

(2009) 12 KL CK 0065
In the High Court Of Kerala
Case No : W.A. No. 95 of 2009

Ummulqura Secondary School

APPELLANT

Vs

Islamic Primary School

RESPONDENT

Date of Decision : 21-12-2009

Acts Referred:

Kerala Education Act, 1958 — Section 17, 18A, 2(1), 2(10), 2(7)
Kerala Education Rules, 1959 — Rule 1(5), 11, 17, 17(1), 2
Kerala Municipalities Act, 1994 — Section 53

Citation : (2010) 1 KLT 523

Hon'ble Judges : P. Bhavadasan, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : P.K. Suresh Kumar, P.S. Sheeja, K. Jaju Babu, P.J. Elvin Peter, M.U. Vyayalakshmi, T.S. Shyam Prasanth, Mohan Pulikkal, Manju Rajan, A. Amrutha Vidyadharan and P.S. Abdul Kareem, for the Appellant; V.P. Seemandini V.A. Muhammed, S. Karthika, M.S. Unnikrishnan, M.R. Anison, K.P. Geethamani, Kaleeswaram Raj, P.G. Rajagopalan and Noble Mathew, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Balakrishnan Nair, J.—The point that arises for decision in these appeals is whether the Government can grant recognition to a school, which was remaining unrecognised, from day one of its establishment. A few Writ Petitions were filed before this Court by persons, running aided/recognised schools, challenging the decision of the Government and also the follow-up proceedings of the Director of Public Instruction, to grant recognition to certain unrecognised schools, which were functioning for the last few years in Malappuram and Kasaragod Districts. Since the very same point arose for decision in all the Writ Petitions, the learned Single Judge heard and allowed them by a common judgment dated 20.10.2008. Challenging the said judgment, the affected respondents have preferred these appeals. Therefore, they are heard and disposed of by this common judgment.

W.A. No. 247 of 2009

2. This appeal is treated as the main case for the purpose of referring to the facts and documents. The fifth respondent in W.P.(C) No. 1116 of 2008 is the appellant. The first respondent herein was the writ petitioner. The first respondent is running an aided High School in Moonniyur in Malappuram District. The appellant/5th respondent was running an unrecognised English Medium High School within the vicinity of the first respondent's School. The State Government issued Ext.P3 order dated 13.6.2007, containing its policy on opening of new schools, upgrading of existing schools, granting recognition to unrecognised schools, issuing NOC to CBSE/ICSE Schools etc. While so, the Government issued Ext.P1 communication dated 6.3.2008, asking the Director of Public Instruction (for short "D.P.I.") to arrange to publish a list of schools, mentioned in that communication as a preliminary notification for grant of recognition, in the Gazette, immediately. Serial No. 9 in Ext.P1 is Nibras Secondary School, Moonniyur, Malappuram, run by the appellant. Pursuant to that, the D.P.I. published Ext.R5(a) notification dated 28.3.2008 in the Kerala Gazette dated 10.4.2008. The list of schools appended to that notification included the appellant's school, which was shown as Serial No. 9. The said notification stated that the schools mentioned therein are proposed to be recognised. Those who have objections were called upon to file their objections.

3. According to the first respondent, the steps taken under Exts.P1 and R5(a) were illegal and contrary to the provisions of Rule 2 and Rule 2A of Chap. V of the Kerala Education Rules (for short "K.E.R."). Further, the aforementioned actions run contrary to the law laid down in Ext.P2 judgment of the Apex Court and also against the provisions of Ext.P3 order. The policy contained in Ext.P3 was, in fact, not to recognise unrecognised unaided schools. But, an exception to that policy was made in relation to areas, where members of the educationally backward Muslim community reside, in Malappuram, Kasaragod, Kozhikode, Kannur and Wayanad Districts, subject to certain conditions. The relevant portion of the said Government Order reads as follows:

2. Recognition of Unaided Schools and NOC for CBSE/ICSE Schools

1. As a policy, un-aided unrecognised schools will not be given recognition.

2. In order to overcome the educational backwardness of the Muslim Community, recognition will be granted and NOC for starting CBSE/ICSE schools shall be issued to those unaided schools satisfying the following conditions apart from those specified in the Kerala Education Rules as the Government are convinced that extreme educational backwardness among the members of the Muslim Community persists in certain areas of Malappuram, Kozhikode, Kasargod, Kannur, and Wayanad Districts. Accordingly applications will be limited to the above districts alone. The Additional conditions are the following:

a) The school shall have started functioning on or before 1.6.2000.

b) The School shall have a minimum of 500 students on its roll.

c) The school shall have classes from 1 to 10.

d) The school shall be functioning in a socially and educationally backward locality.

