

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

Wednesday, the 24th day of May 2023 / 3rd Jyaishta, 1945
WP(C) NO. 15455 OF 2023(F)

PETITIONERS:

1. KERALA CBSE SCHOOL MANAGEMENT ASSOCIATION (REGD) REPRESENTED BY ITS GENERAL SECRETARY P.S. RAMACHANDRAN PILLAI, REG.NO. 174/1996, PENTA TOWER, 7TH FLOOR, KALOOR, KOCHI, PIN - 682017
2. PRINCIPAL ST: JOHN'S SCHOOL, KEERUKUZHAY, THUMPAMON, PATHANAMTHITTA, PIN - 689502
3. PRINCIPAL VIDYADHIRAJA VIDHAYA PEEDOM CENTRAL SCHOOL, PONNARAMTHOTTAM, MAVELIKKARA, ALAPPUZHA, PIN - 690101
4. SENIOR PRINCIPAL ST: THOMAS SENIOR SECONDARY SCHOOL, PUNALUR, KOLLAM, PIN - 691305

RESPONDENTS:

1. STATE OF KERALA REPRESENTED BY THE SECRETARY, GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
2. KERALA STATE COMMISSION FOR PROTECTION OF CHILD RIGHTS REPRESENTED BY ITS REGISTRAR, TC NO. 14/2036, VANROSS JUNCTION, THIRUVANANTHAPURAM, PIN - 695034
3. THE DIRECTOR OF GENERAL EDUCATION, DIRECTORATE OF GENERAL EDUCATION, JAGATHY, THYCAUD, THIRUVANANTHAPURAM, PIN - 695014
4. THE REGIONAL DIRECTOR, CENTRAL BOARD OF SECONDARY EDUCATION, BSNL RTTC CAMPUS, KAIMANAM, THIRUVANANTHAPURAM, PIN - 695040
5. THE CENTRAL BOARD OF SECONDARY EDUCATION REPRESENTED BY ITS SECRETARY, VIKAS MARG, C BLOCK, PREETHI VIHAR, NEW DELHI, PIN - 110062

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to issue an interim direction to the 4th respondent to give permission for conducting vacation classes in CBSE School on the basis of their respective applications pending disposal of the Writ Petition.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this court's order dated 09/05/2023 and upon hearing the arguments of M/S K.P.SATHEESAN (SENIOR), P.MOHANDAS (ERNAKULAM), K.SUDHINKUMAR, SABU PULLAN, GOKUL D. SUDHAKARAN & R.BHASKARA KRISHNAN, Advocates for the petitioners, SRI.Nirmal S., Advocate for the respondents 4 & 5 and of GOVERNMENT PLEADER for respondents 1 & 3, the court passed the following:

P.V.KUNHIKRISHNAN, J

**W.P.(C) Nos.15455, 15707, 15723,
15746 & 16068 of 2023**

Dated this the 24th day of May, 2023

REFERENCE ORDER

These writ petitions are filed mainly challenging an order bearing No. H(4)/7002/2023/DGE dated 03.05.2023 passed by the Director of General Education (DGE), Thiruvananthapuram. As per the above proceedings, the DGE directed that all the Primary, Secondary and Higher Secondary schools in Government, Aided and Unaided sectors shall not conduct vacation classes. In W.P.(C.) No. 15455/2023, this Court stayed the implementation of the above order for two weeks, mainly relying on the judgment of this Court in **ISS (English Medium) Senior Secondary School, Perinthalmanna v. State of Kerala [2018 (2) KHC 829]**. In **ISS (English Medium) Senior Secondary**

School's case (supra), this Court observed that if there is no objection from the parents, teachers and students, the special classes can be conducted during the summer vacation on condition that the school authorities will provide basic facilities. In tune with the above dictum, similar orders were passed in some other writ petitions also. Today, these writ petitions came up for the extension of the interim order. W.P(c) No. 16068/2023 is a fresh writ petition for admission.

