
(2010) 08 KL CK 0326
In the High Court Of Kerala
Case No : W.A. No. 896 of 2010

Tribal Mission

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 18-08-2010

Acts Referred:

Constitution of India, 1950 — Article 21A
Kerala Education Rules, 1959 — Rule 2, 2A

Citation : (2010) 08 KL CK 0326

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : George Poonthottam, for the Appellant; C.P. Sudhakara Prasad, General and T.B. Hood, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—The Appellant is a charitable institution running a self-financed school at Attappady which is a tribal area in Palakkad District. Sixty per cent of the students in the Appellant's school are children of tribals and members of the Scheduled Caste Community. The school is an. English medium school with Hostel providing free food and accommodation to the students. The school was started in the year 2001 and in the year 2003 Appellant applied for recognition of the school as a self-financed school in the unaided sector vide Ext.P-1 application. Based on Appellant's application the Asst. Educational Officer, Mannarkkad prepared Ext.P-2 report and submitted the same to the Deputy Director of Education who made Ext.P-3 and forwarded the same to the Secretary to Government, who in turn, referred it to the Director of Public Instruction, the head of the Department. The Director of Public Instruction vide Ext.P-4 dated 30-12-2003 recommended to the Government for grant of recognition to the Appellant's school as a self-financed school in the unaided sector. However, the Government did not take any action in the matter, and thereafter, the Appellant approached this Court for direction to the Government to consider the matter. This Court issued interim direction to the Government to

consider Petitioner's application for recognition. It is to be noted that besides the recommendation made by the Director of Public Instruction based on the inspection report by Asst. Educational Officer forwarded by the Deputy Director of Education, the Appellant had produced Ext.P-7 resolution passed by the Sholayoor Grama Panchayath and Ext.P-8 resolution passed by the Attappady Block Panchayath requesting the Government to grant approval to the Appellant's school. However, in spite of recommendation both by the Educational authorities at all levels and request from the Grama Panchayath and Block Panchayath, Government did not pass any orders. This led to filing of WPC and Ext.P-9 interim order was issued by this Court directing the Government to consider recognition for Appellant's school. However, Government vide Ext.P-14 order rejected the claim and therefore the Appellant withdrew the Writ Petition that was pending at that time, and filed the present Writ Petition which was heard and disposed of by the learned Single Judge along with 36 other Writ Petitions.

2. The challenge in all the Writ Petitions was mainly against the policy decision of the Government not to grant recognition for opening up self-financed educational institutions. Even though Appellant had made a specific prayer for direction to grant recognition to the Appellant's school based on documents produced, the learned Single Judge did not grant it and hence this Writ Appeal is filed. We have heard Counsel appearing for the Appellant and Advocate General appearing for the Respondents.

3. We do not think there is any need to consider the findings and observations of the learned Single Judge pertaining to the policy of the Government that was under challenge in the batch cases. This is because after hearing both sides and after going through the records produced, we felt that Appellant has made out a case to interfere with Ext.P-14 order issued by the Government and they are eligible to get recognition for their School in the self-financed (unaided) sector consistent with Government policy. Before proceeding to consider the correctness of Ext.P-14 order, we have to refer to the peculiar features of the Appellant's school which are the following:

1. Appellant's is an English medium school in a remote tribal area and admittedly there is no English medium school even in the neighbouring villages and two schools functioning in the neighbouring villages are Malayalam and Tamil medium schools.

2. Appellant is a charitable institution running the school by providing teaching and accommodation facility free of cost mainly to children of tribals and members of Scheduled Caste community

3. All the educational authorities, including the Head of the Department, namely, the Director of Public Instruction, recommended Appellant's school's eligibility for recognition as a school in the unaided sector.

4. In terms of the requirement of the Govt. orders for recognition, the local

authorities, namely, Grama Panchayath and Block Panchayath, have both recommended to the Government for granting recognition to the Appellant's school.

5. The photographs produced by the Appellant before us show the infrastructure facilities available in the school including play ground which prima facie establish that the school is very well-established and the Appellant as a charitable institution is doing service to the community by providing free education, including free accommodation and food to the tribal children and members of the Scheduled Caste community.

6. The educational authorities after inspection noticed that the School has not only infrastructural, but all the Instructional facilities, like required number of teachers, library, computer centre, etc.

7. Recognition sought from Government does not involve any financial commitment for Govt. because Appellant's is a self-financed institution (unaided school).

4. On going through Ext.P-14 order issued by the Government, which is the order declining recognition to Appellant's school, we notice that denial of recognition is for the reason that the Government apprehends fall in number of divisions in the neighbouring three schools, one being GTUPS, Mattathukkad. However, in Ext.P-14 itself it is stated that all these schools are either Tamil or Malayalam medium and none of the schools is an English medium school, whereas the Appellant's school is an English medium school. It is admitted in Ext.P-14 that Appellant's school has infrastructure facility and the educational authority, namely, the Asst. Educational Officer, who conducted inspection, noticed that the school has all the infrastructure and instructional facilities including computer centre, library and staff strength. In fact, as late as on 8-10-2007 and 9-11-2007 the District Educational Officer inspected the school and recorded vide Exts. P-11 and P-12 copies of registers produced by the Appellant in the WPC that the Appellant's school has all the facilities entitling it for recognition. We are of the view that the apprehension of the Government that there would be fall in number of students and divisions in the schools in the neighbouring villages, if recognition is granted to the Appellant's school, is without any basis because Appellant's school is an English medium school whereas those schools in the neighbouring villages are either Tamil medium or Malayalam medium schools. Further it is to be noted that Appellant's school is a residential school and it provides free accommodation to the children of tribals and members of the Scheduled Caste community and the poor people in the area. Free accommodation to students besides free education is certainly an incentive to the poor people particularly tribals to send their children to School and get them educated. We are of the view that if Government could not give free education to the students from the age of six to fourteen, in terms of Article 21A of the Constitution of India, they should at least encourage Ors. to provide it and in this regard all what is required is only recognition being granted by the

Government, which is only a facility to conduct examination in the school. While granting recognition, Government does not make any financial commitment to the Appellant's school as it is a self-financed school, that too is run with its own fund without collecting any charges from the students. Therefore, in our view, the policy of the Government is against public interest and against the scheme of Constitution to provide free education to students upto the age of 14.

5. The next ground argued by the Advocate General is that according to Government's policy, recognition should be granted to schools in terms of Rule 2 and 2A of Chapter V of the Kerala Education Rules. Under the scheme of these rules, it is for the Government to first conduct study about educational requirements in the State and identify the areas where schools have to be opened. It is only against Government's notification inviting applications that the schools are supposed to make application for opening of new schools. Admittedly Government conducted study and Ext.P-6 notification was issued on 13-6-2007 identifying Malappuram, Kasaragod, Kozhikode, Kannur and Wayanad Districts as Districts where educational backwardness of Muslim community persists. Later, Palakkad District in which Appellant's school is located is also brought within the list of educationally backward Districts. Revised notification was issued as G.O. (Rt.) No. 85/09 dated 27-2-2009 including Palakkad District also as educationally backward District. Pursuant to the direction issued by the Government the Director of Public Instruction on 24-5-2010 identified 8 Panchayaths in Palakkad District where educational backwardness exists. Even though Appellant's school is located in the Tribal area and Grama Panchayath and Block Panchayath recommended the need to give recognition to the Appellant's school, Government has not identified Attappady area as one wanting a new school. We notice that these Government orders are issued in 2007 and 2009 whereas the Appellant's application is pending from 2003 onwards and on which based on the norms, all the educational authorities recommended recognition to the Appellant's school. The school has around 300 students and has classes from Std. I to X and the Xth Std. students will appear for the Examination in March, 2011. The norms for recognition vide Ext. P-6, G.O.(P) No. 107/07/G.Edn. dated 13-6-2007 are the following:

1. As a policy, unaided recognized schools need not be given recognition. It may be declared that unaided schools will not be given recognition in future.
2. For those schools functioning in the State now whether they may be considered for recognition at all, a policy decision may be taken at Government level.
3. Since many of them may be answering to the demand for English Medium and better quality education in the rural areas, those having facilities as per Kerala Education Rules and maintaining better academic standards may be considered for recognition, if the local bodies also recommend recognition of a school acknowledging the need for such a school in the local body's jurisdiction. Further steps can be as in the Chapter V, Kerala Education Rules, which also envisages

the setting up of recognised schools.

It is to be seen that condition No. 3 states that local bodies have a say in regard to recognition of an English Medium School in rural areas. The Appellant's school squarely satisfies the above condition prescribed by the Government because it is located in a remote village area that too in a tribal area and both the Grama Panchayath and Block Panchayath have in their resolutions forwarded to the Government stated that there is no other English Medium school in the area and therefore for the benefit of the local people Appellant's school should be granted recognition. We therefore feel that denial of recognition to Appellant's school merely because the same may lead to fall in divisions in the neighbouring schools is untenable.

6. The conceded policy of the Government is to promote education that too in areas where there is educational and economic backwardness. During this academic year, 178 Higher Secondary Schools are granted in the aided sector and the estimated annual expenditure of the State for each school is stated to be Rs. 30 lakhs. We do not know why the Government wants to stand in the way of private educational agency rendering free education to poor and downtrodden in rural areas where the minimum that they are demanding is only recognition which does not involve any financial commitment for the State. Intrinsic merit of the Appellant's school is evident from the fact that even in their unrecognised school, as many as 300 set of parents have sent their children for education which obviously means that they expect Govt. to grant recognition to the School. The local bodies endorsed the credibility of the Appellant's school and the need for recognition. We therefore see no reason why the Government should not grant recognition to the Appellant's school which was started 9 years back and is admittedly running very well.

We therefore allow the Writ Appeal by modifying the judgment of the learned Single Judge as regards the observations and findings in the Appellant's Writ Petition, that is, WPC 3181 of 2008 and allow the WPC by vacating Ext.P-14 order and by directing the Government to grant recognition to the Appellant's school as unaided self-financed English Medium School to run classes from I to X from the academic year 2010-11 onwards.