

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

WP(C).No. 9947 of 2010 (P)

PETITIONER :

**THE MANAGER, VIVEKANANDA ENGLISH
MEDIUM SCHOOL, MULLASSERY, THRISSUR DISTRICT.**

**BY ADVS.SRI. ELVIN PETER P.J.
SMT.POOJA SURENDRAN**

RESPONDENTS :

- 1. STATE OF KERALA REPRESENTED BY THE
SECRETARY TO GOVERNMENT, GENERAL EDUCATION, DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.**
- 3. THE ASSISTANT EDUCATIONAL OFFICER,
MULLASSERY, THRISSUR DISTRICT.**

BY GOVERNMENT PLEADER SRI. SOJAN JAMES

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF THE NOTIFICATION DT 27/6/2003 ALONG WITH RELEVANT EXTRACT OF THE LIST ISSUED BY THE R2.**
- P2: COPY OF THE NOTIFICATION DT 29/10/2003 ALONG WITH THE RELEVANT EXTRACT OF THE LIST ISSUED BY THE R2.**
- P3: COPY OF THE ORDER, G.O. DT 20/2/2004 ALONG WITH THE RELEVANT EXTRACT OF THE LIST ISSUED BY THE GOVT.**
- P4: COPY OF THE ORDER DT 31/3/2004 ISSUED BY THE R3.**
- P5: COPY OF THE ORDER DT 18/1/2005 ISSUED BY THE R3.**
- P6: COPY OF THE ORDER DT 29/5/2006 ISSUED BY THE R3.**
- P7: COPY OF THE ORDER DT 10/3/2008 ISSUED BY THE R2.**
- P8: COPY OF THE ORDER DT 29/1/2010 ISSUED BY THE R2.**
- P9: COPY OF THE COMMUNICATION DT 26/3/2007 ISSUED BY THE R2.**

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.9947 of 2010

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Dated this the 3rd day of September, 2015

JUDGMENT

Under challenge in this writ petition is Ext.P8 order issued by the second respondent directing to treat the petitioner's school as among the list of unrecognised schools.

2. The petitioner alleges that the school has provided all the accommodations strictly in accordance with Rule 5 of Chapter IV of the K.E.R. Therefore, no exemption from the D.P.I under Rule 5A of Chapter IV of K.E.R is required for the petitioner's school. Similarly, the petitioner's school has satisfied all the conditions laid down under Rule 17 Chapter V of the K.E.R and, therefore, no temporary recognition is required for the school under Rule 21. Therefore, the petitioner's school is entitled to be granted permanent recognition prescribed under Rule 21; it is alleged.

3. The petitioner further alleges that the only shortcoming in the physical requirement of the school established by him is in relation to the site area. It is stated that once the Government granted permission to the school under Rule 11, it should be presumed that the requirement of the site area has been exempted and respondents 2 and 3 have absolutely no authority to consider

them. Therefore, Ext.P8 order issued by the second respondent directing to treat the petitioner's school as among the list of unrecognised schools without granting recognition is absolutely illegal, arbitrary and was issued without any authority of law. It is with this background, the petitioner has approached this Court.

4. No counter affidavit has been filed by the respondents.

5. Arguments have been heard.

6. The learned counsel for the petitioner would point out that the school established by the petitioner has provided accommodation strictly in accordance with Rule 5 of Chapter IV of the K.E.R and Therefore, no exemption from the D.P.I under Rule 5A of Chapter IV of the K.E.R is required for the petitioner's school. It was submitted that the petitioner has satisfied all the conditions laid down in Rule 17 of Chapter V of the K.E.R and, therefore, no temporary recognition is required for the petitioner's school under Rule 21. Therefore, according to the learned counsel for the petitioner, the petitioner's school is entitled to be granted permanent recognition prescribed under Rule 21.

7. According to the learned counsel, the only shortcoming pointed out by the respondents is the physical requirement of the school established by the petitioner. It is in relation to the area of

the site. The learned counsel for the petitioner would submit that the petitioner's school is having 60 cents of land and buildings therein where the school is functioning. It is crucial to note that the school has been granted temporary recognition from year to year and the same was continuing. Once the Government granted recognition to the petitioner's school under Rule 11, it has to be presumed that the requirement of the site area stand exempted and respondents 2 and 3 cannot now turn round and say that recognition cannot be continued on account of the shortcoming of physical requirement as pointed out above.

8. Moreover, sub rule (1) of Chapter IV KER specifically lays down that the said requirement should be complied only in normal circumstances which obviously means that in area where it is impossible to procure the site area laid down under Rule 1 for establishing the school. Therefore, this Court is of the view that in such cases, Rule 1 need not be strictly enforced. The very fact that the petitioner was enjoying the recognition of the Government would indicate that the petitioner is entitled to have the same benefit so that the children of the locality would have the ultimate benefit of primary education. This special circumstance warrants an interference by this Court in this matter.

9. This Court is of the view that recognition can be granted to the petitioner's school after obtaining an undertaking from the petitioner that the land and building shall be exclusively used for running the school only.

In the result, the writ petition is allowed. Ext.P8 is quashed. Respondents 2 and 3 are directed to grant permanent recognition to the petitioner's school, within two months from the date of receipt of a copy of this judgment, on receipt of getting a undertaking as above. It is hereby made clear that this shall not be treated as a precedent for giving relaxation to the physical requirements and the relief is granted to the petitioner only on account of the special circumstances that the petitioner's school was enjoying recognition till the impugned order was issued.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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