

(1995) 02 KL CK 0054
In the High Court Of Kerala
Case No : O.P. No 6427 of 1994

Parent Teacher Association, Maharaja's College
Vs

APPELLANT

State and Others

RESPONDENT

Date of Decision : 14-02-1995

Acts Referred:

All India Services Act, 1951 — Section 3(1)
Constitution of India, 1950 — Article 12, 226

Citation : (1995) 1 KLJ 387

Hon'ble Judges : D.J. Jagannadha Raju, J

Bench : Single Bench

Advocate : S.A. Nagendran, for the Appellant; T.P. Kelu Nambiar Sr. Advocate, P.G. Rajagopalan and V.K. Beeran A.A.G., for the Respondent

Judgement

D.J. Jagannadha Raju, J.—This O.P. is filed by three associations for quashing Ext. P 3 order dated 27-10-1993 modifying condition No. 6 in Ext. P 1 order dated 12-10-1973. The ancillary reliefs prayed for are : (1) directing respondents to forbear from giving effect to Ext. P 3 order; and (2) to issue a writ of mandamus to the fourth respondent to forbear from constructing any multi-storied building on the land allotted to the Kerala History Association, the fourth respondent by Ext. P 1 order and in the area encroached by the fourth respondent from out of the College campus. Considering the lengthy Original Petition, the counter affidavits and the reply affidavit, I feel it would be sufficient if the cardinal facts are stated for appreciation of the controversy involved in this case. The Kerala History Association was started long ago by eminent History teachers and historians. It was originally given some facilities for conducting its activities in the buildings of the Maharaja's College. Subsequently, as the activities of the Kerala history Association expanded, the fourth respondent - association became a registered association in 1965. As its activities expanded, the fourth respondent approached the Government for allotting a site so that it can construct a building for the purpose of the association, its functions and its library. The request of the association was recommended by the head of the

department of History and the Principal of the Maharaja's College, Ernakulam. The District Collector also recommended it and then by G.O. 817/73/RD dated 12 - 10 - 1973 five cents of land comprised in Sy. No. 719 of Ernakulam Village was transferred from the Education Department to the Revenue Department and it was assigned to the Kerala history Association, free of cost, for construction of a building. The order imposes certain conditions. Ext. P 1 is the order. First a tiled building was constructed on the site assigned and subsequently, the fourth respondent tried to construct a pucca building. It made various efforts to raise funds. Then it approached the Government, through the District Collector, first seeking permission to mortgage the site to a nationalised bank so that money can be raised for construction of the building. That permission was granted. But no nationalised bank came forward to help the fourth respondent with fund. Then another effort was made and the fourth respondent requested the Government to modify the order dated 12-10-1973. On that request being considered as genuine and as one supported by the recommendation of the District Collector, Ext. P 3 order dated 27-10-1993 was issued modifying condition No. 6 of Ext. P 1 order. The trouble started after Ext. P 3 order was issued. On 16-12-1993 the Indian Express, Cochin Edition, published a news-item to the effect that the fourth respondent association has entered into an agreement with a leading hotelier in the city for the construction of a hotel complex in the land owned by the Kerala History Association. Several other newspapers also gave publicity to this news-item. Immediately, the Principal of the Maharaja's College sent Ext. P 5 letter to the Director of Collegiate Education and requested the Director to move the Government to direct the Kerala history Association to return the land to the College as the College is having acute shortage of land for further development. The College Development Committee also met on 24-1-1994 and requested the Government to take urgent steps to stop the construction of the hotel complex inside the College Campus. It was alleged that the construction of the hotel complex in the College premises would disturb the campus life and the academic atmosphere. By reason of the protest of the students and other organisations the fourth respondent stopped the construction of the hotel complex till the College was closed for the summer vacation. During the summer vacation the construction activities commenced and there was wide publicity in the newspapers on 6 - 5 - 1994 about the construction activity and the general public expressed its resentment. It is alleged that Ext. P 3 order was issued by the government under political pressure to permit the fourth respondent, the Kerala History Association, to construct a hotel complex in the Maharaja's College Campus. It is alleged that the fourth respondent - association has now become a fertile profitable venture without investment of any capital and outlay. It was alleged that the fourth respondent while occupying five cents of land assigned to it has virtually occupied eight cents of land and thus trespassed into three cents of land over and above the five cents assigned to it. It is claimed that the multi-storied complex is now sought to be built in the 8 cents of land, that is now under the occupation of the fourth respondent. Hence the writ Petition was filed on 9 - 5 - 1994.

