
(2012) 06 KL CK 0017
In the High Court Of Kerala
Case No : W.A. No. 713 of 2012

The Manager, A. Jayanthakumar, R.V.S.M.H.S.S.	APPELLANT
Vs	
The State of Kerala and Others	RESPONDENT

Date of Decision : 05-06-2012

Acts Referred:

Constitution of India, 1950 — Article 21A

Citation : (2012) 3 KLJ 579

Hon'ble Judges : C.N. Ramachandran Nair, J;C.K. Abdul Rehim, J

Bench : Division Bench

Advocate : P.B. Sahasranaman, T.S. Harikumar and K. Jagadeesh, for the Appellant; Liju Stephen, GP, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—Appellant is an educational agency which is running a school for the last around 70 years. The school was initially started as a combined Upper Primary and High School which was in the Aided sector wherein salary is paid by the Government to the staff and teachers. When Pre-degree was abolished, Government allowed the appellant-school to be upgraded to Higher Secondary School with Standards 11 and 12 which is also given in the Aided sector i.e. by Government funding for payment of salary to staff and teachers. Twenty years back the appellant started Kindergarten sections and also Primary School in the Unaided sector i.e. without any Government assistance for payment of salary to staff and teachers. The self-financed Primary school run by the appellant which has around 500 students is the only English Medium school in a village area in the backward District of Alleppey. The advantage for students in the appellant's school is that from Lower Kindergarten to 12th Standard they can continue in the very same school and complete full schooling. The only difference between the Lower Primary School and sections above L.P. is that while the Upper Primary, High School and Higher Secondary School sections are in the Aided sector functioning with grant and salary paid to teaching and non-

teaching staff by Government, the Primary section is self-financed wherein appellant collects small fees from the students and with the funds raised so, the appellant is running the school. The Kerala Education Rules in Chapter VI Rule 7(3) provides for private study of students upto standard 5. So many self-financed schools are running in the State as provided under Rule 7(3). Until 2008 these schools were also allowed to issue Transfer Certificates for the students leaving the 5th Standard to join 6th Standard in recognised Aided or Government schools. However, from 2008 onwards Government prohibited private schools from issuing Transfer Certificates to students and as a consequence, unrecognised private Primary schools had to send their students to Government schools to write the qualifying examination to join 6th Standard and thereafter the procedure prescribed by the Government is to issue Transfer Certificate from the schools wherefrom these students write the examination and qualify for admission to 6th Standard. In order to get over this cumbersome process of taking school children to Government schools to write examination for entry to 6th Standard, several private Primary Schools applied for recognition from Government as required under Rule 11 Chapter V of K.E.R. and the appellant is one such school which applied for recognition of their Primary School which has been functioning as an English Medium School along with Kindergarten section for the last around 20 years. Since the Government has been sending the applications from one authority to another authority without passing any orders, appellant approached this court wherein Government put forward the defence that recognition of school is a matter of policy and, therefore, High Court cannot issue any direction in this regard. The learned Single Judge accepted the Government stand and rejected the W.P. (C) against which this appeal is filed. We have heard counsel appearing for the appellant and Government Pleader for respondents.

2. As already stated, the appellant is running a school from Kindergarten to 12th Standard and Government has no dispute about the eligibility of the appellant as an educational agency to run school, that too, as Aided school from Upper Primary to Higher Secondary level with hundreds of students. The school has a long history of around 70 years. The appellant only claimed recognition of the Primary section of the school before the Government, that too, in the self-financed sector wherein grant of recognition does not involve any financial commitment for the Government. Government Pleader submitted that there is no proof of local need of the area for running the Primary section of the school and that "local educational need" of the area is a relevant consideration for granting recognition under Rule 17(v) of Chapter V K.E.R. The appellant has a specific case that the appellant is the only English Medium school in a Panchayat area in a backward District and the Panchayat is in favour of granting recognition to the school (Panchayat passed resolution-copy Ext. P1(6)). The local need for a school has to be considered with reference to the educational service it renders and also the educational needs of the people of the area. Nobody can dispute that there is an increased trend among the parents to send their children for study in English

Medium Schools. Most Primary schools run by the Government and by private educational agencies in the Aided sector are imparting education in the local vernacular and that is the reason why here and there English Medium schools started are thriving with large number of students joining such schools. Right to elementary education is a fundamental right guaranteed under Article 21A of the Constitution and the same is available to students between age group of 6 and 14. Primary section of the school, therefore, squarely falls under Article 21A of the Constitution. "School" as defined under the Right to Free and Compulsory Education Act, 2009, in Section 2(h)(iv) takes in self-financed schools which do not receive any aid from the Government. So much so, the statutory obligation of the Government to impart free and compulsory education to children in the age group of 6 to 14 does not mean that the Government should not allow education of such children in private self-financed schools. The Right to Education Act contemplates discharge of constitutional obligation by the Government by providing school nearby residential areas only when there is no school facility available in the area. In our view, the local need of the area in primary education is an English Medium school which is met by appellant's self-financed primary school and the same is proved by the fact that around 500 children are studying in primary section of appellant's school. If the Government does not grant recognition to appellant's self-financed school, then as part of the constitutional obligation of the Government, the local need of the area should be met by the Government by providing an English Medium school in the Primary section. The Government Pleader has no case that Government has any intention of starting any such school to meet the needs of the students in the area where appellant's school is located. As already stated above, the facility rendered by the appellant by providing Kindergarten and Primary school in English medium is helpful to the local people to send their children from the beginning till the end of their schooling in appellant's school. In our view, no more evidence is required towards proof of need for a Primary school in English medium in the area in which appellant's school is situated than the number of students itself and, therefore, the facts and circumstances intrinsically prove the case in favour of the appellant for recognition of the school. It is conceded that private schools are permitted under the Right to Education Act and by granting recognition to schools, Government only gives a facility to the school to issue T.C. to their students to join up in the higher class in the very same school where Standards 5 to 12 are run in three sections of Upper Primary, High School and Higher Secondary in the Aided sector. In our view, the attitude of the Government will defeat the objective of Article 21A as well as the provisions of the Right to Education Act because children have also a right to be educated in the language of their choice and when Government does not have English medium schools in an area, the obligation of the Government is to recognise self-financed private English medium schools. Kerala is one State which has large number of excellent self-financed schools developed in the course of several years where education is imparted in English Medium. We feel Government should do everything to encourage such schools so that Government is relieved of the burden of funding

Government or aided schools. In view of our findings above, we declare that the local need for an English medium Primary school in the self-financed sector is established by the appellant and if all other conditions are satisfied, Government has to give recognition. However, Government should grant recognition to the school on condition that the school will continue in the Unaided sector and recognition shall be in force until then. We accordingly allow the appeal vacating judgment of the learned Single Judge and direct the Government to consider the application and grant recognition, if all the conditions are satisfied or subject to satisfaction of such conditions as are required except the educational need of the area which stands established from the facts found by us and stated above.