

(2014) 11 KL CK 0224

In the High Court Of Kerala

Case No : W.A. No. 601 of 2011 and connected cases

State of Kerala

APPELLANT

Vs

Krishanankutty Nair

RESPONDENT

Date of Decision : 12-11-2014

Acts Referred:

Kerala Education Act, 1958 — Section 14, 14 (1), 14(1), 7, 7(6)

Right of Children to Free and Compulsory Education Act, 2009 — Section 2 (f), 2(n), 38

Citation : (2015) 1 KLT 392 : (2015) 4 SCT 386

Hon'ble Judges : T.B. Radhakrishnan, J;C.T. Ravi Kumar, J;Babu Mathew P. Joseph, J

Bench : Full Bench

Advocate : K.A. Jaleel, Addl. Advocate General, Advocates for the Appellant; Kurian George Kannanthanam, Sr. Advocate and Jiji Thomas and Tony George Kannanthanam, Advocates for the Respondent

Judgement

T.B. Radhakrishnan, J.—W.A. Nos. 653 of 2011 and 53 of 2012 arise from W.P.(C) No. 18311 of 2010, the latter among which is instituted having obtained leave to appeal. W.A. No. 601 of 2011 arises from W.P.(C) No. 16909 of 2010. Except the appeal instituted with leave, the other two appeals are by State of Kerala. Issues arose as to whether the statutory authorities acted within jurisdiction in taking action to take over two schools, which are the subject matter of the two different Writ Petitions. The managers had issued notices under S. 7(6) of the Kerala Education Act, 1958, "K.E. Act", for short, about the intention to close down the schools concerned. The statutory provision envisages a notice of one year ending with 31st May of the year in which the school is proposed to be closed down, to the Government. The authorities, apparently, took action as if they were taking over the schools in question in terms of S. 14 of the K.E. Act. The learned single Judge found that action for take over can be only by the Government and decision in that regard has to be by that authority only, however that, the impugned decisions were issued either by the Director of Public Instructions or by the District Collector. Those proceedings were, therefore, quashed. The

learned single Judge also noted that the notices given in terms of S. 7(6) cannot by itself generate an action under S. 14 of the K.E. Act. The Writ Petitions were accordingly allowed.

2. Hearing the appeals, the Division Bench noted that the issues relating to application of Ss. 7 and 14 of the K.E. Act are dealt with by the Division Bench earlier in the decision in *Parent Teacher Association v. State of Kerala* (2000(1) KLT 804). Noticing that the said and earlier decisions in that regard had not addressed on the question of rehabilitation of students, teachers and staff of the closed schools, the matter has been adjourned to the Full Bench for consideration of such issues as well, though the Bench did not disagree with the views expressed earlier.

3. With the passage of time, the Right of Children to Free and Compulsory Education Act, 2009, which is a Central Act, hereinafter "F.C.E. Act", for short, came into force with effect from 01.04.2010. Thereafter, the Government of Kerala, made the Kerala Right of Children to Free and Compulsory Education Rules, 2011, "F.C.E. Rules," for short, with effect from 30.04.2011. Those rules are issued in exercise of powers conferred on the State Government under Section 38 of the F.C.E. Act. R.6(10) of the F.C.E. Rules provides that the Government or local authority shall ensure that access of children to the school is not hindered on account of social and cultural factors, on account of closure of a Government or aided school and that no school is closed down without the recommendation of the Assistant Educational Officer and the local authority and prior sanction of the Government. Assistant Educational Officer means an officer in-charge of elementary education in all schools having classes up to eighth standard - See R. 2(f) of the F.C.E. Rules. S. 2(n) of the F.C.E. Act defines a school to mean any recognised school imparting elementary education and includes different types which are enumerated under clauses (i) to (iv) under that provision. Elementary education is defined in S. 2 (f) of the F.C.E. Act to mean the education from first class to eighth class. The schools which are subject matter of these Writ Appeals are schools which fall into that category.

4. With the aforesaid, we notice that this Court in *P. Krishnakumar Vs. The State of Kerala and Others*, and in *Subramanian v. State of Kerala & Ors.* (1986 KLT 359), held that the provisions of S. 7 of the K.E. Act and R. 24 (1) of Chapter V of the Kerala Education Rules, 1959, "K.E.R.", for short, do not speak of any "permission" from any one and that the only obligation of the manager is to give one year's notice of his intention to close down the school. That view was followed by the Division Bench in *P.K. Balakrishnan Vs. N.R. Ramaseshan and others*, . In *Parent Teacher Association* (supra), the Division Bench reiterated the aforesaid position and specifically held that the manager's right to close down his school is preserved in terms of S. 7(6) of the K.E. Act, subject to his complying with the conditions laid down in that Section as to one year prior notice. The earlier view that the right of a manager to close down a school under S. 7(6) of the K.E. Act cannot be treated as an act of neglect within the meaning

