

The Manager, vs the State of Kerala,

The Manager, vs the State of Kerala,

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Court : Kerala

Decided On : Nov-08-2022

Judge : Honourable Mr. Justice P.B.Suresh Kumar, Honourable Mrs. Justice C.S. Sudha

Appeal No. : WA/1511/2022

Appellant : The Manager,

Respondent : The State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR & THE HONOURABLE MRS. JUSTICE C.S. SUDHA TUESDAY, THE 8TH DAY OF NOVEMBER 2022 / 17TH KARTHIKA, 1944 WA NO. 1433 OF 2022 AGAINST THE JUDGMENT DATED 23.08.2022 IN WP(C) 27124/2022 OF HIGH COURT OF KERALA APPELLANTS/PETITIONERS:

1 THE MANAGER,(T K DASAN) AGED 60 YEARS S/O A. KUNHUNNI NAIR, A.L.P. SCHOOL, MATHUR EAST, MATHUR P.O., PALAKKAD DISTRICT, PIN-678 571 (RESIDING AT CHITHRALAYAM, MATHUR

P.O., PALAKKAD), PIN - 678571 2 DEEPA V HEADMISTRESS, A.L.P. SCHOOL, MATHUR EAST, MATHUR P.O., PALAKKAD DISTRICT, PIN - 678571 3 DIVYA B LOWER PRIMARY SCHOOL ASSISTANT, A.L.P. SCHOOL, MATHUR EAST, MATHUR P.O., PALAKKAD DISTRICT, PIN - 678571 4 SANTHOSH KUMAR V PRESIDENT, PARENT TEACHERS ASSOCIATION (PTA), A.L.P. SCHOOL, MATHUR EAST MATHUR P.O., PALAKKAD DISTRICT, PIN - 678571 5 ADDVAID K M (MINOR) STUDENT IVTH STANDARD A.L.P. SCHOOL, MATHUR EAST MATHUR P.O., PALAKKAD DISTRICT PIN-678571 REPRESENTED HIS GUARDIAN AND FATHER MANU K M, S/O MURALIDARAN,K M,ATHYARATHVEED, MATHUR P.O., PALAKKAD DISTRICT , PIN - 678571 BY ADVS. M.SAJJAD V.A.MUHAMMED

RESPONDENTS/RESPONDENTS 1 TO 7:

1 STATE OF KERALA REPRESENTED BY ITS CHIEF SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-, PIN - 695001 2 THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, SECRETARIAT ANNEXE- II, THIRUVANANTHAPURAM, PIN - 695001 3 THE DIRECTOR OF GENERAL EDUCATION JAGATHY, THIRUVANANTHAPURAM, PIN - 695014 4 THE DEPUTY DIRECTOR OF EDUCATION CIVIL STATION, KENATHUPARAMBU, KUNATHURMEDU, PALAKKAD, PIN - 678001 5 THE DISTRICT EDUCATIONAL OFFICER MUNICIPAL COMPLEX, ROBINSON ROAD, OPP. GOVERNMENT HOSPITAL, SANTHI NAGAR, SULTANPET, PALAKKAD, PIN - 678014 6 THE ASSISSTANT EDUCATION OFFICER KUZHALMANNAM, PALAKKAD-678 702 7 THE UNION OF INDIA REPRESENTED BY ITS SECRETARY,HUMAN RESOURCES DEPARTMENT (EDUCATION & LITERACY) SASTRI BHAVAN, NEW DELHI-, PIN - 100001 BY ADV SRI.B.RAMACHANDRAN, CENTRAL GOVERNMENT COUNSEL SMT.SABEENA P.ISMAIL-SPECIAL GOVERMENT PLEADER.