2. Heard the learned counsel for the petitioners in all these cases and the learned Government Pleader.

3. Rule 1 Chapter VII of Kerala Education Rules (for short 'KER') says that all schools shall be closed for summer vacation every year on the last working day of March and re-opened on the first working day of June unless otherwise notified by the Director. The DGE now issued the impugned orders in these writ petitions, stating that, because of the prevailing atmospheric temperature, no classes shall be conducted in any of the schools during the summer vacation. There is no challenge to Rule 1 of Chapter VII KER in these

writ petitions. Therefore, the order passed by the DGE is strictly in tune with Rule 1 of Chapter VII KER. Some of the petitioners in these cases are the Managers of the school under the Central Board of Secondary Education (CBSE). Their contention is that, the DGE has no power to issue such an order against CBSE schools. This Court, in a batch of writ petitions, considered similar contentions in 2019, when the DGE passed an order based on the directions of the Child Rights Commission. This Court, after considering all the contentions observed like this :

"7. Having heard the learned counsel on either side, it is seen that Government has got every right to issue directions in accordance with the alerts received from the Disaster Management Authority in order to protect the citizens with special care to children inclusive of those upto 18 years of age, from extreme heat. At the same time Government has also a duty to see that the children are not adversely affected by the recurrent declaration of holidays/loss of working days on innumerable reasons including that on account of natural calamities. The Schools are duty bound to impart the students education in effective manner and to equip them to appear in the public examinations which are decisive of their very future or else it will in effect result in

deprivation of the fundamental right to education of the students. In order to compensate the loss of working days, it would be necessary to find out additional class hours to complete the syllabus. Otherwise it would also be a violation of child rights. It is seen that the Government circular itself provides that camps, workshops, etc can be conducted during vacation, with prior permission of educational authorities who shall ensure that sufficient safeguards are provided to meet the adverse climatic conditions on account of extreme heat. Therefore I am of the view that if the School authorities as well as the PTA have made a request after ensuring all safeguards for meeting the unprecedented weather conditions not only to the students of X to XII but also to the teachers and all those involved in conducting vacation classes, it is liable to be considered by the competent authorities under the CBSE. In some of the cases the petitioners have produced resolution passed by the PTA of the Schools to request for permission from the authorities to conduct the summer classes. In some of the cases the School authorities like management/Managers/ Principals have also addressed the authorities under the CBSE to grant them permission to conduct classes ensuring that they will provide all facilities to protect the children from any adverse conditions of weather. Having regard to all these circumstances, I am of the view that as the Government Circular itself provides for conducting of summer camps for a period of ten days, even without interfering with the Government circular as a whole, there can be a direction to

the competent authorities under the CBSE to consider the request of the petitioners to conduct classes during summer vacation and to take a decision after verifying the facilities provided in each of the schools on a case to case basis. Therefore these writ petitions are disposed of with the following directions :

- 1. The Principals of the petitioner schools shall approach the Regional Director of CBSE with application for permission to conduct vacation classes within one week.*
- 2. The details regarding the safeguards adopted to meet the extreme climatic conditions like facilities for pure drinking water, first aid, food, availability of water in the toilets for the students as well as the teachers, facilities in the class rooms and the premises for protection from the extreme heat; the dates on which the classes are proposed; schedule of class hours, the transportation made available to the students, etc, shall be furnished in such applications.*
- 3. The application of the Principal shall be submitted along with the resolution of the PTA in respect of conducting of vacation classes despite the adverse weather conditions and declaration of the authorised representative of the management of the school in respect of the facilities they are providing for the students as well as teachers to meet the climatic conditions.*
- 4. The Regional Director shall thereafter consider such applications with reference to the facilities provided/assured and having regard to the requirement of the classes to be conducted as against the number of teaching days lost in the*

previous academic year and take appropriate decision in respect of each schools within a period of 10 days from the date of receipt of such applications. At any rate, the permission need be granted only for a maximum period of 20 days. The Regional Director would be free to impose such conditions to ensure the safeguards in tune with the alerts of the State Disaster Management Authority, in order to protect the children as well as all involved in conducting the classes.

5. *On the basis of such permission being granted the petitioner schools would be free to conduct classes during summer vacation.*

6. *The Government circular issued on 28.03.2019 shall not stand in the way of granting the aforesaid permission and conducting of classes in tune with such permission.”*
(Underline supplied)

4. The above judgment was taken up in appeal, and the Division Bench of this Court disposed of the Writ Appeal with the following observations :

3. *“We agree with the said submission of the learned Standing Counsel for the CBSE and though the writ appeals are rendered infructuous by the orders passed we make it clear that the Regional Director of CBSE cannot have any say in the matter nor can he verify such situations existing in a State, which prompts the State Government to pass such orders. We leave open the question of sustainability of the*

Government orders, but make it clear that like directions cannot be issued to the Regional Director of the CBSE to consider such aspects as covered by the orders of the State Government, which all schools within the State are to comply with, irrespective of the affiliating body; which body cannot have a contrary stance.”