2. On 10 - 5 - 1994 the Court admitted the Writ Petition and in C.M.P. No. 11228 of 1994 the Court passed an interim order to the following effect:

"There will be an interim stay of operation of Ext. P 1 order for a period of two weeks. The fourth respondent is also restrained from constructing buildings in the space allotted to them as per Ext. P 1 Government order for a period of two weeks. Post the CMP on 24 - 5 - 1994".

Subsequently, by various orders, the interim stay was being extended. When C.M.P. No. 31235 of 1994 came up for hearing, this Court passed an order directing posting of the O.P. for final hearing on 30-1-1995 at the top of the list, and dismissed the Petition which was actually filed for directing the fifth respondent, the Corporation of Cochin, to purchase the original plan, etc., submitted and approved for construction of the building.

3. Respondents 1 to 3 filed a counter stating that for genuine reasons and in public interest, Ext. P 3 order has been passed relaxing condition No. 6 of Ext. P 1 and that the dominant intention of the government is to see that there should be a pucca building for the fourth respondent - association so that it could protect valuable documents, records and other reference books. The counter mention that earlier the Government gave permission to mortgage the land to any nationalised bank for securing a loan for constructing a building. That was given as early as on 24 - 4 - 1975. The modification of condition No. 6 in Ext. P 1 order was made only with a view to enable the fourth respondent to raise funds for the construction. On enquiries the Government found that the request of the fourth respondent was genuine and that it had no sources to raise funds for constructing a building and the building of the association is now in a dilapidated condition. Hence Ext. P 3 order was issued. If there is any encroachment by the fourth respondent, it will be enquired into and proper action taken. There is no mala fide intention or undue influence in permitting the fourth respondent to construct a new building in the land assigned to it. Respondents 1 and 3 will examine if the agreement dated 15-11-1993 entered into by the fourth respondent with a private individual would violate the conditions stipulated in Exts. P 1 and P 3. In effect, the counter of R 1 to R 3 upholds the action of the Government in granting Ext. P 3 order and relaxing condition No. 6 of Ext. P 1 order.

4. The elaborate counter filed by the fourth respondent gives a complete history of the Kerala History Association, its activities and various functions performed by it. It also mentions that the Writ Petition filed by the three associations is not maintainable as they are not persons aggrieved by the action of the Government or the action of the fourth respondent. It is also claimed that, even according to the petitioners, Ext. P 1 assignment order is one granted under the Kerala Land Assignment Rules. Ext. P 3 order which alone is now challenged is not an order of assignment. It is only a, modification of one of the conditions of Ext. P 1 order. There is nothing in the Act or the Rules to show that a modification order or relaxation order should express on the face of it that it is done in public interest.

Only an assignment order under Rule 24 of the Rules should mention that the assignment is in public interest. As Ext. P 1 is not challenged, the challenge now posed to Ext. P 3 is untenable. If the Government feels that the fourth respondent, the assignee, has violated the conditions of" assignment, it is always open to the Government to cancel the assignment and resume possession. The present Writ Petition is nothing but an effort by certain busy bodies to sling mud on the fourth respondent and it is not a genuine public interest litigation. The Writ Petition is totally devoid of merits, and it has to be dismissed.

5. Sri. S.A. Nagendran, Senior Counsel appearing for the petitioners, contends that this Writ Petition is a matter of general public importance. There is ample material on record to indicate that Ext. P 3 order modifying condition No. 6 of Ext. P 1 order is issued due to pressures exerted on the political authorities and Ext. P 3 order does not conform to Rule 24 of the Kerala Land Assignment Rules. The order nowhere mentions that it is issued in public interest. There is absolutely no public interest involved for granting Ext. P 3 order. The State Government by filing a counter through the third respondent cannot supplement what is stated in the order by claiming that Ext. P 3 was issued in public interest. He places reliance upon the decision of the Supreme

Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, ; and a decision of a Division bench of this Court in *State of Kerala V. Balakrishnan*, (1992) 1 KLT 420 in support of his arguments. With a view to meet the contention that it is not open to the petitioners to file a Writ Petition on the basis of newspaper reports, he contends that it is now well accepted by the Indian courts that public interest litigation can be launched on the basis of newspaper reports. In support of this argument he relies upon the decision of a Division Bench of this Court in *Niyamavedi V. Raman Srivastava*, (1995) 1 KLT 206.

