

(2008) 08 KL CK 0059

In the High Court Of Kerala

Case No : Writ Petition (C) No's. 3270 and 3441 of 2008

Babu Paul Perumpillil

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 05-08-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92
Kerala Education Rules, 1959 — Rule 4(1), 4(3), 4(4), 92

Citation : (2008) 08 KL CK 0059

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : George Poonthottam and S. Sreekumar, for the Appellant; M.K. Damodaran George Varghese Kannanthanam N. Sukumaran, S. Shyam, Saji Varghese Kakkattumattathil and Anu Sivaraman, Government Pleader, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—St. Peter's and St. Paul's Church, Kolencherry, the Petitioner in W.P. (C) No. 3441/08, runs certain educational institutions governed by the provisions of the Kerala Education Act, 1958, hereinafter referred to as "the Act", for short, and the Kerala Education Rules, 1959, hereinafter, "KER", for short. That corporate educational agency is governed by by-laws approved by the department in terms of the provisions of the Act and KER, in terms whereof, management of the educational institutions were being carried on. It appears that the last among the approved managers in office, Sri Pailly Pillai, died on 1-7-2007. In the meanwhile, Fr. Jacob Kurian submitted a proposal on 10-5-2007 to the District Educational Officer, Aluva, proposing for approval, five members to the governing body of the School Board. Fr. Varghese Edumary and Ors. forwarded a different proposal of five persons, dated 13-7-2007, for the aforesaid purpose. In the proposal of Fr. Jacob Kurian, Sri Babu Paul was stated to have been elected as the manager. The proposal of Fr. Varghese Edumary was for the approval of Sri Paulose P. Kunnath as the manager. The DEO, for reasons which he has recorded in his order dated

1-8-2007, rejected the appointment of Sri Paulose P. Kunnath and Sri Babu Paul.

2. The proposal of Sri Paulose P. Kunnath as manager was carried in appeal before the Director of Public Instructions in terms of Rule 4(3) of Chapter III KER, which deals with management of private schools. The refusal to approve the appointment of Sri Babu Paul as manager was carried directly to the Government, purportedly invoking Rule 92 of Chapter XIV A KER, which deals with conditions of service of aided school teachers.

3. It appears that the appeal placed before the DPI regarding the approval of the managership of Sri Paulose P. Kunnath was stagnating on account of the pendency of the revision before the Government, touching the refusal of approval of Sri Babu Paul as manager. W.P. (C) No. 30908/07 was filed before this Court by Fr. Varghese Edumary and Sri Paulose P. Kunnath. After hearing both sides, this Court directed the Government to consider and pass appropriate orders in the revision petition pending before it. Following that, the Government issued G.O. (Rt.) No. 484/08/G. Edn. dated 24-1-2008 [Ext. P-9 in W.P. (C) 3270/08 and Ext. P-12 in W.P. (C) 3441/08] which is impugned in these writ petitions filed by Sri Babu Paul and by the Vicar of the church. Extensive pleadings are placed on record in support of the challenge; as also in support of the impugned order. Different allegations are thrown by rivals and also against various aspects touching the manner in which the choices were made. The process of decision making by the Government is also impeached on different grounds. The sustainability of the decision contained in the Government Order is seriously questioned, having regard to the various matters reflected by the note file, that led to the said G.O., a copy of which has been obtained by the Petitioner in W.P. (C) 3270/08 under the Right to Information Act and placed therewith as Ext. P-10.

4. The DEO, as already noticed, had taken the decision that the request for approval of either among the two as the manager was being rejected in view of the absence of consensus and because the DEO was of the clear opinion that it was beyond the scope of his authority to decide and resolve any factional dispute between the parties. I may also recall that C.R.P. 803/07 is filed challenging the order of the District Court, Ernakulam, granting leave to institute a suit u/s 92 of the CPC and hearing of that matter stands deferred as of now.

5. Rule 4 of Chapter III deals with approval of appointment of managers. Sub-rule (3) thereof provides that any person aggrieved by an order of an educational officer under Sub-rule (1) may prefer an appeal to the Director. Sub-rule (4) of Rule 4 provides that the Government may, on their own motion or otherwise, revise any order passed by the Director of Public Instructions. The issue in hand is one relating to approval of appointment of managers and falls squarely within Chapter III, which deals with management of private schools. It is not a matter relating to conditions of service of aided school teachers, which fall under Chapter XIV A KER. Therefore, indisputably, no revision Under Rule 92 of Chapter XIV A KER would lie against the decision of the DEO. It also needs to be noticed

in this context that the manner in which Sub-rules (1), (3) and (4) of Rule 4 of Chapter III are couched would show that the Government would not have a revisional authority, except as against the order of the DPI issued under Sub-rule (3) of Rule 4, in exercise of appellate power, against the decision of the educational officer under Sub-rule (1) of Rule 4. In contradistinction to this, is the provision in Rule 92 of Chapter XIV A KER, which provides an essentially plenary revisional power with the Government to revise any order passed by a subordinate authority. Such power Under Rule 92 of Chapter XIV A is not dependent on whether an appellate power has been exercised or not. This nice distinction has been noticed by this Court in *Parameswaran Namboothiri v. State of Kerala*, O.P. No. 3505/01 & Connected cases, decided on 19-6-2001. It also needs to be immediately noticed that Rule 92 of Chapter XIV A KER provides the revisional jurisdiction, as stated therein/ only in respect of matters contained in that Chapter. Therefore, it is beyond doubt that in exercise of revisional power Under Rule 92 of Chapter XIV A, the Government cannot decide on a matter which falls within Chapter III KER, that is, management of private schools. So much so, the Government did not have jurisdiction to decide on the revision filed before it against a decision of the DEO and therefore, the impugned order is void. It is so declared.

6. It was attempted to be pointed out that the decision of the Government cannot be impeached on the ground as aforesaid, because, that followed the directions of this Court in W.P. (C) 30908/07. A perusal of that judgment firstly shows that the direction was only to consider and pass appropriate orders. *Stricto sensu*, there was not even a direction to deal with the matter on merits. That apart, in the absence of jurisdiction and when there is a clear compartmentalisation of power between Rule 4(4) of Chapter III and Rule 92 of Chapter XIV A KER, there is no question of the agreement of parties conferring jurisdiction on the Government or the High Court being presumed to have issued a direction to consider the matter *de hors* the statutory rules. The absence of jurisdiction cannot be cured by any such procedure. When the court directs consideration of a matter by any authority, including the Government, it can decide that matter only in accordance with law. See *Raveendran v. State of Kerala*(1).

7. With the aforesaid, needless to say, the parties have to stand relegated to the DPI for consideration of the appeal filed by Sri Paulose P. Kunnath. To secure the ends of justice, it is also necessary that the Government transmits the revision petition filed before it by Sri Babu Paul to the DPI, to be treated as an appeal in terms of Rule 4(3) of Chapter III KER, on the strength of this judgment. It shall be so done within five clear working days from now. On such remitted matter being received by the DPI, the said officer will hear the parties and take a final decision on the merits and having regard to the entire facts and circumstances. It is so directed. The final decision shall be taken within an outer limit of a fortnight from the date of receipt of a copy of this judgment or a revision from the Government, whichever is later. To expedite matters, the parties in these writ

petitions are directed to appear before the DPI to mark their attendance on 8-8-2008, at 11 a.m., so that the DPI could fix the date for hearing.

8. The aforesaid directions call for consideration of yet Anr. aspect. The note file that led to the impugned Government Order shows that the final decision contained in that order was taken by the Minister for Education in the Government of Kerala. The note file deals with various factual and legal matters. Severe criticism is advanced from both sides to different aspects of the rival claims that fell for consideration in arriving at the impugned G.O. The manner in which the Government dealt with the matter is also criticized with different allegations being thrown even against different officers personally. It was also argued that the materials on record do not lead to any order as has been passed by the Minister. In the backdrop of these allegations and the fact that the impugned Government Order has been held to be void, the DPI will ensure that no assistance whatsoever is taken from the note file or from the decision taken by the Government which has been found to be void hereby. It is further directed that the views of the Government, as reflected in the impugned order, shall not weigh with the DPI and shall not be considered in deciding the matter directed to be considered. This is all the more so because the DPI, exercising the statutory power under Sub-rule (3) of Rule 4 of Chapter III KER, has to act as a statutory officer, unguided and uninfluenced by any decision or view of the Government, even if it is of the higher one in the hierarchy of administration.

9. Though the learned Counsel for the Petitioner in W.P. (C) 3270/08 made a fervent plea that there may be some adjustments made as to the management in the interregnum, I am of the firm view that all that is required is that the DPI passes orders within the time fixed as above, without fail.

These writ petitions are ordered as above.