

(2010) 08 KL CK 0310

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 30106 of 2008

St. Mary's Church

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 11-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 14
Kerala Education Act, 1958 — Section 2(2), 35
Kerala Education Rules, 1959 — Rule 1, 2, 4, 5, 51A

Citation : (2011) 1 KLT 298

Hon'ble Judges : K.T. Sankaran, J

Bench : Single Bench

Advocate : V.A. Muhammed and K.E. Hamza, for the Appellant; Kurian George Kannanthanam S. Sreekumar, P. Martin Jose, A. Muhammed Hashim, E.N. Vishnu Namboodiri, Devan Ramachandran, Tony George Kannanthanam, Pirappancode V.S. Sudheer and Nisha Bose, Government Pleader, for the Respondent

Judgement

K.T. Sankaran, J.—Since the parties are common and since common questions arise for consideration in these Writ Petitions, the Writ Petitions are being disposed of by this common judgment as requested by all the counsel. W.P. (C) No. 30106 of 2008 is taken as the main case. The facts are stated herein below and the exhibits are referred to as in W.P. (C) No. 30106 of 2008.

2. The dispute essentially is whether Vicar of St. Mary's Church, Njarakkal or whether the Mother Superior, Little Flower Convent, Njarakkal is entitled to be the Manager of Little Flower Girls High School. A more fundamental question as to whether the School belongs to Little Flower Convent or whether it belongs to St. Mary's Church is also involved. The Petitioner is the Vicar of St. Mary's Church, Njarakkal (hereinafter referred to as the "Vicar"). The Vicar challenges Ext. P5 order dated 30.9.2008 passed by the Government upsetting Ext. P1 proceedings dated 5.10.1971 passed by the Regional Deputy Director of Public Instruction, Ernakulam. By Ext. P5 order, the Government directed the District

Educational Officer, Ernakulam to approve the Mother Superior, Little Flower Convent (hereinafter referred to as the "Mother Superior") as the Manager of Little Flower Girls High School, Njarakkal. Consequently, the District Educational Officer passed Ext. P6 order dated 3.10.2008 which is also under challenge in the Writ Petition.

3. The case of the Vicar is the following:

St. Mary's UP School, Njarakkal and Little Flower High School, Njarakkal belong to St. Mary's Church Educational Agency. Little Flower High School (hereinafter referred to as the "School") was established by the Parishioners of the Church in 1948 under the blessings of Arch Diocese of Ernakulam - Angamaly. The constitution of the Educational Agency was approved by the Regional Deputy Director of Public Instruction, Ernakulam as per Ext. P1 order dated 5.10.1971. As per the constitution of the Educational Agency, the Vicar of the Church shall be the Manager of the School. At the time of commencement of the school, Father Kuruvila Panjikkaran was the Vicar of the Church and as such, he was the Manager of the school. The Petitioner being the Vicar of the Church is the present Manager of the School.

4. While so, the third Respondent Mother Superior filed Ext. P2 petition dated 2.4.2008 before the Secretary to Government (Education Department) praying for cancelling the approval of byelaws as per Ext. P1. In Ext. P2 proceedings, the Vicar filed Ext. P4 reply dated 15.5.2008. After hearing both parties, the Government passed Ext. P5 order dated 30.9.2008 holding that the School belongs to the Little Flower Convent and the same was established by the Mother Superior of the Convent. It was also held that the ownership of the School vests with the Convent. The Government directed the District Educational Officer to approve the Mother Superior as the Manager of the school. Accordingly, the District Educational Officer passed Ext. P6 order dated 3.10.2008.

5. According to the Petitioner, Ext. P1 order passed in 1971 was beyond challenge by the Mother Superior before the Government. The Government has no jurisdiction to deal with a petition like Ext. P2 and to pass an order like Ext. P5 cancelling Ext. P1 proceedings. According to the Petitioner, there was absolute lack of jurisdiction on the part of the Government. The Petitioner contends that if the Mother Superior was aggrieved, her remedy was only to approach the Civil Court. According to the Petitioner, a suit would be barred by limitation, since Ext. P1 order was passed in the year 1971.

