

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

MONDAY, THE 6TH DAY OF FEBRUARY 2023 / 17TH MAGHA, 1944

WP(C) NO. 3866 OF 2023

PETITIONERS:

- 1 THE VILLAGE INTERNATIONAL SCHOOL, REPRESENTED BY ITS
MANAGER, KUMARAMANGALAM P.O., THODUPUZHA, PIN - 685608

- 2 THE COUNCIL OF CBSE SCHOOLS KERALA
(REGISTER NO. EKM/TC/376/2019), REPRESENTED BY ITS
PATRON, DR. INDIRA RAJAN, VIKRAM SARABHAI SPACE PARK,
THENGODE POST, KAKKANAD, ERNAKULAM DISTRICT, PIN -
682030

BY ADVS.
M.R.VENUGOPAL
DHANYA P.ASHOKAN
S. MUHAMMAD ALIKHAN

RESPONDENTS:

- 1 THE STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001

- 2 THE DIRECTOR OF GENERAL EDUCATION
JAGATHY, THIRUVANANTHAPURAM, PIN - 695014

- 3 SECRETARY (AFFILIATION), CENTRAL BOARD OF SECONDARY
EDUCATION, CBSE BHAVAN, SHIKSHA KENDRA, 2, COMMUNITY
STREET, PREET VIHAR, NEW DELHI, PIN - 110092

SMT.NISHA BOSE -SR.GP, SRI.S.NIRMAL -SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
06.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C R

JUDGMENT

This writ petition is virtually in the nature of a sequel to WP(C)No.22812/2020, earlier filed by the 2nd petitioner the Council of CBSE Schools, Kerala (hereinafter referred to as "Council") - in which Ext.P2 judgment had been delivered by this Court.

2. The "Council", along with two others, had approached this Court as above, seeking directions to the competent Deputy Director of Education (DDE) of the State of Kerala, to issue to them "Formal Prior Recognition Letter" in Form No.II, appended to the Kerala Right of Children to Free and Compulsory Education Rules, 2011 (hereinafter referred to as the "RTE Rules" for short), so as to enable

them to seek application with the Central Board of Secondary Education (CBSE); and this Court had delivered Ext.P2 judgment with the following directions:

"a) Declaring that, as per the provisions of the Kerala Right of Children to Free and Compulsory Rules, 2011, and the Right to Information Act - any application made by a School seeking an "Order of Prior Recognition" under the terms of Rule 14 of the said Rules shall be issued by the concerned Deputy Directors of Education only in Form No.II of the Rules and in no other manner, after following due procedure and after making such necessary inspections as are warranted under it.

b) To ensure that the afore directions are properly complied with and since none of the Deputy Directors of Education are on the party array, I direct the 2nd respondent - Director of General Education to issue a circular to all such officers informing them the contents of this judgment and instructing them to act implicitly by

the directions herein.

c) This shall be done by the 2nd respondent - Director of Education, as expeditiously as is possible but not later than two weeks from the date on which the copy of this judgment is received."

3. It transpires that "Formal Prior Recognition Letters" are being thus, issued to various Schools, on the strength of which they obtained affiliation from the CBSE; but a question has now arisen, touching upon the continuation of such affiliation, after a period of five years.

4. The petitioners assert that, even though no further or fresh "Formal Prior Recognition Letter" is required to be obtained by them, or by the Member Schools of the 3rd petitioner, to seek continuation of affiliation from the CBSE, the Government has

now issued Ext.P5 Order dated 09.11.2022, virtually mandating that such is necessary; and that, for issuing it, the competent Authority will charge Rs.10,000/- as expenses, with incremental increase every year.

5. The petitioners challenge this order as being unnecessary and untenable on the assertion that, going by the "RTE Rules" and the applicable affiliation Bye-Laws of the CBSE, no "Formal Prior Recognition Letter" is required to be obtained by them, or by various other affiliated Schools, for seeking continuation of affiliation from the CBSE.

6. Smt.Dhanya P.Ashokan - learned counsel appearing for the petitioners, pointed out that, going by the "RTE Rules" applicable to Kerala, the "Formal Prior Recognition Letter" is not confined to any period, but it is shown

to be effective from the date on which it is issued. She predicated that, therefore, under the Affiliation Bye-Laws of the CBSE, of the year 2018, (hereinafter referred to as the "Affiliation Bye-Laws") when the Schools are to apply for continuation of affiliation with them, all which they are required to do is to submit a self attested certificate, prepared in the format which is available in Appendix III thereof of the year 2018; without having to have it certified by the Educational Authority of the State. She asserted that, however, misinterpreting this provision, the competent State Educational Authorities are now insisting that each such School apply for a new " Formal Prior Recognition Letter"; and thus payed that Ext.P5 be set aside.

7. Smt.Nisha Bose - learned Senior

Government Pleader, on the other hand, submitted that even if no " Formal Prior Recognition Letter" is required to be obtained by the Schools to seek continuation of their affiliation with the CBSE every five years, it is, concededly, a mandatory requirement that they obtain a certificate from the District Educational Officer, or such other competent Educational Authority, with respect to their infrastructural and other facilities. She pointed out that, going by Appendix - III of the 2018 "Affiliation Bye-Laws," the District Educational Officer, or such other authorised Educational Authority, is to certify certain general information with respect to the School, as also those regarding its land and ownership, along with essential safety requirements. She pointed out that this is

possible only if the Authority is to visit the Schools and cause necessary investigation, for which, a fee becomes imperative. She argued that Ext.P5 Government Order only fixes such fees and nothing more; and thus prayed that this writ petition be dismissed.