6. On behalf of respondents 1 - 3, Sri. V.K. Beeran, learned Addl. Advocate General, contends that Ext. P 1 order was passed long ago with a view to help the fourth respondent to construct a building of its own. Subsequently when the State found that the fourth respondent did not have funds and it was unable to raise resources to construct a building, even when permission was granted to mortgage the assigned land to nationalised banks, the fourth respondent approached the Government to relax certain conditions of Ext. P 1, and finding that the request was genuine and bona fide, the Government passed the impugned order Ext. P 3 dated 27-10-1993. He contends that there is nothing illegal in Ext. P 3 and the various allegations about the mala fides and want of bona fides on the part of the Government are not sustainable. He contends that the O.P. is misconceived and is therefore liable to be dismissed.

7. Sri. T.P. Kulu Nambiar, senior counsel appearing for the fourth respondent, contended that no writ petition is maintainable against the fourth respondent. It is only a registered society. It does not come within the ambit of the State or local or other authorities which are contemplated under Article 12 of the

Constitution. He relied upon a series of decisions and the memorandum of Articles of Association and Rules and Regulation of the fourth respondent in support of this argument. A copy of the Booklet of the memorandum of Articles of Association and Rules and Regulations, was made available to the Court for the purpose of scrutiny and judgment of the Case in the light of them. According to him, the Writ Petition against the fourth respondent is misconceived and the fourth respondent is unnecessarily dragged into this controversy. According to him, the crucial question is whether Ext. P 3 is a valid order. He contends that Ext. P 1 order dated 12 - 10 - 1973 is not challenged in the proceedings. The petitioners categorically admit that Ext. P 1 order was issued under the Kerala Government Land Assignment Act, 1960 and the Kerala Land Assignment Rules, particularly Rule - 24 If Ext. P 1 is not challenged, it is not open to the petitioners to challenge Ext. P 1 at this distance of time after a lapse of 20 years. He further contends that only an assignment order issued under Rule 24 of the Rules has to indicate that it is issued in public interest. Ext. P 3 which is an order issued only regarding relaxation of one of the conditions of assignment order need not indicate on its face that it is issued in public interest. Under the General Clauses Act, the authority which has the power to grant the assignment has also the power to relax, vary or amend any of the conditions of grant or assignment. He also contends that the argument of the Learned Counsel for the petitioners that Ext. P 3 should prima facie show that it is issued in public interest is not tenable. This is not a case where the statute requires that the order should indicate that it is being issued in public interest. In support of his contention he relies upon the principles enunciated in *Raghavan Nair V. Padmakumar*. ILR 1992 (3) Ker. 667.

8. Sri. Nagendran replying to the arguments of Learned Counsel for the fourth respondent contends that if the fourth respondent is discharging a public duty a writ would certainly lie. The fourth respondent is a necessary party to the Writ Petition as it is the beneficiary of Ext. P 3 order. Even a modification or relaxation of the assignment order requires to conform to Rule- 24. It should be passed only in public interest and public interest alone is the governing factor. The order itself should indicate it. By filing a counter the State Government is not permitted to show that it is issued in public interest. Ext. P 3 violates Rule 24 of the Kerala Land Assignment Rules. He places reliance upon the decision of the Supreme Court in *Janata Dal Vs. H.S. Chowdhary and Others*, ; and a decision of this Court in *C.K. Rajan Vs. State of Kerala and Others*, to indicate what is public interest and when a Writ Petition would lie against an authority similar to the fourth respondent.

9. In the light of the contentions of the respective parties, the following questions fall for consideration

- (1) Whether a Writ Petition would lie against the fourth respondent?
- (2). Whether Ext. P 3 is liable to be challenged on the ground that it does not prima facie show that it is issued in public interest?

(3) Whether Ext. P 3 order which relaxes condition No. 6 of Ext. P 1 order is vitiated in any manner or whether it is a genuine and bona fide order?

10. Point No. 1 : It is now well established law that a Writ Petition would lie against a State and all local or other authorities mentioned in Article 12 of the Constitution: By a series of decisions, the Supreme Court has indicated what type of organisations and associations would come within the ambit of "other authorities" mentioned in Article 12. Learned Counsel for the fourth respondent strongly relies upon the decision of the Supreme Court in Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others, . In that decision, the Supreme Court had to consider whether the Institute of Constitutional and Parliamentary Studies (ICPS) registered under the Societies Registration Act is not a State within the meaning of Article 12 of the Constitution. The Supreme Court discussed in this decision, the various tests formulated by several decisions of the Supreme Court to find out whether an institution is a State or not and then gave its conclusions in paragraphs 13, 15, 17 and 17 A. The court observed in paragraph 13 at page 479 as follows :

"It is time to turn to the facts of the present case to find out as to what the conclusion should be when the tests formulated by the several cases of this Court referred to above are applied. There cannot indeed be a strait jacket formula. It is not necessary that all the tests should be satisfied for reaching the conclusion either for or against holding an institution to be "state". In a given case some of the features may emerge so boldly and prominently that a second view may not be possible. There may yet be other cases where the matter would be on the border line and it would be difficult to take one view or the other outright."

