

(2006) 06 KL CK 0029

In the High Court Of Kerala

Case No : Writ Petition (C) No. 23673 of 2005

Sreekala

APPELLANT

Vs

D.E.O.

RESPONDENT

Date of Decision : 28-06-2006

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 30
Kerala Education Rules, 1959 — Rule 1, 2

Citation : (2006) 3 KLT 840

Hon'ble Judges : K.M. Joseph, J

Bench : Single Bench

Advocate : P. Sreekumar and K.S. Manu, for the Appellant; R. Gopan and P.S. Krishna Pillai, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Joseph, J.—The case of the Writ Petitioner, in brief, is as follows:

She is a member of the fourth respondent, which is the SNDP Sakha Yogam, which manages an Aided School. Ext. P1 is the Byelaw approved by the Educational Authorities. As per the same, Managing Committee is to be elected from Members of the fourth respondent who in turn are empowered to elect one among them as Manager. It is also provided that the President, Secretary and the Treasurer of the fourth respondent will be Members of the Managing Committee in addition to five Members to be elected from the General Body of the fourth respondent. The present Manager was elected with effect from 4.5.2002 for a period of three years which tenure has ended. Since steps were not taken to constitute a new Managing Committee, W.P.(C) No. 14095/05 was filed seeking direction to enable the constitution of a new Managing Committee. Ext.P2 notice was issued to convene a General Body for electing the Managing Committee. As per Ext.P2 notice, the draft voters' list was to be published on 29.7.2005 and the final voters' list was to be published thereafter. In terms of Ext.P2, a schedule was enacted for the conduct of the election. It is stated that

there are 2400 members in the fourth respondent and they are eligible to vote provided there are no arrears in respect of the monthly subscription. Ext.P3 is a final voters" list excluding about 950 members without any justifiable reason, it is stated. Only the petitioner"s husband was included. Petitioner relies on Ext.P4 which is the voters" list to the third respondent and it is stated that she was not served with any notice demanding payment of any money. Petitioner submitted objection. Ext.P5 is an objection filed by the petitioner. It is stated to be signed by 950 persons whose names were excluded. Ext.P6 is an affidavit of the Vice President and a Member of the Managing Committee relied on to contend that no meeting of the Committee was held after May, 2005 and the Committee did not have any occasion to look into the draft voters" list and finalise the same. The prayers sought in the Writ Petit on are as follows: i) Issue a writ of mandamus or any other writ, order directing the 1st respondent to ensure that the managing committee for SNDP HS, Mahadevikadu is constituted strictly in terms of Exhibit P1 bye-laws and by enabling all the eligible members of the 4th respondent to cast their votes.

ii) Declare that Exhibit P3 voters list published by the 4th respondent is not valid.

iii) Appoint an Advocate Commissioner or any other authority to conduct an election to the managing committee of the SNDP HS, Mahadevikadu in terms of Ext. P 1 bye-laws.

iv) Issue a writ of mandamus or any other writ or order directing the 1st respondent to look into the omissions made in Ext. P1 voters list, recast the same and to supervise the election to the managing committee and the appointment of the manager of SNDP HS, Mahadevikadu.

v) Issue any other writ or order restraining the 4th and 5th respondents from conducting the election as scheduled on 12/8/2005 based on Ext.P3 voters list.

2. A counter Affidavit has been filed by the fourth respondent wherein, it is, inter alia, stated as follows:

The Writ Petition is not maintainable. The SNDP is not amenable to writ jurisdiction. Reliance is placed on the following decisions:

1) Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, .

2) Virendra Kumar Srivastava Vs. U.P. Rajya Karmachari Kalyan Nigam and Another, .

3) Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, .