THIS WRIT APPEAL HAVING COME UP FOR FINAL HEARING ON 08.11.2022, ALONG WITH WA.1511/2022 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR & THE HONOURABLE MRS. JUSTICE C.S. SUDHA TUESDAY, THE 8TH DAY OF NOVEMBER 2022 / 17TH KARTHIKA, 1944 WA NO. 1510 OF 2022 AGAINST THE JUDGMENT DATED 13.07.2022 IN WP(C) 18604/2022 OF HIGH COURT OF KERALA APPELLANTS/PETITIONERS: 1 THE MANAGER M.G. LOWER PRIMARY SCHOOL, M. PUDUR, GOVINDAPURAM P.O., KOLLENGODE, PALAKKAD DISTRICT- 678 507. 2 A.C. SAJI, AGED 54 YEARS, S/O CHANDRASEKHARAN, LOWER PRIMARY SCHOOL TEACHER, M.G. LOWER PRIMARY SCHOOL, M. PUDUR, GOVINDAPURAM P.O., KOLLENGODE, PALAKKAD DISTRICT- 678 507. BY ADVS. V.A.MUHAMMED V.RAJASEKHARAN NAIR RESPONDENTS/RESPONDENT 1 TO 5: 1 THE STATE OF KERALA REPRESENTED BY ITS CHIEF SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.

2 THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, SECRETARIAT ANNEXE- II, THIRUVANANTHAPURAM-695 001. 3 THE DIRECTOR OF GENERAL EDUCATION, JAGATHY, THIRUVANANTHAPURAM-695 014 4 THE ASSISTANT EDUCATIONAL OFFICER, KOLLENGODE, PALAKKAD DISTRICT-678 506 5 THE UNION OF INDIA, REPRESENTED BY ITS SECRETARY, HUMAN RESOURCES DEPARTMENT (EDUCATION & LITERACY) SASTRI BHAVAN, NEW DELHI-100 001 BY ADV SRI.B.RAMACHANDRAN, CENTRAL GOVERNMENT COUNSEL SMT.SABEENA P.ISMAIL-SPECIAL GOVERNMENT PLEADER.

THIS WRIT APPEAL HAVING COME UP FOR FINAL HEARING ON 08.11.2022, ALONG WITH WA.1433/2022 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR & THE HONOURABLE MRS. JUSTICE C.S. SUDHA TUESDAY, THE 8TH DAY OF NOVEMBER 2022 / 17TH KARTHIKA, 1944 WA NO. 1511 OF 2022 AGAINST THE JUDGMENT DATED 13.07.2022 IN WP(C) 17406/2022 OF HIGH COURT OF KERALA APPELLANTS/PETITIONERS: 1 THE MANAGER, KPM HIGHER SECONDARY SCHOOL, CHERIYAVELLINALLOOR,OYOOR VIA, KOLLAM DISTRICT-691 516. 2 GULAB KHAN K., UPST LANGUAGE TEACHER, KPM HIGHER SECONDARY SCHOOL, CHERIYAVELLINALLOOR,OYOOR VIA, KOLLAM DISTRICT-691 516. BY ADVS. V.A.MUHAMMED M.SAJJAD RESPONDENTS/RESPONDENTS 1 TO 5: 1 THE STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.

2 THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, SECRETARIAT ANNEXURE-II, THIRUVANANTHAPURAM-695 001. 3 THE DIRECTOR OF GENERAL EDUCATION, JAGATHY,THIRUVANANTHAPURAM-695 014. 4 THE DISTRICT EDUCATIONAL OFFICER, KOTTARAKKARA,KOLLAM DISTRICT-691 506. 5 THE UNION OF INDIA, REPRESENTED BY ITS SECRETARY, HUMAN RESOURCE DEPARTMENT (EDUCATION & LITERACY), SASTRI BHAVAN,NEW DELHI-110 001. BY ADV SRI.B.RAMACHANDRAN, CENTRAL GOVERNMENT COUNSEL SMT.SABEENA P.ISMAIL-SPECIAL GOVERNMENT PLEADER. THIS WRIT APPEAL HAVING COME UP FOR FINAL HEARING ON

