
(1960) 07 KL CK 0005
In the High Court Of Kerala
Case No : A. S. No. 396 of 1960

Eipe

APPELLANT

Vs

Koshi and Another

RESPONDENT

Date of Decision : 21-07-1960

Acts Referred:

Constitution of India, 1950 — Article 1, 10, 2, 226, 4
Kerala Education Act, 1958 — Section 2(2)

Citation : (1960) KLJ 1182

Hon'ble Judges : M.A. Ansari, C.J;M. Madhavan Nair, J

Bench : Division Bench

Advocate : T.S. Krishnamoorthy Iyer and G. Rajasekhara Menon, for the Appellant; C.M. Kuruvilla, C. George and O.N. Ninan, for the Respondent

Final Decision : Dismissed

Judgement

Madhavan Nair, J.—The appellant is the headmaster of the S.C.S. High School, Thiruvallah, which was established sixty years ago by the second respondent, the Mar Thoma Evangelistic Association. A committee known as the Mar Thoma Sabha Council, had also established certain schools in the State. Both the Evangelistic Association and the Sabha Council being closely related institutions of the Malabar Mar Thoma Syrian Church, they wanted to ensure a common policy of education in all these schools and for that purpose they placed all the schools referred to above under one Corporate Management early in 1955. Later, A.S. No. 396 of 1960. Decided on 21-7-1960. On 2-8-1958, a formal constitution for the Corporate Management was drawn up, a copy of which is proved in this case as Ext. R1. Articles 1, 2, 4, 8, 9 and 10 of this document are as follows:--

1. The Corporate Management shall consist of two units -- one for the boys" schools and one for the girls" schools.
2. The Corporate Management shall keep a seniority list of teachers of different categories for each unit. Ordinarily promotions and transfers shall be made within the unit itself, but in the exigencies of service and interests of the schools,

inter-unit promotions and transfers may be made by the Corporate Management.

3. The right of administering the schools shall vest with the Corporate Management but the ownership of the schools shall vest with the present owners.

4. The finance of each school shall be kept separate and the Corporate Manager shall have full control over the finance.

5. The proprietors of any school shall have the right to withdraw their school from the Corporate Management after at least one year's notice.

6. Fresh appointments shall be made from the list of candidates selected by the Service Commission of the Mar Thoma Church.

This constitution was approved by the Education Department with effect from 15-4-1959. Ext.P. 5, letter dated 24-7-1959 addressed to the appellant by the General Secretary shows that the appellant himself was apprised of these facts as also of the approval of the common seniority lists of teachers in all the schools as provided in article 2 of Ext. R1 constitution. The appellant never protested against these proceedings. His only case is that by these proceedings the ownership of the S.C.S. High School was never changed and that is not disputed in this case.

First respondent is the manager appointed by the Corporate Management to manage all the schools under them. On 30--5--1960 he issued an order, Ext.P. 7, transferring the appellant to the High School at Valakam and the headmaster of that school to the S.C.S. High School, Thiruvallah. This order was served on the appellant on 1--6--1960.

2. On 2--6--1960 the appellant moved this Court by Original Petition No. 712 of 1960 for the issue of a Writ of Certiorari or any other appropriate writ, order or direction to quash Ext.P. 7 as it is ultra vires the powers of the 1st respondent the author thereof. The learned Judge before whom it came up for decision on 3--6--1960 dismissed the same by an order which runs as follows:

The petitioner is a teacher in a private school and the order of transfer complained against, it is alleged, has been made by the 1st respondent, a private individual who has no competence or power to do so under the provisions of the Kerala Education Act, 1958 and the Rules made thereunder, by which the school is governed. If that be so the petitioner can well ignore the order and I fail to see how this Court can under Art. 226 of the Constitution quash an order made by what I might call a private pretender. I dismiss the petition.

3. This appeal is preferred against the above-said order.

4. We may at once say that we do not agree with the observation that if the order Ext.P. 7 is beyond the competence of the 1st respondent who issued it the appellant can well ignore it but cannot seek to quash it by proceedings under Article 226 of the Constitution. To ignore or defy the order of the manager will not prove effective. The appellant will not be liable to function as the headmaster

of the School when another will be holding office as per the order of the manager who must necessarily be an influential person in the Church. If the appellant attempts to overthrow his rival, he will only launch himself in trouble beyond expectation. In the circumstances defiance of Ext.P. 7 order, however much the appellant may be legally entitled to do so, will not afford an adequate remedy to him and his petition for relief under Article 226 of the Constitution cannot be rejected in that way. See the observations of the Supreme Court in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, where a similar contention was referred by the court. But we do agree with the learned Judge that the Original Petition deserved only to be dismissed and this we do on the merits of the case.

5. In this Court the respondents 1 and 2 have filed an affidavit in which they say that the placing of the S.C.S. High School under the Corporate Management by the Managing Committee was with the approval of the second respondent, the Evangelistic Association, that the first respondent was appointed as Manager by common consent and with the approval of the Department as per the Kerala Education Rules, that the transfer of the appellant was ordered in the best interests of the schools concerned and there is no idea of any penalty involved in the same that several other teachers also have been transferred likewise by the Manager, and that Ext.P. 7 involves only a purely administrative order in the usual course of management of the schools which should not therefore be made the subject of a judicial review under Article 226 of the Constitution.

6. The contentions of the appellant are mainly that, with the coming into force of the Kerala Education Act, and the rules framed thereunder, on 1-6-1959 the power of transferring teachers in private Schools has become regulated by rules 10 and 11 of Chapter XIV-A of the Kerala Education Rules, 1959, and that under the said rules the 1st respondent has no competency to issue an order of transfer as in Ext.P. 7.

7. Rule 10 of Chapter XIV-A of the Kerala Education Rules which alone is relevant for the purposes of this case, provides:

When more than one school is under the same Educational Agency, the Educational Agency may transfer any teacher from one school to another and in deciding on these transfers the principles followed in Government schools shall be observed.

The term Educational Agency is defined in Section 2(2) of the Kerala Education Act as meaning

any person or body of persons permitted to establish and maintain any private school under this Act

In the case of schools which have been established long before the Kerala Education Act came into being, no question of permission under this Act to establish the school can arise at all. So the only relevant consideration to identify

the Educational Agency of such schools is to find out the person or body of persons who are permitted to maintain the school under the Kerala Education Act. It is clear from the articles of Ext. R1 quoted above that it is the Corporate Management who are entitled or permitted to manage and maintain the schools concerned in this case. Therefore the Corporate Management constituted as per Ext. R1 is the Educational Agency of the instant schools.

8. Both the S.C.S. High School, Thiruvallah, and the High School, Valakam, being under the Educational Agency of the Corporate Management, it is competent for the Corporate Management to transfer the appellant from the S.C.S. High School, Thiruvallah, to the High School, Valakam.

9. The question then arises whether the 1st respondent who is only the Manager chosen by the Corporate Management can order a transfer of the appellant as was done by him by Ext.P. 7. Rule 3 in Chapter III of the Kerala Education Rules provides:

(1) The management of every aided school may be vested by the Educational Agency in a person who shall be referred to as the Manager and who shall be responsible to the Department for the management of the institution.

(2).

(3).

(4) The Educational Agency shall be bound by the acts of the Manager.

It follows therefore that on the appointment of a manager by the Educational Agency, the power of the latter becomes vested in the former. The manager may therefore be characterised as the legally authorised delegate of the Educational Agency. It is not disputed in this case that the Manager chosen by the Corporate Management is the 1st respondent. He is therefore competent to transfer the appellant from the S.C.S. High School, Thiruvallah, to any school maintained by the Corporate Management under Ext. R1. The order of transfer, Ext.P. 7, issued by the 1st respondent is therefore perfectly valid and well within his power under the Kerala Education Rules.

10. In the above view, the question of availability of writs of Certiorari and Mandamus in cases of acts done by Domestic Tribunal, which was debated at the Bar, does not properly arise for consideration in this case. The appeal fails and it is dismissed with costs (one set).