

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 29TH DAY OF JULY 2020 / 7TH SRAVANA, 1942

WP(C).No.8849 OF 2017(S)

PETITIONER:

T. MUHAMMED FAISI,  
S/O.MOYINKUTTY HAJI, AGED 46 YEARS,  
THENATH HOUSE, ELAMBRA, PAYYANAD P.O.,  
MANJERI-VIA, MALAPPURAM DISTRICT-676 122.

BY ADVS.SRI.P.VENUGOPAL (1086/92)  
SMT.T.J.MARIA GORETTI

RESPONDENTS:

- 1 STATE OF KERALA,  
REPRESENTED BY THE SECRETARY,  
GENERAL EDUCATION DEPARTMENT, 2ND FLOOR,  
SECRETARIAT ANNEXE,  
THIRUVANANTHAPURAM-695 001.
- 2 DIRECTOR OF PUBLIC INSTRUCTIONS,  
DIRECTORATE OF PUBLIC INSTRUCTIONS, JAGATHI,  
THIRUVANANTHAPURAM-695 014.
- 3 DEPUTY DIRECTOR OF EDUCATION  
MALAPPURAM, DOWN HILL.P.O., MALAPPURAM-676 519.
- 4 DISTRICT EDUCATION OFFICER,  
MALAPPURAM, UP-HILL, CIVIL STATION P.O.,  
MALAPPURAM DISTRICT-676 505.
- 5 ASSISTANT EDUCATIONAL OFFICER, MANJERI,  
MANJERI P.O., MALAPPURAM DISTRICT-676 121.
- 6 DISTRICT COLLECTOR, MALAPPURAM,  
CIVIL STATION.P.O., MALAPPURAM DISTRICT-676 505.

7        **MANJERI MUNICIPALITY, MANJERI,  
MALAPPURAM DISTRICT-676 121,  
REPRESENTED BY ITS SECRETARY.**

**R1 TO R6 BY SENIOR GOVERNMENT PLEADER  
SRI. SURIN GEORGE IPE**

**R7 BY ADV. SRI. K. SHIBLI NAHA, SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
24-07-2020, THE COURT ON 29-07-2020 DELIVERED THE FOLLOWING:**

“C.R”

**JUDGMENT**

Dated this the 29<sup>th</sup> day of July, 2020

S. Manikumar, CJ

Petitioner, a resident of Elambra village in Manjeri Municipality, has filed this public interest writ petition seeking for issuance of a writ of mandamus, commanding respondents 1 & 2 - State of Kerala, represented by the Secretary, Thiruvananthapuram; and the Director of Public Instructions, Thiruvananthapuram, to take all necessary steps to establish a Government Lower Primary School at Elambra in Manjeri Municipality, expeditiously, within a specified time limit, as prescribed by this Court.

2. Facts leading to the filing of instant writ petition are that- Elambra is located on the outskirts of Manjeri Municipality and is a socially and educationally backward area. Majority of the population, including members of Scheduled Castes/Scheduled Tribes, consist of middle class families, with agriculture and coolie work as their avocation.

3. According to the petitioner, there are no primary schools within the radius of 3 kilometres and during the last more than 30 years, the local residents are in continuous effort to get a new Government LP School at Elambra. Several representations were submitted before the authorities concerned, including the Hon'ble Minister of Education. However, no action has been taken.

4. When absence of suitable land for opening the school was projected as a reason for not acceding to the request, the residents have purchased one acre of land, in the year 1985, for starting the school, and got it registered in the year 1993, as evident from Exhibit-P5 series. Manjeri Municipality has offered to construct buildings and to provide rent-free accommodation to the school, till the completion of the building works, as evident from Exhibits-P7 and P8.

5. Petitioner has further stated that respondent Nos.4 & 5 - the District Education Officer, Malappuram; and the Assistant Educational Officer, Manjeri respectively, have conducted various surveys and submitted reports recommending a new Government School at Elambra, as evident from Exhibits-P9, P10 & P11.

6. The Assistant Educational Officer, Manjeri, in Exhibit-P9 report dated 5.2.2014, has stated that Elambra is an educationally backward area, with lack of transport facilities, and there is no Lower Primary School, within the radius of 3 kilometres.

7. In the inspection conducted on 27.03.2015 (Exhibit-P10) by the 4<sup>th</sup> respondent as per the direction of the District Collector, Malappuram (respondent No.6), it was reported that the local people have purchased suitable land for establishing a school, and Municipality has agreed to construct the required buildings.

8. Petitioner has further stated that the Deputy Director of Education, respondent No.3, has also recommended for opening a new Government LP School at Elambra, as per his letter dated 15.05.2015 (Exhibit-P11) addressed to the Director of Public Instructions, Thiruvananthapuram, respondent No.2, on the ground that Elambra is an educationally backward area and there is no Government LP School therein.

9. In view of the stand adopted by the respondents, petitioner has approached the Kerala State Human Rights Commission, for redressal of his grievance. The Commission has initiated proceedings vide HRMP No.6502/2015/MPM on the complaint of the petitioner and conducted an enquiry. After ascertaining the stand of the Director of Public Instructions, Thiruvananthapuram, (respondent No.2) and all the relevant materials, the Commission, by its order dated 06.02.2016 (Exhibit-P13), directed the Director of Public Instructions, to take urgent steps for opening a school at Elambra. The Commission has also directed to give preference to the request, since they are waiting for the school, after purchasing the land in the year 1985, and prepared to provide necessary infrastructure.

10. Similarly, petitioner has approached the Kerala State Commission for Protection of Child Rights, seeking to redress the enduring grievance of the inhabitants of Elambra. The Commission initiated proceedings and, by order dated 04.07.2016 (Exhibit-P14), directed the

Secretary, General Education Department, in unambiguous terms, to take time-bound action to open a new Government LP School at Elambra. Petitioner has further contended that in spite of the above orders, the respondents have not taken any steps to open the school. Being aggrieved, the instant writ petition has been filed.

11. The Additional Secretary to the Government, General Education Department, has filed a counter affidavit, contending as follows:

(i) It is contended that the prayer sought for by the petitioner in the writ petition is not maintainable, either in law or on facts. Starting of new school / upgradation of schools within the territorial limit of various local authorities in the State are governed by the provisions of Kerala Education Act and Rules, and also under the Right of Children to Free and Compulsory Education Act, 2009 and the Rules framed thereunder. The sanctioning/upgradation of schools in the State is based on the procedure laid down in Rules 2 and 2(a) of Chapter V of Kerala Education Rules, 1959. Under the said provision, the educational need has to identify first and the same has to be notified. On the basis of the said notification alone, application for opening schools can be submitted or considered by the authority.

(ii) It is further contended that various Managers and Parent Teacher Associations approached this Court seeking a direction to the State Government to pass orders upgrading their existing schools so as to bring within their fold additional classes. The said writ petition culminated in common judgment dated 18.06.2015 in W.P(C) No.3060/2014 and connected cases. In the said judgment, this Court directed the State Government to

collect data with regard to children upto the age of 14 years and draw a list of areas within the territorial limits of various local authorities in the State showing Educational need in terms of Right to Free and Compulsory Education Act and Rules.

(iii) As per the direction of this Court in *Manager, LPGS, Veliyam, Kollam v. State of Kerala and Others* [2015 (3) KHC 703], Government have directed the authorities to conduct verification of educational needs throughout the State of Kerala.

(iv) In exercise of the powers conferred by sub-rules (1) and (2) of Rule of Chapter V of the Kerala Educational Rules, 1959, read with sub-rule (14) of Rule 14 of the Kerala Right of Children to Free and Compulsory Education Rules, 2011, the Director of Public Instructions have to notify the list of localities identified to have educational need. The procedures are followed and the list of selected areas is submitted.

(v) As per the Government direction, Sarva Shiksha Abhiyan, Kerala mapped the schools and Multi Grade Learning Centres working in Kerala through Global Positioning System. The Director of Public Instructions notified the list of 62 localities in 4 schedules through Extraordinary Notification No.985 in Volume V of Kerala Gazette dated 25.05.2016. The notification allowed a time frame of one month for filing objections or representations, if any, against the published list. The Additional Director of Public Instructions (General) conducted a personal hearing on 30.09.2016 with the complaints and prepared a list of 81 localities in 5 schedules and submitted them to the Government.

(vi) After analysing the same, the Government of Kerala directed to revise the list after collecting physical verification report of the educational officers concerned. In between, some individuals, who have not submitted the objection/representation

approached this Court, for including their localities and also opposing inclusion of certain localities in the list. As per the directions of this Court, Government directed to consider their representations by the Director of Public Instruction. Thereafter, the Director submitted a list of 91 localities in 5 schedules to the Government by letter dated 06.02.2017. This 91 localities are in inclusion of the 62 localities in the earlier draft notification. On verification, it was found that many areas where there is no educational need were included in the list, since actual physical verification about the inhabitants of the children and distance of school was not verified.

(vii) Government have directed to constitute a combined team of competent officers from the Directorate of Public Instruction and Sarva Shiksha Abhiyan, to conduct an integrated and scientific study about these localities, considering the parameters given below.

- i. Distance of the nearest school to the area specified in the draft notification.
- ii. Distance to the nearest available school from the residence of students.
- iii. Transportation facility available in the neighbourhood school.
- iv. Details of children in the age group of 1-14 years in the feeder area.
- v. Details of teachers in the neighbourhood school who were thrown out due to the shortage of students.
- vi. Population density of the area.
- vii. Details of Multi Grade Learning Centres, if any, in the area.

(viii) The team of experts prepared a detailed chart of localities with the above 7 facts. From this list, considering lot of facts like student availability, distance to the nearest school, availability of transportation etc., the Director of Public



Instruction identified three localities which have ultimate educational need to be included in the notification and forwarded to Government. The Director of Public Instruction also requested the Government to provide transportation to the students who were falling in 88 localities having proven educational needs. Two localities shown in the draft notification dated 25.05.2016 were removed from the list, since it was found that there is no educational need. The expert team found out that a school namely AMLP School, Vettikkattiri is already working in Ward No.1 of Pandikkad Panchayat in Malappuram District, which is notified as Serial No. 12 in the Schedule 1. Another school is available in 1 km radius of Mevada, Ward No. 5 of Meenachil Panchayat, which is notified as Serial No. 27 in the Schedule 1. Hence, the Director of Public Instruction excluded those two localities from the list to be notified. Justification for inclusion of three localities for Ext.R1(b) notification was also forwarded by DPI.

(ix) Government have granted permission to notify three localities, identified to have educational needs, in the Kerala Gazette Extraordinary. The Director of Public Instruction prepared Exhibit-R1(b) notification and published in the Kerala Gazette dated 19.05.2017. As stated above, the Director of Public Instructions has also requested the Government to provide transportation to the students who were falling from 88 localities having proven educational needs. On further scrutiny of the 88 arrears, the following three arrears that come from Thiruvananthapuram Corporation area were found to have no educational need and hence, have been excluded from the list.

- A. Veli - Ward 99
- B. Shanghumugam - Ward 34
- C. Paruthippara - Ward 15

(x) Moreover, Vadakkumuri area of Muthola Panchayat in Palakkad District included in the earlier list have been found to have no educational need and hence, excluded as per Government order dated 26.04.2017. Government have considered the whole aspect of meeting educational needs and that in 82 areas transportation facilities can be granted vide Exhibit-R1(e) Government order dated 09.06.2017. Later, on further scrutiny, it was found that Pullur Ward No.2 of Manjeri is found to have educational need for standard VIII & hence, will be notified separately as per the provisions of Kerala Education Rules, 1959.

(xi) It is further contended that going by the list prepared by the Government as directed by this Court, the area in question i.e Elambra in Manjeri Municipality is not an area identified as having educational needs. In the absence of educational needs, application submitted by the petitioner cannot be considered since the same is the policy decision of the Government.

(xii) It is further contended that the petitioner cannot rely on the direction of the Human Rights Commission and order of the Commission for Child Rights when the criteria is fixed by this Court. It is also contended that starting of new schools/upgrading of existing schools in the State is a policy decision of the Government in general and, therefore, request of the petitioner cannot be considered since various aspects such as existence of nearby schools and the facilities available in the locality have to be considered. In the above circumstances, the respondent has sought for dismissal of the writ petition.

12. Based on the averments made in the Statement of facts, Mr. P. Venugopal, learned counsel for the petitioner, submitted that for establishing a Government Lower Primary School in a socially and

educationally backward area, people of Manjeri Municipality have been fighting for nearly 35 years, since 1985. He further submitted that land was purchased by the people for construction of school buildings and Municipality is willing to construct the building. All that is required is sanction for establishing a Government LP School.

13. Learned counsel for the petitioner further submitted that when the educational authorities, viz., the Deputy Director of Education, Thiruvananthapuram; the District Education Officer, Malappuram district; and the Assistant Educational Officer, Manjeri, respondents 3 to 5 respectively, have inspected the area and submitted survey reports, substantiating the educational need of the school, the Secretary, General Education Department, Thiruvananthapuram; and the Director of Public Instructions, Thiruvananthapuram, respondents 1 & 2 respectively, have simply ignored the reports and failed to discharge the duties cast upon them under Section 19 of the Kerala Right of Children to Free and Compulsory Education Rules, 2011 r/w. Section 3(3) of the Kerala Education Act, 1958.

14. Referring to Rule 6 of the Kerala Right of Children to Free and Compulsory Education Rules, 2011, learned counsel for the petitioner submitted that in respect of children in Standards I to V, a school shall be established within a walking distance of 1 km of the neighbourhood.

15. Responding to the above, Mr. Surin George Ipe, learned Senior Government Pleader, submitted that pursuant to a direction made by this Court in *Manager, LPGS, Veliyam, Kollam v. State of Kerala and Others* [2015 (3) KHC 703], school mapping was done by the educational authorities, considering the parameters framed by a committee comprising of competent officers from the Directorate of Public Instructions and Sarva Siksha Abhiyan, and it was found that there are schools existing in the nearby places and that there was no educational need for establishing a Government LP school in Elambra area.

16. Learned Senior Government Pleader further submitted that sanctioning/upgradation of schools in the State is based on the procedure laid down in Rules 2 and 2(a) of Chapter V of the Kerala Education Rules, 1959. He also submitted that the petitioner cannot rely on the directions of, either the Human Rights Commission or the Commission for Protection of Child Rights. Starting new schools is the policy decision of the Government and individual requests cannot be considered.

17. In reply, Mr. P. Venugopal, learned counsel for the petitioner, submitted that the respondents have erroneously applied Rules 2 and 2(a) of Chapter V of the Kerala Education Rules, 1959, which are applicable to recognised private schools alone, however the issues herein are governed by Rule 14 of the Kerala Right of Children to Free and Compulsory

Education Rules, 2011, and on the said aspect, invited our attention to the above said rules.

18. Placing reliance on the decision of a Hon'ble Full Bench of this Court in *Manager, Aysha LP School, Cheddikulam and Another v. State of Kerala and Others* reported in [2019 (3) KLT 450], learned counsel for the petitioner submitted that Government cannot deny sanction for establishing a Government LP School, relying on the procedure adopted in respect of private schools. For the above said submissions, he prayed for issuance of a writ of mandamus.

19. Heard learned counsel for the parties and perused the materials available on record.

20. Letter dated 22.10.2013 addressed to the Minister for Education, Kerala, by the Chairman of Manjeri Municipality reads thus:

VALLANCHIRA MUHAMMAD ALI  
Chairman  
Manjeri Municipality, Manjeri 676121

-----  
Ref.....

Date:.....

To

Hon. Minister of Education, Kerala.

Sir,

Elambra is the only area in Manjeri Municipality wherein primary educational institution is not available within the periphery of 1 KM. Since children from this area which is inhabited by poor families belonging to minority category cannot be sent in vehicles to the schools in the neighbouring areas, the children here are deprived of

primary education. When the South LP School in Manjeri Municipality was under the threat of closure, attempt was made by the then Municipal Council and you who was the former constituency M.L.A. but overriding the said decision, the then Government shifted the Manjeri South L.P. School to Kavalangad. Therefore, the inhabitants of Elambra had lost this opportunity also.

The rule regarding right to education that, primary educational institutions should be available within a periphery of 1 KM, is also denied to the inhabitants of this area. If an L.P. School is sanctioned here, accommodation facility without rent shall be provided, local people are ready to surrender one acre of land freely and the Municipality is ready to provide necessary building facility.