08.11.2022, ALONG WITH WA.1433/2022 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR & THE HONOURABLE MRS. JUSTICE C.S. SUDHA TUESDAY, THE 8TH DAY OF NOVEMBER 2022 / 17TH KARTHIKA, 1944 WA NO. 1585 OF 2022 AGAINST THE JUDGMENT DATED 13.07.2022 IN WP(C) 17413/2022 OF HIGH COURT OF KERALA APPELLANTS/PETITIONERS: 1 THE CORPORATE MANAGER, SANGEETHA SOCIETY MANAGEMENT CORPORATE AIDED SCHOOLS, PALAMATTOM, THATTEKADU, KOTHAMANGALAM, ERNAKULAM DISTRICT-686 681. 2 SOWMYAMOL.C., AGED 38 YEARS WIFE OF RAJANEELKANTH, LPSA, ST.MARY'S LP SCHOOL, ACHANAMGODE, PALAKKAD DISTRICT-678 506. BY ADV V.A.MUHAMMED RESPONDENTS/RESPONDENTS 1 TO 7: 1 THE STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001. 2 THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT,

SECRETARIAT ANNEXE II, THIRUVANANTHAPURAM-695 001. 3 THE DIRECTOR OF GENERAL EDUCATION, JAGATHY, THIRUVANANTHAPURAM-695 014. 4 THE DISTRICT EDUCATIONAL OFFICER, SULTANPET, PALAKKAD DISTRICT-678 014. 5 THE ASSISTANT EDUCATIONAL OFFICER, KOLLENGODE, PALAKKAD DISTRICT-678 506. 6 THE ASSISTANT EDUCATIONAL OFFICER, CHITTUR, PALAKKAD DISTRICT-678 101. 7 THE UNION OF INDIA REPRESENTED BY ITS SECRETARY, HUMAN RESOURCE DEPARTMENT (EDUCATION & LITERACY), SASTRI BHAVAN, NEW DELHI-110 001. BY ADV SRI.B.RAMACHANDRAN, CGC SMT.SABEENA P. ISMAIL, SPECIAL GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR FINAL HEARING ON 08.11.2022, ALONG WITH WA.1433/2022 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: C.R. P.B.SURESH KUMAR & C.S.SUDHA, JJ.
----- Writ Appeal Nos. 1433, 1510, 1511 and 1585 of 2022 ----- Dated this the 8th day of November, 2022

JUDGMENT

C.S.Sudha, J.

These intra-court appeals under Section 5 of the Kerala High Court

Act, 1958 have been filed by the petitioners in W.P.(C) No.17413, 17406, 18604 and 27124 of 2022, aggrieved by the dismissal of the petitions by common judgment dated 13/07/2022. The writ petitions have been filed by Managers and teachers of a few aided schools challenging Ext.P1 notification dated 18/04/2022, by which the Government of Kerala (GoK) has amended the Kerala Education Rules, 1959 (the KER), by inserting few new Rules. The parties and the documents will be referred to as described in W.P.(C) No.17413 of 2022 from which Writ Appeal No. 1585 of 2022 has been filed.

2. According to the petitioners, Ext.P1 notification is arbitrary,

grossly illegal, inconsistent as well as offending the salient features of the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) and the Rules made thereunder and also the various provisions of the Kerala Education Act, 1958 (KEA) and the Rules framed thereunder. The petitioners, therefore, sought a declaration that Ext.P1 is ultra vires, illegal and unconstitutional. The learned Single Judge by the impugned judgment dismissed the petitions. Aggrieved the petitioners have come up in appeal.

3. Heard both sides.

4. The Rule making power of the GoK is undoubtedly available in

the light of Section 36 of the KEA. The rules made in exercise of such power being pieces of subordinate legislation, can be subject to judicial scrutiny only on the grounds available in that premise. As held by a Division Bench of this court in *Suresh C. v. State of Kerala*, 2009 (3) KHC 287, what is the principle or policy that would best serve the object and purpose of the Act is for the legislature or its delegate to decide. That is a well settled principle. The courts will not be justified in sitting in judgment over the wisdom of the policy maker and striking down a rule or regulation on the only ground that in the view of the court a provision is not reasonable. It is also a well settled position that the unreasonableness that invalidates a subordinate legislation is not the antonym of reasonableness as understood in common parlance. That unreasonableness which invalidates the subordinate legislation is manifest arbitrariness or injustice to the extent of holding inevitably that the legislature never intended to give authority to the rule maker to make such a rule. The court considering the

validity of the subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether subordinate legislation conforms to the parent statute. Where a Rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non- conformity of the Rule is not with reference to any specific provisions of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity.