6. According to the Mother Superior, the property was purchased by the Convent as per Exts. R3(c) to R3(j) documents of title, though in some of the documents, the Convent was represented by the Vicar of the Church. The School was established in 1945 by the nuns of Little Flower Convent, before the commencement of the Kerala Education Act and Rules. The Mother Superior and the nuns of the Convent constitute the educational agency. Since the nuns found it difficult to manage the school, the Vicar of the Church (Father Kuruvila

Panjikkaran) was appointed as the Manager by the Educational Agency. Sanction was granted by the Government to the Mother Superior to establish the School, The change of name of the School as Little Flower Girls High School, Njarakkal was also approved by the Educational Agency on the request made by the Mother Superior. The Mother Superior, representing the Educational Agency was appointing Vicar of the Church as the Manager of the school. The Mother Superior was not aware of any byelaw having been approved by the Educational Authorities in respect of the School. The School is housed in the Convent building which is occupied by the nuns. Recently, the Vicar of the Church was transferred and as the nuns of the Convent found that they could manage the school, an application was filed before the District Educational Officer to approve the Mother Superior as the Manager. At that time, the Mother Superior was informed that Ext. P1 order passed by the Regional Deputy Director of Public Instruction approving the byelaw of the Educational Agency was in existence. The proprietary body was the Convent. The Convent did not frame any such byelaw which was approved as per Ext. P1. The Church has no ownership over the school. The School was not sanctioned in favour of the Church. The proceedings of the Regional Deputy Director do not affect the right of ownership and the right of management of the School by the Convent. Ext. P1 order is void. The Mother Superior or the Convent is not bound by Ext. P1 order and they can ignore the same. The Regional Deputy Director of Public Instruction was not having any authority to pass Ext. P1 order under the Kerala Education Act and Rules.

7. As stated earlier, the Government considered the rival contentions put forward by the parties and held that the Convent has title to the properties of the School and that the Vicar or the Church has no title. It was also held that the Mother Superior had established the school.

8. After Ext. P5 order came into existence, it would appear that the disputes between the parties aggravated. In June, 2009 "precept under obedience" was issued to the Mother Superior directing her to show cause why she should not be removed from the position. In July, 2009 a letter of warning was issued by the Superior General of Mount Carmel Generalate to the Mother Superior. Even before that the Mother Superior was transferred to another Convent as an ordinary nun and not as Mother Superior.

9. When the Mother Superior was transferred to another Convent, she filed O.S. No. 503 of 2009 on the file of the Munsiff's Court, Ernakulam. In fact the suit was filed before the vacation court and an application for temporary injunction was moved, in which an order of interim injunction was passed on 2.5.2009. O.S. No. 503 of 2009 is pending. As against the letter of warning and "precept under obedience", the Mother Superior filed O.S. No. 298 of 2009 on the file of the court of the Subordinate Judge of North Paravur. The Sub Court, North Paravur granted an interim order of injunction restraining termination of service of the Mother Superior. That order was confirmed in C.M.A. No. 25 of 2009 on the file of the Additional District Court, North Paravur. It is submitted that on the basis of

the interim order in O.S. No. 298 of 2009, the third Respondent is continuing as the Mother Superior. O.S. No. 121 of 2010, Sub Court, Kochi was filed by the Njarakkal Little Flower Convent Trust represented by the Chairperson and Mother Superior (the third Respondent) and St. Joseph's Educational and Charitable Trust represented by the Principal and Manager and Mother Superior of the Convent (third Respondent) for a declaration that the first Plaintiff has full right of control and management of the Educational Agency of the Little Flower High School, Njarakkal. There is also a prayer for restraining Defendants 1 to 6 from trespassing upon the plaint schedule property and from causing obstruction to the smooth functioning of Little Flower High School and St. Joseph's Public School. The Plaintiffs also prayed for an injunction restraining Defendants 7 and 8 from disturbing the peaceful functioning of the existing Convent community of six nuns including the third Respondent. The Defendants in O.S. No. 121 of 2010 are 3 Bishops, the Cardinal, the Vicar of St. Mary's Church, the Catholic Bishops Conference, the Superior General and the Provincial. It is submitted that an interim order of status quo was passed in O.S. No. 121 of 2010. It is stated that O.S. No. 298 of 2009, Sub Court, North Paravur and O.S. No. 121 of 2010, Sub Court, Kochi are pending.

