

(1993) 01 KL CK 0074

In the High Court Of Kerala

Case No : W. A. No. 226 of 1989 and 284 of 1989

P.K. Balakrishnan

APPELLANT

Vs

N.R. Ramaseshan and others

RESPONDENT

Date of Decision : 27-01-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 19(6)

Kerala Education Act, 1958 — Section 14, 14(1), 14(2), 14(2), 7

Citation : (1993) 1 KLJ 735

Hon'ble Judges : Varghese Kalliath, J;P.K. Shamsuddin, J

Bench : Division Bench

Advocate : T.P.K. Nambiar and Govt. Pleader A.A. Mohammed Nazir, for the Appellant; T.D. Rajalakshmi and E.R. Venkttswaran, for the Respondent

Final Decision : Dismissed

Judgement

Varghese Kalliath, J.—These appeals are against the judgment in O. P. No. 8684/87. W. A. No. 284/89 is by the first respondent-State of Kerala in the Original Petition and W. A. No. 226/89 is by the additional 3rd respondent. Petitioner in the Original Petition challenged Ext. P9 notification issued by the Government u/s 14 (2) of the Kerala Education Act, 1958 (Act 6 of 1959) (hereinafter referred to as "the Act") read with sub-rule (5) of Rule 1 in Chapter 20 of Kerala Education Rules 1959 (hereinafter referred to as "the Rules"). A learned single Judge of this Court, after considering the points raised by the petitioner against Ext. P9, quashed Ext. P9 and allowed the Original Petition. The State/first respondent has filed W. A. No. 284/89 and the additional 3rd respondent has filed W. A. No. 226/89. In these circumstances, we think that it is only appropriate to dispose of these two Writ Appeals by a common judgment.

2. Petitioner in the Original Petition was the manager of Nurani Hindu High School, Palghat. By Ext. P3 dated 21-2-1985, petitioner in the Original Petition informed the Director of Public Instruction that he proposes to close down the institution with effect from 1st June, 1986. He only said that the circumstances

do not permit him to run the school. The Director of Public Instruction declined permission by his order dated 13-2-1986. Petitioner replied to Ext. P4 by Ext P5 communication dated 5-3-1986 stating that no permission is required to close that school and so Ext. P4 is ineffective and invalid. By Ext. P6, petitioner informed the Headmaster also that he is closing down the school from 1-6-1986. In Ext. P7 he has said thus; "please be informed that in pursuance of my notice cited given to you, the school has been closed down with effect from this day". The notice referred is Ext. P3 dated 21-2-1985. In the light of these proceedings, Government passed Ext. P9 order which is challenged in the Original Petition.

3. The question that was considered in the Original Petition by the learned single Judge was as to the validity of Ext. P9 notification. Admittedly Ext. P9 was passed u/s 14(2) of the Act. It is contended by the petitioner that by Ext. P3 notice read with Ext. 17, the school closed from 1-6-1986 and there was no existing school to enable the Government to assume management long after 1-6-1986 by Ext. P9 proceedings dated 8-9-1987. Section 7 (6) of the Act provides that no manager shall close down the school unless one year's notice, expiring with the 31st May of any year, of his intention so to do, has been given to the officer authorised by the Government in this behalf. The Rule corresponding to Section 7 (6) of the Act is Rule 24. of Chapter V of the Rules. Rule 24 (1) provides that no private school shall be closed down without giving the Director one year's notice expiring with the 31st May of any year of the intention to do so. Rule 24 (2) of the Rules enables the Director to consider the question of closure of the school and to grant or refuse permission for the closure of the school. This provision was found to be invalid in the decision reported in 1972 KLT 496 (Krishnan v. State of Kerala & others). This Court held that sub-rule (2) of Rule 24 of the Rules is inconsistent with Section 7 (6) of the Act and beyond rule making power. We may advert to this decision a little elaborately when we deal with the question of the correctness of this decision.

4. It has to be noted that the above decision has been followed in 1986 K. L. T. 359 (Subramanian v. State of Kerala & others), Another learned single Judge of this Court observed that the provision of Section 7 and of Rule 24(1) of Chapter V do not speak of any "permission" from anyone. The only obligation of the manager is to give one year's notice of his intention to close down, so that if the authorities are so minded, they can make other arrangements for the staff and the pupils. Further it was held that "For the simple reason that it is Inconvenient for the State, the D P. I. or the others to absorb the students and staff elsewhere, they cannot decree, without authority of law, that someone else like the manager should carry the burden for ever". The court also observed that: "If the establishment and administration of an aided school have anything to do with Art 19(1) (g) of the Constitution, the manager of such a school should also have the freedom to close it down, subject of course to such reasonable restrictions as are permissible under Art, 19(6). The same view was taken in an unreported judgment in O. P. No.. 8552/85 which was affirmed in W.A. No. 515/88. In W. A. No. 512/88, a Division Bench of this Court, speaking through Chief Justice

Malimath, observed that the provisions of Section 7 (6) of the Act would enable the management to close down the school after complying with the obligations contained in Section 7 (6) of the Act. The judgment begin with a surprise in these words : "We are surprised at the action of the authorities to compel an aided educational institution to function even though according to the rules it has given one year's notice of ceasing to function as an aided school". W. A. No. 512/88 was also against the judgment in O. P. No. 8552 of 1985 rendered by Justice Paripoornan.

5. So long as sub - rule (2) of Rule 24 of Chapter V of the Rules is no longer a provision which could be sustained, the action taken by the Government in issuing Ext. P9 cannot be sustained for the simple reason that the management has got the right to close down the school after complying with the provisions contained in Section 7(6) of the Act read with Rule 24(1) of Chapter V of the Rules and in this case, it cannot be disputed that it has been done. Counsel for the appellant in W. A. No. 226/89 submitted that there was no closure of the school when Ext. P9 order was passed. But such a case was not taken up by the appellant before the learned single Judge. We have already adverted to Ext P7 which categorically asserts that the management has closed down the school. The manager has produced copy of the complaint, Ext. P8, which was filed before the Superintendent of Police stating that even though the school was closed down, by force the school was reopened on 2-6 1986 and so necessary action has to be taken for such an unlawful action on the part of the Headmaster and staff of the school. Est. P10 is the counter statement filed by the District Educational Officer in I. A. No. 1167/86 in C.S. No. 154/86. A reading of the counter statement also will show that in fact, the manager has closed down the school on 1-6-1986 pursuant to the notice he has given to the Director of Public Instruction.

6. Counsel for the appellant in W, A. No. 226 of 1989 submitted that so long as the manager has not complied with Rules 25 and 26 of Chapter V. of the Rules, it cannot be said that the manager has closed down the school and being a school which continued to function, Government has the right to issue Ext. P9 notification. We may advert to Rules 25 and 26 of Chapter V. of the Rule 25 provides that when a school is closed down or discontinued or its recognition is withdrawn, the manager shall hand over to the Assistant Educational Officer for the area in the case of the primary schools and to the District Educational Officer for the area in the case of all other schools, all records and accounts of the school and the Department shall take the necessary steps for; taking charge of the records and accounts. Obviously this Rule envisages a state after the closure of the school. Similar is the provision with regard to Rule 26 of Chapter V of the Rules. Rule 26 of the Rules provides that if any school is closed down the financial guarantee furnished by the Educational Agency in respect of that school shall not be released until all liabilities of the school are discharged and all records and accounts relating to the school are handed over to the Department. We do not think that relying on the alleged non-compliance or Rules 25 and 26 of

Chapter V. of the Rules, appellant in W. A. No. 226 of 1989 can contend that there was no real closure of the school of a time when Ext. P9 notification was issued.

7. From Ext. P10 it is clear that the manager has issued a memo intimating the Headmaster that he has closed down the school and to hand over the records to the authorities concerned. We have to consider the case in the light of all circumstances of the case Further, it has to be noted that the appellant in W. A. No. 226/89 has not raised this point before the learned single Judge and the learned single Judge has no occasion to consider this point at all. Of course, counsel submitted that this point has been taken in the appeal memorandum. We feel that the matter has to be considered in the light of what has really happened in this case There was dear intimation given to the Director of Public Instruction stating that the manager proposed to close down the school and that notice was given as early as on 21-2-1985. All the circumstances would show that there was really a closure of the school on the part of the management.

8. Now, we shall independently consider the question whether the order impugned, Ext. P9 is a valid order complying with the provisions contained in Section 14 of the Act. Nothing is stated as reason for invoking the power u/s 14 of the Act except a statement that in the interests of the pupils of the school, the power under Sub - section (2) of Section 14 of the Act has to be exercised. It has to be noted that Section 14 provides that the power u/s 14 of the Act can be exercised only when it appears to the Government that the manager of a school has neglected to perform any of the duties imposed by or under this Act or the Rules made thereunder and also if in the public interest it is necessary to take over the management of the school. Section 14 of the Act postulates two conditions; (i) that the manager is guilty of neglect to perform any of the duties imposed by or under this Act or the Rules and (ii) that taking over the management of the school must be in the public interest. To say that the manager neglected to perform any of the duties imposed by the Act or under the Rules by issuing a notice or a memo u/s 7(6) of the Act is patently unjustifiable. The statute envisage and gives the right to the management to close down the school u/s 7(6) of the Act and the action taken by the manager under the provision can never be treated as an act of neglect within the meaning of Section 14(1) of the Act. Of course, the action under Ext. P9 has been taken invoking the emergency power given under sub-section (2) of Section 14 of the Act. When that emergency power has to be exercised, it is plain and clear that the power to exercise the emergency power is sub section (1) of Section 14 of the Act and the requirements under sub-section (1) of Section 14 of the Act should exist before invoking sub-section (2) of Section 14 of the Act. In this case, it is plain that the conditions postulated under sub-section (1) of Section 14 of the Act were not in existence to issue Ext. P9 notification. For this reason also, Ext. P9 is invalid.

9. We have said that we will be adverting to the decision reported in 1972 K. L. T.

496. We said so, since counsel for the appellant in W. A. No 226 of 1989 submitted that this decision requires reconsideration. It has to be noted that the Government proceeded on the basis that after the decision in 1972 K. L. T. 496, Rule 24(2) of Chapter V of the Rules is a dead letter in the Rules and the power under Rule 24 (2) of the Rules cannot be exercised. Perhaps that may not be a reason for us to say that the decision does not require re - consideration. But we are of opinion that sufficient reasons have been stated by the learned single Judge to say that sub-rule (2) of Rule 24 of Chapter V of the Rules is violative of Article 14 of the Constitution of India and that Rule is inconsistent with Section 7 (6) of the Act. A reading of the judgment would show that in fact, the learned single Judge has held that it is not the lack of power that made sub - rule (2) of Rule 24 of the Rules inconsistent with Section 7 (6) of the Act. When the legislature has enabled the manager to close down the school after complying with Section 7 (6) of the Act the Rule cannot enlarge the conditions required u/s 7 (6) of the Act and if it does, it amounts to enacting an inconsistent Rule to override a statutory provision which enfranchised a statutory right to the management. Of course, the learned single Judge also adverted to the question whether under the terms of Section 7 (6) of the Act the manager's right to close down his school is preserved subject to his complying with the condition laid down in the said Section insisting on one year's prior notice, is subject to what is provided under Rule 24 (2) of Chapter V of the Rules. The learned single Judge said that the provision contained in Sub rule (2) of Rule 24 of the Rules would abridge the freedom of the manager beyond what the parent enactment has authorised to be done by subjecting the right of the manager to close down the institution to a further condition that it will be dependent upon the grant of permission by the Director of Public Instruction.

10. The above decision (1972 K. L. T. 496) has been followed in 1986 KLT 359. The learned single Judge also considered the fundamental right of the manager to close down the school subject of course to such reasonable restrictions as are permissible under Article 19(6) of the Constitution of India when considering the question of an action taken by the Director of Public Instruction to prevent the manager from closing down the school. We feel that there is no reason for us to doubt the correctness of the decision reported in 1972 K. L. T. 496. In the result, we see no error in the judgment impugned in W. A. No. 226/1989 and W.A. No. 284 of 1989. Both Writ Appeals are dismissed.