

The Principal Vs. Simi a.C

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SooperKanoon Citation : sooperkanoon.com/2958

Court : Kerala

Decided On : Nov-17-2014

Judge : Honourable Mr.Justice Antony Dominic

Appellant : The Principal

Respondent : Simi a.C

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE ANTONY DOMINIC & THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN MONDAY, THE17H DAYOF NOVEMBER201426TH KARTHIKA, 1936 WA.No. 1575 of 2014 () IN WP(C).27162/2014 ----- AGAINST THE

JUDGMENT

IN WP(C) 27162/2014 of HIGH COURT OF KERALA DATED3110-2014 APPELLANTS/7TH AND8H RESPONDENTS:

----- 1. THE PRINCIPAL JAWAHAR ENGLISH MEDIUM SCHOOL, PATHIRAPPALLY KUDAPPANAKKUNNU, THIRUVANANTHAPURAM.

2. THE MANAGER, JAWAHAR ENGLISH MEDIUM SCHOOL, PATHIRAPPALLY KUDAPPANAKKUNNU, THIRUVANANTHAPURAM. BY ADVS.SRI.M.P.ASHOK KUMAR SMT.BINDU SREEDHAR SMT.R.S.MANJULA

----- 1. SIMI A.C.,
AGED 26 YEARS, D/O. LATHA, ANANYA BHAVAN, T.C. 20/265 CRA 216
PATHIRAPPILLY, MUKKOLA.P.O. THIRUVANANTHAPURAM-695005.

2. THE SECRETARY, GENERAL EDUCATION DEPARTMENT, GOVERNMENT
SECRETARIAT THIRUVANANTHAPURAM-695001.

3. THE DISTRICT COLLECTOR, COLLECTORATE, CIVIL STATION
THIRUVANANTHAPURAM-695001.

4. THE DIRECTOR OF PUBLIC INSTRUCTIONS, JAGATHY,
THIRUVANANTHAPURAM-695014.

5. THE DEPUTY DIRECTOR OF EDUCATION, THIRUVANANTHAPURAM-
695001.

6. THE DISTRICT EDUCATIONAL OFFICER, THIRUVANANTHAPURAM-
695001.

7. THE ASSISTANT EDUCATIONAL OFFICER,
THIRUVANANTHAPURAM(NORTH) PIN-695001. WA.No. 1575 of 2014 -2- 8.
SHIJI.A.G. NAIR, TEACHER, JAWAHAR ENGLISH MEDIUM SCHOOL
KUDAPPANAKKUNNU VILLAGE, PATHIRAPPALLY, MUKKOLA.P.O.
THIRUVANANTHAPURAM-695005 RESIDING AT KUZHIVILA PUTHEN VEEDU,
NETTAYAM MANIKANTESHWARAM.P.O., THIRUVANANTHAPURAM-13.

9. THULASI.S. AKASH BHAVAN, TGRA-58, PATHIRAPPALLY
KUDAPPANAKKUNNU, PRESIDENT, PTA JAWAHAR ENGLISH MEDIUM
SCHOOL PATHIRAPPALLY-695005. R1 BY ADV. SRI.P.ANOOP (MULAVANA)
R2 TO R7 BY SR.GOVERNMENT PLEADER SRI T.T.MUHAMOOD R8 BY
SRI.THOMAS ABRAHAM R9 BY SRI.S.MANU THIS WRIT APPEAL HAVING
BEEN FINALLY HEARD ON 07/11-2014, ALONG WITH WA. 1580/2014 & WA.
1594/2014, THE COURT ON 17/11-2014 DELIVERED THE FOLLOWING: "CR"
ANTONY DOMINIC & ANIL K.NARENDHAN, JJ.

----- W.A.Nos.1575, 1580 & 1594 of 2014
----- DATED THIS THE 17th DAY OF
NOVEMBER, 2014

JUDGMENT

ANIL K.NARENDRA, J.

These Writ Appeals arise out of the judgment dated 31/10/2014 of the learned Single Judge in W.P.(C)No. 27162/2014. W.A.No.1575/2014 is filed by the 7th and 8th respondents in the Writ Petition, who are the Principal and the Manager respectively, of Jawahar English Medium School at Pathirappally in Thiruvananthapuram district. W.A.1580/2014 is filed by the 10th respondent in the Writ Petition, who is the parent of one Aswin studying in the 3rd standard of the said school and W.A.No.1594/2014 is filed by the 9th respondent in the Writ Petition, who is working as a teacher of that school.

