must say that at least now the State should honour the command of Article 45. It must be made a reality - at least now. Indeed, the National Education Policy - 1986 says that the promise of Article 45 will be redeemed before the end of this century. Be that as it may, we hold that a child (citizen) has a fundamental right to free education up to the age of 14 years.

176. This does not however mean that this obligation can be performed only through the State schools. It can also be done by permitting, recognising and aiding voluntary non-governmental organisations, who are prepared to impart free education to children. This does not also mean that unaided private schools cannot continue. They can, indeed, they too have a role to play. They meet the demand of that segment of

population who may not wish to have their children educated in State-run schools. They have necessarily to charge fees from the students. In this judgment, however, we do not wish to say anything about such schools or for that matter other private educational institutions except 'professional colleges'. This discussion is really necessitated on account of the principles enunciated in *Mohini Jain* ((1992) 3 SCC 666) and the challenge mounted against those principles in these writ petitions.

9. The aforesaid observations of the Supreme Court were made in 1993. As already noted, Article 21-A was inserted in the Constitution by an amendment that received assent in 2002, but took effect only from 01.04.2010. The RTE Act came into force thereafter, and the RTE Rules, framed by the State Government were in place only by 2011. The aforementioned facts are stated herein only to lay emphasis on the urgency with which the State Government is expected to act in a matter that is of significant national importance. The government of a State, that has been a forerunner in the field of education in this country, cannot afford to drag its feet when called upon to guarantee the fundamental rights of its people in the field of elementary education. The State Government shall take note of these aspects while discharging their obligations, within the time limits specified in this judgment. This court expects the State Government to accord high priority to this matter and ensure that there is no

occassion for seeking any extension of time for complying with the directions in this judgment. The children of this State cannot be deprived of their fundamental right to elementary education, either on account of unjustifiable inaction, or on account of delayed action, of the State Government, in the discharge of its constitutional obligations.

The Writ petitions are disposed with the aforesaid directions.

**A.K.JAYASANKARAN NAMBIAR
JUDGE**

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