It is stated that the period of the Managing Committee of the Sakha is three years. In the election of the School Managing Committee, the School Manager will be elected separately. The previous Managing Committee of the Shakha Yogam was elected on 23.12.2001. It is stated that the fourth respondent has got a Membership Register containing 1645 members. Notice was issued

demanding arrears amount and those who remitted the arrears within the time were incorporated and including them 1045 persons were incorporated in the final voters" list. It is further stated that 38 objections were received and considered. Petitioner has not filed any objection, it is stated. Ext.P5 is stated to be a forged document. OS No. 200/05 was filed before the Munsiff Court, Harippad wherein they filed application to stay the election which was dismissed by Ext.R4(b) order. OS No. 152/05 was also filed for injunction to restrain them from proceeding with and completing the election schedule. Ext.R4 (c) is the plaint. A Receiver Petition was filed which was heard and dismissed by Ext.R4(d). Now there is a stay of declaration of the election in force. Election of the Shakha Yogam is stated to be already over. Fifth respondent has counted the votes as per law and submitted Ext.R4(f) Report.

3. A Reply Affidavit has been filed wherein, faced with the contentions taken in the Counter Affidavit, the petitioner takes up the following contentions:

The fourth respondent is a Corporate Educational Agency in terms of Rule 1 of Chapter III of KER. It is stated that the fourth respondent receives financial aid from the Government through its Manager. Maintenance grant is granted by the Government. Salary and other perks for the staff of the School are given by the Government. Therefore, the fourth respondent is acting as an agent, it is stated, in the field of education. It is further alleged that it is a body financially, functionally and administratively dominated by or under the control of the Government and such a body could be considered as an authority under Article 12 of the Constitution. There is a reference made to the decision in Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, . Likewise, reliance is also placed on the decisions in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, and Islamic Academy of Education and Another Vs. State of Karnataka and Others, .

4. Shri P. Sreekujnar, learned Counsel appearing on behalf of the petitioner would contend that the Writ Petition in question is maintainable. It is submitted that the Educational Agency, the constitution of which is to be as provided in Rule 2 of Chapter III of KER, is an authority under Article 12.

5. I am of the view that there is no merit in the contentions of the petitioner in this Writ Petition. The prayers sought for include a direction to the first respondent to ensure that the Managing Committee is constituted strictly in terms of Ext. P I Byelaws, to direct him to look into the omissions in Ext.P3 voters" list, recast the same, supervise the election and to declare that Ext.P3 voters" list is not valid. I am of the firm view that none of these prayers can be granted by this Court in a proceeding under Article 226 of the Constitution of India. Under Chapter III Rule 2 KER, in the case of an Aided School, when there is a Corporate Agency, there necessarily has to be a constitution providing for various aspects stated therein. It should include provisions as to appointment of the Manager. The constitution has to be approved and thereafter the appointment of the Manager made also has to be approved by the Authorities.

Apart from the same, I do not think that the provisions in the KER contemplate a role for the Educational Authorities in the matter of holding elections or even supervising the election. This is not a matter which is to be attended to by the Educational Authorities. I find that there is no warrant for clothing the Educational Authority with such a power. No provision has been pointed out vesting any duty with the Educational Officer to discharge functions of the nature the petitioner seeks to enforce in this Writ Petition. The fourth respondent is the SNDP Shakha Yogam. Ext.P3 voters' list challenged by the petitioner has been published by the fourth respondent. Apart from the fact that the validity of the voters ' list is a disputed question, I do not think it is a question which should be resolved under Article 226.

6. I do not think that there is merit in the contention that the fourth respondent should be treated as an authority under Article 12. The fourth respondent is not constituted under a statute and it is not a statutory body. It is purely a private body. There is no case that the School was established by any State funding. No doubt, being an Aided Institution, the School may be receiving aid in the form of salary being paid to the staff and the maintenance grant. Learned counsel for petitioner, no doubt, pressed upon me that this is a case where the School is providing education and therefore, a public function is being discharged and being an Educational Agency, there is no basis in view of the receipt of aid in the form of salary besides maintenance grant and discharge of functions to not consider the fourth respondent as an authority under Article 12. There is reference to the control exercised by the State.