2. The Writ Petition is filed by the 1st respondent in all these Writ Appeals, who is the mother of one Abishek studying in the UKG and one Anusha studying in the 3rd Standard of Jawahar English Medium School at Pathirappally, challenging Ext.P5 Government W.A.Nos.1575, 1580 & 1594/14 -2- order dated 15/10/2014 and seeking various reliefs including a writ of mandamus directing respondents 4 to 7 herein to ensure that the students in Jawahar English Medium School are admitted to nearby Government and Aided schools immediately, and for other consequential reliefs. By judgment dated 31/10/2014, the learned Single Judge set aside Ext.P5 Government order, thereby restoring Ext.P1 order dated 30/9/2014 and Ext.P4 proceedings dated 14/10/2014 of the Director of Public Instruction, the 4th respondent herein, by which the school was ordered to be closed down with immediate effect, with a further direction to the Principal to make necessary arrangements for admitting the students to the nearby Government and Aided schools. It is aggrieved by the judgment of the learned Single Judge dated 31/10/2014, the appellants are before us in these Writ Appeals.

3. We heard the arguments of the learned counsel appearing for the appellants in these Writ Appeals, the learned counsel for the 1st respondent (writ petitioner) and

the learned Senior Government Pleader appearing for the official respondents. Since common issues are raised in these cases, we W.A.Nos.1575, 1580 & 1594/14 -3- are proceeding to dispose of these Writ Appeals by a common judgment.

4. The contentions raised on behalf of the appellants in these Writ Appeals are as follows; The 1st respondent has no locus standi to challenge Ext.P5 order and she is merely a name lender acting on behalf of certain persons having vested interests. The present Writ Petition is the verbatim reproduction of the earlier public interest litigation, which was not entertained by this Court. Moreover, there is no prayer in the present Writ Petition to quash Ext.P5 order. By Ext.R7(c) Certificate of Authority issued by Travancore Institute of Science and Technology, the school is authorised to solicit students and conduct classes up to Senior Secondary Certificate Course/Vocational Courses. None of the students in the school were subjected to any physical or mental harassment and the allegation that on 25/9/2014 the 1st respondent's son was locked up in a kennel in the school premises is untrue and the said story is also part of a conspiracy between certain persons having vested interests. The 4th respondent issued Ext.P1 order to close W.A.Nos.1575, 1580 & 1594/14 -4- down the school, absolutely without any authority of law and in violation of the procedure contemplated under Sub-section (3) of Section 18 of the Right to Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as 'the RTE Act') and Sub-rules (1) and (2) of Rule 15 of the Kerala Right to Children to Free and Compulsory Education Rules, 2011 (hereinafter referred to as 'the RTE Rules'). Further, private study of pupils in unrecognised schools up to Standard VIII is permissible in terms of the provisions under the Kerala Education Rules, 1959 (hereinafter referred to as 'the KER') and the special orders issued by Government of Kerala from time to time. There is also no prohibition in giving training to students under Open Basic Education Programme, on the strength of the accreditation given by the National Institute of Open Schooling. Going by Sub-rule (10) of Rule 14 of the RTE Rules an unrecognised school can submit application for recognition at anytime. Moreover, the Government of Kerala vide G.O.(Rt.)No.4078/14/G.Edn. dated 9/10/2014 granted time up to 31/12/2014 for submitting application for recognition of the schools under the RTE Act. It is W.A.Nos.1575, 1580 & 1594/14 -5- based on an

appeal filed by the 1st appellant in W.A.No.1575/2014, the Government by Ext.P5 order stayed the operation of Ext.P1 order of the 4th respondent and the said order is perfectly legal. Section 32 of the Act provides for redressal of grievance of any person relating to right of a child under the RTE Act, by making a written complaint to the local authority. The closure of the school adversely affects the education and future of the students and it is in violation of the fundamental rights guaranteed under Article 21A of the Constitution and also in violation of the provisions under the RTE Act and the Rules made thereunder. Therefore, according to the appellants, the reasoning of the learned Single Judge is legally unsustainable and the learned Single Judge ought to have declined any interference under Article 226 of the Constitution of India. The learned Senior Government Pleader appearing for respondents 2 to 7 also supported the reasoning of the Government in Exhibit P5 order.

5. Per contra, the learned counsel for the 1st respondent (writ petitioner) contended that, in connection with the incident occurred on 25/9/2014, the 5th respondent conducted an enquiry, W.A.Nos.1575, 1580 & 1594/14 -6- as directed by the 4th respondent, and submitted Ext.P6 report. Based on the said report, the 4th respondent issued Ext.P1 order by which the school was ordered to be closed down with immediate effect. On 9.10.2014, the 1st Appellant in W.A.No.1575/2014 forwarded a request to the 4th respondent to cancel Ext.P1 order, which request was rejected by Ext.P4 proceedings. Aggrieved by Ext.P4 an appeal petition was submitted before the Minister for Education, Kerala, and the Government by Ext.P5 order stayed Ext.P1 order arbitrarily and absolutely without any valid reasons. Further, the school is functioning in a residential building and the students are taught in small and cramped class rooms without adequate ventilation and lighting. The said building is also not up to the specifications prescribed under the KER and the school is not having any permission by the Education Department. Therefore, according to the learned counsel for the 1st respondent, the learned Single Judge rightly interfered with Ext.P5 order.

6. We have considered the rival submissions made at the Bar. W.A.Nos.1575, 1580 & 1594/14 -7- 7. Going by the averments in the Writ Petition, on 25/9/2014, the 1st respondent's son Abishek who was studying in the UKG of Jawahar

English Medium School at Pathirappally was locked up in a kennel in the school premises for talking to his friends and her daughter Anusha who was studying in the 3rd Standard, who alleged to have witnessed the incident was threatened with dire consequences, if she discloses the incident to her parents. Based on a complaint made before the Police, Crime No.1196/2014 of Peroorkkada Police Station has been registered against the Principal and the Class Teacher, alleging commission of offences punishable under Sections 342, 317 and 34 of the IPC and Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000, which is evident from Ext.P2 FIR dated 29/9/2014.

8. The 4th respondent directed the Deputy Director of Education, Thiruvananthapuram, the 5th respondent herein, to conduct an enquiry into the matter and submit a report. Accordingly, the 5th respondent in Ext.P6 reported that, the School is running without any recognition and adequate W.A.Nos.1575, 1580 & 1594/14 -8- infrastructure facilities. The 5th respondent had also made enquires with the alleged victim and his sister who had witnessed the alleged incident. The 4th respondent, based on Ext.P6 report submitted by the 5th respondent, issued Ext.P1 order dated 30/9/2014, by which the school was ordered to be closed down with immediate effect. It was further ordered that the Heads of the nearby Government and Aided schools will admit the students in the age appropriate classes without insisting for Transfer Certificates and other formalities, provisionally. The parents of the students were allowed one month time to submit Birth Certificates to the respective schools.

9. On 9.10.2014, the Principal forwarded a request to the 4th respondent to cancel Ext.P1 order by which the school was ordered to be closed down with immediate effect. The 4th respondent rejected the said request by Ext.P4 order dated 14/10/2014. As borne out from Ext.P4, the Principal vide letter dated 9/10/2014 informed the 4th respondent that she is ready to improve the existing facilities in the school and requested for cancellation of Ext.P1 order and to permit her to reopen the W.A.Nos.1575, 1580 & 1594/14 -9- school immediately. But the said request was rejected by the 4th respondent, vide Ext.P4 proceedings dated 14/10/2014, stating that the school in question is functioning without permission and recognition from the Department. As the functioning of the school itself was ab

initio void, the request for cancellation of Ext.P1 order can only be rejected. Therefore, the 4th respondent by Ext.P4 proceedings, directed her to make necessary arrangements for admitting the students in the school to the nearby recognised schools, as directed in Ext.P1 order. It was also made clear that any laxity on her part in implementing Ext.P1 order will visit penal consequences under the provisions of the RTE Act.

10. It is aggrieved by Ext.P4 proceedings of the 4th respondent, the Principal submitted an appeal petition before the Minister for Education, Kerala, and the Government of Kerala, the 2nd respondent herein, by Ext.P5 order dated 15/10/2014, stayed Ext.P1 order of the 4th respondent until further orders, without prejudice to the enquiry and proceedings initiated consequent on the allegation of locking up of a student in kennel and also the W.A.Nos.1575, 1580 & 1594/14 -10- final action to be taken thereupon. The reasons stated in Ext.P5 to grant such an order are that, the students of the school are in the middle of their academic year and that the process of recognition of the school under the RTE Act is yet to be completed.

11. Regarding the contention raised by the appellants that, the 1st respondent has no locus standi to challenge Ext.P5 order and she is merely a name lender acting on behalf of certain persons having vested interests, we notice that, the factual basis for such a contention, as set forth in the counter affidavit, is that subsequent to the alleged incident her children had left the school and joined another school namely, Infant Jesus School, Kuravankonam. Further, the present Writ Petition filed by the 1st respondent is the verbatim reproduction of W.P.(C) No.26554/2014, a public interest litigation filed by another person seeking the very same relief, which was not entertained by this Court. It is not in dispute that, as on the date of the alleged incident, her son Abishek was studying in the UKG and her daughter Anusha was studying in the 3rd Standard of Jawahar W.A.Nos.1575, 1580 & 1594/14 -11- English Medium School. It was based on her complaint the Police registered Ext.P2 FIR against the Principal and the Teacher concerned. Regarding the alleged incident, the 5th respondent conducted an enquiry and submitted his report before the 4th respondent and it was based on that report the 4th respondent issued Ext.P1 order to close down the school. Therefore, when the

Government by Ext.P5 stayed the operation of Ext.P1 order thereby permitting the school to be reopened, the 1st respondent could certainly have a grievance and in such circumstances, she has the locus standi to challenge Ext.P5 order. Since Ext.P5 order is one passed by the Government, no purpose would be served by moving a complaint before the local authority under Section 32 of the RTE Act.

12. Even a cursory look of the memorandum of Writ Petition in the present case and that in W.P.(C)No.26554/2014, a copy of which is marked as Exhibit R7(a), would make it appear that the present Writ Petition is the verbatim reproduction of W.P.(C)No.26554/2014 filed by the Convener of Janakiya Ikya Vedhi, Mukkola, as a public interest litigation, seeking the very W.A.Nos.1575, 1580 & 1594/14 -12- same relief, which was not entertained by this Court. However, this by itself would not be sufficient for this Court to draw an inference of any malafides on the part of the 1st respondent in approaching this Court, challenging Ext.P5 order or to infer that she is merely a name lender acting on behalf of certain persons having vested interests. Therefore, the contentions raised by the appellants in this regard can only be rejected and we do so.

13. Regarding the contention raised by the appellants that, there was no prayer in the Writ Petition to quash Ext.P5 order, we notice that, in the public interest litigation originally moved and also in the present Writ Petition, the main prayer sought for reads thus; "Issue a writ of mandamus, or any other appropriate writ , order or direction, directing the 1st respondent (2nd respondent in these Writ Appeals) to set aside Exhibit P5 order." But, as apparent from the statement of facts of the present Writ Petition and also the grounds raised therein, the main prayer intended by the 1st respondent was issuance of an appropriate writ, order of direction quashing Ext.P5 order. In Goswami W.A.Nos.1575, 1580 & 1594/14 - 13- Krishna Murarilal Sharma v. Dhan Prakash (1981 (4) SCC574 and in Smt.Lachi Tewari v. Director of Land Records (1984 Suppl. SCC431 the Apex Court expressed the view that, if there was mistake committed by the lawyer, the parties should not suffer. Moreover, going by the pleadings in the counter affidavit filed in the Writ Petition and also the affidavit accompanying to the interlocutory applications filed for impleadment, the party respondents in the writ petition (appellants in these Writ Appeals) proceeded with the case knowing fully that it is

one filed to set aside Ext.P5 order. Hence no prejudice whatsoever has been caused to any one of them, by the learned Single Judge proceeding with the Writ Petition as one filed to set aside Ext.P5 order. In such circumstances, we find absolutely no grounds to interfere with the reasoning of the learned Single Judge in rejecting the objection regarding the so- called defect in the prayer sought for in the Writ Petition.

14. The RTE Act was enacted by the Parliament to provide for free and compulsory education to all children of the age of six to fourteen years and it came into force on 1/4/2010. Going by W.A.Nos.1575, 1580 & 1594/14 -14- Sub-section (1) of Section 3, every child of the age of six to fourteen years, including a child belonging to disadvantaged group referred to in clause (d) or child belonging to weaker section referred to in clause (e) of Section 2, shall have a right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education. Clause (f) of Section 2 defines 'elementary education' to mean the education from first class to eighth class. Clause (n) of Section 2 defines 'school' to mean any recognised school imparting elementary education and includes those schools enumerated under Sub- clauses (i) to (iv) and going by Sub-clause (iv), it includes an unaided school not receiving any kind of aid or grant to meet its expenses from the appropriate Government or the local authority. Sections 8 and 9 deal with the duties of the appropriate Government and the local authority respectively, which includes a duty to ensure good quality of elementary education conforming to the standards and norms specified in the Schedule to the RTE Act. The norms and standards for a school prescribed in the Schedule includes the number of teachers, W.A.Nos.1575, 1580 & 1594/14 -15- building, minimum number of working days, etc. Going by the Schedule, the school building should be an all-weather building consisting of (i) at least one class-room for every teacher and an office-cum-store-cum-Head Teacher's room; (ii) barrier-free access; (iii) separate toilets for boys and girls; (iv) safe and adequate drinking water facility to all children; (v) a kitchen where mid-day meal is cooked in the school; (vi) Playground; and (vii) arrangements for securing the school building by boundary wall or fencing.

15. Sub-section (1) of Section 18 of the RTE Act mandates that, no school, other than a school established, owned or controlled by the appropriate Government or the local authority, shall, after the commencement of the said Act, be established or functioned, without obtaining a certificate of recognition from such authority, by making an application in such form and manner, as may be prescribed. Going by the proviso to Sub-section (2) of Section 18, no such recognition shall be granted to a school unless it fulfils the norms and standards specified under Section 19. As per Sub-Section (3) of Section 18, on the W.A.Nos.1575, 1580 & 1594/14 -16-contravention of the conditions of recognition, the prescribed authority shall, by an order in writing, withdraw recognition and going by the second proviso to the said Sub-section, no recognition shall be so withdrawn without giving an opportunity of being heard to such school, in such manner, as may be prescribed. Sub-section (4) of Section 18 mandates that, with effect from the date of withdrawal of the recognition under Sub-section (3), no such school shall continue to function.

16. As per Sub-section (1) of Section 19, no school shall be established, or recognised, under Section 18, unless it fulfils the norms and standards specified in the Schedule. The mandate of Sub-section (2) of Section 18 is that, where a school established before the commencement of the said Act does not fulfill the norms and standards specified in the Schedule, it shall take steps to fulfill such norms and standards at its own expenses, within a period of three years from the date of such commencement. Going by Sub-section (3) of Section 19, where a school fails to fulfill the norms and standards within the period specified under Sub-section (2), the authority prescribed under W.A.Nos.1575, 1580 & 1594/14 - 17- Sub-section (1) of Section 18 shall withdraw recognition granted to such school in the manner specified under Sub-section (3) thereof. Sub-section (4) of Section 19 mandates that, with effect from the date of withdrawal of the recognition under Sub-section (3), no such school shall continue to function.

17. In exercise of the powers conferred by Section 38 of the RTE Act, the State of Kerala has made the RTE Rules, which came into force on 6/5/2011. Rule 14 deals with recognition/upgradation to schools. Going by Sub-rule (1) of Rule 14, every school, other than a school established, owned or controlled by the Central Government or the State Government or the local authority, established before the

commencement of the RTE Act, and referred to under Sub-clause (iv) of Clause (n) of Section 2 as an unaided school and which have obtained recognition under the Kerala Education Act and Rules issued thereunder or has obtained No Objection Certificate from the Government for affiliation to other Boards of Education, shall make a self-declaration within a period of three months from the appointed date, in Form No.I to the Assistant Educational Officer W.A.Nos.1575, 1580 & 1594/14 -18- concerned, regarding its compliance or otherwise with the norms and standards stipulated in the Kerala Education Rules in addition to the norms in the Schedule and fulfilment of the conditions enumerated in Clauses (a) to (m) of Sub-rule (1) of Rule 14. One of such conditions in Clause (d) is that, the school shall comply with the provisions in the Kerala Education Act and Rules issued thereunder relating to area, location and accommodation. Clause (e) of Rule 2 defines 'appointed date' to mean the date on which the Rules shall come into force.

18. As per Sub-rule (5) to Rule 14, the District Educational Officer and the Assistant Educational Officer concerned shall, within three months of the receipt of the self-declaration, inspect such schools to ensure that the schools fulfill the norms and standards and the conditions mentioned in Sub-rule (1). Going by Sub-rule (6), after the inspection is carried out, the inspection report shall be placed before the District Level School Recognition Committee and also in the public domain and the schools conforming to the norms, standards and the conditions in Rule 14 alone shall be granted recognition by the Deputy Director of W.A.Nos.1575, 1580 & 1594/14 -19- Education in Form No.II, within a period of thirty days from the date of inspection. The proviso to Sub-rule (6) provides that, recognized unaided schools that have been established before the date of commencement of the Act, and presenting their students for the respective Class 10 Board examinations continuously from 1/1/2000, shall be issued a Certificate of Recognition under Sub- section (1) of Section 18 of the Act, based on the self-declaration of the Educational Agency that it conforms to the norms and standards as specified in the Schedule and these rules. Sub-rule (7) mandates that, schools that do not conform to the norms, standards and conditions mentioned in Sub-rule (1) shall be listed by the Deputy Director of Education by notification and such schools may request the Deputy Director of Education for an on-site inspection for

grant of recognition at any time so that such period does not exceed three years from the date of commencement of the Act and Sub-rule (8) mandates further that, any School which does not conform to the norms, standards specified in the Schedule and conditions mentioned in Sub-rule (1) within three years from the date of commencement of the Act W.A.Nos.1575, 1580 & 1594/14 -20- shall stop its functioning and running of any such school shall be punishable as provided in section 19 of the Act. Sub-rule (9) makes it clear that, no school, other than a school established, owned or controlled by the Central Government, State Government or local authority be established or functioned after the commencement of the Act and no school which does not conform to the norms and standards specified in the Schedule and those conditions mentioned in Sub-rule (1) shall be given recognition.

