

(2022) 12 KL CK 0037

In the High Court Of Kerala

Case No : Review Petition No. 765, 827 Of 2022 In Original Petition (C) No. 377 Of 2022

Haridas N.A

APPELLANT

Vs

Padmanabhan P.P

RESPONDENT

Date of Decision : 02-12-2022

Acts Referred:

Constitution of India, 1950 — Article 227
Kerala Education Act, 1958 — Section 33

Citation : (2022) 12 KL CK 0037

Hon'ble Judges : K. Babu, J

Bench : Single Bench

Advocate : Arjun Raghavan, T.R.Harikumar, Biju Abraham, B.G.Bhaskar, G.Sreekumar, Maya M, V.M.Krishnakumar

Final Decision : Disposed Of

Judgement

K. Babu, J

1. These review petitions are filed for reviewing the judgment and order dated 12.7.2022 in O.P.(C)No.377 of 2022 to the extent it restrained the defendants in O.S.173 of 2021 or anybody acting on behalf of the governing committee of Nanminda High School Society from making any appointment in the School till the disposal of the Original Suit.

2. Defendant Nos.1 to 3 and 5 in the original suit are the review petitioners. The plaintiffs instituted the original suit for a declaration that the general body meeting of Nanminda High School Society held on 21.2.2021 is invalid and non est and that there is no validly elected governing body or office bearers for the Society. Nanminda High School is managed by a Society named Nanminda High School Society.

3. In the general body meeting of the Society held on 21.1.2021 a governing body was elected. The plaintiffs essentially challenged the election of the present

governing committee contending that the meeting of the general body of the Society was bereft of the prescribed quorum and hence the committee elected at the meeting is per se invalid and illegal.

4. The plaintiffs filed I.A.No.2 of 2021 in O.S.No.173/2021 and prayed for a temporary injunction to restrain the defendants from functioning as the office bearers of Nanminda High School Society.

5. The trial Court dismissed I.A.No.2 of 2022. The order of dismissal was challenged in C.M.A.No.52 of 2021 before the District Court which confirmed the order of the trial Court.

6. The judgment of the District Court was under challenge in O.P.(C)No.377 of 2022. This Court dismissed the Original Petition finding that there was no reason to interfere with the impugned order of the Court below.

7. At the time of hearing, the plaintiffs/respondents had raised a concern that the present management was taking steps to make appointments in the School.

8. Therefore, while dismissing the Original Petition this Court issued the following directions:-

"30. However, having regard to the rival contentions, this Court is of the view that a direction is to be issued to the trial Court to dispose of the original suit and the other connected cases within three months from this day. All policy decisions taken by the present governing body of the Society shall be subject to the result of the suit. The defendants or anybody acting on behalf of the present committee shall not make any appointment in the School till the disposal of the suit. It is further made clear that the findings of the Lower Appellate Court were only for the purpose of deciding the interlocutory application and the trial Court shall dispose of the suit untrammelled by any of the observations made in the judgment of the Lower Appellate Court."

9. Heard both sides.

10. The challenge in these review petitions is that the directions issued by this Court restraining appointments to Nanminda High School is against the mandate of Section 33 of the Kerala Education Act, 1958. The learned Counsel for the review petitioners, relying on a series of precedents, contended that no Court should grant any temporary injunction or make any interim order restraining any process of appointment of an aided school. The learned counsel for the respondents/defendants per contra contended that while exercising the powers under Article 227 of the Constitution of India this Court has wide discretionary powers.

11. Section 33 of the Kerala Education Act, 1958 reads thus:-

"33. Courts not to grant injunction.-Notwithstanding anything contained in the Code of Civil Procedure, 1908, or in any other law for the time being in force, no court shall grant any temporary injunction or make any interim order restraining

any proceedings which is being or about to be taken under this Act.”

12. In *Damodaran v. Vasudevan* (1990 KHC 495) this Court held that as per Section 33 of the Kerala Education Act a Civil Court is not competent to grant temporary injunction or make any interim order restraining any proceeding which is being or about to be taken under the Act.

13. In *Kamalakshi Amma v. Karthiyani Amma* (1999 KHC 377) this Court, while interpreting Section 33 of the Kerala Education Act, held that an interim injunction cannot be granted restraining the Manager of an aided school from making appointments.

14. A Full Bench of this Court in *A.M.S.Mannadiar v. State of Kerala* (1995 KHC 206), while interpreting the scope of Section 33 of the Kerala Education Act, held that no Court shall grant any temporary injunction or make any interim order restraining any proceeding which is being or about to be taken under the Act.

15. While dismissing the Original Petition, this Court had directed the trial Court to dispose of the Original Suit within a period of three months from the date of the judgment. In view of the challenge on the validity of the election to the governing committee in the general body meeting held on 21.1.2021, to do complete justice, this Court directed that there shall not be any appointment till the disposal of the suit.

16. The fact that the Manager of the School, in his capacity as a statutory authority, was not a party to the proceedings and the bar contained in Section 33 of the Kerala Education Act were not brought to the notice of this Court. The direction issued by this Court restraining the appointment is contrary to Section 33 of the Kerala Education Act. This is an error apparent on the face of the record.

17. The learned counsel for the respondents/plaintiffs contended that this Court issued the direction exercising its judicial discretion conferred by Article 227 of the Constitution of India to do complete justice in view of the nature of the dispute regarding the management of the School.

18. In *Manish Goel v. Rohini Goel* [AIR 2010 SC 1099] the Apex Court held that generally no court has competence to issue a direction contrary to law nor the Court can direct an authority to act in contravention of the statutory provisions. In *Anurag Kumar Singh v. State of Uttarakhand* (AIR 2016 SC 4542) the Apex Court held that judicial discretion can be exercised by a Court only when there are two or more possible lawful solutions. The discretion assumes the freedom to choose among several lawful alternatives.

19. Section 33 of the Kerala Education Act mandates that no Court shall grant any temporary injunction or make any interim order restraining any proceedings which are being or about to be taken under the provisions of the Act. The petitioners in R.P.No.827 of 2022 have produced an order dated 20.3.2013 by the DEO, Thamarassery, approving defendant No.5 as the Manager (temporary)

for a period from 24.1.2021 to 23.1.2024 (Annexure-1). As per Annexure 2 order dated 12.5.2022, the Additional Director of General Education modified Annexure 1 order of the DEO, Thamarassery to the effect that approval of the appointment of defendant No.5 as Manager of the School is subject to the result of O.S.No.132/2021. Therefore, defendant No.5 continues to be the Manager of the School as per the provisions of the Kerala Education Act and Rules. The appointment to the various posts in Nanminda High School is a proceeding to be initiated under the provisions of the Kerala Education Act.

20. Resultantly, the direction contained in the judgment in O.P.(C)No.377 of 2022 to the extent it restrained the appointment in Nanminda High School till the disposal of the suit stands vacated.

21. However, it is made clear that all appointments to be made in Nanminda High School shall be subject to the decision in O.S.No.173 of 2021. The appointing authority, in case of making any appointment, shall mention in the order of appointment that the appointment shall be subject to the result of O.S.No.173 of 2021 so as to bring the same to the notice of the prospective appointee. The direction to the Court below is also modified. The Court below shall dispose of O.S.No.173/2021 within a period of two months from this day.

22. Registry shall forthwith communicate the directions to the Court below.

The review petitions are disposed of as above.