
(2013) 05 KL CK 0025

In the High Court Of Kerala

Case No : WP (C) . No. 12559 of 2013 (T)

R. Sudharman

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 24-05-2013

Acts Referred:

Citation : (2013) 05 KL CK 0025

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : M.V. Thamban, Sri. R. Reji, Smt. Thara Thamban and Sri. B. Bipin, for the Appellant; Lowsy A., Government Pleader, for the Respondent

Judgement

Thomas P. Joseph, J.—Pezhumthuruthu L.P. School, it is submitted, was established on 15.6.1951 by the people of the locality. In the year 1954, the Government made it compulsory that an L.P. School must have 50 cents of land for sanctioning grants. Accordingly, deed No. 5508/54 was executed and registered creating a Trust for management of the School and appointing a managing committee of the Trust with 11 members. Of the said 11 members, five were to be nominated by the three persons referred to in the writ petition while the remaining six were to be elected from the local people residing in three "Karas". It is the case of the petitioner that there could be a manager from any of the six persons elected by the local people only if any of the five nominated members refused to act as such. Alleging that deed No. 5508/54 was executed against interest of people of the locality, a Suit was brought in Sub Court, Kollam as O.S. 171/92. It is stated that without notice to the affected persons, that Suit was settled and a Scheme was framed on 20.2.1994 for administration and management of the School. The Scheme permitted introduction of new members and that was intended at ousting the local people. Though the Scheme was framed on 20.2.1994, election was held only in May, 1997. Now the office bearers of the managing committee, whose term has run out is continuing in the helm of affairs. Petitioner approached the Sub Court, Kollam for modification of

the Scheme and obtained Ext. P1, order dated 4.8.2008 amending the Scheme. Grievance of the petitioner is that the 2nd respondent, the Director of Public Instructions has not so far taken steps to incorporate amendment in the bye-law of the school and no direction is also being given to conduct fresh election to the managing committee of the Trust in accordance with the amended Scheme. Hence this writ petition seeking a direction to the respondents 1 to 5 to reconsider approval granted to the bye-law of Pezhumthuruthu L.P. School at Kollam in view of the amended Trust Scheme (Ext. P2) and issue order directing the respondents 1 to 5 to withdraw approval granted to the 6th respondent as Manager till a managing committee and manager is elected in accordance with Ext. P2 amended Trust Scheme. The learned counsel for the petitioner has submitted that Ext. P3 representation was given to the Director of Public Instructions as early as on 20.11.2002. To that, the said authority gave Ext. P5, reply dated 27.1.2003 stating that a reconsideration is possible subject to the decision of the School (obviously referring to Sub Court, Kollam). That was followed by the petitioner submitting Ext. P6, representation dated 9.7.2011 (where petitioner referred to Ext. P4 letter of the Director of Public Instructions), complaining that managing committee of the Trust came into force on 12.1.2003, its term of office is only five years and that period has expired but election to the managing Committee or of Manager is still not conducted. Petitioner therefore, prays that the Director of Public Instructions may be directed to take urgent steps to conduct election of the managing Committee and of the Manager. There is also a claim that bye-law of the School is to be amended incorporating such terms that in accordance with the interest of the local people. The learned counsel for the petitioner submits that though the prayer in Ext. P6 is to conduct election, there is also a request that bye-law of the school may be amended incorporating the terms which are conducive to the interest of the local people.

2. The learned Government Pleader who has taken notice for respondents 1 to 5 has contended that the educational authorities have no jurisdiction to go into the complicated issues of fact and enter decisions. It is pointed out that this is a case where a Suit was pending in the Civil Court and even as per version of the petitioners, the Scheme framed by the Civil Court was got amended as revealed by Ext. P1. It is pointed out that under Rule 2 of Chapter III of the Kerala Education Rules (for short "the Rules") power of the Director of Public Instructions is only to approve the bye-law (governing administration and management of the school) and not to direct conduct of election. That, according to the learned Government Pleader, is the function of the Civil Court in case there is failure to conduct election in accordance with the bye-law.

3. I have gone through the decisions in A. Abdul Rahim and Another Vs. State of Kerala and Others, , Mar Theophilus v. State of Kerala (1986 KLT, (S.N. No. 93 at Pg. 57) and Iysha Narayanan v. State of Kerala and Others (ILR 1985(1) (Ker.) 348). The view taken in the aforesaid decisions is that the function of the educational authorities under the Rules is only to discharge duties and exercise power conferred on them in accordance with the Kerala Education Act and the

Rules. It is clear from these decisions that the said authorities are not required to go into complicated questions of fact which is within the realm of the Civil Court. In *Mar Theophilus v. State of Kerala* (supra), it is observed that where problems are far too conflicting requiring taking of determination of different legal questions, the educational authorities can certainly hold their hands and await appropriate decisions from the Civil Courts.

4. Question of educational authorities incorporating any clause in the bye-law even if as it is claimed by the petitioner, it is for the interest of the local people does not arise. For, going by Rule 2 of Chapter III referred above, the power conferred on the Director of Public Instructions is only to approve the bye-law (or reject it appropriate reasons) after hearing the persons concerned. No provision in the Act or Rules which empower the educational authorities to direct conduct of election is also brought to my notice. Therefore, the request made in Ext. P6 as such cannot be entertained. But this does not stand in the way of the petitioner producing the amended bye-law before the DPI and seeking its approval. Leaving the above opportunity to the petitioner, this writ petition is disposed of. However, it is made clear that if the amended bye-law (if any) is produced by the petitioner with a request for its approval, the DPI shall consider the request and take appropriate decision on its merit as early as possible, at any rate, within four months from the date of receipt of such request, after hearing the parties interested and affected.

Petitioner shall produce a copy of this writ petition and judgment before the DPI, as early as possible.