

(2002) 01 KL CK 0021
In the High Court Of Kerala
Case No : O.P. No. 32683 of 1999

Mohamedkutty

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 22-01-2002

Acts Referred:

Kerala Education Rules, 1959 — Rule 1, 2

Citation : AIR 2003 Ker 39

Hon'ble Judges : R. Rajendra Babu, J

Bench : Single Bench

Advocate : N. Haridas and C.S. Manu, for the Appellant; M.J. Rajasree, Government Pleader and T. Krishnanunni, for the Respondent

Final Decision : Dismissed

Judgement

R. Rajendra Babu, J.—The Kunhimon Haji Memorial High School (KHMHS) at Alathiyur was established in 1974 by late Hamsa Haji, who died on 16.9.1993. He was the Individual Educational Agency and the Manager of the school. The fifth respondent Sainaba is the wife of late Hamsa Haji. They had nine daughters and two sons. Petitioner Mohammedkutty is the eldest son and the younger son Moideenkutty, later died leaving his widow and three children. The KHMHS belonged to the deceased Hamsa Haji and the school was located in an area of 3.5 acres of land. In 1988 Hamsa Haji proceeded for Haj and during the period of his absence, he authorized the petitioner to be the Manager of school and the DEO approved the petitioner as the temporary Manager as per Ext. P2 proceedings. During May 1993 Hamsa Haji became ill and he authorised the petitioner to be the Manager of the school till Hamsa Haji recovers from his illness. The younger brother of the petitioner also had consented to the above course. Hamsa Haji did not recover from his illness and he died on 16.3.1993 and thereafter the petitioner continued to be Manager of the school without any opposition from the other legal representatives of the deceased Hamsa Haji and according to the petitioner, he is still continuing as the Manager of the school.

2. After the death of Moideenkutty, the younger brother of the petitioner, all the legal representatives of the deceased Hamsa Haji including the petitioner, the fifth respondent and the wife of the deceased Moideenkutty for herself and representing her minor children executed Ext. R5(b) agreement. The petitioner signed the above agreement, as the first party. As per the above agreement, the petitioner as well as all the other legal representatives of the deceased Hamsa Haji decided to retain the school and the premises as common till the school and the compound are disposed of by sale and that the petitioner shall continue as the Manager of the school and all decisions regarding the administration of the school shall be taken collectively by all the legal representatives of the deceased Hamsa Haji, that the petitioner has to account for the income and expenditure and the profit and loss shall be shared among them. It was further agreed that the majority decision shall be implemented and shall be binding on all the legal representatives and if anyone acts in violation of the majority decision of the members, such person shall also be liable to compensate the members. Later, all the legal representatives of the deceased Hamsa Haji except the petitioner unanimously decided to remove the petitioner from the Managership and to appoint the fifth respondent, the mother, as the Manager of the school. The above decision had been communicated to the DEO for necessary action. As the DEO was not inclined to consider the above request made by all the legal representatives of the deceased Hamsa Haji, the fifth respondent filed OP No. 2304/99 before this Court for directing the third respondent therein (DEO) to take appropriate decision on their representation. By Ext. R5(d) judgment dated 28.1.1999, this Court directed the third respondent, the DEO, to dispose of their representation in accordance with law. Accordingly, the third respondent passed Exhibit P7 order approving the appointment of the fifth respondent Sainaba, the wife of the deceased Hamsa Haji, as the Manager of the school with effect from 17.3.1999. Aggrieved by the above order, the petitioner filed Exhibit P8 revision before the Director of Public Instructions, Trivandrum (DPI). By Exhibit P11 order dated 20.7.1999 the DPI dismissed Exhibit P8 revision and confirmed Exhibit P7 order of the DEO approving the appointment of the fifth respondent as the Manager of the school. Thereafter, the petitioner filed Ext. P12 representation before the Government (first respondent) challenging Exhibit P11 order. The first respondent rejected Ext. P12 representation by Exhibit P16 order dated 7.12.1999. Hence, the petitioner filed this Original Petition for quashing Exhibit P7 order passed by the District Educational Officer, Tirur (DEO) approving the appointment of the fifth respondent Sainaba, the mother of the petitioner, as the Manager of the Kunhimon Haji Memorial High School (KHMHS) at Alathiyar, Ext. P11 order of the Director of Public Instructions, Trivandrum (DPI) confirming Exhibit P7 order and dismissing the revision filed by the petitioner challenging Exhibit P7 and Exhibit P16 order passed by the Government upholding Exhibit P11 and dismissing Exhibit P12 representation made by the petitioner before the Government.

