
(1998) 08 KL CK 0019

In the High Court Of Kerala

Case No : W.A. No's. 1686 and 1734 of 1998

Midhun Murali and Another

APPELLANT

Vs

Fertilisers and Chemicals and Others

RESPONDENT

Date of Decision : 25-08-1998

Acts Referred:

Constitution of India, 1950 — Article 12, 36, 39, 45

Citation : (1998) 08 KL CK 0019

Hon'ble Judges : D. Sreedevi, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : K. Jaju Babu, for the Appellant; P.K. Kurian, Senior Standing Counsel and Antony Dominic, for Respondent Nos. 1, 3 and 4, for the Respondent

Judgement

A.R. Lakshmanan, J.—Petitioners 1 and 2 in O.P. 8125 of 1998 are the Appellants in W.A. 1686 of 1998. They along with another Petitioner by name, Adin Abraham, filed the Original Petition to declare that the selection for admission to Standard I in Udyogamandal school pursuant to Exts. P-1 and P-2 is illegal and improper and direct Respondents 1, 3 and 4 to cancel the same and also to direct the said Respondents to conduct admission to FACT Udyogamandal school to Standard I afresh in accordance with law.

2. According to the Appellants in the above appeal, the first Appellant was a student of LKG, MKG and UKG at Kasturba English Medium Nursery School. He was an excellent student and was having First Rank in the Nursery School for both MKG and UKG. He was awarded distinction in the National Level Talent Search Examination held in 1996-97 and is also proficient in Extracurricular activities and was placed first in the Painting Competition held at FACT Township. The case of the second Appellant is also not different. Apart from his excellence in Nursery School, he holds Certificate of Merit in the P.C.M. Scholarship Examination at LKG and UKG and he has also won the Merit Certificate in the Competitive Examination conducted by the K.P.S.E. Board Trust. Since the third Petitioner did not prefer any appeal, we are not considering his case in this

appeal.

3. According to the Appellants in W.A. 1686 of 1998, there were several irregularities in conducting the examination etc. and, therefore, the action of the contesting Respondents in not giving admission to them is illegal. Certain alleged irregularities have also been mentioned in paragraph 8 of the Original Petition.

4. A detailed counter-affidavit was filed on behalf of Respondents 1, 3 and 4, who are the Appellants in W.A. 1734 of 1998. According to them, to cater to the educational needs of the children of its employees, the Company has established schools at Udyogamandal and at Ambalamedu where the Cochin Division of the Company is located. The schools are established by the Company basically to cater to the educational needs of the children of its employees. The admission to the Udyogamandal School, but for the limited number of students admitted at the discretion of the Management, is based on the merit list prepared on the basis of a screening test as the number of students applying for admission is much more than that could be accommodated. Therefore, considering the syllabus to be followed in the school, which is of an all India character, and the number of Applicants, the screening test was considered to be necessary before granting admission. This was the practice followed in admitting the students right from the beginning of the school. This year it was decided to select the students based on oral and written tests. The select list published included 36 candidates selected on merit and another four against the management quota and the last candidate admitted on merit has secured 71.5% marks in the written test whereas the Appellants secured only 61.5% and 66.5% marks respectively and they were ranked 49 and 51. Therefore, they did not find a place in the merit list for admission. It was also noticed that admission to Standard I in all the neighbouring schools have been closed and if a re-examination is ordered at this stage, that might result in hardship to those already included in the select list published on 9-4-1998 and awaiting admission in the Udyogamandal school. In the circumstances, the management has decided to streamline the admission procedure and issue administrative instructions in this respect, taking into account the points raised by the second Respondent in his report for future admissions. The second Respondent had submitted a report on the alleged irregularities in the conduct of entrance examination for admission to the Udyogamandal school. It is seen that the report was based more on probabilities. It is submitted that there is no violation of any of the fundamental rights of the writ Petitioners as alleged in the Original Petition. The various other averments made by the Petitioners have also been denied by the contesting Respondents.

5. The learned single Judge, on a consideration of the rival submissions made by both the parties, has observed in paragraph 5 of his judgment as follows:

Exhibits PI and P2 show that admission to Std. I was being conducted "based on the combined results of assessment both oral and written". As already mentioned above, 1st Respondent is a State within the meaning of Article 12 even for establishment of educational institutions. Therefore, admission to such

