**2IN THE HIGH COURT OF****KERALA**

W.P.(C)No. 27669 of 2010

Decided On: 14.06.2011

Appellants: **Usman Kurikkal, O.V.**
**Vs.**
Respondent: **State of****Kerala and Others**

**Hon'ble Judges/Coram:**
Mr. Justice K.T. Sankaran

**JUDGMENT**

**Mr. Justice K.T. Sankaran**

1. The petitioner, O.V. Usman Kurikkal, challenges in this Writ Petition Ext. P-1 Order dated 20-8-2010, passed by the Government, and Ext. P-3 consequential proceedings of the District Educational Officer, Wandoor.

2. Thachinganadam High School (hereinafter referred to as 'the High School') was established by Thachinganadam School Committee (hereinafter referred to as 'the Committee'). The property in which the High School is housed, having an extent of 3.52 acres, was purchased on behalf of the Committee as per registered sale deed dated 31-7-1975 (Ext. P-4). The Committee consisting of eight members was approved by the Education Department as a Corporate Educational Agency. The fifth respondent, P. Achuthan Nair, is a founder member of the Committee. The Committee framed Ext. P-5 bye-laws dated 23-6-1978, for management of the High School. The bye-laws were approved by the Deputy Director of Education.

3. On account of the disputes among the members of the Committee and the consequent deadlock in the management of the High School, the Government, as per Ext. P-6 Notification dated 21-5-2005, took over the management of the High School, in exercise of the powers conferred by sub-section (2) of Section 14 of the Kerala Education Act. Ext. P-6 order was challenged by the fifth respondent and Devaki Amma, another member of the Committee, in W.P.(C) No. 16961 of 2005, which was allowed as per Ext. P-7 judgment dated 1-7-2005. The notification dated 21-5-2005 was quashed and the Government was directed to take fresh decision on the question of taking over of the management of the High School, after issuing notice to the writ petitioners therein and other members of the Committee as well as the legal heirs of the deceased members. Ext. P-7(a) show cause notice was issued by the Government to the members of the Committee in compliance with Ext. P-7 judgment. It is stated that the members of the Committee arrived at a settlement, elected new office bearers and approached the Government. A meeting of the members was convened by the District Educational Officer, in which, all the members of the Board of Directors of the Committee, except Achuthan Nair, attended. The Government passed Ext. P-11 order dated 6-5-2006 returning the management of the High School with the permission to approve the managership of P.Devaki Amma upto 17-2-2006. It is stated by the learned Senior Counsel for the petitioner that for the subsequent period upto 31-3-2007, one Aboobacker Haji was elected as the Manager.

4. Ext. P-5 bye-laws of the Committee shows that the property was purchased for the High School Director Board in the name of Achuthan Nair and that the property and the movables and improvements therein belong to the Director Board. Ext. P-5 bye-laws provides that a member of the Committee, though entitled to transfer his membership to another member, is not entitled to transfer it to a stranger. Ext. P-5 bye-laws were amended as per Ext. P-8 'karar', in which, six members signed. The bye-laws were amended with effect from 23-10-2005, by which, it was provided that any Director would be entitled to transfer his membership even to strangers. It is stated that the 'karar' was executed based on the decision of the Committee in the meeting held on 23-10-2005. The amendment to the bye-laws was approved by the Deputy Director of Education, Malappuram.

5. It is stated that in the meeting of the Committee held on 30-4-2006, it was resolved, as evidenced by Ext. P-9 minutes, to transfer the management of the High School and its properties to the petitioner. Six members participated in the meeting. Another member, K.M.Neelakantan Namboothiri ratified the decision and transferred his rights to the petitioner. Achuthan Nair did not attend the meeting. Accordingly, Ext. P-10 sale deed was executed on 3-5-2006. It is stated that on 30-4-2006 itself, the Committee resolved to transfer the management of the High School to the petitioner and, therefore, he submitted an application dated 1-5-2006 to the District Educational Officer to approve the change of management in favour of the petitioner. It is stated that Aboobacker Haji, the then Manager, also submitted an application to the District Educational Officer for approving the change of management. The District Educational Officer issued Ext. P-2 order 12-5-2006 approving the change of management in favour of the petitioner.

