

(2012) 02 KL CK 0132

In the High Court Of Kerala

Case No : Writ Petition (C) No. 806 of 2012 (A)

E.K. Dhananjayan Thampan Secretary, Kadathanad Raja's
High School, Purameri Vadakara, Kozhikode District

APPELLANT

Vs

A.K. Vijayakrishna Varma Raja Manager, Kadathanad Raj's
High School, Purameri Vadakara, Kozhikode District -
673101, M.P. Lakshmi, Headmistress, M. Kadathanad Raja's
High School Purameri, Vadakara, Kozhikode District -
673101, The District Educational Officer, Vadakara - 673101
and The Secretary, General Education Department,
Secretariat Thiruvananthapuram - 695001

RESPONDENT

Date of Decision : 13-02-2012

Acts Referred:

Kerala Education Rules, 1959 — Rule 92

Citation : (2012) 02 KL CK 0132

Hon'ble Judges : Pius C. Kuriakose, J;A.V. Ramakrishna Pillai, J

Bench : Division Bench

Advocate : M.C. Sen, Sri. M.P. Sreekrishnan and Smt. Shahna Karthikeyan, for the Appellant; Devan Ramachandran, for R1, Sri. Augustine Areakkattel, for R2 and SRI. C.R. Syamkumar, Sr. Government Pleader for R3 and R4, for the Respondent

Judgement

Pius C. Kuriakose, J.—The petitioner is a clerk in Kadathanad Raja's Higher Secondary School and is the Secretary of a Committee constituted for the management of the Kadathanad Raja's High School, the most important item of the property which was subject matter of suit for partition O.S. No. 1 of 1964 on the files of the Sub Court, Vadakara. It was this court which entrusted to the managing committee the management of the school under Ext. P1 order dated 1-7-1994 passed in C.M.P. No. 059 of 1994 in A.S. No. 143 of 1994 pending before this Court. The present writ petition seeking reliefs in respect of an order passed by the Manager of the School against the petitioner was made over to this Court by order dated 11th January 2012 in view of its connection with A.S. No. 143 of 1994. The first respondent in the writ petition is Sri. A.K.

Vijayakrishna Varma Raja alias Valiyaraja, the Manager of the High School. The second respondent is the Headmistress of the School and is Ex-officio Member of the Managing Committee. The third respondent is the D.E.O. Vadakara and the fourth respondent is the Secretary to Government in the General Education Department. On 21-11-2011 the first respondent Manager suspended the petitioner from the post of Clerk of Kadathanad Raja's High School. The petitioner filed Writ Petition No. 31341 of 2011 before this Court seeking quashment of the suspension order on various grounds. However, even before the merits of the grounds raised in the writ petition were considered by this Court, the third respondent D.E.O, by his order dated 2-12-2011 marked as Ext. P14 in the writ petition, revoked the order of suspension and declined the request of the first respondent to continue the suspension beyond the period of 15 days. When Writ Petition No. 31341 of 2011 came up for consideration before this Court, it was submitted by the learned Government Pleader on the basis of instructions from the D.E.O. that Ext. P14 order was already passed by the D.E.O. on the basis of an enquiry conducted in the matter and that the suspension order has been revoked with a direction to reinstate the petitioner with immediate effect. In view of the above submission of the learned Government pleader this Court disposed of the writ petition taking the view that the petitioner has already been granted relief. Ext. P9 is copy of the judgment in that writ petition.

2. The present writ petition has been filed seeking the following reliefs:

- i. Issue a writ of mandamus directing the 2nd respondent to implement Exts. P-14 and P13 by reinstating the petitioner as Clerk in Kadathanadu Raja's Higher Secondary School, Purameri forthwith.
- ii. Declare that there is no properly constituted appeal/revision against Ext. P14 as the Managing Committee entrusted for the management of the School by Ext. P1 order of this Hon''ble Court have not taken any decision to impugn Ext. P14.
- iii. Declare that the 1st and 2nd respondents are personally liable for the financial commitment to the Managing Committee due to non-implementation of Ext. P14.

No counter affidavit or statement is filed by the first respondent in this writ petition. However, in I.A. No. 404 of 2011 filed by the writ petitioner himself in the appeal suit seeking certain directions, the first respondent Manager has filed a detailed statement through which he raises contentions against the grounds raised in this writ petition.

3. Shorn of details, the contention raised is that Ext. P14 order passed by the D.E.O. directing reinstatement of the writ petitioner is illegal and has been challenged before the Government and the Government has issued orders staying Ext. P14 vide Government's communication No. 77547/N1/11/E.Edn. dated 29-12-2011 (the document produced as Annexure R1(a) along with that statement).

4. We have heard Sri. M.C. Sen, learned senior counsel for the writ petitioner, Sri. Devan Ramachandran, learned counsel for the first respondent, Sri. Augustine Areakkattel, learned counsel for the second respondent Headmistress and Sri. C.R. Syamkumar, learned senior Government Pleader for respondents 3 and 4.

5. The principal bone of contention between the parties at the Bar was the order of stay issued by the Government on Ext. P14 order passed by the D.E.O. The quintessential submission made by the learned senior counsel Mr. Sen was that the very filing of the revision against Ext. P14 by the first respondent was unauthorised and illegal. The stay order passed by the Government on Ext. P14 (hereinafter referred to as the stay order) is *per se* illegal as the same was issued in a proceeding initiated by the Manager illegally and without authorisation of the Managing Committee. Referring to Ext. P3 Government Order it was submitted that the petitioner's functioning as the Secretary of the Managing Committee of the School notwithstanding his being a clerk in the School was authorised by the Government under that order. It was submitted by the learned senior counsel that when it was brought to the notice of this Court that the first respondent was going astray in the discharge of his duties as the Manager this Court by Ext. P11 order appointed a permanent observer in all the meetings of the Managing Committee of the School and held that all decisions taken without the attendance of the observer will be ignored by this Court. It was submitted by the learned senior counsel that the Manager preferred revision against Ext. P14 order of the D.E.O. on his own and without authorisation in that regard by the Managing Committee. Ever since Ext. P14 was passed the first respondent was playing a game of hide and seek. Because of this the Managing Committee met and resolved on 30-12-2011 that Ext. P14 shall be implemented. Mr. Sen submitted that the Managing Committee's decision is not to challenge Ext. P14 but is to implement the same. The revision filed by the first respondent against Ext. P14 is without authority. Such a revision is not a properly constituted revision. Ext. P15 representation has been submitted to the Minister seeking to vacate the stay order at the earliest as the same amounts to violating decisions taken by the Managing Committee pursuant to successive orders passed by this Court.

6. The submission of Mr. Devan Ramachandran initially in response to Mr. Sen's submission regarding the validity of the stay order issued in the revision was that it is not correct to say that the stay order is issued by the Government vide Annexure R1(a) on the basis of a revision filed by the Manager. It was submitted that R1(a) stay order was issued by the Government on a *suo motu* revision under Rule 92 of Chapter XIV-A of K.E.R. on the basis of some complaints received by the Minister from persons other than the first respondent. When the issue became controversial as to how the Government came to be in seizing of the revision whether *suo motu* or at the instance of somebody, we directed the learned senior Govt. Pleader to seek specific instructions on this question from the concerned and file a statement. Accordingly a statement is now filed by the Government Pleader. Paragraphs 2 and 3 of the above statement are relevant

and are extracted as follows:

2. It is respectfully submitted that the Government received a revision petition from the Manager of the Kadathanad Raja's Higher Secondary School on 19-12-2011 requesting that the operation of the order passed by the District Educational Officer, Vadakara dated 2-12-2011 be stayed and also to grant permission to extend the period of suspension beyond 15 days. The fourth respondent herein, on the above revision petition has directed the District Educational Officer, Vadakara to keep his proceedings No.B5-8961/2011 dated 2-12-2011 (Exhibit P14 in the writ petition) in abeyance pending finalisation of the enquiry, by letter No. 77547/N1/11/G.Edn. dated 29-12-2011. The District Educational Officer, Vadakara has also been directed to furnish a detailed report in the matter.

3. The enquiry mentioned in the letter of the Government to the District Educational Officer, Vadakara is the disciplinary proceedings initiated by the Manager against the petitioner in the writ petition. The Government has not appointed any enquiry Officer for the purpose and it is the Manager who has initiated disciplinary proceedings against the petitioner. The report called for by the Government from the District Educational Officer, Vadakara has been received by the Government on 1-12-2012 and the Government shall pass orders on the revision on merits in accordance with the Rules and after considering the report of the District Educational Officer, Vadakara.

We find that the revision against Ext. P14 was initiated on the basis of a petition submitted by the first respondent Manager. We are also convinced that the enquiry which is referred to in Annexure R1(a) is not any enquiry ordered by the Government but is the disciplinary proceedings initiated by the first respondent on the basis of which the writ petitioner was placed under suspension by the first respondent.

7. After conveying our impressions on the basis of the statement filed by the learned Government Pleader to both sides, we have heard the learned counsel for the parties again. One of the arguments addressed before us by Mr. Sen, learned senior counsel was that continuing the writ petitioner under suspension is patently illegal. It was submitted that the initial period of 15 days of suspension is over. The Manager's request for extension of that period beyond the 15 days was never granted. The stay order by the Government stays only the implementation of Ext. P14. As far as the permission sought for continuing the period of suspension beyond 15 days, the same is never granted by the D.E.O. or by the Government. The Headmistress is not justified in not permitting the writ petitioner to rejoin service. Mr. Sen reiterated his submission that the order of suspension was passed in gross violation of successive orders passed by this Court in relation to management of the School. The filing of the revision against Ext. P14 has to be found to incompetent. According to the learned senior counsel, there is every justification for issuing the declaration which is sought for as relief No. 2 in the writ petition. Mr. Sen submitted that at any rate, the writ

petitioner should be ordered to be reinstated forthwith pending disposal of the revision entertained by the Government.

8. The submission of Mr. Augustine Areakkattel, learned counsel for the second respondent Headmistress was that the second respondent is yet to be issued with any order or communication from any competent authority directing to reinstate the petitioner in service. He submitted that in the absence of any such communication the Headmistress cannot be blamed for what she did and what she is doing.

9. The argument of Mr. Devan Ramachandran on behalf of first respondent was that as the Government is in seizing of a revision against Ext. P14 which is a regular revision under Rule 92 of Chapter XIV-A of the K.E.R. the best that can be done is to direct the Government to take an early decision in that revision with notice to the writ petitioner, the petitioner in the revision petition and anybody else who may be concerned in the matter.

10. We should now refer to I.A. No. 2095 of 2002 filed by one E.K. Rama Varma Raja (hereinafter referred to as the impleading petitioner) seeking his impleadment as additional 5th respondent in the writ petition. According to the impleading petitioner, he is the senior most member of Edavalath Kovilakam and the third senior male member of Porlathiri Swaroopam. According to him, the order of suspension passed against the writ petitioner by the Manager was perfectly justified as the writ petitioner and the committee headed by him has ruined the good will of the School. He points out that the writ petition has been filed suppressing the pendency of the revision against Ext. P14 before the Government. He claims that he has several documents which will prove misconduct on the part of the petitioner in the matter of management of the School. According to him, in the interest of the welfare of the School he should be allowed to be impleaded. The application for impleadment was very stiffly opposed by the learned senior counsel for the writ petitioner. It was submitted by the learned senior counsel that the impleading petitioner is not a sharer as per the preliminary decree passed. It was also submitted that the impleading petitioner sold away his share to strangers. The submission that the impleading petitioner sold away his shares to strangers was disputed by Sri. Jayakumar Namboothiri, learned counsel for the impleading petitioner. We have heard the counsel for the parties in the matter of the impleadment petition also. Sri. Jayakumar Namboothiri supported all the submissions of the learned counsel for the first respondent viz., Sri. Devan Ramachandran.

11. We have given our anxious consideration to the rival submissions addressed at the Bar. We have carefully gone through the pleadings and we have scanned the materials placed on record by both sides. As it was noticed that there are serious derelictions in the matter of management of the affairs of the School on account of the differences of opinion between the first respondent Manager and majority of the members of the Management Committee this court on 16-12-2011 issued Ext. P11 order appointing a permanent observer for all the

meetings of the Managing Committee and held that decisions taken without the attendance of the observer will be ignored by this Court. Pursuant to Ext. P11 meeting of the Managing Committee already scheduled to 17-12-2011 was adjourned by the writ petitioner who is the Secretary of the Managing Committee. The petitioner consulted the permanent observer and a meeting of the Management Committee was scheduled to be held on 30-12-2011 at 10.00 a.m. and notice to the said effect was circulated among the members of the Management Committee. It is seen that on 30-12-2011 a communication was served on the permanent observer by the Manager through a messenger. It was in that communication that it was stated that Ext. P14 is stayed by the Government and writ petitions are pending before this court with regard to promotion of Smt. K. Prabha and Sri. K. Rajeevan to the Higher Secondary Wing of the School. The communication further stated that as the agenda of the meeting pertaining to the aforesaid matters the meeting is adjourned. It is also stated that the Manager is unable to appraise the Managing Committee of these matters on account of his ill-health and he has been advised to take rest for a period of two weeks. Ext. P12 is the above communication. It is seen that Ext. P12 was placed before the Managing Committee in which five out of eight members were present apart from the observer. It was resolved that the meeting need not be adjourned considering the importance and emergency need of the agenda to be discussed. Meeting was held as scheduled and the decision taken was that Ext. P14 should be implemented and also that the Managing Committee will not be liable for financial commitments arising out of the non-implementation of Ext. P14 order. Ext. P13 is copy of the minutes.

12. It is transparently clear that the challenge which the first respondent made against Ext. P14 order of the D.E.O. is without authorisation from the Managing Committee. On the terms of successive orders passed by this Court in the appeal it is the Managing Committee which is entrusted with the right to manage the school. Without the authorisation from the Committee the Manager was not entitled to challenge Ext. P14 on his own. The writ petitioner is the Secretary of the Managing Committee. The revision is filed by the first respondent against Ext. P14 bypassing the orders of this court under which all decisions pertaining to management are to be taken by majority in the Managing Committee. We express our strong displeasure about the manner in which things are being done by the first respondent in the matter of managing the School. We are sure that the very filing of the revision against Ext. P14 by the first respondent was improper.

13. Notwithstanding our views regarding propriety of the action of the Manager in filing revision before the Government against Ext. P14, we are not inclined to issue relief No. 2 sought for in the writ petition as it is seen that Government is now seizing of statutory revision under Rule 92 of Chapter XIV-A of the K.E.R. We direct the 4th respondent or anybody else in the State who is to deal with the revision directed against Ext. P14 to dispose of the revision in accordance with law after hearing the revision petitioner and the writ petitioner and also the

impleading petitioner if he is desirous of a hearing opportunity in the matter of the above revision. The impleading petitioner can file a request in that regard before the Government within ten days from today. If such a request is received by the Government from the impleading petitioner the same will be considered favorably. Before going into the merits of the revision the Government will first go into the question of maintainability of the revision in the light of the orders passed by this Court in the appeal suit which are to the effect that management of the school is entrusted with the Managing Committee and that the decision of the Committee will have to be taken by majority and not by the first respondent Manager unilaterally.

14. Considering the merits noticed in the grounds raised we direct the second respondent Headmistress to reinstate the petitioner as clerk subject to the final outcome of the revision presently pending before the Government. This direction is issued finding that the request of the Manager for permission to keep the writ petitioner under suspension beyond the period of 15 days was never granted by the Government or any other authority. However, we clarify that the petitioner's service in the School on the strength of this order will be subject to the final decision which will be taken by the Government in the revision. WP(C) is allowed to the above extent. No costs.