

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

WP(C).No. 17427 of 2013 (C)

PETITIONER(S):

**N.NATARAJAN, AGED 56 YEARS,
MEMBER-MANAGING COMMITTEE OF - GANAPATHY VILASOM
EDUCATIONAL AGENCY
KOOVAPPADY, S/O. LATE NARAYAN IYER,
RESIDING AT THEKKEPUTHIYEDATH MADOM, KOOVAPPADY,
PERUMBAVOOR, ERNAKULAM DISTRICT.**

**BY ADVS.SRI.S.P.PARAVINDAKSHAN PILLAY
SRI.T.C.SURESH MENON
SRI.A.R.NIMOD
SRI.SANIL JOSE
SRI.P.S.APPU
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO
SRI.S.A.ANAND**

RESPONDENT(S):

- 1. THE DEPUTY DIRECTOR OF EDUCATION,
ERNAKULAM-682 001.**
- 2. THE DISTRICT EDUCATIONAL OFFICER,
ERNAKULAM-682 001.**
- 3. KASTHURIRANGAN,
THEKKEPUTHIYEDATH MADOM, KOOVAPPADY,
NOW RESIDING IN U.S.A.,
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER
SMT. K.MANGALAMBAL,
RESIDING AT THEKKEPUTHIYEDATH MADOM, KOOVAPPADY,
PERUMBAVOOR, ERNAKULAM-683 544.**
- 4. J.JAWAHAR
RESIDING AT RUGMINI MANDIRAM, G.K.ROAD, PERUMBAVOOR,
ERNAKULAM-683 542.**

msv/

WP(C).No. 17427 of 2013 (C)

*** ADDITIONAL R5 TO R8 IMPEADED**

5. J.RAMANATHAN

S/O.LATE T.JAWAHAR, SKYLINE ATLANTIS, FLAT C 401,
C BLOCK 4TH FLOOR, OLD MADRAS ROAD,
DOORVANI NAGAR POST, BANGALORE - 660 018,
HAVING BEEN COME OVER TO ERNAKULAM.

6. RUGMINI AMMAL, AGED 71 YEARS,

W/O.LATE T.JAWAHAR, RESIDING AT SKYLINE ATLANTIS,
FLAT C 401, C BLOCK 4TH FLOOR, OLD MADRAS ROAD,
DOORVANI NAGAR POST, BANGALORE - 660 018.

7. LALITHA KRISHNAN, AGED 48 YEARS,

D/O.LATE T. JAWAHAR, RESIDING AT SKYLINE ATLANTIS,
FLAT C 401, C BLOCK 4TH FLOOR, OLD MADRAS ROAD,
DOORVANI NAGAR POST, BANGALORE - 660 018.

8. RANI REMESH, AGED 44 YEARS,

D/O.LATE.T.JAWAHAR, RESIDING AT SKYLINE ATLANTIS,
FLAT C 401, C BLOCK 4TH FLOOR, OLD MADRAS ROAD,
DOORVANI NAGAR POST, BANGALORE - 660 018.

* ADDL. R5 TO R8 ARE IMPEADED AS PER ORDER
DATED 07/01/2014 IN IA 298/2014.

*** ADDITIONAL R9 & R10 IMPEADED**

9. K.SADANANDAN, S/O.LATE KANNAN

KALAPURACKAL, CHERANELLOOR, EDAVOOR P.O.,
KOVAPPADY VILLAGE, KUNNATHUNADU TALUK,
PIN - 683 544.

10. K.K.KARNAN, S/O.KRISHNANKUTTY,

AGED 61, KURAVAMPADATH HOUSE,
OKKAL P.O., ERNAKULAM - 683 550.

* ADDL. R9 TO R10 ARE IMPEADED AS PER ORDER
DATED 31.3.2015 IN IA 4773/2014.

