

(1968) 11 KL CK 0013
In the High Court Of Kerala
Case No : O.P. No. 2182 of 1968

The Marakkara Educational and Development Society	APPELLANT
Vs	
State of Kerala and another	RESPONDENT

Date of Decision : 29-11-1968

Acts Referred:

Kerala Education Rules, 1959 — Rule 10

Citation : (1969) KLJ 122

Hon'ble Judges : K.K. Mathew, J

Bench : Single Bench

Advocate : K. Velayudhan Nair, V.S. Moothath, N.R.K. Nair, K.J. Joseph and T.K.M. Unnithan, for the Appellant; V. Sivaraman Nair and V.M. Nayanar for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

K.K. Mathew, J.—In this writ petition, the petitioner, a society registered under the Societies Registration Act, has applied for a writ of certiorari or other appropriate writ, or direction quashing an order passed by the Government sanctioning the opening of a High School by 2nd respondent. Government published a notification inviting applications for permission to open new schools in the year 1968--69. The petitioner-society applied for sanction for opening a school with Stds. 7 to 10 as an aided school in Marakkara Village, Tirur Taluk. The 2nd respondent also applied for permission to open an aided school with Standards 7 to 10 in the same village. The application of the 2nd respondent was allowed by the Government by the, order impugned in this proceeding.

2. The petitioner submits that in passing the order sanctioning the opening of a school by the 2nd respondent, the Government have taken into consideration irrelevant materials and ignored relevant ones, and therefore, the order is vitiated by mala fides.

3. Counsel for the petitioner submitted that in the Press-note issued by

Government, sanction for opening a High School was granted to the petitioner but that in the Gazette notification that followed, that was given the go-by, and sanction was accorded to the 2nd respondent for opening a school. Counsel said that Government sanctioned the school to the petitioner because the plot of land in which it proposed to locate the school would meet the educational needs of the locality better than the plot where the 2nd respondent proposed to locate the school, that there was no scope for any mistake as to the person to whom the sanction for opening the school was granted, and that what happened was, that the Government changed their mind out of irrelevant considerations and sanctioned the school to the 2nd respondent, and that was published in the Gazette.

4. The Minister for Education has filed an affidavit in this court stating that it was on account of a typing error that in the Press-note it was stated that sanction was granted to the petitioner to open a school in the site offered by it, that as a matter of fact, Government intended to sanction and really sanctioned the school to the 2nd respondent, and that the error was rectified in the Gazette notification. Although counsel for the petitioner contended that the circumstances are against the acceptance of the statement in the affidavit, I do not think that I will be justified in rejecting it. I cannot attach much weight to the contention of counsel, that the decision arrived at the conference was noted down at the time, and since the note has not been produced before the court, no value can be attached to the statement that it was on account of a mistake in typing, that the error crept into the Press-note.

5. But I think that the petitioner must succeed for the reason that there were no materials before the Government which warranted the sanction for opening the school to the 2nd respondent, or, to put it in other words, the Government did not take into account the available relevant materials for deciding the question.

6. Rule 10 of Chapter V of Kerala Education Rules is as follows:--

After applications for permission to open new schools in any year are received within the time prescribed therefor, the Local Educational Authority (if any) shall make such enquiries as it may deem fit with the assistance of the District Educational Officer, with particular reference to the following:--

- (i) the existing schools in and around the locality in which the proposed school is to be started.
- (ii) the strength of the several Standards and the accommodation available in each of the existing schools;
- (iii) the distance from each of the existing schools to the site in which it is proposed to locate the new school;
- (iv) the nature of the management and the guarantee it offers of the financial stability; and

(v) the extent to which the educational needs of the locality require a new school.

The Local Educational Authority (if any) shall then prepare the development plan indicating the new schools to be opened in the ensuing school year and shall forward the applications with their recommendations and the development plan to the Government through the Director, all in triplicate.

7. No Local Educational Authority has been established and so no development plan was prepared indicating the new schools to be opened. But, in the counter-affidavit filed on behalf of Government, the 1st respondent, it is stated that on receipt of the applications with the recommendations of the Director of Public Instruction, discussions were held at the Government Secretariat by the Education Minister with the Director of Public Instruction and the Additional Secretary to the Government, Education Department, where each individual application was discussed with special reference to the recommendation made by the District Educational Officer, Director of Public Instruction and the District Development Council. So, it is clear that the merits of the applications were considered with reference to the recommendations made by the District Educational Officer, the Director of Public Instruction and the District Development Council. The recommendations made by the District Educational Officer are clear from the records. No records have been placed before me to show that any specific recommendation was made by the Director of Public Instruction or by the District Development Council on the applications. So far as the petitioner's application for sanction for opening a school is concerned, (which is referred to in the recommendations as application having Sl. No. 4), the recommendation made by the District Educational Officer is unambiguous.

Site quite suitable, level touch rocky. Situated on either side of the road. 4.25 acres in area. No schools within a radius of six miles. A school is highly necessary in the area. Hence recommended.

The recommendation made by the District Educational Officer on the 2nd respondent's application is as follows:--

About 11/2 kms. away from the proposed H.S. (Application having Sl. No. 4-- Priority No) Near to the Marakkara U.P.S. site, not so suitable as the other, slopping. Not recommended in terms of recommendation of Sl. No. 4.

These would clearly show that site offered by the petitioner is superior and that since there are no schools within a radius of six miles, the location of the school in the plot would serve the educational needs of the locality better. The recommendation by the District Educational Officer of the site offered by the petitioner was based on specific facts. There was no mistake or ambiguity about it. As I have said, no recommendation was made by the Director of Public Instruction or by the District Development Council to the contrary. At any rate, no record has been placed before me to show that a different recommendation was made either by the Director of Public Instruction or by the District Development Council. There is also no averment in the affidavit filed on behalf of

the Government that the Director of Public Instruction or the District Development Council recommended the site offered by the 2nd respondent as superior in any respect or that the application made by the 2nd respondent deserved preferential consideration on any ground. So, we have to take it that the site offered by the petitioner for locating the school was superior in every respect to the site offered by the 2nd respondent. There is no case for the Government that the Minister for Education or the Director of Public Instruction made a local inspection of the area in question and came to a different conclusion. In short, there is no case for Government that there were any other materials before them which would warrant a different conclusion. This is, therefore, a case where there were no grounds for departing from the recommendation of the District Educational Officer and coming to a different conclusion. This is a case where with the materials available on record, the Government could have reached only one conclusion. Even if a conclusion is to be reached by an authority on its subjective satisfaction, the order would be vitiated by mala fides, if there are no grounds to support it. In *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, Shelat J. made the following observations:

Though an order passed in exercise of power under a statute cannot be challenged on the ground of property or efficiency, it is liable to be quashed on the ground of mala fides, dishonesty or corrupt purpose. Even if it is passed in good faith and with the best of intention to further the purpose of the legislation which confers the powers, since the authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to be the relevant facts.

As the materials available in the case would indicate that from every point of view the application of the petitioner deserved preferential treatment, and as there were no grounds on which the 2nd respondent's application could have been granted, I think, there was mala fides in the eye of the Law: Or, if I may put it in other words: If it appears to the court that the Government have been, or must have been, influenced by extraneous considerations which ought not to have influenced them--or, conversely, have failed, or must have failed, to take into account considerations which ought to have influenced them--the court has power to interfere. It can issue a mandamus to compel them to consider the applications properly. This was laid down by Lord Esher M.R., in *Reg v. Vestry of St. Pancras* (1890) 24 Q.B.D. 371, 375. He said:

They must fairly consider the application and exercise their discretion on it fairly, and not take into account any reason for their decision which is not a legal one.

If people who have to exercise a public duty by exercising their discretion take into account matters which the courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion.

8. In *Associated Provincial Picture Houses Ltd., v. Wednesbury Corporation*, (1948) 1 K.B. 223, 229 Lord Greene M.R. Said:

a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider.

The above passage has been repeatedly cited with approval in the House of Lords by Lord Reid, in *Smith v. East Elloc Rural District Council* 1956 1 All. E.R. 855 and *Fawcett Properties Ltd. v. Buckingham County Council* 1961 A.C. 636, 660.

9. Applying these principles, I think, this is a case where the court should interfere and quash the order and direct the passing of a proper order. But the matter does not end there. The 2nd respondent states that after the order, he has constructed a school on the site offered by him, that several students have been admitted to the school and are carrying on their studies there, that quashing the order at this time would hamper their studies and will cause serious inconvenience to them. I see considerable force in this argument. But for that reason, I do not think that the order should be allowed to stand. I would, therefore, while quashing the order, direct that the status quo will be maintained until the proper order is passed by Government. I would direct the Government to pass the order within six weeks from to-day.

The writ petition is allowed in the manner and to the extent indicated above. It is dismissed in all other respects. No costs.