

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

THURSDAY, THE 21ST DAY OF OCTOBER 2021 / 29TH ASWINA, 1943

WP(C) NO. 19298 OF 2021

PETITIONER/S:

1 (MINOR)
AGED 13 YEARS,
REP. BY HER FATHER

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BY ADVS.
RAVI KRISHNAN
K.J.MANU RAJ
K.VINAYA

RESPONDENT/S:

- 1 THE DISTRICT EDUCATION OFFICER,
PALAKKAD FORT NEAR TOWN HALL, PALAKKAD 678 001.
- 2 ASSISTANT EDUCATIONAL OFFICER,
ALATHUR, ERATTAKULAM, ALATHUR, PALAKKAD 678 682.
- 3 THE HEADMASTER, ALPS KOTTASSERY, THEKKEPOTTA,
ALATHUR, PALAKKAD 678 687.
- 4 THE HEADMISTRESS, SJHS PUTHUKODU,
ALATHUR, PALAKKAD 678 687.

SMT RESMITHA R CHANDRAN, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
21.10.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Can the right of a child pursuing elementary education to get admitted in a class appropriate to his or her age be denied on the ground of non-production of a Transfer Certificate? Will the provisions of the Kerala Education Rules which insists on the production of Transfer Certificate for admission to schools stand in the way of the implementation of the provisions of the Right of Children to Free and Compulsory Education Act, 2009 ("Act 35 of 2009" for short). These are the questions posed for consideration in this writ petition.

2. The petitioners are aged around 12 years. While they were pursuing their V Standard education in the ALP School, Kottassery, COVID-19 Pandemic struck the nation and all activities came to a standstill. The schools were closed down and like other students all over the Country, the petitioners were also forced to sit indoors and pursue their education. Fortunately for them, they were able to learn most of the VI standard subjects by watching the VICTERS (Versatile ICT Enabled Resource for Students), an edutainment channel in the Malayalam language operated by Kerala Infrastructure and Technology for Education (KITE) under the Department of General and Higher Education (Kerala) and wholly owned by the Government of Kerala. Their parents also assisted them in their homeschooling endeavours.

3. Since the 3rd respondent school had classes only till V standard, they applied for a Transfer Certificate and armed with the same, the petitioners approached the 4th respondent, who is the Headmistress of the SJHS Puthokkode and requested that they be permitted to join the VII Standard class. The petitioners contend that without admitting them in the class, the 4th respondent forwarded the applications to the 1st respondent and sought clarifications. The grievance of the petitioners is that no action was taken by the 1st respondent. The petitioners rely on Exts.P2 to P18 birth certificates issued by the Registrar of Births and Deaths, Thrissur, to bring home the point that they have attained the requisite age to secure admission in the VII standard. It is in the above backdrop that the petitioners are before this Court seeking the following relief:-

- (i) issue a writ of mandamus or other appropriate writ order or direction directing the 4th respondent to grant admission to the petitioners to the VIIth standard in the 4th respondent's school at the earliest and without insisting transfer certificate from the 3rd respondent school.

4. The 3rd respondent has recorded their presence before this Court through their counsel. Though the notice was served on the 4th respondent, there is no appearance either in person or through counsel.

5. I have heard Sri. Ravi Krishnan, the learned counsel appearing for the petitioners, Sri.Sushanth J, the learned counsel appearing for the 3rd respondent school and Smt. Resmitha Chandran, the learned Government Pleader.

6. Ext.P2 to P18 birth certificates reveal that some of the petitioners have crossed the age of 12 years and some have attained 13 years of age. It is undisputed that the petitioners have all completed their V standard education and transfer certificates have been issued by the 3rd respondent. The fact that no classes were held in schools in the State of Kerala during the academic year 2020-2021 owing to the restrictions imposed due to the pandemic is also undisputed. The petitioners state that they did homeschooling and studied the subjects through the VICTERS Channel. The only question is whether the petitioners are entitled to get admission in a Class appropriate to her/his age.

7. Act 35 of 2009 was enacted to provide free and compulsory education to all children of the age of six to fourteen years. Section 2(f) of the Act defines "elementary education".

Section 2(f) "elementary education" means the education from first class to eighth class.

8. Section 4 of the Act provides for special provisions for children not admitted to, or who have not completed elementary education. The said provision reads thus:

Section 4: Special provisions for children not admitted to, or who have not completed, elementary education

Where a child above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary

education, then, he or she shall be admitted in a class appropriate to his or her age:

Provided that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, have a right to receive special training, in such manner, and within such time-limits, as may be prescribed:

Provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years."

9. Section 4 of the Act comes to the rescue of a child who either has not been admitted to any school or a child who though admitted was not able to complete his or her elementary education. The provision provides that the child shall be admitted to a class appropriate to his or her age. The statute also mandates that the said child, who has been so admitted, has the right to receive special training so that he or she can be at par with the other children in the same class. The said child shall also be entitled to free education till the completion of elementary education even after 14 years.

10. In exercise of powers conferred by Section 38 of the Right of Children to Free and Compulsory Education Act, 2009, the Government of Kerala has framed the Kerala Right of Children to Free and Compulsory Education Rules, 2011. Rule 5 of the Rules speak about special training and the same reads as follows:

Rule 5: Special Training

(1) The School Management Committee of a school owned and managed by the Government, local authority and aided schools, shall identify children requiring special training and organise such training as follows:-

(a) The special training shall be based on specially designed, age appropriate learning material for children with special needs and late enrollments developed by the academic authority.