4.1. In *Maharashtra State Board of Secondary and Higher*

Secondary Education v. Paritosh Bupesh Kumarsheth, AIR 1984 SC 1543, the Apex Court has held that, the Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it

is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The legislature and a delegate are the sole repositories of the power to

decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the rule/regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution.

4.2. The Apex Court in *Saregama India Ltd. v. Next Radio Ltd.*,

2022(1) SCC 701, held that the court is entrusted by the constitution of the power of judicial review. In the discharge of its mandate, the court may evaluate the validity of a legislation or rules made under it. A statute may be invalidated if it is ultra vires constitutional guarantees or transgresses the legislative domain entrusted to the enacting legislature. Delegated legislation can, if it results in a constitutional infraction or is contrary to the ambit of the enacting statute, be invalidated. However, the court in the exercise of judicial review cannot supplant the terms of the provision through judicial interpretation by re-writing statutory language. Draftsmanship is a function entrusted to the legislature. Craftsmanship on the judicial side cannot transgress into the legislative domain by re-writing the words of a statute. For then, the judicial craft enters the forbidden domain of a legislative draft.

5. Keeping the aforesaid principles in mind, we now proceed to

consider the challenge raised by the petitioners to Ext.P1 notification. As is evident from a reading of Ext.P1 and the Explanatory note attached to it, the KER has been amended to curb the practice of creating additional divisions and posts on the basis of bogus admissions and forged attendance of students, thereby preventing a drain of public money. One of the main grievances of the petitioners is that, by the newly incorporated Rule 12(3) in Chapter XXIII of the KER, sanctioning of additional divisions and posts will take effect from the first of

October of the academic year. This according to the petitioners is against the provisions of the RTE Act, as it denies the right of the students from having the required number of teachers till the month of October of the academic year.

5.1. As noticed by the learned Single Judge, after the filing of the

writ petitions, the GoK issued Ext.R1(a) notification as per which permission has been granted to the management of the aided school(s) to appoint teacher(s) on daily wage basis till additional posts are created and appointments made. Ext.R1(a) redresses the grievance raised in the writ petitions against Rule 12(3). However, now the allegation of the petitioners is that the engagement of the teachers on a daily wage basis till the sanctioning of additional divisions or additional posts would infringe the right of the claimants under Rule 43 and Rule 51A of the KER. This argument is without any basis because the claim under the aforesaid Rules would arise only when sanctioned posts exist and

steps are taken to fill up the said posts. When post(s) itself is/are not existing or available, where is the question of the right of the claimants under the aforesaid provisions being affected?

6. Rule 12(4) brought in by Ext.P1 notification in Chapter XXIII of

KER says that, in a school where additional division or additional posts are found necessary, the Educational Officer shall make a surprise visit to the school and conduct a preliminary verification so as to ascertain the genuineness of the pupil's strength by checking the entire details of both the pupils present and absent on that day with their unique identification number (UID) and other school records. On such verification, if the requirement for additional division or additional posts is found on valid grounds, the details of it shall be submitted to the Director on or before 15th July of each year through the web portal 'SAMANWAYA' for getting its sanction from the Government. The submission of details through 'SAMANWAYA' shall also be duly recorded in the staff fixation order. According to the petitioners, this Rule is against the provisions of the RTE Act and also against the undertaking given by the GoK before the Apex Court in Civil Appeal No.958/2013, the judgment of which is Ext. P5.

6.1. Rule 15 of Chapter VI of the KER deals with removal of pupils from the rolls. Clause (iii) of Rule 15 says that a pupil shall be removed from the rolls, if he has been absent without leave for fifteen working days consecutively; or has been continuously absent for five working days from the reopening day. By Ext.P1 amendment, a note has been brought in after Clause

