



2025:KER:30625

W.A. No.4 of 2025

1

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947

WA NO. 4 OF 2025

AGAINST THE JUDGMENT DATED 21.11.2024 IN WP(C)
NO.34850 OF 2018 OF HIGH COURT OF KERALA

APPELLANTS/ADDITIONAL 6TH, 7TH AND 8TH RESPONDENTS IN WPC
NO.34850 OF 2018:

- 1 ADDL.R6 RASHIDA K, AGED 58 YEARS, W/O. ABDUL JABBAR, MANNISSERY HOUSE, AMAYOOR P.O, MANJERI, WORKING AS ASSISTANT TEACHER, A.L.P SCHOOL, PAZHEDAM, MANJERI, MALAPPURAM., PIN - 679 303
- 2 ADDL.R7 SOUDATH C.H, AGED 56 YEARS, W/O. HAMEED P.K, PANICKERKUNNAN HOUSE, THRIKKALANGODE, WORKING AS ASSISTANT TEACHER, A.L.P SCHOOL, PAZHEDAM, MANJERI, MALAPPURAM., PIN - 686 520
- 3 ADDL.R8 SWAPNA K.G, AGED 54 YEARS, W/O. MOHANDAS, WORKING AS ASSISTANT TEACHER, A.L.P SCHOOL, PAZHEDAM, MANJERI, MALAPPURAM. (ADDL.R6 TO R8 ARE IMPEADED AS PER ORDER DATED 09/11/2018 IN IA.NO.01/2018), PIN - 676 123

BY ADV V.VARGHESE



2025:KER:30625

W.A. No.4 of 2025

2

RESPONDENTS/WRIT PETITIONERS 1 AND 2 AND RESPONDENTS 1 TO 5
IN WPC NO.34850 OF 2018:

- 1 N.SIDRATHUL MUNTHAHA, AGED 36 YEARS, WIFE OF
TARIQ, RESIDING AT NEERULPPAN, AL-HILAL MANZIL,
PATHAPPARIYAM P.O, MANJERI, MALAPPURAM DISTRICT.,
PIN - 676 123
- 2 C.H.ABDUL RASHID, RESIDING AT CHOLASSERI HOUSE,
VIP COLONY, DOWN HILL, MALAPPURAM DISTRICT-676
519.
- 3 THE STATE OF KERALA, REPRESENTED BY ITS SECRETARY
TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT,
SECRETARIAT ANNEXE-11, THIRUVANANTHAPURAM 695 001
- 4 THE DIRECTOR OF PUBLIC INSTRUCTIONS, JAGATHY,
THIRUVANANTHAPURAM-695 014.
- 5 THE DEPUTY DIRECTOR OF EDUCATION, DOWN HILL,
MALAPPURAM-676505., PIN - 676 505
- 6 THE DISTRICT EDUCATIONAL OFFICER, MALAPPURAM-676
505.
- 7 THE ASSISTANT EDUCATIONAL OFFICER, MANJERI,
MALAPPURAM DISTRICT-676 121.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
08.04.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**C.R****J U D G M E N T****A. Muhamed Mustaque, J.**

The Lower Primary School Pazhedam, Manjeri, Malappuram District, is an aided school. One Sri. T.P. Muhammed Haji was the owner and manager of the school. After his demise, his son, T.P. Abdul Salam, was acting as the manager. He is also one of the legal heirs of the late. T.P. Muhammed Haji. The legal heirs of T.P. Muhammed Haji subsequently transferred ownership to one Aranhikkal Abdul Salam. There was a dispute regarding omission of a certain parcel of land, which forms part of the school property, in the document. Anyway, we are not adverting to that matter now, as the issue before us requires consideration from a different perspective. The Aranhikkal Abdul Salam sold his right over the property to N. Sidrathul Munthaha, who is the Part-Time Arabic Teacher of the above school. Thereafter, N. Sidrathul Munthaha approached the Government for approval as the manager. There is a legal embargo on a teacher of a school becoming its manager. The Government exempted her from the bar



applicable to the teachers acquiring the management right of the school by an Order dated 03.12.2012.

2. Thereafter, N. Sidrathul Munthaha requested the transfer of management involving ownership, invoking Rule 5A of Chapter III of the Kerala Education Rules (For short, "KER"). This has been approved by the Director of Public Instructions as per the proceedings dated 07.03.2014. The teachers of the school have approached this Court challenging the exemption granted to N. Sidrathul Munthaha and the proceedings approving the change of management, invoking Rule 5A of Chapter III of the KER, in W.P.(C) No.8393 of 2014.

