
(2000) 06 KL CK 0047

In the High Court Of Kerala

Case No : O.P. No. 15481 of 2000-R

All Kerala Unaided Recognised Schools Parents' Association,
Aluva and Another

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 02-06-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 30(1)

Citation : AIR 2000 Ker 339

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : V.M. Kurian, for the Appellant;

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.—The first petitioner is an Association of Parents of students and the second petitioner is a recognised school. The second petitioner claims to be an educational institution established and administered by a minority community entitled to the protection of Article 30(1) of the Constitution of India. It has made an application, Ext. P3, pursuant to Ext. P2 notification inviting application for opening Higher Secondary Schools.

2. They seek a direction to the effect that the decision of Government not to sanction plus-two course in unaided recognised schools as unconstitutional and seek a direction to sanction such course to the second petitioner.

3. What happened to the second petitioner's application, Ext. P3, is not disclosed in the Original Petition. Based on a write up in a vernacular daily, they presume that there is a Government decision not to sanction such course in recognised schools.

4. Ext. P3 application shows that the applicant is one Fr. George Chatholil and that the school concerned is under individual management. It is not an application by any denomination of minority community. So it cannot be

contended that the institution is a minority institution entitled to the protection of Article 30(1) of the Constitution of India. Merely because the applicant belongs to minority community, the institution run by him will not become a minority institution. Only a corporate body can manage a minority institution and not an individual. The individual shall be at least an office bearer of such body. The second petitioner has also not, apart from an evasive averment, shown and substantiated that this institution had been established and administered by a minority community or its denomination. So it is not entitled to the benefits of Article 30(1), as claimed.

5. What is the real decision of Government as impugned in the Original Petition is not legibly disclosed in the Original Petition. If the Government decides to sanction new Higher Secondary Schools in Government and aided schools alone, based on a policy, it cannot be said to be faulty. Government can exert more control and it can regulate the running of the school if the schools are sanctioned in such sectors, because such managements are bound to follow the guidelines set by Government in the matter of admission of students, levying of fees, protection to students of backward communities, salary of teachers, curricular activities, etc. The Government cannot imposed such control in respect of schools in unaided recognised sector. When Government takes such policy decisions, which shall have an object to be attained, it cannot be subjected to judicial review under Article 226 of the Constitution of India. When there is clear cut distinction between recognised schools on the one hand and schools in other sector, such a decision cannot be termed as discriminatory. Moreover, the petitioners do not have any vested right to get sanction for opening new higher secondary schools. Merely became Government invited applications from management of recognised sector, it does not mean that schools shall be granted to them as well. Even after invitation of application , Government is free ever, even to drop the idea of sanctioning of new schools, depending on several factors.

6. The petitioners have no case of any mala fides or ulterior motives attributable to the respondents. His also not demonstrated how the process of taking the impugned decision is vitiated to invoke the jurisdiction of this Court to subject the decision to judicial review :

Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. (Tata Cellular Vs. Union of India,).

In the matter of judicial review, the repeated notes often sounded by the Apex Court is to the following effect :

"This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the uncharted ocean of public policy and should not question the efficacy or otherwise of such policy so long the same

does not offend any provision of the State or the Constitution of India, (M.P. Oil Extraction v. State of M.P. (1997) 6 JT (SC) 97 : (AIR 1998 SC 145). No statutory violation is pointed out by the petitioner. I have already held that the petitioners could not demonstrate any situation for protection of Article 30(1) and that there is no discrimination as well. The petitioners also do not have any vested right to get sanction for opening new school.

In the aforesaid situation, the petitioners have not made out a case and the original petition is liable to be dismissed.