6. Achuthan Nair (fifth respondent) submitted Ext. P-12 representation dated 17-8-2006 to the Government to review/revoke Ext. P-11 order dated 6-5-2006. In Ext. P-12, Achuthan Nair stated that the alienation made in favour of Usman Kurikkal was illegal, that Achuthan Nair had filed O.S.No.84 of 2006 before the Munsiff's Court, Perinthalmanna for a declaration that he continues to be a member of the Director Board and that the assignment in favour of Usman Kurikkal is not valid and binding on him. It was also pointed out in Ext. P-12 that no change of management involving change of ownership was effected by the Deputy Director, to be approved as provided under Rule 5A of Chapter III of the Kerala Education Rules.

7. Ext. P-12 Review Petition filed by Achuthan Nair was dismissed by the Government as per Ext. P-18 order dated 10-8-2007. Ext. P-18 order was passed after hearing all the parties concerned. It was stated in Ext. P-18 order that the only question to be considered in the Review Petition was whether there was any error apparent on the face of the record. It was also held that a subsequent event will not constitute an error apparent on the face of the order passed by the Government. It was noticed in Ext. P-18 that the Government passed Ext. P-11 order on the basis of consensus of parties and the petitioner was a party to that consensus. In paragraph 28 of Ext. P-18 order, it was held thus:

In the above circumstances, Government are pleased to order that the sale of right of the Director Board of the High School to O.V.Usman Kurikkal on 3-5-2006 is in order and also that the right of the petitioner over the property of the High School has to be decided by a civil court.

8. Thereafter, Achuthan Nair filed Ext. P-19 "Mercy Revision Petition" before the Honourable Minister for Education. In Ext. P-19, the prayers were the following:

(a) The operation of the G.O.(Rt.) No.3746/2007/GEdn. dated 10-8-2007 may kindly be stayed till the disposal of the Mercy revision petition or else all the action of Shri Usman Kurikkal O.V. would have to be treated as legal. Even his attempt to boost up attendance adopting fraud would cause huge financial burden to Govt.

(b) To appoint an Officer of the Educational Department as Manager of the school provisionally till the dispute on the illegal transfer of management is settled by the final authority.

(c) This Mercy petition may be heard taking evidence afresh on the authority of each which led to the approval of Shri Usman Kurikkal O.V. including the omission to observe the provision in S 6 of KE Act 1958and the rules in 4(2) 5A chapter III of KER.

(d) Any other relief deemed fit if sought at the time of hearing.

9. A reading of Ext. P-19 would indicate that essentially the petition was filed to review Ext. P-18 order dated 10-8-2007, which was passed on Ext. P-12 Review Petition against Ext. P-11 order. Though the word "Review" is not mentioned in Ext. P-19 and it is stated that it is a 'Mercy Revision Petition', in order to grant the prayers made in Ext. P-19, it was necessary to review Ext. P-18 order.

10. It would appear that after Ext. P-19 Mercy Revision Petition was filed, Sri Aboobacker Haji filed a petition before the Director, Vigilance and Anti Corruption, raising certain allegations against the petitioner and the management of the High School. It would also appear that an enquiry was conducted by the Director of Public Instruction and a report (Ext. P-20) was submitted to the Government.

11. Usman Kurikkal filed W.P.(C) No.16525 of 2008 challenging Ext. P-19 proceedings. Achuthan Nair filed W.P.(C) No.28617 of 2008. Those Writ Petitions were disposed of as per Ext. P-21 judgment dated 4-3-2010 directing the Government to consider the Mercy Revision Petition filed by Achuthan Nair with notice to the petitioner and other Directors of the Corporate Educational Agency. The Government was directed to consider the maintainability of the Mercy Revision Petition as a preliminary issue.

12. Thereafter, the first respondent passed Ext. P-1 order dated 20-8-2010 holding that the Mercy Revision Petition is maintainable. By the same order, the first respondent cancelled Ext. P-2 proceedings of the District Educational Officer dated 12-5-2006 approving Usman Kurikkal as the Manager. On cancellation of Ext. P-2 order, it was held that there arose a vacuum in the management of the High School, that there are two rival claimants, namely, Usman Kurikkal and Achuthan Nair and that the management of the High School cannot be entrusted to any of them till the civil court decides the disputes between the parties. Ext. P-1 order was concluded by saying thus:

In this special situation in order to avoid the vacuum of management the school is taken over by Government and the District Educational Officer, Wandoor will act as the temporary manager of the school.

