

(2021) 09 KL CK 0007

In the High Court Of Kerala

Case No : Writ Petition (C) No. 23452 Of 2015

**Manager Janakeeya Vidyalayam, Machad, P.O, Manalithara
Wadakkanchery, Thrissur District 680 589**

Date of Decision : 01-09-2021

Acts Referred:

Kerala Education Rules, 1959 — Rule 2, 2A, 3

Citation : (2021) 09 KL CK 0007

Hon'ble Judges : Mohammed Nias C.P, J

Bench : Single Bench

Advocate : V.A.Muhammed, M.Sajjad, Justin Jacob, U.Balagangadharan

Final Decision : Dismissed

Judgement

Mohammed Nias.C.P.,J

1. Petitioner, the Manager of an Aided Lower Primary School, Arogyamatha Lower Primary School, Thrissur questions the recognition granted to the school of which the 6th respondent is the Manager under the provisions of the Kerala Education Act, 1958 and Rules, 1959 (hereinafter referred to as 'KER'). He contends that there are about six schools including the petitioner's within a radius of two kilometers from the 6th respondent school, which remained closed for several years. Violating the provisions of the KER, in particular, Rule 2 and 2-A thereof of Chapter V, recognition has been granted to the 6th respondent school is the sum and substance of their challenge.

2. Earlier, the petitioner had filed WP(C)No.29263 of 2013, which resulted in Ext.P5 judgment, whereby the official respondents were directed to hear the petitioner herein as well before taking a final decision on the question of grant of recognition to the school of which the 6th respondent, is the Manager.

3. Heard learned counsel for the petitioner, learned Government Pleader, and the learned counsel for the 6th respondent.

4. It is the contention of the petitioner that despite the specific direction in Ext.P5 judgment to hear them, they did not get an opportunity to represent their

case as they could not participate in the hearing on 25.05.2015 or on 2.6.2015, as the notice of the second hearing was received by them only on 01.06.2016 and thus they could not attend or put forth their objection in the hearing. Resultantly, Ext.P8 Government Order dated 04.07.2015 was passed, whereby, the complaints raised against the grant of recognition to the 6th respondent were repelled. The petitioner challenges, apart from Ext.P8, Exhibits P3 and Ext.P4 as well, which are the Government Orders stating the guidelines for granting recognition. By Ext.P9 judgment, this Court, referring to the earlier judgment in *Manager, LPGS, Veliyam, Kollam v. State of Kerala and Others* [2015 (3) KHC 703], which issued various directions to the State Government to ensure compliance by the State Government of its obligations in the matter of opening of new Schools/upgradation of existing Schools as contemplated under the Right of Children to Free and Compulsory Education Act and Rules, held that the State Government was to consider the matter of upgradation of Schools fully in accordance with the stated policy which has to be in tune with the judgment in *Manager, LPGS, Veliyam, Kollam* (supra). Thus, it is the submission of the learned counsel for the petitioner that the impugned orders are contrary to the directions in Exhibits P5 and P9 judgments of this Court, provisions of the KER as well as an infraction of the principles of natural justice.

5. The learned Government Pleader submits that the petitioner was given ample opportunity to present their case on 25.05.2015, which he did not avail, and also another opportunity was also granted for hearing on 02.06.2015. On both occasions they were absent. It is also submitted that in spite of their absence, all the contentions which the petitioner took in the writ petition filed earlier, namely, WP(C)No.29263 of 2013 were noticed and each of them addressed. The Government took into consideration the conditions stipulated in Exhibits P3 and P4 and found that the 6th respondent complies with all of them. It is also asserted that there were two physical inspections by the Deputy Director of Education, Thrissur, before granting recognition and the said decision was again reiterated as per Ext.R6(a) dated 09.11.2015.

6. The learned Counsel for the 6th respondent apart from reiterating the arguments raised by the learned Government Pleader, raised another argument that deserves to be considered. He cited *Manager, Palathingal M.L.P. School, Parappanangadi v. Sethumadhavan P.K. and Others* [2017 (9) SCC 306] for the proposition that the petitioner despite Ext.P5 judgment need not be heard at all while his school is being upgraded as the ratio of the Supreme Court judgment is that there is no right of hearing to anyone else as of right.

7. It is to be noted that in the judgment of the Hon'ble Supreme Court, it is seen that there was a contention that no notice was given to the Schools in the vicinity to raise any objection with regard to the upgradation of the neighbouring school and as such there is a violation of the procedure prescribed in Rule 2 of Chapter V of KER. In fact, the said contention was accepted by the learned Single Judge of the High Court and order of the State Government granting upgradation

was set aside and the said judgment was affirmed in appeal. On appeal, the Hon'ble Supreme Court held that though Rule 2 and Rule 2A of Chapter V of KER prohibits opening and upgradation of new schools except in terms of the said Rules, Government has taken a conscious decision to make a relaxation in favour of the school in question before it and exempted it from the rigour of Rule 2 and Rule 2A of Chapter V of KER and upgradation was done. The Government order in that case upgrading schools was made with specific reference to Rule 2 and Rule 2A of Chapter V of KER as well as Rule 3 of Chapter I of KER consciously relaxing operation of Rule 2 and 2A of Chapter V of KER. The Hon'ble Supreme Court upheld the authority and jurisdiction of the Government to grant relaxation in terms of Rule 3 of Chapter I of KER, which reads as follows:-

"Where the Government are satisfied that the operation of any rule under these Rules causes undue hardship in any particular case, the Government may dispense with or relax the requirements of that rule to such extent and subject to such conditions as they may consider necessary for dealing with the case in a just and equitable manner."

8. Thus, it was held in that case the Government had exercised its power of relaxation and thus it could not have been said that the rigour of Rule 2 and Rule 2A of Chapter V of KER was not followed. In the instant case, it has to be noticed that the State Government being a party to Ext.P5 judgment, could not have exercised the power of relaxation in view of the mandamus issued directing the petitioner herein also to be heard while considering the application of the 6th respondent for upgradation. The Government was as much bound as the other parties to the judgment in as much as Ext.P5 judgment has become final in the absence of the same being varied in any manner known to law. A subsequent judgment of the Hon'ble Supreme Court could be a reason to challenge Ext.P5 judgment successfully in an appeal, but that not having been done, the right of hearing afforded to the petitioner by Ext.P5 judgment could not have been taken away except at the peril of inviting an action for contempt. Thus, the contention of the 6th respondent that the petitioner need not have been heard at all, given the dictum laid down in the judgment mentioned above, though attractive, cannot be countenanced. Any party to the judgment is bound by a direction in it as long as it stands. This is the fundamental premise on which the judicial system rests for any deviation from it is an affront to the rule of law. It is settled law that the effect of a mandamus issued cannot be taken away except by way of an amendment to the statute governing the field which takes away the very substratum of the judgment.

9. In the facts of the case, it is to be noted that a right of hearing was afforded to the petitioners in terms of Ext.P5 judgment, but they failed to avail the same. Hence, the petitioners cannot complain about the violation of the principles of natural justice or of any statutory provision. Right of hearing is one and availing of it is another. In the instant case, nothing has been substantiated to show that Ext.P8 suffers from any illegality warranting interference. Petitioners' contentions

have been noticed and answered and the finding that the 6th respondent school meets all the requirements is only to be upheld.

There is no merit in the writ petition, accordingly, it is dismissed.