Then in Paragraph 14 the Court mentioned about the origin of the Institution and the situation prevailing at the time of independence, and in paragraph 15 it referred to certain conditions that are essential for successful functioning of democracy and indicated :

"In the early years of freedom, the spirit of sacrifice and a sense of obligation to the leadership that had helped the dream of freedom to materialise had been accepted. The emergence of a new generation within less than two decades of independence give rise to a feeling that the people's representatives in the Legislatures required the acquisition of the appropriate democratic ideas and spirit. ICPS was born as a voluntary organisation to fulfill this requirement. At the inception it was certainly not a governmental organisation and it has not been the case of the parties in their pleadings nor have we been told at the bar during the long arguments that had been advanced that the objects of ICPS are those which are a State Obligation to fulfill. The Society was thus born out of a feeling that there should be a voluntary association mostly consisting of members of the two Houses of Parliament with some external support to fulfill the objects which were adopted by the Society".

In paragraph 16 the Court mentioned about the beginning of the Society, its office-bearers, where it was located and how it was, functioning. In paragraphs 17 and 17 A the court laid down its conclusions as follows :

"17. The objects of the Society were not governmental business but were certainly the aspects which were expected to equip Members of Parliament and the State Legislatures with the requisite knowledge and experience for better functioning. Many of the objects adopted by the Society were not confined to the two Houses of Parliament and were intended to have an impact on society at large.

16 A. The Memorandum of the Society permitted acceptance of gifts, donations and subscriptions. There is material to show that the Ford Foundation, a U.S. Based Trust, had extended support for some time. Undoubtedly, the annual contribution from the Government has been substantial and it would not be wrong to say that they perhaps constitute the main source of funding, yet some money has been coming from other sources. In later years, foreign funding came to be regulated and, therefore, it became necessary to provide that without Government clearance, like any other institution, ICPS was not to receive foreign donations. No material has been placed before us for the stand that the Society was not entitled to receive contributions from any indigenous source without government sanction. Since Government money has been coming, the usual conditions attached to Government grants have been applied and enforced. If the Society's affairs were really intended to be carried on as part of the Lok Sabha " or Parliament as such, the manner of functioning would have been different. The accounts of the Society are separately maintained and subject to audit in the same way as the affairs of societies receiving Government grants are to be audited. Government usually impose certain conditions and restrictions when grants are made. No exception has been made in respect of the Society and the mere fact that such restrictions are made is not a determinative aspect".

In paragraph 18 the Court observed that after meticulous examination of the correspondence, though there is some sort of supervision, there is no deep and pervasive control of the government. In paragraph 19 the Court referred to the Tripathi Committee report which suggested changes in the set-up and affairs of the society, and then referred to the correspondence that passed between the Minister of Law and the Executive chairman and pointed out that the Minister had tried to exercise his authority as the Controlling department of Government in the matter of making the grant, but that it is not a conclusive feature that it is a State. In paragraph 20 the Court observed as follows :

"A broad picture of the matter has to be taken and a discerning mind has to be applied keeping the realities and human experiences in view so as to reach a reasonable conclusion. Having given our anxious consideration to the facts of the case, we are not in a position to hold that ICPS is either an agency or instrumentality of the State so as to come within the purview of "other authorities" in Art. 12 of the Constitution"

11. Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], is a decision of the Supreme Court in which two judges dealt with the question whether the National Council of Educational Research & Training is a State as defined under Article 12 of the Constitution. In paragraphs 3 to 5 the Court discussed the scope of Article 12 and after going into the Memorandum of Association of the NCERT and its functions and objects, it observed at the end of paragraph 5 as follows

"The affairs of the NCERT are conducted by the Executive Committee comprising of Government servants and educationists. The Executive Committee would enter into arrangements with Government, public or private organisations or individuals in furtherance of the objectives for implementation of programmes. The funds of the NCERT consist of : (i) grants made by the Government; (ii) contribution from other sources, and (iii) income from its own assets. It is free to apply its income and property towards the promotion of its objectives and implementation of the programmes. The Government control is confined only to the proper utilisation of the grant. The NCERT is thus largely a autonomous body".

