
(1976) 03 KL CK 0009
In the High Court Of Kerala
Case No : O.P. No. 2469 of 1974

Rt. Rev. MSGR. Mark Netto

APPELLANT

Vs

Government of Kerala and Others

RESPONDENT

Date of Decision : 05-03-1976

Acts Referred:

Constitution of India, 1950 — Article 30(1)
Kerala Education Rules, 1959 — Rule 12, 23C, 6

Citation : AIR 1977 Ker 58

Hon'ble Judges : Viswanatha Iyer, J; Balakrishna Eradi, J

Bench : Division Bench

Advocate : George Varghese Kannanthanam, Thomas V. Jocab and P.C. Joseph, for the Appellant; Mustafa Kani Rawther, Govt. Pleader, V. Sivaraman Nair, V.M. Nayanar, K. Ravindran and M. Krishnakumar, for the Respondent

Final Decision : Dismissed

Judgement

Viswanatha Iyer, J.—In this Original Petition the petitioner challenges the order of the Regional Deputy Director of Public Instruction, Trivandrum, dated 5th June 1973 (Ext. P-2) refusing permission to the petitioner to admit girls in the St. Vincent's High School, Kaniyapuram. The order of the District Educational Officer, dated 2nd May 1974 (Ext. P-4) issued in consequence of Ext P-2 order is also challenged. In 1947 the Government accorded sanction to one Dr. A. G. Pereira to open a High School under his management at Kaniyapuram. Subsequently the school was transferred to the Trivandrum Roman Catholic diocese and it is administered by this diocese during the last 25 years. The petitioner is the corporate Manager of the schools belonged to the Roman Catholic diocese of Trivandrum. Only boy students were admitted in school concerned in this case till the end of the academic year 1971-72. In the next academic year the management built a separate building in the school compound to provide accommodation for girl students to be admitted and then the Manager applied to the Regional Deputy Director for permission to admit girl students in the school. By Ext. P-2 order referred to above permission was refused. In the

order it was stated that the Manager failed to produce evidence to show that the original sanction was to open mixed school, that the school was being run purely as a boys' school for the last more than 25 years, that there is also facility for the education of the girls of the locality in the nearby girls' school situated within a radius of one mile and that therefore the request of the Manager is refused. Without waiting for a decision of the Government on the revision petition, Ext. P-3, filed against Ext. P-2 order the petitioner seems to have admitted some girl students in the school. So the District Educational Officer by Ext. P-4 order dated 2nd May 1974 instructed the head of the school to see that girls are not admitted in the school. This is challenged by the petitioner on various grounds,

2. Firstly it is contended that sanction was not accorded for a boys' school but only for a High School and so in the absence of any restriction in the order of sanction regarding admission of girls the school is a mixed school for the purpose of the Kerala Education Act and Rules and the petitioner is entitled to admit girls also in the school. Ext. P-1 is the copy of the original order according sanction to open a High School and therein it is not mentioned that sanction is open to a High School for the boys only. Under the Travancore Education Code, which was a Code of instructions followed in establishing and recognising aided schools in Travancore State, a school was classified as a boys' school or a girls' school depending only on the nature of the sex of the pupils admitted in the school and did not depend on any order sanctioning the school. The school is an existing school within the meaning of the Kerala Education Act and the Rules. "Existing School" is defined thus in the Act :--

" "existing school" means any aided, recognised or Government school established before the commencement of this Act and continuing as such at such commencement;"

A school established before and continuing as such after the commencement of the Act will be deemed to have been established in accordance with the Act (see Section 3 (4) of the Act). From this it follows that the nature of the previous establishment will continue as such after the commencement of the Act till such time as it is altered under the provisions of the Act. Under the Act also Chapter II dealing with the classification of schools, Chapter IV dealing with establishment and maintenance of schools and Chapter V opening and recognition of schools do not provide for specifying a school as a boys' school or a girls' school. A "girls' school" has been defined in Chapter II, Rule 6 of the Kerala Education Rules as a school where admission to some or all the standards is restricted to girls only. A "boys' school" is not defined either in the Education Act or in the Rules. Therefore, it must be understood in its ordinary sense namely as a school where admission to some or all of the standards is restricted to boys only. This restriction need not be under any order of the educational authorities and can be self-imposed by the management. Rule 23-C of Chapter V of the Kerala Education Rules provides that the Director may sanction bifurcation of an existing school into a boys' school and a girls' school. From this it is contended that the

boys" school can come into being under the Kerala Education Rules only as a result of bifurcation of an existing school. If this contention is to be accepted it would mean that a management cannot think of a boys" school only and a boys" school can in the same area exist only along with a girls" school run by the same management. There is no warrant for such a conclusion based on the Education Rules,

3. It is not disputed that till the academic year 1971-72 girls were not being admitted in the school. It was also stated at the time of argument that till recently in secondary schools managed by the Roman Catholic diocese, co-education was not allowed. In the counter-affidavit filed on behalf of the State it is stated that from the very inception, the school has been functioning only as a boys" school, that when, during 1948-49 the then Divisional Inspector of Schools, Tri-vandrum, by his letter, dated 3rd March 1949 enquired of the management whether girls could be admitted in the school, the management then opined that admission of girls to the school would be detrimental to the moral well being of the pupils who were in their teens. Though this averment is denied in the reply affidavit, the conduct of the petitioner in not admitting girls in the school till 1972 supports the contention of the State that the school was run only as a boys" school. Rule 5 (1) of Chapter IV Kerala Education Rules relating to the establishment and maintenance of schools provides that in Upper Primary Schools, Secondary Schools and Training Schools run as mixed schools there should be a separate waiting room for girls. The petitioner has no case that such an arrangement existed in the petitioner's school till 1972-This supports the contention of the State that the school was run only as a boys" school. The school was being run as a boys" school when the Education Act came into force. It will be deemed to have been established as such under the Act and so it can be considered only as a boys" school for the purpose of Kerala Education Act and the Rules.

