Supreme Court of India
State Of Kerala And Ors vs K.G. Madhavan Pillai And Ors on 19 September, 1988
Equivalent citations: 1989 AIR 49, 1988 SCR Supl. (3) 94
Author: S Natrajan
Bench: Natrajan, S. (J)

PETITIONER:
STATE OF KERALA AND ORS.

Vs.

RESPONDENT:
K.G. MADHAVAN PILLAI AND ORS.

DATE OF JUDGMENT19/09/1988

BENCH:
NATRAJAN, S. (J)
BENCH:
NATRAJAN, S. (J)
SEN, A.P. (J)

CITATION:
1989 AIR 49 1988 SCR Supl. (3) 94
1988 SCC (4) 669 JT 1988 (4) 613
1988 SCALE (2)1247
CITATOR INFO :
RF 1991 SC1117 (9)
R 1991 SC2160 (33)

ACT:
Kerala Education Act, 1957/Kerala Education Rules--Sections 2(7), 2(8), 37/Chapter V--Rules 2, 2A, 9, 11 and 12--Opening new unaided recognised Schools or upgrading existing schools-Government according sanction to educational agencies--Later order cancelled--Held Order vitiated by reason of non-observance of principles of natural justice.

HEADNOTE:
Respondents are running Private Schools. In pursuance of the State of Kerala publishing in the Gazette a final list of areas where new unaided recognised high schools/upper primary schools/lower primary schools were to be opened or existing unaided lower primary schools/ upper primary schools were to be upgraded in the year 1986-87 the Respondents-educational agencies submitted applications for grant of sanction to open the unaided recognised schools or for upgrading the schools already run by them. These applications were duly inquired and considered by the

District Educational Officer as also by the Director of Education as per the Rules & procedure laid down therefor, particularly Rules 24(3) and (4) and thereafter the Government considered the applications in accordance with Rule 2A(5) and took a final decision for grant of necessary sanction for opening/upgrading of 36 lower primary schools, 36 upper primary schools and 19 high schools, totalling in all 91 schools in the list of areas selected. On 4.2.87, the State Government issued an Order under Ex. P-4, granting sanction to the Respondents to open new unaided schools or to upgrade their existing schools subject to the conditions set out therein. However, by an Order Ex. P-5, dated 20.2.87, the Government directed that the earlier order under Ex P-4 be kept in abeyance. The Respondents challenged the Order of the Government by means of a Writ Petition.

During the pendency of the Writ Petition general elections were held to the Kerala Legislative Assembly as a result whereof a new Ministry assumed office. The Government under the new Ministry passed an order dated 19.5.87 under Ex P-7 cancelling in toto the order under Ex-P-4 granting sanction to the Respondents to open the school or to upgrade the existing schools.

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The Respondents thereupon amended their Petition suitably and challenged the validity of the order of cancellation passed under Ex.P-7. The Singie Judge of the High Court before whom the Writ Petition first came up for hearing took the view that while it was obligatory for the Government to follow the procedure prescribed in Rules 2 & 2A, Chapter V, if it was to permit the opening of new unaided recognised schools or upgradation of existing schools, the converse result would not follow i.e. wherever the Government had gone through the procedure under the Rules the Government could not retrace its steps and was bound to proceed further in the matter and that the Government had no option to reverse its decision. On the question of revocation of the order of sanction, however, the learned Judge held that the power to sanction new schools carried with it the inherent power of cancellation of an order passed under Rule 2A(5). Accordingly the learned Singie Judge dismissed the petitions. The respondents thereafter preferred appeals before the Division Bench. The Division Bench allowed the appeals, reversed the order passed by the Single Judge but granted only limited reliefs to the Respondents in that it quashed the order under Ex. P-7 dated 19.5.87 and issued a mandamus to the State Government to consider the applications of the Respondents on their merits on the basis of the earlier order passed in their favour under Ex. P-4 dated 4.2.87. The Division Bench further held that the Respondents have locus-standi to challenge the order of cancellation and that the Government did not have the power or jurisdiction to revoke the

cancellation order. It also held that the cancellation order violated the principle of natural justice.

Being aggrieved by the decision of the Division Bench of the High Court, the State filed these appeals after obtaining special leave.

Dismissing the appeals this Court,

HELD: The importance of securing recognition lies in the fact that without recognition the students studying in the unaided schools will neither be permitted to appear as candidates in the examinations conducted by the State nor be eligible to avail of the opportunities for higher education or to enter public service examination. The obtainment of recognition from the Government is therefore a vital factor for the educational agencies starting new schools or newly upgrading their existing schools. [107B-C]

Rule 2A(1) makes it imperative for the Director to call for applications from interested parties for opening new schools or upgrading existing schools in the selected areas. The mandate contained therein goes to show that the

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idenffication and selection of inadequately served areas under Rule 2(4) is not an idle or meaningless exercise. [111A-C]

When even an unsuccessful applicant is conferred a right to represent to Government against the non-approval of the application, can it be said that an approved applicant has no right whatever to complain when the sanction granted to him is revoked all of a sudden without he being given any opportunity to show cause against such cancellation. [111D-E]

The further scrutiny of the application of the approved applicant under Rule 9 and the confirmation of approval under Rule 11 would not, however, mean that the earlier sanction granted under Rule 2A(S) does not create "legitimate expectation right" in the approved applicant. [111G-H: 12A]

The Rules do not provide for the Government reviewing suo moto any order of sanction passed under Rule 2A(5) in favour of any applicant for opening of a new school or upgrading an existing school and its power of revision under Rule] 2 is confined to the reconsideration of the case of any applicant whose name did not find a place in the final list of approved applications published by the Government. [116D-E]

Though the sanction granted to the respondents under Ex. P-4 would not by itself entitle them to open new schools or upgrade the existing schools, it did confer on them a right to seek the continuance of the statutory procedural stream in order to have their applications considered under Rule 9 and dealt with them under Rule 11 [122C]

It was not open to the Government, either under the Act or Rules or under Section 20 of the Kerala General Clauses Act to cancel the approval granted to the respondents under

Rule 2A(5), for opening new schools or upgrading existing schools in the selected areas on the basis of a revised policy. [122D]

The impugned order under Ex. P-7, irrespective of the question whether the government had the requisite power of cancellation or not, is vitiated by reason of non-observance of the principles of natural justice and the vice of extraneous factors. [122E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1407-15 of 1988.

PG NO 97 From the Judgment and Order dated 29.9.1987 of the Kerala High Court in W.A. Nos. 601, 602, 604, 605, 610, 655, 664, 680 and 735 of 1987.

P.S. Poti, K. Sudhakaran and K.R. Nambiar for the Appellants.

T.S. Krishnamurthy Iyer, K.K. Venugopal, Dr. Y.S. Chitale, E.M.S. Anam and Mrs. Baby Krishnan for the Respondents.

