



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

THURSDAY, THE 21ST DAY OF NOVEMBER 2024 / 30TH KARTHIKA, 1946

WP(C) NO. 34850 OF 2018

PETITIONERS:

- 1 N.SIDRATHUL MUNTHAHA, AGED 36 YEARS,
WIFE OF TARIQ, RESIDING AT NEERULPPAN,
AL-HILAL MANZIL, PATHAPPARIYAM P.O, MANJERI,
MALAPPURAM DISTRICT.
- 2 C.H.ABDUL RASHID,
RESIDING AT CHOLASSERI HOUSE, VIP COLONY,
DOWN HILL, MALAPPURAM DISTRICT-676519.

BY ADVS.
SRI.S.M.PREM
SRI.H.NARAYANAN
P.M.PAREETH
AISWARYA VENUGOPAL(K/755/2020)
NAJEEB P.S(K/328/2020)

RESPONDENTS:

- 1 THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT ANNEXE-11,
THIRUVANANTHAPURAM-695001.
- 2 THE DIRECTOR OF PUBLIC INSTRUCTIONS,
JAGATHY, THIRUVANANTHAPURAM-695014.
- 3 THE DEPUTY DIRECTOR OF EDUCATION,
DOWN HILL, MALAPPURAM-676505.
- 4 THE DISTRICT EDUCATIONAL OFFICER,
MALAPPURAM-676505.



5 THE ASSISTANT EDUCATIONAL OFFICER,
MANJERI, MALAPPURAM DISTRICT-676121.

ADDL.R6 RASHIDA K., AGED 52 YEARS
W/O. ABDUL JABBAR, MANNISSERY HOUSE, AMAYOOR P.O,
MANJERI, WORKING AS ASSISTANT TEACHER, A.L.P SCHOOL,
PAZHEDAM, MANJERI, MALAPPURAM.

ADDL.R7 SOUDATH C.H., W/O. HAMEED P.K, PANICKERKUNNAN HOUSE,
THRIKKALANGODE, WORKING AS ASSISTANT TEACHER,
A.L.P SCHOOL, PAZHEDAM, MANJERI, MALAPPURAM.

ADDL.R8 SWAPNA K.G., W/O. MOHANDAS, WORKING AS ASSISTANT
TEACHER, A.L.P SCHOOL, PAZHEDAM, MANJERI,
MALAPPURAM.

(ADDL.R6 TO R8 ARE IMPEADED AS PER ORDER DATED
09/11/2018 IN IA.NO.01/2018)

BY SRI.DHEERAJ A.S., GOVERNMENT PLEADER
BY SRI.M.A.FAYAZ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18.11.2024,
THE COURT ON 21.11.2024 DELIVERED THE FOLLOWING:



JUDGMENT

The 1st petitioner herein states that she purchased a Lower Primary School from one Sri.Aranhikkal Abdul Salam during 2010. The transfer as above is also approved pursuant to Ext.P1 dated 07.03.2014 issued by the 2nd respondent herein. The 1st petitioner was also a teacher of the School, which she purchased as above, and therefore, in pursuance of an application filed by her, the Government issued Ext.P2 order dated 03.12.2012, exempting the petitioner from the rigors of Rule 8(2) of Chapter III of the Kerala Education Rules (for short, 'KER'). The 1st petitioner sought to get herself approved as the Manager. This attempt was challenged at the instance of some of the teachers at the School by instituting W.P(C) No.8393 of 2014. Since this Court stayed further proceedings pursuant to Ext.P1 herein (produced as Ext.P13 in that writ petition), the petitioner states that she nominated the 2nd petitioner herein as the Manager of the School. Pursuant to the directions issued by this Court as seen from Ext.P4, the 1st petitioner's application for appointing



the 2nd respondent as the Manager was considered. By Ext.P6(a), the application as above stood rejected. The afore order was confirmed by the Additional Director of Education. Though a further revision was filed before the Government, that was also rejected as seen from Ext.P9. It is challenging the orders at Exts.P6(a), P8, and P9 issued as above that the captioned writ petition is filed by the petitioners.

2. Certain teachers in the School concerned have got themselves impleaded in this writ petition as additional respondents 6 to 8. They have filed a counter affidavit, seeking to sustain the impugned orders.

