

(1995) 01 KL CK 0037
In the High Court Of Kerala
Case No : W.A. No. 1690 of 1994

Hariharan

APPELLANT

Vs

Srate of Kerala and Others

RESPONDENT

Date of Decision : 04-01-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Education Rules, 1959 — Rule 15, 15(1), 15A, 15A(1)

Citation : (1995) 1 KLJ 179

Hon'ble Judges : K. Sreedharan, J;B.N. Patnaik, J

Bench : Division Bench

Advocate : K. Ramakumar, for the Appellant; Lal George, Government Pleader, for the Respondent

Judgement

Sreedharan, J.—Heard counsel for the Appellant and the learned Government Pleader, who advanced arguments after getting instruction from the Government.

2. Writ Petitioner in O.P. 18131 of 1994 is the Appellant. He applied for permission to conduct "patana sibiram" (Instructors" Training Course) in the Government High School, Pulamanthole. The Headmistress of the school granted permission to conduct discussions and classes in the school as per Ext. P-2 order dated 8th November 1994. That order was cancelled by the Deputy Director of Education, Malappuram by Ext. P-3 dated 19th December 1994. According to the Petitioner, Deputy Director of Education, the second Respondent had no jurisdiction to interfere with Ext. P-2 order passed by the Headmistress of the school and that the order Ext. P-3 is void in so far as it was issued without notice to the Petitioner. Learned Single Judge came to the conclusion that the Deputy Director is not invested with any authority to revoke the order passed by the Headmistress and that Ext. P-3 order is bad for not giving an opportunity to the Petitioner of being heard in the matter. But the learned Judge did not interfere with the order passed by the Deputy Director on the ground that the Deputy Director had in his mind that there would be some sort of communal disharmony

or any other matters in the matter of granting permission to the Petitioner to use the school premises. Consequently, the Original Petition was dismissed. Hence this appeal.

3. The short question that arises for consideration is whether the Deputy Director of Education, the second Respondent had any jurisdiction to interfere with the sanction given to the Petitioner for holding "sibiram" in the school.

4. Rule 15 of Chapter IV of Kerala Education Rules provides that the premises of an educational institution (Government or private) shall ordinarily be used only for the purposes of functions conducted by such institution. But the executive authority of the local body concerned in the case of an institution under the control of a local body, the District Educational Officer in the case of a Government School and the Manager in the case of a Private School is empowered to grant permission for the use of the school building or the ground, for holding public functions arranged by the management or by a department of the State of the Government of India or for any other purposes. From this it is clear that in the case of a Government School, the District Educational Officer can grant permission for the use of the school premises for any purpose. This power vested with District Educational Officer under Rule 15(1), it is conceded, has now become vested in the Headmasters of Government schools. It therefore follows that the third Respondent before us namely the Headmistress of the Government School, Pulamanthole is empowered to grant permission for the use of the building of the school for any purpose. Petitioner applied for permission to conduct "patana sibiram" in the Government High School, Pulamanthole. Third Respondent, the Headmistress of the school, who is the authority competent to accord the sanction under Rule 15(1) of Chapter IV, K.E.R. allowed the prayer as evidenced by Ext. P-2 order.

5. Rule 15A(1) of Chapter IV, K.E.R. states that notwithstanding anything contained in Rule 15, Government shall have power to issue directions that the school buildings and their properties (whether Government or private) shall not be used for any purpose specified in such directions. The directions so issued by Government shall be binding on the departmental authorities and the educational agencies. This shows that in case, Government has issued any direction contemplated by Rule 15A(1) of Chapter IV, provisions contained therein will be binding on all authorities which are to accord permission under Rule 15(1) of Chapter IV, K.E.R. Incase the direction given by the Government under Rule 15A(1) is violated, the Government alone has got the power to take action to cancel the permission accorded by the departmental authority. This power of the Government, it is conceded before us, has not been delegated to any subordinate authority including the Deputy Director of Education. Therefore it has to be held that the order issued by the Headmistress under Rule 15(1) of Chapter IV, K.E.R. should not have been interfered with by the Deputy Director of Education as has been done in this case. Viewed in this light, the learned Single Judge was perfectly justified in coming to the conclusion that the Deputy Director is not

invested with any authority to revoke the order passed by the Headmistress.

6. Learned Government Pleader placed before us G.O.(Ms) 68/84/Gen. Edn., dated 5th April 1984 and contended that Government have issued directions to the authorities not to accord sanction to anyone to use the school building or its premises for any drill or training which may lead to communal disharmony, ill-will and hatred between members of different religious denominations. The directions contained in the G.O. according to the learned Counsel is binding on all departmental authorities including the Headmistress of the school and the Deputy Director of Education. Consequently, it is contended that when the Headmistress passed an order in violation of the directions given in the Government order, the Deputy Director can interfere with the said permission. We are not in a position to agree with this contention.

7. The Government Order referred to stated that buildings and properties of any school whether Government or private, shall not be permitted to be used for any drill or training with or without arms by persons who are not students or members of the staff of the school. It went on to state that the buildings and properties of the school shall not also be permitted to be used for any activity which may lead to communal disharmony, ill-will and hatred between members of different religious denominations or sects or which may be prejudicial to maintenance of law and order. The Government Order went on to state that the heads of institutions in the case of Government Schools should ensure that the above directions is scrupulously observed, and any violation of it will entail disciplinary action without prejudice to any other action that may lie against them. This Government Order issued under Rule 15A of Chapter IV, K.E.R. binds the Headmistress of the school. She should have taken note of the provisions of the G.O. while granting the permission to the Petitioner. There is nothing on record to show that she did not take note of the Government Order while granting permission as evidenced by Ext. P-2. If she had violated the directions contained in the Government Order while issuing Ext. P-2 order she should be subjected to disciplinary action. But the violation by the Headmistress will not confer any jurisdiction on the Deputy Director of Education to interfere with Ext. P-2 order issued by the Headmistress. If Ext. P-2 order was found to be against the direction contained in the Government Order referred to earlier, the Government and the Government alone could interfere with Ext. P-2 order. Government has not moved its little finger to interfere with Ext. P-2. In such a situation, we are clear in our mind that the action taken by the Deputy Director of Education in issuing Ext. P-3 was without jurisdiction. Ext. P-3 is only to be ignored.

8. By Ext. P-2 Petitioner got a right to conduct "patana sibiram" in the Government High School, Pulamanthole. That right was interfered with by the Deputy Director by issuing Ext. P-3 without affording the Petitioner an opportunity of being heard in the matter. It means that Ext. P-3 order was issued in violation of the principles of natural justice. On that ground also Ext. P-3 has to

be quashed.

9. Learned Single Judge did not grant any relief to the Petitioner because he thought that the Deputy Director had in mind that there would be some sort of communal disharmony or some other matters in the matter of granting permission to the Petitioner to use the school premises. On this ground, the learned Judge refused to exercise the extraordinary jurisdiction under Article 226 of the Constitution. We do not find any materials to support this observation of the learned Judge.

10. By Ext. P-2 order, the Headmistress of the school granted permission to conduct "sibiram" in the school between 23rd December 1994 and 1st January 1995. Since the said period has already expired, we are not in a position to give any relief to the Appellant.

Writ Appeal is disposed of with the above observations. No order as to costs.

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