The Judgment of the Court was delivered by NATARAJAN, J. These appeals by special leave arise out of a common judgment rendered by the High Court of Kerala in a batch of writ appeals filed by the respondents herein against the dismissal of their petitions under Article 226 of the Constitution of India for the issue of writs of certiorari, mandamus, prohibition etc. by a learned single Judge. Though the appeals were allowed and the order of learned single Judge was reversed, the Division Bench has granted only limited reliefs to the respondents in that it has quashed the impugned order of the Government under Ex. P-7 dated 19-5-87 and issued a mandamus to the State Government to consider the applications of the respondents on their merits on the basis of the earlier order passed in their favour under Ex. P-4 dated 4-2-87. The State of Kerala, feeling aggrieved with the judgment of the Division Bench, has preferred these appeals.

Pursuant to the State Government publishing in the Gazette a final list of areas where new unaided recognised high schools/upper primary schools/lower primary schools are to be opened or existing unaided lower primary schools/upper primary schools are to be upgraded in the year 1986-87, the respondent educational agencies submitted applications for grant of sanction to open new unaided recognised schools or for upgrading the schools already run by them. By 4-2-87, the State Government issued an order under Ex. P-4 granting sanction to the respondents to open new unaided schools or to upgrade their existing schools subject to the conditions set out therein. However, by an order under Ex. P-5 dated 20-2-87, the Government directed the earlier order under Ex. P-4 to be kept in abeyance. The respondents challenged the order of the Government by means of petitions under Article 226 of the Constitution. During the pendency of the writ petitions, the general elections were held in Kerala State and a new ministry came to assume office. The government under the new ministry passed an order dated 19-5-87 under Ex. P-7 cancelling in toto

the order under Ex. P-4 granting PG NO 98 sanction to the respondents to open new schools or to upgrade the existing schools. This led to the respondents amending the writ petitions suitably so as to direct their challenge to the validity of the cancellation order passed under Ex. P-7. The respondents failed before the single Judge but on appeal the Division Bench has granted them limited reliefs as set out above.

Before adverting to factual matters. it is necessary to refer to some of the relevant provisions of the Kerala Education Act (for short `The Act') and the Kerala Education Rules (for short `The Rules). After the Kerala Education Bill, 1957, had been passed by the Kerala Legislative Assembly and was reserved by the Governor for the consideration of the President, the President made a reference to the Supreme Court under Article 143(1) of the Constitution for obtaining the opinion of the Court upon certain questions relating to the constitutional validity of some of the provisions of the Bill and the Supreme Court gave its opinion as reported In re. Kerala Education Bill, 1957 (1959 SCR 995). The preamble to the Act states that the Act is being enacted "to provide for the better organisation and development of educational institutions in the State providing a varied and comprehensive educational service throughout the State". Section 2 is the definition section and for our purpose it is enough if we look at the definitions of 'educational agency', 'private school', and 'recognised school' because we are concerned in these appeals only with private recognised schools and not with government or departmental schools or aided schools. Section 2(2), 2(7) and 2(8) read as under:

2(2). "Educational agency" means any person or body of persons permitted to establish and maintain any private school under this Act;

2(7). `-Private school" means an aided or recognised school;

2(8). "Recognised school," means a private school recognised by the Government under this Act". Section 3(1) empowers the Government to regulate primary and other stages of education and courses of instruction in government and private schools. It is apposite to mention here that recognised schools do not receive any financial aid from the Government though they are bound to impart instruction only according to the prescribed curriculum of studies and they can have recognised standards or divisions of classes only in accordance with the Act and the Rules. Section 3(3) sets out that the Government may provide PG NO 99 educational facilities by (a)establishing and maintaining schools or (b) permitting any person or body of persons to establish and maintain aided schools or (c) recognising any school established and maintained by any person or body of persons. Section 3(4) confers deemed recognition to all the schools which were in existence when the Act came into force. Section 3(5) stipulates that after the commencement of the Act, the establishment of a new school or the opening of a higher class in any private school shall be subject to the provisions of the Act and the Rules made thereunder and that if any school or higher class is established or opened otherwise than in accordance with the provisions of the Act and the Rules, they will not be entitled to be recognised by the Government. Section 9 provides that the Government shall pay the salary of all teachers in aided schools direct or through the Headmaster of the school. Section 13 lays down that if there is any retrenchment of teachers in any aided school on account of orders of Government, then the retrenched teachers can be absorbed in any Government school or aided school. Section 36 confers power on Government to make Rules, either prospectively

or retrospectively for the purpose of carrying into effect the provisions of the Act. Section 37 provides that all Rules made under the Act shall be laid before the Legislative Assembly for its approval. In exercise of its powers under Section 36, the Government have framed Rules and they have been approved by the Legislature. Though the Rules contain several chapters, we need look only into chapter V and the relevant rules therein. Rule 2 provides for the Director of Public Instructions (hereinafter the Director) preparing once in two years "a report indicating the locality where new schools or class or grades are to be opened and existing lower primary schools or upper primary schools or both are to be upgraded." In preparing such a report, the Director is enjoined to take into consideration several factors. The list so prepared by the Director should be published in the Gazette before the end of January of the year of publication, inviting objections or representations against such list. Every objection filed by an objector has to be accompanied by a challan for Rs.10. On receipt of the objection. the educational authorities have to conduct enquiries, hear the parties, visit the areas and submit their reports, together with their views on the objections raised, to the Director within a period of two months. The Director, if he find6 it necessary, may also hear the parties and thereafter he has to finalise the list and send his recommendations with the final list to Government within a period of two months. The Government has thereafter to PG NO 100 scrutinise the records and approve the list with or without modifications and cause the approved list to be published by the Director. As against the final list published by the Director, there is no right of appeal or revision for anyone but the Govern nent is empowered to review the list. As Rules 2(4) and 2(5) are relevant for consideration, they are extracted hereunder:

"2(4). Government after scrutinising all the records may approve the list, with or without modification and forward it to the Director within a month from the last date of the receipt of the recommendation of the Director. The list shall be finalised before the end of July by the Government and shall be published by the Director."

"2(5). No appeal or revision shall lie against the final list Published by the Director Provided that the Government may, either suo moto or on application by any person objecting to the list published by the Director under sub-rule (4) made before the expiry of thirty days from the-date of such publication, review their order finalising such list and make such modifications in that list as they deem fit by way of additions or omissions, if they are satisfied that any relevant ground has not been taken into consideration or any irrelevant ground has been taken into account while finalising the said list;

Provided further that no modification shall be made under the preceding proviso without giving any person likely to be affected thereby an opportunity to make representations against such modification."

Then comes Rule 2A which is an important provision and requires close scrutiny. Rule 2A(1) provides that after the publication of the final list under Rule 2(4) the Director shall, by notification in the Gazette in the month of October, call for applications for opening of new schools and for upgradation of existing schools in the areas specified in the final list. Rule 2A(2) lays down that only applications made in response to the notification published by the Director will merit consideration and not applications made otherwise. Rule 2A(3) lays down that on receipt of such applications for

permission to open new schools or for upgrading of existing schools, the District Educational Officer should make appropriate enquiries regarding the cor PG NO 101 rectness of the particulars contained in the application and other relevant matters and then forward the applications with his report thereon to the Director. Rule 2A(4) obligates the Director to peruse the applications and the reports of the District Educational Officers and forward all the papers to the Government with his own report. Rule 2A(S) enJoins the Government to consider the applications and the reports accompanying them and take a finfill decision and publish the same in the Gazette. As this sub-rule is of importance it requires extraction:

"2A(5). The Government shall consider the applications in the light of the report of the District Educational Officer and the Director and other relevant matters which the Government think necessary to be considered in this connection nd shall take a final decision and publish their decision in the Gazette with the list containing necessary particulars."