8. Pertinently, Sri.S.Nirmal - learned Standing Counsel for the CBSE, affirmed that, as per Form No.II of the "RTE Rules" applicable to Kerala, the "Formal Prior Recognition Letter" issued by the jurisdictional Deputy Director of Education is not confined in its life to a particular period, but is shown to take effect from the date on which it is issued. He submitted that, therefore, in such circumstances, the CBSE does not insist on the Schools to produce another "Formal Prior Recognition Letter", as

mentioned in the impugned Ext.P5 Government Order, for it to be eligible to seek continuation of the affiliation already granted. He however, added that, for this purpose, the Schools have to submit a certificate as per the format in Appendix - III of the "Affiliation Bye-Laws", wherein, they need to vouch for their infrastructural facilities, as also the availability of essential safety requirements, as are mandated. He submitted that, therefore, as long as the original "Formal Prior Recognition Letter" issued by the competent Educational Officer is not confined to a specific period, Ext.P5 - to the extent to which it inflexibly mandates that a fresh "Formal Prior Recognition Letter" be obtained by the affiliated Schools for the purpose of

continuing their affiliation from the CBSE - does not appear to be necessary or tenable.

9. Very interestingly, after submitting as afore, Sri.Nirmal then added that, going by the latest "Handbook" published by his client, the schools are also having an option to produce a "System Generated Self Certification/System Generated DEO Certificate", with respect to the aspects mentioned in Appendix-III of the "Affiliation Bye-Laws"; and that the CBSE will act upon it, while processing their application for continuation of affiliation. He explained that, however, if the CBSE is to find any discrepancy in the said certificate and if they are to feel that a physical inspection by the Educational Officer of the State is necessary, they will inform the School

appositely; consequent to which, they will have to obtain the necessary certification from it, as per Appendix-III of the "Affiliation Bye-Laws".

10. The afore stand of the CBSE renders the position ineluctably clear that, the schools now have the option of approaching them for continuing their self affiliation based on their own certification or a System Generated Certification; and it is only if the same is found to be insufficient and they being so informed by the CBSE, would they then require to apply for and obtain the certificate as per Appendix - III of the "Affiliation Bye-Laws", from the Educational Authority.

11. Axiomatically, Exhibit P5 order would have relevance only if any school is required to approach the competent Educational

Authority of the State, for the afore certification, on being so asked to do by the CBSE. Apodictically, therefore, the petitioners need not now harbour any grievance against this order, since it would apply to them only if they are constrained by the CBSE to seek certification from the Educational Authority, and not otherwise.

12. Such being the scenario, I cannot find the imposition of a charge for inspection by the Government, in Ext.P5, to be illegal or unfair because, the school/s certainly will have to defray the expenses for such purpose, including for the verification of the infrastructural and safety imperatives, as stipulated by the "Affiliation Bye-laws" of the CBSE.

13. Obviously hence, the plea of the

petitioners to quash Exhibits P4 and P5, as being inconsistent to the provisions contained in the Right to Information Act, 2009 and the Right to Information Rules, 2011, would not be necessary for this Court to consider; and I leave open such contentions, if it becomes required to be considered in future.

This writ petition is thus allowed.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

SAS

'TO BE SPOKEN TO' ORDER

This matter has been listed today at the request of Smt.Dhanya P. Ashokan - learned counsel for the petitioners, who voiced an apprehension that, when Exts.P4 and P5 have been left uninterdicted by this Court, the

Educational Authority of the State may misinterpret it to mean that, when approached by a School, they will only issue a "Formal Recognition Letter".

2. I think this apprehension is justified because, Exts.P4 and P5 have been issued by the Government, as I have already said above, under a wrong notion that the CBSE would require a "Formal Letter of Recognition" for even renewal. Since this Court has clarified that all which the Schools may have to do, if called upon by the CBSE, is to obtain a certification under Appendix III of the 'Affiliation Bye-laws', I deem it appropriate to clarify that Exts.P4 and P5 will be read down to such effect. Consequently, should the Schools approach the jurisdictional Educational Authority, they will only be competent to issue the afore

certification and not a "Formal Recognition Letter", for continuing the affiliation.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

MC

APPENDIX OF WP(C) 3866/2023

PETITIONERS' EXHIBITS

- Exhibit P1 TRUE COPY OF THE FORMAL PRIOR RECOGNITION LETTER DATED 16/01/2020 ISSUED BY THE 2ND RESPONDENT TO THE DEO, THODUPUZHA, COPY OF WHICH RECEIVED BY THE 1ST PETITIONER
- Exhibit P2 TRUE COPY OF THE JUDGMENT DATED 22/01/2021 IN WPC 22812/2020 ISSUED BY THIS HON'BLE COURT
- Exhibit P3 TRUE COPY OF FORM NO. I SELF-DECLARATION DATED 27/05/2022 SUBMITTED BY THE 1ST PETITIONER TO THE DEPUTY DIRECTOR OF EDUCATION, THODUPUZHA
- Exhibit P4 TRUE COPY OF THE CIRCULAR NO. NS (2)/10819/2018/DGE DATED 14/12/2022 ISSUED BY THE 2ND RESPONDENT ALONG WITH ENGLISH TRANSLATION
- Exhibit P5 TRUE COPY OF THE G.O.(MS) NO.208/2022/GEDN DATED 09/11/2022 ISSUED BY THE 1ST RESPONDENT ALONG WITH ENGLISH TRANSLATION

//TRUE COPY//

P.A. TO JUDGE