
(2013) 06 KL CK 0069

In the High Court Of Kerala

Case No : Writ Petition (C) No. 11257 of 2012

Kalyani Amma

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 04-06-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 3 KHC 77 : (2013) 3 KLJ 101 : (2013) 3 KLT 65

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : P.K. Suresh Kumar and K.P. Sudheer, for the Appellant; K.A. Jaleel), Government Pleader (T.T. Muhammoood), V.A. Muhammed, S.P. Aravindakshan Pillay, N. Santha, Peter Jose Christo, S.A. Anand and V. Varghese, for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—Petitioner is the Manager of a Higher Secondary School governed by the provisions of the Kerala Education Act, 1958 and the Kerala Education Rules, 1959, for short, "KER". She complains that if the Government Upper Primary school, Vanmugham is upgraded as a High School under the Rashtriya Madhyamic Siksha Abhiyan Scheme, hereinafter referred to as "RMSA Scheme", that will adversely affect the Higher Secondary school of which she is the Manager. The crux of the petitioner's apprehension is that if the Government Upper Primary School is upgraded, the number of students who join the secondary wing of the petitioner's school would fall drastically resulting in retrenchment of teachers and other members of the staff. The Writ Petition is, therefore, filed challenging Ext.P2 by which the Government considered the petitioner's representation and rejected it. By that Government Order, the Project Director, R.M.S.A. Scheme stands directed to go ahead with the proposal for upgradation of the Government Upper Primary school observing norms and procedure stipulated under the said Scheme. The fundamental ground on which the Government decision is challenged is that it is founded wholly on false

information provided by the Assistant Educational Officer and that even as per that Government Order, no primary school can be upgraded under the R.M.S.A. scheme if a secondary school is located within a distance of 5 kms. The factual foundation for this contention is the plea of the petitioner that the distance between her school and the Government Upper Primary School is only about 3 1/2 kms and therefore, the Government Upper Primary School cannot be upgraded. Petitioner criticizes the materials relied on by the Government regarding the distance between two schools.

2. In answer, the Government have filed a counter affidavit and an additional counter affidavit. We may immediately note that the learned senior counsel appearing for the writ petitioner pointed out that in the counter affidavit, the Government had stated that the distance between two schools under the R.M.S.A. Scheme is 5 kms. However, the learned Additional Advocate General pointed out that the additional counter affidavit has been filed rectifying the said erroneous statement in the counter affidavit filed initially and the fact of the matter is that R.M.S.A. Scheme envisages that there should be "at least one school" within a radius of 5 kms. He also made reference to Ext.P5 information obtained under the Right to Information Act, 2005 and produced by the writ petitioner along with her reply affidavit. The Parent-Teachers' Association also supported the Government decision and has pointed out that though the school is situated in a socially and economically challenged backward area, the local people have done their best to provide the facilities to have the Government upper Primary School upgraded to a High School.

3. Before we proceed further, we may note that this Writ Petition is before the Division Bench on a reference by the learned single Judge in the light of an earlier reference order noticing that there is divergence of opinion expressed by two Division Benches in *Punnose v. Nair Service Society* (1984 KLT 736) and *W.A. No. 1042 of 2012* since reported as 2013 (3) SCT 429 (Ker) . Having bestowed our anxious consideration, we are of the view that the views expressed by the Division Bench in those two cases are not pointedly on the issue as to whether the Manager of an aided school can object to the upgradation of Government upper primary school into a High School. That apart, in *Punnose's* case, the Division Bench did not speak as such, on any question of locus standi or on the jurisdiction of the High Court under Art. 226 of the Constitution. The said judgment proceeded to consider the objections raised against the proposed upgradation of an upper primary school and held that the objector did not have any right to sustain any such objection on the basis of the provisions of the Education Act and K.E.R. and that the ground of objection that the number of students in a particular school run by the objector will be reduced, is not a valid ground of objection against the grant of privilege of upgradation of an existing upper primary school. Not only that, *Punnose's* case was decided in a conflict between two aided schools, it did not involve any Government school as in the case in hand. *Mythri Vidya Bhavan English Medium School's* case was decided by the Division Bench in relation to C.B.S.E. School. Apart from the fact that the

learned Additional Advocate General points out that the said decision stands stayed by the Hon'ble Supreme Court of India, we are of the view that the said precedent does not contain any ratio to be applied on any of the questions arising for decision in the case in hand, we, therefore, do not see any question to be answered on the reference. Hence, we proceed to examine the plea projected by the writ petitioner.

4. As held in *Kerala Bhramana Vidyabhivardhaka Sangha v. State* (1977 KLT SN 15 (C. No. 39)), Rules in Chapter V of K.E.R. which govern opening and recognition of schools do not apply to Government schools. Therefore, the question whether a particular Government upper Primary School is to be upgraded as a High School or not, is a matter on which no issue based on the provisions in that Chapter of K.E.R. could be raised by way of objections. The Government upper Primary School, Vanmugham, in the opinion of the Government, deserves to be upgraded. Such upgradation of that school, even going by Ext.P2, is being done by the application of the R.M.S.A. Scheme.

5. The frame work for implementation of the R.M.S.A. School is aimed as a Scheme for universalisation of access to and improvement of quality at the secondary stage of education. The introductory provisions of that scheme recall the National Policy on Education (NPE), 1986 (as modified in 1992) to specify that Access to Secondary Education will be widened with emphasis on enrolment of girls, Scheduled Castes and Scheduled Tribes, particularly in science, commerce and vocational streams, vocationalization through specialized institutions or through the re-fashioning of secondary education will, at this stage, provide valuable manpower for economic growth. The R.M.S.A. Scheme pointedly notes that with the liberalization and globalization of the Indian economy, the rapid changes witnessed in scientific and technological world and the general need to improve the quality of life and to reduce poverty has made it essential that school leavers acquire a higher level of knowledge and skills than what they are provided in the eight years of elementary education. The population of the age group 14-18 was 8.55 crore in 2001 as per census data. That led to the estimation of the population of that age group as on 1.3.2005 at 9.48 crore, and at 9.69 crore as on 1.3.2007, i.e., at the beginning of the 11th Five Year Plan; to stabilize to be at around 9.70 crore in 2011. The Gross Enrollment Ratio for classes IX-XII in 2005-06 was 40.49% and the figure for classes IX and X was 52.26% whereas that for classes XI and XII was 28.54%. The Committee on Universalisation of Secondary Education (CABE) had also pointed out the requirement to make good quality education available to all students in all schools at affordable fees and that such goal should be a primary commitment of the Common School System. The manner in which the R.M.S.A. Scheme is evolved is to ensure that process of education reaches out to be available to students at proximate locations, it is in this context that it is insisted that there should be "at least one school" within a radius of 5 kms. Such provision in the Manual of Financial Management and Procurement for R.M.S.A., as disclosed through Ext.P5 information given under the Right to Information

Act, is not in dispute. That being so, even if there is another higher secondary school within the said radius of 5 kms., it would be well within the authority of the Government to decide on the upgradation of an existing upper primary school to be a high school or even a higher secondary school.

6. As already noted, the plea of the Manager of an aided school that there would be fall in the pupils' strength and consequential division fall in his or her school is not a ground to be countenanced while considering the question of establishing or granting upgradation of a school. This position stands fortified by Punnose's case.

7. Even if the fact of the matter remains that the distance between the petitioner's school and the Government Upper Primary School, Vanmugham is around 3 1/2 kms only, availability of schools within such distance is a mode of extending the system of education as made available for the economically and socially challenged people belonging to the marginalized sector of the community to utilize. This is a matter to be left to be dealt with by the Government in their wisdom relating to policy making, governance and management. That does not fall for judicial review. Therefore, it makes no difference whether Ext.P2 proceeded on the basis that 5 kms., is the distance prescribed between two schools. There is no infirmity committed by the Government in appreciating the relevant materials to decide to upgrade Government Upper Primary School, Vanmugham to be a High School. We see no ground available in favour of the petitioner for judicial review of the administrative action leading to the Government decision to upgrade the Government Upper Primary School, Vanmugham as a High School; or, in issuing Ext.P2 repelling the plea of the writ petitioner. The challenge, therefore, fails.

In the result, the Writ Petition fails. The same is accordingly dismissed.