Consequent to Ext. P-1, the District Educational Officer took charge as the Manager of the High School on 31-8-2010, as evidenced by Ext. P-3. As stated earlier, Exts. P-1 and P-3 are under challenge in this Writ Petition.

13. Sri K.R.B.Kaimal, the learned senior counsel appearing for the petitioner, submitted the following: The Kerala Education Act and the Kerala Education Rules do not confer any power on the Government to take over any aided school. Section 14 of the Act only provides for taking over management of a school. Under Section 14(1) of the Kerala Education Act, the management of aided schools shall be taken over only after serving show cause notice and affording a reasonable opportunity to the Manager and the Educational Agency. Taking over management of a school under Section 14(1) should be on the grounds specified in the Section, namely, (1) The Manager has neglected to perform any of the duties imposed by or under the Act or the Rules; and (2) In the public interest, it is necessary to take over the management of the school. It is submitted that in the case on hand, no show cause notice was issued as provided under Section 14(1) of the Kerala Education Act and, therefore, Ext. P-1 order is illegal, arbitrary or unsustainable. The grounds for taking over the management are also not made out in the case. No emergency is made out or indicated and therefore, sub-section (2) of Section 14 of the Act would not apply. The procedure provided in Chapter XX of the Kerala Education Rules was not followed before taking over management. A notice shall be issued to the Manager in form 18, as provided in Rule 1 of Chapter XX of the KeralaEducation Rules. Ext. P-6 order dated 21-5-2005 taking over management of the school was quashed as per Ext. P-7 judgment in W.P.(C) No.16961 of 2005. Thereafter, the management was reverted to the committee on the basis of a consensus among the parties. Therefore, Ext. P-7(a) notice cannot be treated as a notice preceding the taking over of management as per Ext. P-1 order. The petitioner became the sole proprietor of the High School. The resolutions of the Board are binding on Achuthan Nair. Seven out of the eight members agreed to the resolutions and later the Board was dissolved. Therefore, Achuthan Nair does not have any right. Ext. P-2 order was cancelled without notice to the petitioner and to that extent, Ext. P-1 is illegal. The fifth respondent (Achuthan Nair) having filed a civil suit, the disputed questions are to be decided in the civil suit. The Government have no jurisdiction to entertain a Mercy Revision Petition addressed to the Honourable Minister. A petition for review of an order passed on review cannot be entertained. There is no case for the Government that the High School was not being properly managed. According to the petitioner, the School in question is one of the best schools in Malappuram District. After the petitioner assumed management, there was considerable improvement in the management of the School. 93% of the students passed in the last SSLC Examination. In the year 2006, the total number of students was about 600 and at present, 1400 students are studying in the School.

14. Sri P.K.Suresh Kumar, learned counsel appearing for the fifth respondent, as well as the learned Government Pleader supported Ext. P-1 order. Sri P.K.Suresh Kumar submitted the following: Achuthan Nair is one among the eight persons who founded the School. The property in question is the common property of all the eight members. The Bylaws are silent regarding disposal of the property. The Committee is not a legal entity or an incorporated body. It has no juristic status. Any co-owner who has not transferred his rights would not be affected by the transfer made by others. Since the transfer is not a complete transfer, it cannot be said that the transfer was of a running school. The transfer is hit by Section 6 of the KeralaEducation Act. Ext. P-10 sale deed is void for all practical purposes. At the time when the District Educational Officer passed Ext. P-2 order dated 12-5-2006, the sale as per Ext. P-10 had taken place on 3-5-2006. Therefore, the District Educational Officer had no power to approve the petitioner as the Manager of the School since the transfer involved transfer of ownership as well. If so, only the Director of Public Instruction was having jurisdiction to approve the Manager. Ext. P-2 order passed by the District Educational Officer is illegal and void. That order was obtained by fraudulent means. Ext. P-9 resolution of the Board of Directors shows that the transfer of property took place on 30-4-2006 itself. On the next day, Usman Kurikkal applied for transfer of management. Ext. P-2 order was passed by the District Educational Officer as if only a transfer of management took place without change of ownership. Under Rule 5 A of Chapter III of the Kerala Education Rules, an aggrieved person can file an appeal to the Government. Ext. P-12 was filed by the petitioner before the Government. Section 14(4) enables the Government to pass further orders and, therefore, Ext. P-1 is just and legal. The power under Section 35 of the Act also can be exercised by the Government. Since the District Educational Officer usurped the powers of the Director of Public Instruction and passed Ext. P-2 order, certainly the Government can intervene and set things right. The petitioner had sufficient notice that the order of the District Educational Officer was under challenge before the Government. The nomenclature of Ext. P-19 petition as a "Mercy Revision Petition" may not as such be relevant and the substance and contents of the petition are to be looked into. Sri P.K.Suresh Kumar added that even if the transfer of the School is taken as valid, it shows that at present there are two members who constitute the Educational Agency. Those members are the petitioner and the fifth respondent. Since there is dispute between them, the Government was justified in taking over the management.