(iii) which says that a teacher in charge of a class in standard IX and X shall

report the details of such absentees to the Head Master or Head Mistress or Vice Principal, as the case may be, so as to remove them from the rolls under these rules. Further, Rule 15A has been inserted after Rule 15 which says that, the teacher in charge of a class in standard I to VIII shall report the details of pupils who have been absent without leave for fifteen working days consecutively or who has been continuously absent for five working days from the re-opening day to the Headmaster or Headmistress or Vice-Principal, as the case may be. The Headmaster or Headmistress or Vice-Principal, as the case may be, shall take immediate follow up actions in consultation with the local authority in terms of Section 9 of the RTE Act. Section 9 of the RTE Act deals with the duties of local authority. Clause (e) says that the local authority shall ensure and monitor admission, attendance and completion of elementary education by every child residing within its jurisdiction. Therefore, a combined reading of the aforesaid provisions would make it apparent that merely because a student is absent on the date of the surprise visit by the Educational Officer, it would not lead to his automatic removal from the rolls or to a conclusion that the admission is bogus. This Rule is in no way against the provisions of the RTE

Act. 6.2. In Ext. P5 judgment, that is, State of Kerala v. President,

Parent Teachers Assn. SNV UP, AIR 2013 SC 1254, the Apex court has considered an appeal from a judgment of a Division Bench of this court. The Apex was called upon to consider whether this Court was justified in directing the Secretary, General Education Department of the State of Kerala to get the verification of the actual students' strength in all the aided schools in the State with the assistance of the police and to take appropriate action. This court finding that there was manipulation of records by the school management relating to the

strength of students concluded that since the Super Check Cell, the Education Department, lacked investigating skill or the authority to collect information from the field, it would be appropriate that the verification of actual students in all the aided schools in the State should be done through the police. Holding so, this Court directed the State to entrust the matter to the police who were to assist the Education Department by conducting enquiry about the actual and real students studying in every aided school in the State and pass on the same to the Education Department for them to fix or re-fix the staff strength based on the data furnished by the Police. The Secretary, Department of Education, was directed to get verification of the actual students studying in all the aided schools in the State done through the police authorities and to take

appropriate action. This court also held that it would be open to the Government to consider photo or finger identification of the students for avoiding manipulation in the school registers. 6.3. The State, aggrieved by the various directions given by this

court, took up the matter in appeal. It was contended that this court was not justified in giving such a direction to the Secretary, Education Department, while the enquiry was being conducted by the Education Department. It was also pointed out that KEA and the KER does not prescribe any mechanism for conducting enquiries by the police at the time of staff fixation; that the method to be adopted in the fixation of staff in various schools is prescribed under Chapter XXIII of KER and the police have no role and that the KER empowers the AEO, the DEO and the Super Check Cell etc. to conduct enquiries, but not by the police. It was also pointed out that the presence of police personnel in the aided schools in the States would not only cause embarrassment to the students studying in the school but would also cast a wrong impression in the minds of the students about the conduct of their Headmaster, teachers and staff of the school.

6.4. The Apex court took notice of the fact that the State itself had admitted in the petition that there ought to be a better mechanism to ascertain the number of students in the aided schools which could be done by finger

printing or any other modern system so that the students could be properly identified and staff fixation could be done on the basis of relevant data. Therefore, the State was directed to evolve a better mechanism to overcome such situations which had arisen in the case, whereby the management of a school on the basis of bogus admissions and wrong recording of attendance had succeeded in obtaining irregular and illegal fixation of staff strength of the school. An additional affidavit was also filed by the State stating that the Government after much thought and deliberations has formulated a scientific method to resolve the issue emanating from staff fixation orders every year. As per the affidavit, the number of students in the school can be determined through UID technology and the number of divisions could be arrived at on the basis of revised pupil-teacher ratio. Further, it was also pointed out that after implementation of UID as a part of scientific package, the Government would remand the matter of identification of bogus admission to the Director or Public Instruction for considering issues afresh after corroborating the findings of Super Check Cell with UID details of the students. The State also contended that circular No. NEP (3) 66183/2011 dated 12/10/2011 would take care of such situations happening in various aided schools in the State.

