

(2004) 01 KL CK 0030
In the High Court Of Kerala
Case No : W.A. No. 2135 of 2003

State of Kerala and Others

APPELLANT

Vs

Abdul Sathar P. and Another

RESPONDENT

Date of Decision : 15-01-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Education Act, 1958 — Section 5B
Kerala Education Rules, 1959 — Rule 8(2)

Citation : AIR 2004 Ker 193

Hon'ble Judges : K. Padmanabhan Nair, J; Cyriac Joseph, J

Bench : Division Bench

Advocate : V.K. Beeran, A.A.G, for the Appellant; M. Sasindran, T.P. Eldho, K.T. Sankaran, Meena A., R. Rajesh Kormath, Sanjana R. Nair, Jaykar K.S., K. Ramakumar and Saritha Varma, for the Respondent

Final Decision : Allowed

Judgement

Cyriac Joseph, J.—This appeal is filed against the judgment dated 10-12-2003 in W.P. (C) No. 38965 of 2003. The respondents in the writ petition are the appellants herein and the petitioner in the writ petition is the first respondent herein. The second respondent herein got himself impleaded as additional respondent No. 2 in the writ appeal.

2. According to the averments in the writ petition, the petitioner (1st respondent herein) is the Secretary of the Diamond Arts and Sports Club, Cherur in Malappuram District. The said club is registered under the Societies Registration Act and its Registration No. is 412/89. The club was formed and promoted by the youngsters in the locality with a view to strengthen social welfare movement. The club has convened several sports and cultural events the income from which has been utilised for the well being of the Society. The first venture of the club was to construct a play ground for the G.M.U.P. School, Cherur. A play ground having 60 mtr. length and 50 mtr. width was constructed by the club in front of

the school with the manual labour of the members of the club and spending about Rs. 75,000/-. Thereafter towards maintenance and development of the play ground the petitioner's club has incurred an expense of Rupees Five Lakhs. The club has also many other things for the benefit of the school like painting and maintenance of the school building, maintenance of the well, construction of the compound wall and gate, donation of motor pump set etc. After the construction of the playground the club used to organise Sevens Foot Ball Tournament every year with the permission of the respondents in the writ petition. Initially Football Tournament was started for raising funds to meet the expenses for maintenance and development of the play-ground. The third tournament was conducted in the year 2002 in the play-ground of the school with the permission granted by the Headmaster of the School as per Ext. P2 order dated 29-11-2002. An amount of Rs. 2500/- was paid as ground rent as demanded by the Headmaster. The tournament was conducted giving no room for complaint from any corner. It was also decided to construct a new stage-cum-class room for the school in the place of the present damaged stage with the profit derived from the 3rd Football Tournament. On the basis of the said decision the Headmaster wrote Ext. P4 letter to the Deputy Director of Education, Malappuram, seeking permission to remove the old stage and to construct a new stage-cum-class room with the profit from the Football Tournament as decided by the Executive Committee on the Parent-Teacher Association at its meeting held on 2-6-2003. The petitioner's club decided to conduct the 4th All India Sevens Football Tournament from 5-12-2003 to 15-1-2004 in the play-ground of the G.M.U.P. School, Cherur. The tournament would be conducted only after 6.30 p.m. in the floodlit ground and there will be absolutely no disturbance to the functioning of the school. It was also decided to utilise the share of the profit from the tournament for the progress of the school, including installation of the computer system. The petitioner submitted Ext. P. 5 application dated 21-10-2003 to the Headmaster of the school seeking permission to conduct the tournament in the playground of the school. But as per Ext. P6 communication dated 25-10-2003 the Headmaster refused to grant permission on the ground that he had come to know from the newspapers and the Education Department that the Hon'ble High Court of Kerala had ordered that schools and their premises should not be allowed to be used for any purpose other than educational purposes. The reason stated by the Headmaster is unsustainable and misconceived because the High Court has not said that school premises should not be granted for non-educational purposes under any circumstances. The High Court has only given some directions for ensuring smooth functioning of the schools and better atmosphere for the pupils. On several occasions the High Court granted permission to various organisations to conduct programmes on school grounds subject to such conditions as necessary for the benefit of the schools and smooth functioning of the classes. Recently in a similar situation, as per Ext. P7 judgment dated 27-11-2003 in W.P. (C) No. 36855/2003, the High Court was pleased to grant permission to conduct football tournament in the ground of the Government Higher Secondary School, Thirurangadi.