15. Sri K.R.B.Kaimal, in answer to the contentions raised by Sri P.K.Suresh Kumar, submitted that an order passed by the District Educational Officer under Rule 4 of Chapter III of theKerala Education Rules can be challenged in appeal before the Director of Public Instruction, as provided in sub-rule (3) of Rule 4. Achuthan Nair did not file any appeal against Ext. P-2 order. The suo motu power of revision of the Government as provided in sub-rule 4 of Rule 4 is only against the order passed by the Director of Public Instruction. He also submitted that the appellate power of the Government under sub-rule (2) of Rule 5A cannot be invoked in the present case as no order was passed by the Director of Public Instruction under Rule 5A of Chapter III of the Kerala Education Rules.

16. Sub-sections (1) to (4) of Section 14 of the Kerala Education Act are relevant to deal with the contentions put forward by either side. They read as follows:

14. Taking over management of schools.-- (1) Whenever it appears to the Government that the manager of any aided school has neglected to perform any of the duties imposed by or under this Act or the rules made thereunder, and that in the public interest it is necessary to take over the management of the school for a period not exceeding five years, they may, after giving the manager and the educational agency, if any, a reasonable opportunity for showing cause against the proposed action and after considering the cause, if any, shown, do so, if satisfied that such taking over for the period is necessary in the public interest.

(2) In cases of emergency, where the Government are satisfied that such a course is necessary in the interests of the pupils of the school, they may, without any notice under sub-section (1) to the manager or the educational agency, take over the management of any school after the publication of a notification to that effect in the Gazette.

(3) Where any School has been taken over under sub-section (2) the educational agency or the manager of the school within three months of the publication of the notification under the said sub-section, may apply to the Government for the restoration of the school showing the cause therefor, and where the Government are satisfied of the cause so shown, they shall restore the school.

(4) The Government may also make such further orders as may appear to them to be necessary or expedient in connection with the taking over of the management of any aided school under this section.

17. In order to attract Section 14(1) of the Act, the following conditions must be satisfied. (1) It must appear to the Government that the manager of the school has neglected to perform any of the duties imposed by or under the Act or the Rules made thereunder; and (2) In the public interest it is necessary to take over the management of the school; (3) A reasonable opportunity for showing cause against the proposed action shall be given to the manager and the educational agency; (4) After considering the cause, if any, shown, the Government must be satisfied that such a taking over is necessary in the public interest. Conditions (1) and (2) are not alternative, but cumulative. Absence of any one of the above conditions would vitiate the order passed under Section 14(1) of the Act. The educational agency has the right to run the school. The manager has specified powers under the Act and Rules. The right to run an aided school can be interfered with only if the conditions under Section 14(1) of the Act are satisfied. Such a right which the educational agency and the manager possesses, cannot be deprived by exercising the power under Section 14(1) or 14(2) of the Act on the mere whims and fancies of the Government Taking over the management of an aided school is aimed at the proper running of the school in accordance with the Act and Rules. Public interest and welfare of the students and teachers are also important in exercising the jurisdiction under sub-section (1) of Section 14 of the Act. In the present case, Ext. P-1 order does not indicate that the conditions under Section 14(1) are attracted. Only because there are two rival claimants for managership, the power under Section 14(1) of the Act cannot be exercised. The dispute between two persons, or among some persons who constitute the educational agency, for managership, by itself does not constitute a complete and exhaustive reason for taking over the management of the school, in the absence of the existence of the, ingredients under Section 14(1) of the Act. Section 14(1) is not intended to deal with the disputes between two or more parties for managership, but it is intended for a larger purpose and to achieve a wider object.

