

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

WP(C).No. 24143 of 2010 (P)

PETITIONER :

**THE MANAGER,
ST. SEBASTIAN'S HIGH SCHOOL,
CHITTATTUKARA, THRISSUR DISTRICT.**

**BY SRI.KURIAN GEORGE KANNANTHANAM,SENIOR ADVOCATE
ADV.SRI.TONY GEORGE KANNANTHANAM**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPT.,
SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE DIRECTOR,
DIRECTORATE OF HIGHER SECONDARY EDUCATION,
HOUSING BOARD BUILDING, THIRUVANANTHAPURAM.**
- 3. THE PRINCIPAL, GOVERNMENT HIGH SCHOOL,
ELAVALLY, THRISSUR DIST.**

**BY ADDL. ADVOCATE GENERAL SRI.K.A.JALEEL
BY SPL. GOVERNMENT PLEADER SRI.T.T.MUHAMOOD**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17-08-2015 ,ALONG WITH WP(C).NO. 20722 OF 2014 AND CONNECTED
CASES, THE COURT ON 20-08-2015 DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE G.O(MS) NO.107/2000 G.EDN DATED 30/3/2000.**
- P2 COPY OF THE G.O(MS) NO.91/10/G.EDN DATED 3/6/2010**
- P3 COPY OF THE NOTIFICATION ISSUED BY THE 2ND RESPONDENT DIRECTOR INVITING APPLICATIONS FOR SANCTIONING OF PLUS TWO IN VARIOUS SCHOOLS.**
- P4 COPY OF THE G.O.(MS) NO.94/10/G.EDN DATED 10/6/2010**
- P5 COPY OF THE APPLICATION SUBMITTED BY THE CORPORATE MANAGER FOR SANCTIONING OF PLUS TWO FOR THE PETITIONER'S SCHOOL.**
- P6 COPY OF THE REPRESENTATION DATED 15/6/2010 SUBMITTED BY THE CORPORATE MANAGER TO THE DIRECTOR OF HIGHER SECONDARY EDUCATION**
- P7 COPY OF THE RESOLUTION DATED 17/6/2010 PASSED BY ELAVALLY GRAMA PANCHAYAT.**
- P8 COPY OF THE G.O.(MS) NO.128/10/G.EDN DATED 20/7/2010 NOTIFYING THE SANCTIONING OF 178 PLUS TWO SCHOOLS**
- P9 COPY OF THE LIST OF SCHOOLS WHEREIN HIGHER SECONDARY COURSES SANCTIONED.**
- P10 COPY OF THE PRINTOUT OF LIST OF SCHOOLS RECOMMENDED FOR STARTING PLUS TWO DOWNLOADED FROM THE WEBSITE OF THE DIRECTOR**

RESPONDENT'S EXHIBIT AND ANNEXURES:

ANNEX R1(A) COPY OF THE REPORT SUBMITTED BY THE AEO, MULLASSERY AFTER INSPECTION IN THE PETITIONER'S SCHOOL.

ANNEX R1(B) COPY OF THE REPORT SUBMITTED BY THE AEO, MULLASSERY AFTER INSPECTION IN THE THIRD RESPONDENT SCHOOL.

/TRUE COPY/

P.S.TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NOS.24143 & 26209 OF 2010

W.P.(C).NOS.3, 14685, 16705, 19447, 19491, 19546, 19647, 19869, 20075, 20120, 20129, 20166, 20199, 20221, 20252, 20266, 20268, 20274, 20276, 20314, 20322, 20363, 20425, 20434, 20451, 20466, 20522, 20555, 20558, 20572, 20576, 20681, 20722, 20724, 20727, 20748, 20762, 20768, 20780, 20784, 20791, 20867, 20868, 20934, 20944, 20948, 20959, 21044, 21104, 21110, 21140, 21191, 21203, 21217, 21241, 21246, 21249, 21258, 21284, 21286, 21288, 21366, 21397, 21406, 21608, 21680, 22108, 22741, 22753, 22955, 23155, 23315, 23534, 25572, 28806 & 34129 OF 2014

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W.P.(C).NOS.989, 2888, 6302, 8834, 9436, 11821, 13814, 14799, 14800, 14987, 15357, 16418, 17335, 18070, 18809, 20583, 21279, 21493, 24188 & 24337 OF 2015

