

(2024) 04 KL CK 0189

In the High Court Of Kerala

Case No : Writ Petition (C).Nos. 15455, 15707, 15723, 15746, 16068 Of 2023 & 1931, 12242 Of 2024

Kerala CBSE School Management Association (REGD)

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 05-04-2024

Acts Referred:

Kerala Education Act 1958 — Section 2(8)

Citation : (2024) 04 KL CK 0189

Hon'ble Judges : M.A.Abdul Hakhim, J

Bench : Single Bench

Advocate : P.Mohandas, K.Sudhinkumar, Sabu Pullan, Gokul D. Sudhakaran, R.Bhaskara Krishnan, K.P.Satheesan, Thoufeek Ahamed, Nirmal S, T.B.Hood, Dr.K.P.Satheesan

Final Decision : Disposed Of

Judgement

A.Muhamed Mustaque, J

1. These matters are placed before us based on a reference order of the learned Single Judge. The matter is related to conducting vacation classes during summer vacation of the schools in the State. The learned Single Judge in the reference order doubted the law propounded in I.S.S (English Medium) Senior Secondary School, Perinthalmanna v. State of Kerala [2018 (2) KHC 849].wherein the learned Single Judge of this Court opined that if there is no objection from the parents, teachers and students, the special classes can be conducted during the summer vacation on a condition that the school authorities will provide basic facilities. In the reference order, the learned Single Judge disagreed with the views in the judgment in I.S.S. (English Medium) (supra) as the children require time for leisure and recreation during summer holidays.

2. Heard the learned Senior Counsel Dr.K.P.Satheesan, Senior Counsel Smt.Dhanya P.Ashokan and Shri Isaac Kuruvilla Illikal for the petitioners, learned Standing Counsel Shri S.Nirmal and learned Special Government Pleader Shri

T.B.Hood.

3. There are two sets of cases before us - one, the schools which are having affiliation with Boards other than State Board such as affiliation with CBSE, ICSE Boards and the other is schools having recognition under the Kerala Education Rules (KER).

4. Apparently, the question in this context arises as the State attempted to justify their action with reference to Rule 1 of Chapter VII of KER. Rule 1 Chapter VII states that all schools shall be closed for the summer vacation every year on the last working day of March and reopen on the first working day of June unless otherwise notified by the Director. We are of the view that as far as the schools are not the schools recognised under KER, they are not bound by the calendar provided under KER. The calendar of the schools under KER would be applicable only to schools that have obtained recognition from the Government under the KER. See the definition of 'recognised schools' under Section 2(8) of the Kerala Education Act vis-a-vis "a private school recognised by the Government under this Act". In respect of the schools not covered under the Kerala Education Rules or Act, cannot be dealt under the same. It is up to the affiliated body to decide on the calendars, school working time etc. Therefore, the school calendar prescribed under KER cannot be extended to CBSE, ICSE schools, etc. Merely for the reason that for the purpose of affiliation, CBSE insisted recognition or NOC from the State Government, that alone will not bring such schools as a recognised school under KER. Such schools will not be considered recognized under the KER unless established or recognized in accordance with the Kerala Education Act or Rules. Therefore, they are not obliged to follow the calendar framed under KER.

5. However, we find that the Government has executive power to protect the best interest of children. The *parens patriae* is the jurisdiction of the State cannot be overlooked here. The Apex Court in *Charan Lal Sahu v. Union of India*, [(1990) 1 SCC 613]; para.35 therein reads as follows:

35. There is the concept known both in this country and abroad, called *parens patriae*. Dr B.K. Mukherjea in his "Hindu Law of Religious and Charitable Trust", Tagore Law Lectures, Fifth Edition, at page 404, referring to the concept of *parens patriae*, has noted that in English law, the Crown as *parens patriae* is the constitutional protector of all property subject to charitable trusts, such trusts being essentially matters of public concern. Thus the position is that according to Indian concept *parens patriae* doctrine recognized King as the protector of all citizens and as parent. In *Budhakaran Chaukhani v. Thakur Prosad Shah* [AIR 1942 Cal 331 : 46 CWN 425] the position was explained by the Calcutta High Court at page 318 of the report. The same position was reiterated by the said High Court in *Banku Behary Mondal v. Banku Behary Hazra* [AIR 1943 Cal 203 : 47 CWN 89] at page 205 of the report. The position was further elaborated and explained by the Madras High Court in *Medai Dalavoi T. Kumaraswami Mudaliar v. Medai Dalavoi Rajammal* [AIR 1957 Mad 563 : (1957) 2 MLJ 211] at page 567 of

the report. This Court also recognized the concept of *parens patriae* relying on the observations of Dr Mukherjea aforesaid in *Ram Saroop v. S.P. Sahi* [1959 Supp 2 SCR 583 : AIR 1959 SC 951] at pages 598 and 599. In the "Words and Phrases" Permanent Edition, Vol. 33 at page 99, it is stated that *parens patriae* is the inherent power and authority of a legislature to provide protection to the person and property of persons non sui juris, such as minor, insane, and incompetent persons, but the words *parens patriae* meaning thereby 'the father of the country', were applied originally to the King and are used to designate the State referring to its sovereign power of guardianship over persons under disability. (emphasis supplied) *Parens patriae* jurisdiction, it has been explained, is the right of the sovereign and imposes a duty on sovereign, in public interest, to protect persons under disability who have no rightful protector. The connotation of the term *parens patriae* differs from country to country, for instance, in England it is the King, in America it is the people, etc. The Government is within its duty to protect and to control persons under disability. Conceptually, the *parens patriae* theory is the obligation of the State to protect and takes into custody the rights and the privileges of its citizens for discharging its obligations. Our Constitution makes it imperative for the State to secure to all its citizens the rights guaranteed by the Constitution and where the citizens are not in a position to assert and secure their rights, the State must come into picture and protect and fight for the rights of the citizens. The Preamble to the Constitution, read with the Directive Principles, Articles 38, 39 and 39-A enjoin the State to take up these responsibilities. It is the protective measure to which the social welfare state is committed. It is necessary for the State to ensure the fundamental rights in conjunction with the Directive Principles of State Policy to effectively discharge its obligation and for this purpose, if necessary, to deprive some rights and privileges of the individual victims or their heirs to protect their rights better and secure these further.

6. The petitioners are the management association and certain schools who want to conduct classes during vacation to make up syllabus, especially, for the students who are attending board exams during the next academic year. They experienced a shortage of time to complete syllabus and prepare the students for the next academic year. We find there is a legitimate concern for school authorities. But at the same time, it should not be at the cost of the best interest of the child. The best interest of the child includes right of the child for rest and leisure. It is appropriate to refer to Article 31 in Part 1 of the United Nations Convention of Rights of the Child.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate

and equal opportunities for cultural, artistic, recreational and leisure activity.

7. The parents cannot barter away their child's right to rest and leisure in exchange to focus exclusively on studies. There is a prevailing belief that prioritising academic studies would protect the best interest of the child. However, growth of child is ensured not solely based on knowledge but also through recreational activities. The child is also having equal right to engage in cultural, artistic, leisure activities. This cannot be compromised. The State also cannot ignore the fact that the child cannot forgo their academic pursuits. However, how to balance children's academic pursuits and their right to recreational activities is a matter to be considered by the State. We also cannot overlook the exposure of the children to summer heat during vacation. The State also need to address this concern as well. The present regulation apparently is invoking power under the Kerala Education Act and Rules. That power cannot be utilised to govern a competing interest and rights of the child and their welfare. The executive Government alone can address the issue. The statutory authorities under KER are incompetent to decide such issues. In this matter, admittedly, they invoked statutory power under KER which according to us cannot be extended to schools other than those recognised under the Kerala Education Act and Rules.

8. We find that the judgment of the learned Single Judge ISS English Medium (supra) is not correct enunciation of law. As rightly noted by the learned Single Judge in reference order, recreational rights cannot be overlooked by parental authority to decide on academical pursuits. Therefore, State can devise its own mechanisms.

9. In the light of the discussions as above, we hold as follows:

i. The State holds executive power to regulate summer vacation. However, this cannot be done based on the calendar prescribed in KER for non-KER schools. The State will have to balance academic interest of the child and their right to recreational activities in a delicate equilibrium.

ii. Taking note of the ensuing vacation, we permit all the schools other than the schools governed by KER calendar to hold vacation classes between 7.30 AM till 10.30 AM. Provided, this arrangement will be subject to future executive orders governing vacation classes.

iii. We also find that law laid down in I.S.S. (English Medium) case (supra) is not a good law to be followed.

iv. In regard to W.P.(C).No.16068/2023, we find this school is a recognised school under KER. This school will have to follow calendar under KER. Regarding the schools governed by the Kerala Education Rules and Act which does not follow the KER calendar, action can be initiated against the Manager. In the absence of any challenge to the Rule in KER, no relief can be granted. Therefore, W.P.(C).No.16068/2023 is dismissed.

v. W.P.(C).Nos. 1931/2024, 15455/2023, 15707/2023, 15723/2023, 15746/2023, & 12242/2024 are disposed of as above.