
(1991) 03 KL CK 0029
In the High Court Of Kerala
Case No : O.P. 908/91-G

T.T. John

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 27-03-1991

Acts Referred:

Kerala Education Act, 1958 — Section 14, 14(1), 14(2), 14(5), 15
Land Acquisition Act, 1894 — Section 5, 5A

Citation : (1991) 03 KL CK 0029

Hon'ble Judges : Varghese Kalliat, J

Bench : Single Bench

Advocate : Abraham Vakkanal, for the Appellant; K. Venugopalan, for Respondent 5, for the Respondent

Judgement

Varghese Kalliat, J.—Petitioner is the Headmaster--Manager of an L.P. School, Thiruvamkulam. Petitioner challenges Ext. P-15. Ext. P-15 is a notification issued by the Government exercising its powers conferred by Sub-section (2) of Section 14 of Kerala Education Act, 1958 (6 of 1959) (hereinafter, referred to as "the Act") taking the entire management of the school of the Petitioner by the Government for a period of 5 years with immediate effect. The notification is dated 4th January 1991. The explanatory note to the notification reveals certain matters. It is stated that the school in question is a staff management school. The present Headmaster/Manager is the Petitioner. He dismantled a permanent building of specification 11.70 m x 6.15 m unauthorisedly. The locals in a memorandum has complained against the action of the Headmaster/Manager and alleged that the school building was dismantled with the ulterior motive of closing the school. Further, it is stated as a reason for the action taken u/s 14(2) of the Act that the school had more than 17 divisions prior to the taking over charge by the Petitioner as Headmaster-cum-Manager and that when the notification was issued, there were only 4 divisions one each in Standards I to IV. It is also stated that the Lower Primary School in question is an institution in the locality which caters to the educational needs of the local public. It is pointed out

that the local Panchayat in their resolution dated 26th November 1983 has requested the Government to take urgent action against the Headmaster/Manager in having dismantled the school building un-authorisedly and that the management should be taken over by the Government. Government further expressed "the opinion that the Petitioner cannot improve the quality and efficiency of teaching in the school. The explanatory note refers to Deputy Director's report and the request made by the Deputy Director to take over the management of the school without issuing any notice to the Petitioner. It is also stated that Director of Public Instruction has fully endorsed the views of the Deputy Director of Education, Ernakulam and requested the Government to take action as suggested by the Deputy Director of Education, Ernakulam. These are the circumstances, which justified the action of the Government taken u/s 14 (2) of the Act.

2. Petitioner complains that all the reasons stated are unsustainable, if a proper scrutiny is made in the matter. He submits that the action of the Government is without applying its mind properly and for extraneous reasons. When the petition came up for hearing, I directed the Government Pleader to produce the entire files relating to this case for my perusal. I also directed that since the matter requires immediate disposal, Government should file its counter-affidavit to the allegations made in the Original Petition. Government has produced the entire files before this Court and has filed a counter-affidavit.

3. Before further disclosing the admitted facts of the case, I think that it is apposite to quote the provision under which the action has been taken by the Government. Section 14 of the Act reads thus:

14. Taking over management of Schools.--(1) Whenever it appears to the Government that the manager of any aided school has neglected, to perform any of the duties imposed by or under this Act or the rules made thereunder, and that in the public interest it is necessary to take over the management of the school for a period not exceeding five years, they may, after giving the manager and the educational agency, if any, a reasonable opportunity for showing cause against the proposed action and after considering the cause, if any, shown, do so, if satisfied that such taking over for the period is necessary in the public interest.

(2) In cases of emergency, where the Government are satisfied that such a course is necessary in the interests of the pupils of the school, they may, without any notice under Sub-section (1) to the manager or the educational agency, take over the management of any school after the publication of a notification to that effect in the Gazette.

(3) Where any school has been taken over under Sub-section (2), the educational agency or the manager of the school within three months of the publication of the notification under the said sub-section, may apply to the Government for the restoration of the school showing the cause therefor, and

where the Government are satisfied of the cause so shown, they shall restore the school.

(4) The Government may also make such further orders as may appear to them to be necessary or expedient in connection with the taking over of the management of any aided school under this section.

(5) Where any-school is taken over under this section, the Government shall pay to the person or persons interested such rent as may be fixed by the Collector, having regard to the rates of rent prevailing in the locality for similar properties:

Provided that where any property has been acquired, constructed, improved or maintained for the purposes of the school with the aid given or by appropriation or diversion of any grant made by the Government the rent shall be fixed by the Collector after taking into account the amount of such aid or grant.

(6) Where any school is taken over under this section, the Government may run the school affording any special educational facilities which the school was affording immediately before such taking over.

(7) Any person aggrieved by an order of the Collector fixing the rent under Sub-section (5) may, in the prescribed manner, appeal to the District Court within whose jurisdiction the school is situated within sixty days from the date of the order and the decision of the Judge shall be final.

(8) It shall also be lawful for the Government to acquire the School taken over under this section, if they are satisfied that it is necessary so to do in the public interest in which case compensation shall be payable in accordance with the principles laid down in Section 15 for payment of compensation.