3. On the basis of the above mentioned averments, the petitioner prayed for quashing Ext. P6 order of the Headmaster and for a direction to the respondents to grant permission to the petitioner to conduct 4th All India Sevens Football Tournament at the ground belonging to the third respondent (i.e., the Headmaster, G.M.U.P. School, Cherur). After taking note of Ext. P7 judgment dated 27-11-2003 in W.P. (C) No. 36855 of 2003, the learned single Judge disposed of the writ petition directing the 4th respondent-District Collector, Malappuram to take a decision by fixing the rent payable. It was also directed that the amount of rent would be utilized for welfare purposes of the school like library, drinking water facility or any other beneficial scheme for the students of the school. The third respondent, Headmaster, was directed to abide by the instructions of the District Collector. It was further directed that the District Collector should take the decision within a period of two weeks from the date of receipt of a copy of the judgment, if necessary, in consultation with the Deputy Director of Education. It was also directed that the District Collector would impose necessary conditions for permission and direct the petitioner to restore the ground to its original position after the tournament was over.

4. Aggrieved by the directions in the judgment of the learned single Judge, the respondents in the writ petition have filed this writ appeal. According to the appellants, the District Administration has received many complaints against the conduct of the football tournament in the school compound. The District Panchayat which has administrative control over the High Schools and Upper Primary Schools has complained that the conduct of the football tournament in the school compound will adversely affect the smooth functioning of the school particularly when the play-ground is surrounded by school buildings on all sides. The residents of the locality have also submitted objections against the conduct of the tournament in the school compound. The Superintendent of Police, Malappuram has given a report that if the football tournament is conducted in the school compound, law and order problems are apprehended in the area. The enquiry conducted by the 4th appellant, District Collector, has revealed the likelihood of breach of peace in the locality if the school compound is given for conducting the football tournament, in view of the serious disputes between the rival factions on account of the election of the President of the Kannamangalam Gram Panchayat. The issue whether the school buildings can be used for any purpose other than educational purposes was considered by this Court in O.P. No. 35376 of 2000 : AIR 2002 Ker 347 and connected cases, and this Court directed that the school compound should not be used for any purpose other than educational purposes. On the basis of the judgment in O.P. No. 35376 of 2000, the Government issued G.O. (Rt). No. 1503/02/G.Edn. dated 7-6-2002 giving specific orders to implement the directions in the judgment in letter and spirit. It is stated that as per the educational improvement programme, extra classes are being conducted by the school after the class hours and hence conduct of the football tournament will cause hindrance to the extra classes. The appellants contend that Section 5B of the Kerala Education Act prohibits the use of property

of Government schools for any purpose other than educational purposes. It is also contended that Rule 8(2) of Chapter IV of K.E.R. provides that school buildings and grounds shall be maintained in good repair and kept clean and tidy. In the light of the above averments, the appellants have prayed for setting aside the judgment of the learned single Judge.

5. While admitting the writ appeal on 19-12-2003, the operation of the impugned judgment was stayed until further orders. Hence no further action could be taken pursuant to the impugned judgment.

6. The first respondent (petitioner in the writ petition) has filed a counter-affidavit controverting the averments in the writ appeal. According to the first respondent, the objections raised by the appellants against the conduct of the football tournament are unsustainable and untrue. The first respondent has denied the averment of the appellants that the District Panchayat and the residents of the locality raised objection to the conduct of the tournament. It is contended that the Annexure A1 judgment in W.P. (C) No. 35376 of 2000 was rendered in a different situation and it does not apply to the facts of this case. According to the first respondent, no extra classes are being conducted in the school. The tournament is proposed to be conducted after 6.30 p.m. Even if extra classes are to be conducted in the school, the conduct of the football tournament would not cause any hindrance to the same. According to the first respondent, the election of the President of Kannamangalam Gram Panchayat has nothing to do with the conduct of the football tournament. On the other hand, it is alleged that one Chakkeri Abdul Haq who was removed from the Presidentship of the Panchayat through a no-confidence motion and his associates are the persons who want to obstruct the conduct of the tournament. Sri Chakkeri Abdul Haq is stated to be the President of the Indian Union Muslim League of the Kannamangalam Panchayat. It is stated that the Muslim League is the ruling party in the District Panchayat and that Sri Chakkeri Abdul Haq has great influence on the said political party. It is alleged that the writ appeal was filed at the instance of Sri. Chakkeri Abdul Haq. It is also stated by the first respondent that so far Diamond Arts and Sports Club has conducted eight local football tournaments and three All India Sevens Football Tournament and at no point of time any law and order problem arose in connection with the football tournaments. Not even a petty case was registered by the Police in connection with the conduct of the football tournaments or in respect of any incident at the place where the tournaments were conducted. According to the first respondent, there is no justification for the statement of the appellants that law and order problem is likely to arise if the football tournament is conducted. Along with the counter-affidavit the first respondent has produced Ext. P8 letter dated 1-1-2004 from Sri V.P.A. Rasheed, President of the Parent-Teacher Association of the G.M.U.P. School, Cherur to the Secretary of the first respondent-Club. Ext. P8 letter shows that the Parent-Teacher Association of the School is grateful to the club for the services rendered by the club to the school in the past and that the Association has no objection to the conduct of the football tournament. In Ext. P8

