



2024/KER/57891

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ZIYAD RAHMAN A.A.

THURSDAY, THE 1ST DAY OF AUGUST 2024 / 10TH SRAVANA, 1946

WP(C) NO. 21811 OF 2024

PETITIONER/S:

- 1 KERALA PRADESH SCHOOL TEACHER'S ASSOCIATION
REPRESENTED BY ITS PRESIDENT (K.ABDUL MAJEED), CHINMAYA
SCHOOL LANE, KUNNUMPURAM, THIRUVANANTHAPURAM, PIN -
695001
- 2 P.K. ARAVINDAKSHAN
AGED 53 YEARS
HEAD MASTER, G.U.P. SCHOOL, KANNUR, KOZHIKODE DISTRICT,
PIN - 673305

BY ADVS. SRI.KURIAN GEORGE KANNANTHANAM, SENIOR ADVOCATE
TONY GEORGE KANNANTHANAM
THOMAS GEORGE
BIBIN B. THOMAS

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT, GENERAL
EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 2 THE DIRECTOR OF GENERAL EDUCATION
JAGATHY, THIRUVANANTHAPURAM, PIN - 695014
- 3 THE MANAGER
EBENEZER HIGHER SECONDARY SCHOOL NELLAD.P.O., VEETTOOR,
MUVATTUPUZHA, ERNAKULAM DISTRICT, PIN - 686669

OTHER PRESENT:

FOR R1 AND R2 BY SRI. ASHOK M CHERIYAN- ADDL.AG
SMT.NISHA BOSE, GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
24.07.2024, ALONG WITH WP(C)No.21992/2024, 22452/2024 AND
CONNECTED CASES, THE COURT ON 01.08.2024 DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

THURSDAY, THE 1ST DAY OF AUGUST 2024 / 10TH SRAVANA, 1946

WP(C) NO. 21992 OF 2024

PETITIONER/S:

- 1 K. M. ABDULLA
AGED 53 YEARS
S/O MOHAMMED ABDU RAHIMAN, PD TEACHER, GOVT. BOYS, HSS,
COURT RD, KACHERIPPADI, MANJERI, MALAPPURAM DISTRICT -
676121. RESIDING AT KOORIMANNIL (H), ANAKKAYAM P.O.
MALAPPURAM DISTRICT, PIN - 676509
- 2 P.K. AZEEZ
AGED 54 YEARS
S/O MUHAMMED HM, FRANCIS ROAD ALPS (AIDED SCHOOL)
FRANCIS ROAD, KOZHIKODE - 673001. RESIDING AT KAMAPURATH
(H), P.O. VAYDIRANGADI, RAMANATTUKARA, KOZHIKODE, PIN -
673633

BY ADVS.
T.T.MUHAMOOD
A.RENJIT
GOKUL R.NAIR
ANSALAM N.X.

RESPONDENT/S:

- 1 STATE OF KERALA
REP. BY THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION
DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
PIN - 695001
- 2 DIRECTOR OF GENERAL EDUCATION
DIRECTORATE OF GENERAL EDUCATION, JAGATHY,
THIRUVANANTHAPURAM, PIN - 695014
- 3 MANAGER
EBENEZER HIGHER SECONDARY SCHOOL, NELLAD P.O., VEETTOOR,
MUVATTUPUZHA, ERNAKULAM DISTRICT, PIN - 686669
- 4 PARENT TEACHERS ASSOCIATION
EBENEZER HIGHER SECONDARY SCHOOL, NELLAD P. O.,
VEETTOOR, MUVATTUPUZHA, ERNAKULAM DISTRICT REPRESENTED
BY ITS PRESIDENT., PIN - 686669

FOR R1 AND R2 BY SRI. ASHOK M CHERIYAN- ADDL.AG



SMT.NISHA BOSE, GP

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
24.07.2024, ALONG WITH WP(C).21811/2024 AND CONNECTED CASES, THE
COURT ON 01.08.2024 DELIVERED THE FOLLOWING:**



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

THURSDAY, THE 1ST DAY OF AUGUST 2024 / 10TH SRAVANA, 1946

WP(C) NO. 22452 OF 2024

PETITIONER/S:

PRIVATE SCHOOL GRADUATE TEACHERS ASSOCIATION KERALA
(PGTA) REPRESENTED BY ITS PRESIDENT, SIBY ANTONY
THEKKEDATH, ST. SEBASTIAN'S HSS, KADANAD P.O., KOTTAYAM
DISTRICT, RESIDING AT THEKKEDATH HOUSE, KALLOORKAD P.O.,
ERNAKULAM DISTRICT, PIN - 686668

BY ADVS.