10. Sri. V.A. Muhammed, the learned Counsel for the Petitioner submits that Ext. P7 Constitution of the Corporate Educational Agency, Vimala Province of the Congregation of Mother of Carmel, Ernakulam and Ext. P8 Constitution of the Corporate Educational Agency, Mary Matha Province, Angamaly of the Congregation of the Mother of Carmel show the schools owned by the Educational Agency. It is submitted that Annexure I attached to Ext. P8 show the schools owned by these Educational Agencies. Little Flower Convent, Njarakkal is not included as a school owned by any of these Educational Agencies. It is also submitted that after Exts. P5 and P6 orders were passed, the third Respondent filed W.P. (C) No. 29553 of 2008 before the this Court for police protection in which Ext. P9 judgment dated 3rd November, 2008 was passed. It is pointed out that the Division Bench of this Court held that if there is any dispute regarding the right to hold an office, that dispute should be settled by a competent civil court. The contention put forward by the learned Counsel for the Petitioner in this regard is that even after Exts. P5 and P6 orders were brought to the notice of this Court, it was thought by the Division Bench that the dispute requires to be settled by the civil court. Per contra Sri. S. Sreekumar, the learned Counsel appearing for the third Respondent submitted that Ext. P9 judgment does not say that in spite of Exts. P5 and P6 orders, the third Respondent was bound to institute a civil suit. For the purpose of this Writ Petition, it is not necessary to arrive at any conclusion on this point.

11. The question to be resolved in this Writ Petition is whether Ext. P5 order passed by the Government is without jurisdiction or not. For that purpose, it is necessary to advert to the scheme of the Kerala Education Act and Rules touching upon the relevant aspect. Section 2(2) of the Kerala Education Act defines Educational Agency. Educational Agency means any person or body of

persons permitted to establish and maintain any private school under the Act. Private school means an aided or recognised school (vide Section 2(7)). There is no dispute that the school in question is an aided school. Under Rule 1 of Chap. III of the Kerala Education Rules, private educational institutions are classified into two categories, namely, (i) those under individual Educational Agency and (ii) those under Corporate Educational Agency. Where the right to conduct the school is vested in an individual in his own right or as the legal representative of a joint family, the Educational Agency shall be termed "Individual Educational Agency" and in all other cases, the Educational Agency shall be termed "Corporate Educational Agency". There is no dispute that the school belongs to a Corporate Educational Agency.

12. Rules 2, 4, 5 and 5A of Chap. III of Kerala Education Rules are extracted below for the sake of convenience.

2. Constitution of Corporate Management:

In the case of institutions under corporate Educational Agency, the constitution of the Educational Agency to the extent and in so far as it relates to the management of any school must be subject to rules approved by the Director which should prescribe among other things (a) the manner in which the proprietary body shall carry out its functions relating to the management of the institutions and (b) the manner in which the managing body shall be elected or appointed, the conditions and tenure of their office and their duties and powers with respect to the management of the institution. In the case of aided schools, the manner of appointment of managers also shall be specified in the rules. Such rules shall not be against the provisions of the Education Act, the rules issued under it, or any other rules passed by the Department or the Government. Any change made in such rules subsequently shall be subject to approval by the Director before becoming operative.

4. Approval of appointment of Managers:

(1) The Educational Officers shall be competent to approve the appointment of Managers by Educational Agencies and to approve changes in the personnel of the Managers.

(2) If the Educational Agencies have schools in more than one Educational District within a Revenue District the appointment of managers and changes in the personnel of the managers may be approved by the Deputy Director (Education) having jurisdiction in the Revenue District. If the Educational Agencies have schools in more than one Revenue District the appointment of managers and changes in the personnel of the Managers may be approved by the Director of Public Instruction.

(2A) The approval of appointment of Managers and changes in the personnel of the Managers under sub-rules (1) and (2) above shall take effect from the date of actual assumption of charge of the management specified in the order of

approval issued by the competent authorities concerned.