Dated this the 20th day of August, 2015

J U D G M E N T

The issue involved in these writ petitions concerns the legality of the grant of Higher Secondary courses to various Schools in the State. The State Government has been processing applications for the sanctioning of Higher Secondary Courses (Standards 11 and 12), otherwise known as “Plus Two Courses”, in existing High Schools in the State, since the academic year 1997-98. The exercise began when the State Legislature enacted the Pre-Degree Course (Abolition) Act, 1997 (Act No.3 of 1998) with the stated object of abolishing the pre-degree course in the State of Kerala, in a phased manner,

commencing from the academic year 1997-98. The legislative step was taken with a view to improve the standard of education in the State, and to bring it in conformity with the National Education Policy that had been announced by the Central Government. Although the State Government announced its policy through various Government Orders that were issued from time to time, and also indicated the procedure that would be followed in the matter of identification of existing High schools that would be permitted to commence Higher Secondary Courses in the academic year that was to follow, the State Government failed to adhere to the laid down procedure while sanctioning courses to existing schools. The legality of the action of the State Government, in identifying some schools alone, from out of the many that applied for the Course, was called in question in a batch of writ petitions before this Court in 2000. A division bench of this court, that went into the issue, found that although the State Government had laid down an elaborate procedure for screening the various applications and identifying the schools that were to be sanctioned the Higher Secondary Courses, they had not followed the said procedure (Judgment dated 07.07.2000 in O.P.No.17843/2000 and connected cases). It was held, therefore, that there was manifest

arbitrariness in the matter of selection of schools for the sanction of higher secondary courses. The Government Orders sanctioning courses to the schools specified therein were, therefore, quashed and the State Government is directed to follow the procedure laid down by it in the Government Orders within a specified time frame.

2. While successive governments have been coming out with policy statements regarding the sanctioning of additional Higher Secondary Schools or additional batches of Higher Secondary Courses in existing schools, there has not been any uniform principle that has been consistently followed by the State Government in these matters. More recently, the State Government came out with the Government Order G.O.(MS).No.185/13/G.Edn. dated 11.06.2013 [hereinafter referred to as the 'Government Order dated 11.06.2013'] whereby it was decided to accord sanction for two batches of Higher Secondary Courses in 148 Gram Panchayaths where there is no Higher Secondary School, and 382 batches in eight northern districts from Ernakulam to Kasaragod. The Higher Secondary Department issued an order dated 17.06.2013 inviting applications for sanctioning such batches. Challenging the said Government Order, inter alia, on the

ground that it was ultra vires the provisions of the Kerala Education Act/Kerala Education Rules and also on the ground that it was discriminatory to existing schools in other areas, a batch of writ petitions was filed before this Court. While a single judge allowed those writ petitions by quashing the Government Orders as ultra vires the provisions of the Kerala Education Rules [KER], a Division Bench of this Court reversed the said finding of the learned single judge, by holding that the provisions of the KER did not apply to the sanctioning of higher secondary courses in higher secondary schools and, further, that there was no material before the court warranting an interference with the policy decision taken by the State Government in the Government Order dated 11.06.2013. In the judgment of the Division Bench it was, however, observed that after giving effect to the policy decision dated 11.06.2013, the Government should also consider the grant of Higher Secondary Courses in other areas where there was an educational need. The relevant portion of the judgment dated 11.04.2014 of the Division Bench in W.A.Nos.1341 and 1375 of 2013, reads as follows:

31. The learned counsel for the party respondent would however submit that there are several schools situated in areas which does not have

sufficient HSS and unless such areas are also taken into consideration, limiting the benefit of the Government order only to 8 northern districts has substantially affected their rights to seek HS courses in the existing High Schools. In fact, the respondent school has no legal right to demand that they should also be provided with HSS. The right to conduct schools is subject to reasonable restrictions and when the Government had imposed some restrictions based on certain factual considerations, it cannot be stated that the respondents have been discriminated. But, at the same time, by evolving a policy in the nature of Ext.P14 the Government also should not shut their eyes on the requirement of other Government/aided or unaided institutions as the case may be in areas falling outside the ambit of Ext.P14, if there is a genuine requirement for starting Plus Two courses. In addition to providing Plus Two courses to make up the deficit in the Panchayats as well as in the 8 northern Districts the impugned order does not preclude the Government from independently considering whether other schools having the required facilities requires upgradation. Each and every request has to be considered based on its own facts and taking into consideration the over all requirement of the locality.

