

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 31ST DAY OF MAY 2019 / 10TH JYAISHTA, 1941

WP(C).No. 14626 of 2019

PETITIONER:

SECRETARY,
DR.N.K.MOHAMMED MEMORIAL MES CENTRAL SCHOOL
VALANCHERRY, MALAPPURAM DISTRICT-676 552.

BY ADV. SRI.R.K.MURALEEDHARAN

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF GENERAL EDUCATION, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 2 THE DIRECTOR OF PUBLIC INSTRUCTION,
JAGATHY, THIRUVANANTHAPURAM-695014.
- 3 THE DISTRICT EDUCATIONAL OFFICER, TIRUR,
MALAPPURAM DISTRICT-676 101.
- 4 THE ASSISTANT EDUCATIONAL OFFICER,
KUTTIPIURAM, MALAPPURAM DISTRICT-679 571.
- 5 THE ASSISTANT EXECUTIVE ENGINEER,
LSGD SUB DIVISION, KUTTIPIURAM BLOCK PANCHAYATH,
POST THOZHUVANOOR, MALAPPURAM DISTRICT-676 552.
- 6 THE VALANCHERRY MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, VALANCHERRY P.O.,
MALAPPURAM DISTRICT-676 552.

OTHER PRESENT:

SPECIAL GP .SRI.M.A.ASIF

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
31.05.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner who is running Dr.N.K.Mohammed Memorial MES Central School, Valancherry which was established in the year, 1993, is aggrieved by the action of the Director of Public Instruction [DPI] in Ext.P5 returning the applications submitted by him for recognition of the School, pointing out various defects in the application, including non- production of the building fitness certificate. Petitioner points out that, all the certificates other than the building fitness certificate for the year 2018-19 at Sl.No.7 is ready for production. According to petitioner the fitness certificate is not issued on the ground that there is no set back.

2. It is stated that the LSGD, Engineer refused to issue the fitness certificate on the ground that, there is no set back. Clause 22 of Ext.P7 norms provides that, the School Building shall be constructed in compliance with the Kerala Municipality Building Rules/Kerala Panchayat Building Rules ensuring safety and security where there is no specification in this regard in the CBSE Affiliation Byelaws

2018. The petitioner has produced Ext.P8 building safety certificate issued by the Assistant Executive Engineer, LSGD dated 24.10.2016 to the effect that the buildings are safe and fit in all respects for functioning an educational institution from pre-primary classes to higher secondary classes.

3. The learned counsel for the petitioner points out that, the School was established in a Panchayat which has since become a Municipality. At the relevant time when the building was constructed, the building Rules were not enforced in the Panchayat and therefore no set back could be provided as prescribed in the Kerala Municipality Buildings Rules/Kerala Panchyath Building Rules. It is pointed out that at this stage it is practically impossible to provide set back to the building. In such circumstances, production of a certificate towards compliance of KMBR Rules would be impossible.

4. The intention behind production of fitness certificate in accordance with KMBR Rules can only be to ensure safety and security of the pupils studying in the School. In the circumstances of the case, since the

petitioner School has been functioning since 1993, it is only just and proper that the respondents consider the application of petitioner limiting the requirement under Section 22 (f) of the norms from fitness certificate under KMBR to production of safety certificate. Therefore, there shall be a direction to the respondents 1 to 4 to reconsider the application of petitioner on re-submission along with building safety certificate issued by the 5th respondent for the current year.

5. The learned Special Government Pleader also pointed out that, the petitioner shall take all steps to ensure that the School buildings are provided with all facilities required, including those prescribed for protecting the interest of students with disability, except for the set back and height of the rooms.

In the above circumstances, the writ petition is disposed of, with the following directions:-

(1) On application by petitioner within one week of the date of receipt of a copy of the judgment, the 5th respondent shall carry out an inspection of the School buildings with respect to the facilities provided therein, and shall issue a certificate to the petitioner with respect to

fitness/certificate of safety and security, without insisting the set back or the height for the existing buildings as prescribed in Kerala Municipal Building Rules, within a period of two weeks of the application.

(2) Petitioner shall resubmit the application along with the certificate from the 4th respondent and all other documents required before the 2nd respondent who shall consider the application of the petitioner on merits and pass orders thereon within a period of six weeks from the date of re-submission of the application.

sd/-

P . V . ASHA

JUDGE

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APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	A TRUE COPY OF THE NO OBJECTION CERTIFICATE ISSUED BY THGE 1ST RESPONDENT DATED 16.11.1993.
EXHIBIT P2	TRUE COPY OF THE EXTENDED AFFILIATION GRANTED BY THE CBSE DATED 20.12.2013.
EXHIBIT P3	TRUE COPIES OF THE PHOTOGRAPHS OF THE SCHOOL BUILDING.
EXHIBIT P4	A TRUE COPY OF THE CIRCULAR DATED 31.08.2017 BY THE CBSE.
EXHIBIT P5	A TRUE COPY OF THE COMMUNICATION FROM THE 2ND RESPONDENT DATED 25.10.2018 ALONG WITH THE LIST OF DOCUMENTS TO BE SUBMITTED FOR FORMAL PRIOR RECOGNITION LETTER.
EXHIBIT P6	A TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER TO THE 5TH RESPONDENT.
EXHIBIT P7	A TRUE COPY OF THE RELEVANT PAGES OF GO(MS)NO.22/2019/G.EDN. DATED 01.03.2019.
EXHIBIT P8	A TRUE COPY OF THE BUILDING SAFETY CERTIFICATE ISSUED BY THE 5TH RESPONDENT DATED 24.10.2016.