

(1980) 07 KL CK 0016

In the High Court Of Kerala

Case No : C.M.P. No's. 10319 and 10493 of 1980 in O.P. No's. 2766 etc. of 1979, 2944 of 1979-A and 49 etc. of 1980

Rev. Fr. Antony Nirappal and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 29-07-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 141, 151
Constitution of India, 1950 — Article 133, 136, 226
Kerala High Court Rules, 1971 — Rule 150

Citation : AIR 1980 Ker 199

Hon'ble Judges : V. Khalid, J;P. Janaki Amma, J

Bench : Division Bench

Advocate : Joseph Vithayathil and Joseph J. Theralttil, for the Appellant; A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

1. These two petitions are for stay of operation of the judgments in the above Original Petitions and consequent penal actions by the respondents under Chapter V of the Kerala Education Rules against the schools involved in the Original Petitions for a period of three months. These applications are filed under Rule 150 of the Rules of the High Court of Kerala.

2. The writ petitions were filed for a declaration that Ext. P-1 notification amending Rule 6 of Chapter V of the Kerala Education Rules, compelling the applicants to agree to appoint in the schools protected teachers retrenched from other Aided schools, to entitle them to get sanction to open new schools or to upgrade existing schools is violative of Article 30(1) of the Constitution, and for other reliefs. By a common judgment dated 11-7-1980, a Division Bench of this Court consisting of Poti J., and one of us declined to exercise its jurisdiction in the matter under Article 226 of the Constitution and dismissed the Original Petitions. The other questions raised in the petitions were not gone into.

3. After the judgment was pronounced, the petitioners' counsel made an oral application to give certificate for appeal to the Supreme Court. The request was declined. It is thereafter that the present petitions have been filed.

4. Since Poti J., is on leave, these petitions have been posted before us.

5. Shri Vithayathil, learned counsel for the petitioners, submits that this Court has inherent jurisdiction u/s 151, C. P. C. and powers under Order XLI, Rule 5 (2), Civil P. C. to grant the relief now prayed for. In support of his submission he brought to our notice the decisions reported in Abdul Kareem Vs. D.M.O., Ernakulam, and Rani Shankeramma v. Ram-chandra Reddy (AIR 1953 Hyd 73).

6. The learned Additional Advocate-General opposed the applications and submitted that this Court had no jurisdiction to grant the prayer since the provisions of the CPC did not apply and that this Court has become functus officio.

7. Abdul Kareem Vs. D.M.O., Ernakulam, , a Division Bench of this Court was considering the nature of the proceedings under An. 226 and whether the provisions of the Civil P. C. including Order 47 were applicable to those proceedings. This Court held that an application for review was entertainable. It was observed that "the provisions of the CPC including the provisions in Order 47 in so far as they are not inconsistent with the Rules of the High Court governing writ jurisdiction must apply to proceedings under Article 226."

8. In AIR 1953 Hyd 73, a Division Bench of that Court was considering a more or less similar application. There the dispute arose between two rival claimants; one the adopted son of the widow of the last male-holder and the other the daughter of the last male-holder. The grant in favour of the daughter was reversed on an application by the adopted son. She applied to the High Court for issuing of the Writs of Certiorari, Prohibition and Mandamus, not only to set aside the judgment against her but also to have the estate released as it had been under the supervision of the Court of Wards ever since she was a minor. The Division Bench allowed the application and directed the Court of Wards to surrender the property to the daughter. It was this order of mandamus that was sought to be stayed before another Division Bench. The learned Judges held that inherent jurisdiction u/s 151 could be applied to grant a short stay.

9. The question arising in these petitions has to be considered in the context of the refusal by this Court to grant leave to appeal to the Supreme Court. The petitioners' counsel would submit that the jurisdiction of the Supreme Court to grant special leave under Article 136 is very wide and not a restricted jurisdiction as the one that this Court has under Article 134-A and therefore, in a matter like this, this Court should exercise its inherent powers and suspend the operation of the judgment.

10. It is true that the discretionary jurisdiction of the Supreme Court is very wide. But for that reason it is not permissible for this Court after leave was

declined to anticipate what the Supreme Court would do and grant interim orders. Provisions of the CPC and the decisions bearing on them are no longer relevant because of Explanation to Section 141 which reads:

"Explanation:-- In this section, the expression "proceeding" includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution."

That being so, the argument built on the provisions of Order XLI, Rule 5 (2) and Section 151 are not sustainable. What is more, Order XLI, Rule 5 (2) applies only when the decree under appeal is capable of execution.

11. Now, the jurisdiction of this Court is governed by the provisions of the Constitution and the High Court Rules, We have already indicated the nature of the order passed by this Court, that is, dismissing the Original Petitions and declining to exercise the jurisdiction under Article 226 of the Constitution. These two petitions are filed under Rule 150 of the High Court Rules which reads:

"150. Interim orders -- In admitting the application it shall be competent for the Court to pass interim orders on motion made for the same as to meet the ends of justice."

It is thus clear that this rule does not apply either. Therefore, the present applications must be governed by constitutional provisions and there are none. Once this Court declines to grant leave to appeal to the Supreme Court, this Court ceases to have powers to pass any interim orders.

12. The learned counsel for the petitioners would submit that the situation is the same when this Court declines leave or grants leave. In other words, according to him, while this Court has got powers to pass Interim orders after granting leave, this Court must be deemed to have such powers when leave is refused also. We cannot agree.

13. From the facts of the case in AIR 1953 Hyd 73, it will be seen that there was an executable order that was sought to be stayed. We may not be understood to hold that the prayer now asked for would be available if the order was executable. Moreover that judgment was rendered at a time when the laws governing similar questions were different. One important distinction that has to be borne in mind between that case and the case on hand is that while in this case leave was asked for and declined, the Division Bench of the Hyderabad High Court was not faced with such a situation. It is therefore not necessary to agree or disagree with what is laid down there.

14. On the facts of this case, we have no hesitation to hold that this Court has no powers to grant the stay of operation of the judgment passed by this Court after this Court declined leave asked for.

15. The petitions are not maintainable and are dismissed.