Therefore, it is requested to give special consideration by the Government for sanctioning LP. School at Elambra and taken urgent actions.

Yours faithfully,

Manjeri  
22-10-2013

Sd/- Chairman  
Manjeri Municipality”

21. Proforma of Survey Report dated 5.2.2014 (Exhibit-P9) submitted by the 5<sup>th</sup> respondent - Assistant Educational Officer, Manjeri, is extracted hereunder:

**PROFORMA OF SURVEY REPORT**

- |    |  |                |
|----|--|----------------|
| 1  | Name of place where the new school is proposed to be opened... existing schools to be opened | <u>Elambra</u> |
| a) | Ward   | : <u>XIX</u>   |
| b) | Manjeri Panchayath/Municipality  | :              |
| c) | Taluk  | : Ernad        |
| d) | Sub district   | : Manjeri      |
| e) | Educational District   | : Malappuram   |
| f) | Revenue District   | : Malappuram   |
| 2  | Whether the proposed school is   | :              |

- 3 Whether the proposal is for opening/upgrading. If upgrading the name of the proposed to be upgraded : Opening a new school
- 3 a) Strength of the School if recognition of an unaided school whether it is functioning without recognition and if so, the year from which it is functioning with the highest standard :
- 4
- 5 **Whether the place is educationally backward and dominated by backward and scheduled cast (specify the details)** : **Educationally backward and also Muslim minority represent more than 80% of the total.**
- 6 Whether the place proposed is in (Strike off which is not applicable) : Elambra
- 7 **Details regarding nearby schools in and around the locality [within 2 kms in the case of UP schools and 3 km in the case of High schools] of proposed school (Specify the distance of schools in each case)** : **1. GLPS, Cherukulam - 3.5 km  
2. GLPS, Thottupoyil - 4 km  
3. GMLPS, Cherankuth - 4.5km**
- 8 The strength of the several standards and the accommodation available in each case of the existing schools in the locality included in column No.7 : Separate sheet attached
- 9 **The educational need of the locality with reference to habitation and backwardness of the area** : **Most of the people residing in the area belongs to backward and Scheduled Casts. The people are very poor and educationally backward. There is no proper transport facilities.**
- 10 **Approximate No. of families benefited by opening/upgrading the school** : **350 families**
- 11 Other matters which deserve consideration (give details) :

- 12 **Extent of site area available** : **One acre land**
- 13 Whether the site proposed satisfied the conditions stipulated in Chapter IV especially with regard to,- :
- a) Accessibility : Road
- b) Facilities for drinking water : Municipal water supply system is existed in the area
- 14 **Reason for opening/upgrading the school** : **There is no LP School within the radius of 3 km. People are depending the nearest schools 4 Km away from the proposed area.**
- 15 Approximate amount of recurring expenditure per annum for the payment of salary to the teachers : Govt.
- 16 **Whether the sanctioning/upgrading would effect the nearby schools resulting it becoming uneconomic. If so, give details of such schools.** : **No such possibility**
- 17 Detailed remarks add due recommendation of the controlling officers in the area where the school is proposed for opening/upgradation : Recommended.  
: Supporting document attached

Sd/-  
Assist. Educational Officer  
Manjeri"

22. Residents of Elambra in Manjeri Municipality, including the petitioner, have made representations viz., Ext-P1 dated 16.03.2015 to the District Collector, Malappuram (6<sup>th</sup> respondent); Exts-P2 & P4 dated 29.10.2015 & 13.08.2016 to the Hon'ble Minister for Education, Kerala; and Ext-P3 dated 17.05.2016 to the Director of Education, Malappuram.



One of such representations made, to the District Collector, Malappuram, is extracted hereunder:

“BEFORE THE HON’BLE DISTRICT COLLECTOR, MALAPPURAM

Muhammed Faisi, S/o. Thenath  
Moyinkutty Haji, Elambra, Elankoor  
P.O., Manjeri, Malappuram District  
(Phone 9747129181) Petitioner

About 300 families residing in Elambra area in Payyanad Village, Ernad Taluk, Manjeri Municipality, Malappuram District are depending on Vadakkangara LP School and Cherukulam L.P. School, situated at a distance of more than 3-4 KM for the education of their children. When the poor children of Elambra area are travelling such distance with much difficulties for education children of wealthy people depend on unaided schools. For grant of a Government L.P. School in this area, the inhabitants of this area had knocked all doors since several decades. Petitions were submitted before the concerned Ministers from time to time and the Peoples representatives even up to the Chief Minister. Parents along with the children conducted march to DDE Malappuram. But the result was disappointing.

In anticipation of sanction of school, required land of about 1 Acre was acquired by the local people in 1985 itself. If the school is granted, the local people are still ready to provide the necessary physical infrastructure. Therefore, it is prayed that this Hon’ble Authority may be pleased to consider this request and pay a visit to the site and after enquiry to make a permanent solution to this education problem of Elambra residents.

16/3/15

Yours faithfully,  
Muhammed Faisi”

23. Letter dated 27.03.2015 of the District Education Officer along with the Inspection and Survey reports sent to the Deputy Director of Education, Malappuram, (Exhibit-P10) are extracted hereunder:

“No. B2/1686/2015 (1)

Office of  
the District Educational Officer  
Malappuram.  
Date: 27/03/2015

From  
District Educational Officer  
Malappuram.

To  
The Dy. Director Education  
Malappuram.

Sir,

Sub: Public grievance – Regarding the application of Sri. Muhammed Faisi seeking sanction of new Government L.F’. School in Elambra area in Manjeri Municipality –

Ref: Letter No. PGR 1/945/2015/262 dated 17/3/15 of Malappuram District Collector.

A representation of Sri. Muhammed Faisi was received vide above reference. The District Collector, Malappuram has directed to enquire into the said complaint and take action.

**The need is that there is no public school for primary education in Elambra area in Manjeri Municipality and therefore a primary school in the Government sector may be sanctioned.**

Site was visited on 27/03/2015. Copy of the inspection report and copy of the survey report are enclosed. Application is recommended.

Yours faithfully,

Sd/-  
District Educational Officer  
Malappuram

Encl: Copy

- 1) District Collector, Malappuram (with endorsement)
- 2) Sri. Muhammed Faisi”

**“INSPECTION REPORT**

The Malappuram District Collector vide letter No. PGR1/945/2015/262 dated 17/03/15 directed to enquire into the representation submitted by, Sri. Muhammed Faisi on 16/03/2015 to the District Collector, Malappuram requesting to sanction a new Government LP. School in Elambra Area, Payyanad Village, Eranad Taluk, Manjeri Municipality.

Accordingly, the site was inspected on 27/03/15. By the effort of the local inhabitants, one acre of land was purchased and set apart for the school. A suitable land in square shape with adequate road approach was purchased and registered for the school.

Within a periphery of three kilometers of this area at present no public schools are available for primary education.

1. GLF School, Cherukulam 3 KM
2. GLP School, Cherankanth 4 KM
3. GLP School, Thottupoyil 3 KM
4. GLP School, Vadakkeka 5 KM

This region is socially and economically backward. At present children are going to various school in crowded auto rickshaw.

Own land is identified for the school. According to the local people, municipal authorities expressed readiness to provide necessary building facility for the school. If retrenched teachers who are included in the teachers’ bank are appointed, the Government will not have any additional financial liability. Because of the united efforts of the local people, one acre of land is identified for the Government LP School. The proposal is recommended.

Sd/- District Educational Officer  
Malappuram”

**SURVEY REPORT**

1	<b>Name of School, Place where the new school is proposed or existing schools to be upgraded</b>	<b>GLPS Elambra, Payyanad. At present no school is functioning.</b>
	(a) Ward	XIX
	(b) ManjeriPanchayath/Corporation	Manjeri Municipality
	(c) Taluk	Eranad
	(d) Sub district	Manjeri
	(e) Educational District	Malappuram
	(f) Revenue District	Malappuram
2	(a) Year Foundation (b) Date of opening the school	Not started yet NA
3	Name of Trust/Society	NA
4	Whether the proposed School is CBSE/ICESE	State syllabus. Govt. LP School
5	Whether the proposed school is opening or upgrading. If Upgrading the name of the proposed school is to be upgraded	Opening a new Govt. L.P.School
6	If the recognition is for an unaided school. Whether it is functioning without recognition and if so the year from which it is functioning with the highest standard	NA
7	<b>Whether the place is educationally backward and dominated backward and scheduled cast</b>	<b>Educationally backward Area. There are no LP schools within a radius of 3 kms.</b>
8	<b>Details regarding nearby schools and around the locality</b>	<b>GLPS - 3 Kms GLPS Thottupoyil - 3 Kms GLPS Cheran</b>
9	<b>The strength of the several standards and the accommodation available in each case of existing schools.</b>	<b>At present there is no school</b>
10	<b>The educational need of the locality with reference to habitation and backwardness of the area</b>	<b>Choiyath Harijan Colony -15 Houses GLPS Chrankuty</b>
11	<b>Approximate number of families benefiting by opening the school</b>	<b>300 families</b>
12	Other matters which deserve consideration (give details)	
13	Extend of land	1 Acres
14	Whether the site proposed satisfy the condition stipulated in Chapter IV especially with respect to (a) Accessibility (b) Facility for drinking water	Accessible. Provided

5	<b>Reason for opening or upgrading the school</b>	<b>There is no LP School within the radius of 3 km.</b>
16	Approximate amount of recurring expenditure per annum for the payment of salary to the teachers	NA
17	<b>Whether the sanctioning/up gradation would effect the nearby schools resulting it becoming uneconomic. If so give details of such schools.</b>	<b>No. The nearby schools have enough strength.</b>
18	<b>Detailed remarks add due recommendation of the controlling officers in the area where the school is proposed for opening/upgradation</b>	<b>The area is socially and educationally backward. The application is recommended.</b>

Sd/-  
District Educational Officer  
Manjeri”

24. Resolution No.37 dated 30.03.2015 adopted by the Manjeri Municipal Council (Exhibit-P8), requesting the Government to open a school at Elambra during the academic year 2015, is extracted hereunder:

“True copy of the Resolution No. 37 dated 30/03/2015 of the Council

Motion

Manjeri Municipality-Manjeri Municipality has taken decision several times to sanction school in Elambra area and brought to the attention of the Government. If a school is sanctioned here, the municipality is ready to provide necessary land and building. If school is sanctioned before completion of construction of building, municipality shall provide facility for conducting the school without rent. Therefore, by this motion, the municipality requests the Government to start school from this academic year so as to ensure the right to ensure keeping in view the backwardness of this area.

Presented by – Kanniyam Aboobeker Sd/-  
Supported by - V.P. Rafeeq Sd/-  
Resolution No. 37

Date; 30-03-2015

Unanimously approved. Decided to request the Government.

Sd/- Chairman  
Manjeri Municipality”

25. Letter dated 15.05.2015 of the 3<sup>rd</sup> respondent - Deputy Director of Education, Malappuram, addressed to the Director of Public Instruction, Thiruvananthapuram (Exhibit-P11), is extracted hereunder:

“D8/9427/9427/2015  
the

Office of  
Deputy Director Education  
Malappuram Dt. 15/5/15

Deputy Director,  
Malappuram.  
Director of Public instruction,  
Thiruvananthapuram.  
Sir,

Sub: Establishing LP School in Elambra in Manjeri Municipality –  
regarding

- Ref: 1) Public contact programme of the Hon. Kerala Chief Minister –  
Stock – application received in 2015 –  
2) Letter No. B/1193/15 dated 13/4/15 of the Manjeri Assistant  
District Educational Officer -  
3) Letter No. B2/1686/15 dated 27/3/15 of the District  
Educational Officer, Malappuram.  
4) Letter No. D2/16424/14 dated 26/11/14 of the Dy. Director  
Education, Malappuram.

Your kind attention is invited to the reference. For establishing LP school in Elambra area in Manjeri Municipality limit, the survey report and inspection report prepared by the Manjeri Dy. District Education Officer and Malappuram District Educational

Officer as per Ref. (2) and (3) after visiting the Elambra area are submitted herewith.

The remote area of Elambra where no facility for education is available depends on the schools situated 5 KM away even for primary education. It is intimated that if school is sanctioned at Elambra, Manjeri Municipality is ready to construct building in the one acre of land acquired by the local people for the school and till “completion of the building; the concerned are ready to allot the nearby madrassa without rent for conducting the school. In connection with the subject matter, this office report No. D8/26424/14 dated 26/11/14 was submitted to your office. Copy of the said report also is enclosed herewith for information.

It is recommended that establishment of LP School in this area which is educationally backward and majority of the inhabitants are backward categories where no LP schools are available within a periphery of 3 KM will be much useful.

Yours faithfully,  
Dy. Director Education  
Malappuram

26. Representation dated 21.11.2016 submitted by the petitioner to respondents 1 and 2 - State of Kerala, and Director of Public Instructions, Thiruvananthapuram, is extracted hereunder:

“From

**T. Muhammed Faisi**  
S/o. Moyinkutty Haji  
Thenath House, Elambra  
Payyanad P.O., Manjeri -via  
Malappuram district. PIN: 676 122.

To

- |   |  |
|---|--|
| 1. Principal Secretary<br>General Education Department<br>2 <sup>nd</sup> Floor, Secretariat Annexe<br>Thiruvananthapuram PIN:695 001 | 2. Director of Public Instructions<br>Directorate of Public Instructions<br>Jagathi, Thiruvananthapuram<br>PIN: 695 014. |
|---|--|

Respected Sir,

Sub: Request for opening a new Government Lower Primary School at Elambra in Manjeri Educational Sub-district-reg:

1. Requests for opening a new Government Lower Primary School at Elambra area in Manjeri Municipality, to cater the educational needs of the local residents is resting with the authorities concerned, for the last more than 3 decades. Various representations in this regard were submitted to the authorities from time to time and the successive governments though convinced of the necessity, were not given due consideration to the requests.

2. Elambra is located on the outskirts of Manjeri Municipality and it is a socially and educationally backward area. More than 300 families are permanently residing in the area. Majority of the population including members of scheduled caste/tribe colonies, consists of middle class families with agriculture and coolie works as their main avocation. It is an underdeveloped area as the facilities for public conveyance, drinking water, electricity etc. are still inadequate. There are no schools within a radius of 3 Km for the primary education of their children. Children in the locality are attending schools at a distance of almost 3 to 5 KM, for their primary education. Children of tender age are constrained to take up tedious travel to attend schools. Absence of proper conveyance facilities adds fuel to the agonies of the children as well as the parents.

3. When absence of suitable land for opening of the school was projected as a reason for not acceding the requests of the public, they have assembled together, collected required fund and



purchased land having an extent of 1 Acre for the sole purpose of facilitating opening and housing the new school. The said land was purchased from various persons on appropriate consideration and stands registered in the name of 'Nejathuddeen Sangam' a voluntary association of the local residents. Recitals in the assignments deeds, prohibits use of the said land for any purpose other than housing of the proposed LP School. The said land is kept idle for the last more than 30 years. The title holder has expressed his willingness to provide the said land for housing the proposed school, on appropriate terms as may be fixed by the competent authorities.

4. Manjeri Municipal Council having convinced of the irresistible longstanding demand of the local public, had also stood along with them and assured to provide necessary infrastructure including construction of necessary buildings and providing rent-free accommodation till the completion of the construction of the required buildings. Manjeri Municipal Council had adopted various resolutions, requesting the authorities concerned and State Government to accord sanction to open a new school at Elambra. It is quite unfortunate that even the requests and persuasions made by the Municipal Council did not evoke any positive response from the authorities concerned.

5. The Assistant Education Officer, Manjeri through his various reports, has recommended opening of a new school at Elambra. The District Education Officer, Malappuram has also conducted detailed enquiries including site inspection following the representation submitted by the local public and submitted report, recommending opening of the school. Both the authorities have recommended for opening of the school on the ground that there is no school within the radius of 3 km and the land is already available and the Manjeri Municipality has offered to provide the building and other

infrastructure facilities. Such reports are resting with the Government. Though the necessity of opening the school was copiously convinced to the authorities concerned, the various representations in this regard were kept idle on some or the other unconvincing reasons.