18. In Subramanian v. State of Kerala and others 1986 K.L.T. 359; Justice M.P.Menon, spoke on the scope and ambit of Section 14(1) of the Kerala Education Act. It was held thus:

6.... It is clear that for the above provisions to operate, the following conditions, among others, should be satisfied:

(i) there should be something to suggest that the manager has neglected to perform any of his duties under the Act or the Rules;

(ii) he should be given a reasonable opportunity to show cause against the proposed take-over;

(iii) the cause, when shown, should be considered by the Government before the final decision is taken.

Now, what is the duty (or what are the duties) under the Act or Rules which the manager in this case has neglected to perform? Ext. P-7 does not refer specifically to any single duty of that kind: it simply accuses the manager of having not properly conducted the school. When? In what manner or in what respect? It seems to me that some kind of specification of the duties neglected to be performed by a manager, apart from a vague accusation of not properly conducting the school, is a minimum requirement of a show cause notice under S. 14(1). Without such a specification, the manager will not get a reasonable opportunity of showing cause against the proposal. On this ground alone, I should say that Ext. P-7 cannot be treated as a valid notice under S. 14(1).

The above view was accepted and followed by the Division Bench in Parent Teacher Association v. State of Kerala 2000 (1) K.L.T. 804.

19. Sri P.K.Suresh Kumar, learned counsel appearing for the fifth respondent, justified Ext. P-1 under sub-section (4) of Section 14 of the Kerala Education Act. Sub-section (3) of Section14 enables the educational agency or the manager of the school, the management of which was taken over under sub-section (2). to apply to the Government for restoration of the school after showing cause therefor. Sub-section (4) of Section 14 empowers the Government to make such further orders as may appear to them to be necessary or expedient in connection with the taking over of the management of any aided school under Section 14. It is true that sub-section (4) enables the Government to pass an order for restoration of the management of the school. The Government has power to pass any order in connection with the taking over of the management of the school including interim orders for the proper management of the school. Sub-section (4) can also be invoked for restoration of the school even before the expiry of the period for which it was taken over under sub-section (1). In the case of the school in question, Ext. P-6 order dated 21-5-2005 was passed taking over the management of the school for a period of six months, exercising the power under sub-section (2) of Section 14 of the Kerala Education Act. The Government appointed the District Collector, Malappuram as the Ex Officio Manager of the School for the said period. Ext. P-6 order was quashed in W.P.(C) No.16961 of 2005 (Ext. P-7). The Government was directed to take fresh decision on the question of taking over of the management of the School. Thereafter, Ext. P-7(a) notice dated 19-11-2005 was issued to the members of the educational agency requiring them to show cause why action should not be taken for taking over management of the School for a period of five years. Evidently, Ext. P-7(a) notice is a show cause notice under sub-section (1) of Section 14. It is stated that after Ext. P-7(a) notice, the members of the educational agency agreed to settle their disputes and differences of opinion and approached the Government. The Government convened a meeting of the members in the presence of the District Educational Officer and an election was conducted. The members of the Committee (Board) executed an agreement as well. The Government, as per Ext. P-11 order dated 6-5-2006, ordered to return the management of the School to the School Committee with permission to approve the managership of P. Devaki Amma up to 17-2-2006. Paragraphs 2 and 3 of Ext. P-11 order are extracted below:

2. Accordingly, notice as per Section 14(1) of KE Act have been served to all concerned. In the meantime the parties concerned jointly requested Government to return the management of the school to the Committee as all the disputed parties have come to an agreement for the effective running of the school. In the hearing it has been informed that they are ready to run the school effectively and collectively. Government further convened a meeting of the Board Members in the presence of the District Educational Officer, Wandoor and directed the District Educational Officer to conduct the election to the office bearers of the committee. It has also been directed to furnish an agreement in stamp paper by the Board members agreeing to that they all will work together for the effective running of the school.

