

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. 18634 OF 2015 (D)

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PETITIONER(S):

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V.C. PRAVEEN

MANAGER, KOORIKUZHI A.M.U. P SCHOOL, KOORIKUZHI  
KAIPAMANGALAM, THRISSUR DISTRICT

BY ADV. DR.GEORGE ABRAHAM

RESPONDENT(S):

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1. STATE OF KERALA  
EPRESENTED BY SECRETARY TO GOVERNMENT  
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT  
THRIUVANANTHAPURAM 695 001

2. THE DIRECTOR OF PUBLIC INSTRUCTION,  
JAGATHI, THIRUVANANTHAPRUAM 695 014

3. THE DISTRICT EDUCATIONAL OFFICER,  
CHAVAKKAD, THRISSUR PIN 680 567

4. MANAGER,  
MALIK DINAR ISLAMIC ORPHANAGE U.P SCHOOL  
KAIPPAMANGALAM, THRISSUR DISTRICT PIN 680 681

R4 BY ADV. SRI.P.M.MOHAMMED SHIRAZ  
BY GOVERNMENT PLEADER SMT.RINNY STEPHEN CHAMAPARAMBIL

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

WP(C).NO. 18634 OF 2015 (D)

WP(C) .NO. 18634 OF 2015 (D)

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#### APPENDIX

#### PETITIONER(S) ' EXHIBITS

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EXHIBIT P1 TRUE COPY OF THE APPLICATION FOR UPGRADATION DATED  
26-08-2010 SUBMITTED BY THE PETITIONER SCHOOL

EXHIBIT P2 TRUE COPY OF THE RESOLUTION PASSED BY THE PANCHAYATH  
COMMITTEE, DATED 25-06-2009

EXHIBIT P3 TRUE COPY OF THE REPRESENTATION DATED 10-07-2009 SUBMITTED  
BY THE PARENT TEACHERS ASSOCIATION OF THE SCHOOL TO THE MINISTER OF  
EDUCATION

EXHIBIT P4 TRUE COPY OF THE COMMUNICATION DATED 14-09-2009 ISSUED BY  
THE GOVERNMENT

EXHIBIT P5 TRUE COPY OF THE PAPER REPORT

EXHIBIT P6 TRUE COPY OF THE REPORT APPEARED IN DESABHIMANI DAILY DATED  
10-09-2010

EXHIBIT P7 TRUE COPY OF THE ABOVE MENTIONED APPLICATION

EXHIBIT P8 TRUE COPY OF THE JUDGMENT DATED 17-12-2010 IN WP(C) NO  
33631/2010

EXHIBIT P9 TRUE COPY OF THE ORDER DATED 24-01-2011 ISSUED BY THE 1ST  
RESPONDENT

EXHIBIT P10 TRUE COPY OF THE GOVERNMENT ORDER G.O(P) 98/12/G.EDN DATED  
28-03-2012 ISSUED BY THE 1ST RESPONDENT

EXHIBIT P11 TRUE COPY OF THE INSPECTION REPORT OF THE DEPUTY DIRECTOR  
OF EDUCATION, THRISSUR

EXHIBIT P12 TRUE COPY OF THE RECOMMENDATION DATED 16-03-2013 OF THE  
DEPUTY DIRECTOR OF PUBLIC INSTRUCTION

EXHIBIT P13 TRUE COPY OF THE CERTIFICATE DATED 17-05-2012 ISSUED BY THE  
ASSISTANT ENGINEER OF KAIPPAMANGALAM GRAMA PANCHAYATH

EXHIBIT P14 TRUE COPY OF THE COMMUNICATION NUMBER N.S 3/64216/D.P.I  
DATED 11-06-2013 OF THE DIRECTOR OF PUBLIC INSTRUCTIONS TO THE  
GOVERNMENT SECRETARY

EXHIBIT P15 TRUE COPY OF THE ORDER DATED 08-06-2015 ISSUED BY THE 1ST  
RESPONDENT UPGRADING THE 4TH RESPONDENT SCHOOL

EXHIBIT P16 TRUE COPY OF THE CERTIFICATE DATED 23-05-2012 ISSUED BY THE  
ASSISTANT ENGINEER

EXHIBIT P17 TRUE COPY OF THE RESOLUTION TAKEN BY THE KAIPPALANGALAM  
GRAMA PANCHAYATH

WP(C).NO. 18634 OF 2015 (D)