5. Now, the petitioners are relying on the judgment of this Court in **ISS (English Medium) Secondary School's case** (supra). This Court disposed of the above case with the following directions :

"3. I notice that the petitioners have taken a legal contention that the recommendation of the Child Rights Commission and the Circular issued by the DPI, even if found to be legally tenable, could not apply to those students who are studying in classes above 8th standard, since as per the provisions of the Protection of Child Rights Act, under which the Commission has been constituted, it would apply only to those children belong to the age group up to fourteen years.

4. I also see that similar matters were filed before this Court in the previous academic year and that several orders were issued permitting conduct of summer classes subject to the approval of the CBSE ICSE and the competent educational authorities.

5. *Since conduct of summer classes are at the request and advice of the parents and students of the various schools and classes are being conducted only for classes 11 upwards, I cannot see any reason why either the Child Rights Commission or the DPI should interdict such classes. The classes, it is stated, are conducted for the benefit of the students to provide them necessary impetus for excellence in future and to finish the vast portions, thus equipping them better in completing the syllabi effectively. Since there is no case for anyone that the students are compelled to sit in vacation classes against their desire and since I cannot find anything stated in the Circular of the DPI or the recommendation of the students intent not to sit in such additional classes, I deem it appropriate to order this writ petition allowing the schools involved in these cases to conduct additional classes during the summer recess 2018, however, in strict vigilance by the competent educational authorities and the CBSE / ICSE, as the case may be. I order accordingly.*

6. *I make it clear that if any complaint is raised by any student or parent against conduct of such classes, it shall be taken due notice by the competent authorities and appropriate instructions issued to the respective schools. The writ petitions are thus ordered."*

6. This Court, in the above case, found that the conduct of summer classes is at the request and advice of

the parents and students of various schools, and classes are being conducted only for classes 11 and upwards. It is also stated by this Court that the classes are conducted for the benefit of students to provide them with the necessary impetus for excellence in future and to finish the vast portions, thus equipping them better in completing the syllabi effectively. This Court also observed that since there is no case for anyone that the students are compelled to sit in vacation classes against their desire, the schools are free to conduct additional classes during summer vacation 2018. This Court also observed that if any student or parent raise any objection regarding the conduct of such classes, it shall be taken due notice by the competent authority.

7. With great respect, I am not in a position to agree with the above findings in **ISS (English Medium) Senior Secondary School's case** (supra). Rule 1 Chapter VII KER clearly says that all schools shall be closed for summer vacation every year on the last working day of March and reopened on the 1st working day of June unless otherwise

notified by the Director. The DGE only reiterated the Rule in KER. The authority of the DGE to pass such an order is upheld by this Court in the judgment dated 05.04.2019 in W.P.(C.) No. 10123/2019, and also in the judgement dated 04.07.2019 in WA No.1255/2019. I am of the considered opinion that, the dictum laid down in ISS English Medium Senior Secondary School's case (supra) would go against the rules, especially because the rule is not declared invalid. Therefore the observations in the above case require reconsideration.

8. Moreover, there is a purpose in giving vacations to the students' community. After a hectic academic year, the students need a break. That is why the summer vacation is given to the students. The students should enjoy the vacations and rejuvenate for their next academic year. Holiday breaks allow the students to shift their focus from traditional study materials. They can reach to their other ambitions in extracurricular activities, which they are generally not able to address during the school year.

Summer vacation is necessary to the students for spending time with their kith and kins and for a mental break. Concentrating on school books alone would not be sufficient for the children. Let them sing, let them dance, let them eat their favourite food leisurely without the fear of next day's home work, let them enjoy their favourite television programmes, Let them play cricket, football or their favourite sports items and let them enjoy trips with their kith and kins. A hectic academic year is coming. Before that, a break is necessary for the student community. The students of 10th standard and Higher Secondary School definitely need a break before they enter their decisive academic year in their life. In such situation, I am of the considered opinion that the order passed by the DGE is the need of the hour. This Court need not invoke the powers under Article 226 of the Constitution of India to interdict an order passed by the DGE, which is in tune with Rule 1 of Chapter VII KER. Therefore, I am not in a position to agree with the dictum laid down in **ISS (English Medium) Senior Secondary**

School's case (supra). It requires reconsideration. The cases are to be heard by a Division Bench. Therefore these writ petitions are adjourned for being heard by a bench of two judges.

The counsel for the petitioners submitted that there is only one week more to complete the summer vacation and the interim order may be extended for one week. I am not inclined to extend the interim order. The petitioners can agitate their contention before the Division Bench. To facilitate the petitioners to agitate their claim immediately, the Registry will place this matter before the Hon'ble Acting Chief Justice forthwith for passing appropriate orders.

sd/-

**P.V.KUNHIKRISHNAN
JUDGE**

SKS