

(2011) 04 KL CK 0111
In the High Court Of Kerala
Case No : W.A. No. 28 of 2011

Mother Superior

APPELLANT

Vs

Vicar, St. Mary's Church

RESPONDENT

Date of Decision : 12-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Education Act, 1958 — Section 35
Kerala Education Rules, 1959 — Rule 2, 4, 5, 5A(2)

Citation : (2011) 2 KLJ 620 : (2011) 2 KLT 837

Hon'ble Judges : C.N. Ramachandran Nair, J;B.P. Ray, J

Bench : Division Bench

Advocate : S. Sreekumar, V.A. Mohammed Siraj, P. Prijith and Pirappancode V.S. Sudheer, for the Appellant; K.C. Santhoshkumar, Government Pleader V.A. Mohammed, Devan Ramachandran and Tony George Kannanthanam, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The rather strange and unusual dispute which we are called upon to resolve in these cases is between the Mother Superior of a Convent and the Vicar of a Church for the control of management of a High School, which was originally started in the year 1945 as a Girls High School and later converted into a mixed School for boys and girls. Since the issues raised in the connected Writ Appeals are consequential to the controversy in the main case, i.e.W.A. No. 28/2011, we proceed to consider the said case first and the parties referred to herein are those arrayed in the said Writ Appeal, wherein the Mother Superior is the Appellant and the Vicar is the first Respondent.

2. The specific case of the Appellant is that the Little Flower Girls High School was established by the Mother Superior of the Little Flower Convent under orders obtained from the Director of Public Instruction of the Princely State of Cochin in the year 1945. In fact the School was started in the first floor of the Convent building, where nuns are staying in the ground floor. School was started after acquiring land around the Convent in the course of time through several

documents of purchase. Since nuns lead a secluded life, every convent has a chapel in it for the nuns to pray and the Appellant's convent also has the facility. It is the usual practice that the Vicar of the nearby church goes for offering prayers in the chapel in the Convent and in the Convent he is called Chaplain. In those days of very limited facilities for communication and transport it was not possible or secure or practical for the Mother Superior of a Convent to function as Manager of the School. Therefore, the Mother Superior nominated the Chaplain i.e., the Vicar of the nearby St. Mary's Church, the first Respondent herein, as the Manager of the Little Flower Girls High School, which was established by the Convent in its own name. Having regard to the close association between the Convent and the Church, both working for promoting the common interest of the parishioners and the community, the system of Chaplain of the Chapel attached to the Convent, who is ex-officio Vicar of the St. Mary's Church, continued to function as the Manager of the Girls High School belonging to the Convent. This practice continued for several years and decades in that the Vicar/Chaplain posted successively continued to function as Manager of the Girls High School of the Convent. When the present incumbent got appointed as the Mother Superior, she wanted to revoke the nomination and replace the Vicar as Manager of the convent school. Accordingly, on the transfer of the then Vicar/Chaplain in early February 2008, the Mother Superior on 12.2.2008 requested the District Educational Officer to recognise her as the Manager of the School, which by that time had become a mixed High School, but still partly functioning in the first floor of the convent building itself. It is at this time, the Appellant was informed by the educational officer that the first Respondent, the Vicar of the Church had prepared a bye-law for the management of the School and got the same approved on 5.10.1971 from the Regional Deputy Director of Public Instruction, wherein the School is declared as one owned, managed and controlled by the St. Mary's Church. This order is produced in the Writ Petition filed by the first Respondent as Ext.P1.

3. The Appellant filed Ext.P2 petition before the Government on 2.4.2008 complaining that Ext.P1 is obtained by the first Respondent without knowledge of the Convent and through fraud and manipulation, and therefore the Government being the highest authority under the Kerala Educational Act and the Rules, should declare Ext.P1 order of the Regional Deputy Director as illegal and unsustainable. The Government after hearing both sides and on verifying the records particularly title deeds of the land, tax receipts and other documents produced by the Appellant found that the School was set up and run by the Convent, and even though the Vicar on nomination continued as the Manager for long the School continued to be a Convent School and the first Respondent i.e. the Vicar of the St. Mary's Church or the Church has no proprietary interest in the School. The Government accordingly cancelled the order issued by the Regional Deputy Director recognizing the first Respondent as the Educational Agency entitling to manage the Girls High School, which was later converted as a mixed School. Following this order issued by the Government, namely Ext.P5, the

D.E.O. issued Ext.P6 order on 03/10/2008 recognising the Convent as the Educational Agency to manage the School and the Mother Superior as the Manager of the School. Ever since the issuance of Ext.P6 order, the School is under the management of the Appellant. Incidents that followed, as stated in Court, are very unfortunate. Even though we do not want to narrate everything, the Appellant has stated that physical violence against nuns by the first Respondent and a section of the parishioners led to hospitalisation of nun and filing of criminal cases against the first Respondent and others and as now the Appellant is managing with police protection granted by this Court. The Appellant's contention is that she is running the School as the Manager with the help of Police and with a section of parishioners supporting her. Appellant's battle against the Vicar and the Church for recovery of the School from the Church created problems to the Appellant herself, in as much as she is transferred and proposed to be dismissed from the Convent, which according to me Appellant is on account of the influence the higher-ups in the Church have over the Provincial Superior and Superior General of the Congregation. In any case, the Appellant filed civil suits one after another, and in all the cases the Appellant has obtained interim orders against her transfer or removal from the Convent as the Mother Superior and even now, she is continuing as the Manager of the School.

4. The first Respondent filed W.P.(C) No. 30106/2006 before this Court for a declaration that the Government has no authority or jurisdiction to issue Ext.P5 order cancelling Ext.P1 order issued by the Regional Deputy Director in favour of the first Respondent recognising the Church as the Educational Agency and the Vicar as the Manager of the Little Flower High School. The first Respondent's contentions found acceptance by the learned Single Judge, who vide judgment dated 11.8.2010 Judgment reported in St. Mary's Church Vs. State of Kerala, . held that the Government has no jurisdiction whatsoever to interfere with Ext.P1 issued by the Regional Deputy Director in favour of the first Respondent and he therefore vacated Ext.P5 Government order and the follow up order issued by the D.E.O., namely Ext.P6, appointing the Appellant as the Manager of the School. It is against this judgment, the main Writ Appeal is filed by the Appellant.

5. We have heard Shri. S. Sreekumar, learned Counsel appearing for the Appellant, Shri. A. Muhammed learned Counsel appearing for the first Respondent and learned Government Pleader appearing for remaining Respondents.

6. After hearing both sides and after going through the judgment what we notice is that the learned Single Judge has not considered anything on merits i.e., as to whether the School originally as a Girls High School with the same name as the Convent was started by the Convent and the Vicar/Chaplain was nominated only as the Manager by the Convent as claimed by the Appellant or whether the School originally was started and managed by the Vicar of St. Mary's Church as claimed by him. On the other hand, the learned Single Judge considered only the

question raised by the first Respondent as Petitioner i.e., whether the Government has jurisdiction and the finding of the learned Single Judge is that the Government has no authority whatsoever to interfere with Ext.P1 order issued by the Regional Deputy Director approving the bye-law and recognizing the first Respondent as the Educational Agency under Rule 2 of Chap.III of the Kerala Educational Rules, which according to the learned Single Judge is the final order over which the Government has no authority or jurisdiction whatsoever. Consequent upon this finding the learned Single Judge allowed the W.P.(C) filed by the first Respondent vacating Exts.P5 & P6 orders by which the Appellant was restored the management of the School. The learned Single Judge held that the dispute between the Appellant and the first Respondent should be settled only in Civil Courts. Even though, there is no direction to the Appellant to relinquish charge as manager of the School and hand over the School to the first Respondent that would be the natural consequence if we uphold the judgment.

7. The main contention raised by the Appellant's counsel before us is that the Government has authority under the Kerala Educational Act and the Rules to decide all matters arising under the Act, particularly when the order challenged before the Government is one obtained through fraud and manipulation without the knowledge of the Appellant. Further contention raised is that the learned Single Judge's finding that all matters pertaining to recognition of Educational Agency and appointment of Manager in this case can be done only through Civil Court, is absolutely untenable. According to the Appellant, a Division Bench of this Court while granting police protection to the Appellant suggested that the Appellant should file civil suit for declaration of right to hold Office as Mother Superior and to manage the School, and only this observation prompted the Appellant to file O.S. No. 121/2010 before Sub Court, Kochi. In short, the Appellant's case is that whatever be the dispute raised by the first Respondent in respect of ownership of land and building, recognition of Educational Agency and approval of Manager of the School are within the realm of the statutory authorities, and all the orders of the subordinate authorities are subject to revision by the Government or in the alternative subject to control by Government in exercise of inherent/residuary powers of the Government u/s 35 of the Act.,

8. On the other hand, the contention raised on behalf of the first Respondent is that Ext.P1 was issued by the Regional Deputy Director on 05.10.1971 and the same is one issued under Rule 2 of Chap.III of the K.E.R, which is not appealable or revisable by the Government. On the factual position, the first Respondent's counsel denied all the claims of the Appellant and contended that the Girls High School was set up by St. Mary's Church with the assistance of parishioners and the Convent never had ownership, control or possession of the school. His contention is that even the Convent itself is under the support of the Church and the parishioners, and the same does not mean that the School was owned or managed by the Convent. Besides denying the claim of the Appellant, the first Respondent's counsel also contended that the Convent of which the Appellant is

the Mother Superior is part of the Congregation of CMC, where the Provincial Superior or Superior General does not support the case of the Appellant. According to him, the Appellant's Convent has no separate existence and it is part of the congregation of CMC and therefore she is not even entitled to take the stand canvassed by her against the first Respondent, which according to him in turn goes against the stand of the higher-ups in the Convent itself. The counsel for first Respondent also produced a list of Schools under the Corporate Management of the CMC Congregation which does not include Appellant's School. Appellant's case is that the list is prepared after Ext.P1 and in any case the same does not go against Appellant's convent's claim over the School. We notice that the dispute on control and management of the high school, which is started by the Appellant, led to adverse action against the Appellant, which are for the time being interdicted by Civil Courts. The suites on all these matters are pending in different Civil Courts and therefore we do not proceed to consider the question whether the Appellant's is an independent Convent with land, building, school etc., or whether it is part of the CMC Congregation and if at all it is so, what are the right of the Appellant and the nuns in the said Convent, most of whom are stated to be standing with the Appellant in her effort to reestablish and retain control of the High School. Leaving these issues to be decided by appropriate Civil Court, we proceed to consider only the merit of the judgment of the learned Single Judge under appeal, wherein the finding is that the Government has no jurisdiction to interfere with Ext.P1 order.

9. Before proceeding to consider the jurisdiction of the Government to consider the legality or propriety of Ext.P1 order obtained by the first Respondent from the Regional Deputy Director approving the bye-laws and declaring St. Mary's Church as the Educational Agency and the Vicar as the Manager, we have to consider the significance of Ext.P1 order obtained by the first Respondent in 1971. The learned Counsel appearing for the Appellant pointed out that the Girls High School was established in 1945 under orders of the Cochin State and since Kerala Educational Act and Rules came only in 1959, it is an "existing school" as defined in the statute and so much so, Chap.III of the K.E.R. does not provide for approval of bye-law of an existing school. When we asked the learned Counsel for the first Respondent as to the provocation of the first Respondent to prepare a bye-law and get it approved in 1971 for a school which started more than 25 years prior to that, which is not a requirement in the Rules, he has not given any satisfactory explanation instead said that the Church at that point of time wanted a comprehensive bye-law for the Educational Agency to run not only the High School but another U.P. School which is under the management of the very same Church. Unfortunately, even after declaring that the Government had no authority to interfere with Ext.P1 order, the learned Single Judge did not consider the Appellant's challenge against Ext.P1 order which is the order against which she has raised a complaint before the Government which found acceptance with the Government. In our view, when the High Court exercising jurisdiction under Article 226 found that the order impugned was issued by the Government

without jurisdiction, it was the duty of the Court to consider whether the party in whose favour the order quashed by the Court was issued by the Government is entitled to get justice from this Court and this required the Court to consider the legality of Ext.P1 obtained by the first Respondent behind the Appellant, particularly when the School originally a Girls High School with the name of the Convent itself is run in the same Convent building where the nuns are staying, which prima facie supports the case of the Appellant. Appellant's case is that when this Court vacated Ext.P5, Appellant's grievance against Ext.P1 should have been considered by this Court which was admittedly not done by the learned Single Judge. Before us, Appellant's counsel first challenged the findings of the learned Single Judge on Ext.P5, which according to the Appellant is intra vires the powers of the Government. However, before considering the finding of the Government on merits under Ext.P5, we have to consider whether the learned Single Judge has rightly held that the Government has no jurisdiction to interfere with the matter. In this context, we have to also consider the contention raised by the first Respondent's counsel that limitation will bar the jurisdiction of the Government from interfering with Ext.P1 if at all this Court finds that the Government has jurisdiction to consider the legality and propriety of Ext.P1 order issued by the Regional Deputy Director. On going through the judgment what we find is that the learned Single Judge has noticed the revisional powers specifically vested on the Government under Rule 4 and the appellate powers vested on the Government under Sub-rule (2) of Rule 5A of Chap.III of the K.E.R., and according to the learned Single Judge, since Rule 2 which provides for approval of Bye-law of the Educational Agency does not provide for any appeal or revision thereunder to the Government, the Government has no jurisdiction whatsoever to interfere with the order issued thereunder. In this context, it is worthwhile to note that since the School involved in this case is an "existing school", there was no requirement for bye-law of the Educational Agency to be approved by the statutory authority and from 1945 till 1971 no bye-law of the School was approved. So much so, we do not think there was any need for getting the bye-law approved except for change in management, if any. Since Ext.P1 in effect goes on record a change in management of the School, it cannot be treated as an approval of just bye-law under Rule 2 of Chap.III is the contention of the Appellant. The first Respondent did not produce title deeds or any other evidence towards proof of ownership of the School with the Church before the Regional Deputy Director, who just based on application approved the bye-law which really has the effect of change of management through Ext.P1 order. The still more strange aspect is that even though the School is functioning on the first floor of the convent building and beneath it the nuns are staying, the Regional Deputy Director has not chosen to issue notice to the Convent or the Mother Superior to find out whether the claim of the Church that the School belongs to them which is not supported by documents of title is correct or not. Obviously, the first Respondent got the bye-law approved by the Regional Deputy Director without knowledge of the Appellant and so much so, she is entitled to challenge it as and when she came to know about it. The Appellant has a specific case that only

when she applied for recognition of the Mother Superior as the Manager, she came to know about Ext.P1 order obtained by the first Respondent, which according to the Appellant is obtained by fraud. In these circumstances we do not think the petition filed by the Appellant before the Government could be treated as one barred by limitation.

10. In support of the jurisdiction of the Government to issue Ext.P5 order impugned in the WP(C) is concerned, the Appellant raised two contentions. The first contention is that in effect Ext.P1 is an order illegally effecting change of management and therefore it has to be treated as an order under Rule 5 or 5A against which appeal/revision is provided to Government. We have already noticed above that there is force in this contention because Rule 2 order is not required for an "existing School" unless there is a change in management which has to be first effected. The next contention is by relying on Section 35 of the Act, which gives residuary powers to the Government for removal of any difficulty arising in the administration of the Act and the Rules. The said Section is as follows:

35. Removal of difficulties: If any difficulty arises in giving effect to the provisions of this Act, the Government may by order, do anything not inconsistent with such provisions which appear to them to be necessary or expedient for the purpose of removing the difficulty.

11. The learned Single Judge was of the view that the above Section has no application in this case because there is no difficulty noticed by the Government in the administration of the Act. What we notice from the above provision is that it vests unlimited powers on the Government and the only restriction is that the Government shall not do anything inconsistent with the provisions of the Act. In this case, the specific allegation of the Appellant is that the Vicar of the Church who was nominated by the Convent as ex-officio Manager on regular basis at some point of time committed breach of trust and claimed the School as one belonging to the Church, of which he was the Vicar. On facts and based on evidence and documents produced, the Government found that the Appellant's claim is genuine and the first Respondent could not produce any document of title or ownership or control of the School except that he was Manager which according to the Appellant was permitted by the Convent. In effect through Ext.P1 what the first Respondent got is a change of management without the original and first owners' even knowing it. In these circumstances, we do not think the Government can express helplessness in the matter and in our view the Government rightly examined the documents and evidence produced by the Appellant in support of her claim. If the findings of the Government in Ext.P5 are correct, certainly the Government has jurisdiction in a matter like this because the first Respondent without any authority whatsoever claimed ownership and control over a School merely because he was for long allowed to be the Manager on nomination by the Educational Agency, namely the Convent, which is permissible under Rule 4 of Chap.III of the K.E.R., Learned Counsel for the

Appellant relied on the decisions of the Supreme Court in *G. Srinivas v. Government of A.P. and Ors.* reported in (2005) 13 SCC 172, and in *A.V. Papayya Sastry and Others Vs. Government of A.P. and Others*, in support of his contention that the Government has authority to pass orders to prevent perpetuation of fraud and consequent injustice. Learned Counsel appearing for the first Respondent submitted that the Appellant could not have gone to the Government for a declaration on convent's title over the School and the property because she has pursued alternate remedy by filing O.S. No. 121/2010 before Sub Court, Kochi seeking the same relief. Therefore, according to the first Respondent, the Writ Petition itself was not maintainable because the Appellant was pursuing appropriate remedy before the Civil Court. However, the learned Counsel for the Appellant submitted that suit was filed only because of the observation made by this Court in the judgment granting police protection to the Appellant. Relying on the decisions of the Supreme Court in *Muralidharan v. Swami Dharmananda Theerthapadar*, reported in 2006 (2) KLT 119 (SC) and in *Sadananda Bai v. Ravi* reported in 2008 (3) KLT 542 learned Counsel for the first Respondent contended that even the Appellants authority to hold office as Mother Superior after the transfer itself is a matter which should be established in a Civil Suit. The right to hold office is a civil right to be established through declaratory decrees of Civil Courts is the case of the first Respondent. We have already stated that we do not want to consider the relationship between the Appellant and the Head of the Congregation because that is the matter directly pending in the Civil Court. Since we have already found that Ext.P1 should be treated as an order not only under Rule 2 but under Rule 5 or 5A as well which could be subject matter of appeal/revision before Government and in any case in exercise of residuary powers u/s 35 Government has jurisdiction to consider a petition filed before it by the Appellant against Ext.P1 order, we have to only consider Ext.P5 on merits. The finding of the Government in Ext.P5 is as follows:

10. The contentions of both the parties were examined in detail. It is found that the arguments of the Petitioner (the Mother Superior) is supported by documentary evidence. The Petitioner has produced copies of title deed of the property (Landed property in Re-Survey No. 165/5 of Narakkal Village in Thandaper No. 1481 with owners name as in which the school is situated and copy of the tax receipt. Moreover she has also produced a copy of the report of the Regulatory Council, Archdiocese of Ernakulam - Angamaly on the LF High School, Narakkal. In these report, it is concluded that the then Mother Superior has applied for the Girls High School and the sanction was accorded to the Mother Superior by the Director of Public Instruction, State of Cochin, Trichur. The Mother Superior as the educational agency has appointed the then Vicar of St. Mary's church as Manager and suggested the name of the school as Little Flower Girls High School. Since then the Vicar of the St. Mary's Church were holding the managership of the High School.

12. After recording the above finding based on documents, the finding of the Government is that the Vicar of the Church, the first Respondent, could not

produce any document in support of his claim on ownership and control of the land and building over which the Convent and High School are run. However, the first Respondent's counsel referred to the documents produced in W.P.(C), wherein the recitals are to the effect that the Vicar of the Church purchased the property for Little Flower Convent. Here again what we find is that the Vicar of the Church acted as an agent to assist the Convent to acquire the property. Even assuming that the claim of the first Respondent that property was purchased by the Church with the funds provided by the parishioners, it is seen from the documents that the purchases are made for the Convent. Convent does not need extensive property whereas the School needs the required extent of property for approval from Government. Therefore, acquisition of the properties are obviously for the purpose of the School and it is immaterial whether the church purchased the property for the Convent or the Convent acquired it by itself. The fact that escaped the attention of the learned Single Judge is that the School itself is run in the first floor of the convent building and the Church has no case that the convent building is owned by the Church. In our view, there is no need for any educational authority to declare disputed title over properties while considering approval of appointment of Manager. However, the statutory authorities have to only consider possession and enjoyment of the property by the management and such findings are always subject to Civil Court judgments and decrees and as and when any declaratory judgments are issued by Civil Court, the same can be the basis for reversing the finding entered into by statutory authorities. In other words, the parties can approach the concerned statutory authority for modification of the orders issued if the same deals with title of the property and if the findings therein are inconsistent with the court decrees. However, we do not think the statutory authorities or the Government can leave a vacuum in the management of the School because the same will affect the student and teacher community adversely. In other words, it is the duty of the educational authorities including the Government to ensure that continuous running of the School is not affected by controversy between rivals groups in the management or between management and others on ownership of the School.

