
(1984) 07 KL CK 0016
In the High Court Of Kerala
Case No : W.A. No. 222 of 1984

Abraham and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 05-07-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1984) KLJ 529

Hon'ble Judges : K. Bhaskaran, Acting C.J.; M.P. Menon, J

Bench : Division Bench

Advocate : T. Devassia, for the Appellant; M.I. Joseph and Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

M.P. Menon, J.—The Director of Public Instruction published a ""preliminary list" of areas where new High Schools were proposed to be opened during the year 1982-83; and Pallipurathussery (Vaikom) was one of the areas localities specified. The proposal was to sanction the opening of a Girls" High School. The Manager of a Girls" High School at Vaikom objected, and after considering all objections, Government decided to drop the proposal. In the "final list" approved by the Government, therefore, Pallipurathussery did not find a place. Aggrieved by this decision, the Manager of a Convent filed a petition for reviewing the final list. Government heard the matter and passed orders directing inclusion of the area in the final list. The convenors of a Pourasamithi at Pallipurathussery thereupon filed O.P. No. 8878/83 challenging the said order, and a learned Judge dismissed the O.P. on the ground that the petitioners had no real interest in the matter, that they had suffered no injury and that having failed to object to the preliminary list at the initial stage, they were not entitled to question the final list as reviewed, at a later stage. This is what the learned Judge said:--

.....The Paura Samithi is not running any school in the locality or any where else, nor had it objected to Ext. P2 preliminary list which provided for a Girls High

School at Vaikom Pallipurathussery. The inclusion of the said area in the final list as per Ext. P4 order of Government cannot therefore be objected to by the petitioner or the Paura Samithi which they purport to represent. The Supreme Court in the decision in Mohd. Ibrahim Khan and Others Vs. State of Madhya Pradesh and Others, has held that a person who had not objected to the grant of a no objection certificate at the appropriate stage is precluded from objecting to the grant of a cinema licence at a later stage. The same principle should apply to the facts of the present case. I do not also see how the petitioners are aggrieved by the establishment of a Girls' High School in the locality. It cannot be denied that the establishment of a High School is for the benefit of the locality and the objection by the Paura Samithi does not appear to be bona fide. The Paura Samithi is not shown to have suffered any injury for the reason of the establishment of a High School for Girls in the locality.

This Writ Appeal, by the Paura Samithi convenors, is directed against the aforesaid judgment.

2. No question of locus standi in the matter of seeking relief under Article 226 of the Constitution had arisen in Mohd. Ibrahim Khan and Others Vs. State of Madhya Pradesh and Others, , relied on by the learned Judge. The case had arisen under the Madhya Pradesh Cinema (Regulation) Act, 1952 and the rules framed there under, and the facts were these. One Prem Narayan applied for a cinema licence, in December, 1975. There were three distinct stages in the licensing procedure under the Act and the rules: --

- (i) the stage of granting a no objection certificate to the site or the location;
- (ii) the stage of licensing the building erected at the site; and
- (iii) the stage of granting licence for exhibition of films.

After considering Prem Narayan's application, no-objection certificate was granted on 10th February, 1976 for a period of six months. It appears that licence for exhibition of films was also granted and that the same was renewed up to 30th September, 1976. When application for another renewal was filed, some of the residents of the locality objected on the ground that there was a mosque, a madrassa and a temple in the vicinity. The Licensing Authority upheld this objection and rejected the application, but on appeal, the State Government reversed the decision, without hearing the objectors. And the question was whether the State Government could have done so. The Supreme Court held that persons who had not objected to the location of the site at the first stage of granting no-objection certificate, had no right to object at the subsequent stages, and consequently Government was not bound to hear them as objectors at the appellate stage where the question was about the renewal of exhibition licence. Desai J. said:--

In this case the application which was turned down by the Distt. Magistrate was one for renewal of a quasi-permanent cinema licence. The application for a no-

objection certificate and granting of the same had passed much long before on 10th February 1976 and appellants had not raised any objection to the grant of no-objection certificate. When the present appellants objected to the renewal of a quasi-permanent cinema licence it was not the stage for grant of a no-objection certificate but it was the stage of renewal of quasi-permanent licence subsequent to the stage of granting of a no-objection certificate, when there was no statutory obligation on the licensing authority to invite objections nor were the appellants entitled to file objections and nor were they entitled to be heard.

Pathak J. added:--

Rules 3 to 6 of the Madhya Pradesh Cinema (Regulation) Rules, 1972 relate to the grant of a "no-objection" certificate, that is to say a certificate that there is no objection to the location of the cinema at the site proposed by the applicant. The Rules contemplate the filing of objections by local residents. That is the stage at which opposition to the establishment of a cinema at the proposed site is specifically provided for. Any person opposing the establishment of a cinema at the proposed location must do so before a "no-objection" certificate is granted. The appellants did not file any objection at that stage. A "no-objection" certificate was granted to the third respondent. Thereafter, when the third respondent applied for a cinema licence, the appellants for the first time opposed the application. They opposed it on the ground that there was a mosque, a "madrasa" and a temple in the vicinity and that the cinema, if permitted, would constitute an obstruction and annoyance to the local residents. Inasmuch as those grounds were available to them during the proceedings for considering the grant of a "no-objection" certificate, and they did not file any objection, they cannot now be permitted to plead a right to oppose the grant of a cinema licence.

The decision turned on the statutory scheme which provided for consideration of different matters at different stages, and on the principle that a person who had not objected to the location of the site at the appropriate stage could not agitate the question at the subsequent stages when other considerations alone were relevant.

3. Rule 2 in Chapter V of the Kerala Education Rules deals with the procedure for determining the areas where new schools are to be opened, and Rule 2A with the procedure at the next stage where applications are invited for sanctioning of schools at the areas so chosen. The Rules read: --

2. Procedure for determining the areas where new schools are to be opened or existing schools upgraded.--(1) The Director may, from time to time, prepare two lists, one in respect of aided schools and the other in respect of recognised Schools, indicating the localities where new Schools of any or all grades are to be opened and existing Lower Primary Schools or Upper Primary Schools or both are to be upgraded. In preparing such lists 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.

Explanation:--For the removal of doubts it is hereby clarified that it shall not be necessary to prepare the two lists simultaneously and that it shall be open to the Director to prepare only one of the lists.

(2) A list prepared by the Director under Sub-rule (1) shall be published in the Gazette, inviting objections or representations against such list. Objections if any, can be filed against the list published within one month from the date of publication of the list. Such objections shall be filed before the Assistant Educational Officers or the District Educational Officers as the case may be. Every objection filed shall be accompanied by a chalan for Rs. 10/- remitted into the Treasury. Objections filed without the necessary chalan receipt shall be summarily rejected.

(3) The Assistant Educational Officer and the District Educational Officer may thereafter conduct enquiries, hear the parties, visit the areas and send their reports with their views on the objections raised to the Director within two months from the last date of receipt of the objections. The Director if found necessary, may also hear the parties and finalise the list and send his recommendations with the final list to Government within two months from the last date of the receipt of the report from the Educational Officer.

(4) The Govt. after scrutinising all the records may approve the list with or without modification and forward the same to the Director within one month from the last date for the receipt of the recommendations of the Director. The list as approved by the Government shall be published by the Director in the Gazette.

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

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

(5A) The proviso added to sub-rule (5) by the Kerala Education (Amendment) Rules, 1981 published in the Kerala Gazette extra-ordinary No. 667 dated the 19th August 1981 shall be deemed to have been added to that sub-rule with effect on and from the 1st date of June 1981.

(6) The Govt. may, by notification in the Gazette extend any period specified in sub-rules (3) and (4) for reasons to be stated in the notification.

2A. Applications for opening of new schools and upgrading of existing schools.--

(1) After the publication of the final list of the areas where new schools of any or all grades are to be opened or existing Lower Primary Schools or Upper Primary Schools or both are to be upgraded the Director shall, by a notification in the Gazette call for applications for opening of new schools of any or all grades and for raising of the grade of existing Lower Primary Schools or Upper Primary Schools or both in the areas specified.

(2) Applications for opening of new schools or for raising of grade of existing schools shall be submitted only in response to the notification published by the Director Applications received otherwise shall not be considered. The applications shall be submitted to the District Educational Officer of the area concerned in form No. 1 with 4 copies of the application and enclosures, within one month from the date of publication of the notification under sub-rule (1)

(3) On receipt of the applications for permission to open new schools or for upgrading of existing schools, the District Educational Officer shall make such enquiries as he may deem fit as to the correctness of the statements made in the application and other relevant matters regarding such applications and forward the applications with his report thereon to the Director within one month from the last date for submitting applications under sub-rule (2).

(4) The Director on receipt of the applications with the report of the District Educational Officer shall forward the applications with his report to Government within one month from the last date for forwarding the report by the District Educational Officer.

(5) The Government shall consider the applications in the light of the report of the District Educational Officer and the Director and other relevant matters which the Government think necessary to be considered in this connection and shall take a final decision and publish their decision in the Gazette with the list containing necessary particulars within one month from the last date for forwarding the report of the Director.

(6) Applications for permission to open a new standard in an existing school during any school year not involving the raising of the grade of the school shall be submitted to the District Educational Officer in charge of the area in form 1 in

triplicate.

(7) *** **

(8) The Government may, by notification in the Gazette, extend any period specified in sub-rules (3), (4), & (5) for reasons to be stated in the notification.

A person who fails to object to the location of the area under Rule 2 cannot object to the grant of sanction under Rule 2A; but that is a different thing from saying that a person who fails to object to the preliminary list cannot object at later stage in the proceedings under Rule 2 itself. All the sub-rule under Rule 2 deal with the one and only subject of fixing up a locality, and at each stage, new localities or areas not included originally could be added by the Government. That is why the proviso to Rule 2(5) contemplates a review at the instance of any person objecting to the list published under sub-rule (4). If we are to hold, as was contended for by counsel for one of the respondents, that only persons who had filed objections to the preliminary list could seek review under the proviso to sub-rule (5), we will not only be reading down the wide language employed by the rule-making authority, but also ignoring the fact that both at the stage of finalisation and review, new areas could be added to the list. And further, if this were the correct position, the Convent Manager could not have moved for review at all in the instant case, as he or she had not objected to the preliminary list.

4. In *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, the Supreme Court classified applicants for certiorari as (i) persons aggrieved, (ii) strangers and (iii) busy bodies, and indicated that in deciding whether "strangers" could approach the court, the "statutory context in which the matter falls to be considered" would be the most important test. 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 as 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. In *S.P. Gupta Vs. President of India and Others*, , Bhagwathi J. noticed that--

The traditional rule in regard to locus standi is that judicial redress is available only to a person who has suffered a legal injury by reason of violation of his legal right or legally protected interest by the impugned action of the state or a public authority or any other person, or who is likely to suffer a legal injury by reason of threatened violation of his legal right or legally protected interest by such an

action.

but felt that such a restricted approach could not be made in all cases. Disagreeing with the view taken by the House of Lords in *Gouriet's case* 1978 A.C. 482, his lordship plumped for the broader view taken by Lord Denning in the *Blackburn case* (1976) 3 All. E.R. 184 and approved the following principle formulated by the Master of the Rolls:

I regard it as a matter of high constitutional principle that if there is good ground for supposing that a government department or a public authority is transgressing the law, or is about to transgress it, in a way which offends or injures thousands of his Majesty's subjects, then any one of those offended or injured can draw it to the attention of the courts of law and seek to have the law enforced, and the courts in their discretion can grant whatever remedy is appropriate.

The complaint of the appellant-petitioners before the learned Judge was that by misusing its power of review under the proviso to rule 2(5), the government was transgressing the limits of law in a manner offending the interests of a large section of the public to which they belonged. We are therefore inclined to hold that they had sufficient *locus standi*, on the facts and circumstances, and in the background of the statutory provisions involved, to approach this Court as applicants for *certiorari*. And once the hurdle of standing is overcome, we find it difficult to resist the contention that the Government has over-stepped the limits of its jurisdiction, in making the impugned order. 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 and 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.

The Writ Appeal is allowed as above. No costs.