SIJI ANTONY

P.M.JOSEPH

P.S.SAJEEV (CHIRAYIL)

MANOJ GEORGE

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY SECRETARY TO GENERAL EDUCATION,
SECRETARIAT, THIRUVANANTHAPURAM,, PIN - 695001
- 2 DIRECTOR OF GENERAL EDUCATION
JAGATHY, THIRUVANANTHAPURAM, PIN - 695014

FOR R1 AND R2 BY SRI. ASHOK M CHERIYAN- ADDL. AG

SMT.NISHA BOSE, GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
24.07.2024, ALONG WITH WP(C).21811/2024 AND CONNECTED CASES, THE
COURT ON 01.08.2024 DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

THURSDAY, THE 1ST DAY OF AUGUST 2024 / 10TH SRAVANA, 1946

WP(C) NO. 22878 OF 2024

PETITIONER/S:

- 1 KERALA ARABIC TEACHERS FEDERATION (KATF) REP. BY ITS
PRESIDENT, ABDUL HAQUE T.P.
AGED 55 YEARS
S/O ABDUL RAHMAN T.P., AUPS, IRUMBUCHOLA, AR NAGAR
P.O., MALAPPURAM - 676305 RESIDING AT THEKKE PURAAYIL,
IYYAD P. O., PIN - 673574
- 2 MAHI K.A.
AGED 52 YEARS
S/O K.S. ALI, LG (ARABIC), GUHSS, NORTH EDAPPALLY,
ERNAKULAM - 682024. RESIDING AT KUNNAMKULATHIL (H),
KALAYATTINKARA P. O., ERNAKULAM, PIN - 682315

BY ADVS.
T.T.MUHAMOOD
A.RENJIT
GOKUL R.NAIR
ANSALAM N.X.

RESPONDENT/S:

- 1 STATE OF KERALA
REP. BY THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION
DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
PIN - 695001
- 2 DIRECTOR OF GENERAL EDUCATION
DIRECTORATE OF GENERAL EDUCATION, JAGATHY,
THIRUVANANTHAPURAM, PIN - 695014
- 3 MANAGER
EBENEZER HIGHER SECONDARY SCHOOL, NELLAD P. O.,
VEETTOOR, MUVATTUPUZHA, ERNAKULAM DISTRICT, PIN - 686669
- 4 PARENT TEACHERS ASSOCIATION
EBENEZER HIGHER SECONDARY SCHOOL, NELLAD P. O.,
VEETTOOR, MUVATTUPUZHA, ERNAKULAM DISTRICT REPRESENTED
BY ITS PRESIDENT., PIN - 686669

FOR R1 AND R2 BY SRI. ASHOK M CHERIYAN- ADDL. AG.



SMT.NISHA BOSE, GP

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
24.07.2024, ALONG WITH WP(C).21811/2024 AND CONNECTED CASES, THE
COURT ON 01.08.2024 DELIVERED THE FOLLOWING:**



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

THURSDAY, THE 1ST DAY OF AUGUST 2024 / 10TH SRAVANA, 1946

WP(C) NO. 22903 OF 2024

PETITIONER/S:

- 1 SREYA V.S. [MINOR]
AGED 14 YEARS
10TH STANDARD STUDENT, KPRP HSS KONGAD, D/O.SIVADASAN
V.N., RESIDING AT VALIYOTIL HOUSE, EZHAKKAD P.O.,
PALAKKAD -678600, REP. BY THE FATHER AND GUARDIAN,
D/O.SIVADASAN V.N., RESIDING AT VALIYOTIL HOUSE,
EZHAKKAD P.O., PALAKKAD, PIN - 678600
- 2 DHYAN MOHAN A [MINOR]
AGED 9 YEARS
4TH STANDARD STUDENT, GUP SCHOOL, KONGAD, S/O. SUNITHA
P.G., RESIDING AT AJANTHA, KONGAD P.O., PALAKKAD -
678631, REPRESENTED BY ITS MOTHER AND GUARDIAN, SUNITHA,
RESIDING AT AJANTHA, KONGAD P.O., PALAKKAD, PIN - 678631
BY ADV K.SANDESH RAJA

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT GENERAL
EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 2 THE DIRECTOR OF GENERAL EDUCATION
JAGATHY, THIRUVANANTHAPURAM, PIN - 695014
FOR R1 AND R2 BY SRI. ASHOK M CHERIYAN- ADDL.AG.
SMT.NISHA BOSE, GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
24.07.2024, ALONG WITH WP(C).21811/2024 AND CONNECTED CASES, THE
COURT ON 01.08.2024 DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

THURSDAY, THE 1ST DAY OF AUGUST 2024 / 10TH SRAVANA, 1946

WP(C) NO. 23474 OF 2024

PETITIONER/S:

KERALA STATE SCHOOL TEACHERS FRONT (KSSTF)
REPRESENTED BY ITS PRESIDENT, TOBIN K ALEX, AGED 44
YEARS, S/O LATE CHANDY, ST. THOMAS H.S.S, PALA,
KOTTAYAM, PIN - 686575

BY ADVS.

CYRIAC KURIAN
ELIZEBATH GEORGE
EMMANUEL CYRIAC

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY SECRETARY TO GENERAL, EDUCATION,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 2 DIRECTOR OF GENERAL EDUCATION
JAGATHY, THIRUVANANTHAPURAM, PIN - 695014
FOR R1 AND R2 BY SRI. ASHOK M CHERIYAN- ADDL.AG.
SMT.NISHA BOSE, GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
24.07.2024, ALONG WITH WP(C).21811/2024 AND CONNECTED CASES, THE
COURT ON 01.08.2024 DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

THURSDAY, THE 1ST DAY OF AUGUST 2024 / 10TH SRAVANA, 1946

WP(C) NO. 24566 OF 2024

PETITIONER/S:

DR.RENJITH P.GANGADHARAN
AGED 43 YEARS
S/O GANGADHARAN, PULLIYIL HOUSE, VENGOLA.P.O,
PERUMBAVOOR, ERNAKULAM DISTRICT, KERALA., PIN - 683536

BY ADVS.
JESTIN MATHEW
BASIL KURIAKOSE
BIJOSH JOSE

RESPONDENT/S:

- 1 UNION OF INDIA
REPRESENTED BY THE SECRETARY TO GOVERNMENT, MINISTRY OF
HUMAN RESOURCE DEVELOPMENT, SHASTHRI BHAVAN, NEW DELHI,
PIN - 110001
- 2 STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT GENERAL
EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 3 DIRECTOR OF GENERAL EDUCATION
DIRECTORATE OF GENERAL EDUCATION, JAGATHY, THYCAUD
THIRUVANANTHAPURAM, PIN - 695014
- 4 NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS
(NCPCR)
5TH FLOOR, CHANDERLOK BUILDING, 36 JANPATH, NEW DELHI,
REPRESENTED BY ITS MEMBER SECRETARY., PIN - 110001
- 5 KERALA STATE COMMISSION FOR PROTECTION OF CHILD RIGHTS
REPRESENTED BY ITS SECRETARY, T.C NO.14/2036, VANCROSS
JUNCTION, THIRUVANANTHAPURAM, PIN - 695034

FOR R2 AND R3 BY SRI. ASHOK M CHERIYAN- ADDL.AG

SMT.NISHA BOSE, GP



THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
24.07.2024, ALONG WITH WP(C).21811/2024 AND CONNECTED CASES, THE
COURT ON 01.08.2024 DELIVERED THE FOLLOWING:



JUDGMENT

[WP (C) Nos.21811/2024, 21992/2024, 22452/2024,
22878/2024, 22903/2024, 23474/2024, 24566/2024]

....

The issue involved in these cases pertains to the sustainability of the decision taken by the Director of General Education, in publishing the academic calendar for the schools governed by the Kerala Education Act and Rules, for the academic year 2024-2025, by making 25 Saturdays, during the academic year, as working days. In this batch of writ petitions, the challenge is against the said calendar and the competence of the Director of General Education, the 2nd respondent in WP(C)No.21811/2024 (*hereinafter referred to as the 2nd respondent*) as according to the petitioners, the decision of making Saturdays as working days for the schools, requires amendment in the Statute as it amounts to a change in policy or practice, and the competent authority to take a decision is the State Government, the 1st respondent in WP(C) No.21811/2024 (*hereinafter referred to as the 1st respondent*). (*For convenience, the Exhibits are mentioned hereinafter, as referred to in WP(C)No.21811/2024, which is*



treated as the leading case, unless otherwise specifically mentioned)

2. Before considering the rival contentions, the circumstances under which the Ext.P3 academic calendar was published have to be understood. Rule 3 of Chapter VII of the KER provides for the minimum number of working days, which reads as follows:

“3. Minimum number of working days- There shall ordinarily be a minimum of [220 instructional days excluding the days of examinations] in every school year. Under special circumstances, shortage in the number of working days may be condoned by the Educational Officer up to a maximum of 20 days and by the Director beyond 20 days.”

The manager and the Parent Teachers Association of an aided School approached this Court by filing W.P.(C)No.25120/2023 seeking a direction to Educational Authorities to ensure 220 working days in the schools as according to the petitioners therein, the Right to Children to Free and Compulsory Education Act (*hereinafter referred to as the Right to Education Act*) and the Kerala Education Act & Rules provide for minimum of 220 working days in an year. The petitioners therein also submitted a representation in this regard before the 2nd respondent. The said writ petition was disposed of by this Court as per Ext. P2 judgment directing the 2nd respondent to take up the said representation and to pass orders in accordance with the law, with notice to petitioners



therein and affected parties, if any, and after affording an opportunity to them, within an outer time limit of six weeks from the date of receipt of copy of the judgment, at any rate, before publication of the Academic Calendar for the next year (2024-2025).

3. In the implementation of Ext.P2 judgment, the 2nd respondent passed Ext. P6 order dated 25.04.2024 wherein it was stated that the Department has decided to make up the number of working days in tune with the Rules. Based on the Ext P6 order, Ext P3 Academic Calendar was published by the 2nd respondent on 3.06.2024, wherein the number of working days was fixed at 220 days by making 25 Saturdays as working days. The challenge in all these writ petitions is against the Ext. P6 order and the Ext. P3 Academic Calendar to the extent it makes the Saturdays as working days.

4. A detailed counter affidavit has been submitted by the 1st and 2nd respondents in WP(C)No.21811/2024, wherein the averments made in the writ petition were denied. It was contended that, as per the Calendar, all the Saturdays were not made as working days. According to them, only those Saturdays, which are sufficient to make up 220 total working days, which is the statutory requirement, were made as working days. The manner in which the Saturdays were selected as working



days was explained in paragraph 4 of the counter affidavit, which reads as follows:

“4. Rule 3 of Chapter VII KER prescribes that there shall ordinarily be a minimum of 220 instructional days excluding the days of examinations in every school year. Under special circumstances, shortage in the number of working days may be condoned by the Educational Officer up to a maximum of 20 days and by the Director beyond 20 days. It can be seen from Ext.P3 that a total number of normal working days excluding Saturdays, Sundays and all Holidays is 195. 9 Saturdays are to be worked to compensate the holidays which falls on normal working days. On another 6 Saturdays the teachers has to attend cluster meeting and on such days there won't be any classes for students. 3 Saturdays will fall during the examination period. When thus calculated, there will be only 213 working days and hence another 7 Saturdays has to be worked to make the working days a total of 220 days. It may be noted that the said 220 working days includes examination days also, though KER prescribes that there should be 220 instructional days excluding the days of examination. Total number of instructional days excluding the days of examination will even now be only 170. The copy of the consolidated statement of the Educational Calendar is produced herewith and marked as Exhibit R2(c).”