13. In the result W.A. No. 28/11 is allowed vacating the judgment of the learned Single Judge and by restoring Ext.P5 order issued by the Government. However, we make it clear that if findings on title and possession of land and buildings based on which Ext.P5 order is issued are reversed by virtue of any final Civil Court judgment or decree, it is open to the first Respondent to apply to the Government for reconsideration of Ext.P5 and in that event, the Government will consider the impact of the Civil Court judgment on Ext.P5 and if any modification or reversal is required, after hearing both sides, the Government will do so.

14. W.A. No. 76/2011 is filed by the Head Mistress of the School against the judgment in W.P.(C) No. 5102/2009, which was disposed of by the learned Single Judge along with batch cases including W.P.(C) No. 30106/2008, the judgment in which is reversed by us in W.A. No. 28/2011 above. The grievance of the Appellant is that her appointment as Head Mistress by the Mother Superior will

be affected on account of the judgment of the learned Single Judge under appeal. We do not think the Appellant can have any grievance now because we have reversed the judgment of the learned Single Judge in appeal restoring the management of the School to the Mother Superior, who appointed the Appellant and consequently, Appellant's appointment approved by the DEO will stand confirmed, and so much so the Appellant will be eligible for all benefits ever since the date of appointment as Head Mistress.W.A. No. 76/2011 is allowed as above.

15. W.A. No. 66/2011 is filed by the Mother Superior against the judgment of the learned Single Judge in W.P.(C) No. 5102/2009, which was disposed of by the learned Single Judge along with batch cases including W.P.(C) No. 30106/2008, the judgment in which is reversed by us in W.A. No. 28/2011, W.P.(C) No. 5102/2008 was filed by the Vicar of the Church along with the President of the PTA of the School apprehending transfer of properties of the School by the Mother Superior. The learned Single Judge held that the dispute on properties if any should be settled in Civil Court by filing appropriate Suit. We do not find any justification to interfere with the judgment of the learned Single Judge. However, we make it clear that in the absence of any prohibitory orders from any Civil Court, the Appellant is free to utilise the properties of the Convent and the School for the purposes for which the same is purchased.W.A. No. 66/2011 is disposed of as above.

16.W.A. No. 69/2011 is filed by the Mother Superior against the judgment of the learned Single Judge in W.P.(C) No. 37015/2008, wherein, under the common judgment, the learned Single Judge held that in view of the cancellation of Ext.P5 issued by the Government, the Appellant cannot seek NOC from the Government. Since we have reversed the judgment of the learned Single Judge and restored Ext.P5 by judgment in W.A. No. 28/2011, it is up to the Appellant to apply for NOC and in which event the same will be considered by the Government in accordance with the norms. Since there is controversy between the Appellant and the first Respondent, there will be a direction to the Government to consider first Respondent's objection, if any, raised against the issue of NOC.W.A. No. 69/2011 is disposed of directing the Government to reconsider the matter afresh by taking into account the current educational policy and the needs of the area also.

W.A. No. 48/2011 is filed by the Mother Superior for a mandamus to the CBSE to grant affiliation to the St. Joseph's Public School without requirement of NOC from the Government. However, the learned Single Judge declined it for the reason that Ext.P5 order issued by the Government pertaining to the adjoining Little Flower High School was cancelled by the learned Single Judge. However, we have by judgment in W.A. No. 28/2011 restored Ext.P5 Government Order, and have in another Writ Appeal directed the Government to consider issue of NOC to the Appellant. The Appellant needs to press the Writ Appeal only if NOC is declined by the Government. In any case, we dispose of W.A. No. 48/2011 with a direction to the CBSE to consider grant of affiliation to the Appellant's public

School, if under the norms the Appellant's School has all facilities.
These Writ Appeals are disposed of as above.