

പതിനാലാം കേരള നിയമസഭ

പതിമൂന്നാം സമ്മേളനം

നക്ഷത്രചിഹ്നമിടാത്ത നിയമസഭാ

10.12.2018-ൽ മറുപടികട്

ചോദ്യം നം. 3256

വെളിമണ്ണ ഗവൺമെന്റ് സ്കൂൾ അപ്ഗ്രേഡേഷൻ

ചോദ്യം

ശ്രീ. പി.ടി.എ. റഹീം

ഉത്തരം

പ്രൊഫ. സി. രവീന്ദ്രനാഥ്

(പൊതു വിദ്യാഭ്യാസ വകുപ്പു മന്ത്രി)

(എ) കൊടുവള്ളി എ.ഇ.ഒ. യുടെ കീഴിൽ പ്രവർത്തിച്ചു വരുന്ന വെളിമണ്ണ ഗവൺമെന്റ് എൽ.പി. സ്കൂൾ യു.പി.സ്കൂളായി അപ്ഗ്രേഡ് ചെയ്തത് ഏതെല്ലാം വ്യവസ്ഥകളുടെ അടിസ്ഥാനത്തിലാണ്;

(എ) അധിക സാമ്പത്തിക ബാധ്യതയും, അധിക തസ്തിക സൃഷ്ടിക്കലും ഉണ്ടാകില്ലെന്നും അപ്ഗ്രേഡ് ചെയ്യുന്നത് മൂലമുള്ള തസ്തികകളിൽ കോഴിക്കോട് ജില്ലയിൽ തസ്തിക നഷ്ടം സംഭവിച്ച് പുറത്താകുന്ന അധ്യാപകരെ നിയമിക്കണമെന്നുമുള്ള വ്യവസ്ഥയിൽ കേരള വിദ്യാഭ്യാസ ചട്ടം അധ്യായം V ചട്ടം 2, 2എ യിൽ ഇളവ് വരുത്തി ഒരു പ്രത്യേക കേസായി പരിഗണിച്ചാണ് ടി സ്കൂൾ 2015-16 അധ്യയന വർഷം മുതൽ 04.08.2015 - ലെ സ.ഉ. (കൈ) 208/2015/ പൊ.വി.വ. ഉത്തരവു പ്രകാരം യു.പി. സ്കൂളായി അപ്ഗ്രേഡ് ചെയ്ത് ഉത്തരവായത്.

(ബി) ഈ വിദ്യാലയം ഹൈസ്കൂൾ ആക്കണമെന്ന് ഹൈക്കോടതി വിധിയുണ്ടോ; എങ്കിൽ ആയതിന്റെ കോപ്പി ലഭ്യമാക്കാമോ;

(ബി) ഉണ്ട്. വിധിപ്പകർപ്പ് അനുബന്ധമായി ഉള്ളടക്കം ചെയ്തിട്ടുണ്ട്.

(സി) പ്രസ്തുത സ്കൂളിന് ഉള്ള സ്ഥലത്തിന് ആകെ എത്ര വിസ്തൃതിയുണ്ടെന്ന് വ്യക്തമാക്കാമോ;

(സി) 53 സെന്റ്

(ഡി) പ്രസ്തുത സ്കൂളിൽ പഠിച്ചിരുന്ന മുഹമ്മദ് ആസിം എന്ന കുട്ടിക്ക് തുടർ പഠനത്തിന് പ്രത്യേക അധ്യാപകനെ നിയമിച്ച് പഠനം തുടരാൻ എസ്.എസ്.എ. മുഖേന പദ്ധതി തയ്യാറാക്കാൻ സാധിക്കുമോ; വ്യക്തമാക്കാമോ?

(ഡി) ശ്രീ. മുഹമ്മദ് ആസിം പി. യും മറ്റുള്ളവരും ചേർന്ന് ഫയൽ ചെയ്ത 10663/2018 എന്ന റിട്ട് ഹർജിയിൽ 11.06.2018-ൽ ബഹു. ഹൈക്കോടതി പുറപ്പെടുവിച്ച വിധിന്യായത്തിനെതിരെ സംസ്ഥാന സർക്കാർ 1408/2018 -ാം നമ്പർ അപ്പീൽ ഹർജി ഫയൽ ചെയ്യുകയും ടി വിദ്യാർത്ഥിക്ക് തൊട്ടടുത്ത സ്കൂളിൽ പഠനം തുടരുന്നതിന് എല്ലാ സൗകര്യങ്ങളും നൽകുന്നതാണെന്ന ഉറപ്പു നൽകിയതിന്റെ അടിസ്ഥാനത്തിൽ മേൽ വിധിന്യായം 18.07.2018 - ൽ ബഹു. ഹൈക്കോടതി സ്റ്റേ ചെയ്യുകയുമുണ്ടായി. ഇക്കാര്യത്തിൽ ബഹു. കോടതിയിൽ നിന്നുള്ള അന്തിമ ഉത്തരവിനായി കാത്തിരിക്കുകയാണ്. സമഗ്ര ശിക്ഷ മുഖേന വിദ്യാർത്ഥിക്ക് തുടർ പഠന സൗകര്യം ഏർപ്പെടുത്തുന്നതാണ്.

സെക്ഷൻ ഓഫീസർ

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

MONDAY, THE 11TH DAY OF JUNE 2018 / 21ST JYAISHTA, 1940

WP(C).No. 23820 of 2016

PETITIONER:

THE MANAGER,
ITHIHADUL ISLAM AIDED LOWER PRIMARY SCHOOL,
CHEROOR, KASARAGOD DISTRICT - 671 123.

BY ADVS.SRI.V.A.MUHAMMED
SRI.M.SAJJAD

RESPONDENT(S) :

1. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECTARIAT,
THIRUVANANTHAPURAM - 695 001.
2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
JAGATHY, THIRUVANANTHAPURAM - 695 014.
3. THE ASSISTANT EDUCATIONAL OFFICER
KASARAGOD DISTRICT - 671 123.

BY SENIOR GOVERNMENT PLEADER SMT. NISHA BOSE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08-06-2018,
ALONG WITH WP(C) 17434/2017 AND CONNECTED CASES, THE COURT
ON 11-06-2018 DELIVERED THE FOLLOWING:

PBS

APPENDIX

PETITIONER(S) ' EXHIBITS

- P1 TRUE COPY OF THE DETAILS OF SCHOOL.
- P2 TRUE COPY OF THE PROFORMA OF SURVEY REPORT.
- P3 TRUE COPY OF THE VISIT REPORT.
- P4 TRUE COPY OF THE RESOLUTION OF THE PTA DT.
04.1.2016.
- P5 TRUE COPY OF HE RESOLUTION OF THE CHENGALA
GRAMA PANCHAYATH DT. 06.5.2015.
- P6 TRUE COPY OF THE LETTER OF THE DEPUTY DIRECTOR
DT. 28.12.2015.
- P7 TRUE COPY THE LETTER OF THE DEPUTY DIRECTOR DT.
25.1.2016.
- P8 TRUE COPY OF THE LIST OF IED STUDENTS.
- P9 TRUE COPY OF THE REPRESENTATION SUBMITTED
BEFORE THE GOVERNMENT DT. 30.5.2016.
- P10 TRUE COPY OF THE JUDGMENT IN CIVIL APPEAL
NO(S) 11359 OF 2017 DATED 08.09.2017

RESPONDENT'S EXHIBITS

NIL

/TRUE COPY/

PS TO JUDGE

ANIL K. NARENDRAN, J.

WP(C)Nos.23820/2016, 17434, 17581, 17582, 17583, 17584,
17585, 17635, 18446, 18613, 18614, 18615, 18616, 18617,
18618, 19460, 19461, 19462, 19463, 20093, 20094, 20095,
20096, 20097, 20098, 20099, 20100, 20101, 20295, 20296,
20297, 20298, 20299, 20300, 20316, 20317, 20318, 20320,
20557, 20843, 20994, 20995, 21138, 21139, 21140 & 22580
of 2017, 10663, 12187, 14209, 14645, 14865, 15088,
15089, 15259, 15494, 15502, 15517, 15518, 15526, 15532,
15539, 15540, 15546, 15548, 15555, 15571, 15615, 15631,
15632, 15634, 15647, 15648, 15651, 15652, 15653, 15669,
15672, 15687, 15707, 15713, 15746, 15764, 15765, 15769,
15770, 15771, 15785, 15801, 15805, 15806, 15813, 15821,
15827, 15830, 15831, 15832, 15838, 15845, 15890, 15941,
15943, 15990, 16101, 16167, 16169, 16206, 16207, 16210,
16215, 16216, 16217, 16223, 16224, 16228, 16229, 16231,
16233, 16264, 16296, 16713, 16718, 16758, 16760, 16761,
16766, 16916, 16940, 16947, 16984, 17866, 17150, 17193,
17273 & 17299 **of 2018**

DATED THIS THE 11th DAY OF JUNE, 2018

JUDGMENT

The common issue raised in this batch of writ petitions is as to whether admission of students to Class V or Class VIII, as the case may be, can be made in the respective Lower Primary Schools (with Class I to IV) and Upper Primary Schools (with Class V to VII) for the academic year 2018-19, despite the fact that in notification No.NS(3)/21147/2016/DPI dated 19.05.2017 issued by the Director of Public Instructions, Kerala educational need was found only in Ward No.2 of Cherekkad in Kunnamangalam Panchayat for Class I to V, and in Ward No.12 of Kunnankattupathy in Kozhinjampara Panchayat and Ward No.2 of

Perunadu in Perunadu Panchayat for Class V, in the school mapping conducted in terms of the provisions under the Right of Children to Free and Compulsory Education Act, 2009 (for brevity 'the Right to Education Act') and also the Rules made thereunder, i.e., the Kerala Right of Children to Free and Compulsory Education Rules, 2011 (for brevity 'the Kerala Rules'). The writ petitions are filed either by the Manager of the respective Lower Primary/Upper Primary Schools or by the Parent-Teacher Association/student of those schools.

2. The petitioners have mainly sought for a writ of mandamus commanding the respondent State and the Educational Authorities to permit admission of students to Class V in the respective Lower Primary Schools and to Class VIII in the respective Upper Primary Schools; and a writ of mandamus commanding the State and the Educational Authorities to provide the respective elementary schools (with Class I to IV or Class V to VII) access to 'Sampoorna Internet Portal', in order to admit students to Class V or Class VIII, as the case may be.

3. In certain writ petitions, notification No.NS(3)/21147/2016/DPI dated 19.05.2017 issued by the Director of Public Instructions, whereby educational need was found only in Ward No.2 of Cherekkad in Kunnamangalam Panchayat for Class I to V, and in

Ward No.12 of Kunnankattupathy in Kozhinjampara Panchayat and Ward No.2 of Perunadu in Perunadu Panchayat for Class V; and also G.O.(Rt.)No.1813/2017/G.Edn. dated 09.06.2017, whereby the Government ordered that, transportation facility will be provided to the children of 82 areas mentioned in the list appended thereto, in order to reach the nearest school with the co-operation/assistance of the local bodies, as provided in sub-rule (4) of Rule 6 of the Kerala Rules, are under challenge.

4. The details of the writ petitions included in this batch are as follows;

Sl. No.	W.P.(C)No.	Petitioner (PTA/ Manager)	Name of School	W.P.(C) filed on	To admit students to Class V/VIII
1	23820/2016	Manager	Ithihadul Islam Aided LPS, Cheroor	15/07/16	V to VIII
2	17434/2017	PTA	AMLPS School Villakkery, Thrissur	25/05/17	V
3	17581/2017	PTA	Crescent UP S Karappuram	26/05/17	VIII
4	17582/2017	PTA	AUP School, Chiramangalam	26/05/17	VIII
5	17583/2017	PTA	Saraswathi ALP School, Panangad	26/05/17	V
6	17584/2017	PTA	Sree Narayana AUP School, Padanakat	26/05/17	VIII
7	17585/2017	PTA	Muzhapilangad UPS,	26/05/17	VIII

Sl. No.	W.P.(C)No.	Petitioner (PTA/ Manager)	Name of School	W.P.(C) filed on	To admit students to Class V/VIII
			Muzhappilangad		
8	17635/2017	Manager/	KMLP School, Kuruvattur	26/05/17	V
9	18446/2017	PTA	AMUP School, Ayyaya, Vellachal.	02/06/17	VIII
10	18613/2017	PTA	ALP School, Kallangai	05/06/17	V
11	18614/2017	PTA	ALP School, Kudalmerkala	05/06/17	V
12	18615/2017	PTA	AUP School, Badira	05/06/17	VIII
13	18616/2017	PTA	ALP School, Kallar	05/06/17	V
14	18617/2017	PTA	Vidyaranya ALP School, Pady	05/06/17	V
15	18618/2017	PTA	Iqbal English Medium LP School, Peringammala	05/06/17	V
16	19460/2017	Manager	Sree Ayyappa Educational Institution , Chittur	09/06/17	VIII
17	19461/2017	Manager	Radhakrishna AUP School, Maniyoor	12/06/17	VIII
18	19462/2017	PTA	Cherumavilai UP School, Mavilai, Kannur	12/06/17	VIII
19	19463/2017	PTA	SVUP School, Karippal	12/06/17	VIII
20	20093/2017	PTA	Kareemul Islamiya ALP School, Kanhangad	16/06/17	V
21	20094/2017	PTA	BAHM ALP School, Panarkulam	16/06/17	V
22	20095/2017	Manager	Kadambur North UP, School, Edakkad, Kannur	16/06/17	VIII

Sl. No.	W.P.(C)No.	Petitioner (PTA/ Manager)	Name of School	W.P.(C) filed on	To admit students to Class V/VIII
23	20096/2017	Manager	Kanhirode Sankaravilasam UPS, Kanhirode, Kannur	16/06/17	VIII
24	20097/2017	Manager	Mangattidom UP School, Mangattidom, Kannur	16/06/17	VIII
25	20098/2017	PTA	Aysha LP School, Aralam, Kannur	16/06/17	V
26	20099/2017	PTA	SNDP LP School, Vazhichal, Tvm.	16/06/17	V
27	20100/2017	PTA	Chami Aiyer LP School, Ayakkad	16/06/17	V
28	20101/2017	PTA	ALP School, Thankayam	16/06/17	V
29	20295/2017	Manager	Oorpazhassikavu UPS, Edakkad, Kannur	19/06/17	VIII
30	20296/2017	PTA	Orikara LPS, Kadachira	19/06/17	V
31	20297/2017	Manager	Meethalepunnad UPS, Iritty, Kannur	19/06/17	VIII
32	20298/2017	Manager	Punnassery UPS, Narikkuni, Kozhikode	19/06/17	VIII
33	20299/2017	PTA	Pattayamma AUP School, Karivellu, Kannur	19/06/17	VIII
34	20300/2017	Manager	Makreri Sankaravilasam Grameena Patasala UPS, Makreri, Kannur	19/06/17	VIII
35	20316/2017	Manager	Kuthuparamba UPS, Kuthuparamba, Kannur	19/06/17	VIII
36	20317/2017	Manager	Koodali UPS, Koodali,	19/06/17	VIII
37	20318/2017	Manager	ALP School, Munnurcode, Palakkad	19/06/17	V

Sl. No.	W.P.(C)No.	Petitioner (PTA/ Manager)	Name of School	W.P.(C) filed on	To admit students to Class V/VIII
38	20320/2017	Manager	Iverkulam Grameena Patasala UPS, Mundallur,	19/06/17	VIII
39	20557/2017	Manager	AUP School, Mannarmala	20/06/17	VIII
40	20843/2017	Manager	Koyyode Central LP School, Kayyode, Kannur	22/06/17	V
41	20994/2017	Manager	Pothuvacheri Central UPS, Kannur	23/06/17	VIII
42	20995/2017	Manager	Janatha UPS, Varandarappilly, Thrissur	23/06/17	VIII
43	21138/2017	PTA	Sri Subrahmanya ALP School, Mudoorthoke, Kasaragod	27/06/17	V
44	21139/2017	PTA	Moidu Memorial LPS, Kechery, Thrissur	27/06/17	V
45	21140/2017	Manager	Sree Vidya Poshini LPS, Thrithallur, Thrissur	27/06/17	V
46	22580/2017	Manager	VVA UP School, Pattambi, Palakkad	06/07/17	
47	10663/2018	1) Pupil 2) PTA 3) Action Committee	Govt.Mappila UP School, Omassery, Kozhikode	26/03/18	VIII, IX and X
48	12187/2018	1) Pupil 2) PTA	Govt.High School, Athirattukunnu, Wayanad	05/03/18	V, VI and VII
49	14209/2018	Parent	Venmani ALP School, Mananthavady, Wayanad	21/04/18	V, VI and VII
50	14645/2018	1) HM	MPM LP School, Killy Kollode, Tvm.	26/04/18	V

