
(2008) 08 KL CK 0034

In the High Court Of Kerala

Case No : Writ Petition (C) No's. 35622, 35646, 35650 and connected cases

Suresh Kumar C.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 14-08-2008

Acts Referred:

Kerala Education Act, 1958 — Section 19, 2(8), 3

Citation : (2008) 3 KLJ 457 : (2009) 4 KLT 588

Hon'ble Judges : M.C. Hari Rani, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : K. Ramakumar, Kurian George Kannanthanam, R. Rajasekharan Pillai, V.A. Muhammed, C.P. Mohammed Nias, T. Ramprasad Unni, A. Sameer and R. Jayachandran, for the Appellant; T.B. Hood (GP), C.P. Sudhakara Prasad (AG) and Devan Ramachandran (SC, CBSE), for the Respondent

Final Decision : Dismissed

Judgement

K. Balakrishnan Nair, J.

W.P.(C) No. 3562, 35646, 35650, 35735, 35752, 35836, 35893 of 2007 & 6552, 10736 of 2008

1. In these writ petitions, the petitioners want to get their secondary schools affiliated to the Central Board of Secondary Education. For moving the said Board for affiliation, they required "No Objection Certificate" from the State Government. The grant of N.O.C. by the Government is governed by Ext.P2, G.O. (Ms) 18/88/G.Edn. dated 12.1.1988. (The exhibits mentioned are, unless otherwise mentioned, those produced in W.P.(C) No. 35622/2007). The said G.O. inter alia says: Government have examined the proposals forwarded by the Director of Public Instruction in this regard and they order that the Educational authorities will adhere to hereafter the following guidelines while applications for affiliation of schools to Central Board of Secondary Education/ISCE etc. are taken up with Government for issue of No Objection Certificate.

(i)

(xii) No institution shall be affiliated or continue to be affiliated or recommended to affiliate unless the middle section of the school is recognised by the Education Department of the State except in cases where the syllabus of the middle classes is approved by the Chairman.

The requirement of N.O.C. from the State Government is provided in the affiliation bye-laws of the CBSE. The relevant provision is contained in paragraph 3.3(i) of Chapter II of the said bye-laws, which reads as follows:

i) The School seeking Provisional Affiliation with the Board must have formal prior recognition of the State/U.T. Government. Its application either should be forwarded by the State Government or there should be a No Objection Certificate to the effect that State Government has no objection to the affiliation of the school with the C.B.S.E. "No Objection Certificate" once issued to any school will be considered at par even if it prescribes a specific period unless it is withdrawn. Condition of submitting a No Objection Certificate will not be applicable to categories 3.1.(i) to (iv).

Paragraph 3.1 mentioned in the above quoted paragraph is as follows:

The Board may affiliate several categories of schools all over India and abroad, as for example:

- i) Government or Government aided schools;
- ii) Schools run by autonomous Organisations under the Government like Kendriya Vidyalaya Sangathan (KVS), Navodaya Vidyalaya Samiti (NVS), Central Tibetan Schools Organisation (CTSO), Sainik Schools Society etc;
- iii) Schools run by Government Department directly like Defence, Railways etc.
- iv) Schools managed directly by Public Sector Undertakings or by reputed societies for Public Sector Undertakings under the financial control of such Public Sector Undertakings or by Societies formed by such undertakings..
- v) Private, unaided schools established by Societies registered under the Societies Registration Act 1860 of the Government of India or under Acts of the State Governments as educational, charitable or religious societies having non-proprietary character or by Trusts.

Going by the above quoted provisions, a secondary school which is unaided and established by registered Societies or Trusts can seek provisional affiliation with the Board, only if the middle section of that school has got recognition from the State Government or the application is either forwarded by the State Government, or the same is accompanied by the N.O.C. issued by the State Government. The petitioners' schools come under the category schools mentioned in paragraph 3.1(iv).

2. The various types of affiliation are mentioned in paragraph 3.2, which read as

follows:

2. Applications for affiliation may be considered under the following four categories:

i) approval of middle class syllabus.

ii) provisional affiliation of a secondary school.

iii) upgradation/provisional affiliation of a school for senior secondary stage.

iv) Regular affiliation to schools run by the Govt./Govt. Aided/Kendriya Vidyalaya Sangathan (KVS)/Navodaya Vidyalaya Samiti (NVS)/Central Tibetan Schools Organisation (CTSO).

v) Permanent Affiliation.

3. In these cases we are concerned with the provisional affiliation of a secondary school mentioned in para 3.2 (ii). The State Government considered the applications submitted by the petitioners and rejected them by a common order dated 15.11.2007, a copy of which is produced as Ext.P7. The relevant portion of the G.O. reads as follows:

7. The applications have been examined in detail on the basis of the report of the Director of Public Instructions, Thiruvananthapuram. All the applicant schools have not obtained recognition from the State Government to run middle class. Further they have also not obtained permission from the CBSE/ICSE to run middle class as envisaged in the guidelines issued by the State Government in GO(Ms) 18/88/G.Edn. dated 12.01.1988. Further the applicant schools at Serial Number 6, 9, 13, 16, 19, 20, 23 and 24 are not paying salary and perks to the employees in tune with the existing norms of the Government. Hence, it is clear that the applicant schools could not satisfy the conditions stipulated in the Guidelines issued in GO(Ms) 18/88/G.Edn. dated 12.01.1988 for N.O.C.

4. The applications for N.O.C. have been rejected, mainly, on the ground that the applicant schools do not have recognition for their middle school from the State Government nor they have obtained permission from the C.B.S.E. to run middle class, as contemplated under Ext.P2 G.O. dated 12.1.1998. In the case of some of the applicants, the rejection was based on yet another ground also. That is, they are not paying salary and perks to the employees in tune with the existing norms of the State Government. It is one of the conditions contained in the affiliation bye-laws of the C.B.S.E. that salary and perks as applicable to the employees of the schools under the State Government shall be payable to the employees of the schools seeking provisional affiliation. In these cases, mainly, the correctness of the 1st ground taken for rejection of the applications for N.O.C. is under challenge. If the State Government insist that salary and perks should be paid to the employees at the rate payable to them as per the C.B.S.E. norms, no one can challenge that stipulation.

5. But, regarding the first and main ground taken for rejection of their

applications for N.O.C, the petitioners would submit that in their middle schools they are following the syllabus approved by the N.C.E.R.T. The said syllabus is being followed in the middle schools having approval of the C.B.S.E. also. So, teaching the said syllabus in their schools will satisfy the requirement of the paragraph (xii) of Ext.P2 G.O. which is quoted above, it is submitted. But, on the other hand, the Government would submit that the approval of the middle class syllabus mentioned in Ext.P2 is used in the technical sense, as the same is understood in paragraph 3.2(i) of Chapter II of the affiliation bye-laws of the C.B.S.E. As an example, the State Government have produced Ext.P1(c) order of the C.B.S.E. along with the counter affidavit in W.P.(C) No. 11398/2008 and some other writ petitions.

6. Ext.R1(c) would show that the approval of the syllabus of middle class is not the mere following by a middle school of the syllabus followed in other middle schools approved by the C.B.S.E. But, it is a separate and independent proceedings in terms of paragraph 3.2(i) of Chapter II of the affiliation bye-laws. The petitioners do not have any case that they were issued with any proceedings by the C.B.S.E. or its Chairman, which can be called as a proceeding approving the syllabus for middle class, as contemplated under the affiliation bye-laws. So, the State Government would submit that the petitioners are ineligible for getting N.O.C, in the light of the norms contained in Ext.P2, as they do not have a middle school section either recognised by the State Government or the syllabus, of which is approved by the C.B.S.E. in terms of the affiliation bye-laws. The C.B.S.E. also supported the above submission of the State Government regarding the approval of syllabus by the C.B.S.E.

7. We heard, the learned senior counsel M/s. K. Ramakumar and Kurian George Kannanthanam and also learned counsel M/s. R. Rajasekharan Pillai, V.A. Muhammed, C.P. Mohammed Nias, appearing for the petitioners. We heard the learned Advocate General, Sri. C.P. Sudhakara Prasad for the State. We also had the benefit of hearing learned counsel Mr. Devan Ramachandran who appeared for the C.B.S.E. We gave anxious consideration to the rival submissions made by both sides. We notice that Ext.P2 G.O. is not challenged in any of these writ petitions. If that be so, if the Government insist that the petitioners have to comply with the requirements of Ext.P2 for the grant of N.O.C., the said stand has to be upheld.

8. It is common case that the petitioners are not running any middle school recognised by the State Government. The definition of recognised school is contained in Section 2(8) of the Kerala Education Act. Sections 3 and 19 also deal with the recognition of private schools. Rules 1, 13A and 16 to 23 of Chapter V of the Kerala Education Rules also deal with recognition. The State Government can recognise a school only in accordance with the above statutory provisions. The petitioners have not moved or obtained recognition for any middle schools of theirs.

9. So, the next point to be considered is whether the stipulation contained in

paragraph (xii) of Ext.P2 will be satisfied, if the petitioners follow the syllabus, which is followed in other schools approved by the C.B.S.E. The State Government is the author of Ext.P2. The State Government say that when they speak of a syllabus of middle class approved by the C.B.S.E., it means approval of the syllabus of the middle class, as contemplated under paragraph 3.2(i) of Chapter II of the affiliation bye-laws. The said construction put by the State Government on condition No. (xii) of Ext.P2 is a plausible construction. Going by Ext.P2, those running middle schools recognised by the State Government or affiliated by the C.B.S.E. (as per the affiliation bye-laws approval of middle class syllabus is one of the forms of affiliation) alone can move for N.O.C. for affiliation of their Secondary Schools. As long as Ext.P2 is not under challenge, we feel that the ground taken for rejection of the application for N.O.C. has to be upheld. But, the learned counsel for the C.B.S.E. pointed out that Ext.P2 will apply for recognition of middle school section also. For that also N.O.C. is required. However, for granting N.O.C. for the same, recognition/approval of the middle school section is insisted. The said provision will be unworkable in relation to grant of N.O.C. for middle school section, it is submitted. But, it is pointed out by the State that in these cases the said question does not arise. We feel that it is only an academic question, which need not be resolved in these cases. The petitioners, as mentioned earlier, do not have a case that they have middle schools recognised by the State Government. They also do not claim that they have got "approval of middle class syllabus" as contemplated in paragraph 3.2(h) of the affiliation bye-laws. So, they are not qualified for getting N.O.C, in terms of Ext.P2. Therefore, the challenge against Ext.P7 (G.O.(Rt) No. 5222/07/G.Edn. dated 15.11.2007) fails.

In the result, the writ petitions are dismissed.

W.P.(C) Nos. 1503, 11398 & 2472 of 2008

The point raised in these writ petitions are covered by the judgment in W.P.(C) No. 35622/2007 and connected cases. Accordingly, these writ petitions are also dismissed.