6.5. The Apex court held that this court was not justified in directing police intervention. However, the background and the seriousness of the

situation which prompted this court to give such a direction was taken note of and it was observed that due to such irregular fixation of staff strength, the State exchequer incurs heavy financial burden by way of pay and allowances. The State has also to expend public money in connection with the payment of various scholarships, lump - sum grant, noon - feeding, free books etc. to the bogus students. A great responsibility is, therefore, cast on the General Education Department to curb such menace which not only burdens the State exchequer but also would give a wrong signal to the society at large. The Management and the Headmaster of the school should be a role model to the young students studying in their schools and if they themselves indulge in such bogus admissions and record wrong attendance of students for unlawful gain, they would never be able to imbibe guidelines of honesty, truth and values in life to the students. The Apex court further held that, investigation by the police with regard to the verification of

the school admission, register etc., particularly with regard to the admissions of students in the aided schools would give a wrong signal even to the students studying in the school and the presence of the police would not be conducive to the academic atmosphere of the schools. In such circumstances, the directions given by this court for police intervention for verification of the students' strength in all the aided schools was set aside. A direction was also given to the Education Department, to forthwith give effect to

the circular dated 12/10/2011 and issue UID Card to all the school children and follow the guidelines and directions contained in the said circular. It was also clarified that, in future, the Government could always adopt better scientific methods to curb such types of bogus admissions in various aided schools. 6.6. We fail to understand how Rule 12(4) is against the undertaking given by the Government before the Apex court as alleged by the petitioners. What was the undertaking supposed to have been given has not been specified by the petitioners. Therefore, the challenge to the said Rule also cannot stand.

7. Rule 12(8) inserted in Chapter XXIII of the KER by Ext.P1 says

that, notwithstanding anything contained in the rules, if a fall in the pupil's strength occurs on the rolls of a school at any time till 31 st January of the year, which is found sufficient to affect the number of divisions or posts sanctioned, the Headmaster or Headmistress or Vice-Principal shall report the fact to the Educational Officer at once through the web portal 'SAMANWAYA'. The Educational Officer, on verification of the report, if finds sufficient reasons to reduce the class, division or post, shall revise the staff fixation order accordingly within twenty days from the date of receipt of the report of the Headmaster or

Headmistress or Vice-Principal. This Rule according to the petitioners, is unjust and arbitrary. 7.1. As stated earlier the purpose of bringing in the amendment to

the Rules is because it was noticed that several aided schools in the State though not all, had succeeded in obtaining staff fixation orders through bogus admissions and misrepresentation of facts. Due to such irregular fixation of staff, the State exchequer incurred heavy financial burden by way of pay and allowances. Rule

12(8) apparently has been brought in with the intention of preventing drain of public money by retaining teacher(s) who are in excess of the pupil-teacher ratio required to be maintained by the Rules. There is nothing arbitrary or unjust in this provision also.

8. Rule 17 inserted in Chapter XXIII says that when the creation of

a new post or holding of a post through bogus admission or forged attendance is detected on a verification conducted by the Educational Officer or Deputy Director, Education or Super Check Officer or Director or any other officer authorized by the Government, the pecuniary loss caused to the Government on account of the creation or holding of such posts shall be fully recovered from the teacher in charge of the class, Headmaster or Headmistress or Vice- Principal, as the case may be, or Manager or Educational Officers concerned who are responsible for the same and disciplinary action shall also be initiated against the concerned. According to the petitioners, there is no justification in fixing liability upon the teacher in charge of the class concerned excluding the

Director, Super Check Cell Officer and other Officers concerned. 8.1. As per the scheme of the KEA and KER, the Manager is the

appointing authority and the Government, the paymaster. The Headmaster or Headmistress or Vice-Principal may be the custodian of the attendance register that is maintained in the schools. However, it is the teacher in charge of the class who maintains the register and marks the attendance of the students of the class every day. Therefore, the teacher is also equally responsible if proper attendance is not marked or attendance is marked or shown of students who are not actually the students of the class. Therefore, there is no justification in the argument that the teacher cannot be held responsible and the same is in no way arbitrary or unwarranted.