3. Heard the learned counsel for the petitioner, the fifth respondent and also the

learned Government Pleader.

4. Admittedly, the KMH school and the premises belonged to the deceased Hamsa Haji and he was the Individual Educational Agency and the Manager of the school till his death. The fifth respondent is the wife of the deceased Hamsa Haji. Deceased Hamsa Haji had 9 daughters and 2 sons. The petitioner is the eldest son. The second son died after the death of Hamsa Haji. During 1988 deceased Hamsa Haji had proceeded for Haj and during his absence he authorised the petitioner to be the Manager of the school to perform the duties of the Manager. The above authorisation was approved by the Educational Authority as per Exhibit P2 proceedings. Exhibit P2 proceedings would clearly indicate that the approval of the petitioner as the Manager of the school was temporary and it was during the absence of deceased Hamsa Haji. Later, in 1993 deceased Hamsa Haji fell ill and he authorized the petitioner to be the Manager during the period of his illness and till he recovers. By Exhibit P3 order the Educational Authority approved the petitioner as the Manager of the school from 17.5.1993 till the existing Manager, Hamsa Haji, resumes charge. Exhibit P3 order was one permitting the petitioner to act as an agent of the Manager of the school, for and on behalf of the Manager, deceased Hamsa Haji, during the period of his illness and until he resumes charge. It was only an authorisation to function as the Agent of the Manager. By the death of Hamsa Haji the above authorisation ceased to exist and the petitioner could not function as the Manager as authorised by his father. By the death of Hamsa Haji, the right of Management and the right over the school devolved on all the legal representatives of the deceased Hamsa Haji. In addition to the petitioner and the fifth respondent, there were 9 daughters and one son as the legal representatives of deceased Hamsa Haji. Admittedly, the petitioner functioned as the Manager of the school even after the death of Hamsa Haji. According to the fifth respondent the petitioner continued to be the Manager of the school as consented by all the legal representatives of deceased Hamsa Haji. Exhibit R5(b) agreement was executed by all the legal representatives of deceased Hamsa Haji, the first party being the petitioner himself, agreeing for retaining the school and the premises as common and to dispose of the same by sale as and when they get attractive price. They further decided that till it was disposed of, the petitioner should continue as the Manager and he should function as per the majority decision of all the other legal representatives of the deceased. It was specifically stipulated in Exhibit Rule 5(b) that the majority decision shall be binding on all the others.

5. The petitioner admitted the execution of Exhibit Rule 5(b) agreement. But, according to him he was compelled to sign the document due to fraud, threat, coercion and threat and as such the above document was not at all binding on him. The learned counsel for the fifth respondent argued that an agreement executed due to threat, coercion, fraud or misrepresentation was voidable at the option of the party whose consent was so obtained and he would be found by the agreement till it was set aside by appropriate civil proceedings. Section 19 of the Contract Act stipulates that an agreement executed by threat, coercion, fraud or

misrepresentation is a voidable one at the option of party whose consent is so obtained. As such the agreement alleged to have been executed by threat, fraud, coercion or force is not a void agreement and it cannot be ignored by the petitioner. It is settled law that the party challenging the contract on the grounds of fraud, coercion or threat has to get the contract set aside by filing a civil suit and he cannot ignore the document as a void one. If the petitioner was aggrieved by the above agreement, he had to file a suit and get the document set aside. Till it was not set aside by appropriate proceedings before any Civil Court, it shall be a valid document and he shall be bound by the terms of the document and the petitioner cannot ignore the same and raise the contention that the document is not binding on him. As the petitioner did not opt to file any suit challenging Exhibit Rule 5(b), he is bound by the terms of the agreement till the document is set aside by any competent Civil Court. Thus, the petitioner was functioning as the Manager of the school as consented by all the other legal representatives of the deceased. As the document would reveal that the majority decision should be binding on all the legal representatives of the deceased, the subsequent decision to appoint the fifth respondent as the Manager of the school, shall be binding on the petitioner.

6. The DEO passed Exhibit P7 order after hearing the petitioner and the fifth respondent and considering all the documents. The majority members, viz., the legal representatives of Hamsa Haji elected and appointed the fifth respondent as the Manager and the DEO approved the same. Such election was in pursuance to Ext. R5(b) agreement and the DEO has to approve the decision of the majority members as the DEO cannot consider the legality or propriety of the above decision of the co-owners who jointly constitute the educational agency. If the petitioner was aggrieved by the election or the appointment of the fifth respondent as the Manager of the school by the majority co-owners on the strength of Exhibit R5(b), that being a civil dispute, his remedy was to challenge the above disputes before a Civil Court. It is settled law that the decision of the Educational Authorities on such civil disputes shall be subject to the decision of the Civil Court. A Division Bench of this Court in *Abdul Rahim v. State of Kerala* 1984 KLT 773 held:

"The decisions of the Educational Authorities are not meant to settle civil rights of the parties to such properties. These decisions are in the nature of summary determination for the sake of expediency, without waiting for the result of a protracted litigation in a civil court. There could be no doubt that the right to agitate on questions of civil rights in a Civil Court would remain unaffected in spite of the decision by the Educational Authorities for the limited purpose of carrying on the functions and fulfilling the obligations under the Act. It does not, and cannot oust the jurisdiction of the Civil Court in matters touching the civil rights of the parties. The impugned order does not conclude the matter so far as the civil rights of the parties are concerned; and it is open to any of the parties to proceedings to take the matter to the Civil Court for its adjudication."

Thus, the petitioner has the right to agitate all the civil disputes before a Civil Court and the orders of the Educational Authorities shall be subject to the final decisions of the Civil Court.

7. The main argument advanced by the learned counsel for the petitioner was that Hamsa Haji was the Individual Educational Agency and by the death of Hamsa Haji, the status of Individual Educational Agency would cease and all the legal representatives would jointly constitute a Corporate Educational Agency and till a bye law had been framed for the administration of the Corporate Management and it was approved by the Educational Authority, the petitioner cannot be removed from the Managership. Though such an argument was advanced by the learned counsel for the petitioner, he could not substantiate the above contention. When the Individual Educational Agency, namely, Hamsa Haji, died, the right over the school and the right of Management devolved on all the legal representatives of the deceased in accordance with their personal law of inheritance and the character of the Educational Agency as Individual Educational Agency would not terminate by the death of the Individual Agency.

8. Chapter III Rule 1 of KER deals with the classification of private Educational Institution. Rule 1 says:

"Private Educational Institutions may be classified into two categories viz (i) those under individual Educational Agency and (ii) those under Corporate Educational Agency. When the right to conduct the school is vested in an individual in his own right or as the legal representative of a joint family, the Educational Agency shall be termed "Individual Educational Agency" and in all other cases the Educational Agency shall be termed "Corporate Educational Agency". Corporate Educational Agency shall include cases where the right is vested in (a) two or more persons jointly with written registered agreement, (b) a Board or Society or Association or Company of institution registered under a statute or created by a statute (c) an Institution of Trust and (d) an ecclesiastical office of any religious denomination".

A reading of Rule 1 of Chapter III would indicate that in the case of a Corporate Educational Agency, the right of Management would be vested in two or more persons jointly by a written registered agreement or vested in a Board, Association or created by a statute. Rule 2 would further make it clear that in the case of a Corporate Educational Agency, the Management of the school must be subject to the Rules approved by the Director. Rule 1 says that the right to conduct a school if vested in an Individual in his, own right or as the legal representative of a Joint Family, the Educational Agency shall be termed as Individual Educational Agency. The usage of the term "Joint Family" in KER does not refer to the concept of "Joint Family" under the Hindu Law. In the case of the death of one of the members of the Joint Hindu Family, his right would devolve on the other members of the family by survivorship and not on the legal representatives of the deceased individual. The usage "the legal representatives of the Joint Family" under the above Rule takes in only all the legal

representatives of the deceased person jointly or collectively and all the legal representatives of the deceased Individual Educational Agency is termed as the Joint Family and it does not take in a Joint Hindu Family as contemplated under the Hindu Law. The concept of Joint Family System was there only under the Hindu Law. The term "legal representatives of the Joint Family" would apply to all the Individual Educational Agencies irrespective of the religion or community to which the Individual Educational Agency belonged. Corporate Management is a creation by agreement between the parties or a creation by a law, but not a creation by operation by law. By the death of Hamsa Haji the character of Individual Educational Agency did not cease, but it would continue and it would be open for all the legal representatives of deceased Hamsa Haji to treat the school and the Management as common and to nominate or appoint one of the legal heirs as the Manager. Here, all the legal representatives had decided to treat the school as common by Exhibit Rule 5 (b) agreement and later all of them, except the petitioner, decided to convert the Management to a Corporate one by Exhibit R5 (g) Constitution. Till Exhibit R5 (g) document is approved by the competent authorities and treated it as a Corporate Educational Agency, the Management shall be deemed to be an Individual Educational Agency and the Management of the school shall be subject to the majority decision of the legal representatives as stipulated in Exhibit R5(b) agreement. It is for the legal representatives to decide whether the Management of the school should be continued as an Individual Educational Agency or be converted into a Corporate Educational Agency by agreement among them. Hence, the argument advanced by the learned counsel for the petitioner that by the death of Hamsa Haji, the Corporate Management would be constituted by operation of law cannot be accepted. A Division Bench of this Court had considered a similar matter in W.A.No. 2844/2001. There it was held:

"Moreover Sankaran Ezhuthassan was the educational agency. It is stated that the property belonged to him absolutely. He died after the Hindu Succession Act. His right hence devolved on his heirs under that Act. Hence the heirs of Sankaran Ezhuthassan in a body now constitute the educational agency. It is that educational agency that has the right to nominate a manager in terms of the Kerala Educational Act and Rules".

9. By the death of Hamsa Haji, the right of Individual Management over the school devolved on all the legal representatives of Hamsa Haji and by Exhibit R5(b) agreement, they decided to continue the right of Management as Individual Educational Agency. Later, they decided to formulate Rules for the management of the school and to make it a Corporate Educational Agency and framed Exhibit R5(g) Constitution. Till Exhibit R5(g) Constitution is approved by the Educational Authorities, it would remain as an Individual Educational Agency.

10. Another argument advanced by the learned counsel for the petitioner was that the fifth respondent was not qualified to be a Manager of the school as she was illiterate. Rule 8(4) of chapter III of KER stipulated that the Manager of an

Aided school shall be literate, solvent and interested in educational practice. The learned counsel for the fifth respondent submitted that she was literate and a certificate issued by the village officer also had been produced to establish the same. The learned counsel for the petitioner submitted that a village officer was not competent to issue a certificate regarding literacy and if she was literate a certificate could have been produced from the school where she has studied. A person can be literate even without going to the school. A certificate was produced to show that the fifth respondent was literate. In fact, it was for the Educational Authority to ascertain and to be satisfied, whether the fifth respondent was literate or not. If she was illiterate, there was no chance of her being approved as the Manager of the school and as such it had to be held that she was literate. Hence, the above contention cannot be accepted.

11. It was further argued by the learned counsel for the petitioner that the fifth respondent was a chronic patient and one of her legs had been amputated and she was physically incapable of running the school. Even if one of her legs has been amputated, she can very well manage the administration of the school if she is mentally capable of managing the affairs of the school. There is no allegation that she is mentally unfit to manage the school. The physical ailment, namely amputation of a leg, is not a matter to disqualify her to be the Manager of the school. Hence, the above argument also cannot be accepted.

12. All the legal heirs of the deceased Hamsa Haji except the petitioner had decided to appoint the fifth respondent as the Manager of the school in accordance with Ext. Rule 5(g) agreement to which the petitioner was also a party and the third respondent had approved the fifth respondent as the Manager of the school. The Appellate Authority as well as the first respondent had considered the above appointment and concurrently found that there was no reasons for interfering with the above appointment. Hence, I find no reasons to interfere with those orders and as such this petition has only to be dismissed.

O.P. No. 26626/2001

13. Petitioner, who is the President of the Parent Teachers' Association of K.H.M.M.H. School, Afathiyur, filed this Original Petition for issuing a direction to respondents 1 and 2, the State of Kerala and the DEO, Tirur respectively to take over the Management of the above school and to make alternate arrangement for the Management of the school as there was disputes between respondents 3 and 4 regarding the management of the school. In view of my decision in O.P. No. 32683/99,¹ I do not think that it is necessary to pass any orders in this Original Petition. I have found that the appointment of the third respondent herein as the Manager of the school was proper and in accordance with law and she will have to continue as the Manager of the school. Moreover, the legal representatives of the deceased Hamsa Haji had already framed a Constitution for conversion of the Management to a Corporate one for the proper administration of the school. In view of the above circumstances, I do not think that it would be proper to direct respondents 1 and 2 to take over the

administration of the school and as such this Original Petition has only to be dismissed.

In the result, both these Original Petitions, viz., O.P. Nos. 32683/1999 & 2662672001, are dismissed.