
(1987) 09 KL CK 0035

In the High Court Of Kerala

Case No : W.A. No. 601/87 and connected cases

K. G Madhavan Pillai and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 29-09-1987

Acts Referred:

Constitution of India, 1950 — Article 14, 143(1), 226, 30
General Clauses Act, 1897 — Section 20, 21
Industrial Disputes Act, 1947 — Section 10(1)
Kerala Education Act, 1958 — Section 3, 3(3)(c), 3(5)

Citation : (1987) KLJ 1316

Hon'ble Judges : V. S. Malimath, C.J;V. Bhaskaran Nambiar, J

Bench : Division Bench

Advocate : T.P. Kelu Nambiar, P.K. appa Nair, M.I. Joseph, Govinda Bharathan, . K. Vijayan, P.N.K. Achan and K.A. Abdul Gafoor, for the Appellant; K. Sudhakaran Advocate General, for the Respondent

Final Decision : Allowed

Judgement

Bhaskaran Nambiar,.J.

1. A question of jurisdiction and the application of the principles of natural justice mainly arise for determination in all these appeals where the appellants challenge the decisions of a learned single Judge upholding a Government Order unilaterally cancelling an earlier permission granted to them to open/upgrade unaided recognised Schools in certain specified areas, The Kerala Education Act allows private schools to be recognised by the Government. These "recognised schools" as, defined under the Act, do not receive any financial aid from the Government, but can impart instructions only according to the prescribed curriculum of studies and can provisions have recognised standards of classes also only in accordance with the provisions of the Act. They are different from "aided schools" where the teachers and staff appointed by the private management are paid by the state and the managements receive substantial aid towards maintenance grant. We are concerned in these appeals only with

recognised schools and not with aided schools or Government or Departmental schools.

2. Schools require to be recognised as otherwise the students studying in these schools will not be permitted to sit for the examinations conducted by the State and they will not be eligible to avail of the opportunities for higher education or to enter public service, Recognition of school by the State is thus an important facet in the establishment of educational institutions.

3. On 6th March, 1986, the Director of Public Instruction published a list of areas indicating where new unrecognised schools of any or all grades are to be opened and existing lower primary schools or upper primary schools or both are to be upgraded inviting objection or representations against such list. The educational authorities conducted the necessary enquiries, considered the objections/representations and sent their reports with their views on the questions raised, to the Director. The Director, in his turn, considered the relevant aspects and finalised the list and sent his recommendation to the Government. The Government approved the list with some modifications. After the Government's approval, the Director published on 24th June, 1986 in the gazette "the final list of areas where new unaided recognised High Schools/Upper Primary Schools/Lower Primary Schools are to be opened or existing unaided L. P. Schools/Upper Primary Schools are to be upgraded in the year 1986-87". The Government included 122 areas in this list where the educational need required new schools or where existing schools are to be upgraded (Ext. P2 in O.P. No. 4515 of 1987).

4. The areas where recognised schools have to be established/upgraded having been thus ascertained and identified, the Director issued a Notification inviting applications for opening new schools or upgrading old schools. These applications are considered as provided in the Act and the Government take a final decision in the matter and a Notification is published showing the names of persons who are permitted to open new Schools or upgrade existing schools. A Notification was issued and published in these cases on 4th February 1987 and the appellants have been given permission to open schools (Ext. P4 in O.P. No. 4515 of 1987). In fact, the Government sanctioned opening/upgrading of 36 lower Primary Schools, 36 Upper Primary Schools and 19 High Schools totalling 91 schools as per this order. This was stayed by the Government itself by order dated 23rd February, 1987 and eventually cancelled by another order dated 19th May, 1987, to be referred to as Ext. P7 hereafter. The challenge is directed against this last order of cancellation and 49 out of the 91 applicants who were earlier granted the permission figure as the appellants.

5. Ext. P7 is challenged on four grounds : (a) that it was issued without jurisdiction; (b) that it was made violating all principles of natural justice; (c) that there was no application of the mind and (d) that it was based on irrelevant grounds.

6. The Advocate General appearing for the State strongly supported the

impugned order contending that right to establish a school arose only when recognition was given by the Government and as no recognition has been given to any of the appellants, they had no locus standi to challenge these orders. He asserted that there was jurisdiction for the Government to cancel the earlier order, that there was application of the mind at the highest levels, that no principle of natural justice was involved and that relevant grounds were taken into consideration for passing the impugned order. He went on to submit that in any case, this Court need not exercise its jurisdiction under Article 226 of the Constitution in appeal when one learned Judge refused to do so and when the quashing of the order will only result in manifest injustice of reviving an "obnoxious" order. We shall advert to the rival contentions in greater detail after referring to the scheme and provisions of the Kerala Education Act and the Rules.

7. The Kerala Education Act is meant "to provide for the better organisation and development of educational institutions in this State" The bill was referred by the President for the opinion of the Supreme Court under Article 143(1) of the Constitution of India and after receiving the opinion "In re Kerala Education Bill, 1957 (A.I.R. 1958 S.C. 956), the bill received the assent of the President on 19th February, 1959. The Act, except for a few provisions which are not relevant for our purpose, came into force on 1st June, 1959.

8. Section 3 of the Act directed that the Government shall take from time to time such steps as they may consider or expedient, for the purpose of providing facilities for general education, special education and for the training of teachers. To provide such facilities, the Government may (a) establish and maintain schools; (b) permit any person to establish and maintain aided schools or (c) recognise any school established or maintained by any person or body of persons. All schools existing on the date of the commencement of the Act are deemed to have been established in accordance with the Act.

9. Section 3 (5) is important. It reads:-

After the commencement of this Act, the establishment of a new school or the opening of a higher class in any private school shall be subject to the provisions of this Act and the rules made thereunder and any school or higher class established or opened otherwise than in accordance with such provisions shall not be entitled to be recognised by the Government.

10. The rules in Chapter V, of the rules relate to opening and recognition schools, and provide in sufficient detail the elaborate procedure to be followed before a school is recognised under the Act. The first step in this direction is to determine the areas where new schools are to be opened and existing schools upgraded and Rule 2 prescribes the procedure for this purpose, The Director has to prepare a list indicating the localities where new schools of any or all grades are to be opened and existing Lower primary schools or Upper primary schools or both are to be upgraded. In proposing such lists, he has to take into consideration the following matters:-

- (a) the existing schools in and around the locality in which new schools are to be opened or existing schools are to be upgraded;
- (b) the strength of the several standards and the accommodation available in each of the existing schools in that locality;
- (c) the distance from each of the existing schools to the area where new schools are proposed to be opened or to the area where existing schools are to be upgraded;
- (d) the educational needs of the locality with reference to the habitation and backwardness of the areas and
- (e) other matters which he considers relevant and necessary in this connection.

This provisional list is published in the gazette inviting objections or representations against such list. The educational authorities thereafter conduct the necessary enquiries, visit the areas and submit their reports to the Director. The Director, if found necessary, may hear the parties and finalised the list and send it to the Government along with his recommendations. The Government, then scrutinises all the records and may approve the list with or without modification.

The list as approved by the Government shall be published by the Director in the gazette. The decision of the Government is final as there is no appeal or revision against the same. However, a power of review is conferred under Rule 2(5) by an amendment inserted on 19-8-1981.

11. In the present case, Ext. P2 is the list of areas approved by the Government and published in the gazette on 24th June, 1986. Ext. P2 has become final. There is no challenge to this order and the Government have not exercised its power of review to cancel this order. There is also no case that the formalities prescribed under the rules have not been followed. The files placed before us also show that there has been a detailed consideration of all aspects when the list prepared by the Director was approved by the Government with slight modifications.

12. It is, therefore, clear that the Government have in these cases finally declared the areas where the educational need demanded the opening of new Schools or the upgradation of existing schools.

13. After the areas are so determined, the second step is provided in Rule 2-A. Rule 2-A insists that the Director shall by a Notification in the gazette call for application for opening new Schools or upgrading existing schools "in the areas specified" under Rule 2. The applications are submitted to the District Educational Officer in a prescribed form along with a prescribed fee and accompanied by certain documents mentioned in Rule 9. The D.E.O. conducts the necessary enquiries and submits his report to the Director. The Director then forwards the applications to the Government along with his report. The Government then take the final decision regarding the persons who are entitled

to open new schools in the areas specified and this decision is published in the gazette. In the present case, this order is Ext. P4 dated 4-2-1987. There is no appeal or revision provided against this order of the Government.

14. After the areas are determined and the persons who can be permitted to open schools are fixed, the third step is provided in Rule 11. There is some controversy as to whether Rule 11 applies or not about which we shall advert to later. But we are satisfied that it is rule 11 that applies and therefore the procedure prescribed under that provision, has also to be followed. If the Government are thus satisfied that permission to open new schools may be granted, the Government has to issue an order specifying (i) the Educational Agency in whose favour the permission is granted; (2) the grade of the school; (3) the standard or standards to be opened; (4) the location of the school; (5) the date from which the school should Start functioning and (6) the conditions to be fulfilled.

15. The fourth step is contained in Rule 14 where the fact of opening after obtaining permission under rule 11 is reported to the Educational Officer and the Director with a statement showing (i) the date of opening; (ii) the location; (iii) the standards opened; (iv) the names and qualifications of the staff; and (v) the accommodation and equipment provided. The Educational Officer is to visit the school immediately to report to the Director whether the conditions stipulated for opening the school have been satisfied.

16. The final step towards recognition is the application to be submitted in the prescribed form under Rule 16 (a) within three months from the date of opening of schools or additional standards. The conditions to be satisfied for the grant of recognition are provided in rule 17 thus:-

- (i) The school must have been opened with permission under Rule 11;
- (ii) Its financial conditions must be satisfactory and no instalment of the financial guarantee specified in Rule 7 must be in default
- (iii) Teachers must have been appointed in accordance with the relevant provisions in the Kerala Education Act and the Rules under it;
- (iv) The Educational Agency or the Manager that may be appointed by it must undertake in writing to have the school accounts annually audited by auditors approved by the Director or the auditors authorised by the Government;
- (v) The school must be necessary to meet the educational needs of the locality; and
- (vi) It must be conducted in accordance with the provisions of the Kerala Education Act, the Rules under it, and the directions issued by the Government or the Department from time to time.

17. If the conditions are satisfied, the final steps is to accord recognition under Rule 21 (2) from the date of opening of the schools. If any of the conditions are

not satisfied, temporary recognition can be given up to three years by the Educational Officer and thereafter only after approval by the Director. The rejection of recognition or withdrawal of recognition is/subject to the statutory remedies of appeal, revision, review etc.

18. In the present case, the second stage under rule 2 - A was reached when the Government after considering the comparative claims of the competing applicants decided and permitted the appellants to open recognised schools or upgrade existing recognised schools (Ext. P4). This was on 4th February 1987. After the appellants thus obtained an order in their favour, after the order was notified in the gazette as provided in Rule 2-A, the Government instead of proceeding with the next stage under rule 11, abruptly cancelled the same as per Ext. P7 order on 19th May, 1987, without any prior notice to the appellants. Ext. P7 reads thus :-

In the G.O. read as first paper above sanction was accorded to open/upgrade 91 unaided recognised schools of various categories during the academic year 1986-87. As per G.O. read as second paper above the orders issued in the said G.O. were kept in abeyance until further orders.

2. Government have/reconsidered the matter. At present there are more than 16000 schools in the State, Thousands of protected teachers will have to be absorbed from these schools. Every time a recognised school is started in an area, there is an immediate impact on the neighboring aided and Government schools leading to fall in strength and divisions, creating more protected teachers and thereby leading to wasteful expenditure. The 91 schools sanctioned were at the fag end of the academic year 1986-87 and it was not possible to start the schools during the same year. Many schools do not fulfil the conditions for starting the schools. In several cases exemption will have to be given to fulfil the conditions year after year. As such Government strongly feel that instead of starting new schools the existing schools should be strengthened in all respect, i.e., site, building, equipment etc.

3. In the circumstances the orders issued in the G.O. read as first paper will stand cancelled. No recognised schools will be upgraded or sanctioned during 1987-88 also.

19. That there has been, in any case, a patent violation of the principles of natural justice is perfectly clear. But no such principle arises according to the learned Advocate General, for, no rights of the appellants are affected and they have no rights in praesenti to be safeguarded. This question has therefore to be tackled first, as the locus standi of the appellants to challenge Ext. P7 is closely connected with this issue.

20. The learned Advocate General contends that under the Act, in Section 3 (3) (c), the Government may recognise schools established and maintained by any person for providing for general education, special education etc. and thus recognition alone gives any right to any educational agency. Before such

recognition, according to the Advocate General, there are no lights recognised by the Act enuring in favour of any educational agency. He proceeds to elaborate this contention by stating that under the rules in Chapter V, after the decision is taken under rule 2-A to permit opening of schools, another direction is called for under Rule 11 and when admittedly no such direction has been issued, there is not even any order permitting the appellants to open schools. When the appellants have not secured any legal right to open schools, the Government's jurisdiction to cancel the order, before any statutory right has accrued, cannot be questioned and they cannot approach this Court either. So the contention runs.

21. We have noticed that under the Act and the rules, the second stage in the process for grant of recognition to establish schools is to decide the claims of persons who should be permitted to open schools, after the areas, where the educational needs demand a new school or upgradation of an existing school, are determined and ascertained. The second stage in Rule 2-A is the first time where a decision is taken in favour of any individual or body of persons. It is thus a decision taken on the merits of the applicants who qualify for opening/upgrading schools. The rule itself speaks of a "decision" by the Government. Without this basic decision, no further steps can be taken to establish a recognised or aided school. The decision under Rule 2-A clothes the applicants in whose favour a decision is rendered with a right to open/upgrade schools. It is a decision contemplated under the statute and demanded by the Act and the rules. If this decision is annulled by any authority, the aggrieved party should necessarily have a remedy. It cannot be said that he is not aggrieved and he has no locus standi. It is difficult" to accept the contention of the Advocate General in this regard.

22. It is necessary to consider the scope of Rule 11 also, for, it is the Advocate General's contention that after the decision under rule 2-A, a further direction is called for under Rule 11 and when no such direction is so far issued, no right accrues.

23. Rule 11 provides that if Government are satisfied that permission to open schools included in the development plan may be granted, they may issue an order to that effect specifying certain particulars. The rule on its plain reading applies only to schools included in the development plan and therefore the appellants contend that this rule has no application as there is no case that the schools with which we are concerned in these appeals are included in any development plan. There is no other rule which speak of a development plan in Relation to establishment of schools. But the legislative history gives us a, clear indication regarding the meaning to be given to the expression "development" plan. Before rule 2-A was inserted on 19th August, 1971 the provision for application for permission to open schools was contained in rule 2. There was no separate provision for deciding about the areas where schools are required to be opened. Rule 10 prescribed that after these applications are received, the educational authority shall consider them with reference to; the following

particulars:-

(i) the existing schools in and around the locality in which the proposed school is to be started.

(ii) the strength of the several Standards and the accommodation available in each of the existing schools; (iii) the distance from each of the existing schools to the site in which it is proposed to locate the new school;

(iv) the nature of the management and the guarantee it offers of the financial stability; and

(v) the extent to which the educational needs of the locality require a new school;

and shall then prepare the development plan indicating the new; school to be opened.

24. A development plan under Rule 10 thus showed the new schools to be opened. Rule 11 thereafter prescribed a subsequent formal order to be issued regarding schools in the development plan. Rule 10 was deleted in 1971 when rule 20 was amended and rule 2-A was inserted making separate detailed provisions for earmarking the area where schools have to be opened and for deciding the persons who should be permitted to open such schools. Even "then rule 11 was not amended deleting the word "development plan". Considering this legislative history, we can safely infer that the development plan in rule 11 relates to the plan for development of education indicating the new schools to be opened as envisaged in Rule 2-A. When, therefore, the Government decide that the education need of an area requires more schools and then indicates where the new school is to be opened, it is part of a development plan for education and the school is included in that plan. A development plan is thus implicit in the amended rule 2-A and it is a compendious expression to denote, the areas; requiring new upgraded schools and the location of the schools in these areas. It is also relevant to note that in rule 17, the first condition to be satisfied for the grant of recognition is that the school must have been opened with the permission under rule 11. Rule 11 should therefore have necessarily a meaning of general application and if it is restricted to a development plan, where none exists, rule 11 and rule 17(1) both become inoperative. A harmonious construction giving meaning and relevance has, therefore, to be adopted to achieve the object to be secured namely, "development of the educational institutions". So understood it has to be held that rule 11 applies to all cases where the Government renders a decision under rule 2-A. Rule 11 formality is a sequel to a decision under rule 2-A. We are inclined to accept the contention of the Advocate General in this regard that a direction under Rule 11 is required, after a decision under rule 2-A is rendered.

25. Even then, it does not support his plea that unless an order under Rule 11 is made, no rights accrue. Rule 11 is reached after a decision is taken under Rule 2- A. Rule 11 prescribes the formalities to be followed after a decision is taken

regarding the educational agency to be permitted to open/upgrade schools. Refusal to follow the consequential formalities prescribed under Rule 2-A thus cannot affect the validity or efficacy of the decision taken under Rule 2-A. The direction under rule 11 has to follow and not precede the decision under Rule 2-A. In this view also the locus standi of the appellants to assail Ext. P7 which cancelled the earlier decision under rule 2-A cannot be challenged.

26. In this dilemma, the learned Advocate General raised the novel contention that a right to establish a recognised school is only a "privilege" and therefore the Government could always withhold the privilege whether a decision under Rule 2-A is rendered or not. In other words, the contention as we understood is that the decision under rule 2-A fixing the persons who can be permitted to open/upgrade schools is only the grant of a privilege which will not confer any right on the appellants or any person in whose favour a decision is rendered under rule 2-A. It seems to us, with great respect to the learned Advocate General, that after the opinion of the Supreme Court in *Re Kerala Education Bill* in 1957 and all the later decisions of the Supreme Court on the subject, the contention that the right to establish a school is a privilege which can be granted at the Government's sweet will and pleasure is too tall a claim to be accepted.

27. When the Kerala Educational Bill was referred to the Supreme Court for its opinion under Article 143 (1) of the Constitution, the question related to the infringement of the Fundamental Right under Article 14 and Article 30 of the Constitution. If there was no right involved, then there was no question of violation of any fundamental right. But the Supreme Court considered in great detail the various provisions of the bill, the right that is involved in the establishment of the schools and the infraction of that right under the proposed enactment. To say, that the Supreme Court need not have considered those questions, but should simply have answered the questions in one simple sentence that there was no right, much less any fundamental right to attract Articles 14 and 30 and what was involved was only a "privilege" is to miss and misunderstand the whole gamut of the reference made by the President. We have no hesitation in holding that the Government does not distribute any largess or privilege when it permits establishment of schools to be recognised under the Kerala Education Act. The establishment of an educational institution cannot be equated to the grant of a privilege to conduct liquor trade or to take forest produce from Government Lands. Article 30 (1) of the Constitution speaks of the "right to establish and administer educational institutions". Article 30(2) provides that "the State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language".

28. The Supreme Court In *Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, observed thus:-

..Without recognition, therefore, the educational institution established or to be established by the minority communities cannot fulfil the real objects of their

choice and the rights under Art. 30(1) cannot be effectively exercised. The right to establish educational institutions of their choice must, therefore, mean the right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions. There is, no doubt, no such thing as fundamental right to recognition by the State but to deny recognition to the educational institutions except upon terms tantamount to the surrender of their constitutional right of administration of the educational institutions of their choice is in truth and in effect to deprive them of their rights under Art 30(1)

29. But the learned Advocate General relies on *Punnose v. Nair Service Society* (1984 K. L. T. 736) to advance the contention that establishment of an educational school is only a privilege. The mere fact that the learned judges of this court have used the expression privilege in the course of the judgment does not mean that this court has held that the establishing of a school is merely a privilege. In fact, the question whether it is only a privilege, or a right, did not arise for consideration in that decision. That decision, with great respect, cannot be taken as an authority for the proposition that the establishment of a school is only a privilege. In fact, that decision itself proceeds on the assumption that the Act has conferred rights etc. when their Lordships observed thus:-

On a close scrutiny of the provisions of the Education Act and the Rules it is fairly clear that the educational agency is only an agent of the Government with certain rights conceded by the Education Act and the Rules framed thereunder and also certain rights on the minority communities guaranteed under the Constitution to establish educational institutions of its own.

30. Thus rejecting the contention of the Advocate General, we hold that the appellants have locus standi to approach this Court under Article 226. We shall proceed to consider the other aspects involved.

Competence to issue the impugned order

31. The Government in Ext. P7 cancelled the decision taken under rule 2-A of Chapter V, of the K.E.R. This rule does not provide for any appeal or revision by the Government. There is thus no power expressly conferred on the Government to cancel a decision arrived at under rule 2-A. At the earlier stage, when the area where the educational requirement demand a new or upgraded school has to be specified as in rule 2, there was initially no power for the Government to review its own decision. An express power for review was conferred in 1981 when rule 2(5) was substituted, thus:-

No appeal or revision shall lie against the final list published by the Director. Provided that the Government may either suo motu or on application by any person objecting to the list published by the Director under sub-rule (4) made before the expiry of thirty days from the date of such publication review their order finalising such list and make such modifications in that list as they deem fit by way of additions or omissions if they are satisfied that any relevant ground

has not been taken into consideration or any irrelevant ground has been taken into consideration or any relevant fact has not been taken into account while finalising the said list:

Provided further that no modification shall be made under the preceding proviso without giving any person likely to be affected thereby an opportunity to make representations against such modification.

The Explanatory Note to this amendment read thus:-

The intention is to confer on Government powers to the effect that Government shall have the power to review the final list of new schools published by the Director of Public Instruction. Hence the amendment.

Where therefore the Government decided to confer powers of review on itself, it amended the relevant rules and armed itself with the necessary power. No such power of review is conferred under rule 2-A so far. Moreover, whenever and wherever the Government decided to confer power of appeal, review, revision in the same Chapter, it has done so by making express provision in that behalf (See Rule 23-A- Review regarding withdrawal of recognition. Rule 23-B- Appeal against an order refusing or withdrawing recognition. Rule 23-BB Government's power of revision). When in Chapter V, of the K.E.R., the rule making authority has inserted provision for appeal, review, revision or appeal in several cases and not provided for any appeal, review of revision under rule 2-A, it has to be held that the rules do not expressly or impliedly confer any power of revision or review of the decision under rule 2-A. Thus the Government did not have any power of review or revision of the order dated 4-2-1987 (Ext. P4) under the K.E.R.

32. Faced with this difficulty, the learned Advocate General relied on Section 20 of the Kerala General Clauses Act (corresponding to Section 21 of the Central Act). It reads thus :-

Power to make, to include power to add, to amend vary or rescind, orders, rules or bye-laws. Where by any Act, power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions if any, to add to, amend vary or rescind any notifications, orders, rules, or bye-laws so issued.

The arguments therefore proceed that the Notification issued u/s 2-A(5) of the rules can thus be cancelled by invoking the provision of the General Clauses Act as the power to issue the Notification carried with it the power to amend, vary or rescind the same. If this broad contention is accepted, any order, rule, Notification issued under any Act can be withdrawn and cancelled, notwithstanding the other express provisions in the Act itself. This contention ignores the role of the General clauses Act in the interpretative processes of various statutes and runs counter to well defined and accepted positions of law as laid down by the Supreme Court in several decisions.

33. In *Kamla Prasad Khetan Vs. The Union of India (UOI)*, , it was held thus:-

It is to be remembered that S. 21 of the General Clauses Act embodies a rule of construction, and that rule must have reference to the context and subject-matter of the particular statute to which it is being applied;.....

34. The power of the Government to cancel or supersede a reference made u/s 10(1) of the Industrial Disputes Act invoking the implied powers of cancellation and revocation of the General Clauses Act arose before the Supreme court in *The State of Bihar Vs. D.N. Ganguly and Others*, . It was observed thus:-

It is conceded by Dr. Bannerjee that the Act does not expressly confer any power on the appropriate government to cancel or supersede a reference made under S.10(1) of the Act. He, however, argues that the power to cancel or supersede such a reference must be held to be implied, and in support of his argument he relies on the provisions of Sec. 21 of the General Clauses Act, 1897 (X of 1897). Section 21 provides that "where by any Central Act or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.

It is well settled that this section embodies a rule of construction and the question whether or not it applies to the provisions of a particular statute would depend on the subject-matter, context, and the effect, of the relevant provisions of the said statute. In other words it would be necessary to examine carefully the scheme of the Act, its object and all its relevant and material provisions before deciding whether by the application of the rule of construction enunciated by Sec. 21, the appellant's contention is justified that the power to cancel the reference made under Sec. 10(1) can be said to vest in the appropriate government by necessary implication. If we come to the conclusion that the context and effect of the relevant provisions is repugnant to the application of the said rule of construction, the appellant would not be entitled to invoke the assistance of the said section. We must, therefore, proceed to examine the relevant provisions of the Act itself.

In our opinion, if the legislature had intended to confer on the appropriate government the power to cancel an order made under Sec. 10(1) the legislature would have made a specific provision in that behalf and would have prescribed appropriate limitations on the exercise of the said power.

If the appropriate government has by implication the power to cancel its order passed under S. 10(1), the proceedings before the industrial tribunal would be rendered wholly ineffective by the exercise of such power.

The discretion given to the appropriate Government under S. 10 (1) in the matter of referring industrial disputes to industrial tribunals is very wide; but it seems the power to cancel which is claimed is wider still; and it is claimed by

implication on the strength of S. 21 of the General Clauses Act. We have no hesitation in holding that the rule of construction enunciated by S. 21 of the General Clauses Act in so far as it refers to the power of rescinding or cancelling the original order cannot be invoked in respect of the provisions of S. 10 (1) of the Industrial Disputes Act.

35. Thus Section 20 of the Kerala General Clauses Act embodies only a rule of construction. This rule, in the interpretation of any statute must have reference to the context and the subject matter of the provisions of that particular statute. If the context and content and object of a statute preclude the application of Section 20 of the General Clauses Act, the rule of construction in section 20 cannot be implied and imported to provide any additional power or authority to cancel or revoke any notification, order etc not contemplated by the Act.

36. Applying the principles laid down by the Supreme Court, it is clear that the Government have not expressly conferred on itself any power of revision under rule 2-A. Whenever the Government intended to arm itself with such powers, it did so by suitable provisions being made or inserted by amendment. Rule 2-A envisages only the consideration of the claims of the competing applicants and when all the educational authorities and finally the Government consider the whole matter with reference to relevant factors and eventually the Government render the decision, the absence of an express provision for review in the Government itself is indicative that no such power was intended or required to be reserved on the very authority which has considered all aspects. Moreover, if a power of cancellation is implied u/s 20 of the General Clauses Act, there is no time limit when it could be exercised and it could be so exercised before or after recognition has been given later, after the entire building has been constructed and the school opened. Section 20 of the General Clauses Act cannot thus be imported in the context to give an arbitrary power of cancellation of the decision rendered under Rule 2-A. The rules in Chapter V, are intended to regulate the field of education in the establishment of schools and they afford statutory guidance to avoid arbitrariness. These rules constitute one integrated process leading to recognition of educational institutions.

37. We have, therefore, no hesitation in holding that the Government did not have any power or jurisdiction conferred u/s 20 of the General Clauses Act to cancel the decision rendered earlier under Rule 2-A, Chapter V, of the K.E.R.

38. The learned single Judge did not advert to the limitation in the application of the rule of construction embodied in Section 20 of the Kerala General Clauses Act or to the provision for appeal, revision and review provided against the other orders and decisions in the same Chapter relating to establishment of schools when the question of jurisdiction was summarily rejected thus:-

Once it is agreed that the Government has power to sanction schools, it is difficult to accept that the Government has no power to cancel the same for relevant reasons.

And again :

It cannot be said that the successor Government (if it can be so called) should not review the decision in the light of the policy which they are inclined to follow, without of course violating the law.

A policy decision of the Government, naturally executive or administrative in nature, cannot be implemented against the tenor and text of any statute in force. A policy decision, even there is any, cannot arm the Government with a power of revision or review over orders passed under any statute where no such power is conferred expressly or impliedly under that statute. The State cannot administratively clothe itself with a statutory power of revision. When the subject matter is regulated by a statute, a policy decision contrary to the statute cannot be given effect to except by suitable amendment to the statute or the rules.

39. Ext. P7 is therefore without jurisdiction and has to be quashed on that ground also.

Principles of Natural Justice

40. After a decision was rendered under the statute under rule 2A (Ext. P2), it was unilaterally cancelled by the Government without any prior notice, without any hearing given to any of the aggrieved person including the appellants. It is admitted that Ext. P7 was not preceded by any show cause notice or any opportunity being offered to the appellants and others similarly placed. The files placed before us also do not show that there was any hearing or consideration of the contention of the appellants and others.

41. Though this argument was not raised before the learned single Judge in the form in which it is raised in these appeals, the learned Judge seems to take the view that there was no duty cast on the Government to consider the claims of any person even after the Government finds educational need for a new school in any area and thus the cancellation was in the exclusive domain of the Government, implying thereby that no principle of natural justice applied. The learned Judge held thus:-

I am not able to agree that Since the procedure laid down in Rule 2 is completed, necessarily in the local areas covered by the final list Government are obliged to sanction schools or upgradation of the schools. If the Government proposes to recognise new schools or sanction upgradation of recognised school, that can be done only after following the procedure prescribed in Rules 2 and 2A of Chapter V. Sanction or recognition cannot be accorded without following the procedure which is prescribed in public interest.

The converse is not true. It does not mean whenever the procedure is followed Government is bound to sanction schools. Sanction of school will depend upon consideration of various circumstances and public interest and the plans which the Government may have for development in the field of education.

42. We cannot, with respect, agree with this dictum. The Education Act is intended to provide for a "varied comprehensive educational service throughout the State" and for the development of educational institutions. Section 3(5) directs that after the commencement of the Act, the establishment of a new school shall be subject to the provision of the Act and the Rules made thereunder. The rule has provided for an elaborate procedure for establishment of schools and for their recognition. It is in pursuance of this legislative intent and scheme and the provision of the Act that the rule insists that as the first stage, the area where the educational need demands the opening/upgrading of schools should be determined. When once the area is so demarcated, when once the need is statutorily found, the State cannot go into hibernation, and refuse to meet the need by non-establishment of new schools or the upgradation of the existing schools. Otherwise, the Government will be abdicating its statutory duty enjoined under the Act. The State cannot create a vacuum after finding that there is, educational need for a new/upgraded school. It is for this reason that rule 2-A states that after the publication of the final list of the areas where new schools have to be opened or existing schools have to be upgraded, the Director shall call for applications for opening new schools. Rule 2-A is a statutory mandate to be complied with after the declaration of the educational need and the identification of the areas where the need exists. It is not possible to agree therefore that the Government have a choice to continue or not to continue the proceedings under rule 2-A even after the need has been found under rule 2. In this view also, at the stage of determination of the competency of the applicants to open schools under rule 2-A, a decision has to be taken as a statutory obligation. When such a decision is rendered after following the principles of natural justice engrafted in the rule itself, it cannot be held that for cancellation of the said decision, no principle of fair play arises.

43. Without an order under rule 2-A, no steps can be taken for establishing a school under the Act and to obtain recognition later. The order under rule 2-A is decisive. If this order is to be revoked, it is elementary that the persons in whose favour this order was passed is given notice and hearing. As this was not done, Ext. P7 is bad for violating of the principle of natural justice,

44. What can be noted from the files placed before us by the learned Advocate General is that the Commissioner and Secretary General Education, makes a note on 10th April 1987 and the Hon"ble Minister for Education endorses it on 16th April 1987 with a remark "No such school need be opened or recognised in 1987-88 or 1986-87". In fact, the file does not show that the Commissioner has called for any remarks from the Director or any officer of the Education Department before he opined "there is no justification for sanctioning any more schools at present of any category, least of all recognised schools". The Government did not address itself to the question whether there was jurisdiction to recall the earlier order and whether it was necessary to follow the principles of natural justice by notice and hearing before the earlier order was cancelled.

Reasons - relevant or not

45. In Ext. P7, the reasons given are these:-(1) Every time a recognised school is started in an area, there is an immediate impact on the neighboring aided and Government schools leading to fall in strength and divisions-creating more protected teachers and thereby leading to wasteful expenditure.

(2) The 91 schools sanctioned were at the fag end of the academic year 1986-87 and it was not possible to start the schools during the same year.

(3) Many schools do not fulfil the conditions for starting the schools. In several cases exemption will have to be given to fulfil the conditions year after year.

(4) The existing schools should be strengthened in all respect, i.e. site, building, equipment etc. And then said "no recognised schools will be upgraded or sanctioned during 1987-88 also", Ext. P7 cancelled only Ext. P4 dated 4-2-1987, the decision under rule 2-A and did not cancel the earlier notification under rule 2 regarding areas where schools have to be opened/upgraded. The Government could not also have cancelled that order for, the time prescribed under rule 2 (5) is already over.

46. The first reason stated in Ext. P7 is that starting of a recognised school has its immediate impact on the neighboring aided and Government schools resulting in fall in strength and divisions, creation of more protected teachers and resulting in wasteful expenditure. These are aspects to be considered under the earlier provision in rule 2 when the Government have to determine the areas where the educational need requires the establishment of new/upgraded schools. Rule 2 specifically states that in preparing the list of such areas, the factors to be taken into consideration shall include (a) the existence of schools in and around the locality in which new schools are to be opened or existing schools are to be upgraded and (b) the educational needs of the locality. It was after taking into consideration all these facts that Ext. P2 was issued under rule 2. That order has become final. Therefore no question arises for determination of the same question in the subsequent proceedings under rule 2-A, when the claims of the applicants who should be permitted to open schools have alone to be decided. Thus in cancelling Ext. P4 issued under rule 2-A, the Government have taken into consideration facts not germane for consideration at that stage, facts which have already been considered at an earlier stage and orders passed which have already become final. Proceedings under Rule 2-A are not intended to reopen facts found under the earlier rule 2. Facts which cannot thus be re-opened under rule 2-A cannot be made use of after an order is passed under rule 2-A to cancel the same.

47. Moreover, even if teachers in aided or Government schools become surplus consequent on the fall in strength or reduction in the number of divisions, there is no statutory duty to pay the teachers who have no work and who have not been temporarily accommodated in other aided or Government schools. Wasteful expenditure on this account seems to be only a surmise. If the Government have

issued any executive order (we have not been shown any) under which they undertook to pay "protected teachers" even if they are not absorbed or accommodated elsewhere, the remedy seems to cancel those executive orders, which is well within the power of the Government, rather than refuse to meet the educational need for expansion by starting/upgrading new schools.

48. The second ground stated in Ext. P7 is that the schools have been started at the fag end of the academic year, and it was not possible to start the schools during the academic year 1986-87. Here again, the Government seems to have stressed on the time factor for opening of the school at the wrong stage and at the wrong time, contrary to the provision in the K.E.R. It is only after the order under rule 2-A is passed, after the claims of the applicants entitled to open the school are settled, that the Government have to issue a direction under rule 11 showing "the date from which the school should start functioning". That power has not been yet exercised. The learned single Judge himself notes that the decision under rule 2-A was delayed because of certain stay orders from this Court. The fact therefore that order under Rule 2-A was passed only on 4-2-1987 does not invalidate the order. There was no statutory compulsion that the school should be opened, and the recognition should be obtained in the same year, namely, 1986-87.

49. It is also significant to note that there was a fixed time schedule under rule 2 prior to its amendment in 1971 fixing the last date for receipt of applications and last date for issue of orders before the 10th of February. It also provided that the Government may revise the dates if found necessary. After the amendment, rule 2 stated that the list of areas prepared by the Director shall be published in the gazette by the end of January of the year of publication. In 1982 this provision was amended omitting the time limit of January. Similarly under rule 2-A originally, the Director was bound to call for application only in the month of October. These words were omitted in 1983 and now the rule only reads that the Director shall, by a notification call for applications. When a fixed time schedule has been given up under the Act, when the date for opening schools has to be fixed only at a later stage the Government was wrong in stating that Ext. P4 was bad because it was issued at the fag end of the year. In Fact, rule 2-A does not contemplate the fixing of any year for opening of the schools and the Act and the rules do not envisage recognition being given every year. When once the school is established according to law, recognition follows and it is revoked only when there are grounds made out as provided under the rules. The issuance of Ext. P4 under rule 2-A only in February 1987, therefore, is not bad on the ground that it was issued at the fag end of the year. The reason is patently erroneous.

50. The third reason stated is that many schools do not fulfil the conditions and that exemption will have to be given to fulfil the conditions. This again, seems to be proceeding on wrong lines at the wrong time

51. It is only under rule 11 after the decision is taken under rule 2-A that the Government gives directions that certain conditions have to be fulfilled. The

Government have not yet prescribed the conditions for it has no case that rule 11 direction has been issued. If conditions are not fulfilled, Rule 15 provides for withdrawal of permission. There are conditions to be satisfied before recognition is granted. That stage has also not reached.

52. The last reason is that no recognised schools/will be upgraded or sanctioned during 1987-88 also. There is absolutely no basis for any such decision except for the minutes of the Hon"ble Minister for education. Neither the file, nor the pleadings show why recognised schools cannot be recognised for 1987-88 also. The Act enables recognised schools to be established according to the prescribed procedure. After the first stage in the procedure, it was found that recognised schools have to be opened or upgraded in certain localities With that finding recorded, a finding which is final under the statute, the Government cannot de hors the statutory finality, conclude that no recognised schools will be allowed. The result now is that even though there is educational need for recognised schools in certain areas even though there are qualified and accepted applicants for opening such schools, the Government say that they will not allow such schools to be opened in 1987-88 and thus the time and energy spent to follow the statutory procedure under rule 2 and the decision arrived at in consequence can be ignored by an administrative fiat that no such schools to be opened. Preventing recognised schools to be opened in such circumstances, where the need is statutorily felt and recognised is plainly arbitrary, This reason also on the face of it, is untenable.

53. Thus (he reasons given in Ext. P7 are untenable, irrelevant and extraneous and judicially unacceptable. Ext. P7 is bad for this reason as well.

Application of the mind

54. It is clear from the proceedings Ext. P7 and the file produced that there has been no application of mind to the facts of each case. 91 persons/bodies were given permission to open schools. 49 of them have come to this Court. Ext. P7 does not speak of any individual case. It says that there are institutions which have not fulfilled the condition imposed. It does not refer to those institutions. Assuming some of the applicants did not fulfil the conditions, and that is a good ground for revocation of the decision under rule 2-A, the cancellation could apply only to those applicants who did not fulfil and not to all the persons generally. We are left in no doubt that Ext. P7 was issued without applying the mind to all relevant facts in each particular case separately, and without advertng to the jurisdictional issue and without referring to the scheme and provisions of the Kerala Education Act and the Rules.

55. Ext. P7 order dated 19-5-1987 is arbitrary, unjust and opposed to the provisions of the Kerala Education Act and the Rules. We make it clear that there is no mala fides levelled or found in the issuance of the impugned order.

56. The learned Advocate General, however, submitted that in any case this Court shall not quash Ext. P7 to restore an unjust order. Ext. P4. We have not

been shown that Ext. P4 deciding about the persons entitled to be permitted to open/upgrade new schools is patently unjust or is not in accordance with the Act and the rules. We note from the file that there has been substantial if not a faithful compliance with the procedure prescribed under the K.E.R before the order were issued under rule 2 (Ext. P2) and under rule 2-A (Ext. P4). There has been an application of the mind of the educational authorities, the Director and the Government at the appropriate levels. Those findings of fact are not in challenge and are beyond challenge after the prescribed period. Ext. P4 cannot be brushed aside as an "obnoxious" or "Mysterious" order. It was made and then published in the gazette. The fact that the same Government stayed it for some time does not mean that the order was bad from its inception. By quashing Ext. P7, no unjust order is revived; an order under rule 2-A of the K.E.R. passed in accordance with the statute and published in the gazette alone survives. This contention has also to be rejected.

57. Before we close, we hasten to add that we have not pronounced on the claims to obtain recognition by the appellants. That stage has not reached. It will be open for the authorities and the Government to deal with the applications for recognition by schools opened/upgraded by the appellants and those similarly situate according to law. Our decision is limited to the validity of the order cancelling Ext. P4 issued under rule 2-A, Chapter V, K.E.R.

58. We are also not referring to the claim of some of the appellants that pursuant to the order, Ext. P4, they have constructed buildings, opened schools, admitted students, appointed teachers, as those facts are not necessary to consider the validity of Ext. P7. They are matters to be considered at the later stages leading to the claim for recognition of the schools. It has to be noted that the Act and the Rules allow coaching of students in private institutions and allowing those students to sit for examination through aided, recognised or Government schools. When such institutions exist, as it is alleged by some of the applicants, and the area where those schools are situate, are found to be in need of educational expansion by allowing recognised schools to be opened or upgraded, it may be that after a decision under rule 2-A is taken in their favour, those factors will have to be taken into consideration at the time when recognition has to be granted. At that stage, the authorities may still have to consider whether even those institutions satisfy the requirement of the Act and the rules for recognition. The files placed before us also show that the authorities were also aware that such schools were existing in large numbers in this State. It is not necessary to consider these aspects, stressed before us by some of the appellants in the view we have taken on the invalidity of Ext. P7. Ext. P4 order under rule 2-A was stayed by order dated 20th February, 1987 (Ext. P5). The stay ceased to operate when Ext. P7, the impugned order, was issued. The stay order Ext. P5. does not revive when Ext. P7 is quashed. The scheme of the Act does not allow a decision under rule 2-A to stagnate. It is unnecessary to quash Ext. P5, as it has become ineffective and infructuous.

In the result, we allow these appeals, set aside the judgments of the learned single Judge, quash Ext. P7 dated 19-5-1987 issued by the Government and direct the State to proceed to take the further steps commencing from Rule 11, Chapter V, of the K.E.R. on the basis of the order Ext. P4 passed on 4-2-1987 under rule 2-A of the K.E.R. The appeals and the Original Petitions are allowed accordingly and the parties, in the circumstances of this case, shall bear their costs.