RESPONDENT (S) ' EXHIBITS:

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EXHIBIT-R4 (A) : TRUE PHOTOCOPY OF RESOLUTION NO.4 DATED 30.07.2007 OF  
KAIPAMANGALAM GRAMA PANCHAYAT

EXHIBIT.R4 (B) : TRUE PHOTOCOPY OF ORDER IN CASE NO.732/2009 DATED  
16.12.2010 OF NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS.

EXHIBIT-R4 (C) : TRUE PHOTOCOPY OF LETTER NO.B/1011/13 DATED 18.05.2013

EXHIBIT-R4 (D) : TRUE PHOTOCOPY OF LETTER NO.OCB 1/17706/12 DATED  
19.06.2013 OF MEMBER SECRETARY

EXHIBIT-R4 (E) : TRUE PHOTOCOPY OF LETTER NO.S.3/3082/11/DPI DATED  
25.10.2011 OF 2ND RESPONDENT

EXHIBIT R4 (F) : TRUE PHOTOCOPY OF CERTIFICATE DATED 04.05.2012 OF  
ASSISTANT ENGINEER, LSGD SECTION

//TRUE COPY//

P.A TO JUDGE

**A.K.JAYASANKARAN NAMBIAR, J.**

.....  
**W.P.(C).No.18634 of 2015**

.....  
**Dated this the 15<sup>th</sup> day of July, 2015**

**J U D G M E N T**

The petitioner is the Manager of AMUP School, Koorikuzhi in Chavakkad. The said School is situated in an educational backward area and has classes upto 7<sup>th</sup> standard. It is the case of the petitioner that while the petitioner has been submitting applications since 2010 seeking upgradation of the School as a High School, and the said applications have been supported by resolutions of the Panchayath recommending the upgradation, the application of the petitioner was not considered by the Government on various occasions for the reason that the Government did not have a policy for up-gradation of Schools during the relevant time. The petitioner thereafter, approached this Court through W.P.(C).No.33631 of 2010 with a prayer for directing the 1<sup>st</sup> respondent to consider a representation preferred by the petitioner seeking an upgradation of a School, as and when the Government came out with a policy for upgradation of Schools in the Educational district. By Ext.P8 judgment dated 17.12.2010, this Court directed the 1<sup>st</sup> respondent to consider the representation preferred by the petitioner while considering the issue of upgradation of Schools in the educational district. Consequent to Ext.P8 judgment, the 1<sup>st</sup> respondent by Ext.P9

order dated 24.01.2011, indicated that there was no change in the policy adopted by the Government, and therefore, the application of the petitioner for upgradation could not be considered by the Government. Thereafter, in 2012, the Government changed its policy and invited applications for upgradation of Schools in the educational district. On finding that there were many Schools in the district that got upgraded, the petitioner also submitted an application seeking upgradation of the School. By Ext.P14 communication dated 11.06.2013, the Director of Public Instruction recommended the School of the petitioner for upgradation. It was while the said application submitted by the petitioner, together with Ext.P14 recommendation of the Director of Public Instruction, was pending before the 1<sup>st</sup> respondent that the petitioner came across Ext.P15 order dated 08.06.2015, whereby the 1<sup>st</sup> respondent upgraded the School belonging to the 4<sup>th</sup> respondent. In the writ petition, Ext.P15 order of the 1<sup>st</sup> respondent is impugned, inter alia, on the ground that no study was done or a comparative assessment made prior to the passing of Ext.P15 order in favour of the 4<sup>th</sup> respondent. It is also contended that Ext.P15 order does not, on the face of it, indicate as to why the School of the 4<sup>th</sup> respondent was to be preferred over the petitioner's School in the matter of upgradation.