(3) Any person aggrieved by an order of the Educational Officer under Sub-rule (1) or of the Deputy Director (Education) under Sub-rule (2) may within 30 days from the date of receipt of the order prefer an appeal to the Director.

(4) Government may, on their own motion or otherwise, revise any order passed by the Director of Public Instruction.

5. Change of management:

(1) All changes in the personnel of the Managers of aided institutions shall be immediately reported to the Educational Officer and approval obtained.

(2) Appointments and changes approved by the Educational Officer shall be reported to the Director.

Note: The Rules 4 and 5 do not apply to change of management involving change of ownership.

5A. Change of management involving change of ownership:

(1) Notwithstanding anything contained in these rules, no change of Management of any aided school involving change of ownership shall be effected except with the previous permission of the Director. The Director may grant such permission unless the grant of such permission will, in his opinion, adversely affect the working of the institution and the interests of the staff and the person to whom the Management is transferred.

(2) Any person aggrieved by an order under Sub-rule (1) may, within 30 days from the date of the receipt of the order, prefer an appeal to the Government.

(3) In the case of change of management of a school involving change of ownership the new Manager of a corporate or an individual Educational Agency, shall be bound to absorb any member who is a claimant under Rule 51A of Chapter XIVA or is eligible for protection belonging to teaching and non-teaching staff of any school of the transferor manager, against the vacancies that may arise in the school.

13. According to the Petitioner, the Deputy Director of Public Instruction, Ernakulam, as per Ext. P1 proceedings, approved the rules of the Corporate Educational Agency. According to the third Respondent, since the School in question was established before the commencement of the Kerala Education Act and Rules, there was no Constitution or Rules to be approved by the Director under R.2 of Chap. III. The third Respondent had challenged Ext. P1 before the Government which led to Ext. P5 order. There is no dispute that Rules 4, 5 and 5A of Chap. III would apply to the case on hand. R.5 deals with changes in the personnel of the Managers of aided institutions while Rule 5A deals with change of management involving change of ownership. R.4 of Chap. III provides for approval of appointment of Managers. Sub-r.(3) of R.4 provides for an appeal to

the Director and sub-r.(4) of R.4 provides for revision against the orders passed in appeal under sub-r.(4) of R.4. Sub-r.(2) of Rule 5A provides for an appeal to the Government against the order passed by the Director. However, an order under Rule 2 of Chap. III is not appealable or revisable under any specific provision in the Kerala Education Rules. Going by the scheme of Chap. III of Kerala Education Rules, it is clear that wherever the rule making authority thought that an appeal or revision should be provided, it has made provisions for the same. By not providing an appeal or revision against the orders passed under R.2 of Chap. III, the rule making authority manifested their intention not to confer any power on the Government to revise or reconsider an order passed by the Director under R.2. Had it been the intention of the Rule making authority that the Government should have appellate or revisional power, there was no difficulty for specifically providing for an appellate or revisional power, as is done in R.4(4) and R.5 A(2). R.2 contemplates approval of the Rules for the management of the Educational Institution under the Corporate Educational Agency and the only condition is that the Rules shall not be against the provisions of the Kerala Education Act and the Kerala Education Rules. The Corporate Educational Agency is the authority to make Rules for the management of the schools owned by the said agency. If a dispute arises between or among the parties constituting the Educational Agency, which cannot be resolved under any specific provision in the Kerala Education Act and Rules, they have to work out their remedies, not before the Government or the Educational Officers, but before the civil court. Though the jurisdiction of the civil court is not specifically mentioned in R.2, there is no case for any of the parties that the civil court lacks jurisdiction to deal with a dispute among the members constituting the Corporate Educational Agency in relation to a matter touching upon the constitution and the rules. A Rule in the Kerala Education Rules need not confer jurisdiction of the civil court. As provided in Section 9 of the Code of Civil Procedure, the civil court shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The Kerala Education Act and Rules do not bar the jurisdiction of the civil court in respect of a matter covered by R.2 of Chap. III of Kerala Education Rules.