R9-R10 BY ADVS. SRI.M.R.ANISON

SMT.T.B.REMANI

SMT.K.P GEETHAMMA

SMT.V.BHARGAVI (PANANGAD)

SMT.PA.RINUSA

R1 & R2 BY GOVERNMENT PLEADER SMT.A.LOWSY

R3 & R5 TO R8 BY ADV. SRI.P.R.SHAJI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
19-03-2015, THE COURT ON 31-03-2015, DELIVERED THE FOLLOWING:

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1- TRUE COPY OF SALE DEED NO. 1678/1957-S.R.O. PERUMBAVOOR
DATED 20-5-1957.**

EXHIBIT P2- TRUE COPY OF THE DEED (AGREEMENT) DATED 8-6-1972.

**EXHIBIT P3- TRUE COPY OF THE ORDER ISSUED BY THE REGIONAL DEPUTY
DIRECTOR OF PUBLIC INSTRUCTIONS, ERNAKULAM DATED 17-1-1974.**

**EXHIBIT P4- TRUE COPY OF THE JUDGMENT IN WPC NO. 16843/2010 ON THE FILE OF
THE HONOURABLE COURT DATED 15-7-2011 REPORTED IN
2011(3) KHC 778.**

**EXHIBIT P5- TRUE COPY OF THE ORDER IN W.A.NO. 1565/2011 ON THE FILE OF THIS
HONOURABLE COURT DATED 14-6-2012.**

**EXHIBIT P6- TRUE COPY OF THE JUDGMENT IN W.A.NO. 1565 & 1630 OF 2011 ON THE
FILE OF THIS HONOURABLE COURT DATED 3-8-2012.**

**EXHIBIT P7- TRUE COPY OF THE ORDER ISSUED BY THE DISTRICT EDUCATIONAL
OFFICER, KOTHAMANGALAM DATED 16-11-2012.**

**EXHIBIT P8- TRUE COPY OF THE NOTICE ISSUED BY THE 3RD RESPONDENT
DATED 17-11-2012.**

**EXHIBIT P9- TRUE COPY OF THE LETTER ISSUED BY THE DISTRICT EDUCATIONAL
OFFICER, KOTHAMANGALAM DATED 3-12-2012.**

**EXHIBIT P10- TRUE COPY OF THE JUDGMENT IN WPC N O. 28041/2012 ON THE FILE
OF THIS HONOURABLE COURT DATED 13-12-2012.**

**EXHIBIT P11- TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE
PETITIONER TO THE D.E.O, KOTHAMANGALAM DATED 1-12-2012.**

**EXHIBIT P12- TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE
PETITIONER TO THE D.E.O, KOTHAMANGALAM DATED 1-3-2013.**

**EXHIBIT P13- TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE
PETITIONER TO THE D.E.O, KOTHAMANGALAM DATED 22-3-2013.**

**EXHIBIT P14- TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE
PETITIONER TO THE 2ND RESPONDENT DATED 19-4-2013.**

**EXHIBIT P15- TRUE COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT
DATED 22-6-2013.**

msv/

WP(C).No. 17427 of 2013 (C)

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.MUHAMED MUSTAQUE, J.

W.P.(C) No. 17427 OF 2013

Dated this the 31st day of March, 2015

JUDGMENT

This writ petition is directed against Ext.P15 order issued by the Deputy Director of Education, Ernakulam, approving the amendment to the Constitution of Ganapathy Vilasom Educational Agency, Kopovappady.

2. Ganapathy Vilasom High School is an aided high school established in the year 1938 by one A.S.Narayana Iyer. The petitioner and respondents 3 and 4 are the owners and members of the managing committee of Ganapathy Vilasom High School. According to the petitioner, this school was purchased by the petitioner's father Sri.K.S.Narayana Iyer and Sri.Viswanathan, the father of the 3rd respondent, and Sri.Ramanatha Iyer, an adoptee father of the 4th respondent. Ext.P1 is the sale deed. One among the members is used to be nominated as a Manager for the purpose of Kerala Education

Act and Rules. An agreement executed by them on 8/6/1972 produced as Ext.P2. The manner in which the school has to be managed is stated in Ext.P2 agreement. This agreement was granted sanction from the Regional Deputy Director.

