



, IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

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THE HONOURABLE MR. JUSTICE EASWARAN S.

TUESDAY, THE 6TH DAY OF AUGUST 2024 / 15TH SRAVANA, 1946

WA NO. 1032 OF 2024

AGAINST THE JUDGMENT DATED 13.03.2024 IN WP(C) NO.8401 OF 2021 OF
HIGH COURT OF KERALA

APPELLANT/RESPONDENTS IN WPC:

- 1 STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT, FINANCE
DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-
695 001., PIN - 695001
- 2 THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001., PIN - 695001
- 3 THE DIRECTOR OF GENERAL EDUCATION,
DIRECTORATE OF GENERAL EDUCATION, JAGATHY,
THIRUVANANTHAPURAM-695 014., PIN - 695014
- 4 THE DEPUTY DIRECTOR OF EDUCATION,
CIVIL STATION, KAKKANAD P.O., ERNAKULAM-682 030.,
PIN - 682030
- 5 THE DISTRICT EDUCATIONAL OFFICER,
MUVATTUPUZHA-686 661., PIN - 686661
- 6 THE ASSISTANT ENGINEER,
LOCAL SELF GOVERNMENT DEPARTMENT (LSGD), SECTION
OFFICE, MAZHUVANNUR, AIRAPURAM P.O., ERNAKULAM-683
541., PIN - 683541
- 7 THE CHIEF SECRETARY TO GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.,

WA NO. 1032 OF 2024

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2024:KER:59838

BY SRI.A.J. VARGHESE - SR GP

RESPONDENT/PETITIONER IN WPC:

THE MANAGER, EBENEZER HIGHER SECONDARY SCHOOL,
VEETTOOR, NELLAD P.O., ERNAKULAM-686 669., PIN - 686669

BY ADVS.
M.U.VIJAYALAKSHMI
K.JAJU BABU (SR.) (K/116/1981)
BRIJESH MOHAN (K/1851/1999)
SACHIN RAMESH (K/000886/2017)

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 06.08.2024, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**J U D G M E N T****AMIT RAWAL, J.**

An innocuous direction of the learned Single Judge has been assailed in an intra court appeal on behalf of the State with an application seeking condonation of delay of 80 days on the premise that the direction of the learned Single Judge, if construed in the letter and spirit, would have far-reaching consequences and open a Pandora's box for all other management of the schools, who have been denied the benefit of Ext.P1 Scheme promulgated on 01.03.2018, whereby, the Government had decided to spend 50% of the cost of construction/renovation.

2. While considering the prayer for condonation of delay of 80 days, it has been stated that the delay occurred on account of receiving certain documents from the Department for preferring the writ appeal. We were about to condone the delay and decide the matter on merits.

3. Sri.Jaiju Babu, learned Senior Counsel assisted by Sri.Brijesh Mohan, the learned counsel for the respondent objected to the same on the premise that there has been wilful concealment of certain factors after passing of the judgment of



the learned Single Judge and filing of the intra court appeal. The details of which are given hereinunder:

1) The learned Single Judge in paragraph No.9 of the impugned order, directed the Department to afford an opportunity of hearing and decide the case with regard to the bills in terms of the Scheme meaning thereby that any construction done before 01.03.2018 would be at the peril of the management.

2) The judgment of the learned Single Judge is dated 13.03.2024 and the certified copy of which was made available to the State on 23.03.2024. Notice was received by the Manager of the School on 05.04.2024 to appear on 19.04.2024.

3) On 19.04.2024, the matter was heard by three officers appointed by the Finance Secretary at length and was kept reserved. For two months, nothing transpired, nor the respondent/writ petitioner received any communication and that impelled him to file Contempt of Court Case No.1502 of 2024 on 19.06.2024.

4) Contempt of Court Case is stated to be pending. On 24.06.2024, notice was issued in the contempt case and posted the matter to 17.07.2024 whereas, the Writ Appeal has been filed



on 02.07.2024 on receipt of the notice of the contempt petition, but before the hearing and it is prayed that the delay should not be condoned and the appeal should be dismissed not only on this ground but also on the ground of suppression of material facts. No explanation has come forth from the officers who reserved the matter in not passing an order.

4. The categoric stand of the State in the counter had been that the Management had raised the construction from 2014 without taking permission from the Panchayat or even getting the site plans approved. The Government will not be entitled to defray the cost of renovation incurred by the Management. In other words, there was no construction after 01.03.2018. The writ petitioner cannot be allowed to over-reach the basic order requirements and make unmerited gains by misleading in any such adalat though the Government had sanctioned an amount of Rs.2,218.50 Lakhs with the account of the Director of General Education towards the Challenge Fund financial assistance for transfer of funds to the qualified beneficiary managements subject to the satisfaction of all eligibility conditions. Finance Department is the Nodal Department for the implementation of the Challenge Fund



Scheme. The Assistant Executive Engineer, Local Self Government in its letter dated 05.05.2021, submitted that the construction was conducted before the introduction of the Challenge Fund Scheme. As per Ext.R1(a) dated 06.03.2019, it was made clear that the benefit of the Scheme would be available only with respect to the constructions started after 01.03.2018.