Sl. No.	W.P.(C)No.	Petitioner (PTA/ Manager)	Name of School	W.P.(C) filed on	To admit students to Class V/VIII
		2) PTA			
51	14865/2018	Manager	Dr.Lohia Memorial LP School, Mannadikonam, Tvm.	30/04/18	V
52	15088/2018	Manager	St.Francis LP School, Ezhacode, Tvm	03/05/18	V
53	15089/2018	Manager	1) SGNM LP School, Ooruttambalam, Kattakada 2) EVUP School, Parasala	03/05/18	V/ VIII
54	15259/2018	Manager	VVA UP School, Pattambi, Palakkad	04/05/18	VIII
55	15494/2018	Manager	AMUP School Parakkal, Malappuram	07/05/18	VIII
56	15502/2018	Manager	SRSUP School, Balaramapuram, Tvm	07/05/18	VIII
57	15517/2018	Manager	Nochad ALP School, Nochad, Kozhikode	07/05/18	V
58	15518/2018	Manager	PMMUP School, Thalippadam, Malappuram	07/05/18	VIII
59	15526/2018	Manager	MGMUP School, Elikulam, Kottayam	07/05/18	VIII
60	15532/2018	Manager	SSVUP School, Kallara, Kottayam	07/05/18	VIII
61	15539/2018	Manager	SNV UP School, Selliampara, Idukki	07/05/18	VIII
62	15540/2018	Manager	AMLUP School Punnathala, Malappuram	07/05/18	V
63	15546/2018	Manager	Harijan LP School,	07/05/18	V

Sl. No.	W.P.(C)No.	Petitioner (PTA/ Manager)	Name of School	W.P.(C) filed on	To admit students to Class V/VIII
			Kallumthazham, Kollam		
64	15548/2018	Manager	TKMM LP and UP School Edakadathy,	07/05/18	VIII
65	15555/2018	Manager	AMUP School Parappanangadi	07/05/18	VIII
66	15571/2018	Manager	St.Peter's LPSchool, Vaduthala, Kochi	07/05/18	V
67	15615/2018	Manager	AMUP School Mampad, Malappuram	08/05/18	VIII
68	15631/2018	Manager	AM LP School Pullode, Malappuram	08/05/18	V
69	15632/2018	Manager	RMA UP School, Karakkode, Malappuram	08/05/18	VIII
70	15634/2018	Manager	A UP School Muthukala, Palakkad	08/05/18	VIII
71	15647/2018	Manager	AKM LP School, Mampad, Malappuram	08/05/18	V
72	15648/2018	Manager	AAHM LP School, A.R.Nagar, Malappuram	08/05/18	V
73	15651/2018	Manager	Vallathol AUP School, Mangalam, Malappuram	08/05/18	VIII
74	15652/2018	Manager	PUM LP School, Odayikkal, Malappuram	08/05/18	V
75	15653/2018	Manager	PSPTM LP School, Sooranad North, Kollam	08/05/18	V
76	15669/2018	Manager	Vanmukam Kodikkal AMUP School Kataloor, Kozhikode	09/05/18	VIII

Sl. No.	W.P.(C)No.	Petitioner (PTA/ Manager)	Name of School	W.P.(C) filed on	To admit students to Class V/VIII
77	15672/2018	Manager	AMUP School Vaniyanoor, Tirur	08/05/18	VIII
78	15687/2018	Manager	SSMUP School, Poozhanad, Tvm.	09/05/18	VIII
79	15707/2018	Manager	AS LP School Chelakode, Thrissur	08/05/18	V
80	15713/2018	Manager	AM UP School, Karakkad, Pattambi.	10/05/18	VIII
81	15746/2018	Manager	Elayavoor Central LP School, Varam, Kannur	10/05/18	V
82	15764/2018	Manager	Kuttiyil AUP School, Tirur, Malappuram	10/05/18	VIII
83	15765/2018	Manager	Varam UP School, Kannur	10/05/18	VIII
84	15769/2018	Manager	AM LP School Anakkayam, Malappuram	10/05/18	V
85	15770/2018	Manager	AM LP School Cherakkaparamba, Malappuram	10/05/18	V
86	15771/2018	Manager	Akkal LV LP School, Mokeri, Kozhikode	10/05/18	V
87	15785/2018	Manager	Nooriya Orphanage AUP School, Valamboor, Malappuram	10/05/18	VIII
88	15801/2018	Manager	AM LP School Indiannur, Malappuram	10/05/18	V
89	15805/2018	Manager	AUP School, Kuruva, Malappuram	10/05/18	VIII
90	15806/2018	Manager	1) KCM UP School,	10/05/18	V/VIII

Sl. No.	W.P.(C)No.	Petitioner (PTA/ Manager)	Name of School	W.P.(C) filed on	To admit students to Class V/VIII
			Kuruvattur, Palakkad 2) ALP School, Pattambi, Palakkad 3) AVL P School, Tirur, Malappuram 4) AM UP School, Areecode, Malappuram 5) MAM UP School, Mankada, Malappuram		
91	15813/2018	Manager	AUP School, Adakkaputhur, Palakkad	10/05/18	VIII
92	15821/2018	Manager	Crescent AUP School Perimbalam, Malappuram	10/05/18	VIII
93	15827/2018	Manager	AML P School Ambaladakavu, Malappuram	10/05/18	V
94	15830/2018	Manager	HMSA UP School, Manjeri, Malappuram	10/05/18	VIII
95	15831/2018	Manager	AUPS, Thirumittacode, Palakkad	10/05/18	VIII
96	15832/2018	Manager	AM LP School Ponmala, Malappuram	10/05/18	V
97	15838/2018	PTA	ALP School, Thekkummury, Palakkad	10/05/18	V
98	15845/2018	Manager	Kizhmuri AML P School, Randathani, Malappuram	10/05/18	V
99	15890/2018	Manager	1) VMHM UP School, Makkaraparamba, Malappuram 2) AML P School, -do-	11/05/18	V/VIII

Sl. No.	W.P.(C)No.	Petitioner (PTA/ Manager)	Name of School	W.P.(C) filed on	To admit students to Class V/VIII
			3) PTM UP School, Angadippuram, Malappuram 4) AM LP School, Mankada, Malappuram 5) AM LP School, Ramapuram, Malappuram 6) AM LP School, Padinhattummuri West, Malappuram		
100	15941/2018	Manager	Mahatma Gandhi LP School, Manalil, Kollam	14/05/18	V
101	15943/2018	Manager	SRV UP School, Oachira	14/05/18	VIII
102	15990/2018	Manager	SABTM LP School, Moovattupuzha	14/05/18	V
103	16101/2018	Manager	National Lower LP School, Manali, Thrissur	15/05/18	V and VI
104	16167/2018	Manager	Elayidam BV LP School, Vadakara, Kozhikode	16/05/18	V
105	16169/2018	Manager	Hayathul Islam LP School, Neerkunnam, Alappuzha	16/05/18	V
106	16206/2018	Manager	Sastha ALP School, Vallikkunnu, Malappuram	16/05/18	V
107	16207/2018	Manager	Orphanage UP School, Padinhattummuri, Malappuram	17/05/18	VIII
108	16210/2018	Manager	PPTM ALP School, Kolathur, Malappuram	16/05/18	V
109	16215/2018	Manager	BTM LP School, Kumbankadu	17/05/18	V

Sl. No.	W.P.(C)No.	Petitioner (PTA/ Manager)	Name of School	W.P.(C) filed on	To admit students to Class V/VIII
110	16216/2018	Manager	SNV LP School, Edathiruthy South, Thrissur	17/05/18	V
111	16217/2018	Manager	Valal UP School, Kottathara, Wayanad	17/05/18	VIII
112	16223/2018	Manager	AML P School Moorkanad, Malappuram	17/05/18	V
113	16224/2018	Manager	Olavilam North LP School, Thalassery, Kannur	16/05/18	V
114	16228/2018	Manager	AMA UP school, Eranhicode, Malappuram	15/05/18	VIII
115	16229/2018	Manager	Uliyil South LP School, Naduvanad, Kannur	15/05/18	V
116	16231/2018	Manager	AM LP School Mattathur, Malappuram	17/05/18	V
117	16233/2018	Manager	AM UP School, Pallikkal, Malappuram	17/05/18	VIII
118	16264/2018	Manager	AM LP School Nilambur, Malappuram	21/05/18	V
119	16296/2018	Manager	SNDSY UP School, Poochakkal, Cherthala	21/05/18	VIII
120	16713/2018	Manager	MOUP School Nilambur, Malappuram	21/05/18	VIII
121	16718/2018	PTA	Palayad LP School, Vatakara, Kozhikode	22/05/18	V
122	16758/2018	Manager	BVA LP School, Pattambi, Palakkad	22/05/18	V
123	16760/2018	Manager	Manavedan UP School,	22/05/18	VIII

Sl. No.	W.P.(C)No.	Petitioner (PTA/ Manager)	Name of School	W.P.(C) filed on	To admit students to Class V/VIII
			Manjeri, Malappuram		
124	16761/2018	Manager	Chekkutty Haji Memorial Higher Secondary School, Pulpetta, Malappuram	22/05/18	V
125	16766/2018	Manager	PMSAMA UP School, Olamathil, Malappuram	22/05/18	VIII
126	16916/2018	Manager	Krishna AUP School, Thachinganadam, Malappuram	23/05/18	VIII
127	16940/2018	Manager	AUP School, Vazhikkadavu, Malappuram	22/05/18	VIII
128	16947/2018	Manager	AUP School, Perinthalmanna, Malappuram	23/05/18	VIII
129	16984/2018	Manager	Vekkalam Aided UP School, Perumthodi, Kannur	24/05/18	VIII
130	17150/2018	Manager	St.Francis UP School, Ezhakode.	25/05/18	VIII
131	17193/2018	Manager	1) Cheruvannur West ALP School, Kolathara, Kozhikode 2) AUP School Pattambi, Palakkad 3) ALP School Puzhakkattiri, Malappuram 4) AH LP School, Ramapuram, Malappuram	23/05/18	V/VIII
132	17273/2018	Manager	Nadupoyil UP School, Vatakara, Kozhikode	25/05/18	VIII

Sl. No.	W.P.(C)No.	Petitioner (PTA/ Manager)	Name of School	W.P.(C) filed on	To admit students to Class V/VIII
133	17299/2018		1) Headmistress, LMS LPS, Arumaloor, Tvm. 2) -do-, Mangalathkonam, Tvm. 3) -do-, Maypuram, Tvm. 4) -do-, Plamoottakada, Tvm. 5)-do-, Arayoor, Tvm. 6) -do-, Vellarada, Tvm. 7) -do-, Panachamoodu, Tvm. 8) -do-, Venganoor, Tvm. 9) Headmistress, LMS UPS, Palayam, Tvm. 10) Head master, LMS UPS, Kottukonam, Tvm. 11) -do-, Parasuvaikal, Tvm. 12) Headmistress, LMS UPS, Perinmbakonam, Tvm. 13) Corporate Manager, CSI-SKD Diocese (CSI), Tvm.	25/05/18	V/VIII
134	17866/2018	Manager	Sree Dayananda UP School, Ponkunnam, Kottayam	30/05/18	VIII

5. W.P.(C)No.23820 of 2016 is filed seeking upgradation of Ithihadul Islam Aided L.P. School with Classes V, VI, VII and also Class VIII from the year 2016-17 and for consideration of Ext.P9 representation made for that purpose.

6. W.P.(C)Nos.17434, 17581, 17582, 17583, 17584, 17585, 17635, 18446, 18613, 18614, 18615, 18616, 18617, 18618, 19460, 19461, 19462, 19463, 20093, 20094, 20095, 20096, 20097, 20098, 20099, 20100, 20101, 20295, 20296, 20297, 20298, 20299, 20300, 20316, 20317, 20318, 20320, 20557, 20843, 20994, 20995, 21138, 21139, 21140 of 2017 (Sl.Nos.2 to 45 in the list @ para.4) were filed in May/June, 2017 seeking permission to admit students in Class V or Class VIII, as the case may be, in the respective L.P. Schools/U.P. Schools, and for a declaration that the classification of schools for general education under the provisions of the Kerala Education Rules (for brevity 'the KER') stands superseded under Article 254 of the Constitution of India, in view of the provisions under the Right to Education Act. In those writ petitions and other connected matters interim orders were granted on 19.05.2017, 26.05.2017, etc. directing the State and the Educational Authorities to permit the petitioners therein to commence admission to Class V or Class VIII, as the case may be, in the respective L.P. Schools/U.P. Schools and the respondents therein were directed to open 'Sampoorna Internet Portal' to facilitate such admissions without further delay. This Court has also ordered that, if any additional teachers are required, the managements will avail the service of the teachers only from the

'Teachers Bank'.

7. W.P.(C)No.22580 of 2017 is filed by the Manager of V.V.A.U.P. School, Pattambi, seeking a writ of certiorari to quash notification No.NS(3)/21147/2016/DPI dated 19.05.2017 issued by the Director of Public Instructions and also G.O.(Rt.)No.1813/2017/G.Edn. dated 09.06.2017, to the extent it excludes the case of V.V.A.U.P. School, in Ward No.I of Muthalamada and seeking a writ of mandamus commanding the 1st respondent State to include the petitioner's school as well, while ascertaining the educational need. The petitioner has also filed W.P.(C)No.15259 of 2018 seeking permission to admit students in Class VIII in V.V.A.U.P. School, Pattambi, through 'Sampoorna Internet Portal'.

8. W.P.(C)No.10663 of 2018 is filed by a differently abled child of Class VII in Government Mappila U.P. School, Velimanna who wants to pursue his studies in the very same school in Class VIII. The Parent-Teacher Association and the Upgradation Action Committee of that Government School are the 2nd and 3rd petitioners in that writ petition, in which Ext.P14 Government letter dated 19.01.2018 is under challenge. The petitioners are seeking a writ of certiorari to quash Ext.P14 order and also a writ of mandamus commanding the respondents to sanction Classes VIII, IX and X, by upgrading the U.P.

School as High School, and to permit conduct of Class VIII for the academic year 2018-19 onwards.

9. W.P.(C)No.12187 of 2018 is filed by a student of Government High School, Athirattukunnu seeking a writ of mandamus commanding the State to sanction Classes V, VI and VII in that School having L.P. and High School sections and for a writ of mandamus commanding the Educational Authorities to consider and pass orders on Ext.P3 and P4 representations.

10. The other writ petitions of the year 2018 (Sl.Nos.49 to 134 in the list @ para.4) are filed seeking permission to admit students to Class V/Class VIII in the respective L.P. Schools/U.P. Schools and to provide access to 'Sampoorna Internet Portal' for admitting students to such Class. Among the said writ petitions, notification No.NS(3)/21147/2016/DPI dated 19.05.2017 issued by the Director of Public Instructions and G.O.(Rt.)No.1813/2017/G.Edn. dated 09.06.2017 are under challenge in W.P.(C)Nos.14645, 14865, 15088, 15089, 15502, 15687, 15806, 15838, 15890, 16718, 16984, 17150, 17193, 17299 and 17866 of 2018. (Sl.Nos.50, 51, 52, 53, 56, 78, 90, 97, 99, 121, 129, 130, 131, 133 and 134). In W.P.(C)No.16167 of 2018 (Sl.No.104) G.O.(Rt.)No.1813/2017/G.Edn. dated 09.06.2017 alone is under challenge.

11. By the order dated 27.04.2018 in W.P.(C)No.14645 of 2018; the order dated 04.05.2018 in W.P.(C)Nos.17434, 17216, 17217, 17218, 17219, 17220, 17221, 17222, 17223, 17225, 17226, 17227, 17228, 17229, 17231, 17232, 17606, 17581, 17582, 17583, 17584, 17585, 17586, 18148, 27841, 27964, 27948, 27947, 27832, 18302, 18342, 27933, 27935, 27936, 27934, 17765, 17363, 17788, and 17580 of 2017, 14814, 14865, 15089, 15088 and 15185 of 2018; the order dated 04.05.2018 in W.P.(C)No.15259 of 2018; the order dated 08.05.2018 in W.P.(C)Nos.18446 of 2017, 15494, 15502, 15517, 15526, 15532, 15539, 15540, 15546, 15548, 15555 and 15571 of 2018; and the order dated 11.05.2018 in W.P.(C)No.15615 of 2018 the respondent State and the Educational Authorities are directed to provisionally permit the petitioners to commence admission to Class V or Class VIII, as the case may be, pending disposal of those writ petitions; and they were also directed to open 'Sampoorna Internet Portal' to facilitate such admission without further delay. In the writ petitions which came up for admission on 11.05.2018, 15.05.2018 and 18.05.2018 no interim orders were granted. Similarly, no interim orders were granted in the writ petitions, which came up for admission from 22.05.2018 onwards.

