
(1995) 03 KL CK 0023
In the High Court Of Kerala
Case No : O.P. No. 899 of 1995

A.N.S. Mannadiar

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 07-03-1995

Acts Referred:

Kerala Education Act, 1958 — Section 33
Kerala Education Rules, 1959 — Rule 22, 6, 7, 8

Citation : (1995) 03 KL CK 0023

Hon'ble Judges : P.K. Balasubramanyan, J;P. Shanmugam, J;K. Sreedharan, J

Bench : Full Bench

Advocate : V. Chitambaresh and T.C. Suresh Menon, for the Appellant; S. Narayanan Poti, General for 1st Respondent and Issac M. Perumpillil, Government Pleader for 2nd Respondent, for the Respondent

Final Decision : Allowed

Judgement

K. Shanmugam, J.—The above Original Petition is filed by the Manager of a Teachers Training Institute praying for issue of a writ of mandamus to direct the Respondents to permit them to fill up the seats lying vacant for the first year T.T.C. course. The short facts of the case are that the management had admitted more than the prescribed number of candidates during 1993-94 on a mis-interpretation of the Government Order. However, the Government has condoned the act of the management on their relinquishing right to admit the prescribed number of candidates for two years. Therefore, the management has to admit candidates selected by the Government for the period 1994-95 and 1995-96. Though the Government sent four lists of selected candidates, because many of the candidates did not turn up, the Petitioner had submitted a representation dated 13th December 1994 (Ext. P-1) requesting the Government to permit the management to fill up the remaining vacancies and admit candidates in relaxation of rules 6, 7 and 8 of Chapter XXV of K.E.R. The Petitioner further states that the Headmistress of the Institute reported the vacancy position on 13th January 1995 (Ext. P-2) stating that there are 15 seats vacant in the first

year. According to the Petitioner the seats are lying vacant and that the course had begun and unless students are admitted at an early date they will not have the minimum attendance and therefore, the failure on the part of the Respondents is arbitrary and therefore, filed the above Original Petition.

2. Though in the first blush the contention of the Petitioner appears to be genuine, on a careful consideration of the matter it is crystal clear that the Petitioner has made deliberate concealment of the material facts with a view to mislead this Court. A cursory study of the various successive O.Ps. filed by the Petitioner reveal the manipulations and tactics adopted by the Petitioner by abusing the process of this Court. The Petitioner is fully aware of the fact that as per Rule 6 only 20 per cent of the seats viz. 8 candidates alone can be admitted in the management quota. So there is no possibility of misinterpretation of the Government Order in this regard. The same Manager appears to be in the habit of admitting students in violation of Rule 6 and then seek for ratification on the ground of relaxation or approach this Court for the purpose of regularisation. One such order obtained by the Petitioner is the judgment in O.P. No. 105/91, dated 8th January 1991 (Ext. P-3).

3. The background of the case of the Petitioner revealed that the Petitioner had been abusing the process of this Court. O.P. No. 105/91 was filed by the Petitioner challenging the order of the Government rejecting the request of the Manager to fill up six seats while admitting candidates of their choice. The contention of the Petitioner in that case was that six candidates allotted by the Government did not come and join and therefore the seats were lying vacant. This Court by judgment dated 8th January 1991 directed the Respondents to take emergent action to fill up all the vacant seats on or before 16th January 1991 and if the department did not make their choice of candidates direction was given to the management to select the candidates. The Petitioner along with Anr. Manager filed O.P. No. 1252/93 challenging the order of the Government, in which it was stated that the additional seats sanctioned have to be filled up as per rules 6, 7 and 8 of Chapter XXV of K.E.R. The Petitioner in that O.P. wanted to select all the candidates for the additional seats. The learned Single Judge by order dated 2nd February 1993 dismissed the O.P. holding that selection must be done in accordance with the existing rules and law. As against that judgment the Petitioner filed W.A. No. 293/93 and the same was dismissed by the Division Bench by judgment dated 9th March 1993. As against the judgment in the Writ Appeal the Petitioner moved the Supreme Court in SLP 7671/93 and the Supreme Court also dismissed the petition on 30th July 1993. In the meantime the Petitioner Manager admitted 16 candidates unauthorisedly and forwarded their names without the counter signature of the Deputy Director of Education, to the Secretary to the Commissioner for Government Examinations to write first year T.T.C. examination in March, 1993. The Director of Public Instruction conducted an enquiry in the matter on 30th October 1993 and found that that the Manager in connivance with the Headmistress had selected and admitted 16 students unauthorisedly which was earmarked for the Department. After having

issued a show-cause notice as to why recognition of the T.T.I. should not be withdrawn under Rule 22 of Chapter V of K.E.R., the Director of Public Instruction by order dated 11th February 1994 ordered that the management should keep unfilled 8 seats in the management quota during 1994-96 and further 8 seats during 1995-97 to adjust and regularise the 16 unauthorised admissions made by the Manager in the Department quota of seats during 1993-95.

4. After the dismissal of the SLP by the Supreme Court, twenty students of the Petitioner- Institute filed O.P. No. 17046/93 challenging the order of the Director of Public Instruction dated 11th February 1994. In the said O.P. it is stated as follows:

The Management have undisputedly the right to fill up 4 seats out of the additional 20 seats, under Chapter XXV, Rule 6 of the Kerala Education Rules ("K.E.R." for short). Four other students (Petitioners 1, 3, 4 and 10) have filed a suit on the file of the Court of the Subordinate Judge of Palakkad, seeking for a declaration that they are liable to be approved and included in the list of eligible candidates. An order for temporary injunction followed on 17th February 1993 in I.A. No. 693/1993 in O.S. No. 81/1993, which extracted hereunder

The Plaintiffs have established a prima facie case. I am satisfied that if an interim injunction is not granted, the purpose of the suit will be defeated. Hence the Defendants are restrained by an interim injunction from taking any steps to relieve the Plaintiffs from the institute until further orders.

Respondents 1 and 3 herein are Defendants 2 and 3 respectively in the suit. The suit is pending and the interim order is also in vogue.

2. The third Respondent Headmistress was not in a position to discern the eligible candidates from Ors. , especially in view of the order of injunction.

The order of the Civil Court in reference to the admission of students is without jurisdiction and illegal. Section 33 of the Kerala Education Act says that notwithstanding anything contained in the Code of Civil Procedure, 1908, or any other law for the time being in force, no court shall grant any temporary injunction or make any interim order restraining any proceeding which is being or about to be taken under this Act. In spite of specific bar and provision the Subordinate Judge, Palakkad appears to have granted interim injunction. It is well settled by several decisions of the apex court that if a court lacks jurisdiction, any order passed by the court is a nullity and it cannot be enforced in any court of law. It has been held that such a nullity can be pleaded at any stage of any proceeding and even collaterally in other courts. In Kiran Singh and Others Vs. Chaman Paswan and Others, . The Supreme Court has observed as follows:

It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of

execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties.

Hence the order obtained by the students should not be taken cognizance of. This is yet Anr. instance to show how the management is manipulating and commercialising the Teachers Training Course. When the O.P. came up for final hearing the learned Single Judge by judgment dated 18th July 1994 allowed the unauthorisedly admitted students to write the examination as in the usual course and directed publication of the result. Thereafter the Petitioner has filed the present O.P. No. 899/95 for a direction to permit the management to fill up the seats lying vacant for the first year T.T.C. course.

5. Thus in spite of the consistent orders of this Court the Petitioner went on filing successive petitions for admitting candidates on his own in sheer abuse of the process of the Court. The petitions filed by him can be grouped below for better appreciation of facts:

Sl.	No	No. of the petition	Nature of prayer	Date of order	Remarks
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1.	O.P. 105/91	To quash the order of the Government rejecting the request to fill up 6 seats lying vacant (students allotted by the Government did not join, according to the Petitioner)	8-1-1991	OP. was disposed of with a direction to the Government to fill up the seats.
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2.	O.P. 1252/93	Against the order of the Government dated 2nd December 1992 to admit the 20 students in accordance with the rules (Meaning that only 4 students can be admitted by the management) and for a further direction not to interfere in the admission of the 20 students by the management themselves	2-2-1993	O.P. dismissed holding that only the Government can fill up the seats.
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3.	W.A. 293/93	Appeal against the judgment in O.P. No. 1252/93	9-3-1993	The Division Bench held that the Appellants are not entitled to the relief prayed for in that O.P.
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4.	S.L.P.7671/93	Against the judgment in W.A. No. 293/93	30-7-1993	Dismissed.
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5.	O.P. 17046/93	To quash the order of the Director of Public Instruction dated 11th February 1994 declining to regularise the illegal admission during 1990-92 and directing that the management will not have the quota for the years 1994 to 1997	18-7-1994	Order of the Government Confirmed. The wrongly admitted students were permitted to write examination.
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direction given by the Division Bench the management admitted twenty students which should have been admitted by the Government according to merit.

8. In this O.P. the Manager has suppressed all the orders passed by this Court as well as the Supreme Court and has set out the fact so evasively so as not to reveal the true position. The teacher's Training Institute which is supposed to

train the future teachers for this country who will mould the character of future citizens of the country is acting as a masked phantom established as a business venture for admitting sub-standard students, without any competitive tests. The Supreme Court in the decision reported in *St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others, etc. etc.*, had occasion to consider this and struck a note of warning in para 20 as follows:

20. Before we part with this judgment, we consider it necessary to strike a note of caution in respect of passing of interim orders by Courts directing the students of unrecognised institutions, to appear at the examinations concerned. In view of the series of judgments of this Court, the Courts should not issue fiat to allow the students of unrecognised institutions to appear at the different examinations pending the disposal of the writ applications. Such interim orders affect the careers of several students and cause unnecessary embarrassment and harassment to the authorities, who have to comply with such directions of the Court. It is a matter of common knowledge that as a part of strategy, such writ applications for directions to recognise the institutions in question and in the meantime to allow the students to appear at the examinations are filed only when the dates for examinations are notified. Many of such institutions are not only "masked phantoms" but are established as business ventures for admitting sub-standard students, without any competitive tests, on basis of considerations which cannot serve even the interest of the minority. There is no occasion for the Courts to be liberal or generous, while passing interim orders, when the main writ applications have been filed only when the dates for the examination have been announced. In this process, students without knowing the design of the organisers of such institutions, become victim of their manipulations.

Sl.	No.	No. of the petition	Nature of prayer	Date of order	Remarks
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6.	O.P.	899/95	For a mandamus to permit the management to fill up the seats lying vacant 31-1-1995 in C.M.P. 1599/95	Direction permitting the management to fill up the seats in accordance with the norms prescribed.	
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7.	W.A.	186/95	By the Government against the order in C.M.P. 1599/95		
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6. In *St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others, etc. etc.*, the Supreme Court has warned that as a part of strategy the so called Training Institutes will move the courts in the last minutes to obtain interim orders for admission claiming that the academic year is coming to a close and examinations are going to be held shortly, either by themselves or by setting up the unwary students who become the prey of these "masked phantoms". The Supreme Court in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, while emphasising the need to encourage the private sector to augment the much needed resources in the field of education held as follows:

Such of them must be put down ruthlessly with an iron hand irrespective of who has started the institution or who desires to set up such an institution.

7. Though the Petitioner-Institute was recognised we are very doubtful about the sort of training that this kind of institution is going to impart to the teachers who are going to shape and mould the future young generation. The standard of education imparted by the Petitioner-Institute is obvious from the facts set out in O.P. No. 17046/93. Of the 20 candidates only 8 were declared successful and 12 candidates were declared as failed in July, 1993 examination. In spite of the specific.

9. From the facts set out above, it is unfortunate to note that the counsel who appeared before us in this case was also the counsel in the O.P. filed by the students. The whole proceedings which smacks mala fide is to perpetuate the illegal design of commercialising the Teachers Training Course. In view of the conduct of the Petitioner which deserves to be condemned in the strongest terms possible, we hereby direct the Director of Public Instruction to go into the selection process of the Institute and take suitable action for the lapses and violations of the rules. It appears as a usual practice of the Petitioner to contend that the candidates selected by the Government did not appear for admission, which we fail to understand when thousands of students compete for being selected to the training course. We express our shock and inability to understand this phenomena.

10. As the Government has stated that they have sent a list of candidates immediately on receipt of Ext. B-2 letter and time having been given to the students to join till 1st March 1995, we do not find it necessary to pass any order in reference to the prayer in the O.P. We find that the O.P. is premature and is not maintainable. We also hold that the Petitioner has suppressed the material particulars in the O.P. For these reasons we find it just and necessary that the petition must be dismissed with exemplary cost. Accordingly we dismiss the Original Petition with a cost of Rs. 10,000.

11. W.A. No. 186/1995. This appeal is filed by the State against the interim order in C.M.P. No. 1599 of 1995 in O.P. No. 899 of 1995 permitting the Petitioner-Manager to fill up the remaining 11 seats. In the light of our findings in O.P. No. 899/95 such a direction cannot be issued. The management has no light to fill up the seats for the period 1994 to 1997 as per the order of the Director of Public Instruction which had earlier been upheld by this Court in O.P. No. 17046/93. As a matter of fact, the Manager had submitted that he will abide by the directions in Ext. P-I in that O.P. Therefore, it is not open to the management to fill up the seats. The learned Judge was not correct in allowing the management to fill up those seats contrary to the rules. In the light of our decision and in view of the fact that the Respondent-Manager has no right to fill up the seats, the above appeal is allowed. No order as to costs.