schools shall not be in arbitrary manner. Equality before law and equal protection of law shall pervade in all actions of the 1st Respondent. One among the cardinal principles of Policy to be followed by the State in terms of Article 39 is that, "children are given opportunities and facilities to develop in a healthy manner mid in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment". Children seeking admission to Std., I will always be less than 6 years of age. They will not be knowing for what they are being tested both orally and in writing. They will not be knowing the repercussions of failure in such tests. They will not be knowing about the consequences arising out of it. Children have to be given opportunities to develop. That is the duty of any State. Development of children will start only at the age of 6 when they are commencing formal education. Even for admission to Std., I if a test is to be conducted, that will not be a state of affairs rendering opportunities and facilities for children to develop in a healthy manner. That will not be a situation where the conditions of freedom and dignity will prevail. To subject such children of tender age to such a test cannot be considered as protection to childhood. In terms of Article 45 it is also the duty of the State to endeavour to provide for free and compulsory " education for all children until they complete the age of fourteen years. To get education upto 14 years is thus the birth right of the children. To deny admission on the basis of the test to children is denial of this birth right to such children. "Therefore, admission to the first standard, where education begins, cannot be based on any test at all either oral or written. The criteria shall not be the test, to admit students to first standard. The 1st Respondent, conforming to the definition of State under Article 12 and Article 36 of the Constitution of India has to find out some other method adaptable to it so that equality for the children is not defeated and the right of the children to get education is not denied. The criteria can be the. nearness of the residence to the school, the income of parents, seniority of the parents etc. without discriminating the children on the basis of answering questions without understanding the consequence of the test to which the children of tender age are subjected.

In the circumstances, the learned Judge has declared that the selection process to Standard I in Udyogamandal school on the basis of the results of oral and written tests is illegal and violative of "the rights available to the children to get education. Since the admission for the current year has already been over, the learned Judge has said that the selected candidates need not be disturbed as several children would be affected. However, in the concluding portion of the judgment, the learned Judge has observed that "the first Respondent shall not hereafter conduct admission test or entrance test for admission to Standard I in any of the schools including Udyogamandal school managed by the first Respondent" and if there are no sufficient seats to meet the requirements of all the Applicants, the admission shall be based on such other criteria as mentioned in the judgment without discriminating the children on the basis of their knowledge, because knowledge shall not be the criterion to get admission to

Standard I. According to the learned Judge, this is applicable not only to the first Respondent, but to every institution where admission to Standard I is made based on entrance test and the learned Judge has directed the State of Kerala also to see that admission to Standard I shall not be based on the admission test in any of the aided, recognised or other institutions run with the grant/permission or sanction of any governmental organisation. The Government or the department concerned is free to prescribe guidelines for such admission. The learned Judge had finally observed that it is impossible to give admission to the Petitioners in OP 8481 of 1998 as several other children already admitted would be adversely affected. Therefore, the learned Judge did not grant any relief to the Petitioners therein.

6. Aggrieved by the observations and other directions made in para 5 of the judgment, Respondents 1, 3 and 4 have filed Writ Appeal 1734 of 1998. Mr. P.K. Kurien, learned senior counsel appearing for the Appellants in the above appeal submitted that the directions given by the learned Judge are against law, facts and circumstances of the case. Learned Counsel submitted that the learned Judge ought not have issued such a direction considering the prayers made in the original petition and other points raised. He has reiterated the submissions made by him in the counter affidavit filed in the original petition and the grounds of appeal.

7. Learned Counsel appearing for the Appellants in WA 1686 of 1998, Mr. K. Jaju Babu, has also reiterated the same arguments and said that since the Appellants have already been admitted in some other school under the same management, at least their claim for admission for the ensuing year may be considered by the management.

8. We have carefully gone through the entire pleadings and also the judgment impugned in these appeals and particularly the directions issued by the learned single Judge. It is to be noticed here that the Appellants in WA 1686 of 1998 (Respondents 1 & 2 in WA 1734 of 1998) did not raise any objection to the prescription of an oral test and written assessment for determining the suitability of the students for admission to the school, The prayer in the Original Petition was only to declare the selection for admission to Standard I in Udyogamandal school pursuant to Exts. PI and P2 as unfair, illegal and improper and to direct the contesting Respondents therein to cancel the same and for other allied reliefs. It is stated by learned senior counsel that the schools are established by the Company basically to cater to the educational needs of the children of its employees. Admissions are given to the children who want to get education in the schools run by the Company either in Malayalam medium or in English medium in accordance with their choice. Insofar as the Udyogamandal school is concerned, there is only one division for each class and on account of the limited number of seats available, considering the all India syllabus and the number of Applicants, the conduct of a screening test was considered necessary before granting admission to the students. In the year in question, the Principal of the

school, vide Ext. PI. notified admission of students to various classes of Udyogamandal school and Clause (3) thereof provided that admission will be based on the combined results of assessment of both oral and written test. In response to Ext. PI, 161 candidates applied for admission to Standard I and in view of the limited number of seats available, it was decided to follow the existing system of conducting an oral and written test. According to the management, such a test is conducted mainly to resolve ties wherever they exist. We have already noticed the marks obtained by the Appellants in WA 1686 of 1998 in the test conducted. It is submitted that when the number of Applicants exceed the number of seats, the management are always entitled to prescribe a method of selection in order to select students to the extent of the seats available. In this process, the School Advisory Committee consisting of teachers and the representatives of the Company have, after deliberations, decided to prescribe a system of assessment of the merit of the students consisting of both written and oral tests.