Then the Supreme Court referred to the decision in Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others, and other decisions, and then came to the conclusion in paragraph 10 in the following words :

"10. In our opinion, the case on hand, having regard to the indications to which we have called attention earlier, does not satisfy the requirements of "State" under Article 12 of the Constitution. We, therefore, agree with the conclusion of the High Court and dismiss the appeal".

One interesting aspect with regard to this decision of the Supreme Court is that the Court confined its examination to find out whether NCERT comes within the ambit of "State" as defined in Article 12. The Court did not go into the question whether the NCERT would come within the ambit of "other authorities" mentioned in Article 12. When this particular aspect was pointed out, Sri. Kelu Nambiar, learned senior counsel for the fourth respondent, frankly conceded that that particular aspect was not considered and gone into by the Supreme Court, and the decision purely relied upon the reasoning of the Supreme Court in Tekraj's case (Supra)

12. The decision of a Division Bench of this Court in Sofhi V. FACT, 1984 KLT 32 is a leading decision on this particular aspect of law. In that decision, after analysing the development of law in the light of the various pronouncements of the Supreme Court, the Court prescribed six tests in paragraph 22 of this decision. They may be extracted with advantage:

"Thus, with the aid of these pronouncements of the Supreme Court, it can be concluded that an authority is a State within Article 12 of the Constitution if it is an instrumentality or agency of the Government. To decide whether it is a instrumentality or agency of the Government due regard may be had to the

following characteristic features and facts and circumstances of each case :

(a) The entirety or a massive majority of the share capital in the hands of the Government is a penetrating index that it is an instrument or agent of the Government

(b) "deep and pervasive" state control is an affirmative assurance that it is Government agency or instrumentality. This can be gathered from the following surrounding circumstances as well:-

(i) Domination in the composition of Society or company by the representatives of the Government;

(ii) Subjection to the directions of the government for the performance of its functions;

(iii) The concurrence or approval of the Government for making rules and regulations;

(iv) The accounts requiring scrutiny and satisfaction of the Government;

(v) The effective control of the affairs of the Society/Corporation by the Government.

(c) Substantial financial assistance by the Government meeting practically the entire expenditure of the Company gives an added colour and flavour of Government agency.

(d) The public importance of the functions, in its nature allied to Governmental activity, is also yet another vital indication.

(e) Monopoly status of the Corporation either conferred or protected by the State.

(f) Statutory origin of the Corporation/Company may be the hall-mark of "State", but the absence of this birth mark need not exclude it from the expansive area of "state" within article 12.

Applying these tests, let us examine whether Fact is a State".

The recent decision of this Court on this particular aspect is *Rajan V. State*, (1994) 1 KLT 754, where the Court held that the Kerala State Science and Technological Museum is not a State or other authority within the meaning of Article 12 of the Constitution of India. For the same reason, it is not a authority within the meaning of Article 226 of the Constitution.

13. If we judge the Kerala History Association in the light of the Principles laid down in *Tekraj's Case* (supra); *Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other*[OVERRULED], ; AND *SOFHI V. FACT*, 1984 K.L.T 32, we find that the fourth respondent does not come within the ambit of State or other authorities contemplated under Article 12 of the Constitution.

14. I shall presently refer to the Memorandum of Articles of Association and Rules and Regulations of the Fourth respondent. The Association has as its main object creating and fostering public interest in the scientific study of History, Archaeology and Anthropology, in general and of the History of Kerala in particular, and to promote and encourage such interest and study, by organising and holding Conventions, Conferences, Seminars, Symposia, Exhibitions, Study-Groups, Study-Tours, Lectures, etc. It has as one of its objects to establish and maintain a Research library and to afford facilities for research work in the field of History and Culture of Kerala and to print and publish books, etc. It is not funded by the Government, though there is scope for receiving grants and donations from the Government and Universities just as they are entitled to receive grants and donations from others and other institutions. As can be seen from the Rules and Regulations, the main source of funding is the subscriptions and the membership fee and the donations by patron members and life members. There is absolutely no government control over this association. No Government official in his ex-officio capacity is a member either of the General Body or of the Managing Committee. The Memorandum of Association and the Rules and Regulations clearly indicate that it does not satisfy the various tests laid down by the courts to come within the ambit of "State" or "other authorities" contemplated under Article 12 of the Constitution, as also Article 226 of the Constitution.