14. Sri. S. Sreekumar, the learned Counsel for the third Respondent submitted that when the Church approached the Deputy Director of Public Instruction for approval of the constitution and the rules, necessarily an order should have been passed by the Deputy Director approving that the Church is the Educational Agency. In answer Sri. V.A. Muhammed, the learned Counsel appearing for the Petitioner submitted that only on finding that the Educational Agency had submitted the application for approval of the constitution and the rules the Deputy Director could pass a proceedings like Ext. P1. No separate order is required for such purpose. I do not think a decision on this question is required for the purpose of disposing of this Writ Petition.

15. Sri. S. Sreekumar also submitted that the Convent is the Educational Agency and the Deputy Director has taken the Church as the Educational Agency which

necessarily involves change of ownership. There is no material to indicate that there was such a change of ownership. Ext. P1 does not indicate that there was a change of management involving change of ownership. Rules were approved not after approving the change of management involving change of ownership. The Deputy Director of Public Instruction did not consider such a question at all while passing Ext. P1 order. Ext. P1 goes to show that it was a simple case of the Deputy Director considering the question whether the constitution and the rules of the Educational Agency should be approved or not, and an order was passed approving the same.

16. The learned Counsel appearing for the third Respondent as well as the learned Government Pleader submitted that the Government had jurisdiction to deal with the question under Rule 3 of Chap. I and Section 35 of the Kerala Education Act. Section 35 reads as follows:

35. Removal of difficulties: If any difficulty arises in giving effect to the provisions of this Act, the Government may by order, do anything not inconsistent with such provisions which appear to them to be necessary or expedient for the purpose of removing the difficulty.

In order to attract Section 35, the precondition is that a difficulty should arise in giving effect to the provisions of the Act. No such contingency arose in the present case. Moreover, if power is to be exercised u/s 35, any order passed by the Government should not be inconsistent with the provisions of the Act; and the Government should be satisfied that an order is required or expedient for the purpose of removing the difficulty in giving effect to the provisions of the Act. No provision of the Act is pointed out which if implemented would create difficulty in the facts of the present case. Therefore, Section 35 is not attracted at all in the case.

17. Rule 3 of Chap. I provides that where the Government are satisfied that the operation of any Rule under the Kerala Education Rules causes undue hardship in any particular case, the Government may dispense with or relax the requirements of that Rule to such extent and subject to such conditions as they may consider necessary for dealing with the case in a just and equitable manner. A Division Bench of this Court in *Esther v. State of Kerala* (1989 (1) KLT 621) held thus:

It is clear from this provision that the Government has been conferred the power to dispense with or relax the requirements of any of the Kerala Education Rules. Such a power can be exercised only when the Government is satisfied that the operation of the particular rule causes undue hardship. It is the hardship that is caused by the operation of a particular provision that is the condition precedent for exercise of the power of dispensation or relaxation. It follows that the beneficiary can only be a person who is governed by the rules. If he is not already governed by the rules, the question of hardship being caused by the operation of the rules does not arise.

18. In *Gangadharan Nair v. State of Kerala and Ors.* (1984 KLT 75), the Division Bench held that R.3 of Chap. I is, in a sense, a built-in safety valve to effectively protect the just claims of those in service, where plain operation of the Rules results in unjust hardship to them. The Rule could be exercised in the case of a group of persons provided that the other conditions for the exercise of the power are satisfied. R.3 is to be invoked only to meet exceptional situations where gross injustice or inequity is seen to result from the application of the rules in all their rigor.

19. In *K.K. Moidu v. State of Kerala and Ors.* (1973 KLJ 591), R.3 of Chap. I K.E.R. was interpreted and it was held thus:

In my opinion, it is not possible to construe the above rule as conferring a naked and arbitrary power on the State Government to mete out special treatment to any individual case according to its whim or fancy in a manner directly opposed to the provisions contained in the Rules. Such an interpretation would render the rule open to attack on the ground that it is violative of Article 14 of the Constitution. It is obvious that the purpose of R.3 is only to reserve power with the Government to grant a relaxation of the rigour of any of the provisions contained in the Kerala Education Rules in special cases where the circumstances are such as would warrant a valid classification of the said case for purposes of Article 14 of the Constitution and where manifest injustice and inequity would otherwise result.

20. Sri. V.A. Muhammed submitted that an order under Rule 3 of Chap. I could be passed by the Government only in favour of person or persons who are governed by any of the provisions of the Kerala Education Rules and if the Government are satisfied that the operation of such provision causes undue hardship to such person or persons. It is submitted by the counsel that the third Respondent Mother Superior was not governed by any of the provisions in the Kerala Education Rules, as she was neither the Manager nor a teacher nor any other authority governed by the provisions of the K.E.R. I am inclined to accept this contention put forward by the learned Counsel for the Petitioner. There is no case for the third Respondent that she was the Manager of the School in question. There is also no case for the third Respondent that any particular Rule in the Kerala Education Rules caused undue hardship to her functioning in any position which is governed by the Kerala Education Rules. The basic requirement for exercise of power under R.3 of Chap. I of the K.E.R. is lacking in the case on hand. Therefore, the Government could not exercise any power under R.3 of Chap. I of Kerala Education Rules to pass Ext. P5 order.

21. Sri. S. Sreekumar, the learned Counsel appearing for the third Respondent submitted that Ext. P1 is vitiated by fraud. Vicar of the Church, on whose application Ext. P1 was issued, suppressed the fact that the Educational Agency was the Convent and that the Church had no rights. It is submitted that the Deputy Director of Public Instruction did not issue notice to the Mother Superior or any responsible person of the Convent and there fore, Ext. P1 is not binding

on the third Respondent. It is submitted that when fraud is so manifest on the face of the record, the Government could step in and exercise their powers to do justice in favour of the affected party. If an authority under the Kerala Education Act and Rules is led to pass an order by perpetrating fraud, the Government would retain its power to intervene and correct the manifest injustice. Fraud vitiates even solemn proceedings and any order passed by any authority, submits the counsel. He relies on the decisions of the Supreme Court in *G. Srinivas Vs. Govt. of A.P. and Others*, and *A.V. Papayya Sastry and Others Vs. Government of A.P. and Others*, in support of this contention.

22. In order to decide the question whether the Vicar of the Church had committed fraud in the matter of getting Ext. P1 order in favour of the Church requires consideration of disputed questions of fact. Necessary pleadings and evidence are required for establishing the case of fraud. The party alleging fraud and the party opposing such contention should get an effective and meaningful opportunity to put forward their respective contentions and to adduce evidence. I do not think that the Government would be the proper authority to exercise such power, particularly in the absence of any provision in Chap. III or anywhere else in the K.E.R. enabling exercise of such power by the Government. On the other hand, the absence of any provision for any appeal or revision in R.2 of Chap. III makes it clear that a case of fraud or any other vitiating circumstance in getting an order like Ext. P1 would be within the jurisdiction of the civil court and not within the jurisdiction of the authorities under the Kerala Education Act and Rules.

23. It is strange to note that the Government did not say in Ext. P5 under which provision of law it exercised the power to upset an order passed by the Deputy Director of Public Instruction in the year 1971. The Government considered complicated questions of fact and law in two or three paragraphs in Ext. P5 in a cryptic manner and without the aid of any evidence, arrived at a conclusion that the Convent is the Educational Agency. A finding as the one arrived at in Ext. P5 could be arrived at even by a Civil Court only after considering the various issues and the documentary and oral evidence. On a cryptic consideration of the facts and law, a dispute which was not so easy to decide, was very easily decided by the Government in Ext. P5. I am not inclined to accept the contention that either R.3 of Chap. I Kerala Education Rules or Section 35 of the Kerala Education Act confers power on the Government to pass Ext. P5 order.

24. Justice M.P. Menon in *Dr. Philippos Mar Theophilus v. State of Kerala and Ors.* (1986 KLJ 1069) held thus:

The case law thus suggests that abdication of jurisdiction (under Rule 5A) by the statutory authorities in every case, on the ground that the dispute is a fit one for the civil court, cannot be justified; it also suggests that there would be cases where the disputes involve complicated questions of fact and law beyond their reach. In each case arising under Rule 5A, therefore, the D.P.I. (or Government) will have to decide whether a case of change of ownership is involved, so as to justify grant of approval for a consequent change of management. If possible

they should decide the question in all cases, at least for the limited purposes of the Act and Rules. But where the problems are far too complex, requiring the taking of evidence and the determination of difficult legal questions, they can certainly hold their hands and await appropriate decisions from civil courts, if they are satisfied that there would be no vacuum in the management of the school in the meanwhile.