32. In W.A.No.1375 of 2013, the issue involved is whether the petitioners have locus standi to file the writ petition to challenge the impugned order. Since we have already held on merits that Ext.P14 Government order is sustainable and does not suffer from any illegality, there is no reason to consider the locus standi of the petitioners separately as it would only amount to an unnecessary exercise. In view of the discussion made above, the writ appeal is only to be dismissed.

In the result,

i) W.A.No.1341 of 2013 is allowed setting aside the judgment of the learned Single Judge. It is

made clear that while proceeding with Ext.P14 Government order, the Government shall also give sufficient opportunity to other schools in other districts also to start Plus Two courses if there is a requirement taking into consideration the need of the locality.

ii) W.A.No.1375 of 2013 is dismissed.

3. Subsequent to the above judgment of the Division Bench, a cabinet committee was constituted, with the Minister for Education as the Chairman, and the said committee also accepted the recommendations of the committee constituted with the Director of Higher Secondary Education as Chairman. The recommendation made by the Director of Higher Secondary Education, along with the list of schools for starting the Plus Two courses, and for sanctioning of additional batches was submitted to the Government on 19.05.2014 to place before the Cabinet. At that stage, the Government deviated from their stated course and issued a Government Order G.O.(MS). No.86/14/G.Edn. dated 24.05.2014 [hereinafter referred to as the 'Government Order dated 24.05.2014'] which indicated that the decision of the Government was not to sanction new Higher Secondary Schools during the academic year 2014-2015, but only to sanction additional batches throughout the entire State and to invite

applications for the same. The justification for this deviation was the contention that, it had come to the notice of the Government that a pursuit of the policy laid down in the Government Order dated 11.06.2013 would entail a huge financial commitment, which the Government could not afford. The Government Order dated 24.05.2014 was challenged by the management of those schools that had been identified for sanction of Higher Secondary Courses pursuant to Government Order dated 11.06.2013. A division bench of this Court, that considered the said writ petitions, allowed the same by quashing Government Order dated 24.05.2014, inter alia on the ground that the Government did not have any material to support a deviation from its earlier policy decision. It also observed that, if the Government wanted to pursue the policy laid down in the Government Order dated 24.05.2014, that could only be done after fulfilling the policy in the earlier Government Order dated 11.06.2013. The relevant portion of the said judgment dated 10.07.2014, in W.P.(C). No.13851/2014 and connected cases, reads as follows:

70. For all these reasons, we allow the writ petitions and quash the impugned Government Order Ext.P6 produced in W.P.(C). No.13851/2014 dated 24.5.2014 and Notification No.Acd.C.3/21437/HSE/2014 dated 26.5.2014

issued by the Director of Higher Secondary Education (Ext.P5 in W.P.(C).No.13909/2014). Since the process of admission for the Higher Secondary courses this year is already underway, (we understand that the same has started by 30.6.2014) we issue the following directions:

i) The process of providing Higher Secondary courses in 148 Grama Panchayats will be expedited, so that students will be able to get admission this year.

ii) The process of sanctioning additional batches in northern districts beginning from Ernakulam and upgrading schools as already provided in Ext.P1, will also be taken simultaneously and orders will be issued accordingly. After completing the above process in tune with the directions in Ext.P5 judgment of the Division Bench, if there is genuine requirement for granting additional batches in any other areas, the same can also be considered by the Government depending upon the educational need.

The Writ Appeals are closed in the light of the above directions. No costs.

4. Thereafter, the Cabinet considered the matter on 16.07.2014. It considered the proposals dated 19.05.2014 and 18.06.2014, based on the Government Orders dated 11.06.2013 and 24.05.2014, together. The matter was entrusted to the Chief Minister for a decision. A sub-committee was constituted to go into the matter, and based on the recommendations of the Cabinet sub-committee, that was accepted by the Council of Ministers, a Government Order

G.O.(MS).No.143/14/G.Edn dated 31.07.2014 [hereinafter referred to as the 'Government Order dated 31.07.2014'] was issued. As per this Government Order, the Government decided to retain the grant as per the Government Order dated 11.06.2013, to the extent of identifying the schools that were eligible for the grant, but then decided to restrict the number of batches, in the schools sanctioned to the Panchayaths under the earlier Government Order, to one each instead of two each that was originally contemplated. Further, it was decided to grant additional batches to certain other schools, over and in addition to those that were identified as eligible for the grant under the Government Order dated 11.06.2013. This Government Order is challenged in some writ petitions forming part of the present batch of writ petitions, where an interim order dated 18.08.2014 was passed directing that only those schools that found a place in the recommendation of the Six member committee could be given sanction or permitted to function. The relevant portion of the interim order reads as follows:

