
(1985) 01 KL CK 0004
In the High Court Of Kerala
Case No : O.P. No. 4027 of 1984

E.J. Narayanan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 21-01-1985

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1985) KLJ 181

Hon'ble Judges : V. Sivaraman Nair, J

Bench : Single Bench

Advocate : K.K. Usha, N.D. Premachandran and V.P. Seemanthini, for the Appellant; Government Pleader, S. Narayanan Poti, V.M. Kurien and A.V. Thomas, for the Respondent

Final Decision : Allowed

Judgement

V. Sivaraman Nair J.

1. The dispute involved in this petition is a far too frequent controversy" relating to permission for opening of new schools in the private sector by the Government in exercise of its powers under the Kerala Education Act and the Rules framed thereunder. The petitioner is the Manager of a private aided high school at Nankicity in Kanjikuzhi Panchayat of Idukki District. That school was sanctioned in the year 1982-83. Kanjikuzhi Panchayat has an area of about 80 Sq. Kilometers and a population of 20,673. It is lucked away among the hills in the far reaches of the High Ranges. There is a Government High School in the Panchayat. There are two U. P. Schools, one owned by the 5th respondent and another owned by the S.N.D.P. Yogam. These schools are within close proximity of the two high schools. S.M.L.P. School, S.N.U.P. School Churuly, Government U. P. School, Alpara, Churuly and Govt. U. P. School Pazhayarikandam are the other educational institutions in the Panchayat. Petitioner and the 5th respondent were applicants for permission to open a new High School at Nankicity in 1982-83. The 5th respondent could not succeed in his attempt to obtain sanction for the High

School at that time. It is the petitioner's contention that thereafter the 5th respondent was trying his level best to obtain sanction for a High School in the same area, but in some other place name, to create unhealthy competition with the petitioner's school.

2. According to Rule 2 Chapter V of the Kerala Education Rules, the Director of Public Instructions has to prepare a report indicating the localities be where new schools are to be opened or existing schools are to be upgraded in preparing such report:

he shall take into consideration the following:

- (a) the existing schools in and around the locality in which new schools are to be opened or existing schools are to be upgraded.
- (b) the strength of the several standards and the accommodation available in each of the existing schools in that locality.
- (c) the distance from each of the existing schools to the area where new schools are proposed to be opened or to the area where existing schools are to be upgraded;
- (d) the educational needs of the locality with reference to the habitation and backwardness of the area; and
- (e) other matters which he considers relevant and necessary in this connection.

The list prepared by the Director has to be published in the Gazette inviting objections and representations to be submitted within a period of one month. After the receipt of objections and representations, the Assistant Educational Officer and the District Educational Officer have to conduct enquiries, hear the parties, visit the area and send reports with their views on the objections raised to the Director. The Director, in his turn, may also hear the parties, finalise the list and send his recommendations with the final list to the Government. The Government, on a consideration of all the records, may approve the list with or without modifications and forward the list to the Director. A detailed time schedule for the various stages of this process is also prescribed by Rule 2. Sub rule 5 provides that there shall be no appeal or revision against the final list. But the proviso herein enables the Government to review the order finalising the list. The Government is also enabled to make such modifications in the list 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 consideration or any relevant fact has not been taken into account while finalising the said list"

A further proviso to the sub rule obligates an opportunity to be given to any person likely to be affected thereby, to make representations against such modification.

3. The Director of Public Instruction published a preliminary list of areas where schools were proposed to be opened in Notification No. 30170/82 dated 15-3-1982 including a new High School to be opened at a place called Punnayar in Kanjikuzhi Panchayat. That notification was published in Kerala Gazette, The petitioner filed Ext. P2 objection stating that the place at which the new High School was proposed to be opened was within a short distance of the petitioner's High School, that there was no educational need justifying the opening of a new High School and that sanction for opening of the new High School was likely to affect the petitioner's High School and the Government High School, Kanjikuzhi seriously. After due enquiry under sub rule 3 of Rule 2 Chapter V of the K. E. R., report and recommendations appear to have been submitted to the Government resulting in the deletion of Punnayar from the final list published in Notification No. NS (1) 30170/82 dated 27-1-1983, under sub rule 4 of Rule 2.

4. Sometime thereafter, the petitioner was intimated by telegram about the hearing of a review petition seeking inclusion of Punnayar in the final list. The matter was finally heard on 27-7-1983. A representative authorised by the petitioner was present at the hearing. The Government passed Ext. P8 order dated 30-7-1983 including Punnayar in Kanjikuzhi Panchayat in the final list for opening of a new High School. This was followed by Ext. P7 notification dated 23-4-1984. The reason mentioned by the Government for including Punnayar in the final list in exercise of the power of review under the proviso to Rule 2(5) Chapter V, Kerala Education Rules was:

Considering the backwardness of the area, the fact of increasing population and the limited facilities of transport now available, it is necessary to open a new high school at Punnayar to meet the educational needs of the locality. The review petition is, therefore, allowed. The place "Punnayar" will be included in the final list of areas for opening new High Schools.

The, petitioner contends that neither a copy of the review petition, if any, nor the order of the Government thereon was communicated to the petitioner. The order passed by the Government in review has been produced along with an additional affidavit It is the petitioner's case that there was evidently an undue anxiety to sanction a high school at Punnayar in favour of the 5th respondent due to extraneous and irrelevant considerations. The petitioner submits that the sanction of the school was not in bona fide exercise of the power of the Government under Chapter V of the K. E. R., since relevant materials were not adverted to, that the decision was influenced by extraneous considerations, that Ext. P8 was not justified by materials on record nor by the educational needs of the locality and that the only factor which influenced the decision of the Government to sanction the school was the anxiety of the Minister for Education to favour the 5th respondent. The petitioner, therefore, seeks the issue of a writ of certiorari to quash Ext. P7 notification and Ext. P8 Government order and a writ of mandamus directing respondents 1, 2 and 4 not to allow any High School to be opened in the area Punnayar.

5. Counter affidavits have been filed on behalf of the first respondent and the fifth respondent. The first respondent submits that the review petition against the exclusion of Punnayar from the final list by the Director of Public Instructions was rightly allowed by Ext. P8 order, since it was found on enquiry that there was need for one more High School in Kanjikuzhi Panchayat at Punnayar as there were five feeder U. P. Schools within a radius of six Kilometers from Punnayar. The distance between the petitioner's High School and Punnayar is said to be 2.5 Kms. and 2 Kms. to the Government High School, Kanjikuzhi. Reference is also made to a report of the District Educational Officer that there is scope for a new High school at Punnayar in Ward No. III of Kanjikuzhi Panchayat which itself is a fast developing area. One justification for Ext.P8 order as stated in paragraph 5 of the counter affidavit is:

when transport facility increases, pupils seeking admission at Vazhathope, Kallarkutty and Murikkasserry will stop going to that schools and that will result in considerable increase in the strength of the schools in Kanjikuzhi Panchayat

Another important justification in Ext.P8 order is that

The facilities available in the existing two High Schools are insufficient to cater to the educational needs of more than 500 pupils coming out from the neighboring Upper Primary Schools

6. The submissions as "above are supported substantially by the counter affidavit of the 5th respondent. Punnayar is said to be the largest ward in Kanjikuzhi Panchayat with 796 families in that ward and equal number in the two adjacent wards. About one thousand pupils come out of the six U. P. Schools in the Panchayat each year. But there are only two High Schools in the Panchayat. This, according to the 5th respondent, results in many students being denied admission in the said High Schools. Reference is made to inadequate accommodation in the existing High Schools and the limited transport facilities which were not considered at the time when the final list of areas was prepared and published in January, 1983. Reference is also made to Ext.R5 (a) representation submitted by the Corporate Educational Agency of the Diocese of Kothamangalam before the Government in support of the review petition. The District Educational Officer is said to have pointed out the educational needs of the area and the necessity for a new high school, which also, it is alleged, supports Ext.P8 order of the Government. It is also submitted that the petitioner had authorised a representative to represent him at the hearing and Ext. P8 order was communicated to that person soon after the issue of that order. The fifth respondent suggests that the Original Petition which was filed only in May, 1984, was far beyond the ordinary period of 90 days after the communication of Ext.P8 order. It is, therefore, submitted that both on merits and on the ground of unexplained delay, the original petition deserves to be dismissed.

7. The objection of the fifth respondent on the ground of delay in approaching this Court is also supported by the Government Pleader appearing for

respondents 1 to 4. It is submitted in the additional reply affidavit that neither the petitioner nor the representative received copy of Ext. P8 order and that the petitioner came to know about disposal of the review petition only when Ext. P7 order was published in the Gazette in April, 1984, The Original Petition has been filed within reasonable time thereafter. Hence the same cannot be dismissed for laches of the petitioner. It is also significant that final orders sanctioning the" new High School was passed by Government only on 6-6-1984 and the order was published in the Gazette only on 20-6-1984 after the filing of the Original Petition. For all the above reasons, it cannot be held that the original petition is liable to be dismissed for delay and laches.

8. Counsel for the respondents submitted that original petition is liable to be dismissed in view of the decision of a Division Bench of this Court reported in *Punnose v. Nair Service Society* (1984 KLT 736), since the educational agencies like the petitioner are agencies of the State on whom

Government has conferred privilege of running the educational institutions" and that such educational agencies cannot attack orders permitting opening of new schools in proceedings under Article 226 of the Constitution of India for the reason of possible reduction of students in their schools. That decision related to the grant of permission at the initial stage and not to such a decision on a review as provided under Rule 2(5) proviso of Chapter V of the Kerala Education Rules. The same question of the standing of a person who objected to the inclusion by the Government of a new locality for establishment of a School in exercise of the powers of review was specifically considered by another Division Bench of this Court in a later decision reported in *Abraham Vadakkancherry v. State of Kerala & Others* (1984 KLT 704). It was held that

Rule 2 of Chapter V of the Kerala - Education Rules with which we are here concerned shows that the educational needs of a locality is the major factor to be taken into account in all proceedings thereunder, and that no restriction is placed on the class of persons who could object to the proposal and the choice. Persons who feel that no new schools are needed in the locality and persons who think that a Boys" school is the need, and not a Girls" school, are all sufficiently interested in the matter. The appellant-petitioners are apparently of the opinion that in as much a Girls" School is already there in or near the locality, the real need is for a Boys" High School. It is claimed that they represent a sizeable section of the parents of the locality who will prefer a Boys" school, if Government is prepared to sanction any school at all. It cannot be said that they are mere busy-bodies or strangers with no interest in the subject matter of the writ petition"

and

The power of review could be exercised under the rule only in cases where the final list approved and published is vitiated by: (a) failure to take into account relevant grounds; or (b) taking into account irrelevant grounds; or (c) failure to

take into account relevant facts There is nothing in the order impugned to show that Government had adverted to the existence or otherwise of any of the above circumstances; the order proceeds on the footing that a review can be undertaken for any reason on any ground. That is transgressing the law and acting in excess of jurisdiction. We therefore quash Ext. P4 in the Original Petition, with freedom to the Government to reconsider the matter in accordance with law, if they are so advised.

In the light of the later decision of the Division Bench reported in 1984 KLT 704, which was rendered On facts more approximate to the facts of this case, I cannot but reject the preliminary objection based on the decision reported in 1984 KLT 736.

9. The petition, on the basis of which the Government decided to exercise its power of review, was filed on 2-2-83, by one T. A. Joseph. The Corporate Educational Agency, Diocese of Kothamangalam, submitted another representation dated 15-2-1983, requesting for inclusion of Punnayar for establishing a High School. In the former, it was stated:

a good number of students are forced to seek admission in High School in distant places and they are experiencing a lot of difficulties for want of proper facilities."

And, in the latter representation, it was stated:

the newly started High School cannot admit all the students of both the U. P. Schools without making the strength too unwieldy and practically for lack of accommodation, admissions are denied to many students.

In a further representation dated 8-3-1983, Convener of Punnayar High School Nirmana Committee stated:

Nearly 1000 students pass out VIIth Standard from the above six U. P. Schools every year and all the students cannot be accommodated in the existing High Schools. Some students even now seek admission in the distant Government H. S., Vazhathope which is 20 KM away.

The review petition appears to have been supported "by the local M. L. A., Panchayat President, some of the Political Parties, the local Church etc. The review Petitions were referred to the Director of Public Instruction, who, in his letter dated 9-6-1983 stated:

I may inform Government that two reports have been received from the District Educational Officer, Idukki which are enclosed for ready reference. There are one aided H. S. and another Govt. H. S. in nearby areas. As a few divisions in the near schools will be affected, I suggest not to include the area in the final list. The report of the District Educational Officer, Idukki and the review petition are forwarded herewith.

In the report dated 8-4-1983, the District Educational Officer, Idukki, stated that he verified the review application, and reported:

I. Nearly 500 students now study in Std. VII of the various UP Schools in Kanjikuzhi Panchayat.

2. To accommodate the above students only two High Schools are functioning in the area.

3. Punnayar in Kanjikuzhi Panchayat is a fast developing area.

4. When transport facility increased pupils seeking admission at Vazhathope, Kallarkutty and Murikkassery will stop going to that schools and that will result in considerable increase in the strength of the schools in Kanjikuzhi Panchayat. So the scope for a third High School is not out of place.

Almost the same words were repeated in a further report dated 14-4-1983. Evidently, the District Educational Officer had not given any positive recommendations. The same official had submitted a further report on 31-5-1983, apparently on a further communication from the Director of Public Instruction. The distance from the petitioner's school to Punnayar was reported to be 11/2 km., the distance between the two existing High Schools as 3km., and that there were six Divisions in Standard VIII of the petitioner's school, and 3 Divisions in the Government High School. It was specifically reported, that "If a new School is opened, there will be a fall of two divisions in SNHS Nankicity and one division in Govt. H. S. Kanjikuzhi".

10. Thereafter, the hearing of the matter was fixed as 20-6-1983, and the parties were informed by telegram. The petitioner informed by letter dated 23-6-1983, that he received the information of the hearing on 20-6-1983 only when the District educational Officer contacted him on 22-6-1983. The representative of the Corporate Manager of Diocese of Kothamangalam also could not be present at the hearing in time, and the hearing was posted to 27-7-1983, of which all the parties were intimated by telegram dated 22-7-1983. The petitioner was represented by Shri P. M. Kumaran, Director, S.N.D.P.

Yogam. The petitioner naturally reiterated the request not to include Punnayar in the final list, stating that such a measure would adversely affect the petitioner's High School, and that there would be consequent reduction of divisions since the distance between the two schools was negligible. On a reference to the report of the District Educational Officer dated 8-4-1983, and without referring to the further report dated 31-5-1983, the Minister for Education passed Ext. P8 order, which reads:

Considering the backwardness of the area, fast increasing population and the limited facilities of transport now available it is necessary to open a new High School at Punnayar to meet the educational needs of the locality. The review petition is, therefore, allowed. The place "Punnayar" will be included in the final list of areas for opening new High Schools.

11. Counsel for the petitioner submits, that the order is bad since it is vitiated by mala fides in law, and exercise of the power of review under the proviso to rule 2

of Chapter V of the Kerala Education Rules in the absence of any of the circumstances justifying the exercise of such power, is illegal and unsustainable. In support of the first submission, the petitioner stated, that the Director of Public Instruction had stated in his recommendations dated 9-6-1983, which is available at page 47 of the files, that "as a few divisions in the near schools will be affected, I suggest not to include the area in the final list". Even in the report of the District Educational Officer dated 8-4-1983, what was stated was, that-

so the scope for a third High School is not out of place"

It is emphatically submitted, that the report of the very same officer dated 31-5-1983, which is available at page 68 of the file, is to the effect, that "if a new school is opened there will be a fall of two divisions in SNHS, Nankicity and one division in Government H. S. Kanjikuzhi," which was conveniently omitted from consideration when Ext. P8 order was passed in exercise of the power of review. It is submitted that the refusal to advert to the report of the Director of public Instruction, the alleged distortion of the report of the District Educational Officer dated 8-4-1983, and the refusal to advert to the report of the District Educational Officer dated 31-5-1983, indicate an undue anxiety to allow the review petition somehow or the other and that the non-application of mind to the relevant facts and materials amounts to malice in law.

12. Counsel for the respondents submits that a detailed enquiry into the merits of the determination by the Government is not within the comprehension of the jurisdiction of this Court under Article 226 of the Constitution of India.. He submits that the -inadequacy of the existing arrangements, the fast developing nature of the area, the increase in transport facilities in the none too distant future resulting in more students joining schools in the Panchayat etc as found in Ext. P8 order are relevant considerations and are amply supported by materials on record.

13. The extent to which administrative determinations on subjective satisfaction with reference to specific facts could be subject to judicial review was considered in a number of decisions.

14. It was held by Lord Halsbury as early as in 1891 in *Sharp v. Wakefield* (1891 A. C. 173) that:

When it is said that something is to be done within the discretion of the authorities.....that something is to be done according to the rules of reason and justice, not according to private opinion.... according to law and not humour. It is to be, not arbitrary, vague, fanciful, but legal and regular.

15. In *Baldwin and Francis Ltd. v. Patents Appeal Tribunal* (1959)2 All. Eng. Rep. 433, Lord Denning held:

There are many cases in the books which show that if a tribunal bases its decision on extraneous considerations which it ought not to have taken into account, or fails to take into account a vital consideration which it ought to have

taken into account, then its decision may be quashed or certiorari, and a mandamus issued for it to hear the case afresh.

16. Govindan Nair, C. J., speaking for a bench of 5 Judges made an impassioned and emphatic appeal to the same principle in *Simon v. Advocate General*, as follows:-

In a welfare State such as ours with a growing emphasis on administrative control which could interfere with the life, liberty" and rights of citizens there should be the insistence that those who are invested with wide and varied powers act according to justice fairness, and who can guarantee this but the Courts entrusted with the jurisdiction such as that in Art. 226 of the Constitution ? There can be no doubt that this jurisdiction will enable Courts to interfere in appropriate cases, where administrative orders have affected the rights of parties or affected their interest in a substantial manner as to cause real and serious injury, if there has been violation of the principles of natural justice, where it would apply, when there has been abuse of power, when the authority had acted in excess of, the power conferred by Statute, or when there has been no dispassionate application of the mind or where there was nothing to indicate that the mind had been applied.

17. It is not, necessary to multiply authorities in this regard. Dealing with the same provisions-Rule 2 (5) proviso of Chapter V Kerala Education Rules, a division bench of this Court held in *Purushothaman v. State of Kerala* (1983 KLT 527) that:

The order impugned in these cases" is subject to judicial review. Such review will be with a view to examine whether the Government was satisfied of the existence of one or the other of the grounds laid down in the relevant rule in the Kerala Education Rules to justify the modification of its order whether the Government-advert to the existence of material that would be relevant in that context and further whether the order impugned shows that it was on the basis that it was on satisfaction of such ground or grounds that Government reviewed its earlier order.

18. It seems to me, therefore, necessary that the question whether the only circumstances under which the power of review could be exercised by the Government under the proviso to Rule 2(5) of Chapter V of the Kerala Education Rules were in existence and whether the decision was vitiated by any extraneous consideration or whether any relevant factor was omitted from consideration are matters which can be subject matter of scrutiny in those proceedings.

19. On an examination of the materials available on record, I am inclined to hold that the petitioner is right in the submission that Ext. P8 order is vitiated by refusal to consider relevant facts and is liable to be voided. The Government could not have exercised the power of review without adverting to the report of the Director of Public Instruction and the report of the District Educational Officer dated 31-5-1983. The effect of both of them was against the inclusion of

Punnayar in the list of areas where High Schools are to be established. Non advertence to such relevant materials vitiates Ext P8 order. It may perhaps be open to the Government to refuse to accept such recommendations, but that only be in bona fide exercise of power with advertence to the adverse materials and with reference to other materials properly brought on record. The educational needs of the locality ascertained and assessed by the educational officers and as recommended by the Director of Public Instruction being basic materials for exercise of the power under rule 2 of Chapter V of the Kerala Education Rules, the refusal to advert to such relevant materials viz., the report of the District Educational Officer dated 31-5-1983 and the recommendations of the Director of Public Instruction dated 9-6-1983 (pages 68 and 47 of the files respectively), renders Ext. P8 decision of the "Government vitiated by malice in law and therefore unsustainable.

20. It may perhaps be possible to contend that the reports of the District Educational Officer dated 8-4-1983 and 14-4-1983 though not unequivocal, may as well support Ext. P8 order and therefore there is no occasion for this Court to interfere with Ext P8 order Counsel for the respondents submitted that a reappraisal of the entire materials available on record at the time of passing Ext P8 order to find fault with that order is foreign to the exercise of jurisdiction under Article 226 of the Constitution, and that propriety of the order shall not be considered in these proceedings.

I would have accepted these submissions and refused to interfere with Ext. P8 order but for two very important factors Firstly, the District Educational Officer is required by Rule 2(2) of Chapter V of the Kerala Education Rules to conduct enquiries, hear parties, visit the areas and send reports with his views on the objection and "the Director, if found necessary, may also hear the parties and finalise the list and send his recommendations". It is not disputed in this case that the initial reports and recommendations were against the inclusion of Punnayar in the list of areas for opening a new High School. It cannot be in dispute that the recommendations on the review petition by the Director, which is statutory in character, was against the inclusion of Punnayar in the final list. The reports of the District Educational Officer dated 8th and 14th April are at best equivocal and non-committal, whereas his report dated 31-5-1983 was undisputedly hostile. No such materials of overwhelming force were available on record justifying the government to brush aside the statutory reports and recommendations and exercise the power of review in favour of the inclusion of Punnayar in the final list of areas. There is not even an assertion anywhere in the order or in the proceedings justifying this extraordinary measure. It is true that the Government has a very wide discretion in the matter of sanctioning of schools under Chapter V of the Kerala Education Rules. Ordinarily, the decision of the Government in exercise of such a discretion shall not be lightly interfered with. But it is not as if such discretion is unlimited. As asserted by Lord Denning in the decision reported in *Laker Airways Ltd. v. Department of Trade* (1977(2)All. E. R. 182):

We have considered this case at some length because of its constitutional importance. It is a serious matter for the courts to declare that a Minister of the Crown has exceeded his power. So serious that we think hard before doing it. But there comes a point when it has to be done. These courts have the authority, and I would add the duty, in a proper case, when called on to inquire into the exercise of a discretionary power by a Minister or his department. If it found that the power has been exercised improperly or mistakenly so as to impinge unjustly on the legitimate rights or interests of the subject, then these courts must so declare. They stand, as ever, between the executive and the subject, alert, as Lord Arkin said in a famous passage, "alert to see that any coercive action is justified in law: see *Liversidge v. Anderson*, To which I would add "alert to see that a discretionary power is not exceeded or misused.

As Patanjali Sastri, C. J. said in a different context, the courts are "the sentinels on the qui vive. The court has to watch out and strike down transgressions of power when any such is brought to its notice, by a person whose interests are adversely affected.

21. Secondly, the power of review available under the proviso to rule 2 (5) of Chapter V of the Kerala Education Rules is hedged in by serious limitations imposed by the Statute. It is not as if the Government is entitled to reconsider the matter on the basis of the same materials which were available at the time when the list was finalised originally. Such power can be exercised only if the Government "are satisfied that any "relevant ground has not been taken into consideration, or any irrelevant ground has been taken into consideration, or any relevant fact has not been taken into consideration while finalising the said list." Satisfaction on one or the other, or all of these three factors, "seems to me to be jurisdictional precondition for the exercise of the power of review provided by the statute, and it is essential that such satisfaction is apparent on the record. It is not stated anywhere in the order; or pleadings in the case, that the Government was satisfied that in finalising the list earlier, any relevant ground was not taken into consideration, or any irrelevant ground had been taken into consideration, or any relevant fact has not been taken into account. If the existence of this satisfaction, which is jurisdictional in character, is not apparent on the record, that order deserves to be set aside. I am supported in this view by the observations of the Division Bench of this Court in the decision reported in *Abraham v. State of Kerala* (1983 KLT 704), where it was observed:

The power of review could be exercised under the rule only in cases where the final list approved and published is vitiated by:

- (a) failure to take into account relevant grounds; or
- (b) taking into account irrelevant grounds;
- (c) failure to take into account relevant facts.

There is nothing in the order impugned to show that Government had adverted

to the existence or otherwise of any of the above circumstances; the order proceeds on the footing that a review can be undertaken for any reason and on any ground. That is transgressing the law and acting in excess of jurisdiction.

The same aspect was considered by U. L. Bhat, J., in the decision in O. P. No. 6423 of 1984, wherein almost similar facts were pleaded in support of the order passed by the Government in review. It was held, that unless satisfaction of the three jurisdictional pre-conditions is recorded, the order passed in exercise of the power of review under the proviso to rule 2(5) of Chapter V of the Kerala Educational Rules cannot be sustained. On an anxious consideration of the entire matter, I cannot come to a different conclusion in this case. Counsel for the petitioner attempted to make out that even the reasons mentioned in Ext. P8 order to include Punnayar in the final list of areas are self-contradictory and unrelated to facts. In view of the conclusion on the jurisdictional aspect of the matter, I am not persuaded to go into the details of this submission. Suffice it for me to state, that according to the reports and recommendations, there was no occasion for exercise of the power of the Government to review the exclusion of Punnayar from the final list, nor was there in existence such satisfaction on the three jurisdictional conditions as would justify Ext. P8 order.

I, therefore, allow the Original Petition and Ext. P8 order and all consequential proceedings are hereby quashed. There will be no order as to costs.

Issue carbon copy of this judgment to counsel on both sides on usual terms.