3. I have heard Sri.P.M.Pareeth, the learned counsel for the petitioners, Sri.M.A.Fayas, the learned counsel representing additional respondents 6 to 8 and Sri.A.S.Dheeraj, the learned Government Pleader for respondents 1 to 5.

4. As noticed earlier, the challenge in this writ petition is as against the findings in Exts.P6(a), P8 and P9. The 1st petitioner has purchased the Lower Primary School as noticed



earlier. The fact that the change in ownership/transfer of management is approved by the 2nd respondent is clear from Ext.P1 order dated 07.03.2014. Though she wanted herself to be approved as the Manager, later, this request was given up, and the 1st petitioner sought to appoint the 2nd petitioner herein as the Manager. It is this prayer that is considered in Ext.P6(a). Reading of Ext.P6(a) would show that the request with reference to the appointment of the 2nd petitioner as the Manager and its approval is rejected by the 5th respondent herein, solely on account of the alleged reason that the transfer of management in favour of the 1st petitioner is not approved. But though Ext.P6(a) is issued on 13.10.2017, the 5th respondent appears not to have referred to Ext.P1. By Ext.P1 order dated 07.03.2014, the transfer of management in favour of the 1st petitioner is approved. The following observations in Ext.P1 would make the position clear:

“The request of the applicant Smt.Sidrathul Munthaha for transfer of Management of ALPS Pazhedam is sanctioned as



per Rule 5A Chapter III KER with a condition that the proposed transferee Manager will protected the legal interest of the staff of the school by all means giving no way for any complaints. A compliance report should be submitted by the Manager in this regard. The Assistant Educational Officer Manjeri will issue formal order in this regard.”

In such circumstances, I am of the opinion that the very basis of the findings contained in Ext.P6(a) was flawed.

5. At this juncture, the relevance of the reference made in Ext.P6(a) order, to the provisions of Rule 5 Chapter III of KER is also to be considered. Chapter III of KER provides for the management of private schools. Rule 4 provides for the approval of appointment of Managers. Rule 5 provides for the need to report to the Educational Officer so as to obtain approval as regards the changes in the personnel of the Manager. However, the Note appended to Rule 5 specifically provides that “The Rules 4 and 5 do not apply to change of management involving change of ownership”. When that be so, the reference made in Ext.P6(a) to the afore provision was not apposite. In



such circumstances, I am of the opinion that the very basis for the findings contained in Ext.P6(a) cannot be sustained.

6. The writ petition filed by the teachers – W.P(C) No.8393 of 2014 came to be disposed of by Ext.P7, directing the Educational Authorities to consider the request made by the petitioners therein for the appointment of the 2nd petitioner herein as the Manager, within a time frame. On the basis of the afore directions, the Additional Director issued Ext.P8 order dated 20.03.2018. The said order after making reference to certain complaints/allegations raised against the 1st petitioner herein and not stating that as a reason, rejected the request made by the 1st petitioner as according to him the properties of the School have to be in the possession of the Manager himself and therefore, a third party cannot be appointed as the Manager. It is further stated that even the management of the School is not shifted in favour of the 1st petitioner herein. However, the said finding with reference to the non-shifting of the management in favour of the 1st petitioner herein was not



correct in view of the findings rendered in the preceding paragraphs. As regards the violation of Rule 3(2) of Chapter III of KER, as to the need for having the possession of the properties in the name of the Manager himself, I notice that, a reading of the afore provisions does not show that a person other than the owner cannot be appointed as the Manager. In fact, the provisions of Section 7(1) of the Kerala Education Act, 1958 (for short, the 'Act') and Rule 3(1) of Chapter III of KER reads as under:

Section 7 of the Act - Managers of Schools:-

(1) Any educational agency may appoint any person to be the manager of an aided School under this act, subject to the approval of such officer as may be authorized by the Government in this behalf.

3(1) of Chapter III of KER –

Management to be vested in a Manager-

(1) The Management of every aided school may be vested by the Educational Agency in a person who shall be referred to as the Manager and who shall be responsible to the department for the management of the institution.

Thus, the “educational agency” is competent to vest the



management of a School on a person as its Manager. The term "educational agency" is defined under Section 2(2) of the Kerala Educational Act, 1958, as "any person" or "body of persons." From this, it is quite clear that the educational agency and the Manager can be two different persons. Therefore, the findings in Ext.P8 to the above effect cannot be sustained.