3. The petitioner filed O.S. No.120/2005 before the Munsiff's Court, Perumbavoor challenging the transfer of right made by the respondents 3 and 4 without the knowledge of the petitioner and without obtaining permission in terms of the Kerala Education Act & Rules. The suit was decreed. Thereupon the appeal was filed and the appeal was also dismissed. The matter is now pending in the regular Second Appeal before this Court.

4. This writ petition is presently filed against the amendment to the Bye Laws. By amendment a decision was seems to be taken to include five more members in the Managing Committee. The petitioner objected such amendment. However, overlooking the petitioner's objection, a resolution was passed amending the bye laws. Now the question arises for consideration is the approval granted to the bye laws by the Deputy Director of Education.

5. Rule 2 of Chapter III of KER provides for approval of

the Constitution related to the management of the school. Therefore, it is necessary to understand the scope of approval given by the statutory authorities. It is relevant to refer to Rule 2 of Chapter III, which reads as follows:

"2. Constitution of Corporate Management-

In the case of institutions under corporate Educational Agency, the constitution of the Educational Agency to the extent and it so far as it relates to the management of any school must be subject to rules approved by the (Director) which should prescribe among other things (a) the manner in which the proprietary body shall carry out its functions relating to the management of the institutions and (b) the manner in which the managing body shall be elected or appointed the conditions and tenure of their office and their duties and powers with respect to the management of the institution. In the case of aided schools, the manner of appointment of managers also shall be specified in the rules. Such rules shall not be against the provisions of the Education Act, the rules issued under it, or any other rules passed by the Department or the Government. Any change made in such rules subsequently shall be subject to approval by

the (Director) before becoming operative.”

6. Chapter III refers to management of private schools. It classifies the educational institutions by two categories viz. (1) those under individual Educational Agency. (2) and those under Corporate Educational Agency. The Corporate Educational Agency is defined as an Educational Agency in which the right of management is vested in (a) two or more persons jointly with written registered agreement. In the light of Rule 1, which particularly refers to the classification of the institution, the Rule 2 has to be understood. Rule 2 only refers to the satisfaction by the competent authority as to the manner in which proprietary body has to function relating to the management of the institution and the manner in which the Managing Body has to be elected or appointed and the conditions and tenure of their office and their duties and powers with respect to the management of the institution. Thus, it is only to ensure that the Constitution of the amendment is consistent with the right to manage the school in terms of Chapter III of KER. The school cannot be left to the undefined proprietary for its management. There must be clear and certain procedure recognised under Law to elect

managing body so as to ensure smooth functioning of the school. Thus scope of enquiry is only limited to find out defined procedure to elect managing body in the bye laws. The differences among the managing committee and the dispute with respect to the right of the managing committee to amend bye laws cannot be decided by the competent authority under Rule 2. Those disputes are purely a civil dispute among the persons with whom the right is vested. The validity of the amendment cannot be decided by the competent officer. No doubt, if the Civil Court passed an order against re-constitution of bye law or amendment of bye law, the competent authority is bound by such decision. The petitioner has no case that the bye law has been amended by totally a strange person who was nothing to do with the school. The bye law, in fact, amended at the instance of respondents 3 and 4, who are undoubtedly members of the Corporate Agency.

7. In that view of the matter, this Court cannot interfere with the decision of the Deputy Director as made in Ext.P15. The petitioner is at liberty to question the right of the respondents 3 and 4 or any other person to amend the bye law in appropriate manner.

With that liberty this writ petition is dismissed. No costs.

Sd/-

**A.MUHAMED MUSTAQUE,
Judge.**

dpk

/true copy/ PS to Judge.