letter, the President of the Parent-Teacher Association has specifically stated that the conduct of the tournament will not adversely affect the functioning of the school or the education of the students or the buildings and the furniture. The first respondent has also produced Ext. P9 certificate dated 25-12-2003 issued by the President of the Kannamangalam Gram Panchayat stating that in the said Gram Panchayat area there is no suitable ground for conducting the football tournament other than the play-ground of the G.M.U.P. School, Cherur, Ext. P9 letter indicates that the Kannamangalam Gram Panchayat has no objection to the conduct of the football tournament. The first respondent has also pointed out that though, as per Ext. P7 judgment, permission was granted to conduct football tournament in Thirurangadi Government Higher Secondary School which is within the same District, the Government of the Education Department or the District Panchayat has not filed any appeal against Ext. P7 judgment. On the other hand, in compliance with Ext. P7 judgment, the rent payable by the Tournament Committee was fixed by the District Collector and the tournament was proposed to be inaugurated by the Superintendent of Police, Malappuram on 4-1-2004. It is further stated that another Sevens Football Tournament is being conducted in the school compound of Government Higher Secondary School, Pookkootoor from 20-12-2003 onwards. Though the said school is under the control and management of the District Panchayat, Malappuram, no objection has been raised by the Government or the District Collector or the District Panchayat against the conduct of the tournament in the compound of the Government school.

7. On behalf of the 4th appellant-District Collector, Malappuram, the Deputy Collector (RR) has filed an affidavit dated 5-1-2004 justifying the action of the Headmaster refusing permission to conduct the football tournament. It is also stated that the Circle Inspector of Police, Malappuram has reported to the District Collector that the conduct of the football tournament will create serious law and order issue. There are pending criminal cases in connection with the election of the President of the Kannamangalam Panchayat wherein the school is situated. It is also stated that one of the parties involved in those cases are conducting the tournament. It is further stated that if the gallery is constructed for conducting the football tournament, the construction of a new building for the school cannot be undertaken as scheduled.

8. In the affidavit in support of the impleading petition (I.A.No. 64 of 2004) filed by the second respondent, it is stated that the writ petition was filed without impleading the District Panchayat, which is an essential party as the school is owned by the District Panchayat. It is further stated that the Cherur G.M.U.P. School has been handed over to the Malappuram District Panchayat as per G.O. (Ms) No. 14/96/DPI dated 18-1-1996. Since then, the school is owned and run by the District Panchayat. The District Panchayat has already allotted a sum of Rupees Five Lakhs for construction of the new building in the school in the open space available in front of the existing class rooms. The said amount will be lost if the construction is not completed before 31-3-2004. The tender for the

building has already been invited and accepted. It is alleged that without even filing an application for permission before the District Panchayat, the Diamond Arts and Sports Club started erecting galleries all around the open area where school assembly regularly meets in the morning. The gallery proposed is very much close to the veranda adjoining the class rooms. It is also alleged that a permanent stage intended for the use of the school was demolished by the said club. According to the second respondent, the area where the club proposes to conduct the football tournament is not a football ground. It is stated that the construction of the gallery for the conduct of the football tournament will affect the very running of the school. The second respondent has produced Annexure R2 (b) order dated 16-12-2003 of the Executive Magistrate and Tahsildar, Thirurangadi directing demolition of the gallery constructed by the club and prohibiting any further construction activity in the school ground until further orders. The reason stated in the order for such direction and prohibition is that such construction was unauthorised. It is stated by the second respondent that in the past there were clashes during the conduct of football tournament and the tournament had to be stopped. The second respondent has produced Annexure R-2(c) letter dated 1-12-2003 from the Circle Inspector of Police, Malappuram to the District Collector, Malappuram stating that law and order issues were prevailing in the area in connection with the election of the President of Kannamangalam Panchayat and that serious law and order issues were anticipated if the football tournament was conducted. The second respondent has also produced Annexure R-2(d) which is stated to be the copy of a representation dated 15-12-2003 submitted by "some parents and local people" requesting the President of the Malappuram District Panchayat to take necessary steps to prevent the conduct of the football tournament in the play-ground of the school. It is further stated in the affidavit of the second respondent that the school has been chosen for the conduct of "Vijaya Bheri" under which tuition classes will be organized at night for the students belonging to the backward community and that such classes will be disrupted if the football tournament is conducted in the school ground. Along with a memo dated 9-1-2004, the counsel for the second respondent submitted a plan which is described as "Site Plan for G.M.U.P. School, Cherur" and is seen signed by the Assistant Engineer, Kannamangalam Gram Panchayat. According to the learned counsel, the location of the proposed building to be constructed with the financial help of the second respondent is shown in the said plan.