According to the first respondent, the policy contained in Ext.P3 could be implemented only in accordance with the provisions of the Kerala Education Act and Rules. But, the action taken under Ext.P1 and Ext.R5(a) is clearly illegal. Raising these grounds, the Writ Petition was filed. The appellant/fifth respondent, one of the contesting respondents, filed a detailed counter affidavit and an additional counter affidavit, resisting the prayers in the Writ Petition. The first respondent/petitioner filed a reply affidavit. The learned Single Judge, after hearing both sides, allowed the Writ Petition and quashed Ext.P1 order of the Government and Ext.R5 (a) notification of the D.P.I.. Feeling aggrieved by the said decision of the learned Single Judge, this appeal is preferred.

4. We heard Sri. P.K. Suresh Kumar, the learned Counsel for the appellant, Sri. V.A. Mohammed, the learned Counsel for the first respondent and the learned Government Pleader for respondents 7 to 15. We also heard the learned Counsel M/s. K. Jaju Babu and Elvin Peter, who appeared in the connected Writ Appeals.

5. The learned Counsel for the appellant submitted that Rule 2A applies only to opening of new schools and does not cover recognition of existing schools. For that, according to the learned Counsel, the relevant rule is Rule 17. It is submitted that the appellant satisfies all the conditions in Rule 17, except the one in Sub-rule (1) thereof. When the Government decided to grant recognition to the appellant's School, it should be taken that the Government had invoked its power under Rule 3 of Chap.I of the K.E.R.. If that be so, there is nothing illegal with the proceedings of the Government and the D.P.I.. In support of the contention that the Government had invoked its power under Rule 3 of Chap.I of the K.E.R., the learned Counsel relied on the decision reported in Cannanore District Muslim Educational Association v. State of Kerala 2008 (2) KLT 879. Special reference was made to para.23, wherein the grant of new schools to Managers of Colleges on delinking of Pre-degree courses was sustained, relying on Rule 3 of Chap.I of the K.E.R.

6. The learned Counsel for the first respondent supported the views of the learned Single Judge. The learned Government Pleader submitted that the Government have accepted the judgment and issued consequential notification under Rule 2 of Chap.V of the K.E.R., proposing the places where the unaided schools are to be recognised. The notification dated 18.9.2009 is published in the Gazette dated 6.10.2009. Ward Nos. 11 and 19 of Moonniyur Grama Panchayat are included as places proposed for recognition of unaided schools in Malappuram District. The appellant's school is functioning in that area.

7. Before dealing with the rival contentions, we will refer to the statutory provisions dealing with recognition of schools. Schools are generally classified into Government Schools and private schools. Private Schools are further

classified into aided schools and recognised schools. Sub-section (7) of Section 2 of the Kerala Education Act (for short, "the Act") defines "private school". As per the definition, "private school" means an aided or recognised school. "Aided School" is defined in Section 2(1) as a private school, which is recognised and is receiving aid from the Government. Under Rule 2(8) "recognised school" means a private school recognised by the Government under this Act. Section 3 of the Act deals with establishment and recognition of schools. Section 3 reads as follows:

3. Establishment and recognition of schools:

(1) The Government may regulate the primary and other stages of education and courses of instructions in Government and private schools.

(2) The Government shall take, from time to time, such steps as they may consider necessary or expedient, for the purpose of providing facilities for general education, special education and for the training of teachers.

(3) The Government may, for the purpose of providing such facilities:

(a) establish and maintain schools; or

(b) permit any person or body of persons to establish and maintain aided schools; or

(c) recognise any school established and maintained by any person or body of persons.

(4) All existing schools shall be deemed to have been established in accordance with the Act:

Provided that the educational agency of an aided school existing at the commencement of this section may, at any time within one month of such commencement, after giving notice to the Government of its intention so to do, opt to run the school as a recognised school, subject to the condition that the services of the teachers and other members of the staff of the school shall not be dispensed with or their conditions of service under the management varied to their disadvantage on account of the exercise of this option.