(b) The training shall be provided in classes held on the premises of the school, as far as is practicable, or in classes organised in places identified by the local authority or the Headmaster.

(c) The training shall be provided by teachers working in the school, or by instructors of Multi-Grade Learning Centres appointed for the purpose by the local authority for which the local authority shall maintain a panel of retired teachers, instructors of Multi-Grade Learning Centres or other qualified service-minded persons of the locality.

(d) The duration of the said training shall be for a minimum period of three months which may be extended, based on periodical assessment of learning progress by the teacher concerned, for a maximum period not exceeding two years.

(2) The child shall, upon induction into the age-appropriate class, after special training, continue to receive special attention by teachers to enable him to successfully integrate with the rest of the class, academically and emotionally.

11. The Rules clearly describe the manner in which special training has to be imparted to the child who has been inducted into the age-

appropriate class and it further provides that the child shall continue to receive special attention to enable him to integrate, emotionally and academically with the rest of the class.

12. Now the question is whether Rule 6 of Chapter VI of the KER which insists that no pupil shall be admitted to any school other than Standard I without the production of a Transfer Certificate can stand in the way of the petitioner securing admission to an age-appropriate class. Article 21A of the Constitution provides that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. It was with a view to give effect to Article 21A that the Parliament has enacted the Right of Children to Free and Compulsory Education Act, 2009. Under Articles 21 and 21A of the Constitution, a child has a fundamental right to education up to the age of 14 years. The language of Article 21A of the Constitution further makes it clear that such free education which a child can claim from the State will be in a manner as the State may, by law, determine. In view of the peremptory provisions of Act 35 of 2009 which enables the child to secure admission in an age-appropriate class without any restrictions whatsoever, the conflicting provisions in the Kerala Education Rules will have to fall by the wayside in view of Article 254 of the Constitution. (See **Kerala Aided L.P. & U.P. School Managers Association Vs. State of Kerala** [ILR 2016(1) Kerala 590])

In view of the above discussion, I am of the view that the petitioners are entitled to succeed. There will be a direction to the 4th respondent to grant admission to the petitioners to the VII standard in the SJHS, Puthukod forthwith without insisting on the production of transfer certificates from the 3rd respondent school.

This writ petition will stand allowed.

Sd/-

RAJA VIJAYARAGHAVAN V

JUDGE

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APPENDIX OF WP(C) 19298/2021

PETITIONER (S) EXHIBITS

Exhibit P1	TRUE COPY OF THE SAID LETTER ISSUED BY THE 4TH RESPONDENT TO THE SIT RESPONDENT DATED 10.6.2021.
Exhibit P2	A TRUE COPY OF THE BIRTH CERTIFICATE OF 1ST PETITIONER DATED 18.5.2009.
Exhibit P3	A TRUE COPY OF THE BIRTH CERTIFICATE OF 2ND PETITIONER DATED 21.8.2009.
Exhibit P4	A TRUE COPY OF THE BIRTH CERTIFICATE OF 3RD PETITIONER DATED 4.8.2009.
Exhibit P5	A TRUE COPY OF THE BIRTH CERTIFICATE OF 4TH PETITIONER DATED 5.6.2018.
Exhibit P6	A TRUE COPY OF THE BIRTH CERTIFICATE OF 5TH PETITIONER DATED 30.9.2011.
Exhibit P7	A TRUE COPY OF THE BIRTH CERTIFICATE OF 6TH PETITIONER DATED 2.11.2011.
Exhibit P8	A TRUE COPY OF THE BIRTH CERTIFICATE OF 7TH PETITIONER DATED 17.11.2014.
Exhibit P9	A TRUE COPY OF THE BIRTH CERTIFICATE OF 8TH PETITIONER DATED 8.1.2009.
Exhibit P10	A TRUE COPY OF THE BIRTH CERTIFICATE OF 9TH PETITIONER DATED 15.6.2015.
Exhibit P11	A TRUE COPY OF THE BIRTH CERTIFICATE OF 10TH PETITIONER DATED 5.8.2010.
Exhibit P12	A TRUE COPY OF THE BIRTH CERTIFICATE OF IITH PETITIONER DATED 16.6.2015.
Exhibit P13	A TRUE COPY OF THE BIRTH CERTIFICATE OF I2TH PETITIONER DATED 22.6.2009.
Exhibit P14	A TRUE COPY OF THE BIRTH CERTIFICATE OF I3TH PETITIONER DATED 4.8.2012.

Exhibit P15	A TRUE COPY OF THE BIRTH CERTIFICATE OF I4TH PETITIONER DATED 17.12.2009.
Exhibit P16	A TRUE COPY OF THE BIRTH CERTIFICATE OF I5TH PETITIONER DATED 17.4.2010.
Exhibit P17	A TRUE COPY OF THE BIRTH CERTIFICATE OF I6TH PETITIONER DATED 22.5.13.
Exhibit P18	A TRUE COPY OF THE BIRTH CERTIFICATE OF 17TH PETITIONER DATED 15.9.2021.

RESPONDENT (S) EXHIBITS : NIL