6. It is apposite to point out that the KERALA STATE HUMAN RIGHTS COMMISSION has initiated a proceedings vide HRMP No:6502/2015/MPM on my complaint and conducted enquiry. After ascertaining the stand of the Director of Public Instructions and all relevant materials, the Commission through its Order dated 06-02-2016 directed the Director of Public Instructions to take urgent steps to open a school at Elambra at the earliest. Commission has also directed him to give preference to the request as they are waiting for the school after purchasing the land in the year 1985 and they are also prepared to provide necessary further infrastructure,

7. A complaint was preferred by me before the KERALA STATE COMMISSION FOR PROTECTION OF CHILD RIGHTS as well seeking its interference to redress the enduring grievance of the inhabitants of Elambra. The Commission initiated proceedings vide No:CRMP No:3498/10/LA2/2015/KeSCPCR and through its Order dated 04-07-2016 directed the Secretary, General Education Department in unambiguous terms to take time-bound action to open a new Lower Primary School at Elambra. Still, to the great dismay of the public, there is no positive action forthcoming.

8. When the required land is already available coupled with the willingness of the Municipal Council to provide necessary infrastructure and the need to open the school is convincingly established through the reports of the competent authorities, the Government ought to have considered and adopted a more pragmatic and beneficial approach to the long standing demand of

the public. It is quite unfortunate that the Government is adopting a most unproductive stand against the request for opening of a new school at Elambra.

9. It is worth to point out that by the enactment of the Right to Education Act (35 of 2009) the entire scenarios has been undergone a drastic change. Right to Education Act came in to force in the year 2010 and the Kerala Rules, following the Act was framed in the year 2011. It is the mandate of the Act that the Government is duty bound to establish neighbourhood schools, where it is not available, within a period of 3 years from the commencement of the Act. As per Rule 6 of the Kerala Rules, the Government is bound to establish neighbourhood schools in respect of children in classes from 1 to 5 within a walking distance of 1 KM and in respect of children in classes from 6 to 8, within a walking distance of 3 KM. It is a matter of fact that there are no schools available within the radius of 3KM at Elambra. As such, the Government is bound to establish a new school, so as to comply with the statutory requirement. The highly deplorable indolence in this regard will indisputably amount to denial of the right guaranteed under the Right to Education Act, to the children.

In this circumstances, I respectfully request immediate attention of your goodself to the longstanding request/demand of the residents of Elambra and to issue necessary directions/orders to open a new Government Lower Primary School at Elambra in Manjeri Educational Sub-district, at the earliest.

Thanking you  
Yours faithfully

Dated this the 21<sup>st</sup> day of November, 2016

Sd/-  
T. Muhammed Faisi”

27. Before the Kerala State Human Rights Commission, when a petition was filed, the Director of Public Instructions, in his report, has referred to Rule 5 of Chapter IV, as well as Rules 2, 2A and 9 of Chapter V of the Kerala Education Rules, 1959. Rule 5 of Chapter IV, and Rules 2, 2A and 9 of Chapter V of the KER, are extracted hereunder:

**Chapter IV Rule 5**

**“5. Accommodation** - (1) Every school shall have building of specifications and plans approved by the Director and the buildings exclusive of veranda shall be of dimensions sufficient to provide accommodation for the various rooms as specified in the following schedule:-

**SCHEDULE**

Type of school	Accommodation required
Lower Primary School	Class rooms, Headmaster’s room (Office room), and accommodation for pupils to take noon- day meals.
Upper Primary School	Class rooms, Headmaster’s room, (Office room) Teachers room, Library, Craft and Appliances room, Tiffin sheds and accommodation for pupils for taking noonday meals when sanctioned.
Secondary School (High and Higher Secondary Schools)	Class rooms, Office room, Headmaster’s or Headmistress’s or Vice Principal’s and Principal’s room, Teachers room, Laboratory room, Library room, Craft room, Drill shed, Tiffin sheds, and accommodation for pupils for taking noonday meals if there is a Primary Section in which noon-feeding is sanctioned.
Training Schools	Class rooms, Office and Headmaster’s room, Library and Museum, Craft rooms, Drill sheds, Tiffin sheds and Accommodation for pupils of the Model Lower Primary School for taking noon-day meals.

**Note:-** There should also be a waiting room for girls in mixed schools coming under the last three types.

(2) No school building shall be altered or added to materially except in accordance with a plan approved by the Department.

(3) The construction of buildings for Secondary Schools in future should be so designed that it may be possible to adjust the design in course of time without much change in the original building so as to provide for additional accommodation for introducing two or more types of diversified courses.

[(3A) No school shall be permitted to function if the roof of the school building is a thatched one or the building is roofed with easily inflammable materials.]

(4) In the construction of school building the following instructions shall be specially noted.

### **Chapter V Rule 2**

**“2. Procedure for determining the areas where new schools are to be opened for existing schools upgraded - (1) The Director may, from time to time, prepare two lists, one in respect of aided schools and the other in respect of recognized schools, indicating the localities where new schools or any or all grades are to be opened and existing Lower Primary School or Upper Primary Schools or both are to be upgraded. In preparing such lists he shall take into consideration the following.**

(a) The existing schools in and around the locality in which new schools are to be opened or existing schools are to be upgraded;

(b) The strength of the several standards and the accommodation available in each of the existing schools in that locality;

(c) The distance from each of the existing schools to the area where new schools are proposed to be opened or to the area where existing schools are to be upgraded;

(d) The educational needs of the locality with reference to the habitation and backwardness of the area; and (e) Other matters which he considers relevant and necessary in this connection.

**Explanation:-** for the removal of doubts it is hereby clarified that it shall not be necessary to prepare the two lists simultaneously and that it shall be open to the Director to prepare only one of the lists.

(2) A list prepared by the Director under Sub-rule (1) shall be published in the Gazette, inviting objections or representations against such list. Objections, if any, can be filed against the list published within one month from the date of publication of the list. Such objection shall be filed before the Assistant Educational Officers or the District Educational Officers as the case may be. Every objection filed shall be accompanied by chalan for Rs. 10/- remitted into the Treasury. Objections filed without the necessary Chalan receipt shall be summarily rejected.

(3) The Assistant Educational Officer and the District Educational Officer may thereafter conduct enquiries, hear the parties, visit the areas and send their report with their views on the objections raised to the Director within two months from the last date of receipt of the objections. The Director, if found necessary, may also hear the parties and finalise the list and send his recommendations with the final list to Government within two months from the last date of the receipt of the report from the Educational Officers.

(4) The Government after scrutinizing all the records may approve the list with or without modification and forward the same to the Director within one month from the last date for the receipt of the recommendations of the Director. The list as approved by the Government shall be published by the Director in the Gazette.

(5) No appeal or revision shall lie against the final list published by the Director.

Provided that the Government may either suo motu or on application by any person objecting to the list published by the Director under sub-rule (4) made before the expiry of thirty days from the date of such publication review their order finalizing such list and make such modifications in that list as they deem fit by way of additions or omissions, if they are satisfied that any relevant ground has not been taken into consideration or any irrelevant ground has been taken into consideration or any relevant fact has not been taken into account while finalizing the said list:

Provided further that no modification shall be made under the preceding proviso without giving any person likely to be affected thereby an opportunity to make representation against such modifications.

[(5A) The proviso added to sub-rule (5) by the Kerala Education (Amendment) Rules, 1981 published in the Kerala Gazette extraordinary No. 667, dated the 19<sup>th</sup> August 1981, shall be deemed to have been added to that sub-rule with effect on and from the 1<sup>st</sup> day of June 1981].

(6) The Govt. may, by notification in the Gazette, extend any period specified in sub-rules (3) and (4) for reasons to be stated in the notification.

**2A. Applications for opening of new schools and upgrading of existing schools -** (1) After the publication of the final list of the areas where [new school of any or all grades] are to be opened or existing Lower Primary Schools or Upper Primary schools or both are to be upgraded the Director shall, by a notification in the Gazette call for applications for the opening of [New schools of any

or all grades and for raising of the grade of existing Lower Primary Schools or Upper Primary Schools or both in the areas specified.

(2) Applications for opening of new schools or for raising schools shall be submitted only in response to the notification published by the Director. Applications received otherwise shall not be considered. The applications shall be submitted to the District Educational Officer of the area concerned in form No. 1 with 4 copies of the application and enclosures within one month from the date of publication of the notification under sub- rule (1).

(3) On receipt of the applications for permission to open new schools or for upgrading of existing schools, the District Educational Officer shall make such enquiries as he may deem fit as to the correctness of the statements made in the application and other relevant matters regarding such applications and forward the applications with his report thereon to the Director within one month from the last date for submitting applications under sub-rule (2).

(4) The Director on receipt of the applications with the report of the District Educational Officer shall forward the applications with his report to Government within one month from the last date for forwarding the report by the District Educational Officer.

(5) The Government shall consider the applications in the light of the report of the District Educational Officer and the Director and other relevant matters which the Government think necessary to be considered in this connection and shall take a final decision and publish their decision in the Gazette with the list containing necessary particulars within one month from the last date for forwarding the report by the Director.



(6) Applications for permission to open a new standard in an existing school during any school year not involving the raising of the grade of the school shall be submitted to the District Educational Officer in charge of the area in form 1 in triplicate.

(7) x x x x

(8) The Government may, by notification in the Gazette, extend any period specified in sub-rules (3), (4) and (5) for reasons to be stated in the notification.

**“9. Conditions for grant of permission to open new schools- No permission to open a new school shall be granted:- (i) If the applicant does not possess absolute ownership or right to be in exclusive possession for a period of not less than six years over the site, buildings and other properties of the school;”**

28. After considering the materials on record, the Kerala State Human Rights Commission by order dated 6.2.2016 in HRMP No.6502/2015/MPM (Exhibit-P13) disposed of the complaint, directing the Director of Public Instructions, respondent No.2, to take action for sanctioning the school, in the area in question, by giving priority to the request of the complainant, who is prepared to provide necessary infrastructural facilities. The said order reads thus:

**“ORDER DATED 6<sup>TH</sup> FEBRUARY 2016 (1191 MAKARAM 23)**

The facts of the case is that the children of more than 300 families residing in Elambra Desom, Payyanad Village, Malappuram District have to depend on the LP schools situated more than four kilometers for their primary education; that since long they are waiting for sanction of a Government LP school in this area; that in

anticipation of sanction of school, the local people by collection purchased the required land of one acre in 1985 itself; that the local people are ready to provide other infrastructure facilities if the school is sanctioned and seek for necessary action to allow their request. Copy of the reports sent by the Malappuram District Educational Officer to the Malappuram District Collector and the Dy. Director of Education, Malappuram is produced along with the complaint.

In the report submitted by the Director of Public Instruction to the commission on 14/9/2015, it is stated that as provided under Rule IV(5) KER proper accommodation is inevitable and as provided under Rule V 9(1) the land of the school and appurtenant buildings/ownership right can be considered suitable only after six years or more and therefore a school without a building cannot be recommended. It is also stated in the report that as part of comprehensive implementation of the right to education in the State, school mapping process is presently continuing and on completion of the said process keeping in view the requirement of each area, notification will be issued under Rule 5(2), 2A of the Kerala Education Rules and thereafter applications will be received for establishing schools. In the report it is also stated that if building is allotted on lease for minimum 30 years and to enter into lease agreement as per rules, then only further action to start a new school at Elambra can be taken and the said fact has been brought to the notice of the Government.

Article 45 of the Constitution provides for compulsory free education to all children up to 14 years. The fact that one acre of land was purchased in the year 1985 by collecting money from the general public in anticipation of sanction of the school proves the bonafide of the local people for establishment of the school.

Implementation of free and compulsory education enunciated by the Constitution is the liability of the Government. National policy is to ensure provision of educational facility to the children below 10 years near their house. In the said circumstances, the assurance that other infrastructure shall be provided by the local people if the school is sanctioned is very relevant.

The report of the Director of Public instruction that the school mapping process is in progress and on completion of the said process notification will be issued and applications will be accepted is taken in its face value. The complaint is disposed of directing the Director of Public Instruction to take action for sanctioning school in this area by giving priority to the request of the complainant who have purchased land for the school in 1985 and ready to provide the facilities.

Copy of the order may be sent to the complainant and the Director of Public Instruction.

Sd/- K. Mohankumar  
Member  
Kerala State Human Rights Commission”

29. When the petitioner approached the Kerala State Child Rights Protection Commission, Thiruvananthapuram, ventilating his grievance, quoting the very same provisions as done before the Kerala State Human Rights Commission, a defence has been taken. Educational authorities have submitted that upon completion of mapping, report of the 2<sup>nd</sup> respondent for starting Government lower primary school in the said area was called for, but the same is not made available so far.

30. State Commission, in exercise of its statutory functions and powers, as set out in Sections 13 to 15 of the Commissions for Child Right

Protection Act, 2005, has visited Elambra area of Manjeri Municipality on 27.05.2015, collected details, examined the need for establishing a Government LP School, backwardness of the area, number of families, number of children studying in primary educational schools, distance between Elambra area of Manjeri Municipality and the existing schools, lack of transport facility, constitutional and statutory provisions, and directed the 1<sup>st</sup> respondent therein to take action for establishing a Government LP School, after conducting enquiry in a time bound manner, for providing free and compulsory education to the children of Standards I to IV, in the economically backward Elambra area in Malappuram District. Respondents therein were further directed to take action to provide infrastructure facilities as stipulated in the schedule to RTE Act, 2009, on the basis of according Government sanction to establish the said school. State Commission for Child Rights Protection also directed that a report on the action taken by the respondents, on the aforesaid suggestions, should be submitted before the Commission, within one month of receipt of this order as per Rule 45 of the Kerala State Child Right Protection Rules, 2012.

31. Order dated 4.7.2016 passed by the Kerala State Commission for Protection of Child Rights in CRMP No.3498/10/LA2/2015/KeSCPCR (Exhibit-P14) is reproduced hereunder:

“ORDER

The petitioner has approached this commission stating that the children of more than 300 families residing in Elambra Desom, Payyanad Village, Malappuram District have to depend on the LP schools situated more than four kilometers for their primary education; that since long they are waiting for sanction of a Government LP school in this area; that in anticipation of sanction of school, the local people by collection purchased the required land of one acre in 1985 itself; that the local people are ready to provide other infrastructure facilities if the school is sanctioned and sought for interference of the commission and to redress the grievance. Along with the petition, copies of the inspection report of the Malappuram District Educational Officer, survey report, consent letter issued by the President, Najathudeen Sangham that if the school is sanctioned, land will be surrendered to the Government and consent letter to the effect that till completion of the building, facility to run the school in Busthanul Ulum Madrasa under the Sangham without rent are also produced.

2. Commission admitted the petition and sought for report from the respondents.

3. According to the report submitted by the 3<sup>rd</sup> respondent on 1/9/2015 it has been stated that Elambra comprises in Ward 10 of Manjeri Municipality, the proposal for sanction of the new school is about 35 years old and proposal was submitted before the Municipal Council for consideration and decision that if the school is sanctioned necessary basic facilities shall be produced.

4. In the report submitted by the 2<sup>nd</sup> respondent on 12/11/2015 it is reported that as a result of the effort of the local public one acre of land was purchased for the school in Elambra area; that there is no

public school within three kilometer periphery in the said area suitable for primary education; that the Malappuram District Education Officer has submitted report for starting school in the said area; that as per Section V9(1) of the Kerala Education Act more than six years ownership of the land/building of the school only will be considered and recommendation cannot be given to a school where there is no building; that as per section IV(5) KER proper accommodation facility is inevitable; that Rule 17 Chapter IV stipulates that the school cannot be used for the purpose similar to place of worship but as part of the comprehensive implementation of right to education rule on the basis of completion of the mapping process keeping in view the educational requirement of each area notification will be issued under Rule 5(2)(2) KER and thereafter applications will be received for starting school and that further action on the application for starting new school at Elambra can be taken only if building with all infrastructure facilities as provided by rules is made available for the purpose of conducting the school on lease for minimum 30 years.

5. In the report of the 4<sup>th</sup> respondent dated 15/10/2015 it has been stated that inspection report and survey report for starting school in Elambra area have been forwarded for further action to the Director of Public Instruction as per No. D8/9427/15 dated 15/5/2015. Copies of the inspection report and survey report are produced before the commission.