12. The interim orders dated 27.04.2018 and 04.05.2018 were

granted on the ground that, last year, when similar matters were brought to the notice of this Court, an interim order was given in favour of the petitioners therein. Taking note of the orders dated 27.04.2018 and 04.05.2018, interim order dated 08.05.2018 was granted in W.P.(C)No.18446 of 2017 and connected cases, which was followed by interim order dated 11.05.2018 granted in W.P.(C)No.15615 of 2018. The learned Senior Government Pleader has already filed interlocutory applications in those writ petitions, to vacate the aforesaid interim orders. The learned Senior Government Pleader has filed an adoption memo dated 28.06.2017 in W.P.(C)No.17434 of 2017 to adopt the detailed counter affidavit filed by the State dated 20.06.2017 in W.P.(C)No.16421 of 2017. Similar adoption memos have also been filed in other writ petitions of the year 2017. In W.P.(C)No.14645 of 2018, the learned Senior Government Pleader has filed a detailed counter affidavit dated 17.05.2018. The said counter affidavit has been adopted in other writ petitions of the year 2018 by filing adoption memos. The learned Senior Government Pleader has filed a separate counter affidavit in W.P.(C)No.10663 of 2018.

13. In W.P.(C)No.17434 of 2017 and connected matters (Sl.Nos.2 to 45 in the list @ para.4), interlocutory applications were filed on 22.05.2018 for amendment of the writ petitions, in order to

challenge the notification dated 19.05.2017 issued by the Director of Public Instructions, whereby educational need was found only in three places, and also the Government order dated 09.06.2017, whereby it was ordered to provide transportation facility to the children of 82 areas. Though the learned Senior Government Pleader contended that the amendment applications are belated, considering the fact that the said notification dated 19.05.2017 and the Government order dated 09.06.2017 are already under challenge in the connected writ petitions, those interlocutory applications were allowed by the order dated 04.06.2018.

14. Heard the learned counsel for the petitioners in the respective writ petitions, the learned Senior Government Pleader for the respondent State and Educational Authorities, the learned Central Government Counsel for Union of India and also the learned counsel appearing for party respondents in the respective cases.

15. As already noticed, the common issue raised in this batch of writ petitions is as to whether admission of students to Class V or Class VIII, as the case may be, can be made in the respective L.P. Schools (with Class I to IV) and U.P. Schools (with Class V to VII) for the academic year 2018-19, in view of the provisions under the Right of Education Act and the Kerala Rules.

16. Article 21A of the Constitution of India, as inserted by the Constitution (Eighty-sixth Amendment) Act, 2002, provides that the State shall give free and compulsory education to all the children of the age of six to fourteen in such manner as the State may, by law, determine. Consequently, the Parliament enacted the Right of Children to Free and Compulsory Education Act, 2009 to provide free and compulsory education to all children of the age of six to fourteen years. The Right to Education Act came into force on 01.04.2010, as notified by the Central Government in the Official Gazette.

17. Clause (a) of Section 2 of the Right to Education Act defines the term 'appropriate Government' to mean (i) in relation to a school established, owned or controlled by the Central Government, or the administrator of the Union Territory, having no Legislature, the Central Government; (ii) in relation to a school, other than the school referred to in sub-clause (i), established within the territory of a State, the State Government; a Union territory having Legislature, the Government of that Union territory.

18. Section 35 of the Right to Education Act deals with power to issue directions. As per sub-section (1) of Section 35, the Central Government may issue such guidelines to the appropriate Government or, as the case may be, the local authority, as it deems fit for the

purposes of implementation of the provisions of this Act. As per sub-section (2) of Section 35, the appropriate Government may issue guidelines and give such directions, as it deems fit, to the local authority or the School Management Committee regarding implementation of the provisions of the said Act. As per sub-section (3) of Section 35, the local authority may issue guidelines and give such directions, as it deems fit, to the School Management Committee regarding implementation of the provisions of the said Act.

19. Section 38 of the Right to Education Act deals with power of appropriate Government to make rules. As per sub-section (1) of Section 38, the appropriate Government may, by notification, make rules, for carrying out the provisions of the said Act. As per sub-section (2) of Section 38, such rules may provide for, in particular, and without prejudice to the generality of the foregoing powers, all or any of the matters enumerated in clauses (a) to (r) thereof. In exercise of the powers conferred by Section 38, the Central Government made the Right of Children to Free and Compulsory Education Rules, 2010 (for brevity 'the Central Rules'), which came into force on 01.04.2010. Similarly, in exercise of rule making powers conferred by Section 38, the State Government made the Kerala Right of Children to Free and Compulsory Education Rules, 2011, which came into force on

06.05.2011.

20. The term 'elementary education' as defined in clause (f) of Section 2 of the Right to Education Act means education from first class to eighth class. Clause (n) of Section 2 define the term 'school' to mean 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. As per clause (p) of Section 2, the term 'specified category', in relation to a school, means a school known as Kendriya Vidyalaya, Navodaya Vidyalaya, Sainik School or any other school having a distinct character which may be specified, by notification, by the appropriate Government.

21. Section 3 of the Right to Education Act deals with right of child to free and compulsory education. As per sub-section (1) of Section 3, every child of the age of six to fourteen, including a child referred to in clause (b) or clause (e) of Section 2, i.e., child belonging to disadvantaged group or child belonging to weaker section, shall

have a right to free and compulsory education in a neighbourhood school till completion of his or her elementary education. As per sub-section (2) of Section 3, 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. Sub-section (3) of Section 3 deals with the right of 'child with disability' referred to in sub-clause (A), (B) and (C) of clause (ee) of Section 2, to pursue free and compulsory elementary education.

22. Section 5 of the Right to Education Act deals with right of transfer of child to other school. As per sub-section (1) of Section 5, where in a school, there is no provision for completion of elementary education, the child shall have a right to seek transfer to any other school, excluding the school specified in clauses (iii) and (iv) of Clause (n) of Section 2, i.e., a school belonging to specified category and an unaided school, for completing his or her elementary education. Section 5 of the Act reads thus;

“5. Right of transfer to other school.- (1) Where in a school, there is no provision for completion of elementary education, a child shall have a right to seek transfer to any other school, excluding the school specified in sub-clauses (iii) and (iv) of clause (n) of Section 2, for completing his or her elementary education.

(2) Where a child is required to move from one school to

another, either within a State or outside, for any reason whatsoever, such child shall have a right to seek transfer to any other school, excluding the school specified in sub-clauses (iii) and (iv) of clause (n) of Section 2, for completing his or her elementary education.

(3) For seeking admission in such other school, the Head-teacher or in-charge of the school where such child was last admitted, shall immediately issue the transfer certificate:

Provided that delay in producing transfer certificate shall not be a ground for either delaying or denying admission in such other school:

Provided further that the Head-teacher or in-charge of the school delaying issuance of transfer certificate shall be liable for disciplinary action under the service rules applicable to him or her.”

23. Section 6 of the Right to Education Act, which deals with duty of appropriate Government and local authority to establish school, reads thus;

“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.”

24. Section 7 of the Right to Education Act deals with sharing

of financial and other liabilities. As per sub-section (1) of Section 7, the Central Government and the State Governments shall have concurrent responsibility for providing funds for carrying out the provisions of the Act. Section 7 of the Act reads thus;

"7. Sharing of financial and other responsibilities.-

(1) The Central Government and the State Governments shall have concurrent responsibility for providing funds for carrying out the provisions of this Act.

(2) The Central Government shall prepare the estimates of capital and recurring expenditure for the implementation of the provisions of the Act.

(3) The Central Government shall provide to the State Governments, as grants-in-aid of revenues, such percentage of expenditure referred to in sub-section (2) as it may determine, from time to time, in consultation with the State Governments.

(4) The Central Government may make a request to the President to make a reference to the Finance Commission under sub-clause (d) of Clause (3) of Article 280 to examine the need for additional resources to be provided to any State Government so that the said State Government may provide its share of funds for carrying out the provisions of the Act.

(5) Notwithstanding anything contained in sub-section (4), the State Government shall, taking into consideration the sums provided by the Central Government to a State Government under sub-section (3), and its other

resources, be responsible to provide funds for implementation of the provisions of the Act.

(6) The Central Government shall-

(a) develop a framework of national curriculum with the help of academic authority specified under Section 29;

(b) develop and enforce standards for training of teachers;

(c) provide technical support and resources to the State Government for promoting innovations, researches, planning and capacity building.”

25. Section 8 of the Right to Education Act deals with duties of appropriate Government. As per clause (a), clause (b) and clause (g) of Section 8, the appropriate Government shall provide free and compulsory elementary education to every child; ensure availability of a neighbourhood school as specified in Section 6; and ensure good quality elementary education conforming to the standards and norms specified in the Schedule to the Act. Similarly, Section 9 of the Act deals with duties of local authority to provide free and compulsory elementary education to every child; ensure availability of a neighbourhood school as specified in Section 6; etc. Section 10 of the Act, which deals with duty of parents and guardian provides that, it shall be the duty of every parent or guardian to admit or cause to be admitted his or her child or ward, as the case may be, to an

elementary education in the neighbourhood school.

26. Section 12 of the Right to Education Act deals with extent of school's liability for free and compulsory elementary education. As per Section 15, a child shall be admitted in a school at the commencement of the academic year or within such extended period as may be prescribed. Section 15 reads thus;

"15. No denial of admission.- A child shall be admitted in a school at the commencement of the academic year or within such extended period as may be prescribed:

Provided that no child shall be denied admission if such admission is sought subsequent to the extended period:

Provided further that any child admitted after the extended period shall complete his studies in such manner as may be prescribed by the appropriate Government."

27. As per Section 16 of the Right to Education Act, which deals with prohibition of holding back and expulsion, no child admitted in a school shall be held back in any class or expelled from school till the completion of elementary education.

28. Section 18 of the Right to Education Act mandates that no school to be established without obtaining certificate of recognition. As per sub-section (1) of Section 18, no school, other than a school established, owned or controlled by the appropriate Government or the

local authority, shall, after the commencement of the said 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. As per sub-section (2) of Section 18, 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 of the Act. Sub-section (3) of Section 18 provides for withdrawal of recognition on the contravention of the conditions of recognition, and sub-section (5) provides for penal consequences to any person who establishes or runs a school without obtaining certificate of recognition, or continues to run a school after withdrawal of recognition.

29. Section 19 of the Right to Education Act deals with norms and standards for school. As per sub-section (1) of Section 19, no school shall be established, or recognised, under Section 18, unless it fulfils the norms and standards specified in the Schedule. As per sub-section (2) of Section 19, where a school established before the commencement of the said Act does not fulfil the norms and standards specified in the Schedule, it shall take steps to fulfil such norms and

standards at its own expenses, within a period of three years from the date of such commencement. Sub-section (3) of Section 19 provides for withdrawal of recognition where a school fails to fulfil the norms and standards within the period specified under sub-section (2), and sub-section (5) provides for penal consequences to any person who continues to run a school after the recognition is withdrawn.

30. Section 25 of the Right to Education Act deals with Pupil-Teacher Ratio. As per sub-section (1) of Section 25, within three years from the date of commencement of the said 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. As per sub-section (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 of the Act, i.e., decennial population census, disaster relief duties or duties relating to elections to the local authority or the State Legislatures or Parliament, as the case may be.

31. The Schedule to the Right to Education Act, which prescribed norms and standards for a school, reads thus;

THE SCHEDULE			
[See Sections 19 and 25]			
NORMS AND STANDARDS FOR A SCHOOL			
Sl.No	Item	Norms and Standards	
1	Number of of teachers (a) For First class to fifth class	Admitted children Up to sixty Between sixty-one to ninety Between ninety-one to one hundred and twenty Between one hundred and twenty-one to two hundred Above one hundred and fifty children Above two hundred children	Number of teachers Two Three Four Five Five plus one Head-teacher Pupil-Teacher Ratio (excluding Head-teacher) shall not exceed forty
	(b) For sixth class to eighth class	At least one teacher per class so that there shall be at least one teacher each for- (i) Science and Mathematics; (ii) Social Studies; (iii) Languages (2) At least one teacher for every thirty-five children (3) Where admission of children is above one hundred- (i) a full time head-teacher; (ii) part time instructor for- (A) Art Education; (B) Health and Physical Education; (C) Work Education.	
2	Building	All-weather building consisting of- (i) at least one class-room for every teacher and an office-cum-store-cum-Head-teacher's room; (ii) barrier-free access; (iii) separate toilets for boys and girls; (iv) safe and adequate drinking water facility to all children; (v) a kitchen where mid-day-meal is cooked in the school;	

		(vi) playground; (vii) arrangements for securing the school building by boundary wall or fencing.
3	Minimum number of working days/instructional hours in an academic year	(i) two hundred working days for first class to fifth class; (ii) two hundred and twenty working days for sixth class to eighth class; (iii) eight hundred instructional hours per academic year for first class to fifth class; (iv) one thousand instructional hours per academic year for sixth class to eighth class.
4	Minimum number of working hours per week for the teacher	Forty-five teaching including preparation hours
5	Teaching learning equipment	Shall be provided to each class as required.
6	Library	There shall be a library in each school providing newspaper, magazines and books on all subjects, including story-books.
7	Play material, games and sports equipment	Shall be provided to each class as required.

32. In exercise of the powers conferred by Section 38 of the Right to Education Act, the State Government made the Kerala Right of Children to Free and Compulsory Education Rules, 2011. Clause (o) of Rule 2 define the term 'neighbourhood' to mean 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 Right to Education Act and shall include areas of such schools in adjacent local bodies. Clause (q) of Rule 2 defines the term 'school mapping' to mean 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 authorised agencies. Clause (t) of Rule 2 defines the term 'walking distance' to mean the maximum distance of one kilometre in respect of a child studying in standard I to V and three kilometres in respect of a child studying in standard VI to VIII, covered by a child from his residence to the school on the shortest, generally accepted path.

33. Rule 6 of the Kerala Rules deals with area or limits of neighbourhood. As per sub-rule (1) of Rule 6, the area or limits of neighbourhood within which a school has to be established by the Government or the local authority shall be, within a walking distance of one kilometre of the neighbourhood, in respect of children in classes from I to V; and within a walking distance of three kilometres of the neighbourhood, in respect of children in classes from VI to VIII. Sub-rule (2) of Rule 6 provides that, the Government shall endeavour 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.

34. Sub-rules (3) to (5) of Rule 6 of the Kerala Rules provides for locating the school by reducing the area or limits specified under sub-rule (1) in places with difficult terrain, etc.; transportation facility for children from small hamlets; and establishment of more than one neighbourhood school in places with high population density. Sub-rule (3) of Rule 6 of the Kerala Rules provides that, 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). As per sub-rule (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). Sub-rule (5) of Rule 6 provides that 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.

35. As per sub-rule (6) of Rule 6 of the Kerala Rules, the basis of the identification of the neighbourhood schools shall be the school mapping carried out by the Government. 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.

36. Sub-rules (7) and (8) of Rule 6 of the Kerala Rules provides for transportation facility to children with disability and home-based teaching to children with severe disability. As per sub-rule (7) of Rule 6, 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. Sub-rule (8) of Rule 6 provides that, 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.

37. Rule 7 of the Kerala Rules deals with academic responsibility of the Government to ensure quality education. As per clause (a) of sub-rule (1) of Rule 7, the Government shall provide free and compulsory education to every child of the age six to fourteen years and to this end, ensure provision of high quality education uniformly in all schools and for this, specify norms and standards in respect of all activities involving quality which supplement the norms and standards specified in the Schedule. As per clause (a) of sub-rule (3) of Rule 7, the Government shall ensure that children with disabilities have access to free education till they attain the age of 18 years and shall promote their integration in the regular schools.

38. Rule 8 of the Kerala Rules deals with responsibilities of the Government and the local authority. As per sub-rule (1) of Rule 8, a child attending a school referred to in sub-clause (i) and (ii) of clause (n) of Section 2 of the Right to Education Act, 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 text books, writing materials, uniforms, free transportation and residential facilities. Sub-rule (2) of Rule 8 provides that, 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 of the said Act, within a period of one year from the appointed date, and every year thereafter.

39. Rule 13 of the Kerala Rules deals with extended period of admission. As per sub-rule (1) of Rule 13, extended period of admission shall not exceed three months from the date of commencement of the academic year of a school. Sub-rule (2) of Rule 13 provides that, where a child is admitted in a school after the extended period he shall be provided with such special training for such period, as may be determined by the head-teacher of the school.

40. Rule 14 of the Kerala Rules deals with recognition/upgradation to school. As per sub-rule (1) of Rule 14, 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 the Right to Education Act, and referred to under sub-clause (iv) of clause (n) of Section 2 as an un-aided 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 (for brevity 'the KER') in addition to the norms in the Schedule and fulfilment of the conditions enumerated in clauses (a) to (m) of sub-rule (1). As per sub-rule (8) of Rule 14, any School which does not conform to the norms and 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 Right to Education Act.

41. As per sub-rule (9) of Rule 14 of the Kerala Rules, 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 the Right to Education 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) of Rule 14 shall be given recognition. As per sub-rule (10)

of Rule 14 of the Kerala Rules, the existing unrecognised schools seeking recognition under the Right to Education 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 the Kerala Rules. Such schools shall also fulfill the educational need of the locality as revealed in the school mapping carried out by the authorised agency and the educational need shall be certified by the local authority and the Assistant Educational Officer concerned. Therefore, even in the case of an unrecognised school, which has complied with the norms and standards stipulated by the KER, in addition to the norms in the Schedule to the Right to Education Act, and fulfilled the conditions enumerated in clauses (a) to (m) of sub-rule (1) of Rule 14, recognition can be granted only if there is educational need in the locality, as revealed in the school mapping and such educational need is certified by the local authority and the Assistant Educational Officer concerned.

42. Sub-rule (14) of Rule 14 of the Kerala Rules provides for opening of a new school or upgrading an existing school. As per sub-rule (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 in Form No.III and shall conform to the norms and

standards specified in the Schedule of the Right to Education Act and those mentioned in Rule 14, 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 authorised agency and such educational need shall be certified by the local authority and the Assistant Educational Officer concerned.

43. The provisions under the Right to Education Act and the Kerala Rules referred to hereinbefore would show that, as per Section 3 of the Act every child of the age of six to fourteen, including a child referred to in clause (b) or clause (e) of Section 2, i.e., child belonging to disadvantaged group or child belonging to weaker section, shall have a right to free and compulsory education in a neighbourhood school till completion of his or her elementary education, as defined in clause (f) of Section 2 of the Act. Section 6 provides that, for carrying out the provisions of the 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 the Act. Sub-section (1) of Section 7 of the Act provides that, the Central Government and the State Governments shall have concurrent responsibility for providing funds for carrying out the provisions of the

Act. Section 8 of the Act casts a duty on the appropriate Government to provide free and compulsory elementary education to every child; ensure availability of a neighbourhood school as specified in Section 6; etc. and Section 9 of the Act casts a similar duty on the local authority.

44. Section 18 of the Act deals with recognition of schools imparting elementary education, other than a school established, owned or controlled by the appropriate Government or the local authority. As per the provisions under Section 19, the fulfillment of the norms and standards specified in the Schedule of the Act is a mandatory requirement to establish or run a school imparting elementary education. In the case of a school established before the commencement of the Act, which does not fulfill the norms and standards specified in the Schedule, within the period of three years from the date of commencement of the Act, as specified in sub-section (2) of Section 19, the authority prescribed under sub-section (1) of Section 18 shall withdraw the recognition granted to such school, in the manner specified in sub-section (3) thereof. The Schedule to the Act prescribes different norms and standards for Class I to V and Class VI to VIII for the items 'number of teachers' and 'minimum number of working days/instructional hours in an academic year'.

45. As per sub-rule (1) of Rule 6 of the Kerala Rules, the area

or limits of neighbourhood within which a school has to be established by the Government or the local authority shall be, within a walking distance of 1km of the neighbourhood, in respect of children in classes from I to V; and within a walking distance of 3km of the neighbourhood, in respect of children in classes from VI to VIII. Clause (o) of Rule 2 defines the term 'neighbourhood' to mean 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. Clause (t) of Rule 2 defines the term 'walking distance' to mean the maximum distance of 1km in respect of a child studying in classes from I to V and 3km in respect of a child studying in classes from VI to VIII, covered by a child from his residence to the school on the shortest, generally accepted path.

46. As per sub-rule (2) of Rule 6, the Government shall endeavour to upgrade in a phased manner, existing Government and aided schools with classes from I to IV, to include classes from V to VIII and in respect of schools which start from class V onwards, to add classes from I to IV 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. The provisions under sub-rule (2) of Rule 6 makes it explicitly clear that, upgradation of the existing Government and aided schools can only be made after taking into account the availability of such classes in the existing schools in the neighbourhood, i.e., the availability of schooling facility in the neighbourhood.

47. As defined under clause (q) of Rule 2, 'school mapping' is the 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 authorised agencies. Therefore, upgradation of the existing Government and aided schools, as provided under sub-rule (2) of Rule 6, can only be made on an assessment of the availability of schooling facilities for elementary education, based on the norms and standards specified in the Schedule to the Act, in terms of location, infrastructure, distance matrix between schools and habitations, etc. If

that be so, the basis for upgradation of the existing Government and aided schools, under sub-rule (2) of Rule 6 of the Kerala Rules, shall be the educational need for such upgradation, as found in the school mapping conducted by authorised agencies.

48. A reading of the provisions under Rule 14 of the Kerala Rules would indicate that, the procedure for recognition contemplated under sub-rule (1) to sub-rule (6) of Rule 14 has application only to schools other than a school established, owned or controlled by the Central Government or the State Government or the local authority. Similarly, a reading of sub-rule (14) of Rule 14, which provides for starting of new schools or upgradation of an existing school would indicate that, it has no application to schools established, owned or controlled by the Central Government or the State Government or the local authority, inasmuch as, the said sub-rule contemplates application from an educational agency or society proposing to start a new school or upgrade and existing school. Though the provisions of Rule 14 has no application in the matter of establishment or upgradation of a school owned or controlled by the Central Government or the State Government or the local authority, in view of the provisions under sub-rule (2) of Rule 6 of the Kerala Rules, read with clause (q) of Rule 2, the basis for upgradation of an existing a

school owned or controlled by the Central Government or the State Government or the local authority shall be the educational need for such upgradation, as found in the school mapping conducted by authorised agencies.

49. In so far as schools other than a school established, owned or controlled by the Central Government or the State Government or the local authority are concerned, the basis for recognition of an unrecognised school or starting a new school or upgradation of a recognised school, shall be the educational need for such recognition, upgradation, etc. as found in the school mapping. Sub-rule (10) of Rule 14 provides that, in order to seek recognition, the existing unrecognised school shall fulfill the educational need of the locality as revealed in the school mapping carried out by the authorised agency and the educational need shall be certified by the local authority and the Assistant Educational Officer concerned. Similarly, as provided under sub-rule (14) of Rule 14, in order to start a new school or upgrade an existing school, 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 authorised agency and such educational need shall be certified by the local authority and the Assistant Educational Officer concerned. Therefore, in view of the provisions

under sub-rule (14) of Rule 14, read with clause (q) of Rule 2 and sub-rule (2) of Rule 6, the basis for upgradation of an existing school, other than a school established, owned or controlled by the Central Government or the State Government or the local authority shall be educational need of the locality as revealed in the school mapping carried out by the authorised agency and certified by the local authority and the Assistant Educational Officer concerned.

50. In **Manager, L.P.G.S., Veliyam, Kollam v. State of Kerala and others [2015 (3) KHC 703]** a learned Judge of this Court had occasion to consider the question as to whether the applications filed before the State, by the Managers of various aided schools in the State, in the form prescribed under the Kerala Right of Children to Free and Compulsory Education Rules, 2011, seeking upgradation of existing aided schools so as to bring within their fold additional classes (Standard V in the case of existing L.P. Schools and Standard VIII in the case of existing U.P. Schools), which do not contain the recommendation/countersignature of the educational authority concerned, which is a mandatory requirement under the said Rules to maintain such applications, can be entertained. On a perusal of the Right to Education Act and the Rules made thereunder, this Court found that for the satisfactory discharge of its obligations under the

said Act, the State Government is obliged to do the matters enumerated in paragraph 3 of the said judgment, in connection with setting up of the necessary infrastructure for imparting elementary education. This Court held that, the number of children who are beneficiaries under the Act, and who reside in the territorial limits of a local authority, would represent the educational need of that area. On a consideration of the steps taken by the State Government, in the light of its obligation to give effect to the provisions of the Right to Education Act in the State, this Court found that the State Government need to complete the tasks enumerated in paragraph 5 of the said judgment, so as to put itself in a position where it will be able to effectively consider the applications preferred by the petitioners therein for upgradation of their schools. It is only thereafter, that the State Government can call for and consider the applications for the grant of new schools/upgradation of existing schools in each area. In paragraph 6 of the said judgment, this Court held that, till such time as the process of consideration of applications is completed by the State Government, existing schools need not be permitted to admit students to standards which have not been sanctioned in the said schools through a formal process of upgradation. Paragraphs 3, 5 and 6 of the judgment read thus;

“3. On a perusal of the provisions of the RTE Act and Rules framed thereunder, it is clear that for the satisfactory discharge of its obligations under the Act, the State Government is obliged to do the following in connection with the setting up of the necessary infrastructure for imparting elementary education:

(i) Collect data regarding children up to the age of 14 years within the State of Kerala.

(ii) Identify an authority that will analyse the said data so as to earmark the areas where the children reside. The demarcation of areas would have to be aligned with the territorial limits of a local authority, and the number of children who are beneficiaries under the Act, and who reside in the said area, would represent the educational need of that area.

(iii) An inventory will then have to be drawn up, of the existing schools within each demarked area, and a study done to ascertain the infrastructural availability in the said schools. Any deficit noticed in servicing the educational need of a particular area, using the existing infrastructural availability, would then have to be remedied through the introduction of new infrastructure brought about either by establishing new schools or by upgrading existing schools in that area.

(iv) Necessary yardsticks/criteria will have to be formulated so as to determine the manner of choosing an existing school in a given area that will be considered for upgrading. While formulating the said criteria, due

consideration must be given to the aspects noted in Rule 6 of the RTE Rules. These criteria will then have to be published so as to ensure transparency in the selection process of schools for upgradation. The chosen schools must also be those that adhere to the norms and standards prescribed for schools under the Schedule to the Act.

(v) Government has to constitute an academic authority, by notification, so as to draw up the curriculum and evaluation procedure for elementary education.

(vi) Government has also to constitute a State Advisory Committee to advise the State Government on implementation of the provisions of the Act in an effective manner.

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5. On a consideration of the steps taken by the State Government thus far, in the light of its obligation to give effect to the provisions of the RTE Act in the State, I find that the State Government will now need to complete the following tasks so as to put itself in a position where it will be able to effectively consider the applications preferred by the petitioners herein for upgradation of their schools.

(i) The data with regard to children up to the age of 14 years will have to be gathered and analysed, and a report drawn up showing the educational need of each area within the territorial limits of the various local authorities in the State.

(ii) Based on a comparison of the aforesaid data, with the

data obtained with regard to the current infrastructural facility available in the said areas, a decision will have to be taken as regards the sanctioning of new schools/upgradation of existing schools in the area concerned. The progress report dated 13.05.2015 prepared by the State Project Director, SSA, Kerala indicates that steps are well underway towards collection of the aforesaid data and preparation of the necessary software that will process the same. Specific time schedules between June 15th and July 15th, 2015 have also been indicated for completing the process.

(iii) The State Government will also need to evolve suitable criteria that will determine which, among the many applications for sanction of new schools/upgradation of existing schools, will be preferred for the said grant.

(iv) It is only thereafter, that the State Government can call for and consider the applications for the grant of new schools/upgradation of existing schools in each area."

6. When queried on the time that would be required by the State Government for completing the aforesaid exercise, the learned Additional Advocate General would submit that the State would require eight months time for the same. On a consideration of the task that the State Government is expected to undertake, I am of the view that the time of eight months, requested for by the State Government, is excessive. In my view, taking into account the time frame indicated by the State Project Director, SSA, Kerala in the progress report referred to above, as well as the time

required for incidental activities, a time frame of four months from today should suffice for the State Government to put itself in a position to call for applications for sanction of new schools/upgradation of existing schools. Accordingly, I direct the State Government to ensure that the necessary steps required for processing applications for opening new schools/upgradation of existing schools, in accordance with the provisions of the RTE Act, is put in place within four months from today, i.e., on or before 31.10.2015. Thereafter, the State Government shall complete the process of calling for applications for sanction of new schools/upgrading existing schools, considering them and taking an appropriate decision thereon, within a further period of two months, so that the said process is completed on or before 31.12.2015. It will be open to the petitioners herein to respond to any notice inviting applications that is published by the State Government pursuant to the directions in this judgment. In view of the directions issued above, I am of the view that till such time as the process of consideration of applications is completed by the State Government, existing schools need not be permitted to admit students to standards which have not been sanctioned in the said schools through a formal process of upgradation. This observation is made in the light of I.A.No.7592/2015, preferred in W.P.(C)No. 14814/2015, wherein the petitioner seeks permission to admit students in Standard V in his school where,

currently, only classes up to standard IV have been sanctioned. To similar effect are the prayers in W.P.(C)No. 14833/2015 and W.P.(C)No.15219/2015 where the petitioners seek a direction to the Educational Authorities to sanction Standard V and VIII respectively in their Schools which, at present, have only classes up to Standard IV and VII respectively. My findings above would necessitate a dismissal of I.A.No.7592/2015 in W.P.(C)No. 14814/2015 and W.P.(C)Nos.14833/2015 and 15219/2015. I do so.” (underline supplied)

51. The judgment in **Manager, L.P.G.S., Veliyam's case (supra)** was followed by a Division Bench of this Court in **State of Kerala and others v. Manager, Bhagavathi Vilasom A.L.P. School and another** (Judgment dated 18.6.2015 in W.A.Nos.96 and 960 of 2015 and W.P.(C)Nos.13792, 13822, 14514, 14531, 14532 and 14533 of 2015). The writ appeals, i.e., W.A.Nos.96 and 960 of 2015 were filed by the State of Kerala and others, aggrieved by the judgment of the learned Single Judge, whereby they were directed to consider the application made by the respective Managers for upgradation of their schools. In those writ appeals, the judgments of the learned Single Judge were under challenge, primarily contending that, in the absence of having completed the proceedings contemplated under the Right to Education Act, which are required to be completed prior to the consideration of the requests for

upgradation, the learned Single Judge ought not to have issued the impugned directions. In so far as W.P.(C)Nos.13792 of 2015, 13822 of 2015, etc. are concerned, those writ petitions were filed by the Managers of different schools where requests have been made for upgradation/opening of higher classes in the respective schools, in terms of the provisions under the Right to Education Act. The Division Bench disposed of those writ appeals and also the connected writ petitions filed by the Managers, by directing that the directions in the common judgment in **Manager, L.P.G.S., Veliyam's case** will govern the appellants and the writ petitioners in those cases also. Paragraphs 4 to 6 of the said judgment of the Division Bench in W.A.No.96 of 2015 and connected cases, read thus;

“4. When these cases were taken up for hearing today, the judgment rendered by the learned Single Judge, disposing of Writ Petition (C) No.3060 of 2014 and connected cases, where identical issues were considered at length, was brought to our issued the following directions:

“Accordingly, I direct the State Government to ensure that the necessary steps required for processing applications for opening new schools/upgradation of existing schools, in accordance with the provisions of the RTE Act, is put in place within four months from today, i.e., on or before 31.10.2015. Thereafter, the

State Government shall complete the process of calling for applications for sanction of new schools/upgrading existing schools, considering them and taking an appropriate decision thereon, within a further period of two months, so that the said process is completed on or before 31.12.2015. It will be open to the petitioners herein to respond to any notice inviting applications that is published by the State Government pursuant to the directions in this judgment. In view of the directions issued above, I am of the view that till such time as the process of consideration of applications is completed by the State Government, existing schools need not be permitted to admit students to standards which have not been sanctioned in the said schools through a formal process of upgradation.”

5. We have gone through the judgment and having regard to the fact that the issues arising in the present cases are similar to the issues that were considered by the learned Single Judge and also the fact that the required steps for processing applications for obtaining new Schools/upgradation are yet to be completed by the Government, we feel that these cases also can be disposed of directing that the appellants and the petitioners herein shall also be governed by the directions contained in the common judgment of the learned Single Judge mentioned above.

6. Accordingly, these writ appeals and writ petitions are disposed of directing that the aforesaid directions in the common judgment in W.P.(C)No.3060 of 2014 and connected cases will govern the appellants and the petitioners in these cases also.” (underline supplied)

52. The judgment of the Division Bench in **Manager, Bhagavathi Vilasom A.L.P. School's case (supra)** was under challenge before the Apex Court in S.L.P.(C)Nos.24786 and 24787 of 2015 filed by the petitioners in W.P.(C)Nos.13792 and 13822 of 2015, who are the Managers of the respective schools. Those S.L.P.s were disposed of by the order dated 07.04.2017 recording the submission made on behalf of the 1st respondent State and others that they have no objection to the order of this Court, i.e., the judgment of the Division Bench dated 18.6.2015 being implemented.

53. By G.O.(Ms.)No.154/2013/G.Edn. dated 03.05.2013, the Government made certain structural changes in the elementary education, Pupil-Teacher Ratio, etc. in view of the provisions under the Right to Education Act. Vide clause (2) of the said Government order, the Elementary Education Cycle is declared as one from Class I to VIII, wherein Class V and Class VIII will function in the existing premises of the Upper Primary Schools and High Schools respectively. Those Upper Primary Schools with Class V will be re-designated as 'Lower and

Upper Primary Schools', and those High Schools with Class VIII will be re-designated as 'Upper Primary and High Schools' under the Right to Education Act. The reason for such re-designation, as discernible from the aforesaid Government order, is that a mere mechanical change would result in large scale fund requirement for construction of classrooms and large scale redeployment of teachers. Vide clause (4) of the said Government order dated 03.05.2013, the Pupil-Teacher Ratio was revised as 30:1 for L.P. Schools (Classes I to V) and 35:1 for U.P. Schools (Classes VI to VIII), taking into consideration the total strength of students in a school and not on the basis of divisions.