It is also averred that, on 25.05.2024, the QIP Monitoring Committee conducted a hearing, in which the stakeholders, including the 1st petitioner in WP(C)No.21811/2024, the Kerala Pradesh School Teacher's Association, were heard and their views were considered



before finalizing the Ext. P3 Academic Calendar. The respondents 1 and 2 sought the dismissal of the writ petition in such circumstances.

5. The said counter affidavit was adopted by the 1st and 2nd respondents in all the other writ petitions.

6. Heard, Sri. Kurian George Kannanthanam, the learned Senior Counsel for the petitioners in WP(C)No. 21811/2024, Sri. T.T. Muhamood, the learned Counsel for the petitioners in WP(C) 22878/2024 and W.P.(C)No.21992/2024, Sri Cyriac Kurian, the learned Counsel for the petitioner in WP(C) No. 23474/2024, Sri Sandesh Raja. K, the learned Counsel for the petitioners in WP(C) 22903/2024, Sri.Jestin Mathew, the learned Counsel for the petitioner in WP(C) 24566/2024, Sri.Siji Antony, the learned Counsel for the petitioner in WP(C) 22452/2024 and Sri. Ashok M.Chерian, the learned Additional Advocate General, assisted by Smt. Nisha Bose, the learned Government Pleader, for the State.

7. The petitioners in the writ petitions include teachers, their associations, students and their parents. Sri. Kurian George Kannanthanam, the learned Senior Counsel for the petitioners in WP(C) No.21811/2024, argued the matter in detail, with specific reference to the provisions of the Kerala Education Act, the rules made thereunder and the provisions of the Right to Education Act. It was pointed out that



Ext P3 Academic Calendar was prepared without any application of mind and without hearing any of the stakeholders. The learned Senior Counsel specifically brought the attention of this Court to the contents of Ext. P6 from which it is evident that the opportunity for hearing was afforded only to the petitioners in the writ petition in which Ext. P2 judgment was passed. As regards the hearing of the QIP Monitoring Committee, it was pointed out by the learned Senior Counsel, by specifically referring to Ext R2(b) minutes that, the said hearing was conducted after the Ext.P6 decision was taken and the suggestions/contentions raised by the various stakeholders were not seen considered or adverted to and instead, simply confirmed the decision taken in Ext. P6, by observing that, since the Contempt of Court proceedings for non-compliance of the Ext P2 judgment is pending, no other decision is possible. The learned Senior Counsel further contended that even though none of the provisions in the Kerala Education Act or the Rules framed thereunder did not specifically declare Saturdays as holidays, by necessary implication and practice, those days were always treated as holidays. To substantiate the said point, the learned Senior Counsel relies on Rule 4(3) of Chapter VII of the KER, which permitted the schools where the majority of staff and pupils are Muslims, to declare Fridays as holidays, instead of Saturdays.



Besides, it was also contended that, as per the Schedule of the Right to Education Act, 2009, there is a precise classification between the students in first class to fifth class as one group and 6th class to 8th class as another group. This distinction was also not taken into account by the respondents, while fixing the working days uniformly for the students of all the classes. Similarly, it is also contended that the schedule of the Right to Education Act contemplates the minimum number of working days or instructional hours. The further contention is that, as the Ext P3 Academic Calendar was prepared by declaring the Saturdays as working days, it amounts to a change in policy, and a decision in this regard could have been taken only by the Government, and it is beyond the scope of the powers of the 2nd respondent, who is only an executive authority vested with only the statutory powers. Another point highlighted was that the Saturdays are usually set apart for the extracurricular activities of the students, including, NCC, NSS, coaching for sports and arts, etc, and nothing is mentioned in the orders as to the alternate arrangement to be made with respect to the same. Thus, it was contended that the entire exercise was done without proper application of mind.

8. Sri. Muhamood T.T., the learned counsel for some of the petitioners, while adopting the contentions raised by the learned Senior



Counsel, contended that, as far as the declaration of Saturdays as working days is concerned, it is a policy decision or change in practice, which was existence in the State right from the inception, for the past several decades and therefore it could have been taken only with the approval of the Council of Ministers. He relies on the Rules of Business of the Government of Kerala formulated in the exercise of powers under clauses (2) and (3) of Article 166 of the Constitution of India. In addition to that, he also brought the attention of this Court to an article published by Mr Kamis Gaballah, Mr Mohammed El Kishawl, Mr Eteman Ibrahim and Mr Sausan Al Kawas, as part of the study conducted by the various Departments of Sharjah University, on the academic performance and study-life balance of dental students, wherein a meticulous discussion has been made with reference to the studies conducted in the schools in North Central United States, where the system of 4-day week system is being followed, instead of a traditional 5-day week and the advantages of the said system.

9. Sri. Sandesh Raja, the learned counsel for the petitioners in WP(C) No. 22903/2024, filed by some of the students, contended that while publishing Ext. P3 Calendar, the 2nd respondent failed to implement the stipulations in the Right to Education Act, in letter and



spirit, despite the fact that the State Government was bound by the stipulations, being a Central enactment.

