

**(2007) 10 KL CK 0056**

**High Court Of Kerala**

**Case No:** WA No. 2422 of 2007 and C.M. Application No. 1102 of 2007

State of Kerala and The Director  
of Public Instruction

APPELLANT

Vs

Malabar Educational

RESPONDENT

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**Date of Decision:** Oct. 26, 2007

**Acts Referred:**

- Constitution of India, 1950 - Article 215
- Contempt of Courts Act, 1971 - Section 11, 12, 2

**Hon'ble Judges:** H.L. Dattu, C.J; K.T. Sankaran, J

**Bench:** Division Bench

**Advocate:** Government Pleader, for the Appellant; George Poonthottam, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

H.L. Dattu, C.J.

The State has presented this Writ Appeal being aggrieved by the order passed by the learned single Judge in W.P. (C) No. 12098 of 2006, dated 28th April, 2006 and the order passed in R.P. No. 871 of 2007, dated 1st October, 2007.

2. There is a delay of nearly 497 days in filing the appeal. Therefore, the State has filed an application to condone the delay in filing the appeal. In the normal course, we would not have taken a very strict view of the pleadings pleaded in the application for condonation of delay. In fact, this Court in many number of cases has condoned the delay in filing the appeal by the State Government, keeping in view the dicta laid down by the Apex Court. In this case, we do not intend to condone the delay for the reason which we will presently advert by referring to what had transpired in the writ petition and the contempt petition filed by the petitioner and the undertaking given by the authorities of the State Government. We would like to refer those matters in extenso to sustain our reasoning for rejecting the application

filed by the State Government to condone the delay in filing the writ appeal.

3. The Malabar Educational & Charitable Trust ("Trust" for short) was before this Court in W.P. (C) No. 12098 of 2006. The prayer made in the writ petition was to direct the State Government and its authorities to issue orders sanctioning the school in favour of the petitioner on the basis of Ext.P5 Government Order following Ext.P9 decision. The consequential relief that was sought in the writ petition was to declare that the petitioner cannot be bypassed while granting High School in the aided sector in Padiyoor Grama Panchayat in the light of Ext.P5 when Ext.P9 decision is given effect.

4. This Court, while entertaining the writ petition has passed an interim order, dated 28th April, 2006. The interim order so passed reads as under:

Admit. Issue notice. Post on 23.5.2006. In the meanwhile, there will be an interim direction to the respondents not to consider any other application for sanctioning of schools within the limits of Padiyoor Grama Panchayat till then. In the meanwhile, the applications submitted by the petitioner will be considered at the earliest in the light of Exts.P5 and P9, if possible before the commencement of the next academic year itself.

5. After receipt of the interim order passed by this Court, the State Government has passed the order dated 9th May, 2006. The order passed by the State Government reads as under:

General Education - WP(C) No. 12098/06 - (M) filed by the Malabar Educational and Charitable Trust - Court Orders - Complied with - Orders issued.

General Education (F) Department

GO(Rt)No. 1904/06/G.Edn. Dated,Thiruvananthapuram,09-05-2006

Read:-1. Interim Order dated 28-04-2006 in W.P.(C) No. 12098/06 (M) of the Hon"ble High Court of Kerala, Ernakulam.

2. GO (Rt) No. 3895/05/G.Edn. Dated 06-08-2005.

3. GO(MS)No.08/06/G.Edn. Dated 05-01-2006.

4. GO(MS)No. 65/06/G.Edn. Dated 14-02-2006.

5. Notification No.NS3/3120/06/DPIs dated 10-02-2006.

6. Judgment dated 03-03-2006 in WP (C) No. 36115 of 2005 - Y of the Hon"ble High Court of Kerala.

ORDER

The Hon"ble High court of Kerala in its interim order read as 1st paper above directed the respondents not to consider any other application for sanctioning of

schools within the limits of Padiyoor Grama Panchayath till the next posting date i.e. 23-05-2006. It has also been directed to consider the application submitted by the petitioner at the earliest in the light of Ext.P5 and P9 if possible before the commencement of the next academic year.

2. Government - vide Government Order read as 2nd paper above (Ext.P5) have recognised the eligibility of the petitioner for a High School in the Padiyoor Grama Panchayath and have given an assurance that the request would be considered on top most priority when Government take a policy decision to sanction any more aided High School in the State.

3. Government - vide order read as 3rd paper above (Ext.P9) have sanctioned new High Schools in four Panchayaths where there are no High Schools. Padiyoor in Kannur is one among the four Panchayaths where new High School have been sanctioned. In the light of the above Government order sanction was also accorded to upgrade a school each in Panayam Panchayath in Kollam and Ponmundam Panchayath in Malappuram in the Government sector as per the GO read as 4th paper above.

4. For sanctioning new schools in Padiyoor Panchayath in Kannur District and Perumanna Panchayath in Kozhikode, Director of Public Instruction had been directed to issue area notification as per the Kerala Education Rules provisions. Accordingly the Director of Public Instruction vide notification read as 5th paper above notified Ward 12 in Perumanna Panchayath in Kozhikode District and Ward 13 in Padiyoor Panchayath in Kannur District as areas where new High School are to be opened and also called for objection/representation if any against the decision.

5. In the meantime Government on 08-03-2006 decided not to sanction new aided schools in the State and decided to cancel the notification read as 5th paper above in the light of declaration of election. The petitioner filed WP(C) No. 36115 of 2005-Y read as 6th paper above in which the Hon'ble High Court directed the respondent to take appropriate action on the application submitted by the petitioner trust without any further delay. It has also been directed to ensure due weightage and consideration as per the order issued in favour of the petitioner (GO (Rt) No. 3895/05/G.Edn. Dated 06-08-2005).

6. In the light of the judgment read as 6th paper above and in the interim order dated 28-04-2006 of the Hon'ble High Court Government examined the request of the petitioner. Since the notification read as 4th paper stands cancelled Government is not a position to entertain the application of the petitioner to sanction the school in the Padiyoor Panchayath as requested for. The direction contained in the interim order read as 1st paper above and in the judgment read as 6th paper above are thus complied with.

6. The petitioner, being of the view that by passing the order dated 9.5.2006, the Secretary to the Government, Department of General Education, has committed an

act of contempt which would fall within the meaning of the definition "civil contempt" as defined in Section 2(b) of The Contempt of Courts Act, 1971, had filed the Contempt Petition, C.C.C. No. 619 of 2006, wherein it was alleged that the respondent in the Contempt Petition has wilfully and deliberately disobeyed the interim directions issued by this Court and requested this Court to initiate appropriate contempt proceedings as envisaged under Sections 11 and 12 of the Contempt of Courts Act read with Article 215 of the Constitution of India.

7. When the Contempt Petition was posted before the learned single Judge, the learned Judge was of the opinion that the petitioner has made out a prima facie case for initiation of the contempt proceedings. Accordingly, in view of the Contempt of Courts Rules prevailing in the State, the matter was referred to a Division Bench of this Court for framing of appropriate charges against the respondent for the disobedience of the orders and directions issued by this Court.

8. The contempt proceedings had been posted before Court on several occasions. The respondent had filed its counter affidavit. Since this Court was not prepared to accept the explanation offered by the respondent in the counter affidavit filed, had directed the respondent to be present before the Court for the purpose of framing of charges. It is at that stage the learned Advocate General of the State had appeared for the respondent.

9. The matter had been posted before the Court on 6.9.2007. Arguments in length was advanced by both the sides. Thereafter, the respondent gave an undertaking before this Court stating that he would withdraw the order passed on 9.5.2006 and pass a fresh order within a month's time from the date of disposal of the contempt petition.

10. The Court, after placing on record the affidavit of undertaking filed by the respondent, was pleased to dispose of the contempt petition. The order passed by this Court reads as under:

Learned Advocate General appearing for the respondent/contemnor, after arguing the matter for quite sometime, has thought it fit to file an affidavit of the respondent/ contemnor. In that affidavit, it is stated that the respondent will now withdraw the order passed on 09.05.2006 and then pass fresh orders as directed by this Court on 28th April, 2006. Further, the respondent/contemnor has offered his/her unconditional apology for the inconvenience caused to the complainant and to this Court.

In our view, by accepting the affidavit and permitting the respondent/contemnor to withdraw the order passed on 09.05.2006 and further by permitting them to pass fresh orders, as directed by this Court on 28th April, 2006, no prejudice will be caused to the complainant. Therefore, we are inclined to accept the affidavit filed by the respondent/contemnor and accordingly we intend to grant the request made in the affidavit. In view of the above, the following:

## ORDER

- i) The affidavit filed by the respondent/contemnor is taken on record.
- ii) The respondent/contemnor is permitted to withdraw his/ her earlier order dated 09.05.2006.
- iii) The respondent/contemnor shall pass fresh orders in accordance with the interim order passed by this Court in W.P.(C) No. 12098 of 2006 dated 28th April, 2006 within a period of one month from today.
- iv) The un-conditional apology offered by the respondent/ contemnor is accepted.
- v) Further proceedings in this Contempt Case are dropped.
- vi) Liberty is reserved to the complainant to approach this Court, if need arises in future.

11. After disposal of the Contempt Petition, for the reasons best known to the respondent, they have filed a Review Petition, R.P. No. 871 of 2007 in W.P. (C) No. 12098 of 2006, before the learned single Judge, inter alia, requesting the court to review the order passed on 28.4.2006. The learned single Judge, after hearing the parties to the lis, by its order dated 1.10.2007, has rejected the review petition primarily in view of the order passed by this Court in Contempt Case No. 619 of 2006. Further the Court has observed that if it had been brought to the notice of the Court the subsequent decision rendered by the Apex Court in State of Kerala v. Prasad 2007 (3) KLT 531, the Court might not have passed the interim order on 28.4.2006. It is difficult for us to accept the reasoning of the learned Judge. Be that as it may.

12. After rejection of the review petition so filed, the State Government, for the first time, has presented this writ appeal.

13. As we have already noticed, the relief sought for by the State Government in this writ appeal is to set aside the order passed by the learned single Judge in W.P. (C) No. 12098 of 2006, dated 28th April, 2006.

14. The order passed on 28.4.2006 is an interim order directing the respondent to pass an appropriate order keeping in view Ext.P5 and P9 orders. Pursuant to the direction issued by this Court, the respondent has already passed an order, dated 9.5.2006. Since the respondent has already acted upon the interim order passed by this Court, at this stage, it may not be necessary for this Court to set aside the order which has already been implemented by the State Government. Therefore, the first relief cannot be granted by this Court at this stage.

15. In so far as the order passed in R.P. No. 871 of 2007 filed in W.P. (C) No. 12098 of 2006 to review the order passed on 28.4.2006 is concerned, we intend to notice that when this Court was about to frame charges against the respondent/contemnor in

the contempt petition, an undertaking was given by the respondent/contemnor, firstly, offering an unconditional apology for the inconvenience caused to the petitioner and further giving an undertaking before this Court that he would withdraw the order passed on 9.5.2006 and would pass a fresh order in accordance with law. What was expected from the respondent by this Court was that, as undertaken before this Court, he should have passed appropriate orders in accordance with law. Instead of doing so, the respondent has thought it fit to file a review petition and in our view, the said review petition is rightly rejected by the learned single Judge. It is relevant at this stage to notice certain observation made by the Apex Court in the case of [T.N. Godavarman Thirumulpad through the Amicus Curiae Vs. Ashok Khot and Another](#), . The Court observed:

Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilised life in the society. That is why it is imperative and invariable that courts' orders are to be followed and complied with

16. Learned Advocate General would contend before us that merely because an undertaking was given by the respondent/contemnor it does not prevent him from approaching this Court by filing an appropriate appeal, if, for any reason, he is aggrieved by the interim order passed by the learned single Judge. In support of that contention, the learned Advocate General has brought to our notice the observations made by the Apex Court in the case of [P.R. Deshpande Vs. Maruti Balaram Haibatti](#), . That was a case where in the rent control proceedings a tenant had given an undertaking before the Court that he would vacate and deliver vacant possession of the premises in his occupation to the landlord. In that regard, an affidavit of undertaking was also filed before the Court. The question that was posed and answered by the Apex Court is whether the tenant can still maintain an appeal or revision after giving such an undertaking. While holding that the tenant still can maintain an appeal or a revision, the Apex Court was pleased to state as under:

11. A party to a lis can be asked to give an undertaking to the court if he requires stay of operation of the judgment. It is done on the supposition that the order would remain unchanged. By directing the party to give such an undertaking, no court can scuttle or foreclose a statutory remedy of appeal or revision, much less a constitutional remedy. If the order is reversed or modified by the superior court or even the same court on a review, the undertaking given by the party will automatically cease to operate. Merely because a party has complied with the

directions to give an undertaking as a condition for obtaining stay, he cannot be presumed to communicate to the other party that he is thereby giving up his statutory remedies to challenge the order. No doubt he is bound to comply with his undertaking so long as the order remains alive and operative. However, it is open to such superior court to consider whether the operation of the order or judgment challenged before it need be stayed or suspended having regard to the fact that the party concerned has given undertaking in the lower court to abide by the decree or order within the time fixed by that court.

17. The decision on which reliance was placed by the learned Advocate General, in our opinion, would not assist him in any manner whatsoever. In the instant case, the Secretary to Government, Department of General Education was the contemnor in Contempt Petition No. 619 of 2006. He had appeared in person before the Court pursuant to the directions issued by this Court. After realising that it may not be possible for him to sustain his defence/explanation, he had not only offered unconditional apology to the Court but also filed an affidavit of undertaking only to escape from the contempt proceedings. This Court did believe a senior officer of the department, that too, when he was represented by learned Advocate General. In all fairness, the respondent should have stuck to his undertaking; That is what this Court would expect from a very senior and experienced officer of the department. But, it happened otherwise. In fact, this Court after accepting the affidavit of undertaking filed by the respondent/ contemnor, dropped the contempt proceedings and had granted time to the respondent to implement the interim order passed this Court. Certainly it was not with an intention either to permit him to file an appeal or a revision or to file a review petition. When an undertaking is given to this Court, it is the solemn undertaking and a party cannot withdraw from such an undertaking given in a contempt proceedings. Sometimes, this Court in order to facilitate the respondent to purge the contempt, would accept an undertaking from them and, thereafter would drop the contempt proceedings. In the instant case also that was done and this Court disposed of the Contempt Case NO.619 of 2006 by its order, dated 6.9.2007. In that view of the matter, in our opinion, the decision on which reliance was placed by the learned Advocate General would not assist him in any manner.

18. Learned Advocate General would further contend that the learned single Judge while passing the interim order, could not have granted the main relief itself. In our opinion, what is canvassed by the learned Advocate General is accepted legal principles, but the learned Advocate General wants to support his submission by relying on the decision of the Apex Court in the case of [Medical Council of India Vs. Rajiv Gandhi University of Health Sciences and Others](#), . In the said decision, the Court has reiterated the principles laid down in the case of [Union of India Vs. Era Educational Trust and Another](#), . While doing so, the Court has observed at paragraph 4 as under:

4. We once again emphasize that the law declared by this Court in *Union of India v. Era Educational Trust* that interim order should not be granted as a matter of course, particularly in relation to matter where standards of institutions are involved and the permission to be granted to such institutions is subject to certain provisions of law and regulations applicable to the same, unless the same are complied with. Even if the High Court gives certain directions in relation to consideration of the applications filed by educational institutions concerned for grant of permission or manner in which the same should be processed should not form a basis to direct the admission of students in these institutions which are yet to get approval from the authorities concerned or permission has not been granted by the Council.

19. In our opinion, even the aforesaid submission of the learned Advocate General cannot be accepted by us. In the instant case, as we have already noticed, this Court while entertaining the writ petition has passed an interim order dated 28.4.2006. That interim order was implemented by the respondent by passing the order, dated 9.5.2006. Having implemented the order pursuant to the interim direction issued, now it does not lie in the mouth of the State Government to contend that the learned single Judge while passing the interim order could not have granted the main relief. Therefore, even the second contention canvassed by the learned Advocate General would not impress us.

20. We have narrated all these facts only for the purpose that the appellant was fully aware of the order passed by the learned Single Judge. In fact, by passing an order, as directed by the learned Single Judge, they had passed an order, which according to us was nothing but deliberately flouting the orders passed by this Court. At their instance in order to purge the contempt, some time was given to them in the contempt proceedings. In stead of purging the contempt they tried to get an order from the learned Single Judge by filing the review petition, which as we have already stated is rightly rejected by the learned Single Judge. Now the State has filed this writ appeal to set aside the interim order passed by the learned Single Judge which is already implemented by the respondent by passing an order contrary to the directions issued by the court. It is only after the petitioner filed contempt proceedings against the respondent and further when this Court was about to initiate contempt proceedings by framing charges, the respondent after giving an undertaking before this Court that he would purge the contempt, has unsuccessfully filed review petition. After doing all this futile exercise, they have now filed the present writ appeal for the reliefs indicated by us earlier and in filing the appeal there is delay of nearly 497 days and to condone the delay an application and affidavit is filed. In the affidavit filed they have only stated all the events that had taken place before this Court. In the normal course, we would have condoned the delay in filing the appeal by the State Government, if the delay had been satisfactorily explained, but that is not the case in this appeal. After going through the pleadings and after hearing the learned Advocate General for the applicant and learned Counsel Sri. George Poonthottam, we are of the view that, the present



appeal is filed is filed only to overcome the undertaking given by the applicant in the contempt proceedings. In our view, the parties should not be permitted to adopt these dubious method to overcome the decision of this Court and if it is done, it would certainly affect the dignity of this Court, which we are not prepared to sacrifice. Therefore, we are not prepared to accept the explanation offered in the affidavit filed along with the application for condonation of delay in filing the appeal. Therefore, the application requires to be rejected.

21. These are the only two submissions made by the learned Advocate General while hearing the application for condonation of delay in filing the appeal.

22. In view of the aforesaid discussion, in our opinion, this is not one of the fit cases where delay in filing the appeal requires to be condoned by us.

Accordingly, we reject the application. Consequently, the Writ Appeal is also rejected. Ordered accordingly.