54. In **Kerala Aided L.P. and U.P. School, Kollam v. State of Kerala and another [ILR 2016 (1) Kerala 590]** a learned Judge of this Court had occasion to consider the challenge against G.O. (Ms.)No.154/2013/G.Edn. dated 03.05.2013, whereby the Government made an attempt to implement the norms and standards for a school under the Right to Education Act. The challenge raised with respect to clause (2) and clause (4) of Government order dated 03.05.2013, which deal with declaration of classes I to VIII as Elementary Cycle and revision of Pupil-Teacher Ratio, respectively, was that the provisions of the KER, insofar as the same are repugnant to the provisions of the Right to Education Act would be rendered void by

virtue of the proviso to Article 254 of the Constitution of India. It was contended that, the first requirement is to bring Class V to L.P. Section after plucking it away from U.P. Section and bringing Class VIII to U.P. Section, by removing it from High School Section. Referring to the definition of 'elementary education' in clause (f) of Section 2 and 'school' in clause (n) of Section 2, it was contended that, as per the Right to Education Act, a school for elementary education is one having Class I to VIII. Therefore, it was contend that, what is contemplated by elementary education is a wholesome education with admittance in Class I and uninterrupted continuance till Class VIII. It was also contended that, refusal, to upgrade L.P. School to U.P. School and sanction of L.P. section to U.P. Schools, would attract withdrawal of recognition under sub-section (3) of Section 18 of the Right to Education Act, since effectively a child who is promoted to Class IV and Class VII, would be expelled for reason of the higher class, within the elementary cycle, being not available. Expulsion is expressly prohibited under Section 16 of the Right to Education Act. The said contentions were repelled by this Court, after referring to the provisions under Section 5 of the said Act, which contemplates a situation where there is no provision for completion of elementary education in a school, then, the child shall have a right to seek for transfer to any school

excluding those specified in sub-clauses (iii) and (iv) of clause (n) of Section 2 of the Act. This Court held that, what is contemplated in Section 16 of the Act is a deliberate, conscious act of expulsion. Hence, it cannot be said that by not upgrading LP School or UP School or by not granting a higher standard of Class V and Class VIII, it would entail withdrawal of recognition. Paragraphs 12 and 13 of the said judgment read thus;

12. The petitioners refer to the definition of 'elementary education' and 'school', contained respectively in Section 2(f) and 2(n), to contend that as per the RTE Act, a school for elementary education is one having Class I to VIII. What is contemplated by elementary education is a wholesome education with admittance in Class I and uninterrupted continuance till Class VIII. A refusal, to upgrade the LP School to UP and a sanction of LP section to the UP Schools, would attract withdrawal of recognition under Section 18(3); since effectively a child who is promoted to Class IV and Class VII, would be expelled for reason of the higher class, within the elementary cycle, being not available. Expulsion, it is pointed out is expressly prohibited under Section 16 of the RTE Act. This would run contrary to the provisions of the RTE Act and the State would be failing in its obligation to comply with the provisions of the Central legislation, is the argument.

13. A reading of the definition clause clearly stipulates that elementary education means, education from first class to

eighth class and a school, as defined under the RTE Act, is one imparting elementary education. Section 16 is a prohibition from holding back and expulsion. The contention of the petitioners is that a LP School which does not have Class V and an UP School which does not have Class VIII would be faced with the threat of withdrawal of recognition under Section 18, since a necessary consequence would be that a student studying in Standard IV or Standard VII would be expelled for reason only of the next higher standard not being available in the school. This Court is unable to accept the extreme contention of the petitioners, especially looking at Section 5 of the RTE Act, as pointed out by the learned Additional Advocate General. Section 5 contemplates a situation where; in a school, there is no provision for completion of elementary education, then, a child shall have a right to seek for transfer to any school excluding those specified in sub-clauses (iii) and (iv) of Clause (n) of Section 2. Hence, it cannot be said that by not upgrading a LP or UP School or by not granting a higher standard of Class V and Class VIII, it would entail withdrawal of recognition. What is contemplated in Section 16 is a deliberate, conscious act of expulsion.” (underline supplied)

55. In **Kerala Aided L.P. and U.P. School's case (supra)** this Court held that, there is nothing wrong in the procedure adopted in clause (2) of G.O.(Ms.)No.154/2013/G.Edn. dated 03.05.2013, which speaks of retaining Standard V and Standard VIII in the same

premises, re-designating them as Lower and Upper Primary Schools and Upper Primary and High Schools. But, this would not bring out the desired effect, since in stand alone LP and UP schools, the elementary cycle, even within the two distinct entities, would be absent. This could be effectively applied only in a complete High School with a LP section. This court found that the process of re-structuring would require more home work, as to the educational need of the area, where a particular school is situated and the proximity of nearby schools having higher standards. Though an upgradation upto Class VIII would not be required, there should at least be restructuring of L.P. and U.P. sections, by including Class V in the former and Class VIII in the latter; plucking them away respectively from U.P. and High Schools. This Court noticed that, the specific issue of restructuring of classes has already been dealt with in **Manager, L.P.G.S., Veliyam's case (supra)**, which consisted of a batch of writ petitions, which sought for consideration of individual applications for up-gradation and higher standards, wherein the learned Judge noticed the steps taken by the Government to bring in the changes contemplated by the Right to Education Act and listed out what remained to be done, including the decisions to be taken based on the educational need, to be determined with reference to the data collected. Since the time limit of four

months granted to the Government, in the judgment dated 18.06.2015, to carry out the reforms was not over, this Court thought it fit not to pre-empt the State by making any declaration on that aspect, as the State has been granted time to bring in such restructuring. This Court observed that, all would have to wait for the restructuring to happen and accordingly, this Court negated the challenge to the conversion of Elementary Cycle, as brought out by clause (2) of G.O.(Ms.)No.154/2013/ G.Edn. Dated 03.05.2013; however, leaving open the question of upgradation or grant of higher standards to be considered after the Government comes out with the comprehensive measure as directed by the judgment dated 18.06.2015. Regarding clause (4) of Government order dated 03.05.2013 stipulating 1:30 and 1:35 ratio to determine the staff strength, as contemplated under the Right to Education Act, this Court held that the provisions of the KER with respect to 1:45 ratio would be rendered void on the Right to Education Act coming into force and the stipulation would be as per the Schedule of the Central legislation, wherein different Pupil-Teacher Ratio is provided for Class I to V and Class VI to VIII, which has to be taken for individual class/divisions in the Elementary Cycle of the schools. Paragraphs 14, 15, 16 and 84(i) of the said judgment read thus;

14. It is to be immediately noticed that the stand of the Government with respect to PTR, is that the same has to be maintained only with respect to a school and not with respect to each class. It is difficult to harmonize the said contention with the present one, since without class V & VII, there could be no complete elementary cycle. Nor could there be a ratio so computed, even if the two separate units, as envisaged in the RTE Act and understood by the Government as the first and second stage of elementary education, is taken separately. Clause 2 of G.O.(Ms.)No.154/2011 speaks of retaining Standard V and Standard VIII in the same premises, re-designating them as Lower and Upper Primary Schools and Upper Primary and High Schools. There is nothing wrong in that procedure adopted. But, this would not bring out the desired effect, since in stand alone LP and UP schools, the elementary cycle, even within the two distinct entities, would be absent. This could be effectively applied only in a complete High School with a LP section. The determination of PTR as contemplated by the Government, on school basis would be impossible, since Class V & VII, in the case of stand alone LP, UP and High schools would be in different schools.

15. The process of re-structuring would hence require more home work, as to the educational need of the area, where a particular school is situated and the proximity of nearby schools having higher standards. Definitely Clause 2 of G.O.(Ms.)No.154/2013 may not alone suffice and

would also depend on the interpretation of PTR ratio as provided in the RTE Act. Attention would also have to be drawn to the contemplation of the RTE Act, which places Class I to V as one unit and Class VI to VIII as another distinct unit. Though an up-gradation up to Standard VIII would not be required, there should at least be restructuring of Lower and Upper Primary sections, including Class V in the former and Class VIII in the latter; plucking them away respectively from the UP & High Schools. Prejudice may be caused to certain Managers and Schools; but, it is only an inevitable and necessary consequence of the implementation of the RTE Act, which could not be assailed on grounds merely of hardship.

16. There were a batch of writ petitions which dealt with the specific issue of such restructuring of classes. The said batch of writ petitions were disposed of by judgment dated 18.06.2015 in W.P.(C)No.3060 of 2014 and connected cases. The said batch consisted of Writ Petitions which sought consideration of individual applications for upgradation and higher standards. The learned Single Judge noticed the steps taken by the Government to bring in the changes contemplated by the RTE Act and listed out what remained to be done, which future action was in the nature of the data to be collected and the decisions to be taken based on the educational need, to be determined with reference to the data collected. The Government was also granted time of four months to carry out the reforms, which time is not yet over. This Court would not pre-empt

the State by making any declaration on that aspect, as the State, has been granted time to bring in such restructuring in W.P.(C)No.3060 of 2014 and connected matters. All would have to wait for the re-structuring to happen and as of now there could be no infirmity found in Clause 2 of G.O.(Ms.)No.154/2013.

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84. Conclusions:

Considering the fact that the various writ petitions in the batch of cases, challenge the various orders individually, together or in different combinations, this Court is of the opinion that the writ petitions can be disposed of on the basis of the aforestated reasoning, with respect to each of the orders and issues highlighted by this Court, under sub-headings and the general conclusions would be as follows:

(i) The challenge to the conversion of Elementary Cycle as brought out by Clause 2 of G.O.(Ms.)No.154/2013/G.Edn. dated 03.05.2013 would be negatived; but, however, leaving open the question of upgradation or grant of higher standards to be considered after the Government comes out with the comprehensive measure as directed in W.P.(C) No.3060 of 2014 and connected cases, by judgment dated 18.06.2015. Clause 4 of the aforesaid G.O. stipulating 1:30 and 1:35 ratio to determine the staff strength, as contemplated under the RTE Act to the schools as such; retaining the 1:45 ratio as per the KER, would stand set aside. The provisions of the KER with respect to 1:45 ratio would be rendered, void on the RTE Act coming into force

and the stipulation would be as per the Schedule of the said Central legislation, wherein different PTR is provided for Class I to V and Class VI to VIII, which has to be taken for individual class/divisions in the Elementary Cycle of the schools.” (underline supplied)

56. During May/June 2017, certain writ petitions, including W.P.(C)No.17434 of 2017 and connected matters (Sl.Nos.2 to 45 in the list @ para.4), were filed before this Court seeking permission to the students in Class IV in the respective L.P. Schools to pursue their studies in Class V also in the very same school; and those studying in Class VII in the respective U.P. Schools to pursue their studies in Class VIII also in the very same school, by restructuring L.P. Schools with Class V and U.P. Schools with Class VIII. In those writ petitions interim orders were granted allowing admission of students in Class V or Class VIII, as the case may be, on certain conditions stipulated therein. By the judgments dated 29.08.2017, 27.09.2017 and 06.10.2017, almost all the writ petitions (other than the above mentioned 43 writ petitions) in which this Court granted interim orders allowing admission for the academic year 2017-18, of students in Class V or Class VIII, as the case may be, were disposed of giving liberty to the petitioners therein to move appropriate proceedings against the notification issued by the Director of Public Instructions bearing

No.NS(3)/21147/2016/DPI dated 19.05.2017 publishing the list of localities identified to have educational need as revealed in the school mapping and further studies and G.O.(Rt.)No.1813/ 2017/G.Edn. dated 09.06.2017, in case they are aggrieved. In the said judgment it was made clear that the interim orders passed in those cases permitting Class V/VIII in the schools of the petitioners would be confined to the academic year 2017-18 only.

57. As per the aforesaid notification dated 19.05.2017 issued by the Director of Public Instructions, educational need was found only in Ward No.2 of Cherekkad in Kunnamangalam Panchayat for Class I to V; and in Ward No.12 of Kunnankattupathy in Kozhinjampara Panchayat and Ward No.2 of Perunadu in Perunadu Panchayat for Class V, in the school mapping conducted in terms of the provisions under the Right to Education Act. The said notification was followed by Government order dated 09.06.2017, whereby the Government ordered to provide transportation facility to the children of 82 areas mentioned in the list appended to that Government order, to reach the nearest school with the co-operation/assistance of the local bodies, as provided in sub-rule (4) of Rule 6 of the Kerala Rules. Paragraphs 7 to 11 and also the operative portion of the judgment dated 27.09.2017 in W.P(C)Nos.16219 of 2017 and connected cases read thus;

7. When the writ petitions were brought up for hearing at the instance of respondents after filing the counter affidavits, the learned Counsel appearing for all the petitioners pointed out that the educational officers were not opening the Sampoorna Portal and were disobeying the directions of this Court. Thereupon, this Court, as per order dated 21.08.2017, directed compliance of the orders. After getting report of compliance from the respective officers through the learned Government Pleader, this Court had directed the petitioners to file affidavits pointing out the number of pupils they admitted on the basis of interim orders. Except in one or two cases, none of the petitioners filed such affidavits as directed, pointing out the number of students they admitted.

8. The contention of the petitioners in all these writ petitions are that as per the provisions contained in RTE Act, 2009, they are entitled to be granted permission to conduct class V in the LP Schools and class VIII in the UP Schools and Government's action in not restructuring the School in such a manner is in gross violation of the statute.

9. On the other hand the learned Advocate General and the learned Senior Government Pleader argued that Government has taken every steps to comply with the provisions contained in the RTE Act, Rules and the judgments of this Court.

10. It is pertinent to note that very same contention was raised in **Manager, L.P.G.S., Veliyam's case (supra)** as well as **Kerala Aided L.P. and U.P. School Managers'**

case (supra), as can be seen from the relevant paragraphs of the judgments extracted in paragraph 2 and 3 above. This Court issued several directions, to Government while rejecting the prayers for re-structuring of all the Schools.

11. Government thereafter issued orders based on the directions in those judgments. Ext.R1(d) order was passed as early as on 9.6.2017. Notifications were also issued as per Exts.R1 (c) and (d) on the basis of School mapping in tune with sub rule (14) of rule 14 of the Kerala Right of Children to Free and Compulsory Education Rules, 2011. It appears that petitioners do not have any complaint over the action taken/orders passed by Government in Exts. R1(c) or (d), though those orders were produced in June 2017. They stick on seeking reliefs, on the very same grounds, which this Court has already declined in the two judgments mentioned above. The Act or rules do not provide that the children should be given facilities to study in the same School from class I to V or VI to VIII or class I to VIII. The duty of the respondents is only to see that facilities to undergo elementary education is available in the neighborhood.

In the above circumstances, these writ petitions are disposed of, giving liberty to the petitioners to move appropriate proceedings against the orders passed by the Government, in case they are aggrieved. It is made clear that the interim orders passed in these cases permitting class V/VIII in the Schools of petitioners would be confined

to the academic year 2017-18 only.” (underline supplied)

58. The judgment of the learned Single Judge in disposing of the writ petitions, giving liberty to the petitioners therein to move appropriate proceedings against the notification dated 19.05.2017 of the Director of Public Instructions and the Government order dated 09.06.2017, in case they are aggrieved, was under challenge before the Division Bench in W.A.No.2487 of 2017 and connected cases. Those writ appeals ended in dismissal by the judgment dated 25.01.2018. Except for the clarification stated in paragraph 10 of the judgment, the Division Bench found no grounds to admit those writ appeals or to set aside the judgment appealed against. A reading of paragraph 10 of the judgment would make it explicitly clear that, the said clarification was in the context of the contentions put forward by the appellants that, the omission to provide education as stipulated by the Right to Education Act and the Rules by commencing Class V or Class VIII, as the case may be, would entail cancellation of the recognition of the schools and that, as per sub-rule (8) of Rule 14 of the Kerala Rules, any school that does not conform to the the norms specified in the Schedule to the Right to Education Act within three years from the date of commencement of the said Act shall stop its functioning, apart from attracting punishment under Section 19 of the

Act. Paragraph 10 and the operative portion of the judgment of the Division Bench in W.A.No.2487 of 2017 and connected cases read thus;

“10. Another contention put forward is that, the omission to provide education as stipulated by the RTE Act and the Rules by commencing classes for Std.V and Std.VIII, as the case may be, would entail a cancellation of the recognition of the schools. According to the learned counsel, as per Rule 14(8) any school that does not conform to the the norms specified in the schedule to the Act within three years from the date of commencement of the Act would have to stop its functioning, apart from attracting punishment under Section 19 of the Act. It is pointed out that the three year period has expired. The above is a contingency that would have to be addressed by the State while considering the question as to whether a school should be granted permission to start additional standards for the purpose of conforming to the provisions of the RTE Act and the Rules. The appellant shall be at liberty to approach the Government for the said purpose. If applications for such purpose are submitted, needless to observe that the Government shall consider and dispose them of in accordance with law. Except for the above clarification we find no grounds to admit these appeals or to set aside the judgment appealed against. These appeals are therefore dismissed.”