6. Upon completion of mapping, report of the 2<sup>nd</sup> respondent for starting lower primary school in the said area was called for but the same is not made available so far.

7. In the above circumstance, the commission visited the Elambra area of Manjeri Municipality on 27/5/2016, collected details from the local people and children and as stated by the local public to

the commission it has come to know that there are about 350 houses, that more than 35 children in the 1<sup>st</sup> standard and several children in standard 2, 3 and 4 are going to the schools situated about 3-4 kilometers in auto rickshaw and bus that an expenditure of Rs. 300/- each per student is incurred, that when 2 or 3 children are going to school, the poor parents cannot bear this expenditure. The commission has realized that the inhabitants of this area are economically backward, majority of them are labourers and some are doing agricultural operation on lease. The local people submitted before the commission that because of the distance, certain children have started schooling at the age of 8, that there are 3 Anganwadies in the area, that in anticipation of establishment of school, the local people have purchased one acre of land for school in 1985, that if school is sanctioned the said land will be surrendered to the Government and that till completion of the school building, facilities will be provided for conducting classes in the nearby Madrassa without any rent.

8. Right to Education of Children (RTE Act) came in force in our country in the year 2009 for free and compulsory education of children. Free and compulsory primary education is the fundamental right of every child. This fundamental right is guaranteed under Article 21A of the Constitution. As per Section 6 of the RTE Act school should be established in the area or within he neighbouring limits reckoned by the Government and local self government institutions for implementing the provisions of this Act. If not established, it is provided to establish a school within 3 years of coming into force of the said Act. As per Rule 6(A) of the Kerala Right of Children to Free and Compulsory Education Rules, 2011, as far as children of standard 1 to 5, a school is established at a walking distance of 1 KM from neighbouring area. In Elambra of Payyanad

Village within the Manjeri Municipality of Malappuram District, children studying in standards 1 to 4 from about 350 families go to school situated 3-4 Kilometers away in auto rickshaw and buses. Travelling expenses of about Rs. 300/- per child is beyond the reach of the parents who are economically backward. The local people state that one acre of level land for establishing the school in the area was purchased in the year 1985. If sanction is accorded by the Government, necessary action for construction of building shall be taken as reported by the 3<sup>rd</sup> respondent. In the inspection report submitted by the 4<sup>th</sup> respondent to the 2<sup>nd</sup> respondent it is mentioned that if teachers are appointed from the teachers' bank, there will be no additional liability to the Government in the matter of appointment. The commission has thus reached the conclusion that it is necessary to establish a Government LP. School in Elambra area where there are lot of children and financially backward. But on completion of school mapping in the state Elambra in Payyanad Village within Manjeri Municipality of Malappuram District is not shown as a place for establishing Government L.P. School in the concerned website of the 2<sup>nd</sup> respondent.

9. In the above circumstances, under Section 31 of Right of Children to Free and Compulsory Education of Child Right Act, 2009 and Section 15 of the Commissions for Child Right Protection Act, 2005, this case is disposed of with the following suggestion.

A) The 1<sup>st</sup> respondent shall take action to establish Government LP School after conducting enquiry in a time bound manner for providing free and compulsory education to children of standard 1 to 4 in the economically backward Elambra in Malappuram District.

B) The respondents shall take action to provide infrastructure facilities as stipulated in the schedule to RTE Act on the basis of according government sanction to establish the said school.



The report on the action taken by the respondents on the aforesaid suggestions should be submitted to the commission within one month of receipt of this order as per Rule 45 of the Kerala State Child Right Protection Rules, 2012.

This case will be considered again on 02/08/2016.”

32. Perusal of the above order of the Kerala State Child Rights Protection Commission, Thiruvananthapuram, shows that the Commission has also taken into consideration the inspection report of the Project Director, SSA, Thiruvananthapuram, the 4<sup>th</sup> respondent therein, to the Director of Public Instructions, Thiruvananthapuram, the 2<sup>nd</sup> respondent therein, to the effect that if teachers are appointed from the teacher's bank, there will not be any additional liability to the Government in the matter of appointment.

33. One of the contentions raised in this writ petition by the 1<sup>st</sup> respondent is that the petitioner cannot seek for a writ of mandamus, on the strength of an order passed by the Kerala State Human Rights Commission. Though the Commission has only directed the Director of Public Instructions to take action for sanctioning a Government LP School in the area in question, by giving priority to the request of the complainant, who have purchased land for the school in 1985 and ready to provide the facilities, incidentally, in the light of Article 21A of the Constitution of India, mandating that the State shall provide free and

compulsory education to all the children of the age of six to fourteen years in such manner as the State may, by law, determine, and Rule 6 of the Kerala Right of children to Free and Compulsory Education Rules, 2011, we deem it fit to consider a few decisions as to whether Right to Education for children is a human right.

(I) In **Miss. Mohini Jain v. State of Karnataka and Ors.** [(1992) 3 SCC 666] the Hon'ble Supreme Court held as follows:

“6. In order to appreciate the first point posed by us it is necessary to refer to various provisions of the Constitution of India. The preamble promises to secure to all citizens of India "justice, social, economic and political" "liberty of thought, expression, belief, faith and worship". It further provides "equality of status and of opportunity" and assures dignity of the individual. Articles 21, 38, 39(a) and (f), 41 and 45 of the Constitution are reproduced hereunder:

“21. Protection of life and personal liberty. - No person shall be deprived of his life or personal liberty except according to procedure established by law.

38. State to secure a social order for the promotion of welfare of the people.- (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

39. Certain principles of policy to be followed by the State. - The State shall, in particular, direct its policy towards securing-

(a) that the citizens, men and women equally, have the right to an adequate means to livelihood;

xxxxxxx

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

41. Right to work, to education and to public assistance in certain cases. - The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

45. Provision for free and compulsory education for children. - The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

7. It is no doubt correct that "right to education" as such has not been guaranteed as fundamental right under Part III of the Constitution but reading the above quoted provisions cumulatively it becomes clear that the framers of the Constitution made it obligatory for the State to provide education for its citizens.

8. The preamble promises to secure justice "social, economic and political" for the citizens. A peculiar feature of the Indian Constitution is that it combines social and

economic rights along with political and justiciable legal rights. The preamble embodies the goal which the State has to achieve in order to establish social justice and to make the masses free in the positive sense. The securing of social justice has been specifically enjoined an object of the State under Article 38 of the Constitution. Can the objective which has been so prominently pronounced in the preamble and Article 38 of the Constitution be achieved without providing education to the large majority of citizens who are illiterate. The objectives flowing from the preamble cannot be achieved and shall remain on paper unless the people in this country are educated. The three pronged justice promised by the preamble is only an illusion to the teeming-million who are illiterate. It is only the education which equips a citizen to participate in achieving the objectives enshrined in the preamble. The preamble further assures the dignity of the individual. The Constitution seeks to achieve this object by guaranteeing fundamental rights to each individual which he can enforce through court of law if necessary. The directive principles in Part IV of the Constitution are also with the same objective. The dignity of man is inviolable. It is the duty of the State to respect and protect the same. It is primarily the education which brings forth the dignity of a man. The framers of the Constitution were aware that more than seventy per cent of the people, to whom they were giving the Constitution of India, were illiterate. They were also hopeful that within a period often years illiteracy would be wiped out from the country. It was with that hope that Articles 41 and 45 were brought in Chapter IV of the

Constitution. An individual cannot be assured of human dignity unless his personality is developed and the only way to do that is to educate him. This is why the Universal Declaration of Human Rights, 1948 emphasises "Education shall be directed to the full development of the human personality...." Article 41 in Chapter IV of the Constitution recognises an individual's right "to education". It says that "the State shall, within the limits of its economic capacity and development, make effective provision for securing the right...to education...". Although a citizen cannot enforce the directive principles contained in Chapter IV of the Constitution but these were not intended to be mere pious declarations. We may quote the words of Dr. Ambedkar in that respect:

"In enacting this Part of the Constitution, the Assembly is giving certain directions to the future legislature and the future executive to show in what manner they are to exercise the legislature and the executive power they will have. Surely it is not the intention to introduce in this Part these principles as mere pious declarations. It is the intention of the Assembly that in future both the legislature and the executive should not merely pay lip-service to these principles but that they should be made the basis of all legislative and executive action that they may be taking hereafter in the matter of the governance of the country." (C.A. D. Vol.VII p.476.)

9. The directive principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under Part III. These principles have to be read into the fundamental rights. Both are supplementary to each other. The State is under a constitutional mandate to create conditions in which the

fundamental rights guaranteed to the individuals under Part III could be enjoyed by all. Without making "right to education" under Article 41 of the Constitution a reality the fundamental rights under Chapter III shall remain beyond the reach of large majority which is illiterate.

10. This Court has interpreted Article 21 of the Constitution of India to include the right to live with human dignity and all that goes along with it. In **Francis Coralie Mullin v. The Administrator, Union Territory of Delhi** (1981 CriLJ 306), this Court elaborating the right guaranteed under Article 21 of the Constitution of India held as under:

“But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self.”

11. In **Bandhua Mukti Morcha v. Union of India and Ors.** [1984] 2 SCR 67, this Court held as under:

“This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and

strength of workers men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State - neither the Central Government nor any State Government - has the right to take any action which will deprive a person of the enjoyment of these basic essential."

12. "Right to life" is the compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens.

13. The fundamental rights guaranteed under Part III of the Constitution of India including the right to freedom of speech and expression and other rights under Article 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity.

14. The "right to education", therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution. The State is under a constitutional-mandate to provide educational institutions at all levels for the benefit of the citizens. The educational institutions must function to the best advantage of the citizens. Opportunity

to acquire education cannot be confined to the richer section of the society.”

As is clear from the above judgment, even prior to the introduction of Article 21A in the Constitution of India, although the right to education was only a Directive Principle of State Policy included in Articles 41 and 45 of the Constitution of India, the Supreme Court held that right to education is concomitant to the fundamental rights enshrined under Part III of the Constitution. By the above said Constitution Amendment Act, right to education has been expressly made a fundamental right by introducing Article 21A in Part III of the Constitution of India. Article 21A reads thus:

“21A. Right to education :- The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may by law, determine.”

(ii) In **Avinash Mehrotra v. Union of India (UOI) and Ors.** [(2009) 6 SCC 398], the Hon'ble Supreme Court held thus:

“24. Education occupies a sacred place within our Constitution and culture. Article 21A of the Constitution, adopted in 2002, codified this Court's holding in *Unni Krishnan, J.P. and Ors. v. State of Andhra Pradesh and Ors.* [1993]1SCR594, in which we established a right to education. Parliament did not merely affirm that right; the Amending Act placed the right to education within the Constitution's set of Fundamental Rights, the most cherished principles of our society. As the Court observed in *Unni Krishnan* (supra), para 8:

“The immortal Poet Valluvar whose *Tirukkural* will surpass all ages and transcend all religious said of education:



“Learning is excellence of wealth that none destroy; To man nought else affords reality of joy.”

25. Education today remains liberation - a tool for the betterment of our civil institutions, the protection of our civil liberties, and the path to an informed and questioning citizenry.

26. Then as now, we recognize education's "transcendental importance" in the lives of individuals and in the very survival of our Constitution and Republic. In the years since the inclusion of Article 21A, we have clarified that the right to education attaches to the individual as an inalienable human right. We have traced the broad scope of this right in *R.D. Upadhyay v. State of A.P. and Ors.* AIR 2006 SC 1946, holding that the State must provide education to all children in all places, even in prisons, to the children of prisoners. We have also affirmed the inviolability of the right to education. In *Election Commission of India v. St. Mary's School and Ors.* AIR 2008 SC 655, we refused to allow the State to take teachers from the classroom to work in polling places. While the democratic State has a mandate to conduct elections, the mundane demands of instruction superseded the State's need to staff polling places. Indeed, the democratic State may never reach its greatest potential without a citizenry sufficiently educated to understand civil rights and social duties, *Bandhua Mukti Morcha v. Union of India and Ors.* [1997] 2 SCR 379 . These conclusions all follow from our opinion in *Unni Krishnan*. Education remains

essential to the life of the individual, as much as health and dignity, and the State must provide it, comprehensively and completely, in order to satisfy its highest duty to citizens.

27. Unlike other fundamental rights, the right to education places a burden not only on the State, but also on the parent or guardian of every child, and on the child herself. Article 21A, which reads as follows, places one obligation primarily on the State:

“The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”

28. By contrast, Article 51A(k), which reads as follows, places burden squarely on the parents:

“Fundamental duties - it shall be the duty of every citizen of India who is the parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.”

29. The Constitution directs both burdens to achieve one end: the compulsory education of children, free from the fetters of cost, parental obstruction, or State inaction. The two articles also balance the relative burdens on parents and the State. Parents sacrifice for the education of their children, by sending them to school for hours of the day, but only with a commensurate sacrifice of the State's resources. The right to education, then, is more than a human or fundamental right.

.....

31. The Constitution likewise provides meaning to the

word "education" beyond its dictionary meaning. Parents should not be compelled to send their children to dangerous schools, nor should children suffer compulsory education in unsound buildings. Likewise, the State's reciprocal duty to parents begins with the provision of a free education, and it extends to the State's regulatory power. No matter where a family seeks to educate its children, the State must ensure that children suffer no harm in exercising their fundamental right and civic duty. States thus bear the additional burden of regulation, ensuring that schools provide safe facilities as part of a compulsory education.

32. In the instant case, we have no need to sketch all the contours of the Constitution's guarantees, so we do not. We merely hold that the right to education incorporates the provision of safe schools.

33. This Court in **Ashoka Kumar Thakur's case** (supra) observed as under:

“It has become necessary that the Government set a realistic target within which it must fully implement Article 21A regarding free and compulsory education for the entire country. The Government should suitably revise budget allocations for education. The priorities have to be set correctly. The most important fundamental right may be Article 21A, which, in the larger interest of the nation, must be fully implemented. Without Article 21A, the other fundamental rights are effectively rendered meaningless. Education stands above other rights, as one's ability to enforce one's fundamental rights flows from one's education. This is ultimately why the judiciary must oversee Government spending on free and compulsory education.”

34. In view of the importance of Article 21A, it is imperative that the education which is provided to children in the primary schools should be in the environment of safety.”

(iii) In **Society for Un-aided Private Schools of Rajasthan v. Union of India (UOI) and Ors.** [(2012) 6 SCC 1], the Hon'ble Supreme Court held thus:

“9. To begin with, we need to understand the scope of Article 21A. It provides that the State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law, determine. Thus, under the said Article, the obligation is on the State to provide free and compulsory education to all children of specified age. However, under the said Article, the manner in which the said obligation will be discharged by the State has been left to the State to determine by law.

Thus, the State may decide to provide free and compulsory education to all children of the specified age through its own schools or through government aided schools or through unaided private schools. The question is whether such a law transgresses any constitutional limitation? In this connection, the first and foremost principle we have to keep in mind is that what is enjoined by the directive principles (in this case Articles 41, 45 and 46) must be upheld as a "reasonable restriction" under Articles 19(2) to 19(6). As far back as 1952, in **State of Bihar v. Maharaja dhiraja Sir Kameshwar Singh of Darbhanga** (1952) SCR 889, this Court has illustrated how a directive principle may guide the Court in determining

crucial questions on which the validity of an important enactment may be hinged.

Thus, when the courts are required to decide whether the impugned law infringes a fundamental right, the courts need to ask the question whether the impugned law infringes a fundamental right within the limits justified by the directive principles or whether it goes beyond them. For example, the scope of the right of equality of opportunity in matters relating to employment (Article 16) to any office in the State appears more fully defined when read with the obligation of the State to promote with special care the economic and other interests of the weaker sections (Article 46).

Similarly, our understanding of the right "to practice any profession or occupation" (Article 19(1)(g)) is clarified when we read along with that right the obligation of the State to see that the health of the workers and the tender age of the children are not abused (Article 39). Thus, we need to interpret the fundamental rights in the light of the directive principles. The above principles are very relevant in this case because the very content of Article 21A comes from reading of Articles 41, 45 and 46 and, more particularly, from Article 45 (as it then stood before the Constitution (Eighty sixth Amendment) Act, 2002). It has been urged before us that Article 45, as it then stood, imposed obligation on the State to provide for free and compulsory education for all children until they complete the age of 14 years and that the said obligation cannot be shifted or passed on to an unaided school, as defined in Section 2(n)(iv) of the 2009 Act. To

answer the said contention, one needs to appreciate the scope of Articles 21, 21A, 19(1)(g) and Articles 41, 45 and 46 of the Constitution. At the outset, it may be stated, that fundamental rights have two aspects they act as fetter on plenary legislative powers and, secondly, they provide conditions for fuller development of our people including their individual dignity. Right to live in Article 21 covers access to education. But unaffordability defeats that access.