15. Thus it is clear that a writ Petition cannot lie against the fourth respondent. At the most it can be said that the fourth respondent is the beneficiary of the impugned order Ext. P 3. But a writ of mandamus or certiorari cannot be issued against the fourth respondent. I hold point no. 1 in favour of the fourth respondent.

16. Point Nos. 2 and 3 :- It will be borne-in-mind that Ext. P 1 is the order of assignment issued on 12.- 10 - '73. That order is not under challenge now. It is also not open to the petitioners to challenge this order at this distance of time, after a lapse of more than 19 years. It is now revealed by the counter affidavit filed on behalf of Respondents 1 to 3 that after the Government assigned five cents of land under Ext. P 1 to the fourth respondent for construction of a building, the association put up a temporary tiled building to use it as its office and library and thereafter the fourth respondent approached the Government for permission to mortgage the land to any of the nationalised banks for securing loans for the construction of a new building. That request was granted as per G.O. Ms. No. 486/RD dated 24-4-1975. In spite of its best efforts, the fourth respondent was not able to raise resources for constructing a building by mortgaging the site to the nationalised banks. In such a background, when the temporary tiled building constructed in 1975 with second hand materials was in a dilapidated condition the fourth respondent started making efforts to raise money for constructing a proper building. For the appeals made for funds, there was no proper response. Then there were negotiations with Sahithya Pravarthaka Co-operative Society. But they were not able to help. Then the Managing Committee

tried to canvass financial help from persons who could afford to help it. Then one Mr. P.A. Abdul Gafoor, Ernakulam came forward with an offer and agreed to abide by the terms and conditions placed before him. The Managing Committee considered the matter on 25. 2. 1993. After strict scrutiny and discussions the Committee unanimously approved the draft agreement and the same was endorsed by the General Body. According to the conditions stipulated in Ext. P 1, the land should be used only for the purpose of constructing a building for the association. The land should not be alienated or space rented out. As the Association has to repay the amount taken for construction, it became unavoidable to let out that space which is not used by the Association. Therefore a representation was made by the Association to the Government to waive or relax the conditions laid down in the assignment order Ext. P 1 to enable the Association to raise funds for the construction of a building. In such a background, the Government after close scrutiny and verification, was pleased to modify condition No. 6 of Ext. P 1 order. It is pertinent to remember that the Collector recommended for relaxation of condition No. 6 seeing the bona fides of the request.

17. It is interesting to see that in this Writ Petition, there is no allegation that the fourth respondent is alienating the site granted under Ext. P 1. There is also no challenge to the right of the fourth respondent to construct a building. When Ext. P 1 is relaxed by issuing Ext. P 3 order, to enable the fourth respondent to construct a building and utilise the same for the needs of the association, the present Writ Petition is filed.

18. It is argued by Sri. T.P. Kelu Nambiar that the modification granted by Ext. P 3 is nothing but an effort to enable the fourth respondent to fulfill the purpose for which Ext. P 1 assignment order was issued. The only modification made is that the fourth respondent will have the right to giving a portion of the building on rent. This modified condition is not violated by the fourth respondent. As can be seen from the grounds in the Original Petition themselves, the petitioners admit that Ext. P 1 order was issued under the provisions of the Kerala Government Land Assignment Act and the Rules framed thereunder. Rule 24 of the Kerala Land Assignment Rules reads as follows :

"24. Powers of Government - Notwithstanding anything contained in these rules the Government may, if they consider it necessary so to do in public interest, assign land dispensing with any of the provisions contained in these rules and subject to such conditions, if any as they may impose".

It is now clear that the original order Ext. P 1 is the order which comes under Rule 24 of the Rules. A perusal of Ext. P.1 clearly shows that though there is no reference to rule 24 while assigning the land of five cents to the fourth respondent, the Government stipulated nine conditions. Conditions 2, 3, and 5 were imposed for affording facilities to the students of the Maharaja's College and to benefit the students in the said College. Condition No. 6 clearly stipulates that the land shall be used only for the purpose for which it is granted and shall not

be- alienated or space rented out. In the first paragraph of the order itself it is clearly mentioned that the land is being assigned for the construction of a building for the association. Then condition No. 7 stipulated that the association should construct its building within one year after getting the land. Condition No. 8 reserved the right to the Government to resume the land in case of breach of any of the conditions of grant by the association or the association is dissolved or the association becoming functus officio. The Government also reserved the right to resume the land if it is required for any public purpose. It is now an admitted fact that Ext. P 1 cannot be challenged after a lapse of 19 years. In fact the petitioners never challenged Ext. P 1. It should be remembered that a authority which has the right to making assignment or grant has also the authority to relax any of the conditions or to modify any of the conditions of grant. This power is there by reason of the General Clauses Act. Ext. P 3 the impugned order dated 27 - 10 - 1993 clearly mentions that after taking into consideration the representation of the fourth respondent and the District Collector's recommendation and after examination in detail, the Government sanctioned the modification to condition No. 6 of Ext. P 1 by giving a portion of the building to be constructed on rent as requested for by the association and as recommended by the District Collector.