19. Going by Sub-rule (10) of Rule 14, the existing unrecognized schools seeking recognition under the Act shall furnish the application (in Form No.III) and shall conform to the norms and standards specified in the Schedule and those specified in the Rules. It shall also fulfill the educational need of the locality as revealed in the school mapping carried out by the authorized agency and the educational need shall be certified by the local authority and the Assistant Educational Officer concerned. As per Sub-rule (11), a Committee, constituted by the Government, comprising of the Director of Public Instruction or W.A.Nos.1575, 1580 & 1594/14 - 21- his nominee, the District Collector and a representative of the local authority, shall verify the facts in the application with reference to the school mapping and the educational need of the locality. Going by Sub-rule (12), the report of the Committee shall be forwarded to the Director of Public Instruction immediately thereafter and going by Sub-rule (13), the Director of Public Instruction shall after examination of the report, forward the eligible cases to the Government for grant of recognition under the Act.

20. Rule 15 deals with withdrawal of recognition to school. As per Sub-rule (1), where the Deputy Director of Education on his own motion, or on any representation received from any person, has reason to believe, to be recorded in writing, that a school recognised under Rule 14, has violated one or more of the conditions for grant of recognition or has failed to fulfill the norms and standards

specified in the Schedule, the said Officer shall issue a notice to the school, as contemplated under Clause (a) to the said Sub-rule, specifying the violations of the conditions of grant of recognition and seek its explanation within one month.

W.A.Nos.1575, 1580 & 1594/14 -22- In case the explanation is not found to be satisfactory or no explanation is received within the stipulated period, the said Officer may cause an inspection of the school, to be conducted by a Committee consisting of five members, of which three should be from the Education Department of the Government, and the other two should be the Ward Member of the local authority and an educationist. The Committee shall conduct due enquiry and submit its report along with its recommendations for continuation of recognition or withdrawal of recognition, to the said Officer. On receipt of the report of the committee, the Deputy Director of Education, after furnishing a copy of the enquiry report and giving the school adequate opportunity of being heard, shall within one month forward a report with his recommendation regarding withdrawal of recognition to Government through the Director of Public Instruction. In cases where violation of conditions of recognition have been rectified or have not been proved, the said Officer shall issue an order for continuance of recognition within one month. Going by Sub-rule (2) the order of withdrawal of recognition passed by the Director of Public W.A.Nos.1575, 1580 & 1594/14 -23- Instruction shall be operative from the academic year immediately succeeding and the Deputy Director of Education shall make arrangements for the continuance of elementary education of the children in a neighbourhood school or schools. As per Sub-rule (3), any person aggrieved by an order under Rule 15 may file a review petition before the Government within thirty days from the date of receipt of such order and the Government shall dispose of the same within three months.

21. The provisions under the RTE Act and the Rules made thereunder, which we have referred to hereinabove in detail, make it abundantly clear that, the preexisting schools imparting elementary education which are in existence as on the date of commencement of the RTE Act are mainly classified into two categories; firstly, recognised schools imparting elementary education which consists of aided schools, schools belonging to specified category and also recognised unaided schools; and secondly, unrecognised schools. As per the procedure for recognition to school contemplated under Rule 14, preexisting

recognised schools falling under the category of aided schools W.A.Nos.1575, 1580 & 1594/14 -24- under sub-clause (ii) of Clause (n) of Section 2, specified category schools like Kendriya Vidyalaya, Navodaya Vidyalaya, etc., under Sub-clause (iii) of Clause (n) of Section 2 and unaided schools under Sub-clause (iv) of Clause (n) of Section 2 which have obtained recognition under the Kerala Education Act and Rules issued thereunder or has obtained No Objection Certificate from the Government for affiliation to other Boards of Education, shall make a self-declaration within a period of three months from the appointed date, in Form No.I to the Assistant Educational Officer concerned, regarding its compliance or otherwise with the norms and standards stipulated in the Kerala Education Rules in addition to the norms in the Schedule and fulfilment of the conditions enumerated in Clause (a) to (m) of Sub-rule (1). Within three months of receipt of such self- declarations, the District Educational Officer and the Assistant Educational Officer concerned shall inspect such schools to ensure that the schools fulfill the norms and standards and the conditions mentioned in Sub-rule (1). As per Sub-rule (6), after the inspection is carried out, the inspection report shall be placed W.A.Nos.1575, 1580 & 1594/14 -25- before the District Level School Recognition Committee constituted under Sub-rule (4) and the schools conforming to the norms, standards and conditions in Rule 14 alone shall be granted recognition by the Deputy Director of Education in Form No.II, within a period of thirty days from the date of inspection. Sub-rule (7) mandates that, schools that do not conform to the norms, standards and conditions mentioned in Sub-rule (1) shall be listed by the Deputy Director of Education by notification and such schools may request the Deputy Director of Education for an on-site inspection for grant of recognition at any time so that such period does not exceed three years from the date of commencement of the Act.

