
(1997) 02 KL CK 0004

In the High Court Of Kerala

Case No : W.A. No. 1656 and 1864 of 1996

Parent-Teachers" Association, Govt. Lower Primary School

APPELLANT

Vs

Chalil Kunhimmu Haji and Others

RESPONDENT

Date of Decision : 25-02-1997

Acts Referred:

Constitution of India, 1950 — Article 15, 16, 25, 26, 27
Kerala Education Rules, 1959 — Rule 5, 5(4)

Citation : AIR 1997 Ker 97 : (1997) 2 ILR (Ker) 69

Hon'ble Judges : U.P. Singh, C.J.; S. Sankarasubban, J

Bench : Division Bench

Advocate : T.P. Kalu Nambiar, P.G. Rajagopalan, T.R.G. Warriyar and Ramdas, for the Appellant; Sumathi Dandapni, K. Jaju Babu and Jose K. Kochupappu, Govt. Pleader, T.P. Kelu Nambiar and P.G. Rajagopalan, for the Respondent

Final Decision : Allowed

Judgement

U.P. Singh, C.J.—At the very threshold, the question posed for our consideration is whether the concession granted by the State to avail of the "Ramzan" holidays by the schools where Muslim students are the majority and allowing them to work during the midsummer holidays would calculate to sabotage secularism affecting the secular nature of the State and as to whether such a concession would violate Articles 15 16 25 26 27 28 30 and 51A of the Constitution of India.

1(a). In view of the mass petition received by the Assistant Educational Officer from a section of guardians of the students studying in the Government L. P. School, Oorakam, where" the majority of the pupils belong to the Muslim community, reporting difficulty and inconvenience for them to participate in the religious rituals and functions in case the school is permitted to continue as a general school, the Asst. Educational Officer, by his order dated 25-8-1992 (Ext. P1) enabled the majority Muslim pupils to participate in the religious rituals and permitted them to follow the so-called "Muslim calendar".

2. Representation against the said order submitted by the Executive Committee

members of the Parent-Teachers" Association of the Government L. P. School, Oorakam and others was soon filed before the Government stating that the action of the Assistant Educational Officer was done in a hasty manner in collusion with the President of the Parent Teachers" Association and the Headmaster of the School and it was against the interest of the students as well as the community at large. It was urged that the Assistant Educational Officer had no authority or jurisdiction to declare the said school to follow the so-called Muslim calendar which was already following the general calendar. The Parent Teachers" Association was not consulted before the change of the general calendar. There were 15 Executive Committee members in the Parent Teachers" Association. The majority of the Executive Committee members were against the move to change the general calendar to Muslim calendar. It was stated that such a policy was not only against the secular interest of the nation, but it will further create communal hatred among innocent pupils. It was stated that in the interest of a secular State and with a view to foster communal harmony in the minds of the pupil and the staff, it was highly necessary that the general calendar, which stood scrutiny for more than sixty years, is restored. Even though the majority of the students in the school were of Muslim community, the general body had decided to follow the general calendar to maintain the secular State of the school. For maintaining the standard of education of the school, it was absolutely necessary that the general calendar is followed. Following the Muslim calendar with intermittent holidays, there is every likelihood of sudden fall in the standard of education. Therefore, request was made to the Government to take serious view of the matter and issue appropriate orders restoring the general calendar to be followed by Government L.P. School, Oorakam.

3. Considering the said representation -- Ext. P2 -- the impugned order passed by the Joint Secretary to the Government, contained in Ext. P5, approved the order of the Assistant Educational Officer, who had ordered that since the majority of the pupils in the Government L.P. School, Oorakam belonged to Muslim community, the request made by the President of the Parent Teachers" Association be accepted and the school will function as per the Muslim calendar. While considering the representation filed by Shri Chalil Kunhimmu Haji, one of the committee members of the Parent Teachers" Association of the said School, the Government examined the matter and heard all the interested parties. After considering all the rival contentions, the order was passed directing that since the academic year 1993-94 would come to a close in a few months, the status quo as followed in the year 1992-93 would be maintained for the school year 1993-94 i.e. till 14-7-1994 and if the majority of the members of Parent Teachers" Association wanted to have a Ramzan vacation pattern, such, schools will work during the midsummer vacation to compensate the loss of working days with the sanction of the controlling officer as noted in the Education Department calendar for the respective year. Following the said direction, the Joint Secretary to the Government in the Department of General Education issued Ext. P6 order stating that until the disposal of the petitions pending in the High Court, the

status quo as directed in Ext. P5 order will be maintained.

4. These orders passed by the Assistant Educational Officer as per Ext. P1 and the orders of the Joint Secretary to Government in the Department of Education as per Exts. P5 and P6 were challenged in O.P. No. 15257 of 1994 by the said Chalil Kunhimmu Haji being a committee member of the Parent Teachers" Association of the Government L.P. School, Oorakam, in which respondent No. 5, the Parent Teachers" Association represented by its President, was made as a party respondent and a prayer was made to quash those orders. In addition, a declaration was sought that all the Government schools in the State, including Government L.P. School, Oorakam were bound to follow the Education Department calendar issued by the Director of Public Instruction, Trivandrum, second respondent in the writ petition. A further declaration was sought that the action of the State in directing the Government schools to follow calendars of any particular religion like Muslim calendar was illegal and unconstitutional.

5. The broad contention raised for consideration before the learned single Judge in the writ petition while challenging the orders of the Government contained in Exts. P5 and P6 was that the decision of the Government to indefinitely continue the Muslim calendar in the Government school was violative of the secularism which is a part of the basic feature of the Constitution and politics cannot be mixed with religion by political partis. Placing reliance on S.R. Bommai and others Vs. Union of India and others etc. etc., , it was contended that if a party in power in a State acts in a manner calculating to sabotage secularism, that would be unconstitutional. Therefore, running a Government school with Muslim calendar is violative of Articles 15 16 25 26 27 28 30 and 51A of the Constitution. The impugned orders are, therefore, arbitrary and unreasonable.

6. The learned single Judge, accepting the above contention, allowed the original petition and quashed Ext. P1 and P5 orders and declared that the State and the educational authorities were bound to ensure that only the Education Department calendar published under Rule 5 of Chapter VII of the Kerala Education Rules was followed in all Government schools in the State, including the present Government L.P. School, Oorakam. The learned single Judge held :

".... There is sufficient provision in Rule 4(3) of Chapter VII of the Kerala Education Rules to enable the Muslim pupils of the school to practice their religion, something personal to themselves, without impairing the requirements of Rule 5(4) of the Kerala Education Rules. In my view, Rule 4(3) of Chapter VII of the Kerala Education Rules would be sufficient to protect the interest of the Muslim community, who are part of the main stream of life in this country. I am therefore of the view that the petitioner is entitled to the declaration prayed for by him and the Government and the educational authorities are bound to insist on the use of the Education Department calendar by all Government schools irrespective of the majority of the pupils being from one community or another and who have been given the liberty to follow Rule 4(3) of Chapter VII of the Kerala Education Rules as regards Fridays and Saturdays".

The learned single Judge further held:

"In my view, the authority who passed the order Ext. P5 has failed to apply his mind to the relevant aspects considered in the context of the basic structure of the Constitution and the decision of His Lordship Justice T.L. Viswanatha Iyer in O.P. 5991/87 brought to that authority's pointed notice by the direction contained in the judgment Ext. P4 rendered by His Lordship Justice K.G. Balakrishnan. The order Ext. P5 is therefore vitiated by non-application of mind and consequently erroneous on the face of the record. It also shows an abdication of duty to consider the representation made before the Government in the context of Chapter VII of the Kerala Education Rules and the mandate of the Constitution. I have therefore no hesitation in striking down Ext. P5. As observed Ext. P5 itself, the order Ext. P1 is also one without jurisdiction and cannot stand. Thus, in my view, the petitioner is entitled to have Exts. P1 and P5 quashed. Since Ext. P6 has already been withdrawn, there is no need to set aside that order. Even otherwise, having quashed Ext. P5 the order Ext. P6 cannot stand".

7. Challenging the judgment of the learned single Judge, the fifth respondent in the original petition, viz. the Parent Teachers' Association, Government L.P. School, Oorakam represented by its President, the present Writ Appeal No. 1656 of 1996 was placed before the Division Bench. Also another writ appeal --W.A. No. 1864 of 1996 -- has been preferred against the said judgment of the learned single Judge by obtaining leave of this Court by the appellant "Samastha Kerala Islam Matha Vidyabhyasa Board". Since both these appeals raise a common question of law on the same facts, challenging the judgment of the learned single Judge rendered in O.P. No. 15257 of 1994, both these appeals have been heard together and are being disposed of by this common judgment.

