
(2003) 06 KL CK 0082
In the High Court Of Kerala
Case No : O.P. No. 19547 of 2002-B

M.A. Gangadharan Moosad	Vs	APPELLANT
The District Educational Officer and Others		RESPONDENT

Date of Decision : 04-06-2003

Acts Referred:

Kerala Education Act, 1958 — Section 3(4)

Citation : (2003) 2 KLJ 520

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : K.T. Sankaran, Preethy Karunakaran, Rajesh R. Kormath, Anish S. Ambady and Bijji Mol Jose, for the Appellant; Thomaskutty, for the Respondent

Final Decision : Allowed

Judgement

M. Ramachandran

1. Ramanattukara High School Sangham is a Corporate Educational Agency and the school founded by the Society has been functioning from late 1940" For an unusual long spell, Sri. M.K. Kunhisankara Menon had been functioning as the Manager of the School, practically from the inception of the school in 1948 to January, 1993. The Society apparently is registered under the Societies Registration Act and the bylaws of the organization prescribes that the President of the Sangham is to function as the Manager of the school. Qualifications for membership had been prescribed by the bylaws and the administration of the school was to be vested in a Managing Committee. It so happened that by passage of time most of the members of the Society had passed away. After the death of Kunhisankara Menon, referred to earlier, a meeting of the members had been convened and one Chandukutty had been elected as the Manager of the school. Alleging that there was no proper meeting, the Secretary of the Sangham had filed a suit (O.S. No. 386 of 1993), which was decreed by the Munsiff's Court, Kozhikode. In the appeal, the judgment and decree had been partly modified. Dissatisfied by the judgment the defendant had filed a second appeal

(S.A. No. 158 of 1997) before this Court. It was dismissed by judgment dated 1.4.1998, a copy of which is Ext. P2. A regarding of Ext. P2 would show that taking cognizance of the entire situation this Court had exerted itself noticing the change in the scenario brought about by passage of time. The Court observed that the Society does not have even a quorum to hold a meeting of the Managing Committee and it was necessary to inject fresh blood. As a matter of fact, there were only three members remaining. Relying on the byelaws, produced in the suit as Ext.A2, the Court found that a minimum of 21 members are necessary for satisfactorily functioning the Society. The court, therefore, observed as following:

I am therefore inclined to direct and invest on the first plaintiff, the authority to call for a meeting of the general body of the society and deciding on inducting the needed new members into the Society so as to make the total strength of membership into 21. It should be done in terms of the byelaws of the society. The persons to be inducted should be responsible citizens, broad minded, cultured and interested in education. It should be ensured that no person actively engaged in politics, labour union activities or other union activities are inducted into the membership of the society. The general body meeting will be convened and the decision in that regard will be taken by the society within a period of four months from this date after due notice to the existing members. After the new members are inducted, their names will also be furnished to the Registrar in terms of the Societies Registration Act. A proper Managing Committee will also be constituted in accordance with the byelaws of the society. After such exercises are undertaken and completed, the first respondent, respondent No. 1 in this Second Appeal, will file a statement before this court reporting compliance with these directions.

2. In due course, the Commissioner appointed by this Court had taken steps for selection a committee from among the members who had additionally offered membership of the Society, 15 persons, who secured the highest number of votes, thus constituted the committee. Thereafter, on the basis of the report submitted by the Commissioner, in C.M.P. No. 1860 of 2000 in C.M.P. No. 1276 of 2000 in S.A. No. 158 of 1997, this Court passed a declaration to clarify the position. It was held that the office bearers would be entitled to hold office in terms of the byelaws of the Society for a period of three years from 4-3-2001. This order had attained finality. The election of Sri. E. Velayudhankutty Panicker as President and the election of Sri. M.A. Gangadharan Moosad as Secretary thus stand ratified.

3. Thereafter, a request had been forwarded by the Secretary to the Department to approve the appointment of Sri. Velayudhankutty Panicker as Manager of the School. Urgency had been highlighted thereby. For want of action a reminder was sent on 10-11 -2001 (Ext.P6). However, the Educational Authorities have refused to oblige them and Ext.P7 dated 13-12-2001, issued by the District Educational Officer, Malappuram was to the following effect:

I invite your attention to the ref. Cited and request you to get the bye-law

approved by the department authorities and to submit a copy of the approved bye law of the Management.

Though an objection was forwarded as Ext.P8, the view in Ext.P7 has been reiterated by stating that for the purpose of approval of the appointment of the Manager, it is required that the constitution has to be got approved by the Deputy Director of Education. A byelaw in consonance with the constitution also had to be got approved by the

District Educational Officer. The school management was thus advised that it was possible for the office to take a decision only after they complete these formalities. Exts.P7 and P9 are the proceedings.

4. The petitioner submits that the approach, evidence by Exts.P7 and P9, is irregular and also amounts to circumventing the orders passed by this Court in the second appeal. It is contended by Sri. K.T. Sankaran that such an objection was unwarranted, as the High Court had been proceeding on the basis of the byelaws that were governing the administration of the Sangham and at this juncture an approval was totally unnecessary. It is submitted that from 1993 onwards because of the civil suits and other circumstances a proper management has not been there. Now at least after this Court satisfactorily resolved the issue, the Department ought not have come up with technical objections. They were to oversee that a Committee and office bearers who were declared as validly elected and had assumed office should not have been put to suspense by raising imaginary objections. With reference to Exl.P9, it is stated that reference to Rule 2 of Chapter III of the Kerala Education Rules whereunder an approval of the byelaws that spoken had no application. It need not have stood in the way of approval of a Manager in the petitioner's school. Sri. K.T. Sankaran referred to the basic position that this was a school which started functioning well before Educational Act and Rules came into force. It was functioning as a Registered Society, which automatically was to be deemed to have been continued with all privileges to run a school as is recognized by the Kerala Education Rules.

5. With reference to the counter affidavit which highlighted these aspects, Sri. Sankaran submits that the contentions had no merit. Especially the objection that the petitioner had a statutory remedy of appeal under Rule 4 was misconceived as this was not yet a final order. He had taken me also to the observations that had been made by this Court in the Second Appeal and in the interlocutory orders, and heavy reliance had been placed on the byelaws which were part of records there, and a copy of which is produced as Ext.P1. In fact at every step what had been insisted by this Court was to see that the proceedings were taken only in conformity with the registered byelaws.

6. The counsel also submits that the present reluctance arises from practically an imaginary objection. After 1993 when the new Manager had put up a claim that he had been elected as the President of the Sangham and consequently the Manager of the school, the Department had not put any objection and such

approval had been granted and he was functioning all through out. This, according to the counsel, showed that there was no proper application of mind, though the counsel was not prepared to submit that the department had been acting with impunity or ignoring the judgment of this Court.

7. As could be seen from the counter affidavit filed by the respondent, the main objection is with reference to the requirement of an approved byelaws. We may examine the relevant provisions in Chapter III of the Kerala Education Rules. The Management of a private school may be vested in an individual Educational Agency or under a Corporate Educational Agency. Corporate Educational Agency can include cases where the right is vested in two or more persons jointly which were always to be with a written agreement. The Management could be vested in a Board or Society or Association or Company or Institution registered under a statute or created by a statute. There were also instances postulated when the school could be managed by an Institution of Trust and an ecclesiastical office of any religious denomination. The petitioner appears to be functioning under a Society, registered under the Societies Registration Act. The requirement is that with reference to such a school, the constitution of the Educational Agency to the extent and in so far as it relates to the management of any school must be subject to the rules approved by the Director.

8. The observation in Ext.P9 is that the petitioner should get the constitution approved from the Deputy Director and make byelaws in consonance therewith and obtain approval from the District Educational Officer. However, there is no warrant for such a direction, even if we assume that the petitioner had disability as had been pointed out. The expression used in the rule is that the constitution of the Educational Agency in respect of its management must be subject to rules approved by the Director/Deputy Director. Therefore, there was no liability to frame a constitution as suggested.

9. The next issue is whether the byelaws already in existence was inherently subjected to a disability. In view of the reliance placed on the byelaws for more than half a century and since this Court had approved the byelaws and even directed holding of election on the basis of such byelaws, it has to be presumed that the byelaws have to be treated as authentic and binding. We have to notice that the petitioner represents the school which came to be established before the Kerala Education Act came to the statute book. Section 3(4) provides that all existing schools shall be deemed to have been established in accordance with the Act. Therefore, when the byelaws took care of the day to day administration, especially since there was no fresh constitution of a Corporate Management after the advent of the rules, the byelaws were not to be subjected to a re-approval. We have also to bear in mind if the byelaws run counter to the rules, the latter automatically takes care of the situation and the byelaws have to be delegated to the background. I further make it clear that only in the event of a change in the byelaws hereafter, approval may become necessary.

10. The respondents had not referred to any significant defect in the byelaws. On

going through Ext.P1 byelaws, it can be seen that the Committee has been entrusted with the management of the school. After the advent of the rules in deference to orders passed by the Department, the position of the President had been modified as that of the Manager by a valid resolution (see Ext.P 1) dated 01.11.1962, and therefore no practical drawbacks could be envisaged. After permitting the elections to be held in accordance with the byelaws, and taking note of the effort that had been taken by the learned Judge to re-vitalise the organization, adhering to the binding rules, it will be improper and indiscreet to suggest that the formal approval of the Manager so appointed will have to await other formalities, as suggested by Ext.P7.

11. Of course the issue as presented here was not in direct consideration, when the parties had come to this Court in respect of certain disputes, but the overall circumstances compel me to hold that the rules as at present existing do not require a revalidation or approval. Exts.P7 and P9 will stand set aside. Within one month from the date of receipt of a copy of this judgment the requests made by Exts.P5 and P6 are to be considered in the light of the observations that are made herein and the appointment of the Manager approved with effect from the date he took charge.

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