**IN THE HIGH COURT OF KERALA**

W.A. No. 392 of 2011

Decided On: 13.08.2012

Appellants: **Kum. Sreya Vinod, (Minor)**
**Vs.**
Respondent: **The Director of Public Instruction & Ors.**

**Hon'ble Judges/Coram:**
C.N. Ramachandran Nair and C.K. Abdul Rehim, JJ.

**JUDGMENT**

**C.N. Ramachandran Nair, J.**

1. This case is an eye-opener for the Government to realise that several Aided and Government Schools in the State are facing natural death on account of depletion of students and it is high time for the Government to take effective steps to make rearrangements in a realistic manner, keeping in mind the availability of quality education in large number of private schools already in existence and more coming up every day. The Lower Primacy School in this case was started in the year 1967 at Ponkunnam, and it's decline started probably when two CBSE Schools were started in Ponkunnam and another two in the nearby area i.e. at Kanjirappally. In 2008-09, the School had only 14 children from Standard I to IV, which came down steeply to 6 in 2009-10, and again to 3 in 2010-11. However, after Onam Holidays the School realised that 3 are only in record and really there is only one pupil in Standard I, who is none other than the daughter of the Teacher-in-charge. In other words, but for the mercy shown by the Teacher-in-charge by admitting her daughter in Standard I, the School would have been running with 3 teachers but without a single student. It is this child, who has come to this Court with WP(C) for permission to write the examination in the same School. However, looking at the absurd position of running a School with a single child, we issued interim order directing the respondents to permit the child to write first standard examination in a nearby Government School. This last student of the School is now in a CBSE School after bidding farewell to the Kerala Syllabus. This is not a unique case, and in several cases reaching in this Court, we have noticed that the cases booked against the managements by Educational Authorities are mostly for bogus admissions to protect existing teachers and for a cover to employ more in the School. With the connivance of the Educational Authorities and ultimately with the blessings of the Government this has been going on, and many Schools, according to the Government's definition, are uneconomic without required number of students, i.e. average of 25 students in a division, and still the Government allows this to continue. It is in this context, we had issued an interim order on 05/04/2011 suggesting to the Government to restructure Schools in a healthy manner so that only required number of teachers are employed in schools and excess should be deployed in other Schools. Reply filed by the Government in the form of report is shocking to us because the Government doesn't intend to do anything to prevent payment of salary to unemployed and under employed teachers.

2. Though education is a Policy matter of the Government, we feel obliged to express our views to the reply filed by the Government. In the report filed on behalf of the Government, reference is made to the provisions of the Right of Children to Free and Compulsory Education Act, 2009, (hereinafter referred to as the Act for short) which came into force in October, 2010. What is inhibiting the Government in the implementation of the suggestions made by us in the interim order to restructure Schools through mergers making them healthy is the need to have "neighbouring Schools" for children. Section 6 of the Act provides that appropriate Government or local authority should establish Schools within such area or limits of neighbourhood as may be prescribed by such Government. While the Central Act & the Rules do not define what is neighbourhood for location of Schools, the Kerala Government has made Right of Children to Free & Compulsory Education Rules, 2011 (hereinafter referred to as the Rules for short) prescribing neighbourhood as 1 KM for children studying from Standard I to V and 3 KMs for children studying from Standard VI to VIII. Obviously, if Rule 6 of the Rules are to be complied with, within 1 KM of every household where a child is available for schooling from Standard I to V, a School should be provided. Similar is the position for students available for study from Standard VI to VIII, that a School should be provided within 3 KMs from every household with such a child. Strangely, Rule 6 contemplates 1 KM and 3 KMs as walkable distance which obviously means that the Government expects all the tender children to walk from their home to the School. Invariably every Primary School has Pre- Primary Section as well. The need for compulsory Pre-Primary school coaching is conceived in Section 11 of the Act itself. The Government, which fixed the distance Rule for neighbouring Schools, expects every pupil to go to School by walking. No one can have a doubt that it would not be safe or desirable to send tender children to reach school by walking because of the heavy and reckless traffic all over the State. Hardly any parent is free to accompany the child to School everyday. Prudent parents and private schools arrange vehicles for picking up and return of school children of tender age from their homes and school buses are provided with Assistants to take care of safety of children. We do not know how Government can expect tender children to be sent to School by walking, which involves tremendous risk and insecurity to the children particularly in this State, where disappearance of children is not uncommon. Therefore, we feel, in the first place, the Government should reconsider the distance Rule, and locate Schools in such a way that Schools run are healthy institutions with required number of students in terms of the norms and required number of teachers, and it doesn't matter if the same involves children traveling 2 or 3 KMs or even up to 5 KMs in a safe vehicle accompanied by Ayahs or Assistants. We are sure that the neighbourhood school contemplated under the Kerala Rule is neither workable nor will the Government be able to establish as many Schools as visualised within every one kilometer and 3 KMs from every homestead wherefrom a child hails for education. The Government should also look at the pattern of distribution of houses in far and remote areas like hilly areas, remote villages and even tribal areas where people are scattered all over, and it would be impossible to provide Schools within the neighbourhood of every child as visualised in the Rules. There will be nothing wrong in the Government or local authority providing safe vehicles and staff to Government Schools, and even to Aided Schools if they do not have fund for it, because education up to the age of 14 has to be provided by the Government at their cost, which not only means coaching in the Schools but the entire facility of Schooling. Since the Government feels that noon-meals and other facilities are to be compulsorily provided, we see no reason why transportation should not also be covered. We therefore direct the Government to reconsider their proposal to start Schools everywhere without caring for availability of students for all such schools.