(9) Nothing in this Section shall apply to minority schools.

These are the admitted facts in the counter-affidavit: Petitioner took the management of the school from 1st April 1988. Before his took charge of the management, one Scaria was the Manager of the school. It is stated in the counter-affidavit that the building which was demolished was in sound condition for the purpose of conducting the school (this fact is seriously denied by the Petitioner). It is further stated that "the Petitioner has managed to get a certificate from the Assistant Engineer, Buildings, Ernakulam saying that the building is in a dilapidated condition and the same is demolished". The building was demolished 5 months after the issuance of the said certificate on 20th, October 1988. It is said that it was done at night. The public came to know about the demolition and they have intervened and the demolition was stopped. It is stated in the counter-affidavit that the public was very much interested in conducting the, school, since number of students are benefitted by the school. It is also stated in the counter-affidavit that ever since Petitioner took management of the school, the strength of the pupils in the school got reduced considerably. The public was not happy in the manner of the functioning of the school under the aegis of the Petitioner. The counter-affidavit further discloses that the public

has alleged that the Petitioner's father is conducting a school one kilometre away from the site and that the Petitioner's is attempting to close down the school for the benefit of the school conducted by his father. Of course, it is stated in the counter-affidavit thus: "Whatever it be, Government is concerned only to see whether his functioning is within the frame work of the Kerala Education Act and Rules".

4. The counter-affidavit further proceeds to say the complaints received by the Government in relation to this school. It is highlighted that the Government has received a complaint in the form of a resolution passed in a public meeting held under the auspices of the citizen council. A special committee meeting of the Thiruvamkulam Panchayat also passed a resolution requesting the Government to take over the administration of the school and save the best interest of the young children of the locality. It is stated that the Deputy Director of Education, Ernakulam has recommended the Director of Public Instruction to advise the Government to take appropriate action in the matter. In conclusion, it is stated in the counter-affidavit that the Government found an emergency situation as contemplated u/s 14(2) of the Act.

5. The resolution of the Panchayat is dated 26th November 1988. A mass petition also was filed on 25th November 1988. A pourasamathi also made a representation on 27th October 1988. A notice was issued by an action committee on 31st October 1988 and there was a protest meeting on 2nd November 1988 and the N.S.S. Karayogam passed a resolution on 30th October 1988. All these resolutions and memorandums, it has to be noted, were made in 1988. The gravamen of the charges highlighted in all these resolutions and representations is that the manager demolished a building and attempted to sell the unserviceable articles.

6. As I said earlier, the main ground for taking a very drastic step of taking over the management of the school is the demolition of a dilapidated building which the authorities nominated in the statute for the verification of the safety of the school building had recommended demolition for the safety of the children. Further, it has to be noted that previous permission is not at all necessary for demolition of a dangerous building and it is quite inappropriate for waiting for previous sanction when a school building is in a dangerous position. Certainly considering this aspect of the matter, the legislature thought of not providing for such a requirement of getting previous sanction. There must be a provision for verification and examination of the condition of the school building so as to determine whether the buildings of the school are having the required fitness, since such a provision is necessary for ensuring the safety of the students. When a building is found to be dismantled by the proper authorities and after taking a proper decision by the Manager convening a meeting of the committee to demolish the building that cannot be a ground u/s 14 of the Act to take a drastic action to take over the management of the school.

7. Petitioner has produced Ext. P-12 inspection report of the Assistant

Educational Officer for the year 1988-89 Ext. P-12 says that the management of the school is satisfactory. Ext. P-13 is a similar report for the year 1990-91. This report also shows that the inspecting authority has found that the management of the school is carried on satisfactorily. Ext. P-3 is the fitness certificate for the school issued by the Assistant Engineer, Buildings section, P.W.D. Edappally. It is very clearly stated that the building which is stated to have been demolished was one which was recommended for dismantling by the Assistant Engineer, Buildings Section, P.W.D., Edappally. Ext. P-4 is the proceedings of the staff meeting held on 21st June 1988 wherein the decision for, demolishing the dangerous building was taken. In Ext. P-4, it is stated thus:

Ext. P-5 is the proceedings of the staff meeting held on 23th June 1988 wherein it is stated that the sale proceeds of the materials of the building which have to be demolished, should be used for the school purpose itself. It is significant to note that in this proceeding, Ext. P-5 the decision taken is to this effect:

Ext. P-5 only evidences a very salutary intention on the part of the management.

8. The demolition was done after further proceedings of the staff meeting on 21st October 1988 that is evidenced by Ext. P-6. All these things show that the demolition was not effected clandestinely causing prejudice to proper functioning of the school, but it has been done with good intention and to promote the welfare of the school.

9. I do not want to refer to some of the counter statements made by some persons concerned alleged to be the guardians of the students studying in that school stating that the school is being run properly and that there is absolutely no necessity for taking over the management of the school. There may be some local rivalry centring on the management of the school. But Government action should not be based on such kind of agitations. A correct factual finding is absolutely necessary before taking action u/s 14 of the Act.

10. I shall now advert to another important aspect of the matter. The fixation of establishment of the school for the year 1988-89 dated 21st June 1988 shows that the number of class divisions sanctioned for 1988-89 is only 4. The present Headmaster assumed charge and took over the management only on 1st April 1988 and there were only 4 class divisions. The statement in the explanatory note that the school had more than 17 divisions prior, to the taking over charge of Shri T.T. John as Manager is absolutely incorrect. Before taking a very drastic action in regard to any school and its management based on factual position in the school, the higher authorities ought to have been more careful in verifying the facts. It has to be noted the fact that the school had 17 divisions at the time when the present Manager/Petitioner took over the management is not correct and it is stated so by the Petitioner and it is not denied. When the staff fixation of establishment for the year 1988-89 clearly says that there were only 4 divisions, it is mysterious how the authorities have stated that there were 17 divisions when the Petitioner took charge as Manager. In the explanatory note also the

fact that there were 17 class divisions has been highlighted. It has to be understood that the notification has been issued by the Government on the explanatory note which contains incorrect facts on crucial matters.

11. Petitioner has also produced Ext. P-16, which is the fixation of establishment for the year 1987-88 dated 6th July 1987. This also shows that there were only 5 divisions. I do not know who has given this false information to the higher authorities and how the higher authorities without verification, acted upon it. Counsel for the Petitioner submits that the 5th Respondent, a Junior Superintendent in the office of the District Educational Officer is responsible for giving to the higher authorities the above false information. I do not want to say anything about these matters. If the Government is interested, Government can make enquiries on these matters.

12. The factual situation does not warrant an action u/s 14 of the Act, is clear from the facts disclosed in this case. The order is irrational and unreasonable in that sense it is nothing, but an abuse of the power granted to the executive by the legislature u/s 14 of the Act.

13. Before closing this judgment, I shall refer to two decisions of this Court; one relating to the seriousness of the action contemplated u/s 14 of the Act and the other with respect to the manner in which an emergency provision has to be exercised by the authorities, who have been granted that power. A Division Bench of this Court has held that only when the Manager has neglected to perform any of the duties imposed by the Act or the Kerala Educational Rules and in the public interest it has become necessary to take such action that the State can invoke Section 14 of the Act and take over the management of an Aided School. It is said that public interest alone is not enough. "Neglect on the part of the Manager to perform any of the duties imposed by the Act or the K.E.R. is a "must".... Even if a Manager is guilty of any laches, the Department has ample powers to take action against him and to declare him unfit to be a Manager. The extreme steps provided for by Section 14 can only be invoked very sparingly and only in cases where action under other provisions is not enough to meet the situation".--see 1978 KLT 275 (Abdurahiman v. State). The taking over the management u/s 14 of the Act itself is an extreme step. The taking over the management without notice will be certainly a drastic extreme step. In this case, this, drastic and extreme step has been adopted. Notice u/s 14(2) of the Act was dispensed with saying that an emergent action is necessary. The emergency was occasioned on account of a fact happened in 1988 and the emergent action was taken in 1991. I can only say that it is plain and obvious that the emergent action is unjustifiable.

14. 1975 KLT 537 (Damodara Menon v. Personal Assistant L.A. to District Collector, Ernakulam) is a case under the Land Acquisition Act. A Division Bench of this Court, elaborately considered the question when an authority can invoke the urgency provision when a normal procedure is prescribed for acquisition. Similar is the situation contemplated u/s 14 of the Act. Relying on several

decisions of the Supreme Court and other High Courts, the Division Bench said that "If no urgent steps will be taken under the Act and if the authorities can act leisurely there can be no justification for dispensing with the enquiry u/s 5. In any view this is an aspect to which the mind has to be applied before enquiry is dispensed with. As was said earlier the urgency must be such that is not possible to allow the time that may be reasonably required for an enquiry u/s 5. If such time that may be required for the enquiry is available before the date on which possession has to be taken or can be taken it cannot be said that there is an urgency which calls for dispensation with the enquiry u/s 5. This aspect has to be seriously borne in mind. These two aspects of urgency and dispensation cannot be treated separately as if there is no link between the two. In this case the authorities showed no urgency for taking possession and no material is available from which a possible view could have been taken that there was such an urgency that could possibly justify action being taken u/s 19 of the Act". The Division Bench approved the decision reported in AIR 1964 P&H 477 (Murari Lal Gupta v. State of Punjab and Anr.) wherein it is stated that "a direction dispensing with adherence to the provisions of Section 5A can be issued only in exceptional cases in which the matter is so urgent that the time that is likely to be spent over the hearing directed by Section 5A would produce such great harm or public mischief that a direction dispensing with that hearing is imperative...."

15. I am of the view that there is absolutely no reason for invoking the provision of Section 14(1) of the Act itself and much less Section 14(2) of the Act. I hold that the order, Ext. P-15 is unsustainable and void. It is quashed. Original Petition is allowed.