9. We heard learned Additional Advocate General, Mr. V. K. Beeran who appeared for the appellants, Mr. K.T. Sankaran, Advocate, who appeared for the first respondent and Mr. K. Ramakumar, Advocate who appeared for the additional second respondent.

10. Apart from the legal contentions, Mr. K.T. Sankaran also submitted that though the first respondent could not conduct the football tournament from 5-12-2003 to 15-1-2004 as originally proposed, the first respondent was still interested in organizing the Fourth All India Sevens Football Tournament in the

play-ground of G.M.U.P. School, Cherur. The first respondent would require only a period of two weeks to make arrangements like construction of the gallery and the tournament would be conducted during a period of 3 to 4 weeks. Thus, according to the learned counsel, only a maximum period of six weeks from the date of obtaining permission, will be taken for the preparation and conduct of the tournament. Learned counsel also submitted that out of the profit from the Third All India Sevens Football Tournament conducted in 2002, the first respondent would contribute to the School a sum of Rupees One Lakh and Five Thousand for the construction of a new stage-cum-class room in the place of present damaged stage. He also submitted that if permission is granted to organise the Fourth All India Sevens Football Tournament as prayed, the first respondent is willing to contribute to the school 60% of the profit received from the tournament. He also submitted that even before starting the tournament the first respondent will deposit with the Headmaster of the school a sum of Rs. 50,000/- as the first instalment of the share of profit from the tournament. He further submitted that that said amount of Rs. 50,000/- need not be refunded to the first respondent even if no profit is received from the tournament. He also stated that the first respondent is willing to issue free passes to the students of the school who are interested in watching the tournament.

11. The third appellant, Headmaster of G.M.U.P. School, Cherur, was personally present in Court. He submitted that the open space between the buildings of the school is used as the play-ground of the school and that there is no other play-ground for the school. He also submitted that no night classes under the "Vijaya Bheri" scheme are being conducted as stated by the second respondent. He further submitted that extra classes are not being taken in the evening at present and that even if extra classes are to be taken, it will be over much before 6.30 p.m. According to the Headmaster, Half Yearly Examination is going on and it will be over by 20th January, 2004. He also submitted that the Parent-Teacher Association has not raised any objection to the conduct of the tournament. He also did not dispute Ext. P-8 letter of the President of the P.T.A. supporting the conduct of the football tournament. He further stated that a building newly constructed for the school is scheduled to be inaugurated on 22-1-2004 and the construction of the proposed building with the financial help of the District Panchayat will be without affecting the playground. The annual examination will be conducted only in the month of April since the school is a "Government Mappila School".

12. We do not find any merit in the contention of the additional second respondent that the G.M.U.P. School, Cherur is owned and run by the Malappuram District Panchayat and that the District Panchayat was a necessary party to the writ petition. The said school is owned by the Government and not by the Malappuram District Panchayat. The management of the school is vested in the Kannamangalam Gram Panchayat and not in the Malappuram District Panchayat. According to Section 5A of the Kerala Education Act, the Management of Government Pre-Primary Schools and Primary Schools in the rural area shall

vest in the Village Panchayat having jurisdiction over the area in which the school is situate. Admittedly, G.M.U.P. School, Cherur is a Government Primary School in a rural area. Hence the management of the said school is vested in the Kannamangalam Village (Gram) Panchayat which has jurisdiction over the said area. It may also be mentioned that as per Section 5A of the Kerala Education Act, only the management of High Schools (including lower primary or upper primary section attached to high schools) and higher secondary schools in rural areas is vested in the District Panchayat. Moreover, according to Section 166 of the Kerala Panchayat Raj Act, 1994, it shall be the duty of the Village Panchayat to meet the requirements of the Village Panchayat area in respect of the matters enumerated in the Third Schedule to the said Act. In the Third Schedule, among Sector-Wise Functions, Item No. 1 of Paragraph X is "Management of Government Pre-primary Schools and Primary Schools". Thus, only the Kannamangalam Village Panchayat has any say in the management of G.M.U.P. School, Cherur and the Malappuram District Panchayat has no jurisdiction over the said school, teamed counsel for the second respondent sought reliance on Section 173 of the Kerala Panchayat Raj Act, 1994. According to Section 173 of the said Act, it shall be the duty of the District Panchayats to meet the requirements of the District Panchayat area in respect of matters enumerated in the Fifth Schedule. According to Sub-section (2) of Section 173 of the Kerala Panchayat Raj Act, subject to the other provisions of the said Act and the directions of the Government, the District Panchayat shall have exclusive power to administer the matters enumerated in the Fifth Schedule and to prepare and implement the schemes in the subjects specified therein, for economic development and social justice. In the Fifth Schedule, in Paragraph IX of Sectorwise Functions, Item No. 1 is "Management of Government High Schools (including Lower and Upper Primary Schools attached to High Schools)". Thus, even according to Section 173 of the Kerala Panchayat Raj Act and the Fifth Schedule of the said Act, the District Panchayat has jurisdiction only over the lower and upper primary schools attached to High Schools. Admittedly, G.M.U.P. School, Cherur is not an Upper Primary School attached to any High School. Therefore, the contention raised by the second respondent based on Section 173 of the Kerala Panchayat Raj Act has no legal basis. Learned counsel for the second respondent also placed reliance on G.O. (MS) No. 14/1996/G.Edn. dated 18-1-1996. A copy of the said Government Order was made available by the learned Government Pleader. The said Government Order contains the guidelines issued by the Government to the local self-Government institutions regarding the management of institutions and schemes and the exercise of powers transferred to the local self-Government institutions by the General Education Department. According to these guidelines, the control and supervision of the High Schools and Upper Primary Schools are with the District Panchayats. But as rightly contended by the learned counsel for the first respondent, the guidelines issued as per G.O. (Ms) No. 14/96/G.Edn. dated 18-1-1996 are contrary to the statutory provisions contained in Section 5A of the Kerala Education Act and Sections 166 and 173 of the Kerala Panchayat Raj Act, 1994 and the said