23. In the said circumstances, considering the spirit of the judgments passed by the Division Bench of this Court and the timely requirement to enable the eligible students to pursue the studies in the current academic year itself, the following interim orders are

passed:

(i) No school other than those who find a place in the recommendation of the 'Six member committee' forwarded along with the letter dated 19.05.2014 of the Director shall be given sanction or shall be permitted to function.

(ii) Schools recommended by the said committee as enlisted in the Annexures to the letter dated 19.05.14 of the Director shall be given provisional sanction to function forthwith, subject to the conditions stipulated in the G.O. Dated 31.07.2014.

(iii) It shall be ensured that no school which does not meet the requirements as specified under Clause 8 (vii) of G.O. Dated 31.07.2014 shall be permitted to function.

(iv) Educational need, if any, in other areas can be considered later, based on the materials to be substantiated.

(v) The 'files' will stand returned for the time being; to be produced at the time of final hearing.

The respondents are directed to file counter affidavit, if any, forthwith.

5. Although the State Government preferred appeals (W.A.Nos. 1163/2014 and 1164/2014) against the said interim order, the appeals were dismissed by the Division Bench by a judgment dated 01.09.2014. The relevant portion of the judgment of the Division Bench reads as follows:

13. A reading of the interim order in its entirety would show that the main reasons which persuaded the learned single Judge to pass the

interim order in question are that, despite the finality of the judgment of this Court in W.A.No.776/14 and connected cases rendered on 10.07.2014, the positive directions issued therein were ignored and deviated from, and that such a course of action was illegal. The further reason that weighed with by the learned single Judge is that though it was claimed that deviation from the directions issued by this Court was due to the local educational needs, and that in assessing the same, the views of the people's representatives were also ascertained, the files that were produced before the learned single Judge did not contain any material substantiating such a consultation process.

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17. We have already seen that the judgment in W.A.No.776/14 and connected cases was rendered by this Court on 10.07.2014. This has not been challenged by anyone of the parties and therefore, the directions in that judgment are binding on the parties, including the appellants herein. In para 70 of that judgment, this Court specifically directed that the process of providing higher secondary courses in 148 grama panchayats will be expedited. It was also ordered that the process of sanctioning additional batches in northern districts beginning from Ernakulam and upgrading schools as provided in G.O. (Ms) No.185/2013/G.Edn., will also be taken simultaneously and orders will be issued accordingly. The Division Bench further ordered that after completing the above process in tune with the directions in the judgment in W.A.No.1341/13, if there is genuine requirement for granting additional batches in any other areas, the same can also be considered by the Government depending upon the educational need. Therefore, in this judgment, this court ordered implementation of G.O.(Ms) No.185/2013/ G.Edn., dated 11.06.2013, and also laid

down the sequence and the manner in which the three directions are to be implemented. This judgment, as already mentioned, has become final.

18. It is trite that a writ of mandamus issued by a constitutional court cannot be watered down except by a legislative process whereby the basis of the judgment itself is altered. Despite this legal position, the Government deviated from the directions of this Court by a dubious process of appointing a cabinet sub-committee and allegedly by ascertaining the views of the representatives of the people, which, again, was not substantiated by any material. The functioning of the Government in a constitutional democracy is circumscribed by the constitutional limitations and the political or other exigencies do not authorise it to act in an extra constitutional method. Therefore, the power to frame a policy or to revise it do not empower the Government to ignore the binding directions of this Court. If that be so, the Government could not have, in any manner, departed from the directions of this Court as contained in para 70 of the judgment in W.A.No.776/14 and connected cases and this, *prima facie*, made its decision arbitrary and unfair, justifying interference.

