

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

WP(C).No. 5212 of 2015 (B)

PETITIONER(S) :

**THE MANAGER,
KOTTATHALA SURENDRAN MEMORIAL VOCATIONAL HIGHER
SECONDARY SCHOOL, EDAVATTOM, KARUVELIL P.O.,
KOLLAM DISTRICT.**

**BY ADVS.SMT.K.R.KRISHNAKUMARI
SMT.P.V.RADHAMANI**

RESPONDENT(S) :

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695 001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM, PIN-695 014.**
- 3. THE DISTRICT EDUCATIONAL OFFICER,
KOTTARAKKARA, KOLLAM DISTRICT, PIN-691 506.**

BY SR.GOVERNMENT PLEADER SRI.C.R.SYAMKUMAR

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: TRUE COPY OF THE APPLICATION DATED 06.12.2014 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXHIBIT P2: TRUE COPY OF THE LETTER DATED 19.02.2015 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

EXHIBIT P3: TRUE COPY OF THE ENVELOP CONTAINING EXT.P2 SENT BY THE 3RD RESPONDENT TO THE PETITIONER.

EXHIBIT P4: TRUE COPY OF THE PROCEEDINGS BEARING ORDER NO.B1.2386/2015 DATED 20.08.2015 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P5: TRUE COPY OF THE PROCEEDINGS BEARING NO.B1.2386/2015 DATED 09.09.2015 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P6: TRUE COPY OF THE CERTIFICATE DATED 10.07.2015 ISSUED BY THE PRESIDENT OR PAVITHRESWARAM PANCHAYATH.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.M.SHAFIQUE, J

W.P.C.No.5212 of 2015

Dated this the 27th day of October 2015

J U D G M E N T

Petitioner has approached this Court complaining about the inaction on the part of the educational authorities in not processing his application submitted under Rule 2A(6) of Chapter 5 of the Kerala Educational Rules (for short 'KER'). Petitioner, being the Manager of a school having High School section alone, requested for starting standards 6 and 7 along with the High School section. But the authorities did not take any action on his request.

2. Initially, during the pendency of this writ petition, Ext.P2 order was passed rejecting the application of the petitioner inter alia stating that no notification in terms of Rule 2A(1) has been issued by the Government. Petitioner amended the writ petition challenging Ext.P2 as well. In the meantime, an interim order was passed by this Court on 28/05/2015 directing the educational authorities to consider the application of the petitioner in terms with Rule 2A(6) of Chapter V of KER. However, the same was again rejected on the ground that no notification

was issued in terms of Rule 2A(1). A contempt case was filed and in the meantime, the Government had withdrawn the said order and presently it is stated that the application is under consideration.

2. The learned Government Pleader submits that, in order to submit an application under Rule 2A(6) of Chapter 5 of KER, it has to be preceded by a notification in terms of sub Rule (1) of Rule 2A. This contention, according to me, will make sub Rule (6) of Rule 2A redundant. Sub Rule 6 of Rule 2A reads as under:

2A. Applications for opening of new schools and upgrading of existing schools-

- (1) xxxx
- (2) xxx
- (3) xxx
- (4) xxx
- (5) xxx

(6) *Applications for permission to open a new standard in an existing school during any school year not involving the raising of the grade of the school shall be submitted to the District Educational Officer in charge of the area in form 1 in triplicate."*

3. It is true that, in terms of Rule 2A of Chapter 5, a notification has to be issued for the purpose of upgrading or

starting a new school. That is not the situation here. For starting a new standard, a different procedure has been prescribed in terms of sub Rule 6 of Rule 2A. Under such circumstances, an application submitted in terms of sub Rule 6 of Rule 2A need not be preceded by a notification in terms of sub Rule (1) of Rule 2A and consequently the educational authorities were bound to consider the application submitted by the petitioner under Sub Rule (6) of Rule 2A of Chapter 5 in terms of sub Rules (3), (4) and (5). This has not been done. Therefore, consequential orders are absolutely bad and is liable to be set aside.

In the result, the writ petition is allowed as under:

- i) Ext.P2 is set aside.
- ii) There will be a direction to the respondents to consider the application of the petitioner under Rule 2A(6) in terms of sub Rules (3), (4) and (5) and pass appropriate orders within the periods specified thereunder.

(sd/-)

(A.M.SHAFIQUE, JUDGE)

jsr

True Copy

PA to Judge