executive guidelines cannot override the said statutory provisions. It should also be noted that the said Government Order was issued on 18-1-1996 whereas Section 5A was inserted in the Kerala Education Act by Act 16 of 2000 published in the Kerala Gazette Extraordinary No. 869 dated 12-5-2000. Hence any guidelines contained in the Government Order dated 18-1-1996 and inconsistent with the statutory provisions in Section 5A of the Kerala Education Act cannot have any legal force. Therefore we are of the view that the Malappuram District Panchayat represented by the second respondent has no locus standi to oppose the prayers of the writ petitioner and that the District Panchayat was not a necessary party to the writ petition.

13. We also do not find any merit in the objection raised by the second respondent and the appellants against the conduct of "the Fourth All India Sevens Football Tournament in the play-ground of the G.M.U.P. School, Cherur. Since the District Panchayat has no control or supervision over the management of the G.M.U.P. School, Cherur, the District Panchayat was not a necessary party to the writ petition and hence the prayer of the writ petitioner cannot be rejected on the ground that the District Panchayat was not made a party to the writ petition. The contention that the functioning of the school will be affected by the conduct of the football tournament cannot be accepted. It is not disputed that the football tournament during the last three years were conducted in the very same play-ground of the school and nobody including the District Panchayat had objected to it. The Parent-Teacher Association of the School and the Kannamangalam Gram Panchayat having control and supervision over the management of the school have not objected to the conduct of the football tournament this time also. Admittedly the football tournament is proposed to be conducted after 6.30 p.m. i.e. long after the working hours of the school. Even the Headmaster of the school, who was personally present in Court, stated that at present extra classes are not being conducted in the evening and that even if extra classes are to be conducted they will be over much before 6.30 p.m. The third appellant also stated that no night classes are conducted under the "Vijaya Bheri" scheme as stated by the second respondent. The Half Yearly examination which is going on will be over by 20th January, 2004 and the Annual Examination will be conducted only in the month of April. The inauguration of the newly constructed building also will be over on 22-1-2004. Hence the normal functioning of the school and the education of the students will not be affected if the football tournament is conducted during the period immediately after 22-1-2004. There is also no merit in the objection that the conduct of the football tournament will prevent the construction of the proposed new building with the financial help of the District Panchayat and that the amount allotted by the District Panchayat will be lost if the construction is not completed before 31-3-2004. Even the plan produced by the second respondent along with his memo dated 9-1-2004 does not show that the conduct of the football tournament in the playground of the school will prevent the construction of the proposed building. The location of the proposed building is away from the play-

ground. Moreover the third appellant stated in the Court that the construction of the proposed building with the financial help of the District Panchayat will be without affecting the play-ground. We are also not impressed by Annexure R-2(d) representation dated 15-12-2003 stated to have been submitted to the President of the Malappuram District Panchayat by some parents and people of the locality. It is significant that the said representation dated 15-12-2003 was submitted after the judgment dated 10-12-2003 of the learned single Judge. It is not possible even to identify the signatories as their addresses are not shown. At any rate, when the Parent-Teacher Association of the school and the Kannamangalam Village Panchayat have no objection to the conduct of the football tournament it is not proper or necessary to take into account Annexure R-2(d) representation. Learned counsel for the first respondent is justified in contending that the said representation can only be one engineered by the persons opposed to the conduct of the football tournament and that it has to be ascertained whether any one of the signatories is a parent of a student and whether the signatures are genuine. In our view so long as the Parent-Teacher Association of the School and the Kannamangalam Gram Panchayat having supervision and control over the management of the school have not objected to the conduct of the football tournament, the objection raised by the second respondent or some persons claiming to be parents and local people cannot be upheld.