(5) After the commencement of this Act, the establishment of a new school or the opening of a higher class in any private school shall be subject to the provisions of this Act, and the rules made thereunder and any school or higher class established or opened otherwise than in accordance with such provisions shall not be entitled to be recognised by the Government.

(emphasis supplied)

Sub-section (5) of Section 3 quoted above clearly shows that any school established or opened otherwise than in accordance with the provisions of the Act and the Rules made thereunder shall not be entitled to be recognised by the Government. The relevant rules concerning opening and recognition of schools

are contained in Chap. V of the K.E.R. Sub-rule (5) of Rule 1 reads as follows:

1(5): The opening of schools by an Educational Agency and their recognition shall be governed by the procedure laid down in the rules below and they shall apply mutatis mutandis to the opening and recognition of new standards. Permission to open and for recognition for each standard shall be separately obtained.

(emphasis supplied)

The rules mentioned in the above quoted sub-rule are Rules 2 and 2A. Rule 2(1) reads as follows:

2. Procedure for determining the areas where new schools are to be opened or existing schools ungraded - (1) The Director may, from time to time, prepare two lists, one in respect of aided schools and the other in respect of recognised schools, indicating the localities where new schools of any or all grades are to be opened and existing Lower Primary, School or Upper Primary Schools or both are to be upgraded. In preparing such lists he shall take into consideration the following:

(a) the existing schools in and around the locality in which new schools are to be opened or existing schools are to be upgraded;

(b) the strength of the several standards and the accommodation available in each of the existing schools in that locality;

(c) The distance from each of the existing schools to the area where new schools are proposed to be opened or to the area where existing schools are to be upgraded;

(d) the educational needs of the locality with reference to the habitation and backwardness of the area; and

(e) other matters which he considers relevant and necessary in this connection.

Explanation: For the removal of doubts it is hereby clarified that it shall not be necessary to prepare the two lists simultaneously and that it shall be open to the Director to prepare only one of the lists.

(emphasis supplied)

Sub-rule (2) of Rule 2 provides that the Director shall publish the list mentioned in Sub-rule (1) in the official Gazette, inviting objections. The objections shall be enquired into by the educational officers and the enquiry reports will be submitted to the Director. The Director will consider them and send them to the Government along with his recommendations under Sub-rule (3). Sub-rule (4) provides that the Government after scrutinizing all the records may approve the list, with or without modification and forward it to the Director, who, in turn, will publish the list so approved by the Government in the Gazette. Rule 2A deals with invitation of applications for opening of new schools and upgrading of

existing Schools in the areas notified under Rule 2(4). The said rule reads as follows:

2A. Applications for opening of new schools and upgrading of existing schools -
(1) After the publication of the final list of the areas where new school of any or all grades are to be opened or existing Lower Primary Schools or Upper Primary Schools or both are to be upgraded the Director shall, by a notification in the Gazette call for applications for the opening of new schools of any or all grades and for raising of the grade of existing Lower Primary Schools or Upper Primary Schools or both in the areas specified.

(2) Applications for opening of new schools or for raising of grade of existing schools shall be submitted only in response to the notification published by the Director. Applications received otherwise shall not be considered. The applications shall be submitted to the District Educational Officer of the area concerned in Form No. 1 with 4 copies of the application and enclosures within one month from the date of publication of the notification under Sub-rule (1).

(3) On receipt of the applications for permission to open new schools or for upgrading of existing schools, the District Educational Officer shall make such enquiries as he may deem fit as to the correctness of the statements made in the application and other relevant matters regarding such applications and forward the applications with his report thereon to the Director within one month from the last date for submitting applications under Sub-rule (2).

(4) The Director on receipt of the applications with the report of the District Educational Officer shall forward the applications with his report to Government within one month from the last date for forwarding the report by the District Educational Officer.

(5) The Government shall consider the applications in the light of the report of the District Educational Officer and the Director and other relevant matters which the Government think necessary to be considered in this connection and shall take a final decision and publish their decision in the Gazette with the list containing necessary particulars within one month from the last date for forwarding the report by the Director."

(6) Applications for permission to open a new standard in an existing school during any school year not involving the raising of the grade of the school shall be submitted to the District Educational Officer in charge of the area in Form 1 in triplicate.