3. The District Educational Officer, Malappuram--vide letter read as 3rd paper above has intimated Government that the meeting as directed was held in his presence on 18-2-2006. All Director Board members except Achuthan Nair had attended the meeting and they elected the office bearers. Accordingly, Sri O.P.Abdul Khadar, Malayil Aboobacker Haji, Smt. P.Devaki Amma and Smt. K.V.Meenakshi Kutty Amma have been elected as President, Manager, Secretary and Treasurer respectively.

20. From the above sequence of events, it is clear that the proceedings initiated for taking over the management of the School under Section 14(1) of the Act came to an end by passing Ext. P-11 order. On 17-8-2006, Achuthan Nair (fifth respondent) filed Ext. P-12 Review Petition before the Government to review Ext. P-11 order. Ext. P-12 Review Petition was dismissed by the Government by Ext. P-18 order dated 10-8-2007. Thereafter, Achuthan Nair filed Ext. P-19 Mercy Revision Petition which culminated in Ext. P-1 order.

21. The power of review could be exercised by a statutory authority or a quasi-judicial authority only when such power is conferred on it by a statute or Rules. Against an order passed under Section 14(4) of the Kerala Education Act, no power of review is provided in the Kerala Education Act or in the Kerala Education Rules. As held in Babu Paul v. State ofKerala 2008 (3) K.L.T. 865, Rule 92 of Chapter XIV A of the Kerala Education Rules do not deal with matters relating to approval of Manager of a private school which falls under Rule 4 of Chapter III of the Kerala Education Rules. The power under Rule 92 of Chapter XIV A of theKerala Education Rules could not be exercised by the Government to review Ext. P-11 or Ext. P-18 order passed by it. Ext. P-11 order was not challenged by any person before the High Court under Article 226 of the Constitution of India. Ext. P-11 order became final. Assuming that the Government could exercise the power of review, that power was exercised by disposing of Ext. P-12 Review Petition filed by Achuthan Nair as per Ext. P-18 order dated 10-8-2007. Thereafter, a further Review Petition or a Mercy Revision Petition could not be filed to review the order passed on a Review Petition. Even when courts, statutory authorities and quasi-judicial authorities are invested with the power of review, they would not get jurisdiction to review the order which was passed on a Review Petition. As regards civil courts, Rule 9 of Order XLVII of the Code of Civil Procedure provides that no application to review an order made on an application for review or a decree or order passed or made on a review shall be entertained. It cannot be assumed that the authorities under the Kerala Education Act and Rules would have such a right to review an order passed on review, even assuming that they have the power to review an order.

22. For the aforesaid reasons, I overrule the contention raised by Sri P. K.Suresh Kumar that Ext. P-1 could be justified under Section 14(4) of the Kerala Education Act. I also hold that Ext. P-7(a) notice cannot be the basis for exercising power under Section 14(1) of the Act at this stage, since the proceedings were closed and the managership was vested in a particular person as per Ext. P-11 order. Therefore, had the Government thought, on a representation made by the fifth respondent or otherwise, that taking over the management of the School was expedient, the Government could have only issued a show cause notice under Section14(1) of the Act. The issue of taking over of management cannot be kept alive indefinitely and that too for a longer period than the period for which taking over of the management could be had under sub-section (1) of Section 14 of the Kerala Education Act. Ext. P-6 order for taking over management was passed on 21-5-2005 and the management v/as restored to the Committee as per Ext. P-11 order dated 6-5-2006. Ext. P-1 order was passed on 20.8.2010. More than five years elapsed from the date of the first proceeding for taking over the management. Section 14(4) of the Kerala Education Act also cannot be invoked to keep alive indefinitely, the proceeding for taking over the management of an aided school.