Rule 2A(7) sets out the time schedule in which the applications are to be made and the orders of Government are to be issued. It is worthy of note that as against the list of applications approved by the Government and published in the Gazette under Rule 2A(S), there is no provision for the Government reviewing the list to the detriment of the applicants whose applications have been approved and the provision made under Rule 12 is only for unsuccessful applicants to present revision petitions to complain of their non-selection. The next rule which requires notice is Rule 9 which sets out the conditions for grant of permission to open new schools. Rule 10 which was originally in the Rules and which prescribed the preparation of a Development Plan by the Director came to be deleted when the Rules were amended. Rule 11 pertains to grant of permission to open new schools. The rule provides that if the Government are satisfied that permission to open the schools included in the development plan may be granted, the Government may issue orders to that effect through the Director specifying

(i) the educational agency to whom permission i9 granted,

(ii) the grade of the school, (iii) the standard or standards to be opened, (iv) the location of the school, (v) the date from which the school should start functioning and

(vi) the conditions to be fulfilled by the educational agency in respect of the site, area, buildings, equipments, staff, financial guarantee etc. Rule 14 provides that when a new school is opened with permission granted under Rule 11, the District Educational Officer and the Director should be informed of the date of opening of the school. the location. the standards opened, the name and qualifications of the PG NO 102 staff etc. etc. The District Educational Officer should then visit the school and report to the Director about the conditions stipulated for opening the school being complied with. Rule 15 provides for withdrawal of permission if the conditions stipulated have not been fulfilled. Rule 16(a) deals with applications for recognition of schools or of additional standards. The rule states that within three B months from the date of opening of schools or of additional standards, applications should be made to the educational authorities for grant of recognition or continuance of temporary recognition. Rule 17 sets out that if all the conditions prescribed have been satisfied, then the school shall be granted recognition.

Now turning to factual matters, the Director published on March 6, 1986 a list indicating the areas where new un- recognised schools are to be opened and existing lower/upper primary schools are to be upgraded and inviting objections or representations against the list from interested parties. Thereafter, the educational authorities conducted the necessary enquiries, considered the objections/representations received and submitted their reports to the Director. There upon the Director bestowed his consideration to the matter and finalised the list and sent his recommendations to the Government. The Government approved the list with some modifications and then caused the approved list to be published by the Director on June 24, 1986 in the Gazette. The list published by the Government set out 122 areas where new schools are to be opened or existing schools are to be upgraded in order to fulfil the educational needs of the notified areas. The Gazette publication was under the caption "The final list of areas where new unaided recognised High schools/Upper primary schools/Lower primary schools are to be opened or existing unaided L.P. Schools/Upper primary schools are to be upgraded in the year 1986-87."

The task of identifying and approving the areas where new unaided schools are to be opened or existing schools are to be upgraded having been accomplished, the Director took the next step of issuing a notification under Rule 2A(I) calling for applications from intending applicants for opening new schools or for upgrading of existing schools in the selected areas. The respondents submitted their applications in response to the notification made by the Director. These applications were duly enquired into and considered by the District Educational Officer and thereafter by the Director as laid down in Rule 2A(3) and (4) and thereafter the Government considered the applications in accordance with Rule 2A(5) and took a H final decision and caused their decision to be published in the Gazette on February 4, 1g87. As per the Gazette notification, the Government granted sanction for the opening/upgrading of 36 lower primary schools, 36 upper primary schools and 19 high schools, totalling in all 91 schools in the list of areas selected. This Gazette PG NO 103 notification has been marked as Ex. P-4. The names of all the respondents found a place in the notification and they were granted permission to open/ upgrade unaided schools. The order reads as under:

"Government are pleased to accord sanction to open/ upgrade unaided recognised schools as detailed in Annexure to the Government Order subject to the following conditions.

1. The schools will be permitted to be opened during the academic year 1986-87 .....

2. For L.P. Schools and U.P. Schools without L.P. Scction, the educational agencies must provide one acre of land; for U.P. School with L.P. Section 1.5 acres of land; and for High Schools with or without primary section 3 acres of land. Recognition will be given only to the educational agency who produce evidence before the concerned controlling authority of having provided the required site.

3. The applicants for opening of the schools or upgradation of the schools shall give an undertaking as provided under Note (V) to Rule I l Chapter V of K. E. Rs . It so happened that on February 4, 1987, itself an announcement was made regarding the holding of general elections in Kerala State but no dates were announced for the election. Presumably, to avoid criticism about the timing of the

publication of the sanction order, the Chief Minister passed orders for keeping in abeyance the sanction accorded to the successful applicants under Ex. P-4 and a Gazette notification to that affect was published on February 23, 1987. Thereupon. the respondents moved the High Court through petitions under Article 226 of the Constitution challenging the action of the Government. During the pendency of the writ petitions, the general elections came to be held and a new ministry assumed power in Kerala State. The new ministry decided to revoke the order of sanction passed under Ex.P-4and caused a Gazette notification Ex. P-7 to be made in that behalf. The notification was as under:

PG NO 104 "In the G.O. read as first paper above sanction was accorded to open/upgrade 91 unaided recognised schools of various categories during the academic year 1986-87. As per G.O. read as second paper above the orders issued in the said G.O. were kept in abeyance until further orders.

2. Government have reconsidered the matter. At present there are more than 16000 schools in the State. Thousands of protected teachers will have to be absorbed from these schools. Every time a recognised school is started in an area, there is an immediate impact on the neighbouring aided and Government schools leading to fall in strength and divisions, creating more protected teachers and thereby leading to wasteful expenditure. The 91 schools sanctioned were at the fag end of the academic year 1986-87 and it was not possible to start the schools during the same year. Many schools do not fulfil the conditions for starting the schools. In several cases exemption will have to be given to fulfil the conditions year after year. AS such Government strongly feel that instead of starting new schools the existing schools should be strengthened in all respects, i.e. site, building, equipment etc.

3. In the circumstances the orders issued in the G.O. read as first paper will stand cancelled. No recognised schools will be upgraded or sanctioned during 1987-88 also."

