

(2013) 11 KL CK 0006
In the High Court Of Kerala
Case No : Writ Petition (C) No. 2442 of 2013

Devasia

APPELLANT

Vs

Deputy Director of Education

RESPONDENT

Date of Decision : 08-11-2013

Acts Referred:

Citation : (2014) 1 KLT 64

Hon'ble Judges : C.T. Ravikumar, J

Bench : Single Bench

Advocate : M.J. Thomas, for the Appellant; P.M. Sameer, Sr. Government Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

C.T. Ravikumar, J.—Education is not merely a privilege but a right. Often, children are denied the right to education and that issue has to be viewed more seriously and sympathetically when it occurs in the case of physically or mentally challenged children, In this case, the unfortunate child Jossy Devasia viz., the petitioner's minor son, aged 10 years was studying in the IVth Standard at Government Upper Primary School, Kattampack in Kottayam District. This Writ Petition has been filed alleging that the petitioner's son Jossy Devasia is prevented from pursuing his studies in the said school and seeking issuance of a writ of mandamus commanding the respondents 1 and 2 to take effective steps to see that his son Jossy Devasia is permitted to pursue with his studies in the said school without any interference from any staff of the school and other members of the Managing Committee and also for consequential reliefs. On 1.3.2013 this Court passed an interim order directing the Assistant Educational Officer, Kuravilangad in whose jurisdiction Government Lower Primary School, Kattampack situates, to direct the Headmaster of that school to admit Jossy Devasia in the IVth standard in that school and permit him to appear for the annual examination at the end of the academic year after condoning the shortage of attendance, if any. Subsequently, the petitioner appeared before the

Headmaster along with the copy of the order and got admitted his son in that school. Obviously, he has now, completed his IVth Standard in that L.P. School and seeks appropriate direction to the respondents to permit him to pursue his studies in the Government Upper Primary School, Kattampack in the Vth Standard. A statement has been filed in this Writ Petition by the 3rd respondent. Various incidents were elaborately described there. The gist of contentions therein is that continuance of the petitioner's son in the said school would pose threat to the lives of his fellow students and therefore he could not be permitted to continue his studies in the said school. Refuting the said contentions the petitioner filed a reply affidavit. The contentions of the petitioner would reveal that he would admit the fact that his son is afflicted with Down Syndrome and according to the petitioner, owing to the said disease Jossy Devasia is incapable of behaving in an unruly manner. It is the further contention of the petitioner is that the child was being brought to the school everyday with the help of others. Taking in to account the indisputable fact that a disabled child has the right to pursue free education and at the same time, the specific contention raised in the statement filed by the 3rd respondent to the effect that on account of the behavioral pattern of the petitioner's son his continuance in the school would pose threat to the lives of his fellow students this Court passed an order on 21.6.2013 directing the Superintendent of Medical College Hospital, Kottayam to constitute a Medical Board to examine the son of the petitioner Jossy Devasia, and in turn, directing the petitioner to produce his son Jossy Devasia before the Superintendent of Medical College Hospital, Kottayam along with the treatment records. A report regarding the likelihood of danger to the fellow students of the petitioner son on account of his alleged peculiar behavioral pattern was directed to be furnished after proper examination and study of his behavioral pattern. Pursuant to the same, a board was duly constituted and based on the suggestions of the board the son of the petitioner was admitted in the hospital in Ward No. 4 with Inpatient No. 053515, on 20.9.2013 for a period of 9 days. The members of the Medical Board closely watched the behavioral pattern of the petitioner's son Jossy Devasia and I.Q. assessment revealed I.Q. of 47 indicating mild mental retardation. Upon further examination the Medical Board arrived at the final impression that the son of the petitioner is having Down Syndrome, mild mental retardation and congenital heart disease for which he had undergone an operation on 30.12.2003. In view of the specific directions in the order dated 21.06.2013 the impression of the board regarding the question whether the continuance of the petitioner's son Jossy Devasia would pose danger to the lives of his fellow students was given as hereunder:-

Based on the above findings the Medical Board concludes that Jossy Devasia has Down Syndrome Congenital Heart Disease (which was operated on 30.12.2003) and Mild Mental Retardation. There is no likelihood of danger to his fellow students on account of his behavioral pattern.

(emphasis added)

2. As noticed hereinbefore, this Court ordered for constituting a Medical Board considering the peculiar situation occurred on account of the allegation regarding behavioral pattern of the petitioner's son Jossy Devasia. The above mentioned report dated 4.10.2013 obtained to pursuant to the order dated 21.06.2013 of this Court would undoubtedly reveal that there is absolute absence of reason or any basis for the said apprehension. In categorical terms the Medical Board opined that there would not be any likelihood of danger to the fellow students on account of the behavioral pattern of the petitioner's son. True that, the Medical Board found that the child is suffering from Down Syndrome and he had congenital heart disease for which he had undergone an operation on 30.12.2003. Unfortunately, he is having mild mental retardation. The said diseases of which the petitioner's son Jossy Devasia is suffering cannot be a reason for denying him the right to education. Like any other students the son of the petitioner's also having a right to education and in fact, on account of his disablement the respondents have an obligation as well to see that he is getting free education from the nearby school itself. Chapter II of the Right of Children to Free And Compulsory Education Act, 2009, (for short "the Act") provides that every child of the age of six to fourteen years has the right to free and compulsory education in a neighborhood school till the completion of elementary education.

Sub-section (1) of S. 3 and the proviso to sub-section (2) of S. 3, of the Act read as follows:

Every child of the age of six to fourteen years, including a child referred to in clause (d) or clause (e) of Section 2, shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education.

Provided that a child suffering from disability, as defined in clause (i) of Section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995, shall have the right to pursue free and compulsory elementary education in accordance with the provisions of Chapter V of the said Act,

The term disability has been defined thereunder in clause (i) of section (2) to mean:-

- (i) blindness;
- (ii) low vision;
- (iii) leprosy-cured;
- (iv) hearing impairment;
- (v) locomotor disability;
- (vi) mental retardation;

(vii) mental illness

The term "mental retardation" has been defined under clause (r) of S. 2 as follows:-

mental retardation means a condition of arrested or incomplete development of mind of a person which is specifically characterised by sub normality of intelligence.

In this case, even after arriving at the conclusion that the son of the petitioner Jossy Devasia is suffering from Down Syndrome, mild mental retardation and of congenital heart disease the unanimous impression formed by the Medical Board is that there would not be any likelihood of danger to the fellow students on account of his behavioral pattern. Thus the report of the Medical Board pursuant to the order of this Court on 21.6.2013 would undoubtedly show that there is no basis for the apprehension of danger to the lives of his fellow students on account of the alleged behavioral pattern of the petitioner's son Jossy Devasia.

Going by S. 8 of the Right of Children to Free and Compulsory Education Act, 2009 the appropriate Government shall provide free and compulsory elementary education to every child. The term "compulsory education", going by the explanation thereunder, means obligation of the appropriate Government to-

(i) provide free elementary education to every child of the age of six to fourteen years, and

(ii) ensure compulsory admission, attendance and completion of elementary education by every child of the age of six to fourteen years;

(b) ensure availability of a neighbourhood school as specified in section 6;

(c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;

(d) provide infrastructure including school building, teaching staff and learning equipment;

(e) provide special training facility specified in section 4;

(f) ensure and monitor admission, attendance and completion of elementary education by every child.

As per Section 2(f) elementary education means the education from first class to eighth class.

In the said circumstances, taking in to account the various provisions and in the Right of Children to Free And Compulsory Education Act, 2009, and also the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 I am of the view that the right of the petitioner's son Jossy Devasia to pursue with his studies in Government Upper Primary School,

Kattampack cannot be deprived of or denied by the respondents based on the apprehension as mentioned above which by now, proved to be unfounded. Certainly, such mere apprehensions in the minds of the authorities cannot result in deprivation of an opportunity to a student who is afflicted such diseases the right to education.

In the result this Writ Petition is disposed of with a direction to the respondents 1 to 3 to take appropriate steps to see that the son of the petitioner Jossy Devasia is able to pursue with his elementary education in Government Upper Primary School, Kattampack on production of a copy of this judgment. It is made clear that even if there is a shortage of an attendance on account of his absence from the school till the date on which he is so permitted to pursue his studies in the school, pursuant to this judgment the same shall be condoned and it shall not stand in the way of his right to appear for the annual examination at the end of this academic year. In other words, such shortage of attendance shall not be a reason for denying him the right to appear for the annual examination at the end of the academic year in the Vth standard.

This Writ Petition is disposed of accordingly.