19. Pleadings in the memorandum of appeal itself would show that when the cabinet sub-committee considered the proposals made by the committee chaired by the Director of Higher Secondary Education, which was constituted in pursuance of GO(MS).No.185/2013, they also took into account the proposals that were received in pursuance of G.O. (Ms)No.86/2014/G.Edn., dated 24.05.2014 and the notification dated 26.5.2014. This was done in spite of the fact that in the Division Bench judgment in W.A.No.776/14 and connected cases, G.O.(Ms)No.86/2014/G.Edn., dated 24.05.2014 and the notification dated 26.05.2014 issued thereunder were quashed by this Court. In the light of this judgment, the proposal dated 18.06.2014 made by the Director of Higher Secondary Education

pursuant to the Government Order and the notification which were quashed by this Court, did not survive after the judgment, to be placed or considered by the cabinet or its sub-committee. Therefore, that procedure adopted by the cabinet sub-committee was illegal. Further, by this process, the appellants again brought into consideration the proposal prepared on the basis of an illegal Government Order and the notification issued. In other words, what was indirectly done was something which could not have been directly done.

20. Therefore, on the materials now available before this Court, it can be concluded that while issuing GO(MS).No.143/2014/G.Edn., dated 31.07.2014, the Government have departed from the binding directions of this Court as contained in para 70 of the judgment dated 10.07.2014 in W.A.No.776/14 and connected cases. This being illegal, we fully agree with the learned single Judge in his prima facie conclusions on this aspect of the matter.

Although Civil Appeals were preferred against the above judgment before the Supreme Court, the findings of the Division Bench were not interfered with. The order dated 14.11.2014 passed by the Supreme Court in the said Civil Appeals reads as under:

ORDER

Permission to file the special leave petitions is granted.

Leave granted.

Heard learned counsel for the parties.

Having heard learned counsel for the parties, it is directed that the students, who have been admitted by the appellant-Schools, shall be treated to be within the strength and be imparted appropriate education so that they can appear in the Board examinations. Needless to emphasize, taking up of the Board examinations by the students, does not enure to the benefit to the Management to put forth its claim before the High Court that they are entitled for enhanced strength of students. When we say so, we only intend to save the interest of the students. It does not confer any kind of equity on the schools. If the school appoints teachers to support its teaching strength, it shall bear the salary and the State Government would have no concern in regard to the payment of salary.

We may hasten to clarify that we have made this arrangement for the present academic year, as the matter is sub-judice before the High Court. The writ court is requested to dispose of the writ petition within four months, so that a controversy of this nature does not remain pending. Needless to say, all the contentions raised or to be raised in the writ court by the parties, are kept open.

The interlocutory applications for impleadment and intervention are allowed. Similar relief is granted to them.

The appeals are disposed of accordingly. There shall be no order as to costs.

6. The Government, thereafter decided to comply with the directions issued in the interim order dated 18.08.2014, and sanctioned all the Higher Secondary Schools and Additional batches recommended by the six member committee vide G.O.(MS) No.247/14/G. Edn dated 24.11.2014. In an affidavit dated 16.6.2015 filed on behalf of the State Government in W.P.(C).No.19491/2014 the position has been clarified as follows:

19. Thereafter, Government deliberated on the question of implementing the direction dated 18/08/2014 in W.P.(C).No.18176/2014 and connected cases and it had been decided to implement the interim order in toto. Such a decision was taken, finding that the sanctioning of Higher Secondary batches to all the Schools recommended by the Six Member Committee will meet the educational need, since the admission to +1 Course is through single window system and the District as a whole is taken as single unit.

20. Accordingly, the government had modified the sanction given as per G.O.(MS). No.143/2014/G.Edn. dated 31/07/2014 and granted all higher secondary batches recommended by the six member committee and excluded those Schools which were not recommended by Six Member Committee. This has been done as per G.O.(Ms). No.247/2014/G.Edn. dated 24/11/2014. A true copy of the G.O.(MS).No.247/2014/G.Edn. dated 24/11/2014 is produced herewith and the same may be marked as Exhibit R1(b).

21. Government have also decided to accept

the interim order dated 18/08/2014 of the Hon'ble High Court in toto. In this connection it is also submitted that in pursuance to the original policy decision of the Government specified in GO (MS) No.185/13/G.Edn. dated 11/06/2013, the six member committee constituted for the scrutiny of applications had recommended only 642 higher secondary batches and all these batches have been sanctioned by government. There is no further educational need to sanction the Higher Secondary School/batches. Since the matter is pending before this Honourable Court and as a matter of the propriety, it was made clear in the Order that this will be subject to the result of the writ petition. Therefore, the petitioner's School is not entitled to get any relief sought for, since the Government have already taken a decision not to sanction to the petitioner's School as the same is not recommended by the Six Member Committee. If this Honourable Court feels that the order dated 24.11.14 is not final, Government reserves its right to make it absolute.