19. What is contemplated by Rule 24 is to give a grant in public interest and if necessary subject to certain conditions. An order relaxing or modifying the conditions of grant is not an order under Rule 24. In such a background there is no necessity for the order to indicate that it is issued in public interest. I shall now examine the contention whether Ext. P 3 is bad on the ground that it does not say on its face that it was issued in public interest.

20. The petitioners' counsel relies upon Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . In paragraph 8 at page 858, the Supreme Court observed as follows :

The second equally relevant matter is that when a statutory functionary makes an order, based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, but the time it comes to court on account of a challenge, get validated by additional grounds later brought out?

The learned Judges referred to the decision in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, .

21. A division Bench of this Court in State of Kerala V. Balakrishnan, 1992 (i) KLT 420 followed the Supreme Court decision in M.S. Gill's case, supra and observed in paragraph 6 as follows. :

"Ext. P 2 order does not contain any reference to public interest to justify this seemingly out of the turn transfer. Files also did not disclose that it was in public interest that he was transferred. It is only in the affidavit that the Joint secretary

of the Government, for the first time, advanced a case of public interest. It is true that an authority may have to transfer its subordinates or employees in the exigencies of service even without compliance with the norms or guidelines. But when public authority asserts that the action was in public interest, at least the files should disclose the fact, even if public interest does not find a place in the order of transfer. When the transfer order is silent about it and when the file also does not disclose it, transferring authority cannot put forward the justification on the premise of public interest for the first time in the affidavit".

Then their Lordships referred to M.S. Gill's case and repelling the argument of the Additional Advocate General observed in paragraph 7 as follows :

"In other words, public interest should not be a camouflage or a smoke screen. Learned Single Judge failed to trace out any such public interest from the file concerned. Hence the question is not precisely what we should have decided at the first instance, but whether the conclusion made by the learned Single Judge is patently erroneous. On a perusal of the file, we are inclined to think that the view taken by the learned Single Judge is also plausible".

The observations in the above two decisions would certainly be applicable to Ext. P 1 order, which is the order passed under Rule 24. But these observations cannot apply to Ext. P 3 which is only an order relaxing one of the conditions imposed in Ext. P 1 original order of grant.

22. It should be remembered that there are various cases where the statute itself requires that the order on its face should disclose that it is issued in public interest. Such a requirement is not found in Rule 24. The decision in *Raghavan Nair V. S. Padmakumar*, ILR 1992 (3) KER 677 is a case where the rule contemplated that the order should ex-facie show that it was issued in public interest. On the ground that the order did not mention that it was issued in public interest, it was found to be defective. There, the State Government granted extension to a retiring Chief Secretary. The DCRB Rules made by Central Government, in exercise of its power u/s 3 (1) of the All India Services Act, dealt with the rule regarding superannuation. Rule 16 contemplated that a member of the service shall be required compulsorily to retire from the service with effect from the afternoon of the last day of the month in which he attains the age of 58 years. The proviso to that rule provided that he may be retained in service after the last day of the month in which he attains the age of 58 years on public grounds which shall be recorded in writing : (a) for an aggregate period not exceeding six months by the State Government; and (b) for any period beyond six months, with the sanction of the Central Government. The second proviso provided that a member of the Service shall not be retained in service beyond the age of 60 years except in very special circumstances. The court dealt with the matter in paragraphs 33 to 35 at pages 699 to 702 and then after dealing with the case law observed in paragraph 55 as follows :

"We are now concerned with a law which mandates public grounds to be

recorded in writing Rule 16 of the DCRB Rules"

The court then observed in paragraph 56 as follows :

"As regards the necessity to record reasons in quasi-judicial proceedings and in certain administrative and executive orders affecting the rights of a party, there cannot be any doubt that reasons, though not as expected in a decision of a court, but in a succinct manner should be given. But it has to be remembered that one of the purposes of insisting reasons to be stated is to enable a higher authority or a reviewing authority to examine the fact whether the authority has applied its mind and also to ensure that the decision is reached according to law and is not a result of capricious whim or fancy or reached on ground of policy of expediency. The necessity to record reasons is greater if the order is subject to appeal". In many cases, the reviewing authority may not have jurisdiction to go into the adequacy of the reasons or the reasonableness of the reasons but, nevertheless the reviewing authority should be in a position to examine the application of the mind of the authority and also to see whether the reasons, if any, stated are totally irrelevant in the sense that the decision is perverse".