of S. 14 (1) of the K.E. Act, merely because he issues such a notice, was also reiterated. The decision in Parent Teacher Association (supra) was rendered also noticing the fact that the decision in Balakrishnan (supra) was carried to the Honourable Supreme Court of India in Civil Appeal No. 5353 of 1993, however that, the judgment was not interfered with. We have looked into a copy of the order of the Honourable Supreme Court of India in Civil Appeal No. 5353 of 1993, which is available in the records of this Court, including as Ext. P6 in the judges papers in the case of Parent Teacher Association (supra). By the time that civil appeal was taken up for final hearing, the issue had become academic, since the period of five years under S. 14 of the K.E. Act was over and the fact situation, as to ground reality in relation to the school in that case, had also totally changed. Be that as it may, having regard to the clear provisions of Ss. 7(6) and 14(1) of the K.E. Act and R. 24(1) of Chapter V of the K.E.R., the position of law noted in Balakrishnan (supra) and in Parent Teacher Association (supra) is correct. In view of the statutory provisions of the K.E. Act and K.E.R., the ratio decidendi of Balakrishnan (supra), Parent Teacher Association (supra) and Krishnakumar (supra) are in accordance with law and do not call for any variation on the basis of the terms of the K.E. Act and K.E.R.

5. The reference order in these Writ Appeals is generated questioning whether Balakrishnan (supra) and Parent Teacher Association (supra) would have been so decided by the Division Bench of this Court had it bestowed attention to the rights and needs of the students and the teachers. Having regard to the statutory position as emanating out of the K.E. Act and K.E.R. as noted above, and bearing in mind the fundamental fact that one of the prime objects and the underlying doctrine that governed the legislation of the K.E. Act and framing of K.E.R. thereunder, is the paramount interest of the pupils, we need to say that no further consideration at this stage is necessary from any other view of the matter in view of our affirmation of those decisions hereinabove.

6. The provisions of the F.C.E. Act and the F.C.E. Rules having come into force, it is essentially within the domain of the competent authority, in terms of those legislative provisions, to take stock of any situation of conflict with those provisions, as regards any particular school or management. The field of elementary education being subject to the F.C.E. Act and the F.C.E. Rules framed under that Act, the conclusions rendered above as to the correctness of the precedent law in the aforementioned judgments of this Court do not preclude the competent authority under the F.C.E. Act and F.C.E. Rules issued thereunder, to consider any issue which would fall within the domain of that Act and those Rules.

7. The question posed for consideration in the reference order does not generate any view which would contradict the conclusions arrived at in the precedents noted above, merely on the basis of the coming into force of the F.C.E. Act and the F.C.E. Rules thereunder. This is so, also because the consideration in the earlier judgments were only in relation to issues under the K.E. Act and K.E.R. The correctness of those judgments do not depend upon the impact of the F.C.E.

Act and the F.C.E. Rules. The impact of both sets of primary and subsidiary legislations; namely, K.E. Act, K.E.R., F.C.E. Act and F.C.E. Rules; would have to be taken care of by the, competent authorities while deciding on individual cases.

8. The result of the aforesaid discussion is that no interference is called for with the judgment under appeal in these Writ Appeals, and the competent authority will be at liberty to take such action as may be called for on any request of the parties, or even otherwise. This shall be strictly in accordance with the relevant provisions of law.

9. Before parting, we may also notice the submission on behalf of the schools that the notices under S. 7(6) of the K.E. Act were issued by those schools before the F.C.E. Act was notified; obviously, meaning thereby that long before that, such notices were issued much before F.C.E. Rules were notified. The question as to whether the notices given by the managers of the schools before coming into force of the F.C.E. Act and the F.C.E. Rules would be governed by the provisions of that Act and those Rules is an issue to be decided as and when raised or arising for decision before the competent authority in appropriate proceedings. Judicial prudence advises that we preclude from speaking on any such issue, since if we were to do that, it would be premature and, also, foreclosing pleas and arguments in that realm. That issue is, therefore, left open.

10. It is mentioned across the bar by the learned Additional Advocate General that there is a Writ Petition pending challenging some of the provisions of the K.E. Act and K.E.R., in the light of the provisions of the F.C.E. Act. We clarify that we have not expressed anything in this judgment touching any such issue. Here, we may also note that insofar as W.P.(C) No. 18311 of 2010 is concerned, the persons, who have been granted leave to appeal (W.A. No. 53 of 2012), have also contended that the person who has given notice of closure is not eligible to do so, having regard to the quality of the office he holds. According to those appellants, he is not an approved manager. This contention will be considered by the appropriate authority, if and when it becomes relevant for such consideration.

In the result, these Writ Appeals are dismissed.