7. SNDP is an Association. In. Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, , the Apex Court held as follows:

The picture that emerges from the case-law is that the tests formulated in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, for determining as to when a corporation can be said to be an instrumentality or agency of the Government are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be - whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.

In *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, , the essential question which arose for consideration was the ambit of Article 30. The decision in *Islamic Academy of Education and Another Vs. State of Karnataka and Others*, also was as an aftermath to the *T.M.A. Pai Foundation's* case supra. In *Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others*, , the question that arose for consideration was as to whether the Board of Control for

Cricket in India is an authority under Article 12. After referring to the decision in Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, the Apex Court held as follows:

Similarly, significant funding by the Government may not by itself make a body a part of the State, if its functions are entirely private in character. Conversely absence of funding for the functioning of the body or the organisation would not deny it from its status of a State if its functions are public functions and if it otherwise answers the description of "other authorities". The Government aid may not be confined only by way of monetary grant. It may take various forms e.g. Tax exemptions, minimal rent for a stadium and recognition by the State, etc. An overemphasis of the absence of funding by the State is not called for.

22. Above is the ratio decidendi laid down by a seven -Judge Bench of this Court which is binding on this Bench. The facts of the case in hand will have to be tested on the touchstone of the parameters laid down in Pradeep Kumar Biswas case. Before doing so, it would be worthwhile once again to recapitulate what are the guidelines laid down in Pradeep Kumar Biswas case for a body to be a State under Article 12. They are:

(1) Principles laid down in Ajay Hasia are not rigid set of principles so that if a body falls within any one of them, it must ex hypothesi, be considered to be a State within the meaning of Article 12.

(2) The question in each case will have to be considered on the basis of facts available as to whether in the light of the cumulative facts as established, the body is financially, functionally, administratively dominated, by or under the control of the Government.

(3) Such control must be particular to the body in question and must be pervasive.

(4) Mere regulatory control whether under statute or otherwise would not serve to make a body a State.

23. The facts established in this case show the following:

1. The Board is not created by a statute.

2. No part of the share capital of the Board is held by the Government.

3 Practically no financial assistance is given by the Government to meet the whole or entire expenditure of the Board.

4. The Board does enjoy a monopoly status in the field of cricket but such status is not State-conferred or State-protected.

5. There is no existence of a deep and pervasive State control. The control if any is only regulatory in nature as applicable to other similar bodies. This control is not specifically exercised under any special statute applicable to the Board. All functions of the Board are not public functions nor are they closely related to

governmental functions.

6. The Board is not created by transfer of a government-owned corporation. It is an autonomous body.

In *General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrughan Nishad and Others*, the question which arose was whether the Cooperative Sugar Mill is an authority under Article 12. Therein, the Court held as follows:

8. From the decisions referred to above, it would be clear that the form in which the body is constituted, namely, whether it is a society or a co-operative society or a company, is not decisive. The real status of the body with respect to the control of Government would have to be looked into. The various tests, as indicated above, would have to be applied and considered cumulatively. There can be no hard-and-fast formula and in different facts/situations, different factors may be found to be overwhelming and indicating that the body is an authority under Article 12 of the Constitution.

(Emphasis supplied)

8. In the conspectus of these principles, it is to be noted as follows:

The fourth respondent is an association of persons. There is no case that the school was established on the basis of any Government funding. It is not created by the transfer of any Government owned Corporation. The control is not particular to the body in question. The fact of regulatory control as is exercised under the Education Act and the Rules cannot by itself make it an instrumentality under Article 12. No doubt, it is discharging a public function, for, education is being imparted. But that, I do not think, having regard to the totality of factors present, it is an authority under Article 12. It is essentially a private body. No doubt, financial assistance in the form of salary is being given and some grants are also made available. But, I do not think that, that is sufficient to bring it under Article 12 of the Constitution of India. The petitioner has failed to make out any case at all. The Writ Petition fails and it is dismissed.