

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

WP(C).NO. 12893 OF 2015 (J)

PETITIONER:

MUNEERA .T.P.

W/O.SHOUKATHALI, MANAGER, MANGATTUMURI A.M.L.P.SCHOOL
P.O.OLAVATTOOR, MALAPPURAM DISTRICT, PIN-673638.

BY ADVS.SRI.KURIAN GEORGE KANNANTHANAM (SR.)

SRI.PAUL MATHEW (PERUMPILLIL)

SRI.PRASUN.S

RESPONDENTS:

1. DIRECTOR OF PUBLIC INSTRUCTIONS
JAGATHY, THIRUVANANTHAPURAM, PIN-695014.

2. ASSISTANT EDUCATIONAL OFFICER,
KONDOTTI, MALAPPURAM DISTRICT.

3. THE HEADMASTER-IN-CHARGE,
MANGATTUMURI.A.M.I.P.SCHOOL.P.O, OLAVATTOOR
MALAPPURAM DISTRICT, PIN-673638.

R1 BY ADV. GOVERNMENT PLEADER SRI.MOHANNED SAVAD

R3 BY ADV. SRI.P.C.SASIDHARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) .NO. 12893 OF 2015 (J)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1 TRUE PHOTOSTAT COPY OF THE NOTICE DT.16.5.2009 ISSUED BY THE
PETITIONER TO THE DIRECTOR OF PUBLIC INSTRUCTION

EXT.P2 TRUE COPY OF THE LETTER DT.20.05.2010 TO THE 3RD RESPONDENT HEAD
MISTRESS OF A.M.L.P.SCHOOL,KONDOTTY

EXT.P3 TRUE COPY OF THE LETTER DT.22.5.2010 ISSUED TO THE 2ND
RESPONDENT

EXT.P4 TRUE PHOTOSTAT COPY OF THE JUDGMENT DATED 3.8.2009 IN W.P(C)
21828 OF 2009

EXT.P5 TRUE PHOTOSTAT COPY OF THE ORDER PASSED BY THE RESPONDENT
REJECTING EXHIBIT P1

EXT.P6 TRUE PHOTOSTAT COPY OF THE JUDGMENT DT.12.4.2011 IN WP(C)18311
OF 2010

EXT.P7 TRUE PHOTOSTAT COPY OF THE JUDGMENT DT.12.11.2014 IN WP(C)
W.A.653/2011

EXT.P8 TRUE PHOTOSTAT COPY OF THE LETTER DT.2.2.2015 ADDRESSED TO
RESPONDENTS 2& 3

EXT.P8 (A) THE POSTAL ACKNOWLEDGMENTS FOR SENDING EXHIBIT P8

EXT.P9 TRUE PHOTOSTAT COPY OF THE JUDGMENT DT.19.1.2015 IN W.P(C)4254
OF 2013.

RESPONDENT(S) ' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.12893 OF 2015

Dated this the 30th day of June, 2015

J U D G M E N T

The petitioner in the writ petition is the Manager of A.M.L.P. School, Kondotty in Malappuram District. Inasmuch as the School was uneconomical and the petitioner was facing a financial crisis, the petitioner issued a statutory notice under Section 7(6) of the Kerala Education Act [hereinafter referred to as the 'KE Act'], to the 1st respondent, intimating him of the proposal to close down the School. Ext.P1 dated 16.5.2009 is a copy of that notice. It would appear that, after the expiry of the period of one year since the issuance of Ext.P1 notice, the petitioner issued directions to the 3rd respondent Headmaster to make available the records and accounts of the School for submitting before the 2nd respondent Assistant Educational Officer. Through Ext.P3 letter dated 22.5.2010, the 2nd respondent was also requested to take over the records and accounts in terms of Rule 25 of Chapter V of the Kerala Education Rules [hereinafter referred to as the 'KER'], so as to complete the process of closure of the School. As no action was forthcoming from the respondents, the petitioner approached this Court seeking a direction to the respondents to comply with the provisions of Rule 25 of Chapter V of the KER and to receive the

records and accounts of the A.M.L.P. School, Kondotty in Malappuram District, so as to complete the process of closure of the School pursuant to Ext.P1 notice that was served on the respondents by the petitioner.