It defeats the State's endeavour to provide free and compulsory education for all children of the specified age. To provide for free and compulsory education in Article 45 is not the same thing as to provide free and compulsory education. The word "for" in Article 45 is a preposition. The word "education" was read into Article 21 by the judgments of this Court. However, Article 21 merely declared "education" to fall within the contours of right to live. To provide for right to access education, Article 21A was enacted to give effect to Article 45 of the Constitution. Under Article 21A, right is given to the State to provide by law "free and compulsory education". Article 21A contemplates making of a law by the State. Thus, Article 21A contemplates right to education flowing from the law to be made which is the 2009 Act, which is child centric and not institution centric. Thus, as stated, Article 21A provides that the State shall provide free and compulsory education to all children of the specified age in such manner as the State may, by law, determine. The manner in which this obligation will be discharged by the State has been left to the State to determine by law. The

2009 Act is thus enacted in terms of Article 21A. It has been enacted primarily to remove all barriers (including financial barriers) which impede access to education. One more aspect needs to be highlighted. It is not in dispute that education is a recognised head of "charity" (see **T.M.A. Pai Foundation v. State of Karnataka** (2002) 8 SCC 481).

Therefore, even according to T.M.A. Pai Foundation, if an educational institution goes beyond "charity" into commercialization, it would not be entitled to protection of Article 19(1)(g). This is where the paradox comes in. If education is an activity which is charitable, could the unaided non-minority educational institution contend that the intake of 25% children belonging to weaker section and disadvantaged group only in class I as provided for in Section 12(1)(c) would constitute violation of Article 19(1)(g) Would such a provision not be saved by the principle of reasonable restriction imposed in the interest of the general public in Article 19(6) of the Constitution?

10. Coming to the principle of reasonableness, it may be stated, that though subject-wise, Article 21A deals with access to education as against right to establish and administer educational institution in Article 19(1)(g), it is now not open to anyone to contend that the law relating to right to access education within Article 21A does not have to meet the requirement of Article 14 or Article 19 for its reasonableness. (See **Khudiram Das v. State of West Bengal** reported in (1975) 2 SCR 832 After the judgment of this Court in **Maneka Gandhi v. Union of India** (1978) 1 SCC 248, the principle of reasonableness is

applicable to Article 14 of the Constitution. As held by this Court in **Glanrock Estate Private Limited v. State of Tamil Nadu** (2010) 10 SCC 96, Article 21 (right to life) remains the core of the Constitution around which Article 14, Article 19 and Ors. revolve. In other words, all other fundamental rights in Part III would be dependent upon right to life in Article 21 as interpreted by this Court to include right to live with dignity, right to education, etc. At the end of the day, whether one adopts the pith and substance test or the nature and character of the legislation test or the effect test, one finds that all these tests have evolved as rules of interpretation only as a matter of reasonableness. They help us to correlate Article 21 with Article 14, Article 19 and, so on. Applying the above principle of reasonableness, though the right to access education falls as a subject matter under Article 21A and though to implement the said Article, Parliament has enacted the 2009 Act, one has to judge the validity of the said Act in the light of the principle of reasonableness in Article 19(6), particularly, when in **T.M.A. Pai Foundation** and in **P.A. Inamdar v. State of Maharashtra** (2005) 6 SCC 537, it has been held that right to establish and administer an educational institution falls under Article 19(1)(g) of the Constitution. Thus, the question which arises for determination is whether Section 12(1)(c) of the 2009 Act is a reasonable restriction on the non-minority's right to establish and administer an unaided educational institution under Article 19(6) Article 21 says that "no person shall be deprived of his life...except according to the procedure established by law" whereas



Article 19(1)(g) under the chapter "right to freedom" says that all citizens have the right to practice any profession or to carry on any occupation, trade or business which freedom is not absolute but which could be subjected to social control under Article 19(6) in the interest of general public. By judicial decisions, right to education has been read into right to life in Article 21. A child who is denied right to access education is not only deprived of his right to live with dignity, he is also deprived of his right to freedom of speech and expression enshrined in Article 19(1)(a). The 2009 Act seeks to remove all those barriers including financial and psychological barriers which a child belonging to the weaker section and disadvantaged group has to face while seeking admission. It is true that, as held in T.M.A. Pai Foundation as well as P.A. Inamdar, the right to establish and administer an educational institution is a fundamental right, as long as the activity remains charitable under Article 19(1)(g), however, in the said two decisions the correlation between Articles 21 and 21A, on the one hand, and Article 19(1)(g), on the other, was not under consideration. Further, the content of Article 21A flows from Article 45 (as it then stood). The 2009 Act has been enacted to give effect to Article 21A. For the above reasons, since the Article 19(1)(g) right is not an absolute right as Article 30(1), the 2009 Act cannot be termed as unreasonable. To put an obligation on the unaided non-minority school to admit 25% children in class I under Section 12(1)(c) cannot be termed as an unreasonable restriction. Such a law cannot be said to transgress any

constitutional limitation. The object of the 2009 Act is to remove the barriers faced by a child who seeks admission to class I and not to restrict the freedom under Article 19(1)(g). The next question that arises for determination is whether Section 12(1)(c) of the 2009 Act impedes the right of the non- minority to establish and administer an unaided educational institution? At the outset, it may be noted that Article 19(6) is a saving and enabling provision in the Constitution as it empowers the Parliament to make a law imposing reasonable restriction on the Article 19(1)(g) right to establish and administer an educational institution while Article 21A empowers the Parliament to enact a law as to the manner in which the State will discharge its obligation to provide for free and compulsory education. If the Parliament enacts the law, pursuant to Article 21A, enabling the State to access the network (including infrastructure) of schools including unaided non-minority schools would such a law be said to be unconstitutional, not saved under Article 19(6) Answer is in the negative. Firstly, it must be noted that the expansive provisions of the 2009 Act are intended not only to guarantee the right to free and compulsory education to children, but to set up an intrinsic regime of providing right to education to all children by providing the required infrastructure and compliance of norms and standards. Secondly, unlike other fundamental rights, the right to education places a burden not only on the State, but also on the parent/guardian of every child (Article 51A(k)). The Constitution directs both burdens to achieve one end: the compulsory education of children free from

the barriers of cost, parental obstruction or State inaction. Thus, Articles 21A and 51A(k) balance the relative burdens on the parents and the State. Thus, the right to education envisages a reciprocal agreement between the State and the parents and it places an affirmative burden on all stakeholders in our civil society. Thirdly, right to establish an educational institution has now been recognized as a fundamental right within the meaning of Article 19(1)(g). This view is enforced by the opinion of this Court in T.M.A. Pai Foundation and P.A. Inamdar that all citizens have a right to establish and administer educational institutions under Articles 19(1)(g) and 26 but that right is subject to the provisions of Articles 19(6) and 26(a). The constitutional obligation of the State to provide for free and compulsory education to the specified category of children is co-extensive with the fundamental right guaranteed under Article 19(1)(g) to establish an educational institution. Lastly, the fundamental right to establish an educational institution cannot be confused with the right to ask for recognition or affiliation. The exercise of a fundamental right to establish and administer an educational institution can be controlled in a number of ways. Indeed, matters relating to the right to grant of recognition and/ or affiliation are covered within the realm of statutory right, which, however, will have to satisfy the test of reasonable restrictions (see Article 19(6)). Thus, from the scheme of Article 21A and the 2009 Act, it is clear that the primary obligation is of the State to provide for free and compulsory education to children between the age of 6 to

14 years and, particularly, to children who are likely to be prevented from pursuing and completing the elementary education due to inability to afford fees or charges. Correspondingly, every citizen has a right to establish and administer educational institution under Article 19(1)(g) so long as the activity remains charitable. Such an activity undertaken by the private institutions supplements the primary obligation of the State. Thus, the State can regulate by law the activities of the private institutions by imposing reasonable restrictions under Article 19(6). The 2009 Act not only encompasses the aspects of right of children to free and compulsory education but to carry out the provisions of the 2009 Act, it also deals with the matters pertaining to establishment of school (s) as also grant of recognition (see Section 18). Thus, after the commencement of the 2009 Act, the private management intending to establish the school has to make an application to the appropriate authority and till the certificate is granted by that authority, it cannot establish or run the school. The matters relevant for the grant of recognition are also provided for in Sections 19, 25 read with the Schedule to the Act. Thus, after the commencement of the 2009 Act, by virtue of Section 12(1)(c) read with Section 2(n)(iv), the State, while granting recognition to the private unaided non-minority school, may specify permissible percentage of the seats to be earmarked for children who may not be in a position to pay their fees or charges. In T.M.A. Pai Foundation, this Court vide para 53 has observed that the State while prescribing qualifications for admission in a

private unaided institution may provide for condition of giving admission to small percentage of students belonging to weaker sections of the society by giving them freeships, if not granted by the government. Applying the said law, such a condition in Section 12(1)(c) imposed while granting recognition to the private unaided non-minority school cannot be termed as unreasonable. Such a condition would come within the principle of reasonableness in Article 19(6). Indeed, by virtue of Section 12(2) read with Section 2(n)(iv), private unaided school would be entitled to be reimbursed with the expenditure incurred by it in providing free and compulsory education to children belonging to the above category to the extent of per child expenditure incurred by the State in a school specified in Section 2(n)(i) or the actual amount charged from the child, whichever is less. Such a restriction is in the interest of the general public. It is also a reasonable restriction. Such measures address two aspects, viz., upholding the fundamental right of the private management to establish an unaided educational institution of their choice and, at the same time, securing the interests of the children in the locality, in particular, those who may not be able to pursue education due to inability to pay fees or charges of the private unaided schools. We also do not see any merit in the contention that Section 12(1)(c) violates Article 14. As stated, Section 12(1)(c) inter alia provides for admission to class I, to the extent of 25% of the strength of the class, of the children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and

compulsory elementary education to them till its completion. The emphasis is on "free and compulsory education". Earmarking of seats for children belonging to a specified category who face financial barrier in the matter of accessing education satisfies the test of classification in Article 14.

Further, Section 12(1)(c) provides for level playing field in the matter of right to education to children who are prevented from accessing education because they do not have the means or their parents do not have the means to pay for their fees. As stated above, education is an activity in which we have several participants. There are number of stakeholders including those who want to establish and administer educational institutions as these supplement the primary obligation of the State to provide for free and compulsory education to the specified category of children. Hence, Section 12(1)(c) also satisfies the test of reasonableness, apart from the test of classification in Article 14."

(iv) In **State of Kerala and Ors. v. Scheduled Caste-Scheduled Tribe Welfare Society of Kerala** [AIR 2007 Ker. 158] this Court, after considering the decision of of the Hon'ble Apex Court in **Mohini Jain (Miss) v. State of Karnataka and others**, [(1992) 3 SCC 666], held thus:

"16. Apart from the same, we doubt very much as to whether, after finding educational need in a locality, the Government can by taking refuge under a policy decision or lack of it refuse to sanction a school in an area where there is admitted educational need. If that is permitted, then that would amount to defeating the constitutional

mandates of Articles 21A, 41, 45 and 46 of the Constitution of India. It is like saying that although people of an area is suffering from acute scarcity of water, because of a policy decision, Government will not provide water to the people of that area. When Constitution mandates that citizens have a fundamental right for something, the Government cannot simply refuse them their constitutional rights in the name of a Government policy or lack of it. The right to education is a fundamental right guaranteed by the Constitution of India. When educational need in an area is found as a matter of fact, we are of opinion that the Government cannot deny that fundamental right to the citizens of the locality on the ground that Government have not taken a policy decision to grant new schools in the State or have taken a policy decision not to grant. Further, even as admitted by the appellant-State itself, the area in question is a socially, economically and educationally backward area wherein 1/3<sup>rd</sup> of the population consists of scheduled castes and scheduled tribes. When Article 46 mandates that State shall promote with special care the educational and economic interests of the weaker sections of the society, and in particular, scheduled castes and scheduled tribes, the denial of right to education to the people of that area would be a social injustice to them and would amount to violation of the constitutional mandate. It is in this context we chose to start this judgment by extracting the relevant paragraphs from the judgment of Supreme Court in Mohini Jain's case (supra) wherein the Supreme Court had categorically held

that Directive Principles are mandates to the State to eradicate poverty so that the poor of this country can enjoy the right guaranteed under the Constitution. As held in Mohini Jain's case, when the preamble promises to secure justice, social, economic and political for the citizens, the objectives flowing from the preamble cannot be achieved and shall remain on paper unless the people of this country are educated. The directive principles are also framed with the same objective. The Directive Principles, which are fundamental in the Governance of this country, cannot be isolated from the fundamental rights guaranteed under Part III of the Constitution of India and therefore these principles are to be read into the fundamental rights. The State is under a constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under Part III could be enjoyed by all. As such, the citizens of the locality in question have been evidently deprived of both the benefits of Article 21A as well as Articles 45 and 46 of the Constitution. That being so, we also endorse the view of the learned single Judge that Government cannot refuse permission to start a new school in the locality in question under the guise of want of a Government policy in that regard. Therefore, we do not find any merit in the contentions of the Government on that issue as well.

17. Then comes the question as to whether the Government can, without first resorting to the procedure prescribed under Rules 2 and 2-A of Chapter V of the Kerala Education Rules, permit starting of a new school. In this connection, it is interesting to note that while



granting the schools in other areas, which is relied upon by the Subarmathi Society in support of their case, also the procedure prescribed under those rules was not followed. In the impugned order, the Government itself justified the same in paragraph 6 as follows:

“6. The allegation, that the sanctioning of these schools without complying with the procedure laid down in the Kerala Education Rules, is absolutely incorrect. The decision in the above schools is taken by the Council of Ministers. It is pertinent to note that Government is vested with power under Rule 3 of Chap. I Kerala Education Rules for dispensing with or relaxing the requirement of any Rule in any particular case. Even though the above orders do not specifically mention about exercise of such power the orders will not be vitiated and the non-mentioning of the specific provision is not fatal to its sustainability. Since the decision is taken by the Council of Ministers, it can very well be construed as a decision taken within the ambit and scope of Rule 3 Chapter I Kerala Education Rules and minor change in procedures if any, with respect to the provisions in Chapter V will not vitiate the sanction.”

After having found that justification for granting schools of their choice, the Government cannot now fall back on the rules to deny the very same benefits to the Sabarmati Society. Further, the Government themselves conceded that the people in that area as well as several other organisations have been clamouring for establishment of a school with primary, high school and + 2 classes for the last several years. In fact, several persons of the locality including students have got themselves impleaded in these writ appeals to support the case of the society in its quest to start a school in the locality. As such, as held by the learned single Judge, Government cannot take the plea that the application submitted by the Sabarmathi

Society cannot be considered on the ground that no notification has been issued by the Government as contemplated under Chapter V of the Kerala Education Rules. In the wake of paragraph 6 of Ext. P 33, the contention of the Government sounds hollow and it seems that the Government is trying to find out one reason or other to deny the people of the locality the benefit of a school to cater to their educational needs, that too, in a locality predominantly inhabited by the weaker sections of the society, admittedly, only on the ground of financial burden to the Government resulting from such a grant.

18. Of course, in the appeal memorandum, the appellant-State has taken a contention that the sanctioning of those schools in the other places was in fact breaching the policy decision and without following the procedure contemplated under Chapter V of the KER and therefore the Government have constituted a review committee to examine all the cases where sanction has been given to start new aided schools and the cases of upgrading existing aided schools. We are not inclined to entertain such a contention at this late stage, which contention was conspicuously absent before the learned single Judge. Further, the Government has not chosen to place before us any material whatsoever in support of that contention. Whatever that be, the Government cannot approbate and reprobate. After having found it necessary to sanction those schools, finding special circumstances which exact special circumstances are very much evident in the present case also, the Government cannot now suddenly take a turn around and say that the granting of

other schools were also against the policy decision and without complying with the procedure prescribed under Chapter V of the KER. For all these reasons, we do not find any merit in the contentions in the writ appeals and the same are liable to be rejected.”

