

2025 LiveLaw (SC) 1162

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SURYA KANT; CJI., JOYMALYA BAGCHI; J.
NOVEMBER 25, 2025**

CIVIL APPEAL Nos.14255-14256 OF 2025 (Arising out of SLP(C)Nos.12939-12940 of 2021)

STATE OF KERALA & ORS.ETC. *versus* T. MUHAMMED FAISI & ANR.

Constitution of India; Article 21A - Right of Children to Free and Compulsory Education Act, 2009 ('the 2009 Act') - Supreme Court directed the Kerala government to take immediate steps to establish government lower primary and upper primary schools in all regions where none currently exist, emphasising that the right to education under the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) cannot be denied due to geographical or financial constraints - the Supreme Court clarified and modified the directions, mandating a phased approach for the State of Kerala to ensure compliance with the 2009 Act - Phase I - Comprehensive Survey and Holistic Policy - Directed State to undertake a comprehensive survey of the entire State and formulate a holistic policy decision for establishing Government Lower Primary Schools in all areas where none presently exist within the distance parameters prescribed under the 2009 Act; Priority must be given to locations with difficult/inconvenient geographic terrain or regions prone to torrential rainfall; Phase II - Establishment of Schools - The State shall establish schools in all areas where - i. No Government Lower Primary School exists within a radius of one kilometre; ii. No Government Upper Primary School exists within a radius of three kilometres - Directed State to identify suitable private buildings for temporarily housing schools as an interim measure, while simultaneously making necessary budgetary allocations for the construction of permanent school buildings. Gram Panchayats may be directed to provide 'shamlat' or panchayat-owned lands, preferably free of cost, for this purpose. [Para 9]

Teacher Deficiency - The State may take a policy decision to engage retired teachers on a contract basis for a period not exceeding one year to address deficiencies in the cadre of teachers while regular recruitment takes place - held that directions shall not be construed as an obligation on the State to release grant-in-aid or additional funds to any private institute/management/society/trust for the establishment or construction of a school - Held that the State is at liberty to formulate a policy inviting charitable institutions to establish schools, with or without governmental aid, in areas lacking Government Lower/Upper Primary Schools, provided they strictly comply with conditions such as transparency in admissions, appointment of qualified teachers, provision of requisite infrastructure, and strict prohibition on charging capitation fee or excess fees - Directed the State of Kerala and its General Education Department to comply with the directions within a period of three months. [Paras 9-13].

[Arising out of impugned final judgment and order dated 29-07-2020 in WP(C) No.8849/2017 20-07-2021 in CCC No.1032/2021 passed by the High Court of Kerala at Ernakulam]

For Petitioner(s) Mr. C.K. Sasi, AOR Dr. KK Geetha, Adv. Ms. Meena K Poulouse, Adv.

For Respondent(s) Mr. P.V. Dinesh, Sr. Adv. Mr. Zulfiker Ali P.S, AOR Ms. Anna Oommen, Adv. Ms. Lakshmi Sree P., Adv. Mr. Augustine Peter, Adv. Ms. Lebina Baby, Adv. Mr. Zulfiker Ali P. S, AOR Ms. Shilpa Liza George, AOR

ORDER

1. Leave granted.
2. The instant appeals have arisen from a question regarding the scope and import of Article 21A of the Constitution, which was raised before a Full Bench of the Kerala High Court, having regard to the constitutional guarantee of free and compulsory education by a State, for children aged 6 to 14 years.
3. It is apposite to underscore, at this stage, that the guarantee of free and compulsory education is not merely a Fundamental Right enshrined in Article 21A of the Constitution, but has also been concretized legislatively through the Right of Children to Free and Compulsory Education Act, 2009 (for short, 'the 2009 Act'), which operationalizes the constitutional mandate.
4. The Full Bench of the Kerala High Court undertook an elaborate examination of the import and underlying constitutional philosophy of Article 21A, as well as the legislative policy embodied in the 2009 Act and the Rules framed thereunder. The Full Bench declined to endorse the novel proposition advanced by the State of Kerala—namely, that the State could satisfy its obligations under Article 21A by providing transportation facilities to enable children to attend distant schools in lieu of establishing neighbourhood schools for classes I to VIII. The Bench rejected the plea of financial burden raised by the State and, in doing so, expressly overruled the earlier decision in Kum. Shreya Vinod v. Director of Public Instruction, 2012 (4) KHC 49, which was found to be incongruent with the statutory scheme. Consequently, the Government Order dated 09.06.2017, which asserted that 'providing transportation facilities will suffice their educational need,' was held to be arbitrary.
5. Consequently, there can indeed be no second opinion but to firmly approve the view taken by the Full Bench of the High Court in Manager, Aysha L.P. School, Chedikulam and Another vs. State of Kerala and others, ILR 2019 (3) Kerala 229, decided on 10.07.2019. We hold so accordingly.
6. Following the Full Bench decision (supra), a Division Bench of the High Court, vide the second impugned judgment dated 29.07.2020 in W.P.(C) No. 8849/2017, reiterated the view taken by the Full Bench and issued certain directions to the respondents.
7. We find that the Division Bench, vide the impugned judgment, has issued consequential directions to the following effect:

"In the light of the above discussion and decisions, the petitioner is entitled to the relief sought for. Accordingly, we allow the writ petition and direct respondents 1 and 2 viz., State of Kerala, represented by the Secretary, General Education Department, Thiruvananthapuram; and the Director of Public Instructions, Thiruvananthapuram, to sanction establishment of Government LP School, at Elambra of Manjeri Municipality, within a period of three months from the date of receipt of a certified copy of this judgment. We also direct Manjeri Municipality to take urgent steps for construction of necessary buildings for the school."
8. It is evident from the afore-extracted direction that the State of Kerala and its General Education Department have been mandated to grant sanction for the establishment of a Government Lower Primary School at Elambra, Manjeri Municipality, in a timebound manner.
9. In these circumstances, having heard the learned counsel for the appellant-State and the learned Senior Counsel appearing for the respondents, we are of the view that the directions issued by the Division Bench are, in substance, correct, though they warrant certain clarifications and modifications as set out hereinbelow:

(i) In lieu of issuing piecemeal directions for the establishment of schools in individual areas or localities, the State of Kerala is firstly directed to undertake a comprehensive survey of the entire State and formulate a holistic policy decision regarding the establishment of Government Lower Primary Schools in all areas where no such school presently exists within the distance parameters prescribed under the 2009 Act. In all locations characterized by difficult or inconvenient geographic terrain, or those situated in regions prone to torrential rainfall, priority shall be accorded to the establishment of such schools;

(ii) Thereafter, in the second phase, the State shall establish schools in all areas where no Government Lower Primary School exists within a radius of one kilometre, and no Government Upper Primary School exists within a radius of three kilometres;

(iii) We are cognizant of the fact that the State Government may not presently be in a position to allocate sufficient funds for the comprehensive construction of all requisite schools. In this context, the State of Kerala is directed to identify suitable private buildings in which schools may be temporarily housed as an interim arrangement. Such a makeshift arrangement, however, cannot be permitted to subsist indefinitely. The State shall, therefore, be required to make the necessary budgetary allocations for the construction of permanent school buildings. The Gram Panchayats may also be directed to provide *shamlat* or panchayat-owned lands, preferably free of cost, to the State Government for the establishment of Government Lower or Upper Primary Schools;

(iv) In the event of a deficiency arising in the cadre of Government Lower/Upper Primary school teachers, the State Government may take a policy decision to engage retired teachers on a contract basis for a period of six months but not exceeding one year, and during that period, the recruitment of regular teachers may take place;

(v) The directions issued by the Full Bench of the High Court or by the Division Bench vide the impugned judgment dated 29.07.2020, shall, however, not be construed as an obligation on the State to release grant-in-aid or allocation of additional funds to a private institute/management/society/trust, etc., for the establishment or construction of the school;

(vi) However, the State shall be at liberty to formulate a policy inviting charitable institutions to establish schools, with or without governmental aid, in areas where no Government Lower or Upper Primary School exists, subject to the condition that such institutions strictly comply with the following: (a) maintenance of transparency in admissions in accordance with the principle of equality; (b) appointment of teachers possessing the qualifications mandated under the Right to Education Act; (c) provision of requisite infrastructural facilities; (d) adherence to all governmental directions and instructions issued from time to time; and (e) strict prohibition on charging any capitation fee or any fee in excess of that prescribed by the State. In implementing such a policy, the State shall adopt uniform criteria and shall not accord preferential treatment to any particular organisation, association, individual, or entity.

10. Adverting to the case in hand, namely, the impugned judgment dated 29.07.2020, passed in the case of T. Muhammed Faisi and others, we find that there are several reports on record to the effect that there exist no Government Lower Primary School within a radius of 3-4 kms. That being so, the direction issued by the High Court for the establishment of a Government Lower Primary School in the subject area is fully justified, and the same is, accordingly, upheld.

11. The needful shall be done within a period of three months.

12. With these directions and modifications, the appeals stand disposed of.
13. It is reiterated once again for good measure, that no private entity shall be entitled to take benefit of these directions for the purpose of securing any grant-in-aid or additional budgetary allocations from the State.
14. As a result, the pending interlocutory application also stands disposed of.

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