22. In this connection it is also submitted that a thorough verification is going on in all higher secondary schools where higher secondary batches are sanctioned, to ascertain whether sufficient infrastructure facilities and required number of students are available as stipulated in GO (MS) No.143/14/G.Edn. Dated 31/07/2014. If any instance of non-compliance/deficiencies is found, the recognition of such batches will be withdrawn. Once again it is submitted that Government have taken a conscious decision to sanction only the batches recommended by the Six Member Committee and sanctioned in G.O.(MS).No.247/14/G.Edn. dated 24.11.14.

7. Consequent to the dismissal of the appeals preferred by the State Government, against the interim order dated 18.08.2014 of the

learned single judge, a number of writ petitions were filed by the Managers of various schools, challenging the exclusion of their school from the list of schools that were sanctioned courses pursuant to Government Order dated 11.06.2013; In the said writ petitions, the petitioners challenged the decision of the six member committee to the extent it decided in favour of the schools that were eventually enlisted for the grant and contended that their eligibility for the grant had not been considered by the said committee. By an interim order dated 10.04.2015, passed in those writ petitions, a learned single judge of this Court directed the State Government to look into the grievance of the writ petitioners in the light of the criteria specified in the Government Order dated 11.06.2013 and de hors the recommendation of the six member committee. The relevant portion of the said interim order reads as follows:

The Government has to consider the following:

(i) In respect of the schools where there is policy decision, the Government has to consider the inter se merit of the schools which were recommended by Six Member Committee and that of the petitioners.

(ii) The Government shall hear the grantee of the schools based on the recommendation of the Six Member Committee and also such of the petitioners, who have raised rival claims.

(iii) The Government has to verify inter se merits of the grantee of the schools based on the

recommendation of the Six Member Committee and the petitioners. Thereafter, advertng to the rival claims, a decision shall be taken by the Government.

(iv) In respect of schools which were given sanction as per G.O.(MS).No.143/14/G.Edn., dated 31/07/2014, the Government must advert whether there is any reason to depart from the order of sanction already granted. Mere financial implication cannot be a reason to revoke the sanction. This fact ought to have taken note of by the Government before granting sanction to them. The petitioners can legitimately expect to be permitted to continue unless for some other rational grounds for withdrawing from it. This reason can only be in relation to the educational need. The Government otherwise is bound to honour their sanction. Since their educational need has nothing to do with the report of the Six Member Committee, their sanction can only be declined only for want of educational need established through any other subsequent factors.

(v) The decision shall be taken after hearing all the parties and affected persons or entities as expeditiously as possible and before the next posting date.

8. The writ petitions were later disposed by judgment dated 29.05.2015 wherein the interim order dated 10.04.2015 was made absolute and a direction was also given to the Government to permit those schools, that had been granted sanction to start new batches of Higher Secondary Courses as per Government Order dated 24.05.2014, to admit students based on the grant in their favour. It is understood that Writ Appeals have been filed by the State Government, against the judgment dated 29.05.2015 referred to

above, and the same are pending consideration before a Division Bench of this Court.

9. The present batch of writ petitions comprise of cases where representations have been preferred by the Managers of various schools for consideration of their application for the grant of Higher Secondary Courses. In some cases, the representations have been rejected stating that the schools in question do not fall within the ambit of the Government Order dated 11.06.2013. In all these cases, inasmuch as the State Government has already implemented its policy decision in the Government Order dated 11.06.2013 by sanctioning the schools and additional batches envisaged therein, and the validity of the said policy decision has been upheld by this Court in the judgments referred above, and further, the decision of this Court quashing Government Order dated 24.05.2014 has become final, nothing remains to be decided in connection with the implementation of the policy decision in the Government Order dated 11.06.2013. This is more so because the implementation of the policy decision in the Government Order dated 11.06.2013 has been effected by the State Government in the manner suggested by this Court in its interim

order dated 18.08.2014 as affirmed by the judgment dated 01.09.2014 of the Division Bench in W.A.Nos.1163/2014 and 1164/2014 and the order dated 14.11.2014 of the Supreme Court in the Civil Appeals referred to above, and I see no reason to deviate from the said directions in the interim order while disposing these writ petitions. I, therefore, close these writ petitions by making the interim order dated 18.08.2014 absolute to the extent it mandates that only those grants that have been made pursuant to the recommendation of the six member committee can be sanctioned by the State Government in implementation of the Government Order dated 11.06.2013.