4. From this it follows that permission is necessary to admit girls in a boys school under Rule 12, Sub-rule (iii) of Chapter VI. Rule 12 (iii) is in the following terms:--

"Girls may be admitted into Secondary Schools for boys in areas and in towns where there are no Girls" Schools and in such cases adequate arrangements should be made for the necessary conveniences. The admissions will be subject to general permission of the Director in particular Boys" Schools which will be specified by him."

Under this rule girls may be admitted into a secondary school for boys only if there are no girls" schools in the same area where there is a boys" school and in such cases adequate arrangement should be made for their necessary conveniences. This means if there are girls" schools in the same area the authorities can refuse permission to admit girls in a boys" school. In the order Ext. P-2 it is clearly stated that there is facility for the education of the girls of the locality in the nearby girls" school situated within a radius of one mile. The

existence of such a school is not disputed and therefore it cannot be said that the Regional Deputy Director refused permission on Irrelevant considerations. When there are girls' schools nearby it is only proper, to maintain discipline and morality, that girls are not admitted in boys' schools. Normally when they reach the secondary schools stage girls may cease to be teen age children and it is only reasonable that they are allowed to continue their studies in girls' schools only if there is such a school in the area. Therefore, the order Ext. P-2 is not open to challenge. From this it follows that the order of the District Educational Officer directing the head of the institution to see that girls are not admitted in the school is not improper or illegal.

5, Faced with this situation and possibly anticipating the Courts' decision the petitioner has amended the original petition to include a prayer to strike down Rule 12 (iii) of Chapter VI, Kerala Education Rules, on the ground that it violates Article 30(1) of the Constitution which gives protection to religious minorities to establish and administer educational institutions of their choice. According to the petitioner, the school in question is run by the Trivandrum Roman Catholic Diocese and as such is a minority educational institution and it is open to the Manager to administer the school in the best manner the diocese thinks proper. It was urged that admission of girls in schools is part of the administration of the institution and so the Manager's right to admit girls in the boys' schools cannot be interfered with by the educational authorities. According to the petitioner, the community wishes to impart training in Christian ideals and way of life to their children and the restriction that such instruction cannot be given to girls in boys' schools is an interference of the right of administration. The right of a minority community to establish and administer educational institutions of their choice was subject-matter of decision by the Supreme Court in more than one case. In *In re Kerala Education Bill* AIR 1958 SC 956, S. R. Das, C. J. explained the content of the right under Article 30(1) of the Constitution in these words:--

"We have already observed that Article 30(1) gives two rights to the minorities. (1) to establish and (2) to administer, educational institutions of their choice. The right to administer cannot obviously include the right to maladminister. The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. It stands to reason, then, that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided."

To the same effect is the decision in *Ahmedabad The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, . In this latter case recognising that the State can provide regulatory measures the Supreme Court stated that such regulations made in the true interests of efficiency of

instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the substance of the right which is guaranteed they secure the proper functioning of the institution, in matters educational, Justice Mathew stated the law thus in paragraph 173:--

"Because Article 30(1) is couched in absolute terms, it does not follow that the right guaranteed is not subject to regulatory laws which would not amount to its abridgment. It is a total misconception to say that because the right is couched in absolute terms, the exercise of the right cannot be regulated or that every regulation of that right would be an abridgment of the right." In the light of these decisions the validity of Rule 12 (iii) in its applicability to a minority institution may be considered. This only says that girls may be admitted in secondary schools for boys in areas where there are no girls' schools. It does not prohibit the minority community from giving education to their girls. It does not prevent them from admitting girls in girls' schools. It only prohibits admission of girls in secondary schools for boys if there is a girls' school in the same area. The basis of the rule seems to be that it will be better for the girls to get instruction in girls' schools as far as possible; and if there is a girls' school why the parents of the minority community should insist on admission of the girls in boys' school is understandable. By the time the child reaches the secondary school stage it would have grown up a little. At that age to keep them under proper guidance and discipline the rule is made that they should as far as possible be given education in girls' schools only. This is only in the nature of a regulation for discipline and morality. It does not interfere with the power of administration of an educational institution by a minority community. Therefore we do not find any reason to hold that the rule in so far as it applies to religious minorities is invalid.

6. From this it follows that there are no reasons to strike down the rule or to hold that the orders passed by the Regional Deputy Director of Public Instruction and the District Educational Officer are invalid. The original petition therefore fails. It is dismissed. But, in the circumstances, we make no order as to costs.