(7) xxx

(8) The Government may, by notification in the Gazette, extend any period specified in Sub-rules (3), (4) and (5) for reasons to be stated in the notification.

8. Sub-rule (1) of Rule 2 specifically mentions about two lists, one in respect of aided schools and the other in respect of recognised schools. Rule 2A does not

mention about any particular list, but it governs both the lists mentioned in Sub-rule (1) of Rule 2. Therefore, recognition of a school as an unaided school can be granted only in a place identified under Rule 2, in respect of which applications were invited under Rule 2A. Without following the procedure provided under Rules 2 and 2A, we think, no school can be recognised. But, the learned Counsel for the appellant relied on Rule 17 of the Rules, which deals with the recognition of existing schools. But, Sub-rule (1) of Rule 17 says that a school opened with the permission under Rule 11 alone can be granted recognition. Rule 11 deals with the grant of permission to open schools included in the development plan approved by the Government. Development plan mentioned in that rule is the plan prepared by the District Planning Committee and approved by the Government, while preparing the State plan. In this context, it is fruitful to refer to Section 17 of the Act. Sub-section (1) of Section 17 reads as follows:

17. Establishment of District Educational Authority:

(1) For the purpose of associating people with the administration of education and to preserve and stimulate local interest in education affairs, each District Planning Committee constituted u/s 53 of the Kerala Municipality Act, 1994 (20 of 1994), shall establish a District Educational Authority having jurisdiction in the district.

For the purpose of associating people with the administration of education and to preserve and stimulate local interest in educational affairs, each District Planning Committee constituted u/s 53 of the Kerala Municipality Act, 1994, shall establish a District Educational Authority having jurisdiction in the District. Section 18 deals with the functions of the District Educational Authority, which includes opening of new schools or upgrading of existing schools. Section 18A deals with the formation of Educational Development Committee for each school by the local authority concerned. Sections 17 to 18A were introduced by way of an amendment on 12.5.2000, as part of entrusting the Management of Government Schools to the District Panchayats and Grama Panchayats. Section 5A was introduced on 12.5.2000, which deals with handing over the management of Government Schools and that of aided Schools taken over by the Government to the Local Authorities. Section 53 of the Kerala Municipality Act deals with the formation of a District Planning Committee for each district by the Government, consisting of the members specified in Sub-section (2) thereof. Sub-section (10) thereof provides that the Committee shall prepare a draft development plan of Panchayats and Municipalities in the District, which, if approved by the Government, will be included in the State plan. Rule 11 of Chap. V of the K.E.R. refers to the power of the Government to open schools included in the development plan. The said plan is the plan prepared by the District Planning Committee with the junction of the Educational Authority concerned. That is clear from Notes (i) and (ii) of Rule 11, which reads as follows:

Note (i) A copy of the order shall be furnished to the Local Educational Authority (if any),

(ii) No school which has not been included in the development plan of the Educational Authority, if any, shall be opened.

Note (ii) quoted above, specifically says that no school, which has not been included in the development plan of the Educational Authority shall be opened. So, the power of the Government to open new schools is subject to the condition of their inclusion in the development plan of the Educational Authority. Recognition under Rule 17 contemplates a school opened under Rule 11. Therefore, the reliance placed by the learned Counsel on Rule 17, to support the impugned action of the Government and the Director, is plainly untenable. Further, since the appellant does not have a case that the school was established under Rule 11, there is no question of application of Rule 17.

9. Since we have already found that even for recognising a school, the procedures prescribed under Rules 2 and 2A of Chap. V of the K.E.R., have to be followed, the unauthorised and illegal functioning of a school for sometime will not confer any right on the appellant to seek recognition or empower the Government to grant recognition de hors the provisions of Rule 2 and Rule 2A of Chap. V of the K.E.R. It is so declared. The decision in Cannanore District Muslim Educational Association's case (supra) has no application to the facts of this case. The provisions of Rule 3 of Chap. I of the K.E.R. cannot be invoked for sustaining the impugned orders in view of Section 3(5) of the Act.

10. In the result, we find no reason to interfere with the judgment under appeal and therefore the Writ Appeal is dismissed.

W.A. Nos. 95, 98, 260, 269, 453, 670 and 1327 of 2009, these appeals are also dismissed.