10. I must now turn to the issue of whether the representations preferred by the petitioners in these writ petitions, for sanctioning of higher secondary courses in their schools, can be considered by the State Government de hors the provisions of Government Order dated 11.06.2013. In this connection, it must be recalled that a Division Bench of this Court had, while disposing W.A.No.1341 of 2013, found that, after giving effect to the policy decision dated 11.06.2013, the Government should also consider the grant of Higher Secondary

Courses in other areas where there was an educational need. This does, however, necessitate an exercise to be done by the State Government to ascertain the educational need in the State. Although, in a counter affidavit filed by the State Government in these writ petitions, certain figures have been furnished showing the number of students who have cleared the SSLC examinations in the current academic year and the total number of seats available in each district to accommodate students for the higher secondary courses in the said districts, the said exercise appears to be a very myopic one in terms of the vision that is expected of the State Government in such matters. This court is of the view that the determination of educational need in the State vis-à-vis the higher secondary courses must be an ongoing exercise that is undertaken by a suitable machinery set up by the State Government to monitor the educational need in the State. It may not be out of place to notice that the State Government has set up a body to monitor the implementation of the provisions of the Right to Children to Free and Compulsory Education Act, 2009 in the State. Setting up a similar machinery for monitoring the educational need for higher secondary education in the State may not be a cumbersome task for the State Government that is even otherwise obliged to cater

to the educational interests of students in the State. What is important, however, is that the State Government adheres to a consistent policy in such matters, ensuring transparency that can be brought about by furnishing timely information as regards the educational need in any area of the State so that applications, for the sanction of new schools or additional batches, can be called for from educational agencies in such areas so as to fill the perceived educational need of that area. While calling for such applications, the State Government would also do well in fixing criteria that would govern the selection of educational agencies for the grant, taking care to make adequate provisions to address the educational needs in such areas as are educationally, socially and economically backward.

11. While this Court would ordinarily be loath to making suggestions as regards the policy to be formulated by the State Government in the field of education, the observations above are deemed necessary taking note of the past experience that has seen a flood of litigation permeating this court every time the State Government comes out with a policy with regard to the sanctioning of higher secondary courses in the State. The State Government ought to

remind itself that consistency and transparency go a long way in sustaining policy decisions, apart from inspiring confidence in the people, in matters of governance. Thus, while disposing these writ petitions, this Court also deems it necessary to issue the following directions to the State Government in the matter of consideration of applications for the grant of higher secondary courses;

- (i) The State Government shall evolve and put in place suitable machinery to determine the educational need in each district in the State in the field of higher secondary education;
- (ii) The machinery to be set up by the State Government must be one that determines such educational need on an ongoing basis so that the educational need for any academic year is estimated at least a year in advance.
- (iii) Based on the determination of educational need, the State Government must periodically call for applications from educational agencies in the district concerned and take steps to sanction higher secondary courses in such districts.
- (iv) The criteria evolved by the State Government for sanctioning higher secondary courses must, inter alia, take into account the socially, educationally and

economically backward areas in each district.

- (v) While considering applications in areas where an educational need has been determined as existing, the State Government shall give preference to those applicants who have been recommended for the grant of higher secondary course in the past, either through Government Orders or through judgments of this Court, but were not sanctioned Higher Secondary Courses only because there was no policy decision then taken by the State Government to sanction Higher Secondary Courses in the State, or on account of the then Government facing financial constraints. Such cases would have to be considered favourably for a grant, subject to the applicant concerned complying with the infrastructural and other requirements mandated by the Kerala Education Act and Rules.
- (vi) Insofar as I have directed that the State Government shall call for applications, based on the perceived educational need determined in any area, before considering a grant of higher secondary course to any educational agency in the said area, it would be open to the petitioners herein to respond to any call for applications by the Government, as and when made, and the fact that they have preferred applications in the past or that any such application preferred has been rejected

in the past shall be of no relevance in a consideration by the State Government of the merit of the fresh applications so preferred by the petitioners.

- (vii) The State Government shall endeavour to complete the above exercise by 31.03.2016 for the next academic year and thereafter, sanction courses based on educational need by 31st March of every succeeding year so that no student is prejudicially affected in the pursuit of his higher secondary education in the State during the academic year 2016-17 or thereafter.

The writ petitions are disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp