

(1965) 02 KL CK 0018
In the High Court Of Kerala
Case No : O.P. No. 1263 of 1964

M. Madhavan Pillai

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 01-02-1965

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Education Rules, 1959 — Rule 9

Citation : AIR 1965 Ker 301 : (1965) KLJ 326

Hon'ble Judges : K.K. Mathew, J

Bench : Single Bench

Advocate : K. Chandrasekharan, T. Chandrasekhara Menon, C. Sankara Menon and P.K. Ammini, for the Appellant; S. Neelakanta Iyer, for Respondent (No. 3), for the Respondent

Judgement

K.K. Mathew, J.—The petitioner was conducting a school known as the Madhava Vilasam Middle School at Thundathil in Trivandrum Taluk. In the year 1953 it was upgraded into a High School. It is claimed by the petitioner that there are accommodations for 40 divisions in the school. By their order dated 20th April 1964 the Government sanctioned the opening of new schools and the upgrading of existing ones for the year 1964-65. That order was published in the Kerala Gazette dated 28th April 1964. By that order, the 3rd respondent was given permission to open a High School and an Upper Primary School in Chempazhanthi area. The petitioner's case is that the order sanctioning the opening of the schools in favour of the 3rd respondent was made in disregard of the rules framed under the Kerala Education Act. The petitioner questions the order on several grounds. It was stated by him that there was no recommendation for the opening of the new schools in the area by any of the subordinate educational authorities, that no applications were filed by the 3rd respondent for sanctioning the opening of the schools within the prescribed period, that the 3rd respondent did not own or possess the sites on which the schools were to be located and that there was no educational need for opening

the new schools in the locality.

2. It was submitted on behalf of the Government that the petitioner has no legal grievance in this matter and therefore the petition is not maintainable. The learned Government Pleader said that, even assuming that the Government have violated the provisions of Rule 9 in Chapter V of the Kerala Education Rules in granting the sanction that would not give the petitioner standing to agitate the question in this proceeding unless his legal right to manage his school is affected. In other words, the argument was that by sanctioning the opening of the new schools, no right of the petitioner has been violated as the petitioner cannot claim immunity from competition as a legal right. It was argued that the loss if any to the petitioner is something which the law does not take cognizance of. I must say that I am not very much impressed by the argument for the reason that the establishment and conduct of aided schools are governed by the Kerala Education Act and the rules framed thereunder. Conditions regulating the establishment and maintenance of the schools have been laid down in the Act and the Rules.

A person who conducts a school can normally expect that the Government will sanction the opening of a new school in the locality only subject to the conditions laid down in Chapter V of the Kerala Education Rules, and if a new school is permitted to be opened in violation of the rules in that Chapter the person already running a school in the area has a standing to question the order sanctioning the new school. It was submitted by the Government Pleader that the petitioner derives no profits from running his school and therefore there is no question of any economic loss to the petitioner arising from competition by reason of the opening of the new schools. But economic loss is not the only kind of detriment which law will take cognizance of in order to give a standing to a person to apply for certiorari. In *Maurice v. London County Council*, 1964-2 Q B 362 Lord Denning observed :

"I know that at one time the words "person aggrieved" (which I regard as the same as "person who shall deem himself aggrieved") were given in these courts a very narrow and restricted interpretation. It was said that the words "person aggrieved" in a statute only meant a person who had suffered it legal grievance. Indeed in *Buxton v. Minister of Housing and Local Government*, 1961-1 Q B 278, which I mentioned in the course of the argument, Salmon J. declined to go into the question of loss of amenities. But that narrow view should now be rejected. In the more recent case of *Attorney-General of the Gambia v. N'Jie*, 1961 A C 617 the Privy Council had to consider these words "Person aggrieved" once again. On behalf of the Board, I ventured to say there; "The words "person aggrieved" are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busybody who is interfering in things which do not concern him : but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests." So here in this case they do include a person who has a

genuine grievance because a consent has been given which prejudicially affects his interests. His interests may be prejudicially affected, not only in regard to light and air, but in regard to amenities also. The one requisite must be that his grievance must be in respect of his interest as an owner or lessee of a building within 100 yards."

I think the observations made by Lord Denning can be applied in the context of the present case. I therefore come to the conclusion that the petitioner is aggrieved by the order of the Government, as it is established that the order was passed in violation of the rules, and I hold that the petitioner has got the locus standi to maintain this petition,

3. The other preliminary objection raised by the learned Government Pleader was that order is not a quasi-judicial one, and is therefore not susceptible of being corrected in certiorari. An agency bound to apply pre-existing rules, having the force of statute to a situation and arrive at a decision, cannot be said to function in a purely administrative capacity. The norms of a person acting in an administrative capacity are his notions of policy and expediency. The fact that the Government in deciding the question whether to sanction the opening of a new school or not have to follow the mandatory-rules laid in the Kerala Education Rules shows that the Government are not functioning in a purely administrative capacity when they decide the question one way or other. Even assuming that the order is administrative in character, considering the imperative nature of Rule 9 of Chapter V, I am of opinion that the Government had no power to grant permission to open a new school or to upgrade an existing one without ascertaining and satisfying themselves on adequate materials as to the educational need of the locality,

As I am holding that the Government have not ascertained whether the educational needs of the locality required the sanctioning of the new schools, I think the Government acted in violation of the statutory rules governing the matter. If that be so, even if the order is administrative in character, I think, I am entitled to interfere with the order as one passed without authority and make the appropriate direction. I therefore overrule this contention, of the learned Government Pleader.

4. Rule 9 of Chapter 5 of the Kerala Education Rules runs as follows :

No permission to open a new school shall be granted :

- (i) If the applicant does not possess absolute ownership or right to be in exclusive possession for a period of not less than six years over the site, building, and other properties of the school ;
- (ii) if the application is defective in material respects ;
- (iii) if the declaration regarding the financial guarantee, where necessary, is not furnished ;

(iv) if the educational needs of the locality do not require the opening of a new school ;

(v) if the situation of the school is inaccessible to all the members of the public ;

(vi) if a person convicted of an offence involving moral turpitude is a member or an office-bearer of the managing body.

Petitioner's counsel mainly relied upon clause (iv) of the rule and submitted that the Government had no materials before them to show that the educational needs of the locality required the opening of the schools in the area. Rule 9 is mandatory in character and is couched in the negative; therefore, unless the conditions mentioned in the rule are satisfied no sanction can be given for opening a new school. The records do not reveal that there was any material with the Government from which they could have come to the conclusion that the educational needs of the locality required the opening of the schools in the area. It was however, submitted by the learned Government Pleader that there was a conference of the Chief Minister, the Director of Public Instruction, and the Educational Secretary, at which the subject was discussed and that it was as a result of the discussion that the sanction for, opening of the new schools was granted. It is seen that sanction for opening or upgrading of more than 450 schools was granted as a result of the discussion in that conference. But there is absolutely no material on record to show that there was educational need in the locality to start the new schools in this area.

Mr. Chandrashakharen, appearing for the petitioner, submitted that the 3rd respondent has married the sister of the wife of the then Chief Minister, and that was the only reason for sanctioning the opening of the schools. For the purpose of disposing of this petition it is not necessary to embark upon an enquiry into the question whether that was the motive in granting the sanction for opening the schools. Suffice it for me to say that there were no materials on record from which the Government could have been satisfied that there was educational necessity for opening the schools in the locality. Clause (iv) of Rule 9 lays down an objective test namely that the educational need of the locality should require the opening of new schools. That need can only be ascertained with reference to the relevant materials. Even in a case where an authority has to be satisfied only subjectively in respect of a matter, it has been held that it is open to the court to go into the question whether there were any materials at all for its subjective satisfaction. This, I think, is an a fortiori case as the test laid down by the rule is not subjective but objective.

It is conceded that the District Development Council presided over by the District Collector has not recommended the opening of any new school in the locality. However, as academic year is coming to a close, I do not think it proper to quash the order sanctioning the schools. I am inclined to direct the Government to consider the question afresh and see whether the educational needs of the locality required the sanctioning of the schools and if the Government come to

the conclusion that the educational needs of the locality did not require the establishment of the schools, to take such appropriate steps as are necessary to implement their conclusion. Mr. Chandrasekharan for the petitioner submitted that recognition for the schools has been granted only for one-year and that the Government can decline to grant further recognition to the schools for the academic year 1965-66 if they come to the conclusion that there was no educational need in the locality for opening the new schools. It will be open to the Government to adopt this course, if that is the most feasible and expedient one to be followed.

5. The writ petition is disposed of as indicated-No costs.