22. On the other hand, under Sub-rule (10) of Rule 14, a preexisting unrecognized school seeking recognition under the RTE Act shall furnish the application in Form No.III and shall conform to the norms and standards specified in the Schedule and those specified in the RTE Rules. Further, it shall also fulfill the educational need of the locality as revealed in the school mapping carried out by the authorized agency and the W.A.Nos.1575, 1580 & 1594/14 -26- educational need shall be certified by the local authority and the Assistant Educational Officer concerned.

Such an application shall be placed before a Committee constituted under Sub-rule (11), which shall verify the facts in the application with reference to the school mapping and the educational need of the locality. Going by Sub-rule (13), the Director of Public Instruction shall after examination of the report, forward the eligible cases to the Government for grant of recognition under the Act.

23. As apparent from the statutory provisions referred to above, in the matter of recognition of preexisting elementary schools under the RTE Act, the cardinal difference between a recognised school and an unrecognised school is that, during the process of recognition a recognised school continues to impart elementary education on the strength of the recognition it already had under the KER, etc., and a self-declaration in Form No.I regarding its compliance or otherwise with the norms and standards stipulated in the KER in addition to the norms in the Schedule of the RTE Act and fulfillment of the conditions enumerated in Clauses (a) to (m) of Sub-rule (1) of Rule 14. W.A.Nos.1575, 1580 & 1594/14 - 27- Based on the report of the District Level School Recognition Committee, a school which fulfills the norms and standards and the conditions shall be granted recognition in Form No.III. Those schools which are found not conforming to such norms and standards and the conditions may request for an on-site inspection for grant of recognition at any time so that such period does not exceed three years from the date of commencement of the RTE Act. In the case of recognised schools, the recognition under the RTE Act is automatic once such schools conform to such norms and standards and the conditions enumerated in Clauses (a) to (m) of Sub-rule (1) of Rule 14. But in the case of an unrecognised school, during the process of recognition such unrecognised school continues to impart elementary education on submitting an application for recognition in Form No.III, which contains a declaration that the school fulfills all the conditions specified in the RTE Act and the Rules made thereunder. In the case of unrecognised schools the recognition under the RTE Act is not automatic once the school conforms to such norms and standards and the conditions enumerated in Clauses (a) to (m) of W.A.Nos.1575, 1580 & 1594/14 -28- Sub-rule (1) of Rule 14. Such school shall also fulfill the educational need of the locality as revealed in the school mapping carried out by the authorised agency and the educational need shall be certified by the local authority and the Assistant Educational Officer concerned. Therefore, an

unrecognised school submitting an application in Form No.III is not under the cover of any recognition whatsoever, unless and until the Government grants it recognition under the RTE Act on the recommendation of the 4th respondent under Sub-rule (13) of Rule 14. If that be so, the procedure for withdrawal of recognition contemplated under Sub-section (3) of Section 18 and Sub-section (3) Section 19 of the RTE Act read with Sub-rule (1) of the RTE Rules have no application in the case of a preexisting unrecognised school. Similarly, the mandate of Sub-rule (2) of Rule 15 that, an order passed by the Director of Public Instruction shall be operative only from the academic year immediately succeeding has also no application in the case of a preexisting unrecognised school. Therefore, the learned Single judge cannot be found fault with in rejecting the contention raised by the appellants that, Ext.P1 W.A.Nos.1575, 1580 & 1594/14 - 29- order of the 4th respondent is contrary to the procedure contemplated under Sub-section (3) of Section 18 of the RTE Act and Rule 15 of the Rules.

24. Further, the appellants in W.A.No.1575/2014 have no case that they have made any application for recognition in Form No.III seeking recognition of their school under the RTE Act. In such circumstances, going by the mandate of the RTE Act and the Rules made thereunder, their school failed to conform to the norms and standards specified in the Schedule and the conditions mentioned in Sub-rule (1) of Rule 14 within three years from the date of commencement of the Act and as such should be closed down. The State Government have no authority under the RTE Act grant extension of time for submission of the application for recognition, for a period exceeding three years from the date of commencement of the Act and in such circumstances, the contention of the appellants that the school is having time up to 31.12.2014 for submitting application for recognition can only be rejected.

