

(2016) 06 KL CK 0041
In the High Court Of Kerala
Case No : W.P.(C). No. 18842 of 2016 (E)

Jayasree

APPELLANT

Vs

Director of Public Instruction Thiruvananthapuram

RESPONDENT

Date of Decision : 10-06-2016

Acts Referred:

Constitution of India, 1950 — Article 21A
Kerala Education Rules, 1959 — Rule 12

Citation : (2016) 3 ILRKerala 467 : (2016) 2 KerLJ 881 : (2016) 3 KHC 300 :
(2016) 2 KLT 930

Hon'ble Judges : V. Chitambaresh, J.

Bench : Single Bench

Advocate : Dr. George Abraham, Sri. Lindons C. Davis, Advocates, for the Appellant; Sri. T. Ramaprasad Unni, Sr. Government Pleader and Sri. K. Mohanakannan and Smt. A.R. Pravitha, Advocates, for the Respondent

Final Decision : Allowed

Judgement

V. Chitambaresh, J.—The petitioner applied for admission of her daughter - Anusree - aged 5 years to Standard-I of Seetharam Upper Primary School ["the School" for short] situated in Palakkad District. The petitioner preferred the School for admission of her daughter as her elder son - Arun - is already a student of Standard-I of the same School. But Ext.P3 application has been rejected by Ext.P4 order of the fifth respondent Headmaster on the ground that permission of the Education Department is needed. Ext.P4 order further reflects that girl students are not normally admitted to the lower primary section even though the School is a mixed one. Ext.P4 order is challenged by the petitioner on the ground that it is violative of Rule 12 of Chapter VI of the Kerala Education Rules, 1959 ["the Rules" for short].

2. The fourth respondent Manager and the fifth respondent Headmaster of the School do not dispute the fact that the School is a mixed one as per the list of Schools maintained. But respondents 4 and 5 contend that no girl student has

been admitted to the lower primary section of the school for years and that the same is confined to boy students. The availability of other schools in the neighbourhood are also pointed out by respondents 4 and 5 to contend that there is no necessity to give admission to the applicant.

3. I have heard Mr. George Abraham, Advocate on behalf of the petitioner, Mr. T. Ramaprasad Unni, Senior Government Pleader as well as Mr. K. Mohana Kannan, Advocate on behalf of respondents 4 and 5.

4. The relevant provision is Rule 12 of Chapter VI KER which is extracted hereunder :-

12. Admission of Boys into Girls' Schools:- (i) All Primary Schools (Lower and Upper) shall be deemed to be mixed schools and admission thereto shall be open to boys and girls alike. But under Special circumstances the Director may exempt particular institutions from this rule so that admission there to might be restricted to boys or girls and in the absence of such special circumstances the Director may withdraw such exemption.

(ii) Admission to Secondary Schools which are specifically recognised as Girls Schools shall be restricted to girls only; but the Director may issue a general permission to boys below the age of twelve to be admitted to classes not higher than standard VII in particular Girls Schools Provided there are no Boys schools in the locality. But such boys on completing the age of twelve shall not be allowed to continue in such schools beyond the school year in which they complete the age of twelve.

(iii) Girls may be admitted into Secondary Schools for boys in areas and in towns where there are no Girls' Schools and in such cases adequate arrangements should be made for the necessary convenience. The admission will be subject to general permission of the Director in particular Boys' Schools which will be specified by him."

5. The Supreme Court has interpreted the above statutory provisions in Rt. Rev. Mark Netto v. Government of Kerala [1978 KLT 798] and the relevant part is extracted hereunder:-

"The language of clause (i) indicates that in all Primary Schools admission shall be open to boys and girls alike and such Schools shall be deemed to be mixed Schools. But it is open to the Director to exempt a particular institution from this Rule meaning thereby that if the School authorities so want, they may run the School for the admission of the boys or the girls only. Similarly clause (ii) of Rule 12 suggests that admission to Secondary Schools which are specifically recognised as Girls Schools shall be restricted to girls only, but with the permission of the Director boys below the age of twelve may be admitted. The purport of impugned clause (iii), however, is to enable the Director to permit the admission of girls into Secondary Schools for boys in areas and towns where there are no girls schools. In other words if there are other girls Schools

permission may be refused for admission of the girls in a School which has been run for imparting education to boys only."

6. It is abundantly clear therefore that all primary schools whether it be lower or upper shall be deemed to be mixed schools and admission thereto shall be open to boys and girls alike. No differentiation can be made between a boy and a girl as regards admission to the lower primary or the upper primary school since it is deemed to be a mixed school. A departure from this course is possible only if the Director of Public Instructions grants exemption in view of certain special circumstances. The Director of Public Instructions is even empowered to withdraw the exemption in the absence of special circumstances as per the express language of the provision. Special circumstances depend on ground realities and only in an extra ordinary situation can such an exemption be granted by the Director of Public Instructions.

7. On the other hand there is no necessity for either the Director of Public Instructions or any Educational officer to give permission to grant admission to a girl student in a primary school. The lower primary schools have standards I to IV and the upper primary schools have standards V to VII as per Rule 2 of Chapter II KER. Normally children upto the age of 12 years study in the upper primary section of the School who treat their classmates - girl or boy - alike without any oblique thoughts. A brotherly or a sisterly affection pervades amongst them and a mixed school at least upto the upper primary section as permitted in KER should be encouraged. A mixed school with a co-education helps the children to have healthy trends and isolation of them at this young age would only prove to be detrimental to their growth. It helps the children grow with better discipline and morality and the permission accorded in Rule 12(i) of Chapter VI KER is with a definite purpose as above.

8. Ext.P4 order refusing admission for the daughter of the petitioner in the lower primary section of the school in the absence of a permission from the Educational authorities is obnoxious. The same is wholly arbitrary and stems from a misreading of Rule 12 (i) of Chapter VI KER which governs the admission of boys and girls alike to all primary schools. Ext.P4 order is quashed and respondents 4 and 5 are directed to grant admission to the daughter of the petitioner in the school if she is otherwise qualified. Article 21-A of the Constitution of India and the Right of Children to Free and Compulsory Education Act, 2009 also lend support to this conclusion.

9. The Writ Petition is allowed. No costs.