34. The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights, drafted by representatives with different legal and cultural backgrounds from all the regions of the world. The Declaration was proclaimed by the United Nations General Assembly in Paris on 10<sup>th</sup> December 1948 (General Assembly Resolution 217A), as a common standard of achievements for all peoples and all nations. Article 26 of the Universal Declaration of Human Rights, 1948, reads thus:

“Article 26;-

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- (3) Parents have a prior right to choose the kind of education that shall be given to their children.”

35. The importance of Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General

Assembly as per Resolution No.44/25 of 20.11.1989, to which we are told, India is a signatory from the year 1992 onwards, was considered by this Court in *Johny Cyriac (Dr.) v. Ministry of Human Resources Development and Others* [2020 (1) KHC 939], in the context of weight of school bags, and held that the paramount consideration of the State should be to protect welfare and interest of the children.

36. In the light of the decisions considered above, Right to Education for Children under Article 21A of the Constitution of India is a human right.

37. The Right of Children to Free and Compulsory Education Act, 2009, is an Act to provide for free and compulsory education to all children of the age of six to fourteen years. As per Section 2(a)(ii) of the Act, appropriate Government means, in relation to a school, other than referred to in sub-clause (i) established within the territory of,-

(A) a State, the State Government,

(B) a Union Territory having Legislature, the Government of that Union Territory:

38. Section 2(h) of the Act defines “local authority”, which means a Municipal Corporation or Municipal Council or Zila Parishad or Nagar Panchayat, by whatever name called, and includes such other authority or body having administrative control over the school or empowered by or under any law for the time being in force to function as a local authority

in any city, town or village. Section 2(l) of the Act defines “prescribed”, which means prescribed by Rules made under this Act.

39. As per Section 2(n) of the Act, “school” means any recognised school imparting elementary education and includes:- (i) a school established, owned or controlled by the appropriate Government or a local authority; (ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority; (iii) a school belonging to specified category; and (iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.

40. As per Section 2(q) of the Act, “State Commission for Protection of Child Rights” means the State Commission for Protection of Child Rights constituted under Section 3 of the Commissions for Protection of Child Rights Act, 2005. That apart, Sections 3, 6, 8, 9, 18, 25, 26, 31 and 32 of the Right of Children to Free and Compulsory Education Act, read thus:

**“3. Right of child to free and compulsory education.-** 1) Every child of the age of six to fourteen years, including a child referred to in clause (d) or clause (e) of Section 2, shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education.

(2) For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education.

(3) A child with disability referred to in sub-clause (A) of clause (ee) of Section 2 shall, without prejudice to the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and a child referred to in sub-clauses (B) and (C) of clause (ee) of Section 2, have the same rights to pursue free and compulsory elementary education which children with disabilities have under the provisions of Chapter V of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996):

Provided that a child with “multiple disabilities” referred to in clause (h) and a child with “severe disability” referred to in clause (o) of Section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999) may also have the right to opt for home-based education.”

**“6. Duty of appropriate Government and local authority to establish school.—**For carrying out the provisions of this Act, the appropriate Government and the local authority shall establish, within such area or limits of neighbourhood, as may be prescribed, a school, where it is not so established, within a period of three years from the commencement of this Act.”

**“8. Duties of appropriate Government.—** The appropriate Government shall—(a) provide free and compulsory elementary education to every child:

Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a

claim for reimbursement of expenditure incurred on elementary education of the child in such other school.

**Explanation.**—The term “compulsory education” means obligation of the appropriate Government to—

- (i) provide free elementary education to every child of the age of six to fourteen years; and
- (ii) ensure compulsory admission, attendance and completion of elementary education by every child of the age of six to fourteen years;
- (b) ensure availability of a neighbourhood school as specified in Section 6;
- (c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;
- (d) provide infrastructure including school building, teaching staff and learning equipment;
- (e) provide special training facility specified in Section 4;
- (f) ensure and monitor admission, attendance and completion of elementary education by every child;
- (g) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;
- (h) ensure timely prescribing of curriculum and courses of study for elementary education; and
- (i) provide training facility for teachers.”

**“9. Duties of local authority.**—Every local authority shall—

- (a) provide free and compulsory elementary education to every child:

Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a

school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school;

(b) ensure availability of a neighbourhood school as specified in Section 6;

(c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;

(d) maintain records of children up to the age of fourteen years residing within its jurisdiction, in such manner as may be prescribed;

(e) ensure and monitor admission, attendance and completion of elementary education by every child residing within its jurisdiction;

(f) provide infrastructure including school building, teaching staff and learning material;

(g) provide special training facility specified in Section 4;

(h) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;

(i) ensure timely prescribing of curriculum and courses of study for elementary education;

(j) provide training facility for teachers;

(k) ensure admission of children of migrant families;

(l) monitor functioning of schools within its jurisdiction; and

(m) decide the academic calendar.”



**“18. No School to be established without obtaining certificate of recognition.—(1) No school, other than a school established, owned or controlled by the appropriate Government or the local authority, shall, after the commencement of this Act, be established or function, without obtaining a certificate of recognition from such authority, by making an application in such form and manner, as may be prescribed.**

(2) The authority prescribed under sub-section (1) shall issue the certificate of recognition in such form, within such period, in such manner, and subject to such conditions, as may be prescribed:

Provided that no such recognition shall be granted to a school unless it fulfils norms and standards specified under Section 19.

(3) On the contravention of the conditions of recognition, the prescribed authority shall, by an order in writing, withdraw recognition: Provided that such order shall contain a direction as to which of the neighbourhood school, the children studying in the derecognised school, shall be admitted:

Provided further that no recognition shall be so withdrawn without giving an opportunity of being heard to such school, in such manner, as may be prescribed.

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

(5) Any person who establishes or runs a school without obtaining certificate of recognition, or continues to run a school after withdrawal of recognition, 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.”

**“25. Pupil-Teacher Ratio.—**(1) Within three years from the date of commencement of this Act, the appropriate Government and the local authority shall ensure that the Pupil-Teacher Ratio, as specified in the Schedule, is maintained in each school.

(2) For the purpose of maintaining the Pupil-Teacher Ratio under sub-section (1), no teacher posted in a school shall be made to serve in any other school or office or deployed for any non-educational purpose, other than those specified in Section 27.”

**“26. Filling up vacancies of teachers.—**The appointing authority, in relation to a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or by a local authority, shall ensure that vacancy of teacher in a school under its control shall not exceed ten per cent of the total sanctioned strength.”

**“31. Monitoring of child's right to education.—**(1) The National Commission for Protection of Child Rights constituted under section 3, or, as the case may be, the State Commission for Protection of Child Rights constituted under Section 17, of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006), shall, in addition to the functions assigned to them under that Act, also perform the following functions, namely:—

- (a) examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation;
- (b) inquire into complaints relating to child's right to free and compulsory education; and
- (c) take necessary steps as provided under Sections 15 and 24 of the said Commissions for Protection of Child Rights Act.

(2) The said Commissions shall, while inquiring into any matters relating to child's right to free and compulsory education

under clause (c) of sub-section (1), have the same powers as assigned to them respectively under Sections 14 and 24 of the said Commissions for Protection of Child Rights Act.

(3) Where the State Commission for Protection of Child Rights has not been constituted in a State, the appropriate Government may, for the purpose of performing the functions specified in clauses (a) to (c) of sub-section (1), constitute such authority, in such manner and subject to such terms and conditions, as may be prescribed.

**“32. Redressal of grievances.—(1) Notwithstanding anything contained in Section 31, any person having any grievance relating to the right of a child under this Act may make a written complaint to the local authority having jurisdiction.**

(2) After receiving the complaint under sub-section (1), the local authority shall decide the matter within a period of three months after affording a reasonable opportunity of being heard to the parties concerned.

(3) Any person aggrieved by the decision of the local authority may prefer an appeal to the State Commission for Protection of Child Rights or the authority prescribed under sub-section (3) of Section 31, as the case may be.

(4) The appeal preferred under sub-section (3) shall be decided by State Commission for Protection of Child Rights or the authority prescribed under sub-section (3) of Section 31, as the case may be, as provided under clause (c) of sub-section (1) of Section 31.”

41. The Commissions for Protection of Child Rights Act, 2005 is an Act to provide for the constitution of a National Commission and State Commissions for Protection of Child Rights and Children's Courts for

providing speedy trial of offences against children or of violation of child rights and for matters connected therewith or incidental thereto.

42. Section 2(d) of the Act, 2005 defines “Child Rights”, which includes the children's rights adopted in the United Nations convention on the Rights of the Child on the 20<sup>th</sup> November, 1989 and ratified by the Government of India on the 11<sup>th</sup> December, 1992. As stated above, as per Article 26 of the Universal Declaration of Human Rights, 1948, right to education is a human right and needless to say, India is a signatory.

43. Chapter III of the Act deals with functions and powers of the Central Commission. Sections 13, 14 and 15 of the Act, 2005 read thus:

**“13. Functions of Commission.—**(1) The Commission shall perform all or any of the following functions, namely:—

(a) examine and review the safeguards provided by or under any law for the time being in force for the protection of child rights and recommend measures for their effective implementation;

(b) present to the Central Government, annually and at such other intervals, as the Commission may deem fit, reports upon the working of those safeguards;

(c) **inquire into violation of child rights and recommend initiation of proceedings in such cases;**

(d) examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disaster, domestic violence, HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures;

(e) look into the matters relating to children in need of special care and protection including children in distress, marginalized and disadvantaged children, children in conflict with law, juveniles, children without family and children of prisoners and recommend appropriate remedial measures;

(f) study treaties and other international instruments and undertake periodical review of existing policies, programmes and other activities on child rights and make recommendations for their effective implementation in the best interest of children;

(g) undertake and promote research in the field of child rights;

(h) spread child rights literacy among various sections of the society and promote awareness of the safeguards available for protection of these rights through publications, the media, seminars and other available means;

(i) inspect or cause to be inspected any juvenile custodial home, or any other place of residence or institution meant for children, under the control of the Central Government or any State Government or any other authority, including any institution run by a social organisation; where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary;

(j) inquire into complaints and take suo motu notice of matters relating to,—

(i) deprivation and violation of child rights;

(ii) non-implementation of laws providing for protection and development of children;

(iii) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children, or take up the issues arising out of such matters with appropriate authorities; and

(k) such other functions as it may consider necessary for the promotion of child rights and any other matter incidental to the above functions.

(2) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.”

**“14. Powers relating to inquiries.—**(1) The Commission shall, while inquiring into any matter referred to in clause (j) of sub-section (1) of section 13 have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 (5 of 1908) and, in particular, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office; and

(e) issuing commissions for the examination of witnesses or documents.

(2) The Commission shall have the power to forward any case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

**“15. Steps after inquiry.—**The Commission may take any of the following steps upon the completion of an inquiry held under this Act, namely:—

(i) where the inquiry discloses, the Commission of violation of child rights of a serious nature or contravention of provisions

of any law for the time being in force, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;

(ii) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

(iii) recommend to the concerned Government or authority for the grant of such interim relief to the victim or the members of his family as the Commission may consider necessary.”

44. Chapter IV of the Act deals with the State Commission for Protection of Child Rights. Section 24 of the Act, reads thus:

**“24. Application of certain provisions relating to National Commission for Protection of Child Rights to State Commissions.**

—The provisions of Sections 7, 8, 9, 10, sub-section (1) of section 13 and Sections 14 and 15 shall apply to a State Commission and shall have effect, subject to the following modifications, namely:—

(a) references to “Commission” shall be construed as references to “State Commission”;

(b) references to “Central Government” shall be construed as references to “State Government”; and

(c) references to “Member-Secretary” shall be construed as references to “Secretary”.”

45. In exercise of the powers conferred by Section 38 of the Right of Children to Free and Compulsory Education Act, 2009, the Central Government has framed the Right of Children to Free and Compulsory Education Rules, 2010. As per Rule 2(g) of the said Rules, 2010, unless the

context otherwise requires, “school mapping” means planning school location for the purpose of Section 6 of Right of Children to Free and Compulsory Education Act, 2009, to overcome social barriers and geographical distance.

46. Part IV deals with duties and responsibilities of Central Government, appropriate Government and local authority. That apart, Rules, 6, 9, 15, and 22 of the Rules, 2010 are extracted hereunder:

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

(a) in respect of children in classes from I to V, a school shall be established within a walking distance of one km of the neighbourhood;

(b) in respect of children in classes from VI to VIII, a school shall be established within a walking distance of three km of the neighbourhood.

(2) Wherever required, the appropriate Government or the local authority shall upgrade existing schools with classes from I to V to include classes from VI to VIII and in respect of schools which start from class VI onwards, the appropriate Government or the local authority shall endeavour to add classes from I to V, wherever required.

(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 appropriate Government or the local authority 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 appropriate Government or the local authority, where no school exists within the area or limits of neighbourhood specified under sub-rule (1), the appropriate 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 said rule.

(5) In places with high population density, the appropriate Government or the local authority may consider establishment of more than one neighbourhood school having regard to the number of children in the age group of 6-14 years in such places.

(6) The local authority shall identify the neighbourhood school(s) where children can be admitted and make such information public for each habitation.

(7) In respect of children with disability, which prevent them from accessing the school, the appropriate Government or the local authority shall endeavour to make appropriate and safe transportation arrangements to enable them to attend school and complete elementary education.

(8) The appropriate Government or the local authority shall ensure that access of children to the school is not hindered on account of social and cultural factors.”

**“9. Responsibilities of the appropriate Government and local authority.-** (1) A child attending a school of the appropriate Government or local authority referred to in sub-clause (i) of clause (n) of Section 2, a child attending a school referred to in sub-clause (ii) of clause (n) of Section 2 in accordance with clause

(b) of sub-section (1) of Section 12, and a child attending a school referred to in sub-clauses (iii) and (iv) of clause (n) of Section 2 in accordance with clause (c) of sub-section (1) of Section 12 shall be entitled to free education as provided for in sub-section (2) of Section 3 of the Act, and in particular to free text books, writing materials and uniforms:

Provided that a child with disability shall be entitled also for free special learning and support material.

Explanation.- For the purposes of sub-rule (1), it may be stated that in respect of the child admitted in accordance with clause (b) of sub-section (1) of Section 12 and a child admitted in accordance with clause (c) of sub-section (1) of Section 12, the responsibility of providing the free entitlement shall be of the school referred to in sub-clause (ii) of clause (n) of Section 2 and of sub-clauses (iii) and (iv) of clause (n) of Section 2, respectively.

**(2) For the purpose of determining and for establishing neighbourhood schools, the appropriate Government or the local authority shall undertake school mapping, and identify all children, including children in remote areas, children with disability, children belonging to disadvantaged group, children belonging to weaker section and children referred to in Section 4, within a period of one year from the appointed date, and every year thereafter.**

(3) The appropriate Government or the local authority shall ensure that no child is subjected to caste, class, religious or gender abuse in the school.

(4) For the purposes of clause (c) of Section 8 and clause (c) of Section 9, the appropriate Government and the local authority shall ensure that a child belonging to a weaker section and a child belonging to disadvantaged group is not segregated or

discriminated against in the classroom, during mid-day meals, in the playgrounds, in the use of common drinking water and toilet facilities, and in the cleaning of toilets or classrooms.”

**“15. Recognition to school.** -(1) Every school, other than a school established, owned or controlled by the Central Government, appropriate Government or the local authority, established before the commencement of this Act shall make a self-declaration within a period of three months of the commencement of the Act, in Form 1 to the concerned District Education Officer regarding its compliance or otherwise with the norms and standards specified in the Schedule and fulfilment of the following conditions, namely:

- (a) the school is run by a society registered under the Societies Registration Act, 1860 (21 of 1860), or a public trust constituted under any law for the time being in force;
- (b) the school is not run for profit to any individual, group or association of individuals or any other persons;
- (c) the school conforms to the values enshrined in the Constitution;
- (d) the school buildings or other structures or the grounds are used only for the purposes of education and skill development;
- (e) the school is open to inspection by any officer authorised by the appropriate Government or the local authority;
- (f) the school furnishes such reports and such information as may be required from time-to-time and complies with such instructions of the appropriate Government or the local authority as may be issued to secure the continued fulfilment of the condition of recognition or the removal of deficiencies in working of the school.

