

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 29TH DAY OF JUNE 2021 / 8TH ASHADHA, 1943

WP(C) NO. 12908 OF 2021(S)

PETITIONER:

ABDULLATHEEF. M., AGED 30 YEARS,
S/O.POCKER, MARAKKATIL HOUSE, PAYYOLI P.O.,
ANGADI, CALICUT-673 523.

RESPONDENTS:

- 1 UNION OF INDIA, REPRESENTED BY THE SECRETARY,
MINISTRY OF EDUCATION, SASTHRI BHAVAN,
RAJENDRA PRASAD ROAD, NEW DELHI-110 001.
- 2 STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 3 THE PRINCIPAL SECRETARY, GENERAL EDUCATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 4 PRINCIPAL SECRETARY,
DEPARTMENT OF LOCAL SELF GOVERNMENT INSTITUTIONS,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 5 DIRECTOR OF GENERAL EDUCATION,
DIRECTORATE OF GENERAL EDUCATION,
JAGATHI, THIRUVANANTHAPURAM-695 014.

WRIT PETITION (CIVIL) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct the Union of India, Government of Kerala and various Local Authorities in the State of Kerala to provide necessary infrastructure facilities to the children pursuing elementary education to participate in online classes forthwith, pending disposal of the writ petition, in the interest of justice.

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S. M.MUHAMMED SHAFI & R.ANAS MUHAMMED SHAMNAD, Advocates for the petitioner, SRI.JAGADEESH LAXMAN, Advocate for R1 and of SRI.SURIN GEORGE IPE, SENIOR GOVERNMENT PLEADER for R2 to R5, the court passed the following:

P.T.O.

rs.

S. MANIKUMAR, CJ

&

SHAJI P. CHALY, J

WP (C) No.12908 of 2021

Dated this the 29th day of June, 2021

ORDER

S. Manikumar, CJ

Instant Public Interest writ petition is filed for the following reliefs:

- i.) Declare that the Union of India, Government of Kerala and various Local Authorities in the State of Kerala are duty bound to provide necessary infrastructure facilities to the children pursuing elementary education to participate in online classes introduced in the State as per G.O. (Rt) No.1756/2020/GED dated 29.05.2020;
- ii) Issue a writ in the nature of Mandamus or any other appropriate writ, order or direction, commanding the Union of India, Government of Kerala and various Local Authorities in the State of Kerala to provide necessary infrastructure facilities to the children pursuing elementary education to participate in online classes forthwith;
- iii) Issue any such other appropriate writ, order or direction as the Hon'ble Court deems fit and proper considering circumstances of the case in the interest of justice.

2. Attention of this Court was also drawn to the report stated to have been furnished at the instance of the Government. Observations on the

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availability of instruments and study objections are incorporated in Exhibit P3 report prepared by the Kerala Sasthra Sahitya Parishath, which are reproduced hereunder:

OBSERVATIONS

1. AVAILABILITY OF INSTRUMENTS

1.1 The Digital Classes have started on 1st June. In that time there was some students who were not having TV connection, Government have taken their survey that time through Samagrasiksha. According to that, many organisations and individuals offered TV as per the request of Government Even though there are some students who are not having own TV in their house still now. As per the survey their number is about 12 percent.

1.2 There were some efforts to reach smart phones to the house of students like above. Even though there about 8 percent of students are not able to continue their study through smart phone.

1.3. Some students who were not able to get their online class earlier, now attending their classes from the neighbouring houses, Library, Cultural centres, Study houses etc. Even though there are some students who are not getting any facilities till now.

2. STUDY OBJECTIONS

2.1. Even the students who are able to attend digital class could not get all classes without interruption. The classes which started on 1st June have seen by only 67 percent of students without any interruption. Remaining have attended only partial classes. This gap is very important

that the study is depending only on digital online classes.

2.2 If avoid personal reasons, it is the main reason is of financial or technical background for not seeing the classes. The slow internet connectivity is the main reason for not getting the classes of more people (39.5 percent). This was effected heavily by the students who are staying hill areas and tribal sector. Even though the connectivity problem is in most parts other than these areas.

2.3 Shortage of Internet (17 percent) Shortage of Smart phone (14.5 percent) are the main reasons other than this. The problems of phone memory, the absence of parents in day time, the other house works, shortage of practical/ technical awareness etc are mostly affected the Scheduled tribals and poor peoples. The attending of classes reducing in General, O.E.C, O.B.C, SC, ST level.

2.4 76 percent parents who were participated in the survey have more than one child. Getting the online facility is affected them due to shortage of mobile phones. There are limitations to give facilities to the parents who are having more child."

3. Attention of this Court is also invited to section 8 of the Right of Children to Free and Compulsory Education Act, 2009, which prescribes the duties of the appropriate Government. Based on the report of the Samagra Siksha, a non-government organisation extracted *supra* and the statutory provisions, Mr.Muhammed Shafi.M., learned counsel for petitioner, submitted that both the State and Central Governments are duty bound to provide free and compulsory education

to every child and in the case on hand, due to non-availability of instruments/shortage of internet, education as mandated is not provided under the statute and therefore, prayed to issue appropriate directions.

4. *Per contra*, placing reliance on the decision of this Court in **Girija C.C. v. State of Kerala & Another** [2020(4) KLJ 51], in particular to paragraph 36 of the judgment, Mr.Surin George Ipe, learned Senior Government Pleader, submitted that considering the similar issue and others, a Hon'ble Division Bench of this Court has already issued directions and therefore, no directions are required in the instant writ petition. Paragraph 36 of the judgment referred *supra* is extracted hereunder:

"36. Duties so cast upon the Government and local authority cannot be brushed aside lightly. Converging so, we are of the view that adequate steps are to be taken by the State Government for ensuring that, not even a single child is deprived of the guarantee extended under the Constitution of India coupled with a duty and obligation of the State and the citizens, and the mandates contained under Act, for ensuring education and welfare of the children. Moreover, the parents and guardian are also imposed with a duty under section 10 of Act, 2009 to undertake a duty to admit or cause to be admitted his or her child

or ward, as the case may be, to an elementary education in the neighbourhood school. Before we part with the judgment, it is only appropriate that excerpts from the judgment of the Apex Court in *Sheela Barse v. Secretary, Children's AID Society* (1987) 3 SCC 50 :: 1986 ICO 482 is discussed, wherein the Apex Court has held that children are the citizens of the future era and only on the proper bringing up of children and giving them the proper training to turn out to be good citizens depends the future of the country. Further it was observed thereunder that gerontocracy in silence manner indicated that like a young plant a child takes roots in the environment where it is placed and howsoever good the breed be if the sapling is placed in a wrong setting or an unwarranted place, there would not be desired growth and same is the situation with the human child. After observing so it was held that it is the obligation of every generation to bring up children who will be citizens of tomorrow in a proper way and today's children will be the leaders of tomorrow who will hold the country's banner high and maintain the prestige of the nation."

5. Mr.Jagadeesh Laxman, learned counsel appearing for the Central Government, submitted that report has been submitted by Kerala Sasthra Sahitya Parishath. Mr.Muhammed Shafi.M., learned counsel for petitioner, disputes the said contention and further added that Kerala Sasthra Sahitya Parishath is also a Non Government Organisation, recognised by the State Government.

6. Be that as it may, considering the materials on record and statutory provisions, we direct the State/Central Government as the case may be, to file their respective statements on the averments and on the aspect of providing necessary fund so as to enable free and compulsory education to the children below the age of 14 years mandated under Article 21A of Part III of the Constitution of India, within ten days from today.

We also direct Mr.Surin George Ipe, learned Senior Government Pleader, to take notice on behalf of respondents 2, 3, 4 and 5. Mr.Jagadeesh Laxman, learned counsel appearing for the Central Government, takes notice on behalf of the Union of India, represented by the Secretary, Ministry of Education, New Delhi.

Sd/- S.MANIKUMAR, CHIEF JUSTICE
Sd/- SHAJI P.CHALY, JUDGE

/true copy/

Jayalal
30-6-2021
ASSISTANT REGISTRAR
30/6/21

smv

30/6/21

WP(G) NO. 12908 OF 2021(S)

**EXHIBIT P3: TRUE COPY OF THE RELEVANT PAGES OF THE REPORT DATED NIL
PREPARED BY THE KERALA SASTHRA SAHITYA PARISHATH, ALONG WITH
ITS ENGLISH TRANSLATION.**