(underline supplied)

59. A reading of paragraphs 5 and 6 of the judgment of the Division Bench in W.A.No.2487 of 2017 and connected cases would show that, after referring to the provisions of Rules 1 and 2 of Chapter II of the KER, Sections 18 and 19 of the Right to Education Act, and also sub-rules (1) and (8) of Rule 14 of the Kerala Rules, the appellants contended that, as per Chapter II, Rule 2 of the KER, schools for General Education are to consist of two grades, the Primary Grade comprising of Class I to VII, which is subdivided into Lower Primary and Junior Basic, comprising of Class I to IV and Upper Primary and Senior Basic comprising of Classes V to VII. Classes VIII to X are collectively known as Secondary Grade. On the other hand, as per sub-section (1) of Section 18 of the Right to Education Act, no school, other than a school established, owned or controlled by the appropriate Government or the local authority, shall be permitted to be established and recognised under Section 18, unless it fulfills 'the norms and standards specified in the Schedule'. The Schedule stipulates Class I to V in one grade and Class VI to VIII in the second category. The Schedule further prescribes Teacher-Pupil Ratio as well as number of working days that the school is expected to work. The appellant have also placed reliance on G.O.(Ms.)No.154/2013/G.Edn. dated 03.05.2013, whereby the Government has declared Class I to

VIII as Elementary Education Cycle. In view of the above provisions, the appellants contended that, it is only appropriate that sanction is accorded to commence additional standards in consonance with the scheme that is envisaged by the Right to Education Act and the Rules. The appellants have also relied on the law laid down by the Apex Court in **Kalyani Mathivanan v. K.V.Jeyraj [(2015) 6 SCC 363]** and also **Sudhir N. v. State of Kerala [(2015) 6 SCC 685]**, in the context of Article 254 of the Constitution of India, which deals with repugnancy of the law made by the State with the law made by the Parliament.

60. A reading of paragraph 7 of the judgment of the Division Bench in W.A.Nos.2487 of 2017 and connected cases would show that, opposing the contentions of the appellants, it was pointed out by the learned Advocate General that, all the obligations of the Government under Article 21A of the Constitution of India as well as the provisions of the Right to Education Act have been discharged, by framing the Kerala Rules in 2011, with effect from 06.05.2011, putting in place all necessary provisions to ensure that the fundamental right under Article 21A of the Constitution was made meaningful to the children. Notification No.NS(3)/21147/2016/DPI of the Director of Public Instructions was issued on 19.05.2017 identifying the localities in

which the facilities stipulated by the Right to Education Act and the Rules were not available and appropriate action has been taken by issuing G.O.(Rt.)No.1813/2017/G.Edn. dated 09.06.2017 by providing transportation facility to the children of 82 areas to reach the nearest school. Relying on the decision of a Division Bench of this Court in **Kum.Sreya Vinod v. Director of Public Instructions and another [2012 (4) KHC 49]** it was pointed out that, providing transportation facility was accepted by this Court as sufficient to discharge the obligations of the State under the Right to Education Act and the Rules. The learned Advocate General has also placed reliance on the decision of this Court in **Kerala Aided L.P. and U.P. School's case (supra)**, paragraphs 10 to 16 and 84 in particular, to point out that, similar contentions had been repelled by this Court on an earlier occasion.

61. While considering the rival contentions, with reference to the mandate of Article 21A of the Constitution of India, the provisions of the Right to Education Act and the Rules made thereunder, the Division Bench noticed that, the complaint of the appellants is that, they have not been granted the sanction to add either additional Class V or additional Class VIII to their schools for the purpose of giving meaningful education to the children who are studying in those

schools. The State has in furtherance of the objective enacted the Kerala Rules, putting in place various measures to ensure proper implementation of the provisions of the Right to Education Act. Though the appellants have contended that, the schools are entitled under the provisions of the Right to Education Act and the Rules made thereunder to be granted permission to start additional classes, the Division Bench found that they do not have any such right either under the Right to Education Act or the Rules framed thereunder. With respect to the question as to whether the State has discharged its obligations for giving effect to the Right to Education Act, the Division Bench found that the Kerala Rules have made provisions. As per Government Order dated 19.05.2017, the Government have identified the areas where sufficient schools were not available to provide elementary education to the children. As per Government order dated 09.06.2017, the Government have, for the purpose of meeting the educational needs of the children in the locality, ordered to provide transportation facilities in 82 areas appended to that order. Such transportation facilities are provided to children for reaching the nearest schools with the co-operation/assistance of the local bodies. The Division Bench held that, instead of establishing additional schools or providing additional infrastructural facilities, the provision of

providing transportation facilities cannot be found fault with.

Therefore, the Division Bench was not satisfied that there has been any lapse in the matter of implementing the provisions of the Right to Education Act and the Rules, as alleged by the appellants. Paragraphs 8 and 9 of the judgment of the Division Bench in W.A.No.2487 of 2017 and connected cases, read thus;

"8. Heard. We have considered the respective contentions advanced before us by the contesting parties, anxiously. It is true that, by the Constitution 86th Amendment Act 2002, the right to education has been made a fundamental right by the introduction of Article 21A. In tune with the mandate of the said provision, the Union Parliament has enacted the RTE Act, 2010. The complaint of the appellants before us is that, they have not been granted the sanction to add either an additional Vth standard or an additional VIIIth standard to the schools conducted by them for the purpose of giving meaningful education to the children who are studying in their schools. We notice that, the obligation to provide elementary education to the children in the age group of 6 to 14 years is on the State. The State has in furtherance of the objective enacted the Kerala Rules of 2011 putting in place various measures to ensure proper implementation of the provisions of the Act and the Rules. Though it is contended that, the schools are entitled under the provisions of the RTE Act, 2009 and the Rules thereunder to be granted permission to start additional

classes, we do not find that they have any such right either under the RTE Act 2009 or the Rules framed thereunder. It is true that, they have offered to provide the necessary facilities for the purpose of starting additional standards at their expense. However, the fact remains that teachers would be necessary to impart instruction to the students. According to the respective counsel appearing for the appellants, by utilising the services of the protected teachers available in the State, any additional burden on the State exchequer could be avoided. It could also be ensured that the services of the protected teachers are more meaningfully utilised, considering the obligation of the State to pay them, even though they do not have sufficient work to be discharged. However, the above aspect is one on which the Government would have to bestow its attention. We do not know what is the number of protected teachers available for such utilisation or deployment. We are also not aware as to what would be the other consequences that are likely to follow by such deployment of the protected teachers. As rightly pointed out by the learned Advocate General, in the absence of such teachers being not available, the Managers of the schools would make fresh appointments adding to the burden on the State exchequer. Therefore, those are matters on which the Government would have to take a decision after evaluating the ground realities.

9. With respect to the question as to whether the State has discharged its obligations for giving effect to the RTE

Act and the Rules, we find that the Kerala Rules have made provisions. As already noticed above, as per Exhibit R1(c) Government Order, the Government have identified the areas where sufficient schools were not available to provide elementary education to the children. 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 Governmental decision making. Instead of establishing additional schools or providing additional infrastructural facilities, the provision of providing transportation facilities cannot be found fault with. Therefore, we are not satisfied that there has been any lapse in the matter of implementing the provisions of the RTE Act and the Rules as alleged by the appellants.” (underline supplied)

62. The judgment of the Division Bench in W.A.No.2487 of 2017 and connected cases was under challenge before the Apex Court in S.L.P.(C)Nos.10677-81 of 2018. Those Special Leave Petitions were disposed of by the order dated 23.04.2018, recording the submission

made by the learned counsel for the petitioners that, the petitioners shall make a fresh application in terms of the order passed by this Court, within a period of one week. The Apex Court disposed of those Special Leave Petitions expecting that the concerned authority shall take a decision within a period of two months thereafter. Against the said order dated 23.04.2018, the State filed correction petition and by the order dated 18.05.2018 the Apex Court has made it clear that it has only issued direction to approach the High Court to prevent the School from approaching the Apex Court for similar orders and if the school approach the High Court, the High Court can also pass an order identical to the order dated 23.04.2018.

63. The learned Senior Government Pleader has filed an adoption memo dated 28.06.2017 in W.P.(C)No.17434 of 2017 to adopt the counter affidavit filed by the State dated 20.06.2017 in W.P. (C)No.16421 of 2017. The procedure followed by the Educational Authorities to identify the localities having educational need is explained in paragraphs 10 to 16 of the counter affidavit filed in W.P. (C)No.17434 of 2017. A reading of the said counter affidavit would show that as per the directions of the State Sarva Shiksha Abhiyan, Kerala mapped the schools and Multi-grade Learning Centres in Kerala through Global Positioning System. The Director of Public Instructions

notified the list of 62 localities in 4 schedules through notification published in Kerala Gazette dated 25.05.2016. As per that notification, one month time was granted 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 complainants and prepared a list of 81 localities in 5 schedules and submitted the same to the Government. After analysing the same, the Government directed the Director of Public Instructions to revise the list after collecting physical verification report of the Educational Officers concerned. In between, some individuals who have not submitted their objections/representations against the draft notification dated 25.05.2016 approached this Court for including their localities or to oppose inclusion of certain localities in the list, which forms part of that notification. This Court directed consideration of those objections. Pursuant to the said direction, the Director of Public Instructions considered their representations and thereafter submitted a list of 91 localities in 5 schedules to the Government, vide his letter dated 06.02.2017. On verification, the Government found that many areas where there is no educational need are included in the said list, since actual physical verification about the habitations of the children and distance to schools were not verified by the authorities. Therefore,

the Government ordered constitution of a combined team of competent officers from the Directorate of Public Instructions and Sarva Shiksha Abhiyan to conduct an integrated and scientific study about the localities, considering 7 parameters mentioned in paragraph 12 of the counter affidavit filed in W.P.(C)No.17434 of 2017. Paragraph 12 of the said counter affidavit reads thus:

“12. The Government directed to constitute a combined team comprising 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 neighborhood school.
- (iv) details of children in the age group of 1-14 years in the feeder area.
- (v) details of teachers in the neighborhood 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.”

64. The combined team of experts prepared a detailed chart of

localities taking into consideration 7 parameters referred to hereinbefore. From the said list, considering the facts like availability of students, distance to the nearest school, availability of transportation, etc., the Director of Public Instructions identified three localities, which have ultimate educational need, to be included in the notification, and forwarded the same to the Government. The Director of Public Instructions has also requested the Government to provide transportation to the students, who were falling in 88 localities having proven educational need. Rest of the areas which were included in the earlier draft notification were found to have no educational need. Along with the counter affidavit in W.P.(C)No.16421 of 2017, a copy of the statement of notified localities having educational need prepared by the Director of Public Instructions is produced as Ext.R1(b). The said statement also contains the list of localities where transportation facility is to be provided. Thereafter, based on the permission granted by the Government, the Director of Public Instructions issued notification dated 19.05.2017 publishing the list of localities identified to have educational need as revealed in the school mapping and further studies. Later, as requested, by the Director of Public Instructions, the Government issued order dated 09.06.2017, for providing transportation facility to 82 areas.

65. The averments in the counter affidavit dated 20.06.2017 filed by the the State in W.P.(C)No.16421 of 2017, which has been adopted in W.P.(C)No.17434 of 2017, vide adoption memo dated 28.06.2017, would show that, in terms of the directions contained in the judgment of this Court in **Manager, L.P.G.S., Veliyam's case (supra)**, the Government conducted an integrated and scientific study about the localities having educational need, which culminated in the issuance of notification dated 19.05.2017 of the Director of Public Instructions, publishing the list of localities identified to have educational need, and Government order dated 09.06.2017 identifying 82 areas for providing transportation facility. Though the aforesaid notification and the Government order are under challenge in the writ petitions referred to hereinbefore at paragraphs 7, 10 and 13 of this judgment, in none of those writ petitions an effective challenge against the said notification and Government order has been made based on the materials collected by the team of experts, considering the 7 parameters of such scientific study. In other writ petitions, even without challenging the said notification and the Government order, permission is sought for to have Class V or Class VIII, as the case may be, in the respective L.P. Schools/U.P. Schools.

66. During the course of arguments, the learned Senior

Government Pleader would point out that, the procedure followed by the Educational Authorities for school mapping and the various steps taken to comply with the directions contained in the judgment in **Manager, L.P.G.S., Veliyam's case (supra)** were placed before this Court in the form of affidavits in support of I.A.Nos.320, 6121, 12119, and 20736 of 2016 and 5839 of 2017 filed in W.P.(C)No.3060 of 2014, which are interlocutory applications filed by the State and the Educational Authorities seeking extension of time. Along with I.A.Nos.9489 and 12982 of 2016, additional affidavits were filed explaining the various steps taken to comply with the directions in that judgment. In those interlocutory applications, extension of time was granted for different periods, and it was thereafter that, notification dated 19.05.2017 of the Director of Public Instructions and the Government order dated 09.06.2017 were issued.

67. The learned Senior Government Pleader would point out that, in the course of school mapping, the areas where the schools in this batch of writ petitions situate, were found not having educational need. Except the petitioners in W.P.(C)No.15259 of 2018 and 15941 of 2018, none have filed objection to the draft notification. As far as the school in W.P.(C)No.15941 of 2018 is concerned, the area where that school situates is included in the Government order dated 09.06.2017

for providing transportation facility. The area where the school in W.P. (C)No.15259 of 2018 situates was later excluded from the notification, since on verification it was found that there is no educational need.

68. On 31.05.2018, while listing the case to 01.06.2018 for further arguments of the learned Senior Government Pleader and for reply by the learned counsel for the petitioners, this Court ordered as follows;

“Since the classes for the academic year 2018-19 are to commence by 01.06.2018, it is made clear that any transfer certificates already issued to students, who have completed Standard IV/VII in the respective schools in these writ petitions, will be subject to further orders to be passed in these writ petitions.”

69. On 07.08.2018, certain clarifications were sought from the learned Senior Government Pleader regarding the school mapping conducted to identify the localities having educational need. On 08.06.2018, the learned Senior Government Pleader, with the assistance of the Additional Director of Public Instructions, a staff in the Directorate of Public Instructions, and also the Programmer, Sarva Shiksha Abhiyan, Ernakulam explained the various steps taken to identify the localities having educational need, which culminated in the notification dated 19.05.2017 of the Director of Public Instructions and the Government order dated 09.06.2018.

70. In the process of school mapping, geographic location of the schools have been collated and mapped on Geographic Information System Platform (GIS Platform) established by Sarva Shiksha Abhiyan Kerala. The school locations have been interlinked with the school report cards based on Unified District Information System for Education database (U-DISE database). The geographic locations of the schools provided by Sarva Shiksha Abhiyan, Kerala are available in its website <http://ssakerala.in/gis>. The web application comprises of base map services like street maps and high resolution satellite images for better understanding of the topography/terrain of the location, administrative boundaries, location information, etc. The geographic location of the schools collected by the State Education Departments has been collated and mapped on the GIS Platform established by National Informatics Centre. Further, the school locations have been interlinked with the school report cards based on U-DISE database, developed and hosted by National University of Educational Planning and Administration.

71. The geographic locations of the schools provided by each State Education Department is available in the website <http://schoolgis.nic.in/> of the Department of School Education and Literacy, Ministry of Human Resource Development, Government of

India. By entering the name of the school or school code anyone can collect the details regarding geographic location of that school, which has been collated and mapped on GIS Platform and other details like the nearest L.P./U.P./Secondary/Higher Secondary schools, the aerial/walkable/driving distance to such schools, the lowest and highest class available in such schools, the number of students enrolled, and also whether such schools are Government schools, aided schools or unaided schools. The distance between two schools can be viewed with street maps and high resolution satellite images by clicking the link 'find' against the name of each nearest school.

72. In none of these writ petitions an effective challenge has been made against notification No.NS(3)/21147/2016/DPI dated 19.05.2017 issued by the Director of Public Instructions regarding educational need and also G.O.(Rt.)No.1813/2017/G.Edn. dated 09.06.2017 to provide transportation facility to the children of 82 areas, with reference to the materials collected in school mapping, and the details regarding geographic location of the schools, availability of classes, etc. The file relating of notification No.NS(3)/21147/2016/DPI dated 19.05.2017 issued by the Director of Public Instructions, made available for the perusal of this Court, would show that the draft notification dated 25.05.2016 was published in the Official Gazette and

also in the website of the Director of Public Instructions. Copy of the draft notification was made available through the office of all Deputy Directors of Education, District Educational Officers and Assistant Educational Officers. Press release was also issued in this regard through the Director of Information and Public Relations. Thereafter, a personal hearing was also conducted on 30.09.2016.

73. As I have already noticed, W.P.(C)No.17434 of 2017 and connected matters (Sl.Nos.2 to 45 in the list @ para.4) where interim orders were granted for the academic year 2017-18, were part of the batch of cases disposed of by the judgment of the learned Single Judge dated 27.09.2017 and the connected judgments. In W.P.(C)Nos.16421 of 2017 and connected cases, this Court granted an interim order dated 19.05.2017, a copy of which is produced as Ext.P9 in W.P.(C)No.15259 of 2018. A reading of the said interim order would show that, when the notification dated 19.05.2017 of the Director of Public Instructions was brought to the notice, without saying that the said notification is bad or that the identification of the localities contained therein is not tenable, while granting the interim order this Court observed that, it is possible that the said notification is liable to be challenged and it is also likely that even if the notification is brought on record it would still require more time to confirm the final

action pursuant thereto.

74. After getting interim orders for admitting students to Class V or Class VIII, as the case may be, for the academic year 2017-18, none of the petitioners in those writ petitions of the year 2017 have chosen to challenge the said notification dated 19.05.2017 of the Director of Public Instructions or the Government order dated 09.06.2017, by amending those writ petitions. Later, by the judgment of the learned Single Judge dated 27.09.2017 and the connected judgments, most of those writ petitions of the year 2017 were disposed of giving liberty to the petitioners therein to move appropriate proceedings against the said notification dated 19.05.2017 and the Government order dated 09.06.2017, in case they are aggrieved. In the said judgment, it was made clear that the interim orders passed in those cases permitting class V/VIII in the schools of petitioners therein would be confined to the academic year 2017-18 only. In view of the above judgment, the Government vide letter No.GEDN-F3/98/2017-G.Edn. dated 21.02.2018 directed the Director of Public Instructions to take immediate steps to ensure that those schools which started Class V and Class VIII during the year 2017-18 based on court directions will not conduct such classes from the academic year 2018-19. The Director of Public Instructions was also

requested to make sure that the students admitted to Class V and Class VIII in such schools are issued transfer certificate to take admission to appropriate schools. A copy of the said Government letter dated 21.02.2018 is produced as Ext.P18 along with the reply affidavit filed by the petitioner in W.P.(C)No.15259 of 2018.

75. W.P.(C)No.17434 of 2017 and connected matters (Sl.Nos.2 to 45 in the list @ para.4) were part of the batch of cases disposed of by the Judgment of the learned Single Judge dated 27.09.2017 and the connected judgments. In W.P.(C)Nos. 17434, 17581, 17582, 17583, 17584 and 17585 of 2017 fresh interlocutory applications were filed seeking permission to admit students to Class V or Class VIII, as the case may be, for the year 2018-19. In those interlocutory applications, this Court granted interim order dated 04.05.2018. Thereafter, the petitioners filed interlocutory applications in W.P.(C)No.17434 of 2017 and connected matters (Sl.Nos.2 to 45) on 22.05.2017, seeking amendment of those writ petitions in order to challenge the notification dated 19.05.2017 of the Director of Public Instructions and also the Government order dated 09.06.2017. The said interlocutory applications were allowed on 04.06.2018 considering the fact that the notification dated 19.05.2017 and the Government order dated 09.06.2017 are already under challenge in other writ

petitions.

76. Regarding the educational need of the locality in which the respective L.P. Schools/U.P. Schools situate, the only averment made in paragraph 9 of W.P.(C)Nos.17434, 17581, 17582, 17583, 17584, 17585, 17635, 18446, 18613, 18614, 18615, 18616, 18617, 18618, 19460, 19461, 19462, 19463, 20093, 20094, 20095, 20096, 20097, 20098, 20099, 20100, 20101, 20295, 20296, 20297, 20298, 20299, 20300, 20316, 20317, 20318, 20320, 20557, 20843, 20994, 20995, 21138, 21139, 21140 of 2017 (Sl.Nos.2 to 45 in the list @ para.4) and also in W.P.(C)Nos.15806, 15838, 15890 and 17193 of 2018 (Sl.Nos.90, 97, 99, and 131) is that there is no neighborhood school within a walking distance of 1km from the L.P. School/3.5km from the U.P. School of the petitioners imparting elementary education. Thus, on the implementation of the Right to Education Act, Class V or Class VIII, as the case may be was started in the petitioners school. The documents produced along with the above 48 writ petitions are mainly the copy of the interim orders of this Court and also the orders of the Apex Court. In W.P.(C)No.15838 of 2018 a counter affidavit has been filed by the 5th respondent Manager, wherein it has been stated that the students who got qualified to Class V have already taken transfer certificates and joined schools of their choice. In W.P.(C)No.17866 of

2018 (Sl.No.134) it is averred in paragraph 9 of the writ petition that there is no neighborhood school within a walking distance of 3.5km of the petitioner's U.P. School.

77. It is pertinent to note that, in W.P.(C)No.18446 of 2017 (Sl.No.9 in the list @ para.4) filed by the President of the Parent-Teacher Association A.M.U.P.School, Ayyaya, Vellachal, a counter affidavit has been filed by the Manager of C.P.P.H.M. Higher Secondary School, Ozhur, Vellachal, who got himself impleaded as the additional 5th respondent, wherein it has been stated that, there are several schools in the locality and that, C.P.P.H.M. Higher Secondary School and A.M.U.P.School are on the adjacent compound. Pursuant to the order of this Court dated 06.10.2017, an Advocate Commissioner was deputed to verify the schools available within the vicinity of the petitioner's school. The Advocate Commissioner in her report dated 29.11.2017 has reported that, the distance between the petitioner's school and that of the additional 5th respondent is only 300 metres. The Advocate Commissioner has also noted the distance to other schools in the locality. The 3rd respondent Assistant Educational Officer has also filed an affidavit pointing out the availability of neighbourhood schools.

78. As far as W.P.(C)Nos.15494, 15517, 15518, 15526, 15532,

15539, 15540, 15546, 15548, 15555, 15571, 15615, 15631, 15632, 15634, 15647, 15648, 15651, 15652, 15653, 15669, 15672, 15746, 15764, 15765, 15769, 15770, 15771, 15785, 15801, 15805, 15813, 15821, 15827, 15830, 15832, 16169, 16206, 16207, 16210, 16216, 16217, 16223, 16224, 16228, 16229, 16231, 16233, 16264, 16296, 16713, 16758, 16760, 16761, 16766, 16916, 16940, 16947, and 17273 of 2018 (Sl.Nos.55, 57 to 77, 81, 83 to 89, 91 to 94, 96, 98, 105 to 108, 110 to 120, 122 to 128 and 132 in the list @ para.4) are concerned the only averment made in paragraph 1 of those writ petitions is that, there is no school situated within the distance of 1km/3km. Therefore, non-sanctioning of Class V/Class VIII would adversely affect the right of the pupils who are studying in the schools in question and that, non-sanctioning of Class V/Class VIII is in violation of the provisions of the Right to Education Act. The documents produced along with the above 59 writ petitions are only copy of the applications filed for upgradation, interim orders of this Court and also the orders of the Apex Court. In W.P.(C)Nos.15494, 15517, 15518, 15526, 15532, 15539, 15540, 15546, 15548, 15555, 15571 of 2018 this Court granted interim order on 08.05.2018 and in W.P.(C)No.15615 of 2018 interim order was granted on 11.05.2018.

79. In paragraph 1 of W.P.(C)No.23820 of 2016 (Sl.No.1 in the

list @ para.4) filed by the Manager of Ithihadul Islam Aided Lower Primary School, Cheroor it is averred that the nearest High School and U.P. School are more than 5km away from the petitioner's school. The petitioner, who is seeking upgradation of his L.P. School with classes upto VIII has not chosen to challenge the notification dated 19.05.2017 issued by the Director of Public Instructions and also the Government order dated 09.06.2017.

80. In W.P.(C)No.14645 of 2018 (Sl.No.50 in the list @ para.4) filed by the Headmistress and the President of the Parent Teacher Association of M.P.M. L.P. School, Killy Kollode, wherein this Court granted an interim order dated 27.04.2018, it is averred in paragraph 1 of the writ petition that nearest school which offers Class V is located more than 1km away and other aided schools are located further away from the petitioner's school. The petitioner has also produced Ext.P2 staff fixation order for the year 2017-18. A counter affidavit has been filed on behalf of the 1st respondent, which has been adopted in other writ petitions as well. In W.P.(C)No.14865 of 2018 (Sl.No.51) filed by the Manager of Dr.Lohia Memorial L.P. School, Mannadikonam it is averred in paragraph 1 that, although there are other schools located elsewhere that offer Class V, many of them are either unaided or technically incompetent to provide same quality of education that the

petitioner's school has been offering. The petitioner has also produced Ext.P2 staff fixation order for the year 2017-18. In the said writ petition, this Court granted an interim order on 04.05.2018.

81. In W.P.(C)No.15088 of 2018 (Sl.No.52 in the list @ para.4), filed by the Manager of St. Francis L.P. School, Ezhacode, Perukavu it is averred in paragraph 1 of the writ petition that, although there are other schools located elsewhere that offer Class V education, many of them are either unaided or technically incompetent to provide the same quality of education and that the petitioner's school is offering all these years for Class I to IV. The petitioner has also produced Ext.P2 staff fixation order for the year 2017-18. In the said writ petition, this Court granted an interim order on 04.05.2018. However, the Manager of St. Francis U.P. School, Ezhacode, Perukavu, who is none other than the brother of the petitioner, got himself impleaded and filed counter affidavit dated 25.05.2018, wherein it has been stated that both schools situate in the adjoining plots sharing a common way and also common boundary one one side. In paragraph 4 of the said counter affidavit it has been stated that, the 6th respondent's school with Class V is less than 50 meters away from the petitioner's L.P. School.

82. In W.P.(C)No.15089 of 2018 (Sl.No.53 in the list @ para.4) filed by the Manager, S.G.M.L.P. School, Marthandeswaram and the

Manager, E.V.U.P. School, Koothaly it is averred in paragraph 3 of the writ petition that, the locality where the 1st petitioner's L.P. School situate does not have any other nearby L.P. School which offers Class V. Similarly, in the case of the 2nd petitioner's U.P. School also, it is understood that there is no school within a radius of 3km that offer Class VIII. In the said writ petition, this Court granted an interim order on 04.05.2018. In W.P.(C)No.15502 of 2018 (Sl.No.56) filed by the Manager, S.R.S.U.P. School, Pallichal it is averred in paragraph 1 of the writ petition that there is no other school in a radius of at least 3km to the petitioner's school where Class VIII is being conducted. The petitioner has also produced Ext.P1 staff fixation order for the year 2017-18. In the said writ petition, this Court granted an interim order on 08.05.2018. In W.P.(C)No.15687 of 2018 (Sl.No.78) filed by the Manager, S.S.M.U.P.School it is averred in paragraph 1 of the writ petition that although there is a High School located nearby the petitioner's school, there is no other U.P. School providing elementary education upto Class VIII in the immediate vicinity. The petitioner has also produced Ext.P1 staff fixation order for the year 2017-18. In W.P. (C)No.17299 of 2018 (Sl.No.133) filed by the Headmistress of 12 L.P./U.P. Schools under the 13th petitioner Corporate Management of CSI-SKD Diocese, Thiruvananthapura, it is averred in paragraph 2 of

the writ petition that there is no other schools in the vicinity that would offer Class V or Class VIII in their respective L.P. or U.P. School. The petitioners have also produced Ext.P1 to P12 staff fixation orders for the year 2017-18.

83. W.P.(C)No.22580 of 2017 (Sl.No.46 in the list @ para.4) is filed by the Manager of V.V.A.U.P. School, Pattambi, seeking a writ of certiorari to quash notification dated 19.05.2017 issued by the Director of Public Instructions and also the Government order dated 09.06.2017, to the extent it excludes the case of V.V.A.U.P. School, in Ward No.I of Muthalamada, and a writ of mandamus commanding the 1st respondent State to include the petitioner's school as well, while ascertaining the educational need. The petitioner has also filed W.P. (C)No.15259 of 2018 (Sl.No.54) seeking permission to admit students in Class VIII in V.V.A.U.P. School, Pattambi, through 'Sampoorna Internet Portal'. It is averred in the writ petition that the nearest high school is at a distance of 4.7km, 4.8km and 4.9 km respectively. A copy of the list of students is also produced along with the writ petitions. In W.P.(C)No.15259 of 2018 this Court granted an interim order on 04.05.2018. In W.P.(C)No.15713 of 2018 (Sl.No.80) filed by the Manager of A.M.U.P. School, Karakkad it is averred that the nearest Government High Schools at Vadanamkurussy and Pattambi

are at a distance of 8km away from the petitioner's school. A copy of the list of students is produced along with the writ petition as Ext.P5. In W.P.(C)No.15831 of 2018 (Sl.No.95) is filed by the Manager of A.U.P. School, Irumbakasserry it is averred in paragraph 4 that the nearby Government High Schools at Vavanur and Chathanur are at a distance of 8km.

84. W.P.(C)No.12187 of 2018 (Sl.No.48 in the list @ para.4) filed by a student of Government High School, Athirattukunnu seeking a writ of mandamus commanding the State to sanction Classes V, VI and VII in that School having L.P. and High School sections and for a writ of mandamus commanding the Educational Authorities to consider and pass orders on Ext.P3 and P4 representations. In paragraph 5 of the writ petition it is averred that the nearest school is located at Irulam, which is at a distance of 4.2km away from Government High School, Athirattukunnu. It is also averred in paragraph 1 that, the school is situated in a backward area and there are 6 tribal colonies adjacent to the school compound.

85. In W.P.(C)No.15707 of 2018 (Sl.No.79) filed by the Manager, A.S.L.P. School, Chelakode seeking permission to have Class V, it is averred that the nearby High Schools at Chelakkara and Kondazhi are at a distance of 6km and 7 km respectively. In W.P.

(C)No.15764 of 2018 (Sl.No.82) filed by the Manager, Kuttiyil A.U.P School seeking permission to have Class VIII, it is averred that the nearby school is at a distance of 7km. In W.P.(C)No.16101 of 2018 (Sl.No.103) filed by the Manager, National Lower Primary School, Manali seeking permission to admit students in Class V and VI, it is averred that the nearest U.P. School is more than 4km away, without transportation facility. In W.P.(C)No.16215 of 2018 (Sl.No.109) filed by the Manager, B.T.M.L.P. School, Kumbankallu seeking permission to admit students to Class V, it is averred that, the nearest school is situated more than 3km away from the petitioner's school. In W.P.(C)No.16984 of 2018 (Sl.No.129) filed by the Manager, Vekkalam Aided U.P. School, Perumthodi seeking permission to admit students to Class VIII and for other reliefs, it is averred that there is no neighbouring school within a walking distance of 3.5km from the petitioner's U.P. School. In W.P.(C)No.17150 of 2018 (Sl.No.130) filed by the Manager, St. Francis U.P. School, Ezhacode seeking permission to admit students to Class VIII and for other reliefs, it is averred that there there is no school having Class V in the nearby locality and the nearest school with Class VIII is at a distance of 8km.

86. In W.P.(C)No.15941 of 2018 (Sl.No.100 in the list @ para.4) filed by the Manager, Mahatma Gandhi L.P. School, Manali

seeking a writ of certiorari to quash Ext.P5 communication dated 24.02.2018 and seeking permission to admit students in Class V, it is averred in paragraph 11 of the writ petition that there is no upper primary school within a radius of 4km and that 25% of the children studying in the school are from scheduled caste/scheduled tribe community. In W.P.(C)No.15943 of 2018 (Sl.No.101) filed by the Manager, S.R.V.U.P School, Changankulangara seeking a writ of certiorari to quash Ext.P2 notification dated 19.05.2017 of the Director of Public Instructions and seeking permission to admit students to Class VIII, it is averred that there is no High School within a radius of 3km and the two schools at Vayanakam and Thazhava are situated more than 3km away.

87. In W.P.(C)No.14209 of 2018 (Sl.No.49) filed by the parent of a student in Class III of Venmani A.L.P. School, Kambatti seeking upgradation of that school as a U.P. School by considering Exts.P4 and P5 representations, it is averred that within the radius of 6km no other U.P. Schools are available and that 31 tribal students and 4 scheduled caste students are studying in that school.

88. In W.P.(C)No.16167 of 2018 (Sl.No.104) filed by the Manager, Elayidam B.V.L.P. School, Kadameri seeking a writ of certiorari to quash Government order dated 09.06.2017 to the extent

of excluding Ward No.6 of Purameri Panchayat and seeking permission to admit students to Class V, it is averred that there is no U.P. School within 3km. In W.P.(C)No.16718 of 2018 (Sl.No.121) filed by the President of the Parent Teacher Association of Palayad Lower Primary School seeking permission to start Class V, it is averred that there is only L.P. Schools within a radius of 2km and that, every year 25 to 35 students pass out of Class IV from the petitioner's school.

89. W.P.(C)No.10663 of 2018 is filed by a differently abled child of Class VII in Government Mappila U.P. School, Velimanna who wants to pursue his studies in the very same school in Class VIII. The Parent-Teacher Association and the Upgradation Action Committee of that Government School are the 2nd and 3rd petitioners in that writ petition, in which Ext.P14 Government letter dated 19.01.2018 is under challenge, whereby the request for upgradation of Government Mappila U.P. School, Velimanna as High School stands rejected on the ground that in the notification issued by the Director of Public Instructions dated 10.10.2017, Velimanna in Omassery Grama Panchayat does not figure as an area having educational need. In Ext.P14 it has also been stated that, when the Government takes a policy decision in future with regard to upgradation of schools, application could be made for upgradation of that school. The

petitioners are seeking a writ of certiorari to quash Ext.P14 order and also a writ of mandamus commanding the respondents to sanction Classes VIII, IX and X, by upgrading U.P. School as a High School, and to permit conduct of Class VIII for the academic year 2018-19 onwards.

90. As already noticed, 'school mapping' as defined under clause (q) of Rule 2 of the Kerala Rules is the assessment of the availability of schooling facilities for elementary education, taking into account various factors mentioned in the said clause, which includes the distance matrix between schools and habitations. As per clause (t) of Rule 2, 'walking distance' is the maximum distance covered by a child from his residence to the school on the shortest, generally accepted path. As per clause (o) of Rule 2, 'neighbourhood' is 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 Right to Education Act and shall include areas of such schools in adjacent local bodies. The mandate of sub-rule (1) of Rule 6 is that, the area or limits of neighbourhood within which a school has to be established by the Government or the local authority shall be, within a walking distance of 1km of the neighbourhood, in respect of children in classes from I to V; and within a walking distance of 3km of the

neighbourhood, in respect of children in classes from VI to VIII.

91. As per sub-rule (3) of Rule 6 of the Kerala Rules, 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). Sub-rule (4) of Rule 6, which deals with transportation facility for children from small hamlets, provides that 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) of Rule 6. Similarly, sub-rule (5) of Rule 6 mandates that, 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.

92. In **Kum.Sreya Vinod's case (supra)** a Division Bench of

this Court held that, there will be nothing wrong in the Government or the local authority providing transportation facility in discharge of its obligations under the Right to Education Act and the Kerala Rules. In the judgment in W.A.No.2487 of 2017 and connected cases, after adverting to the contention advanced by the learned counsel with reference to the law laid down in **Kum.Sreya Vinod's case**, another Division Bench held that, instead of establishing additional schools or providing additional infrastructural facilities, the provision of providing transportation facilities cannot be found fault with.

93. In **Manager, Palathinkal M.L.P. School v. Sethumadhavan T.K. and others (2017 (4) KHC 799)** the Apex Court held that, children in the age group of 10 to 14 years cannot be expected to walk 3km or more to attend school. The right to education upto the age of 14 years is a fundamental right under Article 21A of the Constitution of India and if this right is to be meaningful, then efforts must be made to open Upper Primary schools in such a manner that no child has to walk 3km or more only to attend school. In the said decision the Apex Court was dealing with a case in which the appellant school, which was a Junior Primary School upto the level of Class IV was upgraded as Upper Primary School by permitting to run Class V to VIII also. The Government order permitting upgradation

was challenged by the 1st respondent, who is the Manager of a school being run in the vicinity, on the ground that the procedure prescribed under the KER had not been followed and no notice was given to the schools in the vicinity to raise objections against upgradation. The learned Single Judge of this Court allowed the writ petition and set aside the Government order on the ground that the procedure prescribed in Rule 2 of Chapter V of KER was not followed. Though the Government order was set aside, the appellant school was given permission to permit the students already admitted to continue their education in the school till the next academic year. The learned Single Judge has also directed that it would be open to the Government to take a fresh decision in the matter, after following the procedure prescribed under Rule 2 of Chapter V of KER. The appellant filed W.A.No.669 of 2016 which ended in dismissal. Before the Apex Court it was contended by the appellant school that both the courts have lost sight of the fact that the State Government specifically exercises the powers of relaxation vested in it under Rule 3 of Chapter I of KER. On a perusal of the Government order dated 16.06.2015, the Apex Court found that, it is a detailed order and the appellant school had made a request that, to meet the needs of the children of the locality, it may be permitted to upgrade as an Upper Primary School. In the order, it is

mentioned that the appellant school is situated in an economically backward area and that the students studying in the appellant school have to attend schools at a distance of 2.5km to 6km after passing Class IV. There were 268 students studying in the school from Classes I to IV. The Apex Court noticed that, there was no specific challenge to the order of relaxation. Having gone through the map produced as Annexure P13 in that Civil Appeal, showing the distance of various schools, the Apex Court found that no other school is at a distance of less than 3km from the appellant's school. The school of the 1st respondent is at a distance of 3km, if one crosses a level crossing and at a distance of 4.5km, if this journey is undertaken by bus. The Apex Court held that, children in the age group of 10 to 14 years cannot be expected to walk 3km or more to attend school. The right to education upto the age of 14 years is a fundamental right under Article 21A of the Constitution of India and if this right is to be meaningful, then efforts must be made to open Upper Primary schools in such a manner that no child has to walk 3km or more only to attend school.

94. During the course of arguments the learned Senior Government Pleader would bring to the notice of this Court G.O. (Rt)No.2006/2018/G.Edn. dated 30.05.2018 issued by the State, wherein it has been ordered that, in the backdrop of the re-opening of

the schools for the academic year 2018-19, the transportation facility provided by the Government order dated 09.06.2017 to children of the 82 localities identified in the said Government order shall continue. It was also ordered that the students of the above mentioned 82 localities can approach the local self Government institutions/ Government to avail such facility for the purpose of such education.

95. The guidelines issued by the Central Government on 25.07.2011 (F.No.1-12/2010-EE-4), in exercise of the powers conferred under sub-section (1) of Section 35 of the Right to Education Act, clarify the provisions under the said Act with reference to neighbourhood schools. The said guidelines would make it explicitly clear that, in providing for the right of every child to free and compulsory education in a neighbourhood school, the Right to Education Act does not restrict the choice of the child to seek admission in a school, which may not be in the immediate vicinity, or the neighbourhood of the child's residence. In other words, there is no compulsion on the child to seek admission only in the school in his or her neighbourhood.

96. As per the said guidelines, the State Government/Union Territories need to arrive at a clear picture of current availability of schools within the defined areas or limits of neighbourhoods. In order

to do this, the State/Union Territories need to (i) define the neighbourhood norms keeping in view that all primary and upper primary schools and composite schools (with primary and upper primary sections) established by the State Government would be neighbourhood schools for the purpose of sub-section (1) of Section 3 and (ii) map the neighbourhoods or habitations and link them to specific schools.

97. The said guidelines would show that, it is possible that a neighbourhood may be linked to more than one school. Similarly, a school may be linked to more than one neighbourhood. The mapping exercise will help to identify gaps and areas where new schools need to be opened to ensure universal access. By undertaking mapping to determine the need, and planning for establishment of neighbourhood schools, the appropriate Government should factor in the intake capacity in all the schools within the area or limits of neighbourhood as prescribed under Section 6, i.e., Government or local body schools, aided schools, and unaided and specified category schools. Such planning will ensure that the Government uses its resources optimally in relation to the actual requirement of providing universal access to elementary education.

98. In the said guidelines, it has also been provided that, the

provision under Section 10 of the Right to Education Act should be read together with the responsibilities of the appropriate Government and local authority to provide free and compulsory elementary education in a neighbourhood school. It is not the intention of Section 10 to compel parents/guardian and children/wards, who do not wish to avail of free and compulsory education, to necessarily admit their children/wards in the neighbourhood schools.

99. In this batch of writ petitions, neither the provisions under the Kerala Rules, nor the provisions of G.O.(Ms) No.154/2013/G.Edn. Dated 03.05.2013, which speaks of retaining Class V and Class VIII in the same premises by redesignating such schools as Lower and Upper Primary Schools and Upper Primary and High Schools is under challenge. The challenge made against clause (2) of the aforesaid Government order dated 03.05.2013, in the context of Article 254 of the Constitution of India, has already been dealt with by this Court in **Kerala Aided LP and UP School's case (supra)**. In the said judgment, the challenge to the conversion of elementary cycle, as brought out by clause (2) was negated, however, leaving open the question of upgradation or grant of higher standards to be considered after the Government comes out with the comprehensive measures as directed by this Court in the judgment in **Manager, L.P.G.S.,**

Veliyam's case (supra).

100. As already noticed, in none of these writ petitions, an effective challenge has been made against notification dated 19.05.2017 issued by the Director of Public Instructions regarding educational need and also the Government order dated 09.06.2017 whereby it was ordered to provide transportation facility to children of 82 areas. An effective challenge to the aforesaid notification and the Government order can be made only with reference to the materials collected in school mapping and the details regarding geographic location of the schools, availability of classes, etc. In the GIS platform established by Sarva Shiksha Abhiyan, Kerala, geographic locations of schools are provided and the web application comprises of base map services, like street maps and high resolution satellite images. The geographic locations of schools provided by Sarva Shiksha Abhiyan, Kerala and by each State Education Departments, is also available in the website of the Department of School Education and Literacy, Ministry of Human Resource Development. The details like the nearest L.P/U.P./Secondary/Higher Secondary Schools, the areal/walkable/driving distance to such schools, etc. are also available on GIS platform and the distance between two schools can be viewed with street maps and high resolution satellite images by clicking the link

'find' against the name of each nearest school. Though such materials are very much available in the website maintained by Sarva Shikshan Abhiyan, Kerala and also the Ministry of Human Resource Development, the petitioners in this batch of writ petitions have not chosen to make use of those materials in order to challenge the notification dated 19.05.2017 of the Director of Public Instructions and the Government order dated 09.06.2017. In some of the writ petitions, during the course of arguments, statements have been handed over showing the distance to the nearby school, number of students, etc.

101. In **Bharat Singh v. State of Haryana (AIR 1988 SC 2181)**, the Apex Court held that, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the Court will not entertain the point. The Apex Court held further that there is a distinction between a pleading under the Code of Civil Procedure Code, 1908 and a writ petition or a counter-affidavit. While in a pleading, i.e., a plaint or a written statement, the facts and not evidence are

required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.

102. In **Manager, L.P.G.S., Veliyam's case (supra)**, this Court had occasion to deal with the question as to whether applications filed before the State by the Managers of various aided schools seeking upgradation of existing aided schools, so as to bring within their fold additional classes, i.e., Class V or Class VIII, as the case may be, in their existing L.P./U.P. Schools can be entertained without the recommendation/counter signature of the educational authority concerned. In the said decision, this Court held that the State Government need to complete the tasks enumerated in paragraph 5 of the said judgment, so as to put itself in a position where it will be able to effectively consider the applications preferred by the petitioners therein for upgradation of their schools. It is only thereafter, that the State Government can call for and consider the applications for the grant of new schools/upgradation of existing schools in each area.

103. Pursuant to the direction contained in the said judgment, school mapping was conducted and in that process, the areas where the schools in this batch of writ petitions situate were not found to

have educational need, vide the notification dated 19.05.2017 of the Director of Public Instructions. The Judges papers in W.P.(C)No.3060 of 2014 would show that various steps taken to comply with the directions contained in the judgment in **Manager, L.P.G.S., Veliyam's case (supra)** were placed before this Court while seeking extension of time and it was thereafter that the said notification and the Government order dated 09.06.2017 were issued. Once the areas where the schools in this batch of writ petitions were not found to have educational need, the permission sought for to have Class V or Class VIII, as the case may be, in the respective L.P. Schools/U.P. Schools cannot be granted unless the petitioners have made out a prima facie case for interference of the said notification and Government order.

104. As already held at paragraphs 48 and 49 hereinbefore, though the provisions of Rule 14 of the Kerala Rules have no application in the matter of establishment or upgradation of a school owned or controlled by the Central Government or the State Government or the local authority, in view of the provisions under sub-rule (2) of Rule 6 of the Kerala Rules, read with clause (q) of Rule 2, the basis for upgradation of such a school shall be educational need for upgradation, found in the school mapping conducted by authorised agencies. Similarly, in view of the provisions under sub-rule (14) of

Rule 14, read with clause (q) of Rule 2 and sub-rule (2) of Rule 6, the basis for upgradation of an existing school, other than a school established, owned or controlled by the Central Government or the State Government or the local authority shall be educational need of the locality as revealed in the school mapping carried out by the authorised agency and certified by the local authority and the educational officer concerned. In that view of the matter, if no educational need is found in the locality in which a school rendering elementary education situates, no application for upgradation of such school by commencing Class V or Class VIII, as the case may be, can be made by the respective management.

105. The procedure or the criteria adopted by the State for school mapping is not under challenge. The scientific study conducted by the officers from the Directorate of Public Instruction and Sarva Shiksha Abhiyan was based on 7 parameters, which include distance of the nearest school to the area specified in the draft notification, distance to the nearest available school from the residence of students, transportation facility available in the neighborhood school, details of children in the age group of 1-14 years in the feeder area; etc. Therefore, the petitioners cannot make out a case for interference merely on the basis the distance between the schools. Despite the fact

that the locality in which the elementary schools which are the subject matter of this batch of writ petition situate were not included in the draft/preliminary notification, none of the petitioners except one or two, objected the said notification.

106. The localities having educational need were identified in that process taking into consideration the availability of students, distance to from their residence to the nearest school, availability of transportation, etc. As per the guidelines (F.No.1-12/2010-EE-4) issued by the Central Government on 25.07.2011, the intake capacity in all the schools within the area or limits of neighbourhood, etc. are relevant considerations while undertaking mapping to determine the educational need and planning for establishment of neighbourhood schools, in order to ensure that the Government uses its resources optimally in relation to the actual requirement of providing universal access to elementary education.

107. In the absence of any valid and tenable challenge made against the notification dated 19.05.2017 of the Director of Public Instructions and the Government order dated 09.06.2017, the petitioners in this batch of writ petitions are not entitled for an order to make admission of students to Class V or Class VIII, as the case may be, in the respective Lower Primary Schools (with Class I to IV) and

Upper Primary Schools (with Class V to VII) for the academic year 2018-19 or for consideration their requests for upgradation of the respective schools. Therefore, any students who are yet to be issued with transfer certificates in the respective L.P. Schools or U.P. Schools to seek admission to Class V or Class VIII, as the case may be, shall be issued with such transfer certificates forthwith, and the State and the Educational Authorities shall ensure that such students are admitted in other schools having Class V/Class VIII, without any delay. The effective strength of students on the sixth working day from the date of reopening in the respective schools shall be reckoned taking note of the transfer certificates so issued/admission of students based on such transfer certificates.

108. However, a distinction has to be drawn in the case of W.P. (C)No.10663 of 2018 which relates to Government Mappila U.P. School, Velimanna. The relief sought for in this writ petition is one for upgradation of that school as a High School, which stands rejected by Ext.P14 Government letter dated 19.01.2018, on the ground that in the notification dated 10.10.2017 of the Director of Public Instructions and the Government order dated 09.06.2017, Velimanna in Omassery Grama Panchayat does not figure as an area having educational need.

109. The provisions under the Kerala Rules would make it

explicitly clear that as far as children with disability and those with severe disability are concerned, sub-rule (7) of Rule 6 provides that, 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. Sub-rule (8) of Rule 6 provides that, 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. Moreover, as per clause (a) of sub-rule (3) of Rule 7, the Government shall ensure that children with disabilities have access to free education till they attain the age of 18 years and shall promote their integration in the regular schools.

110. In the writ petition it is averred that the nearby schools with Class VIII are at a distance of 5km, 8km and 10km respectively from Government Mappila U.P. School, Velimanna. However, the distance that has to be travelled by the 1st petitioner, who is a differently abled child, in order to reach the aforesaid schools from his house, is not discernible from the pleadings and materials on record, so also the other parameters relevant for school mapping. However, considering the nature of disabilities of the 1st petitioner, the major one among them being absence of both upper limbs, by birth, as borne out

from Ext.P1 disability certificate dated 15.10.2010 issued by the Medical Board, wherein it is certified that he is having 90% permanent disability, this Court deem it appropriate to direct the State and Educational Authorities to ensure that the 1st petitioner is permitted to pursue Class VIII at Government Mappila U.P. School, Velimanna itself by sanctioning Class VIII as a special case, considering the peculiar facts and circumstances of that case and also the aforesaid provisions under the Kerala Rules.

111. Necessary orders in this regard shall be issued by the 1st respondent State, within one week from the date of receipt of a certified copy of this judgment, taking note of the order of this Court dated 31.05.2017, whereby it was made clear that any transfer certificates already issued to students, who have completed Standard IV/VII in the respective schools, will be subject to further orders to be passed in these writ petitions.

In the result, W.P.(C)No.10663 of 2018 is disposed of as above and all other writ petitions are dismissed. No order as to costs.

Sd/-
ANIL K. NARENDRAN
JUDGE

dsn/ami