7. Now the challenge with reference to the findings in Ext.P9 is to be considered. Ext.P9 order has been issued pursuant to the revision petition filed by the 1st petitioner herein against Ext.P8 order. In the said order, the findings in Exts.P6(a) and P8 are repeated in paragraph 9. In view of the conclusions in the preceding paragraphs, the afore findings cannot be sustained. The said order also refers to the provisions of Rule 3(2) of Chapter III of KER to conclude that the 2nd petitioner cannot be appointed as the Manager. However, the wordings of the afore provision only show that in the cases of aided institutions under individual management like the one hereunder, the individual proprietor may also be the Manager.



This is clear from the usage of the word "may" thereunder. The position would have been different if the word used was "shall". Insofar as it is not so prescribed thereunder, the reference made to the provisions of Rule 3(2) of Chapter III of KER does not appear to be correct.

8. In Ext.P9 order, the Government has also upheld the entrustment of the management with the Assistant Educational Officer. Taking over of management of the Schools is possible only in the situation provided under Section 14. However, such a takeover is possible only in situations enumerated under Section 14(1). But in the case at hand, the situations laid down under Section 14(1) have not been shown to exist. It was only because the request of the 1st petitioner to appoint the 2nd petitioner as the Manager was being refused, for untenable reasons as already found, that the entire issue arose. Therefore, the directions in the impugned order to entrust the management of the School to the Assistant Educational Officer does not appear to be correct.



9. The judgments cited by both sides are now to be referred to. The learned counsel for the petitioners relied on the judgment of this Court in **Koyyode Madrassa U.P.School v. Director of Public Instructions [2011 (1) KLT 150]**, to contend that prior permission of Director as provided in Rule 5A is not necessary for effecting the transfer. The afore judgment lays down the following principles:

“17. The aforesaid discussions would lead to the following conclusions :

- (i) Previous permission of the Director is not required before making the transfer, if the transfer is of a running school with its management.
- (ii) Previous permission of the Director is required only for effecting change of management involving change of ownership on the basis of the transfer mentioned above.
- (iii) Transfer of a running school together with its management and properties does not come under S.6 of the Kerala Education Act. Therefore, previous permission in writing as required under S.6 is not necessary for making the transfer.
- (iv) Previous permission mentioned in R.5A of Chap.III relates only to the stage of change of management involving change of ownership and it does not relate to



the stage of making a transfer of a running school with its management.

(v). Permission of the Director under R.5A of Chap.III K.E.R. can be made even after the transfer of a running school together with its management and properties is made.”

Insofar as in the case at hand, the transfer sought for was of a running School with its management, I am of the opinion that the principles laid down in the afore decision are applicable. Furthermore, in the case at hand, the transfer of the School is already approved as seen from Ext.P1. Though, the learned counsel for the petitioners relied on the judgment of this Court in **Kesava Kurup v. State of Kerala [1988 (1) KLT 77]**, to contend that on account of the transfer of the School, the staff have not been adversely effected and therefore additional respondents 6 to 8 cannot voice any grievance, I notice that the said judgments need not be applied in the case at hand, since the issue is being decided on merits.

On the whole, I am of the opinion that the petitioners are entitled to succeed. Resultantly, this writ petition would stand



allowed by setting aside Exts.P6(a), P8, and P9 issued by the 5th respondent, the 2nd respondent, and the 1st respondent, respectively.

Sd/-
HARISANKAR V. MENON, JUDGE

In

APPENDIX OF WP(C) 34850/2018

PETITIONERS' EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE ORDER NO.G2/78983/2012/DPI DATED 07/03/2014 OF THE DIRECTOR.
- EXHIBIT P2 TRUE COPY OF THE G.O(RT.0 NO.5765/12/G.EDN.DATED 03/12/2012.
- EXHIBIT P3 TRUE COPY OF THE ORDER NO.01/2014/K.DIS DATED 01/10/2016.
- EXHIBIT P4 TRUE COPY OF THE INTERIM ORDER IN WP9C)NO.8393/14 DATED 28/03/2017.
- EXHIBIT P5 TRUE COPY OF THE APPLICATION FOR CHANGE IN THE PERSONNEL OF MANAGER SUBMITTED BY THE 1ST PETITIONER.
- EXHIBIT P6 TRUE COPY OF THE ORDER NO.C/1623/2017 DATED 13/10/2017 OF THE AEO, MANJERI.
- EXHIBIT P6 TRUE COPY OF THE JUDGMENT IN WP9C)NO.26480/17 DATED 09/08/2017.
- EXHIBIT P7 TRUE COPY OF THE JUDGMENT IN WP(C)NO.8393/14 DATED 07/02/2018.
- EXHIBIT P8 TRUE COPY OF THE ORDER NO.G(2)/82026/2017/DPI/K.DIS.DATED 20/03/2018.
- EXHIBIT P9 TRUE COPY OF THE G.O(RT).NO.3959/2018/G.EDN.DATED 04/10/2018.
- EXHIBIT P10 TRUE COPY OF THE MINORITY CERTIFICATE ISSUED TO ALPS, PAZHEDAM DATED 22/09/2014.

RESPONDENTS' EXHIBITS:

- EXHIBIT R6(A) PHOTOCOPY OF THE ORDER PASSED BY THE AEO DATED 11.07.2013



- EXHIBIT R6 (B) PHOTOCOPY OF THE ORDER PASSED BY THE AEO DATED 21.03.2013.
- EXHIBIT R6 (C) PHOTOCOPY OF THE CERTIFICATE FITNESS DATED 30.05.2013.
- EXHIBIT R6 (D) PHOTOCOPY OF THE ORDER ISSUED BY THE AEO DATED 27.08.2013.
- EXHIBIT R6 (E) PHOTOCOPY OF THE ORDER OF THE AEO MANJERI DATED 27.07.2013.
- EXHIBIT R6 (F) PHOTOCOPY OF THE ORDER EVIDENCING THE TAKING OVER THE MANAGERSHIP OF ALPS, PAZHEDAM DATED 31.03.2018.
- EXHIBIT R6 (G) PHOTOCOPY OF THE MINUTES OF MEETING DATED 28.07.2017.
- EXHIBIT R6 (H) PHOTOCOPY OF THE REQUEST OF HEADMISTRESS OF ALP SCHOOL, PAZHEDAM DATED 31.07.2017.
- EXHIBIT R6 (I) PHOTOCOPY OF THE REPLY DATED 13.10.2017 RECEIVED FROM THE PETITIONERS
- EXHIBIT R6 (J) PHOTOCOPY OF THE DECISION TAKEN BY THE THRIKKALANGODE GRAMA PANCHAYATH DATED 20.11.2017.
- EXHIBIT R6 (K) PHOTOCOPY OF THE MINUTES OF MEETING HELD ON 03.12.2017.
- EXHIBIT R6 (L) PHOTOCOPY OF THE DECISION TAKEN BY THE THEN HEADMISTRESS AND THE REMAINING TEACHERS OF ALP SCHOOL, PAZHEDAM DATED 04.12.2017.
- EXHIBIT R (M) PHOTOCOPY OF THE LETTER ISSUED BY THE PRESIDENT OF THRIKKALANGODE GRAMA PANCHAYATH TO THE DISTRICT COLLECTOR, MALAPPURAM.
- EXHIBIT R (N) PHOTOCOPY OF THE LETTER ISSUED BY THE DEPUTY DIRECTOR OF EDUCATION, MALAPPURAM DATED 26.03.2018.
- EXHIBIT R6 (O) PHOTOCOPY OF THE ORDER ISSUED BY THE DEPUTY



DIRECTOR OF EDUCATION, MALAPPURAM DATED
23.12.2014.

EXHIBIT R6 (P) PHOTOCOPY OF THE LETTER ISSUED BY THE AEO,
MANJERI DATED 24.12.2014.

EXHIBIT R6 (Q) PHOTOCOPY OF THE COMPLAINT SUBMITTED BEFORE
THE MINISTER FOR EDUCATION.

EXHIBIT R6 (R) PHOTOCOPY OF THE REQUEST SUBMITTED BEFORE THE
KSEB DATED 24.06.2014.

EXHIBIT R6 (S) PHOTOCOPY OF THE JUDGMENT IN W.P(c)
No.11137/2018 DATED 03.04.2018.

EXHIBIT R6 (T) PHOTOCOPY OF THE LETTER ISSUED BY THE
PREVIOUS MANAGER DATED 08.01.2018

EXHIBIT R6 (U) PHOTOCOPY OF THE LETTER ISSUED BY THE RETIRED
HEAD MISTRESS.

EXHIBIT R6 (V) PHOTOCOPY OF THE NOTICE ISSUED BY THE 2ND
PETITIONER DATED 11.04.2018.