The case of Dr. Philipose Mar Theophilus is a case under Rule 5A of Chap. III which empowers the authorities to decide even the question regarding title. Even in such a case, it was held in Dr. Philipose Mar Theophilus v. State of Kerala and Ors. (1986 KLJ 1069) that where the problems are far too complex, requiring the taking of evidence and the determination of difficult legal questions, decision of the civil court would be desirable.

25. In Iysha Narayanan v. State of Kerala (1984 KLT SN 65 (C. No. 110), the Division Bench held:

When the right to the ownership of a school is seriously in dispute, a proper decision thereon can be rendered only by examining a large volume of evidence, oral and documentary, which the parties will be interested in adducing. The Educational Officers and the Secretary to Government would be unequal to the task of adjudicating such a dispute. Of course, if the statute provides that they, and they alone, could decide the matter, that policy will have to be given effect to. The statute in this case does not confer any such exclusive jurisdiction on them, except for the purposes of administering the Act. The civil court's power remains untouched.

26. An order under R.2 of Chap. III K.E.R. is not appealable or revisable. The Government also could not exercise power either u/s 35 of the Kerala Education Act or under R.3 of Chap. I of the Kerala Education Rules in the admitted fact situation. For the aforesaid reasons, I hold that Ext. P5 order is without jurisdiction and that the Government have no power to pass such an order. Accordingly, W.P. (C) No. 30106 of 2008 is allowed and Ext. P5 order is quashed. Since Ext. P5 order is quashed, necessarily Ext. P6 consequential order passed by the District Educational Officer is also liable to be quashed. I do so. It is made clear that the question whether the Church is the Educational Agency or whether the Convent or Mother Superior is the Educational Agency is not decided in these Writ Petitions as it is beyond the scope of the Writ Petitions.

27. Writ Petition No. 37015 of 2008 is filed by the Vicar of the Church apprehending that the State of Kerala may grant "No Objection Certificate" to the Mother Superior for getting affiliation of CBSE. Affiliation would be granted or No Objection Certificate would be issued to the Mother Superior only on the basis of the order dated 30.9.2008 passed by the Government marked as Ext. P5 in W.P. (C) No. 30106 of 2008. Since that Government Order is quashed, I do not think any further direction need be issued in this Writ Petition.

28. W.P. (C) No. 5102 of 2009 is filed by the Vicar of the Church apprehending

transfer of the property belonging to the School. An interim order was passed restraining the Mother Superior from transferring the property of the School. In view of the order in W.P. (C) No. 30106 of 2008 and also in view of the pendency of the civil suit referred to above, the disputed questions need not be decided in this Writ Petition. The Writ Petition is closed leaving open all the contentions of the parties.

29. W.P. (C) No. 36577 of 2009 is filed by the Petitioner therein (Tressiamma. M.J.) seeking approval of her appointment as Headmistress from 1.4.2009. The District Educational Officer passed Ext. P9 order approving her appointment. Ext. P9 order was subsequently cancelled by the District Educational Officer as per Ext. P10 order dated 11.11.2009. Ext. P10 order is under challenge in the Writ Petition. In the light of the disposal of W.P. (C) No. 30106 of 2008, it is only appropriate that the District Educational Officer considers the matter afresh taking into account the seniority and other qualifications of the Petitioner. The District Educational Officer shall pass order after affording an opportunity to the Writ Petitioner, the Mother Superior and also the Vicar of the Church and any other affected party.

30. W.P. (C) No. 19273 of 2008 is filed by the Mother Superior for the issue of a Writ of Mandamus to the C.B.S.E. to grant affiliation to the school without insisting on the No Objection Certificate from the State Government. In the light of the judgment in W.P. (C) No. 30106 of 2008, I do not think any relief can be granted to the Petitioner in this Writ Petition. Leaving open all the rights of the parties and the contentions put forward by them, the Writ Petition is closed.

The Writ Petitions are disposed of accordingly.