5. On the other hand, Sri.Jaiju Babu, learned Senior Counsel countered the aforementioned arguments and submitted that the Government is dilly-dallying with the matter for the reason that Ext.P5 is the testimony of the completion of the building on 02.03.2019. In the proceedings before the Adalat initiated by the Government, the Tahsildar vide ExtP16 letter dated 26.02.2021, recommended to the Director General of Education, Higher Secondary eligibility for receiving the Challenge Fund as per law and vide Ext.P19 dated 20.10.2021, the Joint Secretary came out with a stand that the petitioner is not entitled to the benefit of the Funds in respect of the construction commenced before 01.03.2018 and as far as other construction is concerned, the matter was pending consideration before this Court. Exts.P6 and P9 the valuation report as well as report of the Assistant



Executive Engineer and Inspecting Officer would show that the renovation was done much later to 01.03.2018. The inspection is dated 24.05.2019.

6. Ext.P4 shows that the Government in the communication dated 26.10.2018, had deposited the amount of Rs.50 lakhs to be paid to the Management in the Government Treasury and Ext.P13 is the valuation certificate. Even otherwise, this intra court appeal would not lie in view of the fact that steps in pursuance to the directions of the learned Single Bench have already been initiated as indicated above while opposing the application for condonation of delay.

7. We have heard the counsel for the parties and appraised the paper book and of the view that matter requires to be dismissed with exemplary costs. The reasons are not one, but many.

8. The Scheme came into force with effect from 01.02.2018 containing condition that the constructions/renovation commenced from 01.03.2018. The schools which initiated the construction/renovation from 01.03.2018 shall be eligible to claim benefit of the Challenge Fund Scheme, whereby, the Government



had extended a benefit of compensation to the extent of 50% of the cost of construction incurred by any of the schools. Ext.P5 is the occupancy certificate showing completion of the building on 02.03.2019. On 26.10.2018, the Government had deposited its share of Rs.50 lakhs in the Government Treasury, but was not disbursed to the Schools on the premise that the construction had commenced before 01.03.2018. The learned Single Judge, in paragraphs 8 and 9, considering all these factors, passed a very innocuous order, which read as under:

“8. If it is a case that the petitioner was not entitled and still was selected and found to be entitled under Ext.P4, the officials who are responsible for the same must be taken to task after a proper enquiry in that regard. The selection and inclusion of the petitioner in Ext.P4 and making him remit Rs.50 lakh as part of the Scheme and thereafter come up with objections much after the construction cannot be justified on the part of the Government, whose actions are enjoined to be just and fair in every sphere of their activities. The reason stated for rejecting the claim of the petitioner after finding him entitled under Ext.P4 cannot be sustained even though the claim of the petitioner for the bills submitted before 1.3.2018 need not be honoured.

9. For the balance of the amount, the



respondents or the competent among them are directed to take a fresh decision in the light of the observations made above and the documents produced in the writ petition after putting the petitioner and other affected parties on notice and after affording reasonable opportunity of hearing. Orders as directed above shall be passed within three months from today, and the amounts to which the petitioner is found entitled shall be paid within one month thereafter. After paying the amount due to the petitioner, it will be open to the Government to take appropriate action against the official responsible for including the petitioner in Ext.P4 in case the petitioner school is found not entitled to the benefit of Ext.P1. Since public money is involved and if it is ultimately found that the petitioner is not entitled to the benefit of Ext.P1 Scheme, the Government will have to pay the amount to the petitioner as promised and recover it from the officials responsible, as stated above.”

9. In pursuance to the aforementioned directions, already steps as noticed above have been taken, but the matter is still kept reserved and only on receipt of the contempt notice, the Government has woken up from slumber in assailing the order. We are unable to fathom as to how and in what manner, a fresh course of action had accrued for challenging the order of the



Single Bench when already all steps have been taken in compliance of the same judgment. Such practice should not be adopted at the end of the Department and as well as the Legal Department of the State as it unnecessarily delays the adjudication of the controversy pending before the competent Authority.

10. It is settled law that if the party does not come to the Court with clean hands, can be thrown out at any stage of the trial with exemplary cost. As noticed above, there is not even a single whisper with regard to the steps taken in compliance of the directions of the Single Judge. Even otherwise, the interest of the Government had already been protected in paragraph 8 and 9 of the judgment extracted supra. For the reasons aforementioned, we are of the view that the challenge is wholly atrocious, fallacious, repugnant and aberrative.

11. We cannot remain oblivious of the fact that the matter was taken up yesterday and after noticing the fact that steps have already been taken while implementing the judgment of the Single Judge, we permitted the Government Pleader to withdraw the appeal. However, request was made to hear the matter on



merits and therefore, it was listed for today as spoken to. Therefore, the appeal is dismissed with a cost of Rs.2,00,000/- (Rupees two lakhs only) to be paid to the respondent by the Government first and then realise it from the legal officers who had taken a decision to file the writ appeal. Liberty granted to the respondent/petitioner for seeking implementation of the order in accordance with law.

Sd/-
AMIT RAWAL
JUDGE

Sd/-
EASWARAN S.
JUDGE

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