2. A counter affidavit has been filed by the 4<sup>th</sup> respondent, who also filed a petition to vacate the interim order that was passed by this Court on 23.06.2015. By the said order, this Court had stayed the operation and implementation of Ext.P15 order that was passed by the Government in favour of the 4<sup>th</sup> respondent. In the counter affidavit, the 4<sup>th</sup> respondent states that his School is a minority institution, and it was on the recommendation of the minority commission that the School has been upgraded by the State Government. It is pointed out that the 4<sup>th</sup> respondent School is the only aided School in Thrissur district which is attached to a recognised orphanage and which does not have a High School Section. The 4<sup>th</sup> respondent vehemently supports Ext.P15 order on the contention that, it is the evident policy of the State Government that an upgradation should be given to Schools run by orphanages, and of the four orphanage run Schools in the State, three including the petitioner have already been upgraded and the upgradation of the petitioner's School was only an exercise in continuation of a policy decision taken by the Government. There is no counter affidavit filed on behalf of the State Government .

3. I have heard the learned counsel for the petitioner, learned counsel for the 4<sup>th</sup> respondent and the learned Government Pleader for the official respondents.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that as per the stated policy of the Government, which was communicated to the petitioner on more occasions than one, there was no requirement for upgradation of School in the educational district in question. When the State Government subsequently indicated that it was considering applications for upgradation of Schools in the district, the petitioner too had filed an application seeking upgradation of his School. The Director of Public Instructions had also recommended the petitioner's school for upgradation. It was pending consideration of the said application, and without intimating the petitioner of any decision in the matter of upgradation, that the State Government has now chosen to upgrade the School belonging to the 4<sup>th</sup> respondent.

5. In Ext.P15 order dated 08.06.2015, whereby the 4<sup>th</sup> respondent School has been upgraded, there is no indication as to the existence of a policy decision taken by the State as regards extending concessions to orphanage run Schools. In that view of the matter, even assuming that there is a policy decision that is taken by the State Government, it is apparent that the said policy decision is not a transparent one in that, it has not been published by the State

Government, prior to passing of Ext.P15 order. I am of the view that, in matters involving scores of Schools that seek upgradation, the State Government cannot take decision on a case to case basis, and any decision must be pursuant to a stated policy that is made known to all the stakeholders. The State Government cannot be seen to be acting in an arbitrary and whimsical manner in the grant of upgradation of Schools in the State. The State Government would have to adhere to this mandate, and ensure that there is a uniform application of a consistent policy, in order to avoid the vice of arbitrariness and discrimination while implementing its policies. It is also not discernible from Ext.P15 order as to what rationale guided the classification that is sought to be brought about through Ext.P15 order, between Schools run by orphanages and regular Schools. I am not convinced with the rationale suggested by the learned Government pleader appearing for the State Government, as regards the classification of children studying in orphanage run Schools and children studying in regular schools, viz. that orphans do not have kin who would help them travel to other schools having secondary school sections, in the back drop of the object that is sought to be achieved through the grant of upgradation of schools in the state. The matter assumes greater significance now, when one consider that in terms of the the Right of Children to Free and Compulsory Education Act, that

was enacted to ensure compliance with the provisions of Article 21 A of the Constitution, the State Government is obliged to sanction new Schools or upgraded existing Schools, as required in terms of the provisions of the the Right of Children to Free and Compulsory Education Act and Rules. In the judgment in **Manager, LPGS, Veliyam, Kollam v. State of Kerala and Others [2015 (3) KHC 703]**, this Court had issued various directions to the State Government so as to ensure a compliance by the State Government of its obligations in the matter of opening of new Schools/upgradation of existing Schools as contemplated under the the Right of Children to Free and Compulsory Education Act and Rules. It was noticed at the time of disposal of the said case that, the State Government had yet to conduct the necessary study to determine the educational need of an area and also to put in place a machinery by which they could identify Schools that were to be upgraded and areas where new Schools had to be established. In the light of the said findings in respect of the study conducted by the State Government, and the exercise that had been done in the matter of upgradation of existing Schools, Ext.P15 order that is impugned in the present writ petition cannot be legally sustained.

Resultantly, I quash Ext.P15 order and direct the 1<sup>st</sup> respondent

to consider the matter of upgradation of Schools in the State only in accordance with the stated policy of the State Government in these matters, and after taking note of the directions already issued by this Court in the decision referred to above.

The writ petition is allowed as above.

**A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

mns