The learned single judge who heard the writ petitions filed by the respondents took the view that while it was obligatory for the Government to follow the procedure prescribed in Rules 2 and 2A of Chapter V of the Rules, if it was to permit the opening of new unaided recognised schools or the sanctioning of upgradation of existing schools, the converse result would not follow i.e. wherever the Government had gone through the exercise of the procedure laid down in Rules 2 and 2A, the Government could not retrace its steps and was bound to proceed further in the matter of the opening of new schools or upgrading of existing schools and that the Government had no option to reverse its decision. In so far as the Government's power to revoke an order of sanction made under Rule 2A(5) is concerned, the learned judge held that the Government's power to sanction new schools also carried with it an inherent right of cancellation of an order passed under Rule 2A(5). The learned judge saw justification for the cancellation order being passed by the Government on another ground also viz. that the sanction for opening of new PG NO 105 schools or upgrading of schools was given only at the fag end of the academic year 1986-87 and, as such, the order of sanction was not capable of implementation. Besides these grounds, the single judge found merit in the reasons given by the Government in the impugned order Ex. P-7 for revoking the sanction viz. that the opening of new unaided schools or upgrading of existing unaided schools invariably

resulted in fall of pupil strength and/or division strength in the government-run as well as aided schools and this led to the ousting of teachers from aided schools whom the State had to treat as "protected teachers" and take care of them and provide appointments for them in government as well as aided schools. The last reason which weighed with the single judge was that the Government's experience in the past showed that many of the schools proposed to be started or seeking upgradation were not able to fulfil the minimum requirements and resorted to seeking Government's indulgence for granting them exemption from complying with the prescribed conditions and requirements. In accordance with these views, the learned single judge dismissed the writ petitions. The Division Bench which heard the writ appeals viewed the matter in a wholly different manner and allowed the appeals. The Division Bench held that firstly the writ petitioners had adequate locus standi to challenge the cancellation order of the Government and that the Government did not have power or jurisdiction to revoke the sanction order; secondly the order of cancellation violated the principles of natural justice; thirdly there was no application of mind and fourthly the order of cancellation was passed on the basis of irrelevant grounds. In presenting the case of the State before us in these appeals Mr. Subramania Poti, learned senior advocate appearing for the State assailed everyone of the findings and reasons given by the Division Bench and argued that the notifications made under Exs. P-4 and P-7 were only announcements of the policy decisions taken by the Government and, the Government could revise its decision at any time and even if they are to be viewed as administrative orders passed by the Government, it was always open to the Government, in exercise of its powers under Section 20 of the Kerala General Clauses Act (corresponding to Section 21 of the General Clauses Act X of 1897) to add, amend, vary, or rescind the notifications. The learned counsel further stated that the respondents would get the status of 'aggrieved persons' and acquire locus standi to question any order of revocation passed by the Government only if they had been granted permission under Rule l1 to open new schools and not before as they would acquire "legitimate expectation rights" only after satisfying the requirements of Rule 11. Proceeding on the same lines, the learned PG NO 106 counsel stated that the Government had not indulged in any adjudicative process nor had the Government violated any provisions of the Act or Rules or even the principles of. natural justice and, as such, the writ petitions did not B present any justiciable issue for consideration by the Court. The last submission made was that the cancellation order did not suffer either from the vice of non-application of mind or the permeation of irrelevant grounds. Controverting the arguments of the appellant's counsel, Dr. Chitale, Mr. Krishnamurthy Iyer and Mr. K.K. Venugopal, learned Sr. Advocates appearing for the respondents contended that the decision rendered by the Division Bench is fully in accordance with law and needs no interference by this Court. They pointed out that the Division Bench has done nothing more than to place the parties in their status quo ante position by quashing Ex. P- and directing the Government to proceed further with the applications in order to see whether permission could be granted under Rule 11 of Chapter V.

In the light of these conflicting arguments what falls for consideration in these appeals may broadly be enunciated under the following heads:

(I) Whether any rights accrued to the respondents pursuant to the sanction granted to them under Ex. P-4 for opening new schools or upgrading existing schools; so as to challenge the cancellation order under Ex. P-7 or whether the right of challenge would accrue to them only after further

approval was granted under Rule l1.

2. Whether it was open to the Government under the Act and Rules or under Section 20 of the Kerala General Clauses Act to cancel in toto the sanction given to 91 approved applicants for opening new schools or upgrading existing schools;

3. Even if the Government had powers of cancellation, whether the order under Ex. P-7 is vitiated by reason of (a) nonobservance of the principles of natural justice (b) non- application of mind and (c) influence of irrelevant grounds.

PG NO 107 Before taking up for consideration these questions, we may set out the various stages contemplated by the Rules which have to be passed through by an educational agency in order to open a new school or upgrade an existing school and obtain recognition from the Government. It is relevant at this juncture to mention that the Act and the Rules do not prohibit the starting and running of private unaided schools by any agency and the only restriction is that it will not be entitled to secure recognition for the said school from the Government unless the conditions imposed by the Rules are satisfied and complied with. The importance of securing recognition lies in the fact that without recognition the students studying in the unaided schools will neither be permitted to appear as candidates in the examinations conducted by the State nor be eligible to avail of the opportunities for higher education or to enter public service examination. The obtainment of recognition from the Government is therefore a vital factor for the educational agencies starting new schools or newly upgrading their existing schools.

Coming now to the stages which should be gone through, there are five stages as set out by the Division Bench and which enunciation is accepted by the learned counsel for the appellants as the correct position. The first stage consists of the Government going through the exercise under Rule 2 culminating in the Government publishing under Rule 2(4) the localities where new schools are to be opened or existing schools are to be upgraded. The second stage consists of the Government calling for applications under Rules 2A(1) from intending applicants for opening new schools or for upgrading the existing schools in the areas specified and taking a final decision and publishing the list of approved applicants in the Gazette under Rule 2A(5). Then comes the third stage when the applications are subjected to more detailed scrutiny under Rule 11 regarding the fulfilment of conditions set out in Rule 9 and the drawing up of the order setting out the name of the educational agency, the grade of the school, the standards to be opened, the location and the date of opening of the school etc The fourth stage is envisaged under Rule 14 and it consists of the educational agency permitted under Rule 11 to report to the educational, authorities the factum of the opening of the school and the fulfilment of the conditions set out in the order and the names and qualifications of the staff etc. so that the educational officer can visit the school and submit a report to the Director regarding the fulfilment of all the conditions by the school authority. The fifth and the last stage l5 set out in Rules 16 and 17 and it pertains to the school authority applying for recognition under Rule 16A and the Director granting sanction under rule 17 after being satisfied that the school authority has satisfied all the requisite conditions for grant of recognition.

PG NO 108 A four-fold argument was advanced by Mr. Poti to assail the judgment of the Division Bench. The contentions were formulated as under:

1. The respondents are not-entitled to the issue of a writ of mandamus because firstly they had unauthorisedly opened new schools in contravention of Section 3(5) without obtaining the Government's permission under Rule 11 Chapter V and secondly the proceedings under Chapter V had reached only the second stage of passing of an order under Rule 2A(5) and had not reached the third stage of permission being granted under Rule 11 whereafter only the respondents would acquire "legitimate-expectation rights" cognisable in law.

2. There was no violation of any Rule or the principles of natural justice when the Government dropped the proposal of permitting new schools to be opened or existing schools to be upgraded in the 91 localities mentioned in Ex. P-4 notification because it was an administrative decision based on Government's policy and no adjudicative process was involved in the passing of the cancellation order.

3. In any event the Government had inherent powers of revocation under Section 20 of the Kerala General Clauses Act corresponding to Section 21 of the Central Act and the exercise of such powers is not open to challenge.

4. In any view of the matter, this was not a case where the High Court should have exercised its powers under Section 226 to restore the sanction order under Ex. P-4 because the Court cannot impose an economic burden on the State's resources by issuance of a writ.