(2) Every self-declaration received in Form 1 shall be placed by the District Education Officer in public domain within fifteen days of its receipt.

(3) The District Education Officer shall, within three months of the receipt of the self-declaration, cause on-site inspection of

such schools which claim in Form No. 1 to fulfill the norms and standards and the conditions mentioned in sub-rule (1).

(4) After the inspection referred to in sub-rule (3) is carried out, the inspection report shall be placed by the District Education Officer in public domain and schools found to be conforming to the norms, standards and the conditions shall be granted recognition by the District Education Officer in Form 2 within a period of fifteen days from the date of inspection.

(5) Schools that do not conform to the norms, standards and conditions mentioned in sub-rule (1) shall be listed by the District Education Officer through a public order to this effect; such schools may request the District Education Officer for an on-site inspection for grant of recognition at any time within the next two and a half years, so that such period does not exceed three years from the commencement of the Act.

(6) Schools which do not conform to the norms, standards and conditions mentioned in sub-rule (1) within three years from the commencement of the Act, shall cease to function.

(7) Every school, other than a school established, owned or controlled by the Central Government, appropriate Government or local authority, established after the commencement of this Act shall conform to the norms and standards and conditions mentioned in sub-rule (1) in order to qualify for recognition under this rule.”

**“22 Maintaining pupil-teacher ratio:-**(1) The sanctioned strength of teachers in a school shall be notified by the Central Government, appropriate Government or the local authority, as the case may be, within a period of three months of the appointed date:

Provided that the Central Government, appropriate Government or the local authority, as the case may be, shall, within three months of such notification, redeploy teachers of schools having strength in excess of the sanctioned strength prior to the notification referred to in sub-rule (1).

(2) If any person of the Central Government, appropriate Government or the local authority violates the provisions of sub-section (2) of Section 25, he or she shall be personally liable for disciplinary action.”

47. In exercise of the powers conferred by Section 38 of the Right of Children to Free and Compulsory Education Act, 2009, Government of Kerala have framed the Kerala Right of Children to Free and Compulsory Education Rules, 2011. As per Rule 2(1)(o) of the Rules, unless the context otherwise requires, “Neighbourhood” means the area near or within a walkable distance of an elementary school referred to in sub-clauses (i) and (ii) of clause (n) of Section 2 of the Act and shall include areas of such schools in adjacent local bodies.

48. Rule 2(1)(q) defines “School mapping”, which means assessment of the availability of schooling facilities for elementary education based on norms and standards specified in the Schedule to the Act in terms of location, infrastructure, teachers and distance matrix between schools and habitations and includes planning school location for the purpose of Section 6 of the Act to overcome social, developmental and geographical barriers and geographical distance and maps of all the schools in the State

using new and emerging technologies including Geographic Information System, prepared by authorized agencies.

49. That apart, Rule 6, 8, 14 & 24 of Rules, 2011 read thus:

**“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 from 6 to 8, a school shall be established within a walking distance of three kilometres of the neighbourhood.

(2) The Government shall endeavor 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) In places with high population density, the Government may consider establishment of more than one neighbourhood school having regard to the number of children in the age group of 6 to 14 years in such places based on the child census conducted by Sarva Siksha Abhiyan or the local authority.

(6) The local authority, concerned, in consultation with the Assistant Educational Officer; shall identify the neighbourhood school where children can be admitted and make such information public through the notice board of the local authority and office of the Assistant Educational Officer. The basis of the identification of the neighbourhood schools shall be the school mapping carried out by the Government.

(7) In respect of children with disability, which prevent them from accessing the school, the Government or the local authority shall make appropriate and safe transportation arrangements to enable them to attend school and complete elementary education.

(8) Additional assistance in the form of home-based teaching shall also be arranged for children with severe disabilities by the Government and the local authority.

(9) The Government and the local authority shall impress upon the parents and guardians of their duty to admit or cause to be admitted, their child or ward as the case may be, to a neighbourhood school, for completion of elementary education.

(10) The Government or local authority shall ensure that access of children to the school is not hindered on account of social and cultural factors, on account of closure of a Government or aided school and that no school is closed down without the

recommendation of the Assistant Educational Officer and the local authority and prior sanction of the Government.

(11) The Government and the local authority shall provide free and appropriate pre-school education based on a Pre-primary Education policy formulated by the Government, to all children above the age of three years till they complete six years so as to prepare them for elementary education. For the purpose, Pre-primary Centres shall be established in all Government and aided schools in a phased manner within three years from the appointed date. A unified child-friendly curriculum shall be developed by the academic authority for these centres which shall have linkages with the Anganwadies for providing Integrated Child Development Scheme services to all the children. The minimum academic and professional qualification of pre-primary teachers shall be as laid down by the National Council for Teacher Education.”

50. Rule 8 of Rules, 2011 deals with duties and responsibilities of Government and local authority and the same reads thus:

**“8. Responsibilities of the Government and local authority.—** (1) A child attending a school referred to in sub-clause (i) and (ii) of clause (n) of Section 2, and a child attending a school referred to in sub-clauses (iii) and (iv) of clause (n) of Section 2 shall be entitled to free education and in particular to free textbooks, writing materials, uniforms, free transportation and residential facilities.

**Explanation:—**For the purposes of these rules, child includes a child enrolled in a school under the Juvenile Justice Care and Protection Act, 2000 and a child attending a Mahila Shikshan Kendra/Learning Centre under the Kerala Mahila Samakhya Society:



Provided that a child with disability attending a school that is recognized by the Government shall also be entitled for free special learning material and assistive devices along with the other entitlements.

**Explanation:**—For the purposes of sub-rule (1), in respect of a child admitted as provided in clause (c) of sub-section (1) of Section 12, the responsibility of providing free entitlements shall be of the school referred to in sub-clauses (iii) and (iv) of clause (n) of Section 2, respectively.

(2) For the purpose of determining and for establishing neighbourhood schools, the Government shall undertake school mapping, and the local authority shall identify all children, including children in remote areas, children with disability, children belonging to disadvantaged group, children of migrant labourers, children belonging to weaker section and children referred to in section 4, within a period of one year from the appointed date, and every year thereafter.

(3) The Government and the local authority shall ensure that no child is subjected to caste, class, religious or gender abuse in the school.

(4) The Government and the local authority shall,—

(a) provide emotional and psychological counseling for all children by professionals in co-ordination with Government Departments like health and social welfare;

(b) ensure the minimum number of working days and instructional hours in an academic year as specified in the Schedule by arranging the school vacations in such a manner that their duration does not exceed forty five days at a time;

(c) ensure that the medium of instruction is as far as practicable, in Malayalam or in the mother tongue: Provided that English as a subject shall be introduced from Class 1 onwards;

(d) text books prepared under NCERT curriculum shall be used in the English medium class divisions from Class 1 to 4 in schools where such divisions have been permitted;

(e) ensure optimum school timings to all children, for which curtailment of school hours on account of following shift or sessional system shall be discontinued within a time limit of three years from the commencement of the Act;

(f) adopt flexibility in school timings wherever feasible so as to facilitate adequate time to children for co-curricular activities and to mitigate difficulties owing to unsafe traffic conditions.

(5) The Government and the local authority shall ensure that the conduct of classes in thatched buildings is discontinued within one year from the appointed date.

(6) The Government and the local authority shall provide adequate funds as grants for the implementation of the School Development Plan, submitted by the School Management Committee as provided under sub-clause (2) of Section 22.

(7) The Government and the local authority shall enhance the manpower and infrastructure facilities in the office of the Assistant Educational Officer so as to enable such officers to effectively discharge his duties under the Act.

(8) For the purposes of clause (c) of Section 8 and clause (c) of section 9, the Government and local authority shall ensure that a child belonging to weaker section and a child belonging to disadvantaged group is not segregated or discriminated against in the classroom, during mid-day meals, in the playgrounds, in the use of common drinking water and toilet facilities, and in the cleaning of toilets or classrooms.

(9) The Government and local authorities shall ensure that,-

(i) no child shall be harassed physically or mentally while transporting the children to and from school by conveyance arranged by the school authorities;

(ii) the vehicle shall not be overcrowded by pupils or unfit for transport;

(iii) No vehicle shall be used or driven in violation of the provisions of Motor Vehicles Act and Rules thereunder.

(10) No child shall be subjected to physical punishment or mental harassment in schools or hostels run by or on behalf of school authorities.

(11) The Government and the local authority shall make arrangements including transportation, for the education of the migrant children coming from other States, in the neighbourhood school, or where this is not practicable, by setting up on-site schools at the workplaces where the migrant labour from other States are engaged in any economic activity in groups. As far as may be practicable, the learning material and the text books shall be in their respective mother tongue. Appropriate learning materials shall be developed by the academic authority in consultation with the academic authority in their State of origin.”

51. Rule 14 of the Kerala Right of Children to Free and Compulsory Education Rules, 2011, speaks about the recognition/upgradation to school and the same reads thus:

“(1) Every school, other than a school established, owned or controlled by the Central Government or the State Government or the local authority, established before the commencement of this Act, and referred to under sub-clause (iv) of clause (n) of Section 2 as an unaided school and which has obtained recognition under the Kerala Education Act and Rules issued thereunder or has obtained No Objection Certificate from the Government for affiliation to other Boards of Education, shall make a self-declaration within a period of three months from the appointed date, in Form No. I to

the Assistant Educational Officer concerned, regarding its compliance or otherwise with the norms and standards stipulated in the Kerala Education Rules in addition to the norms in the Schedule and fulfilment of the following conditions, namely:—

- (a) the school is run by a society registered under the Societies Registration Act, 1860 (21 of 1860), or a public trust or an educational agency constituted under any law for the time being in force;
- (b) the school is not run for profit to any individual, group or association of individuals or any other persons;
- (c) the school conforms to the values enshrined in the Constitution; (d) the school complies with the provisions in the Kerala Education Act and Rules issued thereunder relating to area, location and accommodation;
- (e) Malayalam is taught as a compulsory language in all classes;
- (f) the Pupil-Teacher Ratio as specified in Section 25 is maintained; (g) the school complies with the provisions under Sections 13, 16, and 17 of the Act;
- (h) the school provides barrier-free access and adapted toilets for children with disabilities;
- (i) the bio-metric identification details along with the Unique Identification Number of each child is maintained in the school;
- (j) the school buildings or other structures or the grounds are used only for the purposes of education and skill development;
- (k) the school does not run any unrecognized classes within the premises of the school or outside, in the same name of the school;
- (l) the school is open to inspection by any officer authorized by the Government;
- (m) the school furnishes such reports and such information as may be required from time to time and complies with such instructions of the Government as may be issued to secure the continued fulfilment of the condition of recognition or the removal of deficiencies in the working of the school.

(2) The school shall submit the declaration-cum application for recognition in Form No: I in electronic form in the web site

maintained for the purpose by the Assistant Educational Officer and shall also submit the same in hard copy in his office and obtain acknowledgment thereof.

(3) Every self declaration received in Form No. I shall be placed by the Assistant Educational Officer in the public domain within fifteen days of its receipt.

(4) A District Level School Recognition Committee consisting of the Deputy Director of Education as the Chairman and District Educational Officers and Assistant Educational Officers of the revenue district as members shall be constituted by the Government.

(5) The District Educational Officer and the Assistant Educational Officer concerned shall, within three months of the receipt of the self declaration, inspect such schools to ensure that the schools fulfill the norms and standards and the conditions mentioned in sub-rule (1).

(6) After the inspection is carried out, the inspection report shall be placed before the District Level School Recognition Committee and also in the public domain and the schools conforming to the norms, standards and the conditions in Rule 14 alone shall be granted recognition by the Deputy Director of Education Officer in Form No. II within a period of thirty days from the date of inspection:

Provided that recognized unaided schools that have been established before the date of commencement of the Act, and presenting their students for the respective Class 10 Board examinations continuously from 1<sup>st</sup> January, 2000, shall be issued a Certificate of Recognition under sub-section (1) of Section 18 of the Act based on the self declaration of the Educational Agency that it conforms to the norms and standards as specified in the Schedule and these rules.

(7) Schools that do not conform to the norms, standards and conditions mentioned in sub-rule (1) shall be listed by the Deputy

Director of Education by notification and such schools may request the Deputy Director of Education for an on-site inspection for grant of recognition at any time so that such period does not exceed three years from the date of commencement of the Act;

(8) Any School which does not conform to the norms, standards specified in the Schedule and conditions mentioned in sub-rule (1) within three years from the date of commencement of the Act shall stop its functioning and running of any such school shall be punishable as provided in Section 19 of the Act.

(9) No school, other than a school established, owned or controlled by the Central Government, State Government or local authority be established or function after the commencement of this Act and no school which does not conform to the norms and standards specified in the Schedule and those conditions mentioned in sub-rule (1) shall be given recognition.

(10) The existing unrecognized schools seeking recognition under this Act shall furnish the application in (Form No. III) and shall conform to the norms and standards specified in the Schedule and those specified in these rules. It shall also fulfill the educational need of the locality as revealed in the school mapping carried out by the authorized agency and the educational need shall be certified by the local authority and the Assistant Educational Officer concerned.

(11) A Committee, constituted by the Government, comprising of the Director of Public Instruction or his nominee, the District Collector and a representative of the local authority, shall verify the facts in the application with reference to the school mapping and the educational need of the locality.

(12) The report of the Committee shall be forwarded to the Director of Public Instruction immediately thereafter.

(13) The Director of Public Instruction shall after examination of the report, forward the eligible cases to the Government for grant of recognition under the Act.

(14) An educational agency or society proposing to start a new school or upgrade an existing school shall furnish an application in the prescribed format Form No.III and shall conform to the norms and standards specified in the Schedule and those mentioned in these rules, and the locality in which the school is proposed to be started has a proven educational need as revealed in the school mapping carried out by the authorized agency and such educational need shall be certified by the local authority and the Assistant Educational Officer concerned.”

52. Rule 22 of Rules, 2011 deals with performance of functions by the State Commission for Protection of Child Rights and the same is extracted hereunder:

“The Government shall provide resources to the State Commission for Protection of Child Rights if any constituted in the State in performance of its functions under the Act.”

53. Rule 24 of the Rules, 2011 deals with manner of furnishing complaints before the State Commission for Protection of Child Rights or the Right to Education Protection Authority and the same reads thus:

“(1) The State Commission for Protection of Child Rights, or the Right to Education Protection Authority, as the case may be, shall set up a Child Helpline to register complaints regarding

violation of child rights and incidental thereto, which shall be monitored by it through a transparent on-line mechanism.

(2) The local body shall ordinarily be the first level of redressal on complaints regarding violation of child rights and it shall provide suitable facilities for hearing and enquiring in to such complaints.”

54. Perusal of Exhibits-13 and P14 orders of the Kerala State Human Rights Commission and the Kerala State Child Rights Protection Commission, Thiruvananthapuram, dated 06.02.2016 and 04.07.2016 respectively, show that the State Commissions have discharged their statutory functions. There is no challenge to the said orders. Without there being a challenge, respondents cannot say that the orders are not binding on them.

55. In all the three reports, the Deputy Director of Education, Malappuram; the District Education Officer, Malappuram; and the Assistant Educational Officer, Manjeri, respondent Nos.3 to 5 respectively, have clearly recorded that the area in question is educationally backward and most of the people residing therein belong to backward and scheduled castes communities. There is no proper transport facility. There are Upper Primary and High schools in and around the locality within a distance of 2 to 5 kilometres viz., GLPS, Cherukulam; GLPS Cherankanth; GLPS, Thottupoyil; and GLPS, Vadakkekara. There is no Government LP school within the radius of 3 kilometres. The people are depending upon



schools, which are not within the neighbourhood of educational authorities viz., respondents 3 to 5 respectively, from the proposed area. There is no Government public school for primary education in the Elambra area in Manjeri Municipality and, therefore, a primary school in the Government sector shall be sanctioned.

56. The Kerala State Child Rights Protection Commission, Thiruvananthapuram, in Exhibit-P14 order has stated that they had visited the area in question and recorded the educational need of the locality for sanctioning a Government LP School, details are extracted above.

