

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

WP(C).No. 7694 of 2015 (J)

PETITIONER(S):

**SADASIVA KURUP, AGED 68 YEARS
MANAGER, UPPER PRIMARY SCHOOL
ELIPPAKULAM (VIA.) PALLICKAL, ALAPPUZHA DISTRICT.**

BY ADV. SRI.B.KRISHNA MANI

RESPONDENT(S)/RESPONDENTS:

- 1. THE ASSISTANT EDUCATIONAL OFFICER
KAYAMKULAM, ALAPPUZHA DISTRICT - 690 502.**
- 2. THE REGISTRAR
N.S.S.KARAYOGAM, CHANGANASSERY
KOTTAYAM DISTRICT - 686 106.**
- 3. CHANDRASEKHARAN PILLAI
UTHRADAM VEEDU, ELIPPAKULAM MURI, VELIKKUNNAM VILLAVE
MAVELIKKARA TALUK, ALAPPUZHA DISTRICT. 690 503**

R2 BY ADV. SRI.R.T.PRADEEP

R3 BY ADV. SRI.K.B.PRADEEP

**R1 BY GOVERNMENT PLEADER SRI.RINNY STEPHEN
CHAMAPARAMPIL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
15-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C).No. 7694 of 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: TRUE COPY OF THE APPLICATION DATED 30/05/2013.

**EXT.P2: TRUE COPY OF THE BY-LAW OF THE N.S.S. KARAYOGAM,
ELIPPAKULAM.**

EXT.P3: TRUE COPY OF THE ORDER DATED 02/03/2015.

**EXT.P4: TRUE COPY OF THE PLAINT, OS NO.530/2014 BEFORE THE MUNSIFF'S
COURT, KAYAKULAM DATED 09/12/2014.**

RESPONDENT(S)' EXHIBITS

EXT.R1(A): COPY OF THE LETTER DATED 28.10.2014.

**EXT.R1(B): COPY OF THE LETTER ISSUED BY THE PETITIONER DATED
15.11.2014.**

**EXT.R1(C): COPY OF THE LETTER ISSUED TO THE SECOND RESPONDENT
DATED 05.03.2015.**

**EXT.R3 A: COPY OF THE ORDER OF DISMISSAL OF I.A.NO.3275/2014 DATED
20.3.2015 IN O.S.NO.530/2014.**

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.7694 OF 2015 (J)

Dated this the 15th day of July, 2015

J U D G M E N T

The petitioner is working as the Manager of an U.P. School, Elippakulam in Alappuzha District. By Ext.P1 order dated 30.5.2013, the petitioner was appointed as the Manager for a period from 1.4.2013 to 31.3.2016. It is the case of the petitioner that as per the bye laws of the N.S.S. Karayogam, it is the Executive Committee, elected by the General body, that has to elect a Manager. While the petitioner was continuing as a Manager of the School, by Ext.P3 communication dated 2.3.2015, the Assistant Educational Officer [AEO] informed the Head Master of the School that the 3rd respondent had been appointed as the Manager of the School. Finding this to be an action that was done behind the back of the petitioner, who was, at that point of time, the President of the Karayogam, the petitioner filed the present writ petition challenging Ext.P3 communication of the AEO as illegal.

2. Counter affidavits have been filed by respondents 1 and 3 and a statement has been filed by the 2nd respondent. In the counter

affidavit filed by the 1st respondent, it is stated that the petitioner is the approved Manager of the School from 1.4.2013 to 31.3.2016. It is stated that a communication was received by the 1st respondent from the Registrar of the N.S.S. Karayogam that the governing body of the Karayogam has been disbanded and the 3rd respondent was appointed as the Manager of the School. Reference is made to Ext.R1(a) communication dated 28.10.2014. It is also averred in the counter affidavit that the petitioner had informed the 1st respondent of the institution of a suit [O.S.No.530/2014]. It is pointed out that Ext.P3 communication was issued to the Head Master at the request of the 3rd respondent only to communicate to him that a decision had been taken by the Karayogam to appoint the 3rd respondent as the Manager of the School. It is specifically stated that Ext.P3 is not an order that is issued in terms of the Kerala Education Rules [hereinafter referred to as the 'KER']. It is also stated that as of now, the petitioner is the Manager of the School and Ext.P3 does not dislodge the petitioner as the Manager of the School. In the statement filed by the 2nd respondent, reference is made to the meetings held by the Karayogam and also the fact that the 3rd respondent is part of an ad-hoc committee that was constituted by the Registrar of the N.S.S.

Karayogam to manage the property of the School pursuant to Clause 15 of the Articles of Association of NSS and Clause 55 of the bylaws. In response to the challenge of the petitioner against Ext.P3, it is the stand of the 2nd respondent that Ext.P3 is an appealable order under the KER. In the counter affidavit filed by the 3rd respondent, reference is made to Ext.R3 A order dated 20.3.2015 of the Civil court that dismisses an I.A. for injunction against the respondents.

3. I have heard the learned counsel for the petitioner, learned counsel for the 2nd respondent, learned counsel for the 3rd respondent as also the learned Government Pleader for the official respondents.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, and, in particular, taking note of the specific stand of the 1st respondent in its counter affidavit that Ext.P3 is not an order that is issued in terms of the KER, and further that Ext.P3 does not have the effect of dislodging the petitioner as the Manager of the School, I am of the view that if it is the case of the respondents that the 3rd respondent is the Manager of the School and not the petitioner, then it is for the said respondent to

establish this fact before the 1st respondent pursuant to an application for change in management filed before the said respondent. Inasmuch as this has not been done till date, the 1st respondent is right in its stand, in the counter affidavit, that, as of today, the petitioner is the Manager of the School in the records available with the Educational authorities. I therefore dispose the writ petition with a direction to the 1st respondent to take a decision in the matter of identifying the Manager of the School, on an application received by him from the 2nd respondent for a change of the Manager. To enable the 1st respondent to take a decision in the matter, I direct the 2nd respondent, who states that he intends to file an application for change in management of the School in favour of the 3rd respondent, to prefer such application within a period of two weeks from the date of receipt of a copy of this judgment. On receipt of the said application, the 1st respondent shall take a decision in the matter after hearing the 2nd respondent, 3rd respondent and the petitioner, and after adverting to the documents produced by them in support of their respective contentions, within a period of two months from the date of receipt of a copy of this judgment. I make it clear that, till such time as the 1st respondent passes orders as directed and communicates the

same to the petitioner and other parties, the interim order of status quo that was granted by this Court on 11.3.2015, shall continue to be in force.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp