
(2016) 02 KL CK 0053
In the High Court Of Kerala
Case No : WP(C) No. 33783 of 2015 (W)

Kochu Madhavan Nair

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 09-02-2016

Acts Referred:

Citation : (2016) 02 KL CK 0053

Hon'ble Judges : K. Vinod Chandran, J.

Bench : Single Bench

Advocate : Jacob Sebastian and Shamseera C. Ashraf, Advocates, for the Appellant; M.A. Fayaz, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J.—1. The petitioner claims to be one of the trustees of Krishna Menon Memorial Educational Trust, created in the year 1977. The trust was founded by one P.V.R. Kutty Menon and one P.V. Kumaran Nair. The trust purchased a school by name S.N.U.P School, the managership of which is the bone of contention in the above writ petition.

2. Admittedly, a suit is pending in the Sub Court, Palakkad filed by the petitioner herein, challenging the meeting held on 02.11.2010, evidenced by Ext. R6(i) and for declaration that Anup Kumar P.V, the 6th respondent herein, who is the 5th defendant in the suit, is neither a trustee nor the Manager of the school. There is also an injunction sought, to restrain the 5th defendant from entering into the premises of the S.N.U.P School. Since there is a suit pending with respect to the managership, it would not be proper for this Court to look into the various aspects, of whether the meeting was properly convened or whether the trustee members had participated in the same.

3. Suffice it to confine the adjudication in the writ petition, to the order passed by the DPI in Ext. P11. The earlier order passed by the DPI at Ext. P8 was challenged by the petitioner herein, in which writ petition there was a remand,

upon which the DPI passed Ext. P11. Both Exts. P8 and P11 directed the 6th respondent to be continued as the Manager of the school.

4. The learned Counsel for the petitioner contended that the 6th respondent was never appointed as a Manager and that the meeting of the trustees said to have been carried out on 02.11.2010, was on the next day of the demise of P.V.R. Kutty Menon and the mother of the 6th respondent, who is the second wife of P.V.R. Kutty Menon had also not signed on the documents, but had merely affixed her thumb impression, casting serious doubts on the meeting convened and decision taken. The contention is that the mother of the 6th respondent having been laid up, paralyzed, that alone would have raised serious doubts on the capacity of the said person to take such a decision on the said date. The further contention of the petitioner herein is that the 5th respondent, who was the Managing Trustee had entrusted the management of the school to the petitioner, based on which an application is said to have been filed before the educational authority, produced as Ext. P1.

5. The learned Counsel for the 6th respondent however points to Ext. R6(i), to contend that such a thumb impression was made before a Gazetted Officer and the same was attested by the Gazetted Officer, as is indicated in the document. True the meeting was convened and a decision taken on the next day of the fathers demise; which was necessitated because the death was sudden and there had been attempts by his step-brothers, the children from the first marriage of his father, to usurp the management of the school. The 6th respondent would also argue that no reliance can be placed on Ext. P1, since the persons shown at serial Nos. 4 and 5 in Ext. P1, were not trustees and they had no role in deciding upon the Manager to be appointed for the school. The said persons are his step-brothers and the document clearly indicates that the petitioner is set up by them and is acting at their behest. The 6th respondent submits that he had been a correspondent as appointed by the trustees, when his father was alive and upon his father's death, his mother and himself were trustees, who had convened a meeting, by which the 6th respondent has been decided to be appointed as the Manager.

6. The issue with respect to the efficacy, legality and sanctity of the meeting, evidenced by Ext. R6(i), is an issue pending in the civil suit. This Court would not pass any observation on that, lest it preempt the civil court, which alone is competent to decide the issue on the basis of the evidence led in the suit and would be better equipped in dealing with the said issue. As was noticed above, the consideration of the above writ petition is to be confined to Ext. P11 order.

7. The trust deed has been produced at Ext. R6(a). The founding trustees are trustees for life and they are P.V.R. Kutty Menon and P.V. Kumaran Nair. P.V. Kumaran Nair is no more associated with the trust. The deed also indicates that the founding trustees are entitled to appoint other trustees provided only, that the total number shall not exceed five at any given point of time. With respect to the vacancies arising among the trustees the remaining members, would have

the authority to fill any vacancy by nomination. Ext. R6(b) is the regulations framed for the trust, which indicates that a meeting of the Trust has to be convened at least once in an year and the minimum quorum for the said meeting would be two.

8. The management of the educational institutions under the Trust, as per clause 6(3) of the Regulation, is vested in the Managing Trustee, who also shall be the Manager of such educational institutions. Admittedly P.V.R. Kutty Menon, was the Managing Trustee and also was the Manager of the school, till his death on 01.11.2010. The dispute arose after the death of the said P.V.R. Kutty Menon, obviously on the sons of the first wife raising a claim to the school, which is evident from the records as will be noticed shortly.

9. While the petitioner contends that the petitioner has been appointed as the Manager by the trustees, no such resolution is placed on record. Nor it is indicated as to when such a meeting was conducted. The only document relied on by the petitioner is Ext. P1, in which, the sons of his first wife of P.V.R. Kutty Menon have also joined with the petitioner and the 5th respondent. Admittedly they are not members of the trust as of now, but the averments of the petitioner, in the writ petition itself indicates that the proposal at Ext. P1 was made by the members of the trust. This alleged proposal, is also not seen placed before the Assistant Educational Officer, as is revealed from Ext. P8.

10. Ext. P8 is the order of the A.E.O., refusing to appoint the 6th respondent as Manager of the school. The rejection is not by reason of the members of the Trust having objected to the same; but is stated to be for reason of the other legal heirs of the deceased Manager having raised an objection. Prima-facie this Court does not see any devolution of interest, with respect to the school, being regulated by the laws of succession, since all parties admit that the school is owned by the Trust. Ext. P2 also belies the contention of the petitioner that Ext. P1 is a proposal of the Trustees, casting a long shadow over the claims raised in the writ petition and lends credence to the argument that the children from the first marriage is attempting to wrest the management of the school, owned by the Trust.

11. Considerable arguments have been addressed as to who are the trustees as of now. While the petitioner asserts the status, of himself and the 5th respondent, as trustees; the 6th respondent claims they retired out of incapacitation due to old age. There was also a dispute raised, as to whether any trust meetings were properly held, even during the life time of P.V.R. Kutty Menon. The learned Counsel, had persuaded this Court to look into the records of the educational authority, which have been produced by the learned Government Pleader, on directions issued.

12. Specific reference has been made by the learned Government Pleader to the report filed by the A.E.O, who has the direct supervision of the aided school, which comes under his jurisdiction. The identical report is seen at pages 209 and

318 of the DPI's records and also page No. 78 of the A.E.O's records. The report shows that even according to the A.E.O, the last meeting of the trust was on 27.07.2006 as available from the records of the educational authorities. On the said day, admittedly the 6th respondent was appointed as a trustee for three years ie., till 13.08.2009 and he was also appointed as a correspondent of the school, extending upto 13.08.2009. Hence even according to the A.E.O, the 6th respondent was the correspondent, but however his tenure stood extinguished on 13.08.2009.

13. The learned Counsel for the petitioner would specifically contend that no meeting was held after the said date. Definitely the petitioner and the 5th respondent would also be trustees as on that date, since their retirement is said to be on 28.03.2009, as is sought to be projected with Ext. R6(d) However, the contention of the 6th respondent is that the petitioner and the 5th respondent had retired due to old age, which has been accepted by the remaining trustees as on 28.03.2009 as evidenced by Ext. R6(d). These are matters to be agitated in a Civil Suit and the disputed questions of fact cannot be adjudicated in writ proceedings.

14. Suffice it to notice the report of the A.E.O., can only be taken as the records available, with the educational authority, disclosing the last meeting to be on 27.07.2006. There can be no presumption drawn on that basis that the Trust did not hold a meeting thereafter. The educational authorities would be concerned with only those meetings of the Trust, having a bearing and touching upon the management of the School. The other issues as to the constitution of the members and the inclusion or exclusion would have a significance only when there is a change in managership. Such a change, over the years was warranted only on the death of P.V.R. Kutty Menon, who was admittedly the Managing Trustee and the Manager till his death. It is also very pertinent that even the petitioner does not have a case that any meeting of the trust was held after the year 2006. Not even an averment is made to that effect and no document relied on to that end. There is also no resolution produced to show that the petitioner was appointed as the Manager in a trustee meeting. While the petitioner in fact asserts that no valid meeting was held by the trustees after 2006, the petitioner has no explanation as to why no meeting was sought to be convened, especially since the regulation indicate that a meeting shall be convened every year, as is evidenced from Exts. R6(a) and (b).

15. In such circumstance, what is to be looked at is, who has the better claim as of now. The 6th respondent was admittedly the correspondent of the school, when P.V.R. Kutty Menon was alive. The trusteeship of the second wife of P.V.R. Kutty Menon, ie., the mother of the 6th respondent, is also not in dispute since even as on 2006, she was a trustee. The petitioner and the 5th respondent also is seen to have been trustees at that point of time, but the specific contention raised by the 6th respondent is that they had voluntarily resigned from the trusteeship due to old age. It is to be specifically noticed that the petitioner is

aged 94 years and the 5th respondent is said to be 89 years of age. Definitely the mere fact of age would not substantiate the contention of resignation. But it has to be noticed that neither the petitioner nor the 5th respondent is seen to have taken any measure to convene a meeting of the trustee board after 2006 and their contention, on the death of P.V.R. Kutty Menon is only to the effect that since no valid trustee meetings are held, they should be deemed to be trustees and the rival claim raised on the basis of Ext. P1 has to be adjudicated.

16. At this point of time, this Court is not convinced that the claim of the petitioner or the 5th respondent could be allowed and by reason of that alone, the 6th respondent be excluded. One other compelling circumstance that has to be taken note of, is the obvious fact that the petitioner and the 5th respondent have now teamed up with the children of the first wife of the deceased P.V.R. Kutty Menon, who were never intended to be included in the trust by the deceased P.V.R. Kutty Menon or P.V. Kumaran Nair, the other founding trustee. This is evident from Ext. P6, a representation filed by the children from the first wife of the deceased Managing Trustee, who have nothing to do with the trust or the School. Further though the A.E.O. Reports that the correspondent-ship of the 6th respondent stood extinguished in 2009, after the three year trusteeship conferred on him by the meeting dated 27.07.2006, Ext. P8 reveals that he was approved as "Correspondent" by order of the Deputy Director of Education, bearing No. B3/842/10/K.Dis dated 04.02.2010, when P.V.R. Kutty Menon was alive, produced as ext. R6 (f), which is not for a specific tenure. The appointment was also from 02.08.2006, and the 6th respondent was continued thereafter.

17. Considering the entire fact situation and that the petitioner had been the correspondent of the school, even when the founding trustee, the 6th respondent P.V.R. Kutty Menon was alive; who was the admitted Managing Trustee and Manager of the school, it is only proper that Ext. P11 be upheld. However, it is made clear that Ext. P11 would be subject to the result of O.S. No. 77 of 2015, pending before the Sub Court, Palakkad.

18. The petitioner has an additional contention that the office of the DPI has now sent a communication at Ext. P13, which indicates that there is a step to appoint an ex-officio Manager for the school. The learned Counsel for the 6th respondent however submits that the said proceedings have been closed. Without going into the fact as to whether the proceedings are pending or not, it has to be noticed that when the DPI had issued Ext. P11 order, there is no question of a review being made of that order, passed under powers conferred under a statute. Ext. P11 has been upheld by this Court and the necessary consequence is the finding that the writ petition is devoid of merit.

The writ petition would stand dismissed with the only reservation is that Ext. P11 would be subject to the result of the suit. No costs.