25. The finding in Ext.P6 report submitted by the 4th W.A.Nos.1575, 1580 & 1594/14 -30- respondent is that the school is functioning without any recognition and adequate infrastructure facilities. Going by the statutory requirements under the RTE Act and the Rules made thereunder which we have already referred to, such an unrecognised school imparting elementary education has to submit an application for recognition in Form No.III after fulfilling the norms and standards

and the conditions for recognition in terms of Sub-rule (1) of Rule 15 and seek recognition under the RTE Act. But, in the case on hand, even after the expiry of the period of three years from the date of commencement of the Act, the school neither obtained recognition nor submitted any application in Form No.III before the appropriate authority seeking such recognition. Ext.R7(a) Proforma of Survey Report produced along with counter affidavit shows that Jawahar English Medium School is an unrecognised school. As far as Ext.R7(c) Certificate of Authority is concerned, its validity was only up to 16/3/2014. Moreover, Ext.R7(d) authorisation issued by the National Institute of Open Schooling makes it abundantly clear that all children in 6-14 age group are to be enrolled in W.A.Nos.1575, 1580 & 1594/14 -31- recognised school as per RTE Act. Therefore, relying on Ext.R7(c) Certificate of Authority, the appellants cannot contend that the school is having necessary recognition to impart elementary education. Similarly, the sanction accorded in Exhibit R7(f) order or any special orders issued by the Government in exercise of its powers under the KER would not enable an unrecognised school to impart elementary education contrary to the provisions under the RTE Act.

26. Neither in the counter affidavit filed in the Writ Petition nor in the memorandum of Writ Appeals, the appellants in W.A.No.1575/2014 have a specific case that, the infrastructure and other facilities available in their school fulfills the norms and standards stipulated in the KER, the norms in the Schedule of the RTE Act and the conditions enumerated in Clauses (a) to (m) of Sub-rule (1) of Rule 14. On the other hand, as evident from Ext.P4, the 1st appellant in W.A.No.1575/2014 moved a request dated 9/10/2014 before the 4th respondent seeking cancellation of Ext.P1 order, stating that she is ready to improve the existing facilities in the closed down school. The said request was W.A.Nos.1575, 1580 & 1594/14 -32- rejected by the 4th respondent, taking note of the finding in Ext.P6 report of the 5th respondent. The specific finding in Ext.P6 report, which the 4th respondent had already referred to in Ext.P1 order, is that that the school is functioning without any recognition and adequate infrastructure. It was ignoring the said finding in Exts.P1, P4 and P6, that the 1st respondent in Ext.P5 order stayed the operation of Ext.P1 order, thereby permitting the school to be reopened. Ext.P5 order proceeds as if the process of recognition of the school under the RTE Act is under process and is yet to be completed. But, the fact remains that, the school is yet to make an

application in Form No.III seeking recognition under the RTE Act. A preexisting unrecognised school which failed to apply for recognition under the RTE Act within three years from the date of commencement of the said Act can only be closed down and if such a school is permitted to impart elementary education, it would amount to flagrant violation of the provisions under the said Act and the Rules made thereunder. If that be so, if this Court upholds Ext.P5 order on technicalities and permit the school to be re-opened, it would result in W.A.Nos.1575, 1580 & 1594/14 -33- perpetuating an illegality, inasmuch as the students will be forced to continue their studies in a school, which does not have any recognition under the RTE Act to impart elementary education. Therefore, the learned Single Judge cannot be found fault with in setting aside Ext.P5 order and thereby restoring Ext. P1 order and Ext.P4 proceedings of the 4th respondent.

27. At any rate, the closure of a school functioning without any recognition under the RTE Act and adequate infrastructure in terms of the said Act and the Rules made thereunder would not offend the fundamental rights guaranteed under Article 19(1)(g) or Article 21A of the Constitution of India. Therefore, the contentions raised by the appellants in this regard was also rightly rejected by the learned Single Judge.

28. Regarding the incident alleged to have happened on 25/9/2014, the 1st respondent would contend that her son Abishek who was studying in the UKG of Jawahar English Medium School was locked up in a kennel in the school premises for talking to his friends and her daughter Anusha who was studying in the 3rd Standard, who alleged to have witnessed the incident W.A.Nos.1575, 1580 & 1594/14 -34- was threatened with dire consequences, if she discloses the incident to her parents. As directed by the 4th respondent, the 5th respondent conducted an enquiry and submitted Ext.P6 report. During the course of such enquiry, the 5th respondent has also made enquires with the alleged victim and his sister who had witnessed the alleged incident. It was based on Ext.P6, the 4th respondent by Ext.P1 order directed the Principal to close down the school. In the counter affidavit filed to the Writ Petition, the appellants in W.A.No.1575/2014 would contend that no such incident happened and the said allegation is only part of a conspiracy by certain persons having vested interests. In support of such

contention, they would point out that, the kennel is very close to the main gate and visible from the public road through which hundreds of persons and vehicles are passing through every time. Since the Police has already registered a crime regarding the incident alleged to have happened on 25/9/2014, we are not expressing anything on the merits of the allegations contained in Ext.P2 FIR. We find absolutely no grounds to interfere with the W.A.Nos.1575, 1580 & 1594/14 - 35- judgment of the learned Single Judge. In the result, these Writ Appeals are dismissed. No order as to costs. Sd/- ANTONY DOMINIC, JUDGE Sd/- ANIL K.NARENDRAN, JUDGE dsn

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