Taking up for consideration the first limb of the first contention of the learned counsel, it is true the respondents have opened new schools or upgraded their existing schools at the approved localities on 2.6.1986 itself i.e. even before the final list of approved areas under Rule 2(4) was published on 24.6.1986 and the sanction order under Ex. P-4 was published on 4.2.1987. The question however will be whether by reason of the opening of the schools prematurely, the respondents stand forfeited of their right to question the cancellation order under Ex. P-

7. We think not. This is because Section 3(5) of the Act PG NO 109 does not totally ban the establishment of a new school or the opening of a higher class but only states that if any school or higher class is opened without following the procedure, then such new school or higher class will not be entitled to recognition by the Government. It will not therefore, be per se a contravention of the Act and the Rules if an educational agency started a new school or opened a higher class without following the provisions of the Act and the Rules and the only disqualification it would suffer is its disentitlement to Government's recognition. That apart the order of cancellation is not challenged by the respondents on the ground they have already established new schools or opened higher classes in existing schools but on the ground the earlier order of sanction under Ex. P-4 had been cancelled without justifiable reason and without the respondents being heard. Therefore, the respondents cannot be non-suited merely on the ground they had opened new schools or higher standards even before the Government published its final list of approved areas under Rule 2(4). Hence, the first limb of the first argument of Mr. Poti cannot be countenanced.

In so far as the second limb of the first contention is concerned, it was urged by Mr. Poti that the publication of the final list under Rule 2(4) was only a preliminary exercise and not a final one because the initial selection of localities under Rule 2(4) for opening new schools or upgrading existing schools requires further scrutiny and approval under Rule 9 and consequently any order of sanction granted under Rule 2A(5) would leave the grantee only in the position of an applicant and not confer on him legitimate expectation rights. In support of his contention Mr. Poti placed reliance on certain passages in Chingleput Bottlers v. Magestic Bottling. 11984] 3 SCR 190 at 211 to 213: AIR 1982 SC 149 paras 14 to 17; State of Kerala v. A. Laxmi Kutti, [1986] 4 SCC 632 at 654 and certain passages in Wade on Administrative Law pages 464, 465, 624 and 625. Looking at Rule 2 and the procedure enunciated therein for determining the areas where new schools are to be opened or existing schools are to be upgraded, we are unable to accept the contention of Mr. Poti that the selection of areas where additional educational facilities are to be provided is only an informal and inconsequential exercise and as such the final list published by the Government carried no force with it till such time the further selection process under Rule 9 is gone through. The reason for our saying so is because Rule 2 prescribes an elaborate procedure and the due application of mind by several agencies before the final list of approved areas is published under Rule 2(4). Rule 2(1), enjoins the Director PG NO 110 to prepare a list of localities where new schools or upgraded schools are to be opened after taking into consideration all the relevant factors viz. the existing schools in and around the locality, the strength of the several standards and the accommodation position in the existing schools, distance factors and the educational needs of the locality with reference to the habitation and backwardness of the area etc. Besides publishing the tentative list, the Director has to call for representations and objections from interested parties and they have to be duly considered by the Educational Officers of the locality and then by the Director himself and eventually the Government itself has to apply its mind to the selection of areas and then cause the final list to be published. The proviso to Rule 2(5) grants only limited powers of modification to the Government viz. to alter the list here and there and not to scrap it outright. Even the power of modification can be exercised only after giving the affected parties an opportunity to make representations against the proposed modification. The selection of approved areas becomes final once the list is published under Rule 2(4), with or without modification and the finality is not contingent upon further approval under Rule 9. What Rule 9 itself provides for is the grant of permission to applicants approved under Rule 2A(5) to open new schools depending upon the applicant subjectively satisfying the Government about his ownership or right to possession of the site, buildings and other needs of the school, his financial guarantee, has not being convicted of any offence involving moral terpitude and about the locality being in need of the new school and the accessibility of the new school to the members of the public. It is significant to point out that Rule 9 speaks of fulfilment of conditions only for opening new schools and not for the upgrading of existing schools. Thus it may be seen that Rule 9 lays down subjective tests while Rule 2 prescribe objective as well as subjective standards in the matter of selecting areas which are in need of new schools or upgraded schools. It was also pleaded that the final list published under Rule 2(4) was vulnerable to cancellation at any time before new schools were actually opened in the selected areas in accordance with the Rules because of change of conditions in the selected areas or because of the selected area losing their place of priority. This is too fragile a statement to merit acceptance because the need of a selected area, given recognition after an elaborate process of selection, cannot disappear overnight unless the need is fulfilled by the Government itself opening a new school or by the residents of the locality

migrating on a large scale to another place.

That the publication of the final list under Rule 2(4) PG NO 111 has not only binding force on the Government but it also entails consequential obligations on the Government could be seen from the fact that Rule 2A(1) makes it imperative for the Director to call for applications from interested parties for opening new schools or upgrading existing schools in the selected areas. Mr. Poti argued that it was only to prevent a deluge of applications for opening new schools all over the States the selection of areas under Rule 2 is gone through so that the number of applications could be restricted. It is difficult for us to accept this statement because it runs counter to the scheme of Rule 2 regarding the selection of areas on objective factors and subjective considerations. Be that as it may, the mandate contained in Rule 2A(1) goes to show that the identification and selection of inadequately served areas under Rule 2(4) is not an idle or meaningless exercise. Such being the case the applications made under Rule 2A(1) cannot be treated as applications made by mere speculators or adventurers. On the contrary the applications carry with them a certain amount of legitimacy in that they pertain to opening of schools in the inadequately served areas notified by the Government and are made in response to the Director's notification calling for applications. In fact Rule 12 confers a right of revision on those applicants whose applications for the opening of new/upgraded schools are not included in the list of approved applicants published by the Government under Rule 2A(5). Thus when even an unsuccessful applicant is conferred a right to represent to Government against the non-approval of his application, can it be said that an approved applicant has no right whatever to complain when the sanction granted to him is revoked all of a sudden without he being given any opportunity to show cause against such cancellation. It is significant to note that the Rules do not provide for the revocation or cancellation of a final list published under Rule 2A(5) and that the right of cancellation is given to the Government only if the approved applicant fails to satisfy the conditions laid down in Rule 9 and thereby becomes disentitled to obtain sanction under Rule 11. The scheme of the Rules is such that after sanction is accorded to an applicant under Rule 2A(5) to open a new/upgraded school, then the applicant acquires a right to have his application considered further under Rule 9 as regards his ownership or possession of land, buildings etc. his declaration of financial guarantee, the suitability of the place offered by him for location of the school and about he being free of any conviction by any criminal court so as to entitle him to the issue of an order under Rule 11. The further scrutiny of the application of the approved applicant under Rule 9 and the confirmation of approval under Rule 11 would not, however, mean that the earlier sanction granted under Rule 2A(5)does not create "legitimate PG NO 112 expectation rights" in the approved applicant. Mr. Poti contended that an applicant obtaining sanction under Rule 2A(5) would only remain in the position of an applicant and it is only after further permission is granted under Rule 11, the applicant can be said to acquire "legitimate expectation rights" and the requisite locus to challenge any order of cancellation passed by the Government. In support of his argument Mr. Poti relied upon (1) State of Kerala v. Laxmi Kutty, (supra) where the Court after referring to the ruling in Mani Subrat Jain v. State of Haryana, [1977] 1 SCC 486 that a person whose name had been recommended for appointment as a District Judge by the High Court under Article 233(1) had no legal right to the post, held that unless there was a judicially enforceable right no w t of mandamus for enforcement of a right would lie; (2) Chinglepet Bottler v. Majestic Bottling, (supra) where the distinction drawn by Megarry V.C. in Mecinnes v. Onslow Fane and Anr., [19781 3 All. E.R. 211 between initial applications for grant of

licence and the revocation, suspension or refusal to renew licence already granted was referred to and the Court observed that "the principle that there was a duty to observe the audi alteram partem" Rule may not apply to cases which relate not to rights or legal expectations but to mere privilege or licence; (3) Wade on Administrative Law, Vth Edition, where difference between rights, liberties and expectations have been set out as under:

'In many cases legal rights are affected, as where property is taken by compulsory purchase or someone is dismissed from a public office. But in other cases the person affected may have no more than an interest. a liberty or an expectation. An applicant for a licence, though devoid of any legal right to it, is as a general rule, entitled to a fair hearing and to an opportunity to deal with any allegations against him. The holder of a licence who applies for its renewal is likewise entitled to be fairly heard before renewal can be refused. So also is a race goer before he can be put under a statutory ban against entering a public race course.

In none of these situations is there legal right, but they may, involve what the courts sometimes call "legitimate expectation '. This expression furnishes judges with a flexible criterion whereby they can reject unmeritorious or unsuitable claims. It was introduced in a case where alien students of scientology" were refused extension of their PG NO 113 entry permits as an act of policy by the Home Secretary. The Court of Appeal held that they had no legitimate expectation of extension beyond the permitted time, and so no right to a hearing, though revocation of their permits within that time would have been contrary to legitimate expectation. Likewise where car-hire drivers had habitually offended against airport byelaws, with many convictions and unpaid fines, it was held that they had no legitimate expectation of being heard before being banned by the airport authority. There is some ambiguity in the dicta about legitimate expectation, which may apparently mean either expectation of a fair hearing or expectation of the licence or other benefit which is being sought. But the result is the same in either case: absence of legitimate expectation will absolve the public authority from affording a hearing.

For the purpose of natural justice the question which matters is not whether the claimant has some legal right but whether legal power is being exercised over him to his disadvantage. It is not a matter of property or of vested interests, but simply of the exercise of governmental power in a manner which is fair and considerate."

The argument, therefore, was that the respondents had no locus standi to move the court to seek the quashing of Ex. P-7 order and mandamus for their applications being approved and granted sanctioned under Rule 17. Refuting this contention Dr. Chitale argued that the respondents were "persons aggrieved" and they had locus standi in the full sense of the term to move the court since their right to open a school, though not claimed as a constitutional right was a natural right and their suitability to open a school in the selected area having been accepted and their names included in the list published under Rule 2A(S), the Government could not cancel the list. Dr. Chitale relied upon the decisions of this Court in Ebrahim Aboobakar and Anr. v. Custodian General of Evacuee Property, [1952] SCR 696 and S.P. Gupta v. Union of India, [1981] Supp. SCC 87. Arguments were also advanced by the appellant's counsel to contend that any permission given under the Rule to run a school would only be a privilege while the respondent's counsel would say that it was a right within

the meaning of Article 19(1)(g) of the Constitution. We do not think it necessary to go into this aspect of the matter because of the controversy narrowing down to the question whether after having granted sanction to the respondents under Rule 2A(5) PG NO 114 to open/upgrade schools, subject to satisfying the conditions under Rule 9 and obtaining clearance under Rule 11, the Government could go back on the matter and cancel the sanction order and that too without giving the respondents any hearing at all.

In the course of the arguments Mr. Poti laid stress upon the fact that while Rule 9 lays down several conditions for being fulfilled before permission can be granted under Rule 11 to an educational agency to start a new school or upgrade a school, the order made under Rule 2A(5) makes mention of only one of the several conditions being noticed by the Government viz the provision of land for the proposed school and as such the order, despite the use of the word "sanction" can by no stretch of imagination be considered as an order which conferred rights upon the respondents and therefore it was futile for the respondents to say that legally enforceable recognition had been given to them to open schools in the selected areas. Going a step further Mr. Poti said that in many cases even the solitary factor noticed by the Government viz the provision of land for the proposed school had not been adequately satisfied and this shortcoming has been referred to in the alleged sanction order passed under Rule 2A(S). Going to the other end, Mr. Iyer and Dr. Chitale tried to take up the stand that the sanction order passed under Rule 2A(5) was virtually one under Rule 11 because the respondents had furnished information pertaining to all the conditions enunciated in Rule 9 and therefore what remained for the Government was only to see whether the schools opened or upgraded by the respondents were entitled to grant of recognition under Rule 17 or not. We are unable to find merit in the last contention of the respondents in this behalf because the Division Bench has clearly stated in para 52 of the judgment that the stage of the Govern ment giving directions for fulfilment of various conditions has not been reached and therefore it was directing 'the State to proceed to take the further steps commencing from Rule 11, Chapter V of the K.E.R." In view of this categoric finding and since it is the admitted position that the Government have not subjectively scrutinised the application of each of the respondents with reference to the conditions enunciated in Rule 9, there is no scope for the respondents to say that the sanction order made under Ex. P-4 was for all practical purposes an order made under Rule 11. Even so, we cannot accept the contention of the State that the applications submitted by the respondents, despite their approval by the District Educational Officer, the Director and the Government and the publication of the sanction order under Rule 2A(5) remained only at the threshold and it was therefore open to the Government to revise its policy of PG NO 115 opening new schools or upgrading existing schools and throw overboard all the approved applications. We do not therefore feel persuaded to accept the first contention of the appellant's counsel that the sanction order passed in favour of the respondents under Rule 2A(5) carried no rights with them and that they would remain still-born orders till they passed through the third stage and were given acceptance under Rule 11.

The second major contention of the appellant's counsel, it may be recalled, was that the Government had not violated any statutory provision or the principles of natural justice when it passed the cancellation order Ex. P-7 revoking the earlier order Ex. P-4. To a large extent the arguments on this aspect of the matter overlapped the arguments advanced with reference to the first ground of attack already dealt with. It was once again argued that the identification and selection of poorly served

areas in the matter of educational facilities under Rule 2 was only an administrative exercise in order to restrict the number of applications for opening new schools within manageable limits and that the real test of selection of the areas began only when the applications were processed under Rule

9. It was likewise urged that though the Government was bound to implement the Directive Principles contained in Article 41 of the Constitution in the matter of providing educational facilities, the obligation was subject to the limits of the economic capacity of the Government and as such the Government cannot be compelled by any educational agency or even by the Court to open new schools unmindful of the financial burden that would be cast on the State by the opening of such schools.

The last submission made in this behalf was that the revocation order passed under Ex. P-7 was not in pursuance of any adjudication of the rights of the applicants but to make known the revised policy of the Government which was taken after considering several relevant factors such as the inadequate resources of the applicants in providing lands, buildings, equipment, financial guarantee etc. for opening the proposed schools, the backlash on Government's finances due to the resultant surplusage of teachers that would occur in aided and government schools due to opening of more unaided schools etc. and therefore the respondents could neither complain of violation of the statute or the principles of natural justice when the Government passed the impugned order under Ex. P-7. It was pointed out by Mr. Poti that the Secretary to Government, Education Department had pointed out in January 1983 about the inadvisability of opening new schools and aboutt many of the applicants failing to satisfy most of the required conditions for PG NO 116 opening new schools but in spite of it the Education Minister had acted in a cavalier manner in passing the order of sanction under Ex. P-4 and therefore the Government was well within its rights in witholding the order in the first instance and revoking it in toto subsequently. We are unable to see persuasive force in these contentions because they do not take notice of the realities of the situation. As we have already pointed out, the identification of inadequately served local areas in the matter of educational facilities and their selection process under Rule 2 cannot be construed as a meaningless and idle exercise. That apart, the final list of selected areas published under Rule 2(4) has not been revoked or cancelled by the Government. Though a fresh list of areas has to be prepared once in two years, that would not mean that the list can be rendered irrelevant due to nonimplementation. Such being the case the sanction order granted to the 91 applicants from among the total number of 122 applications has the support of the earlier Government order made under Rule 2(4). It must, therefore, logically follow that the approved applicants are entitled to have their applications taken to the next stage for consideration on more subjective factors so as to obtain permission under Rule 11 if they satisfied the requirements laid down by Rule 9. We have already pointed out that the Rules do not provide for the Government reviewing suo motu any order of sanction passed under Rule 2A(5) in favour of any applicant for opening of a new school or upgrading an existing school and its power of revision under Rule 12 is confined to the reconsideration of the case of any applicant whose name did not find a place in the final list of approved applications published by the Government.

In so far as the argument that the Government cannot be compelled by any educational agency or by the Court to incur additional financial burden by opening new schools, or new classes is concerned,

we have to point out that the argument in the present context has no force because all the applications that were approved pertained to the opening of unaided schools. Therefore, there is no question of the Government being put to additional financial burden due to the opening of new schools in the selected areas. Moreover, the sanction order under Ex. P-4 specifically provided that "the applicants for opening of the schools or upgradation of the schools shall give an undertaking as provided under note

(v) to Rule 11 Chapter (V) of the K.E.R." The undertaking referred to above is for ensuring that the approved applicant "shall not move the Government at any time for the conversion of the school into an aided school" and clause

(b) of Rule 11 further provides that "if any application is made for conversion into an aided school, the permission granted for opening of the school shall automatically lapse." Hence the argument that the Government will be saddled with additional financial burden by the opening of new unaided schools is a mis-conceived one.

PG NO 117 It cannot be disputed that the applicants have to necessarily make arrangements for purchasing or taking on lease the required extent of land as well as making arrangements for the building and equipment that would be needed, for obtaining sanction from the Government even at the stage of making an application under Rule 2A(2). The Government cannot, therefore, be heard to say that no prejudice would occur to the respondents by reason of the cancellation order and that no principles of natural justice would be voilated if the Government unilaterally revokes an order of sanction granted under Rule 2A(5) to the respondents for opening new schools or for upgrading existing schools. For all these reasons, we are unable to accept the second contention of the appellant's counsel. We now pass on to the third contention that even if there is no provision in the Rules for the Government cancelling the sanction order passed under Ex. P.4, the Government is always possessed of inherent powers of revocation under Section 20 of the Kerala General Clauses Act and hence the Division Bench was wrong in holding that the Government had no jurisdiction to pass the impugned order Ex. P-7. In support of this argument, Mr. Poti referred to the decisions in M. P. State v. V. P. Sharma, [1966] 3 SCR 557 at 570 and Lt. Governor v. Avinash Sharma [1971] 1 SCR 413 at 416. Both the cases arose under the Land Acquisition Act and what was in issue before the Court was whether the Government could exercise powers only under Section 48 of the Land Acquisition Act to withdraw a notification for acquisition made under Section 4(1) of the Act. In the first case, after the issue of a notification under Section 4(1), the Government issued successive notifications under Section 6 of the Act covering different portions of the land notified for acquisition under Section 4(1). The validity of the last of the notifications under Section 6 was challenged on the ground that a notification under Section 4(1) could be followed only by one notification under Section 6 and that successive notifications with respect to different parts of the land comprised in one notification under Section 4(1) cannot be made. The contention was upheld by the High Court and also by this Court after over ruling the plea that once notification was made under Section 4(1), the Government PG NO 118 could issue successive notifications under Section 6 as long as the notification under Section 4(1) was not withdrawn by the Government in exercise of its powers under Section 48. In repelling this contention, the Court incidentally observed that the argument "that the only way in which the notification under Section 4(1) can come to an end is by

withdrawal under Section 48(1)" is not correct because "under Section 21 of the General Clauses Act the power to issue a notification includes the power to rescind it and therefore it is always open to the Government to rescind a notification under Section 4 or under Section 6 and a withdrawal under Section 48(1) is not the only way in which a notification under Section 4 or Section 6 can be brought to an end."

In Lt. Governor v. Avinash Sharma, (supra) the Government caused a notification under Section 4 of the Land Acquisition Act to be made on March 31, 1964 and followed the same by a composite notification on May 16, 1964 under Section 6, 17(1) and (4). Then the Collector served notices under Section 9 in June 1964. Subsequently on October 5, 1965 the State Government published an order cancelling the earlier notifications dated March 31, 1964 and May 16, 1964. The owner of the land challenged the cancellation order and sought a mandamus to direct the Government to proceed with the acquisition in accordance with law and determine the compensation payable to him for compulsory and urgent acquisition. It was contended on behalf of the State that under Section 21 of the General Clauses Act the State had the power to cancel the notification at any time and that Section 48 of the Land Acquisition Act did not trench upon that power. The contention was rejected and the Writ Petition filed by the owner of the land was allowed. In the course of the judgment it was observed as follows:

"Power to cancel a notification for compulsory acquisition is, it is true, not affected by Section 48 of the Act. By a notification under Section 21 of the General Clauses Act, the government may cancel or rescind the notifications under Sections 4 and 6 of the Land Acquisition Act". The Court, however pointed out that "The power under Section 21 of the General Clauses Act cannot be exercised after the land statutorily vested in the State Government. In another portion of the judgment it was observed that after possession has been taken pursuant to a notification under Section 17(1) the land is vested in the Government and the notification cannot be cancelled under Section 21 of the PG NO 119 General Clauses Act, nor can the notification be withdrawn in exercise of the powers under Section 48 and that any other view would enable the Government to circumvent the specific provision by relying upon a general power. Mr. Poti's contention was that till the permission was granted under Rule 11 for opening new schools or upgrading schools, the power of the Government under Section 20 of the Kerala General Clauses Act remained unaffected. We are unable to accept this argument because as pointed out by the Division Bench, the Act and the Rules do not provide for revocation of an order of sanction granted under Rule 2A(5) before taking the application to the third stage and evaluating it on subjective considerations as to whether permission should be granted under Rule 11 or not. In other words once the government approves an application for opening a new unaided school or a higher class in an existing unaided schools and passes an order under Rule 2A(5), then the successful applicant acquires a right of legitimate expectation to have his application further considered under Rules 9 and 1 l for the issue of a sanction order under Rule 11 for opening a new school or upgrading an existing school. It is no doubt true, as pointed out by the Division Bench, that by the mere grant of an approval under Rule 2A(5), an applicant will not acquire a right to open a new school or to upgrade an existing school but he certainly acquires a right enforceable in law to have his application taken to the next stage of consideration under Rule l l. The Division Bench was, therefore, right in taking the view that the general power of rescindment available to the State Government under Section 20 of the Kerala General Clauses Act has to be

determined in the light of the "subject matter, context and the effect of the relevant provisions of the statute." For the aforesaid reasons the fourth contention of Mr. Poti has also to fail.

The last contention of Mr. Poti was that the Division Bench of the High Court ought not to have issued writs under Article 226 of the Constitution for quashing the order under Ex. P-7 and issuing a mandamus to the Government to proceed with the approval-exercise' and consider the eligibility of the respondents for being granted permission under Rule 11 for opening new schools or upgrading existing schools in the selected areas. Various factors were adverted to in support of this plea. It was first of all stated that the respondents have no enforceable right under law to open a school or to insist upon government according them sanction. Secondly, it was stated that many of the respondents were not possessed of adequate land or suitable buildings or PG NO 120 necessary equipment or financial resources etc. to open the schools. Thirdly, it was urged that the academic year 1986- 87 had almost come to a close when the order under Ex. P-4 was issued and hence the order had practically become infructuous. Fourthly, it was stated that though there would be no direct expenditure for the State in the opening of unaided schools, the consequential results would affect the finances of the State. It was said that as a result of the opening of new unaided schools or upgraded schools, the pupil strength and the division strength in the existing government and aided schools inevitably get reduced and this led to reduction in the teaching staff strength of those schools and the teachers thrown out of employment have to be given protection by the State by treating them as protected teachers and absorbing them in other government and aided schools as and when vacancies arose and it was in this manner the,State's finances came to be affected. By this devious reasoning it was contended that the State cannot be compelled to incur additional expenditure in order to oblige the respondents opening new schools etc. We have given our careful consideration to these submissions and find that they have no merit or substance. We have already set out step that though the respondents do not claim a fundamental right, since them base their claim under Article 30(1), to open new schools, they do acquire a legal right under the Act and the Rules, after the Government finalises the list of approved applicants for opening new schools or upgrading existing schools in the selected areas. The Rules enjoin the Government to scrutinise the applications at various levels and then cause a list of the approved applications to be published. Any applicant whose name is not included in the approved list can file a revision to Government under Rule 12 and seek redressal of his grievance. Therefore it follows that if an application is approved and sanction is granted under Rule 2A(5), the applicant acquires a justiciable right to have his application considered at the next level of determination under 9 and Rule 11. To take any other view of the matter would run counter to the Rules in Chapter V and the legislative intent underlying them. In so far as many of the respondents not possessing the required extent of land or the type of building or the amount of finance etc. for opening a new school, it is always open to the Government when scrutinising the applications in the context of Rule 9, to refuse grant of permission to those applicants and reject their applications. By the judgment of the Division Bench, the right of the State Government to pass appropriate orders under Rules 9 and 11 have not been taken away. As regards the contention that the sanction granted under Ex. P-4 on 4.2.87 was almost at the PG NO 121 close of the academic year and as such the order could not have been effectively implemented by the respondents even if the order had not been revoked, we have only to point out that the applications were made well in time but at the instance of some parties who moved the High Court, the Government was restrained from passing sanction orders and it was on account of that there was

some delay. Even otherwise Rule 11 provides for the Government prescribing the date from which the school should start functioning. It is always therefore open to the Government to fix the date from which the school should start functioning and the Government is not left without power to exercise regulatory control in such matters. The last of the reasons given viz. that by the opening of new aided schools, the teachers in the government and aided schools will be rendered surplus due to fall in the pupil strength or the division strength in the existing schools, it speaks rather poorly of the standards of education in Government and aided schools. Be that as it may, this cannot be a reason which can be advanced by the Government after it had gone half the way through the exercise of opening new schools in areas and localities where educational facilities are not adequate. It was urged that there are 16,000 schools in Kerala State and they themselves cast a heavy burden on the finances of the State and as such the State cannot afford to have more teachers thrown out of employment in Government and aided schools due to opening of new schools and pay them their salary till such time they are absorbed in regular vacancies in the existing schools. The argument fails to take note of the fact that all these factors were not new developments but were in existence even when the Government took steps under Rule 2 to identify the poorly served areas and then called for applications from interested parties for grant of permission to open new schools or to upgrade existing schools. If really the opening of new aided schools would result in an adverse effect upon the finances of the State, then the Government should find remedy for the situation by amending the Rules suitably so as to severely limit the scope for opening new unaided schools by putting more stringent conditions. In fact, the Government have already proceeded in that direction and even now Rule 11 stipulates that any unaided school granted recognition should not seek conversion into an aided institution and that if such conversion is sought for, then the recognition granted earlier will automatically lapse. Over and above all these things, it is inconceiveable that by the opening of 1 unaided schools, new or upgraded, even assuming all of them are granted permission under Rule 11, the impact on the pupil strength of division strength the existing government and aided schools will be so great as to cause a large number of teachers being rendered surplus and the Government PG NO 122 being forced to incur heavy expenditure by treating them as protected teachers and paying them their salary. We are, therefore, in complete agreement with the Division Bench that these factors are undoubtedly extraneous ones and do not afford justification for the passing of the impugned order Ex. P-7 for revoking the earlier sanction order Ex. p-4. Hence the last contention also fails. In the light of our reasoning and conclusions, our answers for the three questions formulated by us are as under:

(1) Though the sanction granted to the respondents under Ex. P-4 would not by itself entitle them to open new schools or upgrade the existing schools, it did confer on them a right to seek the continuance of the statutory procedural stream in order to have their applications considered under Rule 9 and dealt with under Rule 11 (2) It was not open to the Government, either under the Act or Rules or under Section 20 of the Kerala General Clauses Act to cancel in toto the approval granted to the respondents under Rule 2A(S), for opening new schools or upgrading existing schools in the selected areas on the basis of a revised policy.

(3) The impugned order under Ex. P-7, irrespective of the question whether the Government had the requisite power of cancel-lation or not, is vitiated by reason of non- observance of the principles of natural justice and the vice of extraneous factors.

In the result, all the appeals fail and are accordingly dismissed. There will be no order as to costs. However, even as the Division Bench has done, we make it clear that we are not making any pronouncement about the suitability or otherwise of the respondents to be granted permission under Rule 11 to open new schools or upgrade existing Schools. All that we hold is that the respondents are entitled, on the basis of the earlier order passed in their favour under Ex. P-4, to seek continuance of the statutory procedure in order to have their applica-tions considered under Rule 9 and for appropriate orders being passed under Rule 11 in accordance with law.

Y. Lal Appeals dismissed.