

(2016) 01 KL CK 0116
In the High Court Of Kerala
Case No : W.P. (C) No. 29561 of 2012 (S)

V.J. Michael and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 28-01-2016

Acts Referred:

Kerala Education Act, 1958 — Section 14, Section 15, Section 18, Section 2, Section 2(1), Section 2(3), Section 3, Section 3(4), Section 3(5), Section 38

Citation : (2016) 1 KerLJ 642 : (2016) 1 KHC 666 : (2016) 1 KLT 892

Hon'ble Judges : Ashok Bhushan, C.J. and A.M. Shaffique, J.

Bench : Division Bench

Advocate : Thomas Antony, M.P. Prakash and K. Rajani, Advocates, for the Appellant; C.R. Syamkumar, Senior Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Shaffique, J.—1. This writ petition is filed as a Public Interest Litigation. Petitioners claim to be residents of a Fishermen's Village. Their grievance is with reference to a primary school which is being run under the name and style "Little Flower English Medium Play School", which is functioning at Palluruthy in Ernakulam District. According to the petitioners, the school was inaugurated in the year 2009 and is fully funded by an Irish Lady Mrs. Mary Mc Cormack. Several students belonging to backward community are studying in the school. The school follows Central Board of Secondary Education syllabus. It is stated that the 6th respondent Trust, viz., Assisi Charitable Trust, was conducting the school and the Trust was managed by the 7th respondent. It is alleged that though the 7th respondent claims to be a priest, a crime came to be registered against him as Crime No. 891/2010 on the basis of certain allegations raised by the victims of an orphanage. He was arrested and is undergoing trial before a criminal court on allegation of charges of sexual abuse. It is stated that 7th respondent is in charge of the whole affairs of the school which would cause serious damage to the students of the school as he is a person who is involved in a crime involving sexual abuse and when such a person manages the school, it

may create an unhealthy situation. In the meantime, Panchayat by Ext. P3 letter has requested the District Educational Officer (DEO) to stop functioning of the school. Ext. P4 is a press release of Assistant Educational Officer (AEO) wherein it is stated that since the school is functioning without recognition of the Government, action has been initiated to stop functioning of the school. This, according to the petitioners, amounts to deprivation of right of education to the children and accordingly, they have sought for the following reliefs;

"i) Call for the records leading to Ext. P3 and P4 and quash the same by the issuance of a Writ of certiorari or any other appropriate writ, direction or order;

ii) Issue a writ of mandamus or any other writ, direction or order commanding the respondents 1 to 5 to take over the Little Flower English Medium Play School, Kalathara, Kari, Palluruthy, Cochin and hand over the same to the 4th respondent Panchayat or such other body for its proper functioning.

iii) Declare that the 7th respondent is not entitled to conduct the school."

2. A memo was filed by the State Attorney producing an enquiry report prepared by the Assistant Educational Officer, Mattancherry. He opined that closing of the school or taking over of the school is not coming under the authority of Assistant Educational Officer and the Government is the authority to take such an action. The Deputy Superintendent of Police has filed a report as directed by this Court. He has stated that the allegations of sexual abuse against the 7th respondent is pending in trial as SC No. 104/2012 before the District and Sessions Court, Ernakulam. Allegations have been made by certain boys who were residing in Kripalayam Orphanage during the period 2005 and 2006. As far as the school is concerned, it was started by the 6th respondent Trust. When the crime was registered, 7th respondent was removed from the post of Manager and one Father Joy Ettuveetil is the present Manager. It is stated that no children from the orphanage is studying in the aforesaid school.

3. A statement is filed by the 4th respondent Panchayat. They have stated that they have no objection in allowing the writ petition.

4. Counter affidavit has been filed by the 6th respondent. It is stated that the writ petition is an abuse of process and is not maintainable. According to the 6th respondent, the writ petition is an experimental attempt instigated by the Irish Lady Mrs. Mary Mc Cormack who has an eye on the assets of the Trust and running of the school. The intention is to tarnish the name of the Trust and Trust members. It is stated that the writ petitioners belong to 7 families. Even the 8th petitioner has informed that he has not even signed a single paper in connection with the writ petition. It is stated that daughter of the 20th petitioner is working in the tailoring unit of Kerala Ireland Foundation run by Mrs. Mary Mc Cormack and it is at her instance that this writ petition came to be filed. It is stated that the school was started mainly for the education and upliftment of the poor children of the locality. They had to walk 4 kms to reach the nearest school and they could not afford to pay heavy donation and fee. For the last six years, about

33 children from the locality are studying in the school. Petitioners' children are not studying in the school since 2010.

5. It is also stated that the school was not started by the Irish lady, whereas it was started by the Trust and they have taken all necessary sanctions from competent authorities for functioning of the school and a situation as warranted and projected by the petitioners have not arisen in the matter. It is stated that 7th respondent is not the Manager of the school whereas it is managed by Father Joy Joseph Ettuveetil.

6. Counter affidavit has been filed by the 7th respondent. He has also denied the allegations raised and has stated that the contentions urged against him is absolutely baseless. Additional respondents 8 and 9 have also filed counter affidavit. They have supported the stand taken by the other respondents.

7. The parties have filed reply and also additional documents in the case. The respondent has filed documents to indicate that the school has applied for recognition, which is pending consideration of the competent authorities.

8. Heard the learned counsel for the petitioners as well as the learned counsel appearing for the respondents.

9. The main contention urged on behalf of the petitioners is that the school is being run without any permission from any of the competent authorities and, therefore, it is necessary for this Court to issue appropriate direction to the Government to take over the school.

10. Learned counsel for the petitioners also relied upon Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the 2009 Act) and also to certain judgments to support the stand taken in the writ petition. It is submitted that the Kerala Education Act, 1958 and the Rules framed thereunder applies to the subject school and, therefore, it is open for the Government to exercise the power under the Act and the Rules in respect of the aforesaid school as well. It is stated that this is not a school recognized by the Government and therefore the Trust has no right to manage the school and the entire management has to be taken over by the Government.

11. Section 3 of the Kerala Education Act refers to establishment and recognition of schools. Section 3 reads as under;

"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 recognised by the Government."

12. The Section only regulates the primary and other stages of education and courses of instructions in Government and private schools. Sub section (3) of Section 3 is relevant, by which the Government can either establish and maintain schools or permit any person or body of persons to establish and maintain aided schools or recognise any school established and maintained by any person or body of persons. Sub