
(2014) 07 KL CK 0101

In the High Court Of Kerala

Case No : W.A. Nos. 537, 538 and 540 of 2014

Byju E.B.

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:

Right of Children to Free and Compulsory Education Act, 2009 — Section 38

Citation : (2014) 07 KL CK 0101

Hon'ble Judges : Dama Seshadri Naidu, J;Antony Dominic, J

Bench : Division Bench

Advocate : R. Rajasekharan Pillai, Advocate for the Appellant; M.K. Aboobacker, Sr. Government Pleader, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Antony Dominic, J.—These appeals are filed by the petitioners in W.P. (C) Nos. 30108 of 2010, 19701 of 2011 and 14654 of 2009, which were dismissed by the learned single Judge, by a common judgment rendered on 07.11.2013. The grievance in W.P. (C) No. 30108 of 2010 against the dismissal of which W.A. No. 537 of 2014 is filed is against Exhibits P3 and P9 orders rejecting the request of the appellant for converting his unaided School into an aided School. In so far as W.P. (C) No. 19701 of 2011 against the dismissal of which W.A. No. 538 of 2014 is filed, there the prayer was to direct consideration of a subsequent representation made by the appellant for the aforesaid purpose itself. In so far as W.P. (C) No. 14654 of 2009 is concerned, that was filed by another person, seeking a direction to the Government to convert the School of the appellant in the other two appeals into an aided School. All these Writ Petitions were considered by the learned single Judge together and were dismissed by him holding that materials before him showed that there are already existing Schools in the locality which are sufficient to meet the educational requirements of the students.

2. We heard the learned counsel for the appellants and the learned Government

Pleader appearing for the respondents and have considered the submissions made.

3. Admittedly, the appellants do not have any statutory or fundamental right to demand that the School in question established by the appellant in W.A. No. 537 and 538 of 2014 should be made an aided School. On the other hand, the establishment of aided School can be only in terms of the provisions contained in the Kerala Educational Act and Educational Rules. In so far as this case is concerned, the materials available before the learned single Judge shows that there are already Schools in the locality which are sufficient to meet the educational requirements of the children in the locality. In such a situation, if the respondents have decided not to grant aided status to the School in question, that decision of the respondents cannot be interfered on the ground that it is arbitrary.

4. Learned counsel for the appellants relied on the provisions contained in the Right of Children to Free and Compulsory Education Rules, 2011, framed by the State of Kerala in exercise of its powers u/s 38 of the Right of Children to Free and Compulsory Education Act, 2009. He made reference to Rule 6 and contended that the Government is duty bound to establish Schools as provided in the Rules. According to him, grant of aided status to the School in question would satisfy the requirements of the rule and therefore the rejection of the application is illegal. We are unable to agree with the counsel. A reading of the Rule would show that the Rule provides for the obligation of the Government to establish Schools as provided therein. Therefore, if the requirements of the Rule are to be met, it is for the Government to establish the School and such statutory obligation of the Government cannot be satisfied by allowing the request of the appellant. Therefore, this contention of the appellant deserves only to be rejected.

5. Even apart from this, it is the settled position of law that under the provisions contained in Chapter V of the Kerala Education Rules, Schools have to be established or granted recognition only when applications are made to the Government in response to notifications issued by the Government, and that too after assessment of the educational requirements of the locality. This legal position cannot be diluted, even if the request of the appellant is supported by the local authorities. In so far as these cases are concerned, even the appellants have no case that any such notification was ever issued by the Government.

For all these reasons, the demand of the appellants, is totally untenable. The judgment under appeal does not, in our view, suffer from any illegality. Appeals fail and are dismissed.