10. Sri. Jestin Mathew, the learned Counsel for the petitioner in WP(C) No. 24566/2024, submitted that in his writ petition, he challenged Rule 3 of Chapter VII of the KER, as according to him, the said provision runs counter to the provisions in the Right to Education Act, which contemplates a different criteria and there is also clear classification between the students in classes 1 to 5 and in classes 6 to 8. The learned Counsel also placed reliance upon the decisions rendered by the Honourable Supreme Court in **Gambhirdan K.Gadhvi v. State of Gujrat and others [(2022) 5 SCC 179]**, **Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others [(1978) 1 SCC 405]** and the Division Bench judgment of this Court in **Kerala CBSE School Management Association v. State of Kerala [2024 (3) KLT 141]**.

11. The learned Counsels appearing for the other petitioners also reiterated and asserted the points referred to above.

12. Sri. Ashok M. Cherian, the learned Additional Advocate General, assisted by Smt. Nisha Bose, the learned Government Pleader, contended that, the 2nd respondent, while preparing Ext. P3 Calendar, was well within his powers contemplated in Rule 5 of Chapter VII of the



KER. According to the learned Addl. AG, in fact there is no provision in the Kerala Education Act or the Rules, prohibiting declaration of the Saturdays as working days. Nowhere it is contemplated that the Saturdays shall be holidays. Moreover, in Rule 3 of Chapter VII of the KER, the minimum working days have been prescribed as 220 days and as per Rule 5(1) (f) of Chapter VII, the 2nd respondent is competent to take the measures necessary to make up the deficiency, to raise the number of working days to the minimum prescribed. Moreover, in the present Calendar, every attempt has been made to ensure that unnecessary burden is not put on the students, and the Saturdays were carefully selected by making use of the weeks where there are declared holidays during the working days, so that, as much as possible, six-day weeks could be avoided.

13. I have carefully examined the relevant statutory provisions, the records placed before me, and the arguments raised by the learned counsels on either side. One of the main contentions raised is that, in as much as the preparation of Ext. P3 Calendar involved the declaration of Saturdays as working days, it amounted to a deviation in statutory stipulations or change in policy or practice. As far as the statutory provisions contained in the Kerala Education Act and the Rules framed thereunder are concerned, it is not specifically contemplated that,



Saturdays shall be treated as holidays for the schools. However, it is an undeniable fact that this has been the practice since its inception, prevailing for several decades, and the education system in the State was based on a 5-day week, where the Saturdays were treated as holidays, except in certain exceptional circumstances. Moreover, as rightly pointed out by the learned Senior Counsel for some of the petitioners, Rule 4(3) of Chapter VII practically acknowledged this, while dealing with the schools where the majority of the staff and pupils are Muslims. The said provision reads as follows:

“4(3): Schools in which the majority of the staff or pupils are muslims may have Fridays as holidays instead of Saturdays which may be working days. In schools in which Fridays are not made holidays, the noon interval on Friday shall be two hours from 12.30 to 2.30 p.m. to enable muslim staff or pupils to attend to prayers. The working hours on these days will be from 9.30 a.m. to 12.30 p.m. and from 2.30 p.m. to 4.30 p.m.]”

Since the above provision specifically mentions that “..... **may have Fridays as holidays instead of Saturdays...**” it can be safely concluded that the scheme of the Kerala Education Act and the rules framed thereunder contemplated a five-day week, where Saturdays were always treated as holidays, which has been the practice throughout, right from the inception. Therefore, it is a statutory recognition and declaration, that has been practiced for years and



decades. Hence, a deviation from the same could not have been done by the 2nd respondent through an executive order, that too, even without any deliberations in this regard. At the most, what could have been done by the 2nd respondent was to place the matter before the 1st respondent through proper channel to enable the 1st respondent to take a decision thereon after hearing all the stakeholders and experts.

14. While making the above observations, I am conscious of the fact that, as per Rule 3 of Chapter VII of KER, the minimum number of working days prescribed is 220 days, and as per the Ext. P3 Calendar, the 2nd respondent only ensured the number of working days as provided in the said rule. It is also true that the 2nd respondent cannot be treated as incorrect when he prepares a calendar containing 220 working days, as contemplated in Rule 3. However, the moment when, to reach the figure of 220 days, he declared 25 Saturdays as working days, he was travelling beyond his powers. This is because, the provisions in KER, by necessary implication, in the light of Rule 4(3) of Chapter VII, made the Saturdays as holidays and such stipulation is confirmed by the practice of following the system of five day week from Monday to Friday, for the past several decades. This amounts to a change in policy and deviation from the statute, which could have been



done only by the 1st respondent after following due process of law in this regard.

15. As rightly pointed out by the learned counsels for the petitioners, the relevance of the statutory provisions contained in the Right to Education Act was also not considered while preparing the Ext P3 calendar. It is to be noted in this regard that, minimum working days have been prescribed in the Schedule of Right to Education Act, 2009 in Sl. No 3, which reads as follows:

“3. Minimum number of working days/instructional hours in an academic year

(i) two hundred working days for first class to an fifth class;

(ii) two hundred and twenty working days for sixth class to eight 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.”

The important aspect to be noticed from the above is that the Right to Education Act created a conscious classification between the students of classes 1 to 5 on one side and classes 6 to 8 on the other side. A separate minimum working days/instructional hours were prescribed for



the two separate categories of the students mentioned above, and therefore, such classification also should have been brought into the Calendar prepared by the 2nd respondent, as far as the working days/instructional hours are concerned, instead of applying the same yardstick to all the students from class 1 onwards.

16. Since the Right to Education Act, is an Act by the Central Government, exercising the powers under entry 25 in List III (Concurrent List) of Schedule VII of the Constitution of India, the same would get supremacy over the Kerala Education Act, and the Rules framed thereunder, which is a State enactment, by virtue of Article 254 of the Constitution of India. The position of law in this regard is well settled by the decision of the Honourable Supreme Court in **Gambhirdan Gadhvi's case** (supra), wherein the conflict between the UGC Regulations and the State enactments relating to the Universities were considered and held that to the extent of repugnancy, the Central Act would be applicable.

17. In this case, the conflict between the schedule of the Right to Education Act, 2009 and Rule 3 of Chapter VII of the KER is twofold. Firstly, there is a lack of classification between students in classes 1 to 5 and classes 1 to 8. The second conflict is with regard to the number of working days. One crucial aspect to be noticed in this regard is that,



besides creating two separate categories as mentioned above, the Right to Education Act prescribed two criteria for academic purposes, i.e. one based on working days and the other based on instructional hours. It is to be noted that Sl no 3 in the Schedule prescribes the minimum number of “**working days/instructional hours**”. Thus, going by the scheme of the Right to Education Act, either of the above has to be fulfilled, and therefore, it could be possible to implement the same, even by following a 5-day week system. As far as the provisions of the KER relating to the number of working days are concerned, in the light of the provisions in the Right to Education Act, as referred to above, it has to give way, as the Right to Education Act is a Central Act, which, as held in **Gambhirdan Gadhvi’s case** (supra), would prevail over the provisions in the KER.

18. Thus, while fixing the calendar, the State Government was bound to implement the provisions of the Right to Education Act by prescribing a separate minimum for the categories mentioned above, either in terms of the number of working days or instructional hours. In this case, not only that such an exercise is not done, but there not even any deliberations on the scope or possibilities of the same. Therefore, the fixation of working days as per Ext. P3, as it now stands, cannot be treated as the one prescribed by due process of law.



19. Another important aspect is that, while making the number of working days as 220 by declaring 25 Saturdays as working days, no opportunity for the stakeholders to be heard was provided. It is to be noted that Exts. P3 and P6 were issued by implementing Ext.P2 judgment, wherein it has been specifically observed by this court that the decision shall be made after hearing the affected parties as well. Despite the above, while issuing Ext. P6, only the petitioners in the said writ petition were heard. There was no hearing of any affected parties, such as the students, parents, teachers, or other persons connected with the management of the educational institutions. The 2nd respondent, while declaring the Saturdays as holidays, purportedly to make up the deficiency and to raise the number of working days to 220 days as prescribed in Rule 3 of Chapter VII of the KER, had not chosen to obtain and consider the viewpoints of the affected parties as referred to above, despite the fact that, it was a decision affecting lakhs of students, parents and thousands of teaching and non-teaching staff. As rightly pointed out by the learned Senior Counsel, such a decision also adversely affects the other extracurricular and recreational activities of the students, such as NCC, NSS, Arts and Sports activities, etc., but no alternative for the same was suggested, and apparently, such an aspect



was not even in the zone of consideration when a decision was made by the 2nd respondent.

20. More importantly, none of the documents produced before this Court, contain a reference to any studies regarding the advantages or disadvantages of making Saturdays as working days, for making up 220 working days, which, going by the language used in Rule 3 of Chapter VII itself, was not intended to be strictly implemented. It is to be noted that the expression “There shall ordinarily be a minimum of 220 instructional days.....” conveys the said intention, and it depends upon other factors as well. Even though, the Schedule of the Right to Education Act also contemplates a minimum of 220 working days, such requirement is confined to the students of classes 6 and above. Moreover, the said Act, provides for a minimum of 800 instructional hours for students of classes 1 to 6 and 1000 instructional hours to classes 6 and 8 in an academic year as well. These aspects are not considered by the 2nd respondent while preparing Ext P3.

21. Similarly, the impact that a six-day week can have on the mental health and well-being of the students was also not considered. The orders in this regard do not contain any reference to any opinions or suggestions of any experts in this regard. The necessity of quality time for the students for recreational and extracurricular activities was also



not considered. Recently, a Division bench of this Court in **Kerala CBSE**

School Management Association v. State of Kerala (2024 (3) KLT

141), while considering the prohibition imposed by the Government in conducting the classes by the schools during summer vacation, after referring to Article 31 in Part I of the United Nations Convention of Rights of the Child, the following observations were made

“6. The petitioners are the management association and certain schools who want to conduct classes during vacation to make up syllabus, especially, for the students who are attending board exams during the next academic year. They experienced a shortage of time to complete syllabus and prepare the students for the next academic year. We find there is a legitimate concern for school authorities. But at the same time, it should not be at the cost of the best interest of the child. The best interest of the child includes right of the child for rest and leisure. It is appropriate to refer to Article 31 in Part 1 of the United Nations Convention of Rights of the Child.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

7. The parents cannot barter away their child’s right to rest and leisure in exchange to focus exclusively on studies. There is a prevailing belief that prioritising academic studies would protect the best interest of the child. However, growth of child is ensured not solely based on



knowledge but also through recreational activities. The child is also having equal right to engage in cultural, artistic, leisure activities. This cannot be compromised. The State also cannot ignore the fact that that the child cannot forgo their academic pursuits. However, how to balance children's academic pursuits and their right to recreational activities is a matter to be considered by the State. We also cannot overlook the exposure of the children to summer heat during vacation. The State also need to address this concern as well. The present regulation apparently is invoking power under the Kerala Education Act and Rules. That power cannot be utilised to govern a competing interest and rights of the child and their welfare. The executive Government alone can address the issue. The statutory authorities under KER are incompetent to decide such issues. In this matter, admittedly, they invoked statutory power under KER which according to us cannot be extended to schools other than those recognised under the Kerala Education Act and Rules.”

22. Thus, this court emphasized the requirement of ensuring the right of the child to have rest and leisure, to engage in play and recreational activities appropriate to the age, etc. Education is not necessarily imparted through the academic studies provided by the educational institutions alone, even though the same is the most predominant source. Education is a much more comprehensive package and not confined to academic studies alone, as it also includes the qualities that a student, acquire and imbibe through interactions with fellow students, teachers, parents, and other members of society, by creating, indulging in and maintaining relationships with each other, by



caring, sharing, exchanging ideas and concepts between them, etc.

Such interactions can occur only if the students are provided with ample opportunities for the same through recreational activities, sports, games, arts, or other methods that could implant within them an affinity towards social commitments and personal relationships. The activities of organizations such as NCC, NSS, etc., are also essential, and necessary provisions for the same are also to be made. It is to be noted that, in the Article referred to by Sri. T.T. Muhamood, the learned counsel for some of the petitioners, contains the details of various studies in the schools in USA, where the 4-day week system was followed instead of the traditional system of 5-day week, and results were found to be the improvement in academic performance of the students. These are factors to be taken into consideration. The mental health of the students is also to be examined before putting the burden upon them of following a six-day week system. These are relevant aspects that should have taken into account, while changing the system into a six day week.

23. Of course, the learned Additional Advocate General raised a contention that, as a policy, they have not made all the Saturdays working days, and they have ensured that, as much as possible, those Saturdays were selected as working days, which fall during the week where there are other declared holidays. Exhibit R2 (c) chart was also



relied on. However, on going through the Ext. P3 calendar, it can be seen that, during the academic year 2024-2025, there are 43 Saturdays in which 10 second Saturdays have to be excluded, being declared public holidays. Out of the remaining 33 Saturdays, 25 Saturdays have been now made as working days. Thus, a substantial number of available Saturdays have been made as working days, and this is a decision which the 2nd respondent could not have taken or even by the 1st respondent without obtaining and examining the views of all the stakeholders such as teachers, their organizations, persons in management of the educational institutions, students and other affected parties. The views of the experts, including the competent persons who are capable of giving valuable inputs as to the impact on the mental health of the students, also should have been considered by perusing the study materials in this regard or through other sources. In this regard, it is to be noted that a contention has been raised by the respondents to the effect that the teachers cannot be treated as the affected parties, as far as the number of working days is concerned, since they are bound by the provisions of the KER. I am not inclined to accept the said contention. Education is imparted mainly through them, and any change in the system, which has been in place for the past several decades, cannot be implemented without affecting them.



24. It is true that after a decision is taken as per Ext. P6 and before the publication of the Ext. P3 calendar, a hearing is provided to some of the stakeholders, which include some of the petitioners herein, as evidenced by Ext. R2(b). However, the same does not contain any consideration of their views, and instead, the authorities simply accepted the decision already taken. Moreover, by the time the hearing was conducted, a decision in this regard had already been taken, and therefore, the hearing referred to above had been reduced to an empty formality.

25. Thus, on an overall analysis of the statutory provisions and schemes of the Right to Education Act, Kerala Education Act, and the Rules framed thereunder, it is evident that the present decision of declaring the 25 Saturdays as working days was taken without properly hearing the stakeholders and obtaining their views. The views of the experts in Education and psychology of children to assess the impact on mental health were also not considered. The classification of the students into two categories, as made in the Right to Education Act, is not taken into account. The possibilities for putting a system in place based on the working hours or instructional hours contemplated in the Right to Education Act are also not explored. The decision is apparently taken in undue haste, without considering the relevant parameters, and



without proper consultations and hearings of the stakeholders and experts. The conflict between the provisions in the KER and the Right to Education Act was not considered. Above all, the decision was taken by the 2nd respondent, who, as already observed above, travelled beyond his powers when declaring 25 Saturdays as holidays, which was a deviation from the policy and statutory declaration as acknowledged in Rule 4(3) Chapter VII of the KER, that has been in practice for the last several decades and such decision could have been taken only by the 1st respondent, by following the procedure in this regard.

26. Even though in WP(C) No 24566/2024, there was a prayer to declare Rule 3 Chapter VII of the KER as ultra vires of the Constitution of India, in the light of the decision that has been taken and directions that are issued hereunder, the same was not considered.

In such circumstances, I am convinced that, Ext. P6 decision of the 2nd respondent and Ext. P3 Academic Calendar are not legally sustainable to the extent that it declared 25 Saturdays as working days. Accordingly, Exts. P3 and P6 are quashed to that extent, with a direction to the 1st respondent to reconsider the same by taking note of the requirements in the Right of Children to Free and Compulsory Education Act, 2009, after considering the views of the stakeholders by extending a reasonable opportunity to them and also considering the views of the



experts as mentioned above. Since, this Court did not issue notice, to the petitioners in Ext. P2 judgment, before taking a decision notice should be issued to them as well. However, considering the fact that, by this time, Ext. P3 is implemented, and on several Saturdays during this academic year, the schools functioned, it is clarified that this judgment shall be made applicable to the coming Saturdays, which are declared as working days as per Ext. P3 calendar.

These Writ Petitions are disposed of with the above directions.

Sd/-

ZIYAD RAHMAN A.A.
JUDGE

pkk



APPENDIX OF WP(C) 21992/2024

PETITIONER' s EXHIBITS

Exhibit P1 TRUE COPY OF THE EDUCATIONAL CALENDAR 2024-25
PUBLISHED BY THE 1ST RESPONDENT

Exhibit P2 TRUE COPY OF THE JUDGEMENT IN WP(C) 25120/23
DATED 26-02-2024 PASSED BY THIS HONOURABLE
COURT

Exhibit P3 TRUE COPY OF ORDER NO. S2 (A)
1599098/2023/DGE DATED 25-04-2024 ISSUED BY
THE 2ND RESPONDENT



APPENDIX OF WP(C) 22452/2024

PETITIONER'S EXHIBITS

Exhibit-P1 TRUE COPY OF ACADEMIC CALENDAR PUBLISHED BY THE 2ND RESPONDENT DATED 03.06.2024.

Exhibit-P2 TRUE COPY OF CIRCULAR NO.QIP 1/12079/2024/DGE DATED 14.06.2024 ISSUED BY THE 2ND RESPONDENT.

ExhibitP3 TRUE COPY OF THE REPRESENTATION NO.642/2024 DATED 19.06.2024 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.



APPENDIX OF WP(C) 22878/2024

PETITIONER'S EXHIBITS

Exhibit P1 TRUE COPY OF THE EDUCATIONAL CALENDAR 2024-25
PUBLISHED BY THE 1ST RESPONDENT

Exhibit P2 TRUE COPY OF THE JUDGEMENT IN WP(C) 25120/23
DATED 26-02-2024 PASSED BY THE HONOURABLE
COURT

Exhibit P3 TRUE COPY OF ORDER NO. S2 (A)
1599098/2023/DGE DATED 25-04-2024 ISSUED BY
THE 2ND RESPONDENT



APPENDIX OF WP(C) 22903/2024

PETITIONER'S EXHIBITS

Exhibit P1 TRUE COPY OF THE JUDGMENT IN W.P.[C]
NO.25120/ 2023 DATED 26/02/2024 OF THE
HON'BLE COURT OF KERALA

Exhibit P2 THE TRUE COPY OF THE EDUCATION CALENDAR FOR
THE YEAR 2024-25 PUBLISHED BY THE 2ND
RESPONDENT



APPENDIX OF WP(C) 23474/2024

PETITIONER'S EXHIBITS

- Exhibit P1 TRUE COPY OF G.O (J) NO. 14/2022/G.EDN. DATED 13.01.2022
- Exhibit P2 TRUE COPY OF THE ACADEMIC CALENDAR PUBLISHED BY THE 2ND RESPONDENT DATED 03.06.2024
- Exhibit P3 TRUE COPY OF THE CIRCULAR NO.QIP 1/12079/2024/DGE ISSUED BY THE 2 RESPONDENT DATED 14.06.2024
- Exhibit P4 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT DATED 14.06.2024



APPENDIX OF WP(C) 24566/2024

PETITIONER'S EXHIBITS

- Exhibit P1 A TRUE COPY OF THE ORDER NO. AS2
(A)1599098/2003/DGE DATED 25/04/2024 ISSUED
BY THE 3RD RESPONDENT
- Exhibit P2 A TRUE COPY OF THE JUDGMENT DATED 26/02/2024
IN WPC NO. 25120/2023 OF THIS HONOURABLE
COURT
- Exhibit P3 A TRUE COPY OF THE EDUCATION CALENDAR DATED
NIL ISSUED BY THE 3RD RESPONDENT
- Exhibit P4 A TRUE COPY OF THE REPRESENTATION DATED
01/07/2024 SUBMITTED BY THE PETITIONER BEFORE
THE 4TH RESPONDENT

APPENDIX OF WP(C) 21811/2024**PETITIONERS' EXHIBITS**

- Exhibit-P1 TRUE COPY OF G.O.(RT)NO.530/2018/G.EDN.
DEPARTMENT DATED 2-2-2018
- Exhibit-P2 COPY OF THE JUDGMENT DATED 26-2-2024 IN W.P©
NO. 25120/2023 OF THIS HON'BLE COURT
- Exhibit-P3 TRUE COPY OF ACADEMIC CALENDAR IS SEEN
PUBLISHED BY THE DIRECTOR, ON 3-6-2024
- Exhibit-P4 TRUE COPY OF THE NOTICE
NO.QIP1DGE/19025/2023/DGE DATED 24-5-2024
- Exhibit-P5 TRUE COPY OF REPRESENTATION DATED 29-5-2024
TO THE 1ST RESPONDENT.
- Exhibit-P6 TRUE COPY OF THE ORDER
NO.S2(A)/1599098/23/D.G.E. DATED 25-4-2024

RESPONDENT EXHIBITS

- Exhibit R2(a) True copy of Order No.DGE Vide No.
S2(A)/1599098/2023/DGE dated. 25.4.24.
- Exhibit R2(b) True copy of the Minutes of the Meeting of
QIP Monitoring Committee held on 25.5.24.
- Exhibit R2(c) True copy of the consolidated statement of
the Educational Calendar

//TRUE COPY//

SD/-

P.S. TO JUDGE