
(2015) 06 KL CK 0086

In the High Court Of Kerala

Case No : Writ Petition (C) No. 12873 of 2015 and W.P.(C) No. 12205 of 2015

A.A. Padmanabhan

APPELLANT

Vs

Director of Public Instruction Jagathy and Others

RESPONDENT

Date of Decision : 08-06-2015

Acts Referred:

Kerala Education Act, 1958 — Section 14, 7, 7 (6)

Citation : (2015) 3 ILR Ker 319 : (2015) 3 KHC 542 : (2015) 3 KLJ 269 : (2015) 3 KLT 33 : (2015) 4 SCT 84

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : Paul Mathew (Perumpillil) and Prasun S., for the Appellant; Sunitha Vinod, Government Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.K. Jayasankaran Nambiar, J.—In both these writ petitions, the common issue that arises for consideration is whether the Manager of an aided L.P School that is duly recognised in terms of the Kerala Education Act and Rules has the right to close down the School in terms of Section 7 of the Kerala Education Act and Rules, and further, whether the provisions of the recently enacted Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as "the RTE Act") and the Rules framed thereunder would affect this right that accrues to the Manager under the Kerala Education Act and Rules.

2. W.P.(C) No. 12873 of 2015 is filed by the Manager of an aided L.P. School, who has complied with the provisions of Section 7 of the Kerala Education Act, and therefore, as per the decisions of this Court, is entitled in terms of the Kerala Education Act and Rules to close down the School without obtaining any permission from the education authorities. In the writ petition, the petitioner Manager seeks a direction to the education authorities to receive the records of the School from him to complete the process of closing down the School. W.P.(C) No. 12205 of 2015, on the other hand is filed by the Headmistress in charge of

the Aided L.P. School and the President of the Parent Teachers Association as also the President of the School Samrakshanasamithi of the said School. In this writ petition, the petitioners impugn the steps taken by the Manager of the aided School to close the School, and the contention raised by the petitioners is essentially that the Manager of the School, does not have a right to close down the School merely by complying with the formalities required under the Kerala Education Act and Rules, but would now have to obtain a specific order from the education authorities in the State permitting him to close down the School. The contention of the writ petitioners, in otherwords, is that, on account of the express provisions of the RTE Act and the Rules framed by the State Government thereunder, taking into account the fundamental right to elementary education vested in children between the ages of 6 and 14, the Manager of a recognised aided L.P School cannot close down the School in violation of the fundamental rights that have been guaranteed to the children studying in the said School. The brief facts in W.P.(C). No. 12873 of 2015, that will serve to put the issue in perspective may now be noticed.

3. With a view to closing the P.M.L.P School, Kiralur in Thrissur district, the petitioner, who was the Manager of the School, issued Ext. P1 notice under Section 7 (6) of the Kerala Education Act to the 1st respondent - Director of Public Instruction-to close down the School. According to the petitioner, the running of the School had become uneconomical, and hence, in the absence of any proposal by the State Government to take over the management of the School, the petitioner was left with no other option but to take steps to close down the School. The petitioner was served with Ext. P3 communication dated 05.06.2012 from the 1st respondent, who informed the petitioner that Ext. P1 notice served by the petitioner could not be acted upon and, insofar as there was a need for running the School in the locality and there were express provisions in the RTE Act that prevented a closing of the School, the education authorities could not permit the petitioner to close down the School. Finding that the stand of the 1st respondent was contrary to a line of judgments of this Court, rendered in the context of the rights of a Manager under the Kerala Education Act and Rules, the petitioner approached this Court through a writ petition challenging Ext. P3 communication issued to him by the 1st respondent. It is relevant to note that, in the meanwhile, the very same issue regarding the rights of a Manager of the School to close down the School in terms of the provisions of the Kerala Education Act and Rules, was engaging the attention of a Full Bench of this Court. By Ext. P2 judgment, a Full Bench of this Court found that there was no reason to deviate from the stand already recognised by the earlier decisions of the Division Bench of this Court, that once the Manager of a School had served the necessary notice under Section 7 (6) of the Kerala Education Act, and the period contemplated therein had expired, the Manager could close the School without awaiting any formal permission from the educational authorities in the State. The Full Bench, however, took note of the contentions that were raised on behalf of the State Government with regard to the provisions of the RTE Act and

Rules framed thereunder and observed as follows:

"10. Before parting, we may also notice the submission on behalf of the Schools that the notices under Section 7 (6) of the KE Act were issued by those schools before the FCE Act was notified; obviously, meaning thereby that long before that, such notices were issued much before FCE Rules were notified. The question as to whether the notices given by the managers of the schools before coming into force of the FCE Act and the FCE Rules would be governed by the provisions of the Act and those Rules is an issue to be decided as and when raised or arising for decision before the competent authority in appropriate proceedings. Judicial prudence advises that we preclude from speaking on any such issue, since if we were to do that, it would be premature and, also, foreclosing pleas and arguments in that realm. That issue is, therefore, left open."

4. Under these circumstances, when the writ petition preferred by the petitioner challenging Ext. P3 communication of the 1st respondent came up for consideration before the Full Bench which was dealing with the issue, the Full Bench by Ext. P4 judgment disposed the writ petition by observing as follows:

"These writ petitions were listed as referred to the full Bench in the light of the reference order in W.A. Nos. 601 of 2011, 653 of 2011 and 53 of 2012. Those writ appeals were dismissed as per judgment dated 12.11.2014, affirming the correctness of the ratio decidendi of P.K. Balakrishnan Vs. N.R. Ramaseshan and others, (1993) 1 KLJ 735 and The Parent Teacher Association Vs. The State of Kerala and Others, (2000) KLJ 395 , as also, the decision in Subramanian v. State of kerala and others [1986 KLT 359] and P. Krishnakumar Vs. The State of Kerala and Others, AIR 1973 Ker 14 : (1972) 2 LLJ 576 . In rendering that judgment dated 12.11.2014, the Full bench had noticed that the provisions of the Right of Children to Free and Compulsory Education Act, 2009 and the Kerala Right of Children to Free and Compulsory Education Rules, 2011 having come into force, it was essentially within the domain of the competent authority to take any action, as may be necessary, on the request of any of the parties. Applying that judgment, these writ petitions are ordered, quashing the orders and decisions challenged therein and directing that the competent authority will consider a the cases of schools involved in these writ petitions also in the light of the contents of the judgment in W.A. Nos. 601 of 2011, 653 of 2011 and 53 of 2012. We also leave open the question as to whether the notices given by the managers of schools before coming into force of the Right of Children to Free and Compulsory Education Act, 2009 and the Kerala Right of Children to Free and Compulsory Education Rules, 2011 would be governed by the provisions of the Kerala Education Act and Rules without reference to the said Central enactment. It would be open to the parties to raise such issue before the competent authority, if such matter comes up for consideration in any proceedings before such authority."

5. It can be seen from a perusal of the above order, that the Full Bench of this Court quashed Ext. P3 communication and directed the competent authority to

consider the case of the petitioner's school in the light of Ext. P2 judgment, where the issue with regard to the impact of the RTE Act on the right of the Manager to close down the School was left open. It is also seen from the decision of the Full Bench referred to above that the issue as to whether the notices given by the Manager of the School before the coming into force of the RTE Act and Rules, would be governed by the provisions of the Kerala Education Act and Rules without reference to the Central enactment, was also left open to be decided by the competent authority as and when such matter came up for consideration in any proceedings before the said authority. The facts in the writ petition would disclose that pursuant to Ext. P4 judgment, the petitioner again approached the educational authority for completing the formalities with regard to closing of the School. Ext. P5 is a letter issued by the petitioner to the 1st respondent and Ext. P8 is a similar letter that is issued by the petitioner to the 2nd respondent. Thereafter, by Ext. P9 letter addressed to the 3rd respondent Headmistress, the petitioner directed the latter to make available all the records of the School for the purposes of handing it over to the 2nd respondent as part of the procedure for closing the School. It is this letter (Ext. P9) that is impugned by the Headmistress in charge in W.P.(C) No. 12205 of 2015. The 2nd respondent, in response to Ext. P8 letter issued to him, took the stand that the School cannot be closed down till a decision is taken in the matter by the higher authorities, as contemplated in Ext. P4 judgment. Inasmuch as there was no decision communicated to the petitioner, by the 1st respondent, on the issue of the impact, if any, that the provisions of RTE Act and Rules would have on the right of the Manager to close down the School that was recognised under the Kerala Education Act and Rules, the petitioner closed down the School on 01.04.2015 and informed the 2nd respondent of the said fact by Ext. P12 communication. It is thereafter, that the petitioners approached this Court through the present writ petition when faced with a situation where the 2nd respondent was refusing to accept the records of the School, and further, the members of the parent Teachers Association, as also the Teachers of the School, had refused to co-operate in the matter of closing down the School. In the writ petition, the petitioner seeks a direction to the 2nd respondent to comply with the provisions of the Kerala Education Act and Rules and to receive the records pertaining to the School for the purposes of effecting a closure of the School in accordance with the provisions of the said Act and Rules.

6. A counter affidavit has been filed on behalf of the 1st respondent wherein a reference is made to the provisions of the RTE Act and Rules. The stand taken by the said respondent in the counter affidavit is that, inasmuch as the provisions of the RTE Act indicate that there has to be an L.P. School within the prescribed distance from the residence of the children who are guaranteed rights under the said Act, and it was a fact that there was no other School in the immediate vicinity, the education authorities could not permit the petitioner to close down the School. The stand of the 1st respondent in its counter affidavit is similar to the contentions of the petitioners in W.P.(C) No. 12205 of 2015 where, apart

from seeking a direction to the State Government to take over or acquire the P.M.L.P School, Kiralur in exercise of the powers under Section 14 of the Kerala Education Act read with Chapter XX of the Kerala Education rules, the petitioners also contend that the Manager of the School cannot close down a school that is obliged to provide elementary education to children in the locality.

7. I have heard the Sri. Paul Mathew, the learned counsel for the petitioner in W.P.(C) No. 12873 of 2015, Sri. Alias M. Cherian, the learned counsel for the petitioners in W.P.(C) No. 12205 of 2015 and the learned Government Pleader for the official respondents in both these writ petitions.

8. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find the following issue arises for consideration in the aforesaid writ petitions:

Whether the rights of the Manager of an aided L.P. School, to close down the School on compliance with the procedure mandated under Section 7 of the Kerala Education Act is, in any way, affected by the introduction of the provision of the RTE Act and Rules framed thereunder?

9. The RTE Act was enacted by the Parliament to provide for free and compulsory education to all children of the age of 6 to 14 years and it came into force with effect from 01.04.2010. The provisions of the Act make it clear that every child of the age between 6 to 14 years, including a child belonging to a disadvantaged group or the weaker Section as defined under the said Act shall have a right to free and compulsory education in a neighbourhood School till the completion of his or her elementary education. The term "School" is defined in Section 2 (n) of the Act to mean any recognised school imparting elementary education and includes a School enumerated under Clauses (i) to (iv) in Section 2 (n) of the Act and includes even an unaided School not receiving any kind of aid or grant to meet its expenses from the appropriate Government or the local authority. Section 18 of the Act mandates that no School, other than a School established, owned or controlled by an appropriate Government or the local authority, shall, after the commencement of the said Act, be established or function, without obtaining a certificate of recognition from such authority, by making an application in such form and manner, as may be prescribed. The provisions of the Act also mandates that no recognition shall be granted to a School unless it fulfils the norms and the standards specified under Section 19. It is also made clear that if a School contravenes the conditions of recognition, it is open to the prescribed authority, to withdraw the recognition granted to the School through the issuance of an order in writing.

10. The provisions of the RTE Act, therefore, make it clear that while aided and unaided Schools can participate along with the State in the discharge of its constitutional obligation of providing free and compulsory elementary education to children between the ages of 6 and 14, the School in question must necessarily be one that is recognised in terms of the provisions of the RTE Act

and Rules. In other words, it is only such Schools as are expressly recognised by the education authority under the RTE Act, through a formal process of recognition, that are permitted to participate along with the State in the discharge of its constitutional obligation of providing free and compulsory elementary education to the specified children. It follows therefore, that if the School in question is one that is not recognised in terms of the RTE Act, either on account of it not applying for a recognition or on account of it not complying with the provisions of the Act, such a School will not come under the purview of the RTE Act and Rules.

11. The State of Kerala has framed the RTE Rules in exercise of the powers conferred on under Section 38 of the RTE Act. The said Rules came into force on 06.05.2011. Rule 14 of the RTE Rules deals with recognition/up-gradation to Schools. The provisions of Rule 14 clearly indicate that every School other than Schools established, owned or controlled by the Central Government or the State Government or the local authority, established before the commencement of the RTE Act and referred to under sub clause (iv) of Clause (n) of Section 2 as an unaided School and which have obtained recognition under the Kerala Education Act and Rules issued thereunder or has obtained No Objection Certificate from the Government for affiliation to other Boards of education, shall make a self-declaration within a period of three months from the appointed date in Form No. 1 to the Assistant Educational Officer concerned, regarding its compliance or otherwise with the norms and standards stipulated in the Kerala Education Rules in addition to the norms in the Schedule and fulfilment of the conditions enumerated in Clauses (a) to m) of Sub-rule (1) of Rule 14. The scope of the provisions under the RTE Act and Rules which deal with grant of recognition to Schools under the RTE Act was considered elaborately by this Court in *The Principal Vs. Simi A.C.*, where it was observed as follows:

"21. The provisions under the RTE Act and the Rules made thereunder, which we have referred to hereinabove in detail, make it abundantly clear that, the preexisting schools imparting elementary education which are in existence as on the date of commencement of the RTE Act are mainly classified into two categories; firstly, recognised schools imparting elementary education which consists of aided schools, schools belonging to specified category and also recognised unaided schools; and secondly, unrecognised schools. As per the procedure for recognition to school contemplated under Rule 14, preexisting recognised schools falling under the category of aided schools under sub-clause (ii) of Clause (n) of Section 2, specified category schools like Kendriya Vidyalaya, Navodaya Vidyalaya, etc., under Sub-clause (iii) of Clause (n) of Section 2 and unaided schools under Sub-clause (iv) of Clause (n) of Section 2 which have obtained recognition under the Kerala Education Act and Rules issued thereunder or has obtained No Objection Certificate from the Government for affiliation to other Boards of Education, shall make a self-declaration within a period of three months from the appointed date, in Form No. I to the Assistant Educational Officer concerned, regarding its compliance or otherwise with the norms and

standards stipulated in the Kerala Education Rules in addition to the norms in the Schedule and fulfilment of the conditions enumerated in Clause (a) to (m) of Sub-rule (1). Within three months of receipt of such self-declarations, the District Educational Officer and the Assistant Educational Officer concerned shall inspect such schools to ensure that the schools fulfill the norms and standards and the conditions mentioned in Sub-rule (1). As per Sub-rule (6), after the inspection is carried out, the inspection report shall be placed before the District Level School Recognition Committee constituted under Sub-rule (4) and the schools conforming to the norms, standards and conditions in Rule 14 alone shall be granted recognition by the Deputy Director of Education in Form No. II, within a period of thirty days from the date of inspection. Sub-rule (7) mandates that, schools that do not conform to the norms, standards and conditions mentioned in Sub-rule (1) shall be listed by the Deputy Director of Education by notification and such schools may request the Deputy Director of Education for an on-site inspection for grant of recognition at any time so that such period does not exceed three years from the date of commencement of the Act.

22. On the other hand, under Sub-rule (10) of Rule 14, a preexisting unrecognized school seeking recognition under the RTE Act shall furnish the application in Form No. III and shall conform to the norms and standards specified in the Schedule and those specified in the RTE Rules. Further, it shall also fulfill the educational need of the locality as revealed in the school mapping carried out by the authorized agency and the educational need shall be certified by the local authority and the Assistant Educational Officer concerned. Such an application shall be placed before a Committee constituted under Sub-rule (11), which shall verify the facts in the application with reference to the school mapping and the educational need of the locality. Going by Sub-rule (13), the Director of Public Instruction shall after examination of the report, forward the eligible cases to the Government for grant of recognition under the Act.

23. As apparent from the statutory provisions referred to above, in the matter of recognition of preexisting elementary schools under the RTE Act, the cardinal difference between a recognised school and an unrecognised school is that, during the process of recognition a recognised school continues to impart elementary education on the strength of the recognition it already had under the KER, etc., and a self-declaration in Form No. I regarding its compliance or otherwise with the norms and standards stipulated in the KER in addition to the norms in the Schedule of the RTE Act and fulfilment of the conditions enumerated in Clauses (a) to (m) of Sub-rule (1) of Rule 14. Based on the report of the District Level School Recognition Committee, a school which fulfills the norms and standards and the conditions shall be granted recognition in Form No. III. Those schools which are found not conforming to such norms and standards and the conditions may request for an on-site inspection for grant of recognition at any time so that such period does not exceed three years from the date of commencement of the RTE Act. In the case of recognised schools, the recognition under the RTE Act is automatic once such schools conform to such

norms and standards and the conditions enumerated in Clauses (a) to (m) of Sub-rule (1) of Rule 14. But in the case of an unrecognised school, during the process of recognition such unrecognised school continues to impart elementary education on submitting an application for recognition in Form No. III, which contains a declaration that the school fulfills all the conditions specified in the RTE Act and the Rules made thereunder. In the case of unrecognised schools the recognition under the RTE Act is not automatic once the school conforms to such norms and standards and the conditions enumerated in Clauses (a) to (m) of Sub-rule (1) of Rule 14. Such school shall also fulfill the educational need of the locality as revealed in the school mapping carried out by the authorised agency and the educational need shall be certified by the local authority and the Assistant Educational Officer concerned. Therefore, an unrecognised school submitting an application in Form No. III is not under the cover of any recognition whatsoever, unless and until the Government grants it recognition under the RTE Act on the recommendation of the 4th respondent under Sub-rule (13) of Rule 14. If that be so, the procedure for withdrawal of recognition contemplated under Sub-section (3) of Section 18 and Sub-section (3) Section 19 of the RTE Act read with Sub-rule (1) of the RTE Rules have no application in the case of a preexisting unrecognised school. Similarly, the mandate of Sub-rule (2) of Rule 15 that, an order passed by the Director of Public Instruction shall be operative only from the academic year immediately succeeding has also no application in the case of a preexisting unrecognised school."

12. The facts in the instant case would clearly reveal that the School under the management of the petitioner in W.P.(C). No. 12873 of 2015, although recognised in terms of the provisions of the Kerala Education Act and Rules, is not one that applied for a recognition under the RTE Act and Rules. On the contrary, the Manager had intimated the educational authorities of his intention to close the School as early as on 18.03.2010, well prior to the date from which the RTE Rules were notified. It follows as a consequence that the provisions of the RTE Act and Rules, including the provisions of Rule 6(10), which is relied upon by the State Government to contend that the Manager of the aided School cannot close down the School without the prior sanction of the State Government, can have no application to a School that admittedly does not have a recognition in terms of the RTE Act and Rules. The contention of the official respondents that a School that is recognised in terms of the provisions of the RTE Act and Rules is obliged to be a part of the scheme that is designed to discharge the constitutional obligations of the State in the matter of providing elementary education to the specified children, is one that will have to be examined in an appropriate case dealing with a School that is so recognised. In the instant case, I am not called upon to decide that issue. Inasmuch as the School in question is not one that is recognised in terms of the provisions of the RTE Act and Rules framed thereunder, and it is not the case of the State Government that it proposes to take over the management of the School in terms of the provisions of the Kerala Education Act and Rules, I am of the view

that the stand of the State Government that the Manager of the aided L.P School cannot be permitted to close down the School, by placing reliance on the provisions of the RTE Act and Rules, is one that cannot be legally sustained.

Resultantly, I allow W.P(C) No. 12873 of 2015 and dismiss W.P.(C) No. 12205 of 2015 by holding that the petitioner in W.P(C). No. 12873 of 2015 is entitled to close down the school in accordance with the provisions of the Kerala Education Act and Rules and in the light of Ext. P4 judgment dated 19.11.2014 of the Full Bench of this Court. The 2nd respondent in W.P(C) No. 12873 of 2015 (The Assistant Educational Officer, Wadakkancherry, Thrissur district) is directed to takeover the records of the School from the petitioner forthwith and at any rate within a period of one week from the date of receipt of a copy of this judgment so as to enable the petitioner to complete the process of closing the P.M.L.P School, Kiralur. As regards the petitioners in W.P(C) No. 12205 of 2015, their challenge against the right of the 7th respondent Manager to close down the School is rejected. Inasmuch as a decision, whether or not to take over the management of the school from the existing Manager was one that the State Government had to take, and they have not done so in accordance with the provisions of the Kerala Education Act and Rules, the other prayer of the petitioners in the said writ petition viz for a direction to the State Government to take over the management of the School, also cannot be granted at this stage. It is, therefore, that the said writ petition (W.P(C) No. 12205 of 2015) is dismissed.

There will be no order as to costs.