It is pertinent to remember that in that decision though both the Judges concurred on the final result of the Writ Petition, Balasubramanian J. expressed his views separately regarding the requirements of Rule 16 (1) of the DCRB Rule. In paragraph 105 at page 738, His Lordship observed that the non-expression of public interest in the order gives room for an argument that Rule 16 (1) of the Rules was not properly complied with. His Lordship also observed that it would have been appropriate if the decision at least specifically referred to rule 16 (1) of the rules and the public ground or grounds on which the decision is taken. But at the same time on the ground that the note in the file refers to specifically to Rule 16 (1), after the decision of the Cabinet is taken, they upheld the order.

23. In the present case on hand, there is no necessity for Ext. P 3 to mention on the face of it that it was issued in public interest as it is only an order modifying one of the conditions of assignment under Rule 24. Ext. P 3 itself is not an order passed under Rule 24.

24. The last question that remains to be considered is whether a writ petition can be filed on the basis of newspaper reports and whether the petitioners have locus standi to file the Writ Petition. The decision in Niyamavedi V. Raman Srivastava (1995) 1 KLT 206 is the latest decision. The Court observed in paragraph 8 as follows :

"The press has now assumed the role of the public educator. The purpose of the press is to advance the public interest by publishing facts and opinions. Such publication of fact is highly essential for educating the public. Newspapers are purveyors of news and views having a bearing on the public administration. Such news-items coming in the papers cannot be brushed aside as totally baseless and unacceptable. They must be regarded as having factual foundation. Against these publications, a public spirited individual may feel agitated. If the incident relates

to a situation which affects the very security of the nation, then the feeling of the citizen will be more intense. In such a situation he according to us, can certainly approach the Court to have the entire matter examined"

It can safely be said that there is nothing wrong in the petitioners associations which are intricately connected with the Maharaja's College coming forward with a Writ Petition challenging Ext. P 3, when they felt that the construction of a commercial building and renting to a hotel would affect the academic atmosphere in the college campus.

25. As regards the locus standi of the petitioners, we can safely say that after the concept of locus standi is given a wide amplitude by reason of public interest litigation, the petitioners certainly have locus standi. The decision of the Supreme Court in Janata Dal Vs. H.S. Chowdhary and Others, explains what is meant by "public interest". In paragraph 51 relying upon Strouds Judicial Dictionary, Vol. IV, the court interpreted "public interest" as follows :

"A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected".

Referring to Black's Law Dictionary, the court observed as follows :

"Public interest - something in which the public community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, state or national government"

26. A Division Bench of this Court in C.K. Rajan Vs. State of Kerala and Others, acted upon a Petition filed by C.K. Rajan which is later supported by sworn statement, and dealing with the question of jurisdiction under Art. 226 the court observed as follows :

"Where the rights of innumerable persons have been infringed bordering on violation of Fundamental rights - (in instant case the right of a religious denomination under Art. 226 is involved) - the remedy by way of suit is likely to be dilatory and the delay will irreparably prejudice and damnify the public. In a public interest litigation where a substantial population of the country - the general public, are interested in the vindication of the rights and the enforcement of some public duty, the Court is bound to consider the gravity or seriousness of the complaint and in so considering, if satisfied, prima facie, that the information laid before court is of such a nature that it calls for examination, the availability of alternative remedy will never prevent the Court nor will it fetter the exercise of jurisdiction under Art. 226".

The Court also pointed out :

"The bar relating to alternate remedy is a rule of self-imposed limitation by the Courts - a rule of policy and expediency, convenience and discretion. In a public interest litigation, the entire complexion changes and the availability of alternate remedy sinks into oblivion".

In view of this pronouncement, it can safely be said that the petitioners do have a locus standi to file the O.P. though they cannot be described as aggrieved parties or affected parties. They are not directly affected by Ext. P 3. For the reasons give above, I hold points 2 and 3 in favour of the respondents.

In the result, the O.P. is dismissed. The respective parties shall bear their own costs. Advocate fee fixed at Rs. 1,000/-