

(2014) 09 KL CK 0003

In the High Court Of Kerala

Case No : Writ Appeal Nos. 1163, 1164 and 1188 of 2014

State of Kerala

APPELLANT

Vs

Muslim Education Society

RESPONDENT

Date of Decision : 01-09-2014

Acts Referred:

Citation : (2014) 3 KHC 707

Hon'ble Judges : Dama Seshadri Naidu, J; Antony Dominic, J

Bench : Division Bench

Advocate : K.P. Dandapani, Advocate General, Advocate for the Appellant; M.R. Anison, Advocate for the Respondent

Judgement

Antony Dominic, J.—W.A. Nos. 1163/14 and 1164/14 are filed by the State of Kerala and others, aggrieved by the interim order dated 18/08/2014 in W.P. (C) No. 20767/14 and W.P. (C) No. 20513/14. W.A. No. 1188/14 is filed by the Corporate Manager, Thalassery Diocese and another, who are aggrieved by the interim order dated 18/08/2014 in W.P. (C) No. 19649/14. The order dated 18/08/2014 which is impugned in these writ appeals is a common order passed in a batch of writ petitions. When writ appeal Nos. 1163/14 and 1164/14 initially came up for consideration before this Court, since any order passed in these appeals would affect the petitioners in the other writ petitions in which also interim orders are passed, this Court directed the appellants to serve notice of these writ appeals on the counsel for the petitioners in all other writ petitions. Thereupon, copy of the appeal memorandum were served on the counsel appearing in all other writ petitions in this batch and all the remaining writ petitions were also listed before this Court. Accordingly, when the appeals were heard on 27/08/2014 and 28/08/2014, apart from the counsel for the parties in these appeals, the counsel appearing for the remaining writ petitioners were also allowed to raise their arguments.

2. The writ petitions were filed mainly challenging the order passed by the 1st appellant on 31/07/2014, sanctioning new higher secondary schools and

additional higher secondary batches in Government and aided sector in the State for the academic year 2014-15. Before we consider the merits of the rival contentions, we shall briefly narrate the facts which led to the filing of these cases.

3. On 11/06/2013, GO (Ms) No. 185/2013.GEdn. was issued ordering that the Director of Higher Secondary Education will issue notification inviting applications for sanctioning higher secondary schools in 148 Grama Panchayats, altogether sanctioning 296 batches, by granting two batches in one school, giving preference to Science and Commerce and to sanction the remaining 382 batches in northern Districts starting from Ernakulam, taking into account the deficiency of availability of plus one seats and for such other reasons by upgrading the existing Government/Aided high schools, sanctioning two batches each and sanctioning one additional batch each in the existing Government/Aided higher secondary schools. The eligibility criteria, norms for submitting applications, priority among the schools, the infrastructural requirements etc. were also indicated in this notification. In compliance with the Government Order, the Director of Higher Secondary Education issued notification dated 17/06/2013, inviting applications from schools.

4. These proceedings initiated by the Government were challenged before this Court in W.P. (C) No. 16080/13 and connected cases. By judgment rendered on 21/08/2013, the writ petitions were allowed by this Court. Questioning the legality of these judgments, WA No. 1341/13 and connected cases were filed and by judgment rendered on 11/04/2014, the judgment of the learned Single Judge was reversed. In this judgment, a Division Bench of this Court clarified that while proceeding in pursuance of the Government Order dated 11/06/2013, the Government shall also give sufficient opportunity to other schools in other Districts also to start plus two courses if there is requirement, taking into consideration the need of the locality.

5. In the meanwhile, on 25/06/2013, the Government issued GO (Ms) No. 194/2013/G.Edn. dated 25/06/2013, appointing a six member committee, with the Director of Higher Secondary Education as its Chairman. The mandate of the committee was that "the committee will scrutinise each application received and the Director of Higher Secondary Education will forward the recommendations of the Committee to Government". The Committee scrutinised the applications received applying the norms indicated in the Government Order dated 11/06/2013 and submitted its report on 19/05/2014.

6. At that stage, Government issued GO (Ms) No. 86/2014/G.Edn., dated 24/05/2014, stating that the Government have reconsidered the entire matter afresh and have decided that no higher secondary school need be sanctioned during the academic year 2014-15 and that it was decided to invite fresh applications for sanctioning additional higher secondary batches to the existing higher secondary schools. Accordingly, the Director, Higher Secondary Education issued notification dated 26/05/2014 inviting applications and considering the

applications received, submitted proposal dated 18/06/2014 making his recommendations in the matter. The matter was considered by the Cabinet on 25/06/2014 and the Chief Minister is stated to have been authorised to take a decision in the matter.

7. GO (Ms) No. 86/2014/G.Edn. Dated 24/05/2014, and the proceedings thereunder were again challenged before this Court in W.P. (C) No. 13897/14 and connected cases. Against the interim orders passed in those writ petitions, W.A. Nos. 776/14 and 780/14 were filed. The writ appeals and the writ petitions were heard by a Division Bench of this Court and by judgment dated 10/07/2014, the writ petitions were disposed of, setting aside the Government Order and the notification and ordering thus:

"70. For all these reasons, we allow the writ petitions and quash the impugned Government Order Ext. P6 produced in W.P. (C) No. 13581/2014 dated 24/05/2014 and Notification No. Acd.C.3/21437/HSE/2014, dated 26/05/2014 issued by the Director of Higher Secondary Education (Ext. P5 in W.P. (C) No. 13909/2014). Since the process of admission for the Higher Secondary course this year is already underway, (we understand that the same has started by 30/06/2014) we issue the following directions:

? The process of providing Higher Secondary courses in 148 Grama Panchayats will be expedited, so that students will be able to get admission this year.

? The process of sanctioning additional batches in northern Districts beginning from Ernakulam and upgrading schools as already provided in Ext. P1, will also be taken simultaneously and orders will be issued accordingly. After completing the above process in tune with the directions in Ext. P5 judgment of the Division Bench, if there is genuine requirement for granting additional batches in any other areas, the same can also be considered by the Government depending upon the education need."

8. After the judgment was rendered by this Court, the cabinet reconsidered the matter again on 16/07/2014 when the Chief Minister is stated to have appointed a cabinet sub-committee. The cabinet sub-committee is stated to have made its report and the same was approved by the cabinet on 23/07/2014. Finally, on 31/07/2014, GO (Ms) No. 143/2014/G. Edn., was issued. In this GO, it is stated that the cabinet sub-committee examined the proposals of the Director of Higher Secondary Education and suggested to get the opinion of the people's representatives of the locality also while assessing the educational need of the area. The cabinet sub-committee made its recommendations, which were accepted and accordingly, the Government sanctioned 700 higher secondary batches as detailed in Annexures-(I) to (III) to this order, subject to the conditions specified in the order itself.

9. This order states that following were the recommendations of the cabinet subcommittee that were accepted;

"(i) 43 Government High Schools and 88 Aided High Schools (total 131) in 134 Panchayaths where no Higher Secondary Schools are available at present, shall be upgraded as Higher Secondary Schools.

(ii) In the Northern Districts from Ernakulam to Kasargod, 18 Government High Schools and 77 Aided High Schools (total 95) shall be upgraded and a total number of 143 batches shall be sanctioned in these schools.

(iii) A total number of 426 additional batches - 82 additional batches in 81 Government Higher Secondary Schools and 344 additional batches in 319 Aided Higher Secondary Schools in the State shall be sanctioned."

10. It was in the above background, the writ petitions were filed. In this batch of writ petitions, after hearing the parties and on perusal of the files, the impugned order was passed by the learned Single Judge on 18/08/2014. The relevant portion of the order reads thus:

"23. In the said circumstances, considering the spirit of the judgments passed by the Division Bench of this Court and the timely requirement to enable the eligible students to pursue the studies in the current academic year itself, the following interim order are passed:

(i) No School other than those who find a place in the recommendation of the "Six member committee" forwarded along with the letter dated 19/05/2014 of the Director shall be given sanction or shall be permitted to function.

(ii) Schools recommended by the said committee as enlisted in the Annexures to the letter dated 19/05/2014 of the Director shall be given provisional sanction to function forthwith, subject to the conditions stipulated in the GO dated 31/07/2014.

(iii) It shall be ensured that no school which does not meet the requirements as specified under Clause 8 (vii) of GO dated 31/07/2014 shall be permitted to function.

(iv) Educational need, if any, in other areas can be considered later, based on the materials to be substantiated.

(v) The "files" will stand returned for the time being; to be produced at the time of final hearing."

It is aggrieved by this order, these writ appeals were filed.

11. On behalf of the appellants, we heard the learned Advocate General and on behalf of the writ petitioners, the respective learned counsel and also the other counsel appearing for the writ petitioners were heard.

12. A reading of the interim order in its entirety would show that the main reasons which persuaded the learned Single Judge to pass the interim order in question are that, despite the finality of the judgment of this Court in W.A. No. 776/14 and connected cases rendered on 10/07/2014, the positive directions

issued therein were ignored and deviated from, and that such a course of action was illegal. The further reason that weighed with by the learned Single Judge is that though it was claimed that deviation from the directions issued by this Court was due to the local educational needs, and that in assessing the same, the views of the people's representatives were also ascertained, the files that were produced before the learned Single Judge did not contain any material substantiating such a consultation process.

13. Lengthy arguments were addressed by the learned Advocate General on the correctness of the findings of the learned Single Judge. According to the learned Advocate General, in the judgment in W.A. No. 1341/13 where the validity of GO (Ms) No. 185/2013/G. Edn was upheld by this Court, this Court has also recognised the power of the State to frame policies and also to revise the policies. According to him, after the judgment was rendered on 10/07/2014, the matter was considered by the cabinet and the cabinet subcommittee, duly taking note of the proposal of the 6 member committee under the Chairmanship of the Director of Higher Secondary Education and also the proposals that were received by the Government in pursuance of GO (Ms) No. 86/2014/G.Edn., dated 14/05/2014 and the notification dated 26/05/2014 issued by the Director. It was contended that it was accordingly that, after ascertaining the views of the people's representatives, the cabinet sub-committee made its recommendations, which were finally accepted by the cabinet and GO (Ms) No. 143/2014/G.Edn., was issued on 31/07/2014. The learned Advocate General contended that it was entirely within the domain of the Government to lay down its policies and revise such policies, considering the educational needs in the State and to cater to the requirements of the student community and that judicial review did not permit interference with such legitimate exercise of power.

14. Having considered the submissions made, we are of the view that though the contention would sound attractive at the first blush, on a closer examination, we find that it cannot be accepted for more reasons than one. Undoubtedly, the Government is entitled to frame its policies and to revise the policies also. Such policies or its revision cannot ordinarily be called in question. However, policies of the Government are not totally immune from judicial review and if a policy is unconstitutional for being arbitrary or mala fide, it certainly is liable to be interfered with. These principles have been summarised by the Apex Court in its judgment in Brij Mohan Lal Vs. Union of India (UOI) and Others, thus:

"99. It is also a settled cannon of law that the Government has the authority and power to not only frame its policies, but also to change the same. The power of the Government, regarding how the policy should be shaped or implemented and what should be its scope, is very wide, subject to it not being arbitrary or unreasonable. In other words, the State may formulate or reformulate its policies to attain its obligations of governance or to achieve its objects, but the freedom so granted is subject to basic constitutional limitations and is not so absolute in its terms that it would permit even arbitrary actions.

100. Certain tests, whether this Court should or not interfere in the policy decisions of the State, as stated in other judgments, can be summed up as:

(I) If the policy fails to satisfy the test of reasonableness, it would be unconstitutional.

(II) The change in policy must be made fairly and should not give the impression that it was so done arbitrarily on any ulterior intention.

(III) The policy can be faulted on grounds of mala fides, unreasonableness, arbitrariness or unfairness, etc.

(IV) If the policy is found to be against any Statute or the Constitution or runs counter to the philosophy behind these provisions.

(V) It is de hors the provisions of the Act or legislations.

(VI) If the delegate has acted beyond its power of delegation.

101. Case of this nature can be classified into two main classes: one class being the matters relating to general policy decisions of the State and the second relating to fiscal policies of the State. In the former class of cases, the Courts have expanded the scope of judicial review when the actions are arbitrary, mala fide or contrary to the law of the land; while in the latter class of cases, the scope of such judicial review is far narrower. Nevertheless, unreasonableness, arbitrariness, unfair actions or policies contrary to the letter, intent and philosophy of law and policies expanding beyond the permissible limits of delegated power will be instances where the Courts will step in to interfere with Government policy."

15. The question therefore is whether the policy as reflected in GO (Ms) 143/2014/GLEdn., dated 31/07/2014 suffers from anyone of these vitiating factors.

16. We have already seen that the judgment in W.A. No. 776/14 and connected cases was rendered by this Court on 10/07/2014. This has not been challenged by anyone of the parties and therefore, the directions in that judgment are binding on the parties, including the appellants herein. In para. 70 of that judgment, this Court specifically directed that the process of providing higher secondary courses in 148 Grama Panchayats will be expedited. It was also ordered that the process of sanctioning additional batches in northern Districts beginning from Ernakulam and upgrading schools as provided in GO (Ms) No. 185/2013/G.Edn., will also be taken simultaneously and orders will be issued accordingly. The Division Bench further ordered that after completing the above process in tune with the directions in the judgment in W.A. No. 1341/13, if there is genuine requirement for granting additional batches in any other areas, the same can also be considered by the Government depending upon the educational need. Therefore, in this judgment, this Court ordered implementation of GO (Ms) No. 185/2013/G.Edn., dated 11/06/2013, and also laid down the sequence and

the manner in which the three directions are to be implemented. This judgment, as already mentioned, has become final.

17. It is trite that a writ of mandamus issued by a Constitutional Court cannot be watered down except by a legislative process whereby the basis of the judgment itself is altered. Despite this legal position, the Government deviated from the directions of this Court by a dubious process of appointing a cabinet sub-committee and allegedly by ascertaining the views of the representatives of the people, which, again, was not substantiated by any material. The functioning of the Government in a constitutional democracy is circumscribed by the constitutional limitations and the political or other exigencies do not authorise it to act in an extra constitutional method. Therefore, the power to frame a policy or to revise it do not empower the Government to ignore the binding directions of this Court. If that be so, the Government could not have, in any manner, departed from the directions of this Court as contained in para. 70 of the judgment in W.A. No. 776/14 and connected cases and this, prima facie, made its decision arbitrary and unfair, justifying interference.

18. Pleadings in the memorandum of appeal itself would show that when the cabinet sub-committee considered the proposals made by the committee chaired by the Director of Higher Secondary Education, which was constituted in pursuance of GO (MS) No. 185/2013, they also took into account the proposals that were received in pursuance of GO (Ms) No. 86/2014/GEdn., dated 24/05/2014 and the notification dated 26/05/2014. This was done in spite of the fact that in the Division Bench judgment in W.A. No. 776/14 and connected cases, GO (Ms) No. 86/2014/G.Edn., dated 24/05/2014 and the notification dated 26/05/2014 issued thereunder were quashed by this Court. In the light of this judgment, the proposal dated 18/06/2014 made by the Director of Higher Secondary Education pursuant to the Government Order and the notification which were quashed by this Court, did not survive after the judgment, to be placed or considered by the cabinet or its sub-committee. Therefore, that procedure adopted by the cabinet sub-committee was illegal. Further, by this process, the appellants again brought into consideration the proposal prepared on the basis of an illegal Government Order and the notification issued. In other words, what was indirectly done was something which could not have been directly done.

19. Therefore, on the materials now available before this Court, it can be concluded that while issuing GO (MS) No. 143/2014/G.Edn., dated 31/07/2014, the Government have departed from the binding directions of this Court as contained in para. 70 of the judgment dated 10/07/2014 in W.A. No. 776/14 and connected cases. This being illegal, we fully agree with the learned Single Judge in his prima facie conclusions on this aspect of the matter.

20. The second aspect of the matter is the process by which the views of the people's representatives were allegedly ascertained. Even going by the pleadings in the appeals, the decision to ascertain the views of the people's

representatives was taken only at the stage when the matter was pending consideration of the cabinet sub-committee. Even if it is assumed that the cabinet sub-committee was at liberty to ascertain the views of the people's representatives and that relying on such views, recommendations were made by it, the files should have shown that it was done in a transparent manner and the process of the alleged consultation should also have been reflected in the files. Order of the learned Single Judge shows that the files made available to him did not disclose anything regarding the persons who pointed out the educational needs, the manner in which it was pointed out or when it was pointed out. It is reiterated in the order under appeal that no such opinion or material was available in the files produced.

21. In a democratic polity, the importance of the people's representatives cannot be questioned. When issues such as educational needs of the area represented by them are considered, they may also be entitled to be consulted and their views may deserve consideration. However, that does not mean that such consultation can be secretive, nor does it absolve the State from conducting its affairs in a transparent manner. Therefore, if the views of the people's representatives were ascertained as claimed and if such views were relied on to deviate from the recommendations of the 6 member committee chaired by the Director of Higher Secondary Education, the materials or information so gathered in the process of ascertaining the views of the people's representatives should have found its place in the files. The files that were made available did not contain any such materials and it was therefore, the learned Single Judge rightly faulted the appellants in this issue.

22. In this context, the learned Advocate General faintly suggested that the files made available to the learned Single Judge did contain the relevant materials. Insofar as this plea of the learned Advocate General is concerned, we have to state that even in the memorandum of appeal, there is no pleading that the files made available to the learned Single Judge contained any material in this regard and that it was omitted to be taken note of by the learned Single Judge. On the other hand, if despite due diligence, any material could not be produced before the learned Single Judge or if any material produced was omitted to be considered and for non-consideration of such material, the order passed suffers from any error apparent on the face of it, the remedy available to the appellants is to seek review of the order itself. Therefore, this contention also is only to be stated and rejected.

23. The learned Advocate General complained that the order dated 18/08/2014 was passed by the learned Single Judge without allowing the state to file a counter-affidavit in the matter. We are unable to accept his contention. First of all, order does not state anywhere that a request for time to file counter-affidavit was made and that it was rejecting the same the order in question was passed. We don't see such a plea in the writ appeals as well. Secondly, counsel for the respondents pointed out that when cases were considered by the learned Single

Judge on 08/08/2014, the appellants were directed to produce the files and the cases were posted to 11/08/2014 for that purpose. On 11/08/2014, the counsel for the petitioners was heard and the learned Government Pleader requested for time for obtaining the files. Thereupon, the files were ordered to be produced on 12/08/2014 and the cases were posted to 13/08/2014. On 13/08/2014 the learned Advocate General sought for a day's time and accordingly, on 14/08/2014 at 1.45 p.m. his arguments were heard and the files were also produced. It was accordingly that the impugned order was passed by the learned Single Judge. The above events show that there is no substance in the plea now raised by the learned Advocate General.

24. It was contended before us that many of the writ petitions were filed without impleading the affected parties and that therefore, the writ petitions were defective for nonjoinder of necessary parties. First of all, such a contention is also not seen raised before the learned Single Judge. Even otherwise, in the writ petitions, the contention raised by the petitioners was mainly regarding the illegality of the procedure adopted by the Government in granting higher secondary schools and the relief claimed is also against the Government. In such a case, the primary liability to justify the validity of the order is on the Government and therefore, the non-impleadment of a party, who, at best, is only a proper party, cannot, in our view, be fatal to the proceedings. See in this connection, the Apex Court judgment in *A. Janardhana Vs. Union of India (UOI) and Others*, .

25. The learned Advocate General contended that the learned Single Judge has proceeded on the erroneous assumption that the proposals submitted by the 6 member committee were binding on the Government and that it being only recommendatory in nature, it was not binding on the Government. Therefore, according to him, the learned Single Judge has misdirected himself in this respect also. Here again, we are unable to accept the contention. We have already stated it was in pursuance of GO (Ms) No. 185/2013 that the committee in question was appointed by the Government by its order dated 25/06/2013.

26. The committee was authorised to scrutinise the applications received and the Director was ordered to forward the recommendations of the committee to the Government. The committee consisted of senior officers of the Government of Kerala and the report of the committee shows that the committee had followed the norms specified by the Government and specified in GO (Ms) No. 185/2013. When such a committee has made its report, though it was only recommendatory in nature, departure from the recommendations should be based on materials available before the Government. Facts available before this Court show that one of the material available before the cabinet sub-committee was the proposal that was submitted by the Director in pursuance of GO (Ms) No. 86/2014 dated 24/05/2014. However, in view of the fact that the said Government Order and the notification issued thereunder were quashed by this Court in the judgment in *W.A. No. 776/2014* and connected cases, such a

material could not have been relied on.

27. The other material that is allegedly relied on is the views of the people's representatives which were allegedly ascertained by the Cabinet sub-committee. Here also, the files that were produced before this Court admittedly did not contain any material substantiating such a consultation process. In other words, it was without any material before it that the cabinet sub-committee and the Government deviated from the recommendations made by the committee, which were to be implemented by the Government in view of the directions of this Court in the judgment in W.A. No. 776/14 and connected cases. In such a situation, the recommendatory nature of the proposals of the committee, cannot now be relied on to justify the GO (Ms) No. 143/2014/GE_{dn}, dated 31/07/2014.

28. During the course of the submissions, it was evident that the Government's anxiety was more on account of the alleged delay in proceeding to sanction higher secondary schools and batches in areas which are covered by Clause (iv) of para. 23 of the order dated 18/08/2014 impugned in these appeals. We do not rule out such anxieties arising out of political and other exigencies, but however, so long as para. 70 of the judgment in W.A. No. 776 of 2014 and connected cases remain in force, proceeding with the sanctioning of the schools in the areas covered by para. 23(iv) of the order would amount to deviation of the sequence specified in the judgment. Such departure is impermissible.

29. It was vehemently contended before us that even if it is conceded that an interim order was to be passed, which itself is not admitted by the appellants, the learned Single Judge could not have passed a mandatory interim order directing that schools recommended by the 6 member committee of the Director shall be given provisional sanction to function forthwith subject to the condition stipulated in GO (Ms) No. 143/2014/GE_{dn} dated 31/07/2014.

30. The legal principles governing the relief of interlocutory mandatory injunction have been explained by the Apex Court in *Dorab Cawasji Warden Vs. Coomi Sorab Warden and others*, and it has been held thus in para. 14 and 15 thus:

"14. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, Courts have evolved certain guidelines. Generally stated these guidelines are:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a *prima facie* cast that is normally required for a prohibitory

injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

15. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the Court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive or complete or absolute rules, and there may be exceptional circumstances needing action, applying them as pre-requisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion."

31. These principles have been followed in Mohd. Mehtab Khan and Others Vs. Khushnuma Ibrahim and Others, also.

32. Thus such interlocutory mandatory orders are generally granted to preserve the status quo of the last non-contested status which preceded the pending controversy and until the hearing when final relief may be granted and that too, in a case where the guidelines indicated by the Apex Court are satisfied. Insofar as these cases are concerned, it is true that the learned Single Judge has granted an interlocutory mandatory direction and the question to be considered is whether it was justified. We have already seen that after the judgment in W.A. Nos. 776/2014 and connected cases was rendered by this Court, the present controversy arose on the issuance of GO (Ms) No. 143/2014/G. Edn, dated 31/07/2014. Therefore, as at the time when GO (Ms) No. 143/2014/G.Edn was issued, the non-contested status quo then prevailing was that the appellants were duty bound to comply with the directions in para. 70 of the judgment in W.A. No. 776/2014 and connected cases. It was on finding that this has been deviated from and that such deviation was prima facie illegal, the learned Single Judge has issued the interlocutory mandatory direction. Resultant position is that the appellants are now compelled to maintain the status quo prior to the Government Order dated 31/07/2014 and are required to comply with the direction in para. 70 of the judgment in W.A. No. 776/14 and connected cases. Such a direction, in our view, in the facts disclosed, was fully justified, lest it would have caused great injustice and irreparable harm not only to the writ petitioners, but also to the student community. Therefore, we are satisfied that in the circumstances of this case, the learned Single Judge was fully justified in passing such a direction.

33. An affidavit dated 25/08/2014 has been filed by the appellants in W.A. No. 1164/2013 stating that the interim order dated 18/08/2014 will result in the deletion of 285 higher secondary batches leading to denial of admission to 14,250 students. Although the factual correctness of such an assertion is a matter to be established, we need only point out that the State cannot commit an illegality and seek to legitimize the same projecting its exigencies before this

Court. If at all, such a situation has been created, the blame cannot be put on this Court, but the appellants themselves should gracefully accept it and should remedy the situation.

34. The appellants in W.A. No. 1118/2014 are the beneficiaries of GO (Ms) No. 143/2014/GEdn and according to them though they were not included in the list of schools recommended by the 6 member committee, considering their eligibility and entitlement, they were included in the list annexed to the impugned Government order. As rightly observed by the learned Single Judge, this Court is neither called upon nor expected to assess the relative merits of the rival claimants and this Court is more concerned about the decision making process which led to GO (Ms) No. 143/2014/G.Edn dated 31/07/2014. The interim order has been passed on the prima facie satisfaction that the decision making process was vitiated and we fully endorse that view. Therefore, this contention cannot be accepted and at any rate is a matter to be agitated in the writ petitions.

35. We do not find any substance in any one of the contentions of the appellants and we decline to interfere with the impugned order. It is clarified that the observations and findings in this judgment are made based on the pleadings and the submissions made before this Court and are only in the context of the interim order dated 18/08/2014 impugned in these appeals. These findings and observations shall not, in any manner, affect any one of the parties in their contentions in the writ petitions and the writ petitions shall be disposed of untrammelled by this order.

The writ appeals are accordingly dismissed without any order as to costs.