

(2003) 04 KL CK 0020
In the High Court Of Kerala
Case No : O.P. No. 1438 of 1998

Kunhikrishnan Adiyodi

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 01-04-2003

Acts Referred:

Kerala Education Rules, 1959 — Rule 5A

Citation : (2003) 2 KLT 488

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : P.N. Ravindran, for the Appellant; T.K.M. Unnithan and Mathew Ummen, P.K. Shakeela, Govt. Pleader and N.L. Krishnamoorthy, for the Respondent

Final Decision : Allowed

Judgement

M. Ramachandran, J.—Krishnan Adiyodi Memorial U.P. School, Chorode had been originally established by late Krishnan Adiyodi, who is the father of the petitioner herein - Kunhikrishnan Adiyodi. The 4th respondent - Kunhiraman Adiyodi, who was functioning as Manager of the school, was his-elder brother. During the pendency of the proceedings, he had passed away and additional respondents 5 to 12, his legal representatives, are brought into the array of parties. The claim in the O.P. centers round the management of the school, as between the two brothers.

2. Essentially Ext.P5 order is under challenge, whereunder the Government had held that Kunhiraman Adiyodi was to be permitted to continue in the position holding management of the school, overruling the stand taken by the Director of Public Instruction, who had upheld the claim of the petitioner. Before dealing with the law on the subject, it may be necessary to refer to a few facts.

3. It is not disputed that though the school properties had been acquired by late Krishnan Adiyodi, the same had been transferred in the name of late Mathu

Amma, who was the mother of the petitioner and the deceased 4th respondent. Mathu Amma had other children as well. Kunhiraman Adiyodi had assumed office as the Manager of the school even before the advent of the Kerala Education Act and Rules in 1958, the exact date being 26.5.1957, and it had been duly approved by the District Educational Officer, Malabar. Thus, as could be seen from the mandate of Section 7(1) of the Kerala Education Act, since Kunhiraman Adiyodi was the Manager as on 1.6.1959, he was deemed to be appointed as the manager under the Act. It may also be pertinent to note that his younger brother Kunhikrishnan Adiyodi was a teacher of the school and he had retired from service in March 1990.

4. On 26.3.1974, well after the death of their parents, the legal representatives had brought among themselves a partition of their properties. Ext.P1 is the copy of the deed. Reference is there to the position that the school compound consisted of 1.24 acres and there were five buildings put up there. Long before the date of partition, it is seen that Kunhiraman Adiyodi had purchased 6 cents of land from Mathu Amma for valid consideration and had annexed the properties to the school properties and had put up one building therein. Thus, at the time of partition, he was in overall control of 1 acre and 30 cents of land and buildings of the school, of course functioning as the Manager.

5. Ext.P1 partition deed provided that the entire school properties and all claims in respect of them, including the improvements, were to be assigned in favour of the petitioner-Kunhikrishnan Adiyodi. Documents indicate that all the other legal representatives of deceased Mathu Amma had agreed to the above. Consequently, there cannot be any dispute about the position that 1.24 acres, wherein the school had been situated, came to the ownership of the petitioner hitherto belonging to the co-owners. 6 cents of land, though attached to the school, was left unaffected because of the partition as it continued with the ownership and possession of Kunhiraman Adiyodi.

6. After his retirement in 1990 the petitioner had thought of assuming managership of the school. This also involved change of properties. By way of caution, all the erstwhile co-owners (excepting the 4th respondent) had given a written consent for such a change. The petitioner had taken steps for getting permission from the educational authorities. The Director of Public Instruction, by proceedings dated 28.12.1995 on the application ordered as following:

Your petition cited has been examined in detail. The present Manager Sri. Kunhiraman Adiyodi has ownership over 6 cents of land and only one building, whereas Sri. Kunhikrishnan Adiyodi has ownership of 1.24 acres and 4 out of five buildings are located in his share. So Sri. Kunhiraman Adiyodi can act as Manager only if the holders consents. Sri. Kunhiraman Adiyodi cannot under any circumstances run the school in 6 cents. Hence in all respects Sri. Kunhikrishnan Adiyodi is the lawful claimant. Therefore you can forward the application and required documents to transfer the Management involving property in your name from Sri. Kunhiraman Adiyodi at the earliest."

7. This is Ext.P2. Finding that this may ultimately affect his interest, Kunhiraman Adiyodi had filed an appeal before the Government, as envisaged by the statute objecting to the orders. He had also filed O.P. No. 3936 of 1996 for expediting the hearing process. As a consequence of this, the Government had passed Ext.P3 order on 1.7.1976 setting aside Ext.P2. It had been recorded that the request of the 4th respondent "seems to be considerable" and he is found eligible for functioning as Manager of the school. The order indicates that Ext.P2 was understood by the Government as an order transferring the management in favour of Kunhikrishnan Adiyodi. It was observed that the proceeding of the Director of Public Instruction was not in order and the same is cancelled.

8. This had been subjected to challenge at the hands of the petitioner and this Court in O.P. No. 11513 of 1996, by judgment dated 3.6.1997, had set aside the orders and directed the Government to reconsider the appeal. The Court had frowned upon the technical approach made by the Government in the matter. It was directed that the Government should examine whether there were circumstances for passing orders as had been requested for, after affording opportunities, to the parties to make representations. Ext.P5 dated 27.12.1997 is the result. It went against the claims of the petitioners and is presently under challenge. The Government had held that Kunhiraman Adiyodi is the owner of the school from 1960 and that the order of the Director of Public Instruction (Ext.P2) deserved to be set aside, as the application for change in management was not maintainable.

9. Sri. P.N. Ravindran appearing for the petitioner submits that Ext.P5 is vitiated by errors, misreadings and contradictions and omitted to take notice of the real aspects that had to be enquired into. According to him, when the order in categorical terms observed that late Mathu Amma was the owner of the land and when she was to be considered as the educational agency till 1960, the subsequent finding that Kunhiraman Adiyodi became the owner could not have been supportable. The order virtually leaves a lacuna in the reasoning. He also refers to the observations in the orders where the Government had held that Kunhiraman Adiyodi was in possession of the building on rent, but forgetting the observations that had been made earlier, that he had even staked a claim of having constructed the building by himself.

10. But, I am of the opinion that these finer and hair-splitting arguments indeed could be relegated to the background. The real and only issue was as to whether it was permissible on the part of Kunhikrishnan Adiyodi to apply for a change of management and whether it could have been rejected as without basis, as done by the Government.

11. Before going through the further aspects of the matter, I may also refer to the fact that counter affidavits have been filed by the contesting respondents as also the Government. Naturally a stand has been adopted by them supporting Ext.P5. However, in taking note of the facts which are not disputed, I think it may be able to come to a decision making reference to the statutory provisions

which are there in the Kerala Education Act and the Rules.

12. Undisputed positions which are necessary for the purpose of this decision are the following:

(i) Late Krishnan Adiyodi was the Manager of the school up to 1957. (ii) After 1957 Kunhiraman Adiyodi was the Manager of the school and continued as such till his death, that is even after Ext.P5 order.

(iii) Mathu Amma was the owner of 1.24 acres of land, wherein the school building had been put up, well before 1957.

(iv) Mathu Amma was the Educational Agency.

(v) School consisted of 1.30 acres of land of which one building on 6 cents was the individual acquisition of Kunhiraman Adiyodi.

(vi) Formal application had been presented by the petitioner after his retirement from the school requesting for change of Management.

(vii) By a partition deed (Ext.PI) of the co-owners, the school properties, including the buildings and all rights had exclusively come to the ownership of the petitioner.

13. According to me, by Exts.P3 and P5 the Government have taken an extreme position to hold that change in managership was impermissible. The reason that could be gatherable from Ext.P5 is that the 4th respondent had come to be the owner of the establishment by his continued occupation of the position of Manager from 1957 onwards. This appears to be basically an erroneous approach. There is no mandate for conferring a status of position of management in favour of a manager, to the exclusion of the rights of an Educational Agency. After the advent of the Kerala Education Act and the Rules, by a fiction the 4th respondent was to be considered as the Manager as per the rules. He had rights, liabilities and obligations within the four corners of the statute. When it is admitted by him that he was the Manager, that primarily and perhaps solely indicated that he could exercise the powers of the Manager but never that of an educational agency. Late Mathu Amma was the educational agency, and the rights devolved on her legal representatives on her demise equally.

14. It is not as if the Manager and the Educational Agency are one and the same. As per the Act and the Rules, it may be possible for the educational agency itself to function as the Manager. But as far as this school is concerned, it never followed such an arrangement. When Mathu Amma was the educational agency her husband Krishnan Adiyodi was the Manager initially. After him, she had nominated Kunhiraman Adiyodi as the Manager. Ext.R2(a) although referred to transfer of management and correspondentship, what in fact he got was the status of registered manager enjoyed by Sri. Krishnan Adiyodi.

15. It was after bringing this arrangement that Mathu Amma, the educational agency, had passed away. On such contingency, the educational agency became

devolved equally on the legal representatives of Mathu Amma. This position had continued till 1974 and was understood by legal heirs, including the 4th respondent. The 4th respondent was the Manager and was also part and parcel of the educational agency. But, thereafter Ext.P1 partition deed defined the rights of the parties. The school and the properties had been specially reserved as going to the share of the petitioner. Even though there is reference to the school in the partition deed and the petitioner and the 4th respondent are described as teachers of the school, thereafter there is nothing to indicate that the ownership of the school or any part thereof had been reserved in favour of the 4th respondent at all. In this context, we may refer to a decision of this Court in *Muhammed Kutty v. State of Kerala* (2002 (2) KLT 300). Right over the school and the right of management devolves on all the legal representatives of the deceased in accordance with their personal law of inheritance and so long as this position continued the character of the school as an individual educational agency was not to terminate. This character in the present stood terminated effective from the date of Ext.P1. It cannot be denied by the 4th respondent that the petitioner became the educational agency of the school. It may also be relevant to note that the term "school" is having an inclusive definition under the Kerala Education Act. u/s 2(9), the school includes the land, buildings, play-grounds and hostels of the school and the movable properties such as furniture, books, apparatus, maps and equipments pertaining to the school. Therefore, when the school had been settled in favour of the petitioner, what has been settled can be the school viz., the corporal and incorporeal rights pertaining to the school and ownership thereof. So long as the 4th respondent was permitted to continue as Manager he could have thus continued, subject to the pleasure of the petitioner and of course subject to the approval of the educational authorities, in case he had thought of bringing about a change.

16. Section 2(2) of the Act defines an educational agency. u/s 7 of the Act provision is made for appointing managers of schools. Any educational agency may appoint any person to be the manager of an aided school, subject to the approval of the Government. The properties of the school are to be in the possession and control of the Manager. As had been pointed out, in a decision of this Court in *Eipe v. Koshy* (1960 KLT 803), the Manager is only a legally authorised delegate of the Educational Agency. He is the executive head, who could be contacted by the outsiders with reference to the conduct of the school and the right of management to the extent of such authority. But he was never the management of the school as such, if we use the term as denoting the ownership of the institution. This position could also be noticed from Section 14 of the Act. Whenever the Government proposes to take over the management of the school, it could be done only after giving notice to the manager as well as the educational agency about such proposal. Therefore, in the present case, when the educational agency was contemplating a change of the manager, it was permissible for him to approach the appropriate authorities. This was because it could have been possible to be argued that there was a change of management

involving a change of ownership u/s 5A of the Act. This was not at all objectionable, as it resulted from an act of partition. The legal recourse available to the petitioner was to follow the procedure provided by the statute, viz., Chap.III of the Kerala Education Rules. Definitely the petitioner could not have proceeded with any suit or other proceedings since the position had been settled by the decision of this Court in *Avvu v. Bapputty* (1977 KLT 648).

17. Chap.III Rule 1 of the Kerala Education Rules, 1959 refers to the broad classification of private educational institutions. These are respectively the individual Educational Agency and the Corporate Educational Agency. Where the right to conduct the school is vested in an individual in his own right or as the legal representative of a joint family, the Educational Agency is to be termed as "individual Educational Agency". While dealing with the appeal filed by the 4th respondent, one fails to see as to how the Government missed the circumstance that the petitioner was the individual educational agency, since there was no dispute about the recitals in Ext.P1 partition deed. Ext.P5 has proceeded on irrelevant assumptions, which had no basic relation to the issue.

18. Rules provide that the management of the school is to be vested by the educational agency in a person, who shall be referred to as the manager and who is responsible to the Education Department for the management of the institution. The rules envisaged that if the aided institution is under the individual management, the individual proprietor could be the manager. Thus, when Kunhikrishnan Adiyodi as the individual educational agency was contemplating taking over a position as manager it could not have been defused by the 4th respondent by putting forward a contention that he was in management for over three decades. He was only a manager having been appointed by the individual educational agency and his rights automatically did not percolate into that of an educational agency during the relevant time. After the death of his mother he was acting as a manager under the co-owners (including himself). After partition, he was to be deemed as continuing as manager under the petitioner. The petitioner had during 1974 a legal disability to take over the management by himself but it would have been perfectly open for him to change the 4th respondent even at that point of time. When there was a change of ownership and the fact notified, it was within the purview of the educational authorities to consider the application and pass appropriate orders thereon.

19. Rule 5A provides that the Director of Public Instruction should grant permission for change of management, including change of ownership, unless the grant of such permission will, in his opinion, adversely affect the working of the institution. However, it has to be assumed that this discretion is limited and in the case of a change brought about by a partition, it may have to be automatic, as otherwise it will trench upon the rights of the Educational Agency.

20. In this view, I am definite that there was no error committed by the Director of Public Instruction in passing Ext.P2. The Government has failed to comprehend the Rule issued and has gone at irrelevant matters when basically

Kunhiraman Adiyodi could not have projected any claims apart from his position as a Manager. Unmerited benefits presently stand conferred on the 4th respondent by overlooking the impact of Ext.Pl. Reference made by Sri. T.K.M. Unnithan on behalf of the 4th respondent to the defect in the description in the application submitted by the petitioner for a change of management are all matters which are really insignificant when we consider the real issue which was to be decided. Accordingly, I have to hold that Ext.P5 is erroneous and deserves to be set aside. Ext.P2 is restored. Consequential orders are to be passed by the appropriate authorities taking note of the claim of the petitioner for a change of manager of the school owned by him.

21. Before concluding, I may refer to the impleading petition that has been filed by the Headmistress of the school as CMP No. 15786 of 2003 and the prayers highlighted therein. The respondents should see to that there is no administrative impasse and consequential orders following Ext.P2 are to be passed within a period of one month from the date of receipt of a copy of this judgment, in the light of the observations that have been made already. It is also made clear that nothing in this judgment is intended to settle or otherwise deal with the claims of respondents 5 to 12 over 6 cents of land and the building owned by the 4th respondent which had been used for the purpose of the school.

22. The Original Petition is allowed. The parties will suffer their respective costs.