9. Another challenge raised by the petitioners is relating to Rule 12(1)

of Chapter XXIII. This Rule deals with fixation of staff strength. It says that subject to the availability of accommodation, the strength of teaching staff in each school

shall be fixed and order shall be issued by the Educational Officer through SAMANWAYA in accordance with the general provisions on Rules made thereunder by 15th July of each year after finalizing the number of divisions of each class based on the strength of pupils on the roll having UID as on the 6th working day from the reopening day in June. The UID strength shall be taken from 'Sampoorna', the school management system provided by the

Department of General Education. According to the petitioners, this is against the provisions of RTE Act as well as Ext.P4 judgment of this Court in W.P. (C)No.15913/2021. 9.1. The said case was a public interest litigation moved for

directing the State to re-fix the staff strength in accordance with the mandate contained in the RTE Act and KER, without taking into account Rule 12(1)(i) of Chapter XIII of the KER, which rule was contended to be ultra vires the provisions of the RTE Act and the KER. This Court after considering the provisions contained in the aforesaid Act, the Rules and the affidavit filed by the Additional Director of Public Instructions, found that adequate steps have been taken by the State to make the staff fixation order. This Court also recorded the submission made on behalf of the State that necessary steps would be taken from June 2022 to satisfy the requirements of Rule 12. The writ petition was disposed of taking note of the aforesaid facts. However, it was submitted on behalf of the petitioner that the rider contained in Rule 12 (1)(i), which reads- subject to the availability of accommodation, is contrary to Sections 25 and 26 of the RTE Act. In reply to this it was submitted on behalf of the State that by virtue of the provisions of the RTE Act, the rider has become redundant and

inconsequential and that the Government is prepared to do the needful in order

to satisfy the requirements of staff fixation without adhering to the said objectionable rider. This Court, therefore, held that Rule 12 (1)(i) of chapter XXIII of the KER is arbitrary, illegal and accordingly, the said clause was set aside.

9.2. The unamended Rule 12(1) reads:- 12.(1). The strength of teaching staff in each school shall be fixed by the Educational Officer (Assistant Educational Officer in LP/UP and District Educational Officer in HSA) as per the effective strength of pupils reckoned for the year 2010-11 and shall remain permanent unless and until the Government deems fit to revise them based on Unique Identification Number (UID) of students. Additional posts over and above the strength of teaching staff fixed shall be created only :-

(i) subject to the availability of accommodation.

(ii) by determining the actual number of pupils in each school using Unique Identification Number (UID) as per the following Procedure:

(1) The existing staff strength shall be given by the Head

of schools to the DEOs/AEOs concerned on 31 st March or the last working day every year. 9.3. The new Rule reads:- (1) fixation of Staff Strength - subject to the availability of accommodation, the strength of teaching staff in each school shall be fixed and orders shall be issued by the Educational Officer through 'SAMANWAYA' in accordance with the above general provisions and the rules hereunder, by 15th July of each year, after finalizing the number of divisions in each class based on the strength of pupils on the roll having Unique Identification

Number (UID) as on the sixth working day from the reopening day in June. The Unique Identification Number (UID) strength shall be taken from 'Sampoorna', the school management system, provided by the Department of General Education.

9.4. As noticed and held by the learned Single Judge, the State is

certainly bound by the dictum in Ext.P4 judgment. Here we refer to Section 19 of the RTE Act, which deals with the norms and standards to be maintained by the schools. Sub-section (1) says that no school shall be established or recognized under Section 18, unless it fulfills the norms and standards specified in the

schedule of the Act. Serial number 2 in the Schedule deals with the norms required for the building of a school. Therefore, schools can be established or recognized subject to the compliance of the norms and standards prescribed in the Schedule. That being the position there is no reason to interfere with Rule 12(1)(i) also.

10. Excessive exercise of rule making powers is not pleaded or

established. The impugned Rules are not established to be capricious or arbitrary, that no reasonably prudent person or institution bestowed with subordinate legislative power, particularly in terms of the rule making power under the KEA, would or ought to have ever made. In this view of the matter, we find no reasons to interfere with the findings of the learned Single Judge

upholding Ext.P1. We confirm them. Hence the writ appeals are dismissed. Interlocutory applications, pending if any, shall stand closed. Sd/- P.B. SURESH KUMAR JUDGE Sd/- C.S.SUDHA JUDGE Jms/03.11

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