8. Before entering into the rival contentions, it will be relevant to notice certain provisions of the Kerala Education Rules. The Education Department issues a calendar for the schools under Rule 5 of Chapter VII of the Kerala Education Rules for every academic year. The calendar indicates the opening day, closing day, the public holidays as also the "Onam" and "Christmas" holidays. It further indicates the special holidays, if any, and the number of working days available. It also prescribes the deficiency to be made up, if any, to reach the number of working days in order to cover the prescribed minimum working days. Rule 5(4) of the Rules provides that all Government and private schools shall follow the calendar issued by the Director. Such a calendar issued for the academic years 1992-93 and 1996-97 was placed before us. It is appended by a "Note" at the foot of the calendar for the year 1992-93, which is significant to be noticed:

"As the fasting month of Ramzan falls during February-March, 1993 and is likely to start around 23-2-1993, the schools that avail themselves of Ramzan holidays will have to be closed probably on 20-2-1993 and there will be a shortage of a few working days. Those schools may work during midsummer vacation and make good the lost working days with the sanction of the controlling officers".

In the like manner, the calendar for the academic year 1996-97 also contained a similar Note stating:

"The schools that avail themselves of the Ramzan holidays will have to be closed probably on 9-1-97 and re-open after Id-UI-Fitr. Such schools will work during the midsummer vacation so as to compensate the loss of working days with the sanction of the controlling officers".

The undisputed fact is that the Education Department issue such a calendar every year in the same manner with a similar Note.

9. In accordance with the said provision, the Parent Teachers' Association of the Government L.P. School, Oorakam situated in the district of Malappuram, adopted a resolution that the school would avail all the Ramzan holidays as indicated in the calendar and approached the Assistant Educational Officer, Vengara through the Headmaster. By order dated 25-8-1992 (Ext. P1), the Assistant Educational Officer allowed the school to follow the Muslim calendar. We do not appreciate why was it necessary to call it a "Muslim calendar" when, admittedly, there was only one calendar. According to the said calendar, schools availing of the Ramzan holidays were required to compensate the working days by working during the midsummer holidays. It appears that a few, members of the Parent Teachers' Association did not appreciate the order of the Assistant Educational Officer, who passed Ext. P1 order. Aggrieved by the said order, one of the members of the committee of the Parent Teachers' Association Shri Chalil Kunhimmu Haji moved a representation before the Government seeking a direction to be issued to the school to follow the calendar issued by the Director of Public Instruction. By Ext. P5 order dated 5-1-1994, the Joint Secretary in the Department of Education, Government of Kerala directed the status quo to be continued for the academic year 1993-94 in the same manner as it was followed in the year 1992-93. It further directed that if the majority of the Parent Teachers' Association members want to have a Ramzan vacation pattern, such schools will work during the midsummer vacation to compensate the loss of working days with the sanction of the controlling officer as per the "Note" appended in the Education Department calendar for the respective years. The order Ext. P6 proceeded on the footing that since original petitions were pending before this Court, the meeting of the Parent Teachers' Association need not be convened.

10. In the counter-affidavits filed by the first and fifth respondents, the stand taken was that Ext. P1 order was passed by the Assistant Educational Officer keeping in view the decision taken by the Parent Teachers' Association. It was passed in good faith and there was no violation of any provisions of the Constitution. In the present school in question, 61.1% of the students belong to the Muslim community. Out of the total 85 schools in Vengara district, 84 schools are following Muslim calendar because majority of the pupils in those schools belong to Muslim community. The schools where Muslims pupils are majority they avail of the Ramzan holidays. In Malabar areas also, a large number of

schools are following this pattern. Till 1984-85, the Muslim students were minority in the Government L.P. School, Oorakam. Since 1985-86, majority of the pupils were Muslims. Accordingly, the Parent Teachers' Association took the decision to request the authorities concerned, for availing the "Fridays" as holidays as also availing of the "Ramzan" holidays. The petition thus submitted by the Parent Teachers' Association was considered by the Assistant Educational Officer, Vengara, who passed the order contained in Ext. P1. The counter-affidavit further asserted that merely because the school availed the Ramzan holidays, it would not alter the secular interest of the nation.

11. The learned single Judge, however, held that the mere existence of Muslim majority among the pupils of the school would not enable the Assistant Educational Officer to dispense with the mandate of Rule 5(4) of Chapter VII of the Kerala Education Rules. The learned single Judge further held that allowing the Government schools to follow different calendar when Muslim students are the majority, it will be against the secular interest of the State and, therefore, the orders contained in-Exts. P1 and Ext. P5 were quashed and a declaration was given that the State and the educational authorities are bound to ensure that only the Education Department calendar published under Rule 5 of Chapter VII is followed in all Government schools in the State, including the present Government L.P. School, Oorakam.

12. We find ourselves unable to accept the said proposition laid down by the learned, single Judge. There was no justification for the learned single Judge to hold that the calendar which is being followed by the present Government L.P. School, Oorakam (Ext. P2) was not the calendar issued by the Education Department under Rule 5(4) of Chapter VII of the Rules. On proper reading of Rule 5(4) of the Rules, it would appear that it contemplates only one calendar which is issued by the Education Department. There is neither general calendar nor any Muslim calendar. Thus the calendar issued by the Education Department under Rule 5(4) of the Rules is in accordance with the mandate of Rule 5 carrying the details and prescribing the number of public holidays, the opening day and the closing day, etc. It stipulates that in case where the majority of the students are Muslim in a particular school and if they want to avail of Ramzan holidays, the same can be availed. In such a situation, the holidays availed by them during Ramzan have to be compensated by working during midsummer holidays. This can be done after obtaining sanction from the controlling officers. The controlling officer in regard to the appellant-school is the Assistant Educational Officer. Thus, we find that the learned single Judge was not correct in holding that what was being followed in the appellant-school was not the calendar issued under Rule 5(4) of the Rules. In fact, all the schools, private and public, followed only one calendar issued by the Government. Further, we are unable to hold that since the calendar prescribes a right to avail of the Ramzan holidays in a school where the Muslims are in majority, it (sic) could not be said that the said school violated Rule 5(4) of the Rules. The reliance placed on a judgment of this Court rendered in O.P. No. 5991 of 1987 (Ext. P3) is of no avail

to the present case, since that was a case where there was fluctuation with regard to the majority of the students. Thus, the said judgment is not applicable to the facts of the present case.

13. The next contention advanced by the respondents that granting such a concession by the State to avail of the Ramzan holidays by the schools where Muslim students are the majority and allowing them to work during the midsummer holidays would calculate to sabotage secularism and would affect the secular nature of the State has to be rejected. The contention that such a concession would be violative of Articles 15 16 25 26 27 28 30 and 51A of the Constitution is equally fallacious. The impugned orders are neither arbitrary nor unreasonable. If the said argument is accepted, then the Government cannot declare any public holiday for Jenmashtami, Ramzan or Christmas. Ours is a State where different people follow different religions and faith. The State does not impose any particular religion or faith on any people. If the State allows to discharge their religious functions, it cannot be said to be against the secular interest of the State.

14. India is the second most populous country of the world. The people inhabiting this vast land profess different religions and speak different languages. Despite the diversity of religion and language, there runs through the fabric of the nation the golden thread of a basic innate unity. It is a mosaic of different religious, languages and cultures. Each of them has made a mark on the Indian polity and India today represents a synthesis of them all. Our mission is to satisfy every interest and safeguard the interest of all the minorities to their satisfaction. It is in the context of that background that we should view the provisions of the Constitution contained in Articles 25 - 30. The object of Articles 25 - 30 was to preserve the rights of religious and linguistic minorities to place them on a secure pedestal and withdraw them from the vicissitudes of political controversy. These provisions enshrined a befitting pledge to the minorities in the Constitution of the country whose greatest son had laid down his life for the protection of the minorities. As long as the Constitution stands as it is today, no tampering with those rights can be countenanced. Any attempt to do so would be not only an act of breach of faith, it would be constitutionally impermissible and liable to be struck down by the courts. The Constitution expressly guarantees freedom of conscience and the right freely to profess, practise and propagate religion. The Constitution makers were conscious of the deep attachment the vast masses of our country had towards religion, the sway it had on their minds and the significant role it played in their lives. To allay all apprehensions of interference by the legislature and the executive in matters of religion, the rights mentioned in Articles 25 - 30 were made a part of the fundamental rights and religious freedom contained in those Articles was guaranteed by the Constitution.

15. In the case of *Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others*, , the Supreme Court held (Para 58):

"In deciding the question as to whether a given religious practice is an integral

part of the religion or not, the test always would be whether it is regarded as such by the community following the religion or not. This question will always have to be decided by the Court and in doing so, the Court may have to enquire whether the practice in question is religious in character and if it is, whether it can be regarded as an integral or essential part of the religion and the finding of Court on such an issue will always depend upon the evidence adduced before it as to the conscience of the community and the tenets of its religion".

In the case of *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, it was said :

"Religion is a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion, as conducive to their spiritual well being, but it will not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion and these forms and observances might extend even to matters of food and dress. The guarantee under the Constitution of India (under Article 25) not only protects the freedom of religious opinion, but it protects also acts done in pursuance of a religion and this is made clear by the use of the expression "practice of religion" in Article 25".

"What constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or oblations to the sacred fire, all these will be regarded as parts of religion. All of them are religious practices and should be regarded as matters of religion within the meaning of Article 26(b) of the Constitution".

In the case of *Seshammal and Others, Vs. State of Tamil Nadu*, the Supreme Court said (Para 12):

"The protection of Articles 25 and 26 of the Constitution is not limited to matters of doctrine or belief. They extend also to acts done in pursuance of religion and therefore contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion. What constitutes an essential part of a religious or religious practice has to be decided by the Courts with reference to the doctrine of a particular religion and include practices which are regarded by the community as a part of its religion".

In the case of *Ratilal Panachand Gandhi Vs. The State of Bombay and Others*, , it was held by the Supreme Court (Para 10):

"Article 25 of the Constitution guarantees to every person and not merely to the citizens of India the freedom of conscience and the right freely to profess, practise and propagate religion. This is subject, in every case, to public order, health and morality. Further, exceptions are engrafted upon this right by Clause (2) of the Article. Sub-clause (a) of Clause (2) saves the power of the State to make laws regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; and Sub-clause (b) reserves the State's power to make laws providing for social reform and social welfare even though they might interfere with religious practices. Thus, subject to the restrictions which this Article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his religious views for the edification of others. It is immaterial also whether the propagation is made by a person in his individual capacity or on behalf of any church or institution. The free exercise of religion by which is meant the performance of outward acts in pursuance of religious belief, is, as stated above, subject to State regulation imposed to secure order, public health and morals of the people. What Sub-clause (a) of Clause (2) of Article 25 contemplates is not State regulation of the religious practices as such which are protected unless they run counter to public health or morality, but of activities which are really of an economic, commercial or political character though they are associated with religious practices".

The Supreme Court, in the case of *Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others*, , held:

"The expression "matters of religion" in Article 26(b) embraces not merely matters of doctrine and belief pertaining to the religion, but also the practice of it, or to put it in terms of Hindu theology, not merely its Gnana but also its Bhakti and Karma Kandas".

16. Allowing the citizens to discharge their religious functions is not against the secular interest of the State. Granting such a concession to the Muslim students to avail "Ramzan" holidays in a school where the Muslim students are in majority and, further, granting them allowance to cover up the working days by working during midsummer holidays is neither unreasonable nor unconstitutional and in no case, it would affect or sabotage secularism. Article 25 not only protects the freedom of religious opinion, but it also protects acts done in pursuance of a religion, which is obvious by the expression "practice of religion" in Article 25. The religious practices should be regarded as a matter of religion within the meaning of Article 26(b) of the Constitution. The protection under Articles 25 and 26 of the Constitution also extends to the acts done in pursuance of religion and, therefore, contain a guarantee for rituals and observances, ceremonies and modes of worship, which are integral parts of religion.

17. When the hearing of these appeals concluded on 11-12-1996, we had allowed the appeals with a direction that the reasons will follow later and we

directed that the calendar issued for the year 1996-97 for all the schools in the State issued by the Department of Education, Government of Kerala under Rule 5 of Chapter VII as it is along with the Note appended therein should be followed. The appellant-school shall also follow the same calendar and avail the Ramzan holidays as indicated in the calendar and granted under the order Ext. P1. By this judgment, after recording reasons, we set aside the judgment of the learned single Judge and allow these appeals. The impugned orders contained in Ext. P1, P5 and P6 are declared to be legal and valid.

18. Order on C.M.P. 4833/1996 in W. A. 1656/1996 and Order on C.M.P. 5428/1996 in W.A. 1864/1996 dismissed.