23. The next question to be considered is whether the Government was justified in upsetting Exhibit P-2 order dated 12-5-2006 passed by the District Educational Officer approving the petitioner as Manager of the School. As per Exhibit P-9 resolution passed by the Board of Directors of the Committee, it was resolved to transfer the management of the school to the Petitioner with effect from 1-5-2006. Application was made to the District Educational Officer on 1-5-2006 for approving the appointment of the Petitioner as Manager. The District Educational Officer passed Exhibit P-2 order dated 12-5-2006 approving the petitioner as the Manager. The school, its properties and management were sold to the Petitioner as per Exhibit P-10 sale deed dated 3-5-2006. The sale deed was also produced before the District Educational Officer. The contention of the 5th respondent is that since there was a change of management involving change of ownership, the District Educational Officer had no jurisdiction to pass Exhibit P-2 order under Rule 4 of Chapter III of the Kerala Education Rules. He contended that only the Director of Public Instruction could approve the change of management involving change of ownership, under Rule 5 A of Chapter III K.E.R. The further contention of the 5th respondent is that if the change of management took place on 1-5-2006, sale of the school on 3-5-2006 would be hit by Section 6 of the Kerala Education Act. Previous permission of the authorised officer is required for effecting sale of the property of the school. The Petitioner contends that Exhibit P-2 order passed by the District Educational Officer cannot be set aside by the Government, exercising the power of Revision or on review of the order dropping the proceedings under Section 14(2) of the Act.

24. Sub-rule (1) of Rule 4 of Chapter III, KER provides that Educational Officers shall be competent to approve the appointment of Managers by Educational Agencies and to approve changes in the personnel of the Managers. Sub-rule (3) of Rule 4 provides for appeal to the Director within 30 days from the date of receipt of the order. Sub-rule (4) of Rule 4 provides that the Government may, on their own motion or otherwise, revise any order passed by the Director of Public Instruction. The power of Revision by the Government is confined to the order passed by the Director of Public Instruction. The Government have no power to revise an order passed by the District Educational Officer under Sub-rule (1) of Rule 4 of Chapter III, KER. The fifth Respondent did not file any appeal to the Director challenging the order passed by the District Educational Officer. The fifth respondent was not entitled to challenge the said order in Revision or by filing a "mercy revision petition" before the Government. Therefore, Exhibit P-1 order passed by the Government, cancelling Exhibit P-2 order passed by the District Educational Officer, is illegal and unsustainable.

25. Copy of Exhibit P-2 order was not marked to the 5th respondent. The 5th respondent is an interested party. Even though the case of the petitioner is that the rights of the 5th respondent were extinguished by the resolution of the Board of Directors, notice should have been given to him by the District Educational Officer before passing Exhibit P-2 order. The 5th respondent has filed O.S. No.84 of 2006 on the file of the Court of the Munsiff of Perintalmanna for a declaration that the plaintiff continues to be the Director of the Board and the assignment of the school by the defendants is not valid and binding on the plaintiff and also for consequential injunction. It is true that the suit was filed after the District Educational Officer passed Exhibit P-2 order. The 5th respondent is a person aggrieved by Exhibit P-2 order. The 5th respondent was agitating his rights all throughout. In these circumstances, the 5th respondent should be afforded an opportunity to challenge Exhibit P-2 order in Appeal. If the 5th respondent files an appeal within 30 days before the Director of Public Instruction under Sub-rule (3) of Rule 4 of Chapter III, KER, challenging Exhibit P-2 order, the appeal shall be taken on file and it shall be disposed of by the Director of Public Instruction (2nd respondent) on the merits, treating the appeal having been filed within time.

26. As stated earlier, the civil suit filed by the 5th respondent is pending. Very many contentions raised by the parties in this Original Petition are questions which should be decided in the civil suit. Therefore, all those questions are not being decided in this Writ Petition.

For the aforesaid reasons, the Writ Petition is allowed and Exhibit P-1 order and Exhibit P-3 proceedings are quashed. If the 5th respondent files an appeal before the Director of Public Instruction within 30 days challenging Exhibit P-2 order, the appeal shall be taken on file and it shall be disposed of by the Director of Public Instruction (2nd respondent) on the merits, after hearing all the interested parties, treating the appeal having been filed within time. All other contentions which are not specifically answered hereinabove are left open to be considered by the Director of Public Instruction or by the civil court, as the case may be. No order as to costs.

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