3. Yet another aspect which we feel should be brought to the notice of the Government is the wish of children and their parents to get quality education, which they believe is education in English medium that too in CBSE/ICSE syllabus. Education is a matter of choice of children and their parents and therefore facility has to be there for education under the local syllabus as well as under the syllabus followed by Central Schools and Schools under the CBSE and ICSE Boards. Only a section of the people are able to fund education for the children in expensive private Schools. In fact, Section 8 of the Act visualises even elementary schooling at the cost of the parents of the children in private schools and there is express prohibition against reimbursement of cost incurred for elementary education in such Schools. The conflict is only for those who desire to send their children for education in private self financed schools and their incapacity to meet the cost. In our view, so long as the Government does not run Schools with CBSE/ICSE syllabus, there will be nothing wrong in Government considering reimbursement of cost of education for poor people to send their children to self financed schools to acquire quality education under the CBSE/ICSE syllabus.

4. In fact by providing financial aid to economically backward children in areas where there are private schools, Government will only save by avoiding opening up of new Schools only for such students. In short, encouragement of existing and setting up of new self financed schools under CBSE Syllabus or even State syllabus will be one way of Government saving fund for new Schools in backward areas.

5. If the Government is of the view that the above are practical suggestions, certainly there will be a case for complete restructuring of Government and Aided schools through mergers of Schools which do not have the required number of students and closure of thoroughly devastated schools without students as in this case. Since steps are taken to protect the teachers in service, probably there can be an embargo against further appointments, so that existing teachers are redeployed in other Schools all over the State without any territorial limits to educational sub districts/districts. 60-70% of the revenue of the State appears to be now utilised for paying salary to just 5,00,000 people and pension to 5,30,000 people and a sizable number of both sections will be teachers and retired teachers. We feel the whole people of the State are entitled to the resources of the State in the form of medical aid, sanitation, drinking water and infrastructural facilities like road, electricity etc. We therefore feel the Government should avoid starting unnecessary Schools along with already existing uneconomic and dieing Schools because through restructuring and by providing school buses, several schools could be revived and improved. Since we are not issuing any positive direction to the Government, we do not wish to refer to the specific provisions of Chapter V of the KER or the Government Orders on uneconomic schools, all of which need to be reconsidered keeping in mind the ground realities including those stated by us above. The Manager of the School, who is also a lawyer of this Court, is personally present and he stated that in spite of the mandatory requirement for the AEO to take over the records of the School, which is completely dead without any student or teacher, as required under Rule 25 of Chapter V of the KER, the same has not been done. Therefore, there will be a direction to the AEO to go to the School, take inventory and take over the records and keep it in safe custody for issuing copies to whoever is entitled for the same. There will also be a direction to the AEO to arrange for issuance of Transfer Certificate to the appellant from the School within a period of three weeks from date of receipt of a copy of this judgment. Government Pleader will forward a copy of this judgment to the Secretary to Government, General Education Department for information and guidance and compliance.

This Writ Appeal is disposed of as above.