14. Learned counsel for the second respondent strongly contended that in view of Annexure R-2(b) prohibitory order dated 16-12-2003, issued by the Executive Magistrate and Tahsildar, Tirurangadi, permission should not be granted to conduct the football tournament. According to the learned counsel, Annexure R-2(b) order is not under challenge in any proceedings. But the learned counsel for the first respondent rightly pointed out that Annexure R-2(b) order came into existence after the filing of the writ petition and the impugned judgment and therefore, he could not have challenged it in the writ petition. At any rate, Annexure R-2(b) order shows that the said prohibitory order against construction activities was issued only on the ground that the construction of the gallery for the conduct of the football tournament in the play-ground of the G.M.U.P. School, Cherur was unauthorised. The construction of the gallery before obtaining permission to conduct the tournament was unauthorised and the Executive Magistrate was justified in prohibiting further construction. But the said prohibitory order need not stand in the way of granting permission to conduct the football tournament. If permission is granted the construction of the gallery is no more unauthorised and Annexure R-2(b) prohibitory order will become infructuous. Therefore the contention raised by the second respondent on the basis of Annexure R-2(b) prohibitory order dated 16-12-2003 also is devoid of merit.

15. It may also be noted that many of the objections raised by the additional second respondent do not find a place among the objections raised by the appellants in the memorandum of writ appeal. It should also be noted that

though as per Ext. P-7 judgment in W.P. (C). No. 36855 of 2003, permission was granted to conduct the football tournament in the play-ground of the Government Higher Secondary School, Tirurangadi, no appeal has been filed against the said judgment and no objection has been raised by the second respondent against the conduct of the said football tournament. Similarly the second respondent has not denied the averment of the first respondent that another Sevens Football Tournament is, being conducted in the compound of the Government Higher Secondary School, Pookkootoor which also is under the control and supervision of the District Panchayat, Malappuram.

16. As per Ext. P-6 order the Headmaster of the school refused permission for the conduct of the football tournament only on the ground that he had come to know from the newspapers and the Department that according to the order of the High Court the school premises cannot be used for any purpose other than educational purposes. According to the appellants, the order referred to by the Headmaster is the judgment of a learned single Judge in O. P. Nos. 35376/2000 and 4010/02. A copy of the said judgment has been produced by the appellant as Annexure A-1. The issue raised in the above case related to putting up hoardings and advertisement boards at the school premises. Referring to Section 5B of the Kerala Education Act, 1958 and Rule 8(2) of Chapter IV of the Kerala Education Rules, the learned single Judge held that there shall not be any hoarding or advertisement at the premises of a school, which will not serve the educational purpose. Referring to Section 6(1) of the Kerala Education Act, the Court held that while granting permission to exhibit an advertisement or place a hoarding at the premises of an aided school, the educational officer is bound to look into all relevant aspects in particular as to whether the advertisement or hoarding in any way would affect the interest of children and whether the same would serve the educational purpose. It was further held that u/s 209C of the Kerala Panchayat Raj Act, 1994 and Section 275 of the Kerala Municipality Act, 1994, the Secretaries of Grama Panchayats and Municipal Corporations are bound to take steps for removal of any advertisement exhibited without permission from the Secretary. The Court directed the Secretary to Government, Local-Self Government to immediately issue appropriate instructions to the local authority in the matter of advertisement at the premises of the educational institutions. The Court also clarified that the Government should strictly enforce Section 5B of the K. E. Act and see that the premises of an educational institution is not made use of for any purpose other than educational purpose. The Court also directed the Secretary to Government, General Education Department to issue appropriate instructions to the educational officers to see that premises of a private school are not used for any purpose other than educational purpose. Pursuant to Annexure A-1 judgment, the Government issued G.O. (Rt) No. 1503/02/G.Edn. dt. 7-6-2002 (Annexure A-2) directing that the directions contained in Annexure A-1 judgment of the High Court should be implemented forthwith in letter and spirit by all Government Educational Institutions in the State. Thus Annexure A-1 judgment was specifically regarding

putting up of hoarding and advertisement boards at the school premises. Of course, there was a direction that the Government should strictly enforce Section 5B of the Kerala Education Act.

17. Section 5B of the Kerala Education Act reads as follows:

"5B. Restriction on alienation of property of Government Schools:-- Notwithstanding anything contained in any law for the time being in force or in any decree, judgment or order of any Court, no sale, mortgage, lease, pledge, charge or transfer of possession of any land appurtenant to a Government School vested with a local authority u/s 5A shall be made and such land shall not be used for any purpose other than educational purposes."

The prohibition contained in Section 5B of the K. E. Act is basically against the sale, mortgage, lease, pledge, charge or transfer of possession of any land appurtenant to a Government School vested with the local authority u/s 5. The purpose of the said prohibition is to prevent the local authority from making any sale, mortgage, lease, pledge, charge or transfer of possession of any land appurtenant to a Government School, the management of which stands vested in the local authority as per Section 5A. It is in the above context that Section 5B proceeds to state that such land shall not be used for any purpose other than educational purposes. The said prohibition cannot apply to the use of the play-ground of a Government School for conducting a football tournament for a few days with the permission of the authority concerned. This is evident from the provisions contained in Rule 15 of Chapter IV of K.E.R., according to which the premises of an educational institution (Government or Private) or any subsidiary building appurtenant to it or a play-ground or vacant site belonging to the institution whether adjacent or remote from it, shall ordinarily be used only for the purposes conducted by such institutions; but the executive authority of the local body concerned in the case of an institution under the control of a local body, the District Educational Officer in the case of a Government school and the Manager in the case of a Private School, is empowered to grant permission on such conditions as he deems fit to impose for the use of such building or ground or site belonging to the institution for holding public functions arranged by the management or by a Department of the State or the Government of India or for any other purposes. Therefore, we are of the view that Section 5B of the Kerala Education Act or Annexure A-1 judgment of the High Court or Annexure A-2 Government Order does not prohibit the grant of permission to conduct football tournament in the play-ground of a school. Otherwise appellants 1, 2 and 4 would have objected to the conduct of the football tournament in the play-ground of other two schools in the very same district. There is no justification for the double standard adopted by the said appellants.

18. In Ext. P-6 letter, the Headmaster proceeded on a wrong assumption that Annexure A1 judgment of the High Court had the effect of totally prohibiting grant of permission to conduct the football tournament in the play-ground of the school. The Headmaster had no other objection in granting permission.

Therefore, the question of granting permission to the first respondent to conduct the football tournament in the playground of the G.M.U.P. School, Cherur is liable to be reconsidered.

19. A question arises whether the Headmaster of the school was competent to grant the permission sought by the first respondent. Learned counsel for the first respondent submitted that in the year 2002, permission to conduct the football tournament was granted by the Headmaster as per Ext. P-2 order dated 29-11-2002 and hence Ext. P5 application dated 21-10-2003 seeking permission was submitted to the Headmaster himself. Learned counsel also submitted that on the previous occasions also, permission was granted by the Headmaster. However, according to Rule 15 of Chapter IV of the Kerala Education Rules, in the case of an institution under the control of a local body, the executive authority of the local body concerned is empowered to grant the permission. In the case of a Government School, the District Educational Officer and in the case of a Private School, the Manager is empowered to grant permission. Since the management of the G.M.U.P. School is vested in the Kannamangalam Grama Panchayat as per Section 5A of the Kerala Education Act and Section 166 of the Kerala Panchayat Raj Act, 1994, it could be contended that the executive authority of the Gram Panchayat is empowered to grant permission. In view of the allegations regarding political pressures and the limitations of time, we do not propose to remand the matter to any of the authorities for fresh consideration and hence it is not necessary to consider whether the Headmaster has competence to grant permission. Hence we refrain from expressing any final view in the matter. At the same time we have noted that the Kannamangalam Gram Panchayat has no objection to the grant of permission to conduct the football tournament.

20. In the above circumstances, we proceed to consider the prayer of the first respondent for direction to the appellants to grant permission to conduct the football tournament in the play-ground of the G.M.U.P. School, Cherur. The claim of the first respondent that the open space between the buildings of the school was developed as a play-ground by the Diamond Arts and Sports Club, Cherur was not disputed by the appellants or the second respondent. The averments in paragraphs 1 and 2 of the writ petition regarding the services rendered by the Club to the school have not been controverted by the appellants. It is also not disputed that three All India Sevens Football Tournaments had been organised by the first respondent in the play-ground of the school during the previous years with the permission of the authorities of the school. Out of the profit from the Third All India Sevens Football Tournament organised in 2002, the first respondent has offered to contribute a sum of Rs. 1,05,000/- (Rupees One Lakh and Five Thousand only) to the school for the construction of a new stage-cum-class room. The first respondent has also offered to contribute to the school 60% of the profit from the proposed football tournament. The first respondent has offered to deposit an advance amount of Rs. 50,000/- which need not be refunded even if sufficient profits are not received from the tournament. Thus, if permission is granted to conduct the football tournament, the school will get at

least a sum of Rs. 1,55,000/-which can be used for the development of educational facilities in the school. As we have already noted, the proposed football tournament will be during a maximum period of four weeks. The conduct of the tournament after 6.30 p.m. will not in any way affect the normal functioning of the school or the education of the students. The construction of the proposed building with the financial help of the second respondent District Panchayat will not be prevented due to the conduct of the football tournament since the said building is to be constructed only outside the area used as play-ground. The Half Yearly Examination will be over by 20-1-2004 and the Annual Examination is to be conducted only in April 2004. The football matches will not be conducted before 6.30 p.m. and therefore either the regular classes or the special classes, if any, will not be affected. The Kannamangalam Grama Panchayat and the Parent-Teacher Association of the School have no objection to the conduct of the tournament. On the contrary, they are in favour of it. We are also of the view that the football tournament can develop among the students sportsman spirit and interest in games. We find that grant of permission to the first respondent to conduct the tournament will be to the advantage of the school and the benefit of the students. We do not see any valid reason to deny permission.

21. Learned Additional Advocate General appearing for the appellants and the learned counsel for the second respondent strongly opposed the grant of permission to conduct the football tournament on the ground that there is likelihood of law and order problem if the tournament is conducted. They invited our attention to the averments in the Memorandum of Writ Appeal, the affidavit filed on behalf of the 4th appellant and the affidavit of the second respondent. Moreover, registration of any case against any individual by the police cannot stand in the way of conducting a football tournament in the village. From the materials placed before the Court it is clear that if at all any tension prevailed in the area, it was in connection with the election of the President of the Kannamangalam Grama Panchayat and not in connection with the proposed football tournament. The Circle Inspector of Police, Malappuram apprehends trouble because, according to him, the football tournament is being organized by one of the parties in the cases registered in connection with the election of the President of the Gram Panchayat. But the fact remains that the tournament is organised by the Club. From the materials placed before the Court, it would appear that since a particular gentleman was removed from the post of the President of the Kannamangalam Gram Panchayat, he and his supporters do not want the football tournament to be organised by the Club. The reason for the objection appears to be that the persons actively involved in the organising of the football tournament are not his supporters. Being the local leader of a political party in power, the said gentleman is allegedly using his political influence over the authorities to prevent the conduct of the football tournament. Even if some persons threaten to prevent or disrupt any function or event in a locality, the law enforcing agencies cannot throw up their hands in helplessness

and say that the function or event should not be organised on account of such threats. It is the duty of the District Administration and the law enforcing agencies to uphold the rule of law and to enable the conduct of lawful functions and events. Otherwise the persons in power can always prevent the conduct of any event or function by getting some people to send some petitions threatening to create law and order problems. In this case, we are satisfied that the bogie of law and order problem has been raised by the appellants and the second respondent only as a ruse to prevent the holding of the football tournament as it is not to the liking of some politically influential persons. It is significant that all these apprehensions about law and order problem and the petitions against the conduct of the tournament surfaced only after the impugned judgment was delivered by the learned single Judge. There is force in the allegation of the counsel for the first respondent that the petitions against the holding of the football tournament were deliberately engineered as part of the organised sinister attempt to prevent the conduct of the tournament. In the above circumstances, we are not inclined to refuse permission to the first respondent to conduct the football tournament on the alleged ground that law and order problems are apprehended. We are not satisfied about the bona fides of the appellants in this regard. Even if any such law and order problem is likely to arise during the football tournament, the law enforcing agencies should be prepared and capable of dealing with the situation so as to maintain law and order and to prevent any breach of peace.

22. Hence the writ appeal is disposed of as hereunder:--

(a) The appellants are directed to permit the first respondent to organise and conduct the All India Sevens Foot Ball Tournament in the play-ground of the G. M. U. P. School, Cherur between 20-1-2004 and 1-3-2004.

(b) The tournament shall not be conducted before 6.30 p. m.

(c) The organisers shall ensure that no damage is caused to the buildings and other properties of the school,

(d) After the tournament, the play-ground shall be restored to its original position by the first respondent.

(e) The first respondent shall deposit with the third appellant - Headmaster, a sum of Rs. 1,55,000/- before the start of the tournament. The said amount can be utilised by the third appellant in accordance with law for the construction of the stage-cum-class-room as proposed by the Parent-Teacher Association or for other educational purposes of the school.

(f) On completion of the tournament, the first respondent shall contribute 60% of the profit to the school as promised.

(g) If the teachers and the students of the school request, they shall be given free passes to watch the tournament.

(h) The District Collector, Malappuram and the Superintendent of Police, Malappuram are directed to take all necessary steps to maintain law and order and to effectively prevent breach of peace and commission of offences during or in connection with the football tournament.

(i) This order granting permission to the first respondent to conduct the football tournament in the play-ground of the G. M. U. P. School, Cherur shall not be treated as a precedent and any request for permission in future can be considered by the competent authority in accordance with law and in the light of the prevailing circumstances.

(j) The impugned judgment will stand modified to the above extent.

(k) The Registry is directed to immediately send a copy of this judgment to the District Collector and the Superintendent of Police for information and compliance.