

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

&

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

WEDNESDAY, THE 10TH DAY OF JULY 2019/19TH ASHADHA, 1941

W.A No.1140 OF 2018

(AGAINST THE JUDGMENT IN WP(C) No.20098/2017 OF THIS COURT)

APPELLANTS/4TH RESPONDENT & PETITIONER:

1. MANAGER, AYSHA LP SCHOOL, CHEDIKKULAM
ARALAM P.O, KANNUR - 670 704.
2. P.P JINACHANDRAN
PRESIDENT, PARENT TEACHER ASSOCIATION, AYSHA LP SCHOOL, CHEDIKKULAM, ARALAM
P.O, KANNUR - 670 704.

BY ADV.

SRI.S.M.PREM

SRI.H.NARAYANAN

SRI.P.RAMACHANDRAN PALAKKAD

RESPONDENTS/RESPONDENTS 1 TO 3 AND ADDITIONAL 5TH RESPONDENT:

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
2. DIRECTOR OF PUBLIC INSTRUCTIONS
JAGATHY, THYCAUD P.O, THIRUVANANTHAPURAM - 695 014.
3. ASSISTANT EDUCATIONAL OFFICER
IRITTY, KANNUR - 670 703.
4. UNION OF INDIA
REPRESENTED BY THE SECRETARY, DEPARTMENT OF SCHOOL EDUCATION & LITERACY,
MINISTRY OF HUMAN RESOURCE DEVELOPMENT, GOVERNMENT OF INDIA,
SHASTRI BHAVAN, NEW DELHI - 110 001.

R1 TO R3 BY SRI.C.P.SUDHAKARA PRASAD, ADVOCATE GENERAL

SMT.NISHA BOSE, SENIOR GOVERNMENT PLEADER

R4 BY SRI.PRASANTH KUMAR R., CENTRAL GOVT. COUNSEL.

THIS WRIT APPEAL HAVING BEEN HEARD ON 3.7.2019 ALONG WITH W.A.NO.1181/2018
AND CONNECTED CASES, THE COURT ON 10.07.2019 PASSED THE FOLLOWING:

“CR”

**V. CHITAMBARESH, ALEXANDER THOMAS
& ASHOK MENON, JJ.**

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**W.A.Nos.1140, 1181, 1183, 1205, 1213, 1218, 1222,
1260, 1261, 1262, 1287, 1300, 1303, 1304, 1306,
1307, 1314, 1316, 1319, 1320, 1324, 1336, 1341,
1346, 1353, 1406, 1408, 1416, 1463, 1465, 1477,
1490, 1505, 1515, 1519, 1522, 1528, 1529, 1533,
1574, 1672, 1696, 1717, 1719, 1723, 1730, 1731,
1872,2108, 2130, 2159, 2161, 2180, 2184, 2185,
2186, 2204, 2205, 2212, 2222, 2300, 2313, 2320,
2324, 2357, 2358, 2371, 2372, 2373 & 2381 of 2018
and 13, 20, 911, 912 & 915 of 2019**

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Dated this the 10th day of July, 2019

Order

Chitambareash, J.

“Vidya Dhanam Sarva Dhanath Pradhanam”

(Knowledge is supreme of all wealth)

is an oft quoted Sanskrit verse. The knowledge can be gifted only by imparting education.

1. These cases come on a reference by the Division Bench doubting the correctness of the decisions in **Kum. Sreya Vinod v. Director of Public Instruction and others** [2012(4) KHC 49] and **T.K.M.M.L.P. & U.P.School v. State of Kerala and others** [W.A.No.2487/2017].

2. Article 21A of the Constitution of India was inserted with effect from 1.4.2010 and the same guarantees free and compulsory education to all the children of the age six to fourteen years by the State. The Right of Children to Free and Compulsory Education Act, 2009 ('the Act' for short) was accordingly enacted specifying the manner in which the education has to be so imparted. The Preamble of the Act which came into force on 26.8.2009 states that it is to provide for free and compulsory education to all children of the age of six to fourteen years. Section 19(2) prescribes an outer period of three years from the date of commencement of the Act for the schools to take steps to fulfil the norms and standards stipulated. The educational agencies lament that their applications to re-structure the schools

by introducing classes in tune with the Act are not favourably considered even after nine years. The State resists this plea asserting that transportation facilities have been provided and that a child can seek transfer to another school for completing elementary education. Additional financial burden on the State exchequer to pay the teachers for the additional classes to be introduced in the schools is also a dissuading factor for the State. Can the reasons aforesated be a valid ground to deny sanction to the educational agencies to re-structure the schools by introducing classes in tune with the provisions of the Act?

3.We have heard Mr V.A.Muhammed, Mrs M.A.Zohra, Mr S.M.Prem, Mr Santheep Ankarath, Mr V.Varghese, Mr Benoy Vasudevan and Mr Keerthivas G., Advocates as well as Mr C.P.Sudhakara Prasad, the learned Advocate General, Ms. Nisha Bose, Senior Government Pleader and Mr Prasanth Kumar R., Central Government Counsel.

4.Section 19 of the Act is extracted below:

“19. Norms and standards for school.– (1) No school shall be established, or recognised under Section 18, unless it fulfils the norms and standards specified in the Schedule.

(2) Where a school established before the commencement of this Act does not fulfil the norms and standards specified in the Schedule, it shall take steps to fulfil such norms and standards at its own expenses, within a period of three years from the date of such commencement.

(3) Where a school fails to fulfil the norms and standards within the period specified under sub-section (2), the authority prescribed under sub-section (1) of Section 18 shall withdraw recognition granted to such school in the manner specified under sub-section (3) thereof.

(4) With effect from the date of withdrawal of recognition under sub-section (3), no school shall continue to function.

(5) Any person who continues to run a school after the recognition is withdrawn, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues.” (emphasis supplied)

The term 'school' means any recognised school imparting elementary education and includes an aided school receiving aid or grant from the appropriate Government or the local authority under Section 2(n) of the Act. The term 'elementary education' means the education from first class to eighth class under Section 2(f) and 'Schedule' means the one annexed to the Act under

Section 2(m). Therefore any school imparting elementary education loses its recognition under Section 18 of the Act unless it fulfils the norms and standards specified in the Schedule. Section 19(2) mandates that every school shall take steps to fulfil such norms and standards at its own expenses within a period of three years from the date of commencement of the Act. The same time period is granted to maintain the Pupil-Teacher ratio specified in the Schedule in each school under Section 25 of the Act to avert withdrawal of recognition.

5.The Schedule in terms of Sections 19 and 25 of the Act is extracted below:

THE SCHEDULE

[See Sections 19 and 25]

NORMS AND STANDARDS FOR A SCHOOL

Sl.No.	Item	Norms and Standards	
1	Number of teachers: (a) For first class to fifth class	Admitted children	Number of teachers
		Up to sixty	Two
		Between sixty-one to ninety	Three
		Between ninety-one to one hundred and twenty	Four
		Between one hundred and twenty-one to two hundred	Five
		Above one hundred and fifty children	Five plus one Head-teacher
		Above two hundred children	Pupil-Teacher Ratio (excluding Head-teacher) shall not

		exceed forty.
	(b) For sixth class to eighth class	(1) At least one teacher per class so that there shall be at least one teacher each for— <ul style="list-style-type: none"> (i) Science and Mathematics; (ii) Social Studies; (iii) Languages (2) At least one teacher for every thirty-five children (3) Where admission of children is above one hundred— <ul style="list-style-type: none"> (i) a full time Head-teacher; (ii) part time instructors for— <ul style="list-style-type: none"> (A) Art Education; (B) Health and Physical Education; (C) Work Education.
2	Building	All-weather building consisting of— <ul style="list-style-type: none"> (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; (vii) arrangements for securing the school building by boundary wall or fencing.
3	Minimum number of working days/instructional hours in an academic year	(i) two hundred working days for first class to fifth class; (ii) two hundred and twenty working days for sixth class to eighth class; (iii) eight hundred instructional hours per academic year for first class to fifth class; (iv) one thousand instructional hours per academic year for sixth class to eighth class.
4	Minimum number of working hours per week for the teacher	Forty-five teaching including preparation hours.
5	Teaching learning equipment	Shall be provided to each class as required.
6	Library	There shall be a library in each school providing newspaper, magazines and books on all subjects, including story-books.
7	Play material, games and sports equipment	Shall be provided to each class as required.

Thus a school envisaged under the Act as per the norms and standards fixed as per the Schedule is only from first class to fifth

class in one category and from sixth class to eighth class in the other category. The Pupil–Teacher ratio for these two categories vastly differs and even the minimum number of working days in an academic year changes which has to be scrupulously adhered to. A teacher who does not possess the minimum qualification as laid down under Section 23(1) of the Act has to acquire the same within a period of five years from that date. The National Council for Teacher Education (NCTE) has laid down the minimum qualification for being eligible for appointment as a Teacher as a Pass in the Teacher Eligibility Test (TET).

6. Section 38 of the Act empowers the appropriate Government to make rules for carrying out the provisions of the Act and there is however no rule delineating Section 19 thereof as regards norms and standards. The 'appropriate Government' in relation to a school within the territory of a State is the State Government and not the Union Government as per Section 2(a)(ii)(A) of the Act. The Kerala Right of Children to Free and Compulsory Education Rules, 2011 ('the Rules' for short) accordingly made has been notified to come into effect from 6.5.2011. Rule 6 of the Rules in so far as it is relevant is extracted below:

“6. Area or limits of neighbourhood.– (1) The area or limits of neighbourhood within which a school has to be established by the Government or the local authority shall be,–

(a) in respect of children in classes from 1 to 5, a school shall be established within a walking distance of one kilometre of the neighbourhood;

(b) in respect of children in classes 6 to 8, a school shall be established within a walking distance of three kilometres of the neighbourhood.

(2) The Government shall endeavour to upgrade in a phased manner, existing Government and aided schools with classes from 1 to 4, to include classes from 5 to 8 and in respect of schools which start from class 5 onwards, to add classes from 1 to 4 wherever required, taking into account the availability of such classes in the existing schools in the neighbourhood and the specific recommendation of the Assistant Educational Officer and the local authority.

(3) In places with difficult terrain, risk of landslides, floods, lack of roads and in general, danger for young children in the approach from their homes to the school, the Government shall locate the school in such a manner as to avoid such dangers, by reducing the area or limits specified under sub-rule (1).

(4) For children from small hamlets, as identified by the Government or the local authority, where no school exists within the area or limits of neighbourhood specified under sub-rule (1), the

Government or the local authority shall make adequate arrangements, such as free transportation and residential facilities for providing elementary education in a school, in relaxation of the area or limits specified in the sub-rule (1).

(5) xxxxxxxxxxxxxxxxxxxx

(6) xxxxxxxxxxxxxxxxxxxx

(7) xxxxxxxxxxxxxxxxxxxx

(8) xxxxxxxxxxxxxxxxxxxx

(9) xxxxxxxxxxxxxxxxxxxx

(10) xxxxxxxxxxxxxxxxxxxx

(11) xxxxxxxxxxxxxxxxxxxx" (emphasis supplied)

The term 'neighbourhood' mentioned in Rule 6 has been defined under Rule 2(o) of the Rules to mean the area near or within a walkable distance of an elementary school referred to in Section 2(n) of the Act. Thus a school falling in the category of classes 1 to 5 shall be established within a walking distance of one kilometre of the neighbourhood school under Rule 6(1)(a) of the Rules. A school falling in the category of classes 6 to 8 shall be established within a walking distance of three kilometres of the neighbourhood school under Rule 6(1)(b) of the Rules. The walking distance between two neighbourhood schools has been so reduced for children in classes 1 to 5 taking into consideration their tender age and frail health. It is therefore the bounden duty

of the Government or the local authority to see that schools of the categories mentioned above are established within the time frame fixed in the Act. The duty does not end there as the Government should further endeavour to upgrade in a phased manner existing Government and aided schools as per Rule 6(2) of the Rules. Classes 5 to 8 have to be added to schools having classes 1 to 4 and classes 1 to 4 have to be added to schools having classes 5 to 8 in order to be a school imparting elementary education. The same shall be done taking into account the availability of such classes in the existing schools in the neighbourhood and the recommendation of the authorities.

7. The State Government cannot shirk its duty to establish schools having classes 1 to 5 every one kilometre and of schools having classes 6 to 8 every three kilometres as specified in Rule 6(1) of the Rules. The State Government cannot wriggle out of its obligation under the Act on the premise that a child has got a right of transfer to other school under Section 5 of the Act. Section 5 of the Act is as follows:

“5. Right of transfer to other school.– (1) Where in a school, there is no provision for completion of elementary education, a child shall have a right to

seek transfer to any other school, excluding the school specified in sub-clauses (iii) and (iv) of clause (n) of Section 2, for completing his or her elementary education.

(2) Where a child is required to move from one school to another, either within a State or outside, for any reason whatsoever, such child shall have a right to seek transfer to any other school, excluding the school specified in sub-clauses (iii) and (iv) of clause (n) of Section 2, for completing his or her elementary education.

(3) For seeking admission in such other school, the Head-teacher or in-charge of the school where such child was last admitted, shall immediately issue the transfer certificate:

Provided that delay in producing transfer certificate shall not be a ground for either delaying or denying admission in such other school:

Provided further that the Head-teacher or in-charge of the school delaying issuance of transfer certificate shall be liable for disciplinary action under the service rules applicable to him or her.”

The right of a child to seek transfer to other school where there is no provision in the existing school for completion of elementary education is only a facilitating factor during the transitional stage. Section 5(3) of the Act casts an immediate obligation on the Head-teacher of the existing school to issue a transfer certificate so that the right of the child to seek a transfer is not impeded. A

'child' means a male or female child of the age of six to fourteen years under Section 2(c) of the Act whose elementary education has to be unfettered and guaranteed. Section 3 of the Act declares that such a child shall have the right to free and compulsory education in a neighbourhood school till the completion of his elementary education. The Act contemplates only two categories of schools – one having classes 1 to 5 and the other having classes 6 to 8 – for the present before unifying the classes for elementary education.

8. We should emphasise that a child is not to be treated as a chattel to be tossed about from one school to another for completion of elementary education which the Act has envisaged as explained above. Mere provision for easy transport from one school to the other or for the issue of a transfer certificate from the existing school is not one contemplated by the Act. A re-structuring of all the schools with uniform classes from 1 to 8 imparting elementary education is the scheme envisaged by the Act which cannot be trampled upon by any State. An immediate leap of schools having classes 1 to 4 and 5 to 7 into an uniform structure of classes 1 to 8 may incur heavy financial burden on the State all

on a sudden. We are not oblivious of the fact that both the Central Government and the State Government shall have concurrent responsibility to share the financial commitment under Section 7 of the Act. The State cannot at any rate refuse permission to add class 5 to schools having classes 1 to 4 and add class 8 to schools having classes 5 to 7 as a preliminary step under the Act. The educational need as contemplated under the Kerala Education Act, 1958 and the Kerala Education Rules, 1959 pales into insignificance after the Act and the Rules. The order dated 9.6.2017 issued by the General Education (F) Department (Ext.P5 in W.A.No.1140/2018) impugned in these cases concludes as follows:

“5. It is found that upgrading of existing schools or starting new schools in the State is not feasible by considering the distant norms alone. In order to meet the educational need of the children in the identified areas (82 No.) appended to this, providing transportation facility will suffice their educational need, as provided in Rule 6(4) of the Kerala Right of Children to Free and Compulsory Education Rules, 2011.

6. Government having considered the whole aspect of meeting educational needs/rights of the children in the area, hereby order to provide transportation facility to the children of the 82 areas

(list appended to this Government Order) to reach the nearest school with the co-operation/assistance of the local bodies, as provided in Rule 6(4) of the Kerala Right of Children to Free and Compulsory Rules, 2011.”

Rule 6(4) of the Rules applies only for children from small hamlets identified by the Government or the local authority where no school exists within the neighbourhood as in the tribal area of Attappady. The intention is that no child even from a small hamlet shall suffer for want of transportation to school and the statute ensures that elementary education is completed without any hassles. The State cannot take refuge under Rule 6(4) of the Rules from establishing schools for elementary education mandated by Section 19 of the Act and Rule 6(1) of the Rules.

9. It has been held in **Kum. Sreya Vinod's case** (supra) as follows:

“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.”

Again it has been held in **T.K.M.M.L.P. & U.P.School's case** (supra) as follows:

“As per Exhibit R1(d), the Government have for the purpose of meeting the educational needs of the children in the locality ordered to provide transportation facilities in the 82 areas appended to the Government Order. Such transportation facilities are provided to children for reaching the nearest schools with the cooperation/assistance of the local bodies. The obligation of the State being to provide sufficient facilities for extending elementary education to the children in the age group of 6 to 14 years, the modalities for making provision for the said purpose necessarily falls within the realm of Government decision making. Instead of establishing additional schools or providing additional infrastructure facilities, the provision of providing transportation facilities cannot be found fault with.”

Providing transportation facilities by the State under Rule 6(4) of the Rules is for a specified contingency referred to earlier and is not a substitute to establish schools for elementary education. The statutory duty cast on the State under Section 19 of the Act read with Rule 6(1) of the Rules is not discharged by providing transportation facilities as held in the decisions afore-quoted. We

overrule the decisions in **Kum. Sreya Vinod's case** (supra) and **T.K.M.M.L.P. & U.P.School's case** (supra) as contrary to the scheme of the Act and the Rules. We declare that the order dated 9.6.2017 of the General Education (F) Department which states that 'providing transportation facility will suffice their educational need' is arbitrary. The applications put in by the educational agency to upgrade the existing schools under Rule 14 of the Rules shall be dealt with in the light of the observations above.

The reference is answered accordingly. The Registry shall post the cases before the appropriate Bench as per roster.

Sd/-

V. CHITAMBARESH, JUDGE

Sd/-

ALEXANDER THOMAS, JUDGE

Sd/-

ASHOK MENON, JUDGE