2. A counter affidavit has been filed on behalf of the 1st respondent, wherein, the stand taken is that the notice sent by the petitioner could not be acted upon since the petitioner's appointment as a Manager of the School was itself on a provisional basis, and therefore, the petitioner did not have the authority to issue Ext.P1 notice for closure of the School. It is also stated that, on account of the provisions of the Right of Children to Free and Compulsory Education Act, 2009, [hereinafter referred to as the 'RTE Act'], whereunder, elementary education is free and compulsory to children in the age group of 6 to 14, the Government is under an obligation to establish and run schools for elementary education at walkable distance of the children. Relying on the provisions of the said Act, therefore, the respondents would contend that the petitioner cannot be permitted to close down the School in terms of the provisions of the KER without analysing the provisions of the RTE Act referred to above.

3. In the counter affidavit filed by the 3rd respondent also, the authority of the petitioner to function as a Manager in connection with the issuance of Ext.P1 notice is called in question. Reliance is also placed on the provisions of Section 6 of the KE Act that mandates that no sale of property of an aided school can be made without permission of the competent authority, and that if any transaction is made in contravention of the statutory provisions, then the said transaction shall be null and void. It is contended that inasmuch as a closure of the School would adversely affect the working of the institution and the interest of the staff, the petitioner cannot compel the educational authorities to accept her request for closing down the School. The provisions of the RTE Act, 2009 are also relied upon to contend that the petitioner cannot close down the school. The learned senior counsel for the petitioner, in response to the submissions with regard to the competence of the petitioner to function as a Manager of the School, would rely on Ext.P4 judgment of this Court, whereby, this Court had directed that till final orders were passed by the Educational authorities in the matter of competence of the petitioner to function as a Manager of the School, the provisional approval that was granted to function as a Manager would continue. It is not in dispute that consequent to Ext.P4, and the

direction to the Educational authority to take a decision in the matter, no final decision that touches upon the competence of the petitioner to function as a Manager of the School had been taken by the Educational authorities.

4. I have heard the learned Senior counsel for the petitioner, learned Government Pleader for the official respondents as also the learned Standing counsel for the 3rd respondent.

On a consideration of the facts and circumstances of the case as also the submission made across the bar, I find that the issue involved in this case is identical to the issue that was decided by this Court through a judgment dated 8.6.2015 in W.P.(C). No.12873/2015 and W.P.(C).No.12205/2015. In the said judgment, after analysing the effect of the provisions of the RTE Act and Rules, on an application submitted by a School, that had not preferred any application in terms of the RTE Act and Rules for the grant of recognition, this Court had found that the request of the petitioner to close down the School in accordance with the provisions of the KE Act and Rules had to be accepted by the respondents. Inasmuch as in the instant case also, it is not in dispute that the petitioner had not preferred any application in

terms of the RTE Act seeking recognition for the school for the purposes of the said Act, it would follow that the findings in the judgment referred to above would apply squarely to the facts of the instant case as well. Accordingly, I hold that the stand of the State Government, that the petitioner cannot be permitted to close down the School, by placing reliance on the provisions of the RTE Act and Rules, is one that cannot be legally sustained, and resultantly, I allow this writ petition by holding that the petitioner is entitled to close down the School in accordance with the provisions of the KE Act and Rules, and in the light of Ext.P7 judgment of the Full Bench of this Court. The 2nd respondent [Assistant Education Officer, Kondotty, Malappuram] is directed to take over the records of the School from the petitioner forthwith (which action the 3rd respondent shall also facilitate), at any rate, within a period of one week from the date of receipt of a copy of this judgment, so as to enable the petitioner to complete the process of closing the A.M.L.P. Schol, Kondotty in Malappuram District.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp