

(1995) 09 KL CK 0016
In the High Court Of Kerala
Case No : W.A. No. 1029 of 1995

Manager, Jamia Sa-adiya Arabia and Another	APPELLANT
Vs	
State of Kerala and Others	RESPONDENT

Date of Decision : 13-09-1995

Acts Referred:

Kerala Education Rules, 1959 — Rule 11, 14, 2, 2(1), 2(2)

Citation : (1995) 09 KL CK 0016

Hon'ble Judges : M.M. Pareed Pillay, C.J;P. Shanmugam, J

Bench : Division Bench

Advocate : Kodoth Sridharan, for the Appellant; N.S. Menon, Govt. Pleader for Respondent 1 to 5 and T.P. Kelu Nambiar, for Respondent 6, for the Respondent

Final Decision : Dismissed

Judgement

P. Shanmugam, J.—Respondents 6 and 7 in O.P. No. 11171 of 1995 are the Appellants. The 6th Respondent herein filed the Original Petition Praying for the issue of a writ of certiorari to quash Ext. P-4 sanction order to open Sa-Adiya Unaided Upper primary School in Ward No. 10 of Chemmanad Panchayat and the opening of the said school in Ward No. 8 of Chemmanad Panchayat; and for a direction to the Respondents to accord sanction to the Petitioner (6th Respondent herein) to open a new unaided recognised U.P. School in Ward No. 10 of Chemmanad Panchayat. The learned Judge declared that the opening of the new Upper Primary School by Respondents 6 and 7 in the O.P. was contrary to the sanction accorded. The learned Judge also directed to accord sanction to the Petitioner in the O.P. to open a new unaided recognised Upper Primary School in Ward No. 10 of Chemmanad Panchayat.

2. Aggrieved by the judgment Respondents 6 and 7 in the O.P. filed the above appeal.

3. The brief facts leading to the filing of the O.P. are that the Government issued a notification dated 13th September 1994 in exercise of the powers conferred by

Sub-rule (4) of Rule 2 of Chapter V of Kerala Education Rules publishing the final list of areas where new unaided recognised Upper Primary Schools are to be opened in the year 1994-95 (Ext. P-1). In so far as Kasaragod District is concerned the area specified was Ward No. 10 in Chemmanad Panchayat. In pursuance to the said notification the 6th Respondent as well as the 1st Appellant submitted their respective applications. Along with, the application the Appellant enclosed a sketch of plan of locality of the school in which he intended to open. In that sketch Ward No. 9 was shown as the place of the school in which the Appellant intended to open the school. After considering these applications the Government issued an order (Ext. P-4) in G.O. (P) No. 229/95/G. Edn., dated 13th June 1995 sanctioning the opening of the school in favour of the Appellant. In the said order while describing the locality under Item No. 81 it is stated as Ward No. 10, Chemmanad panchayat.

4. It is an admitted case that even though the application of the Appellant related to Ward No. 9 the sanction order was for Ward No. 10 and the Appellant had opened a new school in Ward No. 9. As for as the Appellants are concerned, they have not mis-represented in their application. The Appellant further submits that the reference to ward number is not significant and if it is found that he had located the school in a different ward, it is always open to direct him to shift it to the required place. It is also submitted that the competent authorities have permitted the Appellant to run the school and it is for the best interest of the education that their entitlement should not be disturbed.

5. On the contrary the learned Counsel appearing for the Respondents submitted that there is absolutely no scope for the Appellant to start the school in any locality other than for which the sanction had been granted. He submitted that the order of sanction is wholly illegal and is fraudulent in exercise of the powers conferred under the Kerala Education Rules.

6. In order to appreciate the rival contentions of the parties it is necessary to go through the provisions set out under the K.E.R. for opening of the newschools. Rule 2 of Chapter V of the K.E.R. deals with the procedure for determining the areas where new schools are to be Opened. Sub-rule (1) of Rule 2 emphasises the Director to indicate the locality where new schools are to be opened. Sub-clause (d) of Sub-rule (1) of Rule 2 also states the educational needs of the locality with reference to the habitation and backwardness of the areas. Sub-rule (2) of Rule 2 is for the preparation of lists and publication of the same in the Gazette inviting objections against such list. The Director, if found necessary, is to hear the parties and finalise the list and send the final list with his recommendations to the Government. Sub-rule (4) of Rule 2 states that the Government after scrutinising all the records shall publish the final list in the Gazette. Sub-rule (5) of Rule 2 provides for an appeal or revision within 30 days from the date of publication of the final list.

7. Rule 2A is regarding the application for opening of the new schools. As per this provision, after the publication of the final list of the areas where the schools are

to be opened application has to be called for, for opening of schools in the areas specified. Sub-clause (3) of Rule 2A contemplates an enquiry by the District Educational Officer as to the correctness of the statements made in the application. The Director on receipt of the applications with the report of the District Educational Officer shall forward the applications with his report to the Government. The Government shall thereafter take a final decision in the light of the report of the District Educational Officer and the Director and other relevant matters and publish the decision in the Gazette with the list containing necessary particulars. Rule 9 deals with the conditions for grant of permission to open new schools. Sub-clause (iv) of Rule 9 says that no permission to open a new school shall be granted if the educational needs of the locality do not require the opening of a new school. Rule 11 which deals with the grant of permission to open new schools requires to specify the location of the school. Note (iv) of Rule 11 says that the school shall not be allowed to function from the date from which permissions was given for opening the school unless all the condition imposed for the opening are satisfactorily fulfilled on or before the opening date. Rule 14 contemplates a report to be submitted to the District Educational Officer and the Director by the management as to the opening of the school with the statement showing location of the school.

8. By referring to these provisions it is submitted that right from the determination of the area by the Director in reference to the need of the locality, calls of objection, enquiry appeal and publications of preliminary and final list of the areas where the schools are to be located. It is incumbent on the authorities to decide finally a specific area where the school is located. Similarly the application made by the management so requires the area and the locality to be specified where the school has started functioning. Therefore, there is no scope for any change or mistake as to the locality or area where the school is to be opened.

9. A Division Bench of this Court in *Madhavan Pillai v. State of Kerala* 1987 (2) KLT 681 had occasion to deal with these provisions regarding the location of the school. It is held that Rule 2A is a statutory mandate to be complied with after the declaration of the educational need and the identification of the areas where the need exists. Without an order under Rule 2A no steps can be taken for establishing a school under the Act and to obtain recognition later. The said decision was confirmed by the Supreme Court in *State of Kerala v. Madhavan Pillai* 1989 (1) KLT 141. The Supreme Court held that the publication of the final list under Rule 2A has not only binding force on the Government but it also entails consequential obligations on the Government as could be seen from the fact that Rule 2A(1) makes it imperative for the Director to call for applications from interested parties for opening new schools in the selected areas. The mandate contained in Rule 2A(1) goes to show that the identification and selection of inadequately served areas under Rule 2(4) is not an idle or meaningless exercise.

10. Taking into account the various provisions and the decisions rendered on the very same provisions it is clear that the Appellants are not entitled to make an application for Ward No. 9 when the notification calling for the application is for ward No. 10. Similarly the impugned order of the Government sanctioning the opening of the school in Ward No. 10 of Chemmanad Panchayat, the application for which is in reference to Ward No. 9, is on the face of it illegal. As set out above Rules 2 and 2A read with Rules 9, 11 and 14 do not entitle a person to apply for a different locality and obtain sanction for the school in a locality other than for which the sanction had been granted. Both the application as well as the sanction orders are, therefore, illegal and the findings of the learned Judge in this regard is perfectly valid. As held by the Division Bench and confirmed by the Supreme Court, the exercise of Rule 2A is not a meaningless exercise if the identification and the calling for application to open a new school in a particular locality is definitely intended to serve the educational needs of the locality with reference to habitation and backwardness of the areas. It is not open to the parties to apply for a different locality and further it is illegal on the part of the Government to consider such an application and to grant permission to the place other than for which the application was made, Admittedly, according to the Appellants, they had applied only for Ward No. 9 even though that is disputed by the Respondents' counsel. Therefore the application as well as the order of the Government are contrary to the rules and report.

11. Learned Counsel on behalf of the Appellants submitted that they had not made any misrepresentation or committed any fraud for making the application. We do not propose to go to the question of fraud or misrepresentation. It is sufficient for us to consider the admitted case of the Appellants themselves that the application was made in reference to Ward No. 9 which the applications were called for, for Ward No. 10 and they have located it at Ward No. 8. Learned Counsel appearing on behalf of the Appellants also referred to Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers, for the proposition that it would not amount to fraud for the failure to disclose the fact which is not required by the statute to be disposed of. As stated earlier we do not intend to go to the question of fraud in the light of the submission made by the Appellants that their application was in reference to Ward No. 9 and not Ward No. 10. The concerned educational authorities were to verify the application with reference to the rules and recommend for consideration. Learned Counsel for the Appellants also referred to the decision in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, , where it has been held that in academic matters involving technical expertise, courts should not ordinarily interfere. The said decision was in the context of revaluation of answer sheets. The facts and circumstances of the case are entirely different and do not apply to the facts of this case. Therefore there is no merit in the submissions made on behalf of the Appellants.

12. Learned Counsel appearing on behalf of the Respondents fairly conceded that the specific direction given by the learned Single judge to the 2nd Respondent,

viz. the Director of Public Instructions to accord sanction may not be proper. We do agree. With the result, the appeal is dismissed with a direction to the 2nd Respondent, viz. the Director of Public Instructions, Trivandrum, to consider the application of the 6th Respondent in the appeal for opening of a new unaided recognized school inward No. 10, Chemmanad panchayat on the basis of the application and pass appropriate orders in accordance with law within a period of 30 days from the date of the receipt of a copy of this judgment. No order as to costs.