9. The above submission of the learned senior counsel for the management is well founded. There is nothing illegal or arbitrary in prescribing a method of selection as decided by the management. The process of selection is prescribed with the intention of selecting meritorious students among the Applicants. Considering the fact that education in the Udyogamandal school is imparted free of cost, the Appellants are entitled to prescribe such mode of selection particularly with a view to choose the most (sic) among the Applicants. It is argued by. Mr. Jaju Babu, learned Counsel for the students that the right to education is a constitutional right and that the State is obliged to provide for the same. There is no quarrel or dispute about the proposition of law made by the learned Counsel. At the same time, we are of the view that the State is entitled to prescribe restrictions in the matter of regulating admissions which can also include an assessment consisting of written and oral tests. The learned Judge, in our opinion, ought to have found that neither in the original petition nor in any of the pleadings there was any complaint about the prescription of an assessment both (written and oral. A perusal of the pleadings in this lease would show that the complaint of the students was only about the alleged irregularities committed in the process of selection and not against the very prescription of the assessment tests. Therefore, the declaration now granted by the learned Judge and the general direction issued prohibiting the conduct of written test or interview not only in any of the schools run by the Appellants in WA 1734 of 1998 but also anywhere in the State, with great respect, are far beyond the dispute involved in the case on hand. Therefore, we are of the opinion that such a direction given by the learned single Judge deserves to be reversed. We are of the view that the Appellants in WA 1734 of 1998 (the management of the Company) which is an authority under Article 12 of the Constitution, they are entitled to frame its own regulations including in the matter of regulating admissions to the schools established by it for giving free education to the children of its employees. Viewed in this angle, the prescription of a process of

assessment cannot be found fault with.

10. The Supreme Court in *Virendra Nath Gupta and another Vs. Delhi Administration and others*, , has held that the management of the school authorities and the Government can even prescribe additional essential qualifications to preserve culture and that prescription of regulations if it is intended for achieving excellence of education, it is not bad. In *St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others*, etc. etc., , the Supreme Court has quoted with approval several principles of law on the subject. The Supreme Court said that the regulations framed by the State cannot abridge the fundamental rights of the minorities and they should be in the interest of the minority institutions themselves and not based on State necessity or general societal necessities. The regulations should be with a view to promoting excellence of educational standards and ensuring security of the services of teachers and other employees of the institutions and in the true interests of efficiency of institutions, discipline, health, sanitation, morality, public order and the like. In *Rev. Sidharajbhai Sabhai v. State of Gujarat* AIR 1963 SC 540, the Supreme Court has held that the regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the substance of the right which is guaranteed; they secure the proper functioning of the institution in matters of education. In *Re. Kerala Education Bill*, 1957 AIR 1958 SC 956 also, the Supreme Court has taken the view that the State has power to make regulations for protecting such social interest.

11. The facts and circumstances of those cases and as held by the various decisions of the Supreme Court referred to by us, we are of the view that regulatory measures prescribed by the management in this case satisfy the test laid down by the Supreme Court.

12. The learned single Judge has also held that the Appellants in W A 1734 of 1998 arc to find out some other method adaptable to it which can include nearness of the residence to the school, income of the parents, seniority of the parents etc. without discriminating the children on the basis of answering questions without understanding the consequences of the test to which they are subjected. We arc of the view that none of the above criteria can form the basis for determining the eligibility for admission to an educational institution. It is also worth noticing that most of the children who are seeking admission to Standard I are those who have completed two to three years of education in Nursery School and are familiar to tests and examination. The test administered for admission to Standard I is also the type that the children are used to in their Nursery School. Therefore, it cannot be said that equal opportunity is denied to those who are seeking admission whereas equal opportunity is ensured in the process of selection. Even admitting for the sake of argument that the Appellants in WA 1686 of 1998 had the constitutional right for education, it cannot be denied that they have no right to insist that their education must be in a particular school or

in a particular manner. No student can insist that a school of his choice should provide him the education in the manner in which he wants. Likewise, the syllabus prescribed by the Council for the Indian School Certificate Examination, New Delhi is of an All India character and it is an accepted fact that the course offered by the schools affiliated to the Council for the Indian School Certificate Examination are comparatively more heavy than those offered in the State syllabus. Therefore, a screening in order to ensure that only deserving candidates are admitted to those course is only natural and it is in the interest of the students also. Otherwise, that will lead to frustration among the unsuitable students leading to dropping out of the course half way through. On this ground also, we are of the view that prescription of a process of selection is justified.

13. For all the foregoing reasons, the writ appeal filed by the management (WA 1734 of 1998) is allowed and the writ appeal filed by the students (WA 1686 of 1998) is dismissed. The direction issued by, the learned Judge that the admission to Standard I cannot be based on any test either oral or written and that the management will have to find out some other method to regulate admission" is deleted. Likewise, the further direction given by the learned Judge to the State of Kerala to see that admission to Standard I shall not be based on admission test in any of the aided recognised or other institutions run with the grant/permission or sanction of any governmental organisation is also deleted.

14. Since the students/Appellants in WA 1686 of 1998 had an excellent and good school records, they may be considered for admission in the next year if they satisfy the rules and regulations prescribed by the management.

No costs.