57. Kerala Education Act, 1958, is an Act to provide for the better organisation and development of educational institutions in the State. Section 3 of the Act, 1958, reads thus:

**“3. Establishment and recognition of Schools.-** (1) The Government may regulate the primary and other stages of education and course of institutions in Government and private schools.

(2) The Government shall take, from time to time, such steps, as they may consider necessary or expedient, for the purpose of providing facilities for general education, special education and for the training of teachers.

(3) The Government may, for the purpose of providing such facilities:-

- (a) establish and maintain schools; or
- (b) permit any person or body of persons to establish and maintain aided schools; or

(c) recognise any school established and maintained by any person or body of persons.

4) All existing schools shall be deemed to have been established in accordance with this Act:

Provided that the educational agency of an aided school existing at the commencement of this section may, at any time within one month of such commencement, after giving notice to the Government of its intention so to do, opt to run the school as recognised school, subject to the condition that the services of the teachers and other members of the staff of the school shall not be dispensed with or their conditions of service under the management varied to their disadvantage on account of the exercise of this option.

(5) After the commencement of this Act, the establishment of a new school or the opening of a higher class in any private school shall be subject to the provisions of this Act and the rules made there under and any school of higher class established or opened otherwise than in accordance with such provisions shall not be entitled to be recognised by the Government.”

58. Reading the Section 3 of the Kerala Education Act, 1958 - Establishment and recognition of schools - makes it clear that for the purpose set out in clause (a), the Government may establish and maintain schools, which mandates the Government to start schools, and clause (b) permit any person or body of persons to establish and maintain aided schools. Both are separate.

59. Rule 14 of the Kerala Right of Children to Free and Compulsory Education Rules, 2011 referred to by the Government in the counter

affidavit, applies to recognised private schools and not a Government school. Contentions of the Government are contrary to the provisions of the Right of Children to Free and Compulsory Education Act, 2009, and the rules framed thereunder by the Central as well as State Governments in the year 2010 and 2011.

60. In *The Manager, Lower Primary Girls School (LPGS) Veliyam v. The State of Kerala and Ors.* reported in [ILR 2015 (3) Ker. 308], the petitioners therein were Managers and Parent Teacher Associations of various aided schools within the State of Kerala. They have contended that consequent to the enactment of the Right of Children to Free and Compulsory Education Act, 2009 and in exercise of the powers conferred on it under the said Act, the State Government have framed the Right of Children to Free and Compulsory Education Rules, 2011. The petitioners therein have sought for a direction to the State Government to pass orders upgrading their existing schools so as to bring within their fold additional classes (Standard V in the case of existing Lower Primary Schools and Standard 8 in the case of existing Upper Primary Schools).

61. Learned single Judge of this Court has observed that it is revealed from the pleadings in the writ petitions that the petitioners have preferred applications before the State Government for the said purpose and that the said applications, though in the form prescribed under the

RTE Rules, do not contain the recommendation/countersignature of the educational authority concerned, which is a mandatory requirement under the Rules to maintain an application. After considering the statutory provisions and the steps taken by Government of Kerala, decision of the Hon'ble Apex Court in *Unni Krishnan J.P. and Ors. v. State of Andhra Pradesh and Ors.* [(1993) 1 SCC 645], the learned single Judge, at para 9, ordered thus:

“9. The aforesaid observations of the Supreme Court were made in 1993. As already noted, Article 21-A was inserted in the Constitution by an amendment that received assent in 2002, but took effect only from 01.04.2010. The RTE Act came into force thereafter, and the RTE Rules, framed by the State Government were in place only by 2011. The aforementioned facts are stated herein only to lay emphasis on the urgency with which the State Government is expected to act in a matter that is of significant national importance. The government of a State, that has been a forerunner in the field of education in this country, cannot afford to drag its feet when called upon to guarantee the fundamental rights of its people in the field of elementary education. The State Government shall take note of these aspects while discharging their obligations, within the time limits specified in this judgment. This court expects the State Government to accord high priority to this matter and ensure that there is no occasion for seeking any extension of time for complying with the directions in this judgment. The children of this State cannot be deprived of their fundamental right to elementary

education, either on account of unjustifiable inaction, or on account of delayed action, of the State Government, in the discharge of its constitutional obligations.”

62. Thus, pursuant to the directions, school mapping has been done.

63. In *Manager, Aysha L.P. School, Chedikulam and Another v. State of Kerala and Others* reported in [ILR 2019 (3) Ker. 229], a Hon'ble Full Bench of this Court considered the grievance projected by the educational agencies therein that their applications to restructure schools by introducing classes in tune with the Act were not favourably considered by the Government even after long lapse of time.

64. Contention of the State was that since transportation facilities have been provided, a child can seek transfer to another school for completing elementary education.

65. Additional financial burden on the State exchequer to pay the teachers for the additional classes to be introduced in the Schools, was also cited as a reason for not considering the applications for restructuring. The question posed for consideration was whether the Government can deny sanction to educational agencies to restructure the schools by introducing classes in tune with the provisions of Right of Children to Free and Compulsory Education Act.

66. Thus, a reference was made to the Hon'ble Full Bench of this Court, 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]. On the request pertaining to establishment of private schools by the applicants therein, educational agencies, the Hon'ble Full Bench, duly considered Rule 6 of the Kerala Right of Children to Free and Compulsory Education Rules, 2011. After considering the statutory provisions, the Hon'ble Full Bench ordered thus:

“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.**



(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 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 restructuring 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.”

67. From the pleadings and material on record, it could be deduced that the people of Elambra area in Manjeri Municipality have been demanding establishment of a Government Lower Primary School, and whereas without considering the reports of local educational authorities, by erroneously applying the rules applicable to grant of recognition to private schools, in Chapter V of the Kerala Education Rules, 1959, and not following the statutory provisions and rules, in particular, Section 3(3) of Kerala Education Act, 1958, Section 3 of the Right of Children to Free and Compulsory Education Act, and Rule 6 of the Kerala Right of Children to

Free and Compulsory Education Rules, 2011, have denied sanction for establishing a Government LP School in Elambra area.

68. For establishing a Government LP School, people of the Elambra area of Manjeri Municipality have been fighting against the mighty Government for 35 years.

69. As per the report of Project Director, SSA, Thiruvananthapuram, submitted to the Director of Public Instructions, respondent No.2 herein, there is no additional liability to the Government in the matter of appointment. There is absolutely no valid reason for ignoring the reports.

70. There is a demand in consonance with the statutory provisions of the rules framed. There is a conspicuous failure on the part of respondents 1 and 2. At this juncture, we deem it fit to consider as to when writ of mandamus can be issued.

(i) In **State of Kerala v. A. Lakshmi Kutty** reported in (1986) 4 SCC 632, the Hon'ble Supreme Court held that, a Writ of Mandamus is not a writ of course or a writ of right but is, as a rule, discretionary. There must be a judicially enforceable right for the enforcement of which a mandamus will lie. The legal right to enforce the performance of a duty must be in the applicant himself. In general, therefore, the Court will only enforce the performance of statutory duties by public bodies on application of a person who can show that he has himself a legal right to insist on such performance. The existence of a right is the foundation of the jurisdiction of a Court to issue a writ of Mandamus.

(ii) In **Comptroller and Auditor General of India v. K.S.Jegannathan** [AIR 1987 SC 537], a Three-Judge Bench of the Hon'ble Apex Court referred to Halsbury's Laws of England 4<sup>th</sup> Edition, Vol. I, Paragraph 89, about the efficacy of mandamus:

"89. Nature of Mandamus.-- .... is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy, for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual."

(iii) In **Raisa Begum v. State of U.P.**, reported in 1995 All.L.J. 534, the Hon'ble Allahabad High Court has held that certain conditions have to be satisfied before a writ of mandamus is issued. The petitioner for a writ of mandamus must show that he has a legal right to compel the respondent to do or abstain from doing something. There must be in the petitioner a right to compel the performance of some duty cast on the respondents. The duty sought to be enforced must have three qualities. It must be a duty of public nature created by the provisions of the Constitution or of a statute or some rule of common law.

(iv) Writ of mandamus cannot be issued merely because, a person is praying for. One must establish the right first and then he must seek for the prayer to enforce the said right. If there is failure of duty by the authorities or inaction, one can approach the Court for a mandamus. The said position is well settled in a series of decisions.

(a) In **State of U.P. and Ors. v. Harish Chandra and Ors.**, reported in (1996) 9 SCC 309, at paragraph 10, the Hon'ble Apex Court held as follows:

“10. ...Under the Constitution a mandamus can be issued by the court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and the said right was subsisting on the date of the petition....”

(b) In **Union of India v. S.B. Vohra** reported in (2004) 2 SCC 150, the Hon'ble Supreme Court considered the said issue and held that,- 'for issuing a writ of mandamus in favour of a person, the person claiming, must establish his legal right in himself. Then only a writ of mandamus could be issued against a person, who has a legal duty to perform, but has failed and/or neglected to do so.”

(c) In **Oriental Bank of Commerce v. Sunder Lal Jain** reported in (2008) 2 SCC 280, at paragraphs 11 and 12, the Hon'ble Supreme Court held as follows:-

“11. The principles on which a writ of mandamus can be issued have been stated as under in The Law of Extraordinary Legal Remedies by F.G. Ferris and F.G. Ferris, Jr.:

“Note 187.- Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.

Note 192.- Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon

officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

Note 196.- Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the court, subject always to the well-settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and should, look to the larger public interest which may be concerned-an interest which private litigants are apt to overlook when striving for private ends. The court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

Note 206.-....The correct rule is that mandamus will not lie where the duty is clearly discretionary and the party upon whom the duty rests has exercised his discretion reasonably and within his jurisdiction, that is, upon facts sufficient to support his action.”

12. These very principles have been adopted in our country. In **Bihar Eastern Gangetic Fishermen Cooperative Society Ltd. v. Sipahi Singh and others**, (AIR 1977 SC 2149), after referring to the earlier decisions in *Lekhraj Satramdas Lalvani v. Deputy Custodian-cum-Managing Officer*, (AIR 1966 SC 334); *Dr. Rai Shivendra Bahadur v. The Governing Body of the Nalanda College*, (AIR 1962 SC 1210), and *Dr. Umakant Saran v. State*



of Bihar, (AIR 1973 SC 964), this Court observed as follows in paragraph 15 of the reports :

"15. ... There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of the officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate Tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. .... In the instant case, it has not been shown by respondent No. 1 that there is any statute or rule having the force of law which casts a duty on respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that respondent No. 1 was not entitled to apply for grant of a writ of mandamus under Article 226 of the Constitution and the High Court was not competent to issue the same."

(v) When a Writ of Mandamus can be issued, has been summarised in *Corpus Juris Secundum*, as follows:

“Mandamus may issue to compel the person or official in whom a discretionary duty is lodged to proceed to exercise such discretion, but unless there is peremptory statutory direction that the duty shall be performed mandamus will not lie to control or review the exercise of the discretion of any board, tribunal or officer, when the act complained of is either judicial or quasi-judicial unless it clearly appears that there has been an abuse of discretion on the part of such Court, board, tribunal or officer, and in accordance with this rule mandamus may not be invoked to compel the matter of discretion to be exercised in any particular way. This principle applies with full force and effect, however, clearly it may be made to appear what the decision ought to be, or even though its conclusion be disputable or, however, erroneous the conclusion reached may be, and although there may be no other method of review or correction provided by law. The discretion must be exercised according to the established rule where the action complained has been arbitrary or capricious, or based on personal, selfish or fraudulent motives, or on false information, or on total lack of authority to act, or where it amounts to an evasion of positive duty, or there has been a refusal to consider pertinent evidence, hear the parties where so required, or to entertain any proper question concerning the exercise of the discretion, or where the exercise of the discretion is in a manner entirely futile and known by the officer to be so and there are other methods which it adopted, would be effective.”

(emphasis supplied)

In the light of the above discussion and decisions, the petitioner is entitled to the relief sought for. Accordingly, we allow the writ petition and direct respondents 1 and 2 viz., State of Kerala, represented by the Secretary, General Education Department, Thiruvananthapuram; and the Director of Public Instructions, Thiruvananthapuram, to sanction establishment of Government LP School, at Elambra of Manjeri Municipality, within a period of three months from the date of receipt of a certified copy of this judgment. We also direct Manjeri Municipality to take urgent steps for construction of necessary buildings for the school.

**Sd/-  
S.MANIKUMAR  
CHIEF JUSTICE**

**Sd/-  
SHAJI P.CHALY  
JUDGE**

krj

APPENDIX

PETITIONER'S/S EXHIBITS:

- P1 COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 6TH RESPONDENT DATED 16.03.2015 WITH ENGLISH TRANSLATION.
- P2 COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE MINISTER FOR EDUCATION, KERALA DATED 29.10.2015 WITH ENGLISH TRANSLATION.
- P3 COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER AND OTHERS TO THE THIRD RESPONDENT DATED 17.05.2016 WITH ENGLISH TRANSLATION.
- P4 COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER AND OTHERS TO THE MINISTER FOR EDUCATION, KERALA DATED 13.08.2016 WITH ENGLISH TRANSLATION.
- P5 COPY OF THE REGISTERED ASSIGNMENT DEED NO.326/1993 OF SRO, MANJERI WITH ENGLISH TRANSLATION.
- P5 (A) COPY OF THE REGISTERED ASSIGNMENT DEED NO.331/1993 OF SRO, MANJERI WITH ENGLISH TRANSLATION.
- P5 (B) COPY OF THE REGISTERED ASSIGNMENT DEED NO.339/1993 OF SRO, MANJERI WITH ENGLISH TRANSLATION.
- P6 COPY OF THE REPRESENTATION SUBMITTED BY THE 'NEJATHUDHEEN SANGHAM' TO THE MINISTER FOR EDUCATION, KERALA DATED 01.11.2011 WITH ENGLISH TRANSLATION.
- P7 COPY OF THE LETTER DATED 22.10.2013 BY THE CHAIRMAN, MANJERI MUNICIPALITY ADDRESSED TO THE MINISTER FOR EDUCATION, KERALA WITH ENGLISH TRANSLATION.
- P8 COPY OF THE RESOLUTION NO.37 DATED 30.03.2015 ADOPTED BY THE MANJERI MUNICIPAL COUNCIL WITH ENGLISH TRANSLATION.
- P9 COPY OF THE PROFORMA OF SURVEY REPORT DATED 05.02.2014 SUBMITTED BY THE FIFTH RESPONDENT.
- P10 TRUE COPY OF THE LETTER ISSUED BY THE DISTRICT EDUCATIONAL OFFICER DATED 27.03.2015 ALONG WITH THE INSPECTION REPORT AND SURVEY REPORT WITH ENGLISH TRANSLATION.

- P11 COPY OF THE LETTER DATED 15.05.2015 ISSUED BY THE 3RD RESPONDENT WITH ENGLISH TRANSLATION.
- P12 COPIES OF EXHIBIT P12(A)-SOME OF THE NEWS EXHIBIT P12(B)- ITEMS REPORTED IN EXHIBIT P12(C)- DIFFERENT DEILIES WITH ENGLISH TRANSLTION.
- P13 COPY OF THE ORDER DATED 04.07.2016 PASSED BY THE KERALA STATE HUMAN RIGHTS COMMISSION IN PROCEEDINGS NO.:HRMP NO.: 6502/2015/MPM WITH ENGLISH TRANSLATION.
- P14 COPY OF THE ORDER DATED 04.07.2016 PASSED BY THE KERALA STATE COMMISSION FOR PROTECTION OF CHILD RIGHTS IN PROCEEDINGS VIDE CRMP NO.3498/10/LA2/2015/KESCPCR WITH ENGLISH TRANSLATION.
- P15 COPY OF THE REPRESENTATION DATED 21.11.2016 SUBMITTED BY THE PETITIONER TO THE 1ST AND 2ND RESPONDENTS.

RESPONDENTS' EXHIBITS:-

- R1(A): COPY OF JUSTIFICATION FOR INCLUSION OF 3 LOCALITIES FOR NOTIFICATION FORWARDED BY DPI.
- R1(B):- COPY OF NOTIFICATION DATED 19.05.2017.
- R1(C):- COPY OF GO(RT.) NO.1813/2017/G.EDN. DATED 09.06.2017.

//TRUE COPY//

P.A. TO C.J.