3. It appears that pending the challenge or before the challenge, N. Sidrathul Munthaha proposed the appointment of C.H. Abdul Rashid, the second respondent herein, as the manager of the school. N. Sidrathul Munthaha entered appearance in the matter in W.P.(C) No.8393 of 2014 and submitted that the challenge made by the teachers had become infructuous since she had proposed the appointment of C.H. Abdul Rashid, and therefore, the matter be considered as per the



law and fresh orders be passed in the matter. The submission that the challenge in regard to the approval granted to N. Sidrathul Munthaha had become infructuous would have a bearing on the outcome of this matter. Going by the nature of the submission made before this Court and taking note of the direction issued therein, we are sure that this Court intended to keep the entire issue alive and open for fresh consideration, while considering the approval of managership of C.H. Abdul Rashid, who was proposed by N. Sidrathul Munthaha. This means that the issue in regard to the approval granted to N. Sidrathul Munthaha survives for fresh consideration by the Government. This Court in W.P. (C) No.8393 of 2014 directed the Director of Public Instructions to consider the matter with respect to the appointment of C.H. Abdul Rashid as the manager. The Director of Public Instructions had considered the matter. The Director of Public Instructions, placing reliance on Rule 3(2) of Chapter III of the KER, was of the view that a manager cannot be distinct from the owner of the school, and rejected the approval. N. Sidrathul Munthaha thereafter carried the matter before the Government in revision. The Government,



by a detailed order, took the view that, as per the KER, the management will have to be with the person who owns the aided school in regard to the individual ownership. It was also adverted that N. Sidrathul Munthaha owned only 22 cents of land. Many other reasons have also been assigned for rejecting the revision filed by N. Sidrathul Munthaha.

4. N. Sidrathul Munthaha came before this Court challenging the orders passed in the writ petition. The learned Single Judge, after adverting to the earlier approval granted to N. Sidrathul Munthaha, was of the view that the earlier order was passed approving the transfer of management, making the position clear to the effect that the Government had approved the transfer of ownership, and after adverting to the statutory provisions, was of the view that the statutory provisions do not make a distinction between an owner and any person other than the owner, who cannot be appointed as a manager. We reserve our views about the above observations, since we want to have an open consideration of the entire matter threadbare in the light of the legal arguments raised before this Court by the



teachers of the school, who have filed this appeal.

5. First of all, we have to decide the validity of the approval granted to N. Sidrathul Munthaha vide Order dated 07.03.2014, and whether the challenge regarding the Order dated 07.03.2014 has been concluded or not. In the light of the Judgment of this Court in W.P. (C) No. 8393 of 2014 dated 07.02.2018, we are of the view that the challenge to the Order dated 07.03.2014 has not been concluded. Though, the teachers had earlier filed W.P. (C) No. 8393 of 2014, they did not raise any objection to the transfer based on Section 6 of the Kerala Education Act, 1958 (hereinafter referred to as the "Act"). A question therefore arises as to whether the transaction itself is void or not. Since the issue further survives for consideration in the light of the Judgment in W.P. (C) No.8393 of 2014, a question regarding the voidability of the transaction can be considered at any stage if it goes to the root of the matter. As we noted above, the issue challenging the legality of the Order dated 07.03.2014 has not been concluded in the earlier round of the litigation and still survives for consideration. This is not a



matter that could be sidestepped, for the reason that this is not at all a factual issue but purely a question of law based on the admitted facts involved in this case. The point that is now being canvassed before this Court by the learned counsel for the appellants is based on Section 6 of the Act.

6. According to the learned counsel for the appellants, since N. Sidrathul Munthaha had not obtained any previous permission before obtaining title, the entire transaction is void under Section 6(3) of the Act and she cannot act as a manager nor can nominate anyone else as a manager.

7. The earlier Order dated 07.03.2014, issued by the Director of Public Instructions, was, in fact, by invoking Rule 5A of Chapter III of the KER. It is appropriate to understand the difference between Section 6 of the Act and Rule 5A of Chapter III of the KER.

Section 6 of KEA	Rule 5A of KER
"Restriction on alienation of property of aided school.	"[5A. Change of management involving change of ownership
(1) Notwithstanding anything to the contrary	(1) Not with standing



contained in any law for the time being in force, no sale, mortgage, lease, pledge, charge or transfer of possession in respect of any property of an aided school shall be created or made except with the previous permission in writing of such officer not below the rank of a District Educational Officer, as may be authorised by the Government in this behalf. The officer shall grant such permission applied for unless the grant of such permission will, in his opinion, adversely affect the working of the school.

(2) Any person aggrieved by an order of the officer refusing or granting permission under subsection (1) may, in such manner and within such time as may be prescribed. Appeal to the Government.

(3) Any transaction made in contravention of subsection (1) or subsection (2) shall be null and void.

(4) If any educational agency or the Manager of any school acts in contravention of subsection (1) or of an order passed under subsection (2), the Government may withhold any grant to the school."

anything contained in these rules, no change of Management of any aided school involving change of ownership shall be effected except with the previous permission of the Director. The Director may grant such permission unless the grant of such permission will, in his opinion, adversely affect the working of the institution and the interests of the staff and the person to whom the Management is transferred.

(2) Any person aggrieved by an order under sub-rule (1) may, within 30 days from the date of the receipt of the order, prefer an appeal to the Government.]

[(3) In the case of change of management of a school involving change of ownership the new Manager of a corporate or an individual Educational Agency, shall be bound to absorb any member who is a claimant under rule 51 A of Chapter XIV A or is eligible for protection belonging to teaching and non-teaching staff of any school of the transferor manager, against the vacancies that may arise in the school]."



8. Section 6 of the Act is a prerequisite before any transfer is effected in circumstances where a 'transfer of an interest' is involved, as referred to in the said provision. That means, in matters where the alienation of property belonging to an aided school is attempted, previous written permission from an officer not below the rank of District Educational Officer, as may be authorised by the Government in this behalf, shall be obtained. It is specifically stated in Section 6(3) of the Act that any transaction made in contravention of Section 6(1) or Section 6(2) of the Act shall be null and void. We are here to state that the document itself will not become void inasmuch as such a transaction is covered by the Transfer of Property Act, 1802. Nonetheless, it would operate as null and void for all aspects covered under the Kerala Education Act and Rules. That is the law.

9. The learned counsel for N. Sidrathul Munthaha would submit that Section 6 of the Act is inoperative since the Government had not appointed any officer in this behalf to



obtain previous permission. According to us, this argument is unsustainable. It is for the Government to authorise such an officer; if no officer is appointed for consideration, the transferor or transferee will have to move the Government for obtaining such previous permission. The objective behind Section 6 of the Act is to ensure that the property belonging to an aided school is not alienated indiscriminately, jeopardizing the future of the students.

10. A comparative analysis of Section 6 and Rule 5A is set out as follows:

Section 6 of the Kerala Education Act	Rule 5A of the Kerala Education Rules
Section 6 would come into operation when there is a voluntary transfer or alienation by the owner of the school to a third party.	Rule 5A contemplates a change of management involving a change of ownership in circumstances where the change is inevitable, consequent upon approved transfer or operation of law governing the property of an aided school.
Substantive provision – lays down the legal requirement for transfer of property of the school by sale, mortgage, lease, pledge, charge or transfer of possession.	Procedural rule – prescribes how a change of management involving a change of ownership should be effected/recorded.



Section 6 will not apply to a change of management involving ownership where no transfer of interest or alienation is involved by an act of the parties as contemplated under this section. This means Section 6 would be applicable only when transfer of interest or alienation is involved by an act of the parties as given in this section.	Once a permission is obtained under section 6, the transferee will have to follow the procedure under rule 5A after the transfer and alienation for recording the change in management if it involves such a change. In all other matters where no transfer or alienation as contemplated in Section 6 is involved, the parties are free to obtain permission under Rule 5A directly.
Section 6 contemplates previous permission before the transfer of a property.	Rule 5A refers to the permission before a change of management.
Any transfer in contravention of Section 6 is null and void.	Failure to follow the procedure under Rule 5A may result in administrative issues, but the change itself may not necessarily be void.

11. However, in a peculiar case like this, there is nothing that prevents the Government from considering whether the approval for transfer under Section 6 of the Act can still be granted or not even after the transfer is effected without previous permission, as the objective of Section 6 of the Act is to ensure that such a transfer shall not adversely affect the working of the school. Since the Government had no occasion to consider the matter under Section 6 of the Act, we leave open the entire



issue to be considered by the Government. We also note that there is a lack of clarity in regard to the law that must be followed in such transactions. It is on account of the lack of clarity in the law that multiple cases of litigation like this have arisen. It is for the Government to decide whether such permission can be granted or not. We make it clear that in all other matters, before the aided school property is being alienated, it is the mandate of the law that permission shall be obtained from the Government or any officer authorised by the Government in this regard, and such permission cannot be obtained merely by invoking Rule 5A of Chapter III of the KER, which is only a procedural rule enabling the recording of a change in ownership consequent upon an approved transfer or by operation of the law. Accordingly, we set aside the impugned judgment of the learned Single Judge and also the orders passed by the Government and direct the Government to reconsider the matter afresh under Section 6 of the Act as well as under Rule 5A of Chapter III of the KER for hearing the teachers who are before us by passing appropriate orders. Needful shall be done within a period of three months. It is for the Government to



2025:KER:30625

W.A. No.4 of 2025

14

decide if the post facto approval can be granted or not, and we are not deciding anything on that aspect in this matter.

Accordingly, the writ appeal is disposed of.

Sd/-

A.MUHAMED MUSTAQUE

JUDGE

Sd/-

P. KRISHNA KUMAR

JUDGE

PR



2025:KER:30625

W.A. No.4 of 2025

15

APPENDIX OF WA 4/2025

PETITIONER ANNEXURES

Annexure 1

**TRUE COPY OF THE RP NO 1312/2024 AND THE
CERTIFIED COPY OF THE JUDGMENT IN THE RP
DATED 12.12.2024**