

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY, THE 22ND DAY OF JANUARY 2021 / 2ND MAGHA, 1942

WP(C).No.22812 OF 2020(B)

PETITIONERS:

- 1 THE MANAGER
LIFE VALLEY INTERNATIONAL SCHOOL, RUBBER BOARD POST-686 009
KOTTAYAM DISTRICT
- 2 THE MANAGER
SREERAMAKRISHNA VIDYANIKETHAN PUBLIC SCHOOL,
NANDIKKARA P.O., - 680 301, THRISSUR DISTRICT.
- 3 THE COUNCIL OF CBSE SCHOOLS KERALA
(REGISTER NO.EKM/TC/376/2019), REP. BY ITS PATRON, DR.INDIRA
RAJAN, VIKRAM SARABHAI SPACE PARK, THENGODE POST-682030,
KAKKANAD, ERNAKULAM DISTRICT.

BY ADVS.
SRI.M.R.VENUGOPAL
SMT.DHANYA P.ASHOKAN

RESPONDENTS:

- 1 THE STATE OF KERALA
REP.BY THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM-695 001
- 2 THE DIRECTOR OF GENERAL EDUCATION
JAGATHY, THIRUVANANTHAPURAM-695 014
- 3 THE DISTRICT EDUCATIONAL OFFICER
KOTTAYAM - 686 001
- 4 THE ASSISTANT EDUCATIONAL OFFICER
IRINJALAKKUDA - 680 121
- 5 SECRETARY (AFFILIATION)
CENTRAL BOARD OF SECONDARY EDUCATION, CBSE BHAVAN, SHIKSHA
KENDRA, 2, COMMUNITY STREET, PREET VIHAR, NEW DELHI-110092

BY SRI.NIRMAL S., SC

OTHER PRESENT:

SRI. P.M.MANOJ - SR.GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22.01.2021,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

An Association called “The Council of Central Board of Secondary Education Schools”, constituted by various self financing schools affiliated to the Central Board of Secondary Education (CBSE for short), along with the Managers of two such schools, have approached this Court seeking that the competent Deputy Directors of Education, who are operating under the provisions of the Kerala Education Act and Rules (Act and KER respectively for short), be directed to issue to them “Orders of Prior Recognition” in Form No.II appended to the Kerala Right of Children to Free and Compulsory Education Rules, 2011 (hereinafter referred to as 'Rules' for short).

2. The petitioners, through their learned counsel, Smt.Dhanya P. Asokan, submit that even though the schools are bound to obtain an “Order of Prior Recognition” from the Government of Kerala for the purpose of renewal of their affiliation/recognition as per its affiliation by-laws in Form No.II of the Rules, the concerned Deputy Directors of Education issue such forms in the manner that they please, manifest from

Ext.P11; while in certain cases, they reject requests for such orders saying that since the Schools are already affiliated to the CBSE, no such is required, as is evident from Ext.P5, issued to the 1st petitioner - School.

3. The learned counsel for the petitioners, therefore, reiteratingly pray that the competent Deputy Directors of Education in the State of Kerala be directed - through the 2nd respondent - Director of Education - to issue the "Order of Prior Recognition" in Form No.II of the Rules, as and when the Schools approach them for such purpose, by making the application in the prescribed format.

4. The learned Standing Counsel for the CBSE, Sri.S.Nirmal, submitted that a statement has been filed by his client, wherein, the following have been stated:

"3. Recognition certificate issued by State Education Department as per the Right to Education Act, 2009 is prerequisite for running a school. Since the submission of Recognition certificate is mandatory requirement, the application for grant of affiliation cannot be processed without the same.

Bye-law 2.3.4 of the Affiliation Bye-laws - 2018 states that the

school seeking affiliation with the board shall submit a formal prior recognition certificate from the concerned state Government as per the rules and provisions contained in the RTE Act, 2009.

Bye-law 2.3.5 of the Affiliation Bye-laws, 2018 states that the Schools mentioned under clauses 2.1.5,2.1.6, 2.1.7 and 2.1.8 seeking affiliation with the Board shall submit format prior “No objection Certificate” to the effect that State Government has no objection to the affiliation of the School with CBSE. No objection Certificate once issued to any school will be considered at par even if it prescribes a specific period and/or level unless it is withdrawn.

4. The petitioner has produced Ext.P8 which is the format appended to CBSE Affiliation Bye-laws, 2018 and as seen from columns 11 & 12 information is sought for with respect to recognition from class 1 to 8 and also the number of recognition certificate. This information is conspicuously missing in Ext.P8. Without producing Appendix -III certificate, the application for extension of Affiliation cannot be proceed.

5. The Clause-16 of form No.II Annexed to The Kerala Right of Children to Free and Compulsory Education Rules, 2011 states:-

“This certificate of recognition granted under the provision of Right of Children to Free and

Compulsory Education Act, 2009 relates to classes 1 to 8. The recognition granted under the provision of Kerala Education Act and Rules issued thereunder or other orders in force will continue in respect of standards above class 8”

Therefore the Deputy Director has to issue the certificate in Form -II in order to enable the DEO of concerned jurisdiction to issue Appendix -III form as provided in Affiliation Bye-laws 2018. In fact the Central RTE Rules, the Right of Children to Free and Compulsory Education Rules, 2010 also has Form -II which is exactly similar to the Form-II under the Kerala Rules. The only difference is that under the Central Rules the DEO has to give the certificate instead of the Deputy Director, under the Kerala Rules. Since the Kerala Rules Form -II has to be certified by the Deputy Director, the DEO can issue Appendix -III format only after the Deputy Director issues Form-II.

Therefore it is highly essential and necessary that the Deputy Director of the concerned jurisdiction issues Form -II in order to enable the DEO to do the ministerial act to certify Appendix-III form required for extension of affiliation under the CBSE Bye-laws, 2018.”

5. Sri.Nirmal, therefore, submitted that the CBSE travels along with the petitioners as far as the cause in this writ petition is concerned and that they support their request that the

concerned Deputy Directors of Education be directed to issue the “Order of Prior Recognition” as required under the Rules in Form No.II appended thereto.

6. The learned Senior Government Pleader, Sri.P.M.Manoj, submitted that since the Rules and the Right to Education Act make it mandatory that a School, which has already obtained affiliation from other Educational Boards like CBSE and ICSE, must make a self declaration in Form No.I of the Rules and that since this should be succeeded by a proper inspection by the competent Authorities, leading to an “Order of Prior Recognition” to be issued by the Deputy Director of Education of the area where the respective school is situated, there cannot be any legal impediment in such orders being issued in Form No.II, provided the Schools comply with all the necessary and imperative conditions under the Act and Rules. The learned Senior Government Pleader, however, submitted that he does not have specific instructions as to why Ext.P11 “Prior Recognition Letter” has been issued by the Additional Director of General Education in the manner shown therein, conceding that this ought to have been issued only in Form No.II

of the Rules. He concluded his submissions by saying that the competent Deputy Directors of Education in Kerala will, therefore, issue the “Orders of Prior Recognition” to any School who approaches the said Authority in Form No.I and that necessary directions for this purpose will be issued by the 2nd respondent - Director General of Education by way of a circular, if this Court is so inclined.

7. When I hear the learned Senior Government Pleader on the afore lines, it is without doubt that there is, in fact, no controversy in this case at all. The petitioners want the Deputy Directors of Education to issue the “Orders of Prior Recognition” in Form No.II of the Rules, while the learned Senior Government Pleader also affirms that this is to be done.

8. Perspicuously, therefore, all that is required from this Court is to record the afore and to issue appropriate directions.

Resultantly, this writ petition is ordered:

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.

SD/-

DEVAN RAMACHANDRAN

JUDGE

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APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE NO OBJECTION CERTIFICATE DATED 30/6/2005 ISSUED TO THE FIRST PETITIONER
- EXHIBIT P2 TRUE COPY OF THE NOC DATED 19/8/2017 ISSUED BY THE FIRST RESPONDENT FOR CHANGING THE NAME OF THE FIRST PETITIONER SCHOOL TO LIFE VALLEY INTERNATIONAL SCHOOL
- EXHIBIT P3 TRUE COPY OF FORM NO.I SELF DECLARATION DATED 8/8/2018 SUBMITTED BY THE FIRST PETITIONER TO THE DISTRICT EDUCATION OFFICER, KOTTAYAM.
- EXHIBIT P4 TRUE COPY OF FORMAT OF FORM NO.II PROVIDED IN THE RTE RULES
- EXHIBIT P5 TRUE COPY OF THE REPLY DATED 3/6/2019 ISSUED BY THE 3RD RESPONDENT TO THE FIRST PETITIONER
- EXHIBIT P6 TRUE COPY OF THE ORDER DATED 31/7/2012 OF THE 5TH RESPONDENT.
- EXHIBIT P7 TRUE COPY OF COMMUNICATION DATED 16/8/2018 RECEIVED BY THE SECOND PETITIONER FROM THE AEO, IRINJALAKKUDA
- EXHIBIT P8 TRUE COPY OF THE CERTIFICATE DATED 29/1/2019 ISSUED BY THE DISTRICT EDUCATION OFFICER IN APPENDIX III TO THE SECOND PETITIONER.
- EXHIBIT P9 TRUE COPY OF THE SELF DECLARATION CUM APPLICATION DATED 8/8/2018 SUBMITTED BY THE VILLAGE INTERNATIONAL SCHOOL
- EXHIBIT P10 TRUE COPY OF THE REMINDER DATED 27/6/2019 SUBMITTED TO THE DEO THODUPUZHA
- EXHIBIT P11 TRUE COPY OF THE COVERING LETTER AND THE FORMAL PRIOR RECOGNITION LETTER DATED 16/1/2020 ISSUED TO THE VILLAGE INTERNATIONAL SCHOOL
- EXHIBIT P12 TRUE COPY OF THE CIRCULAR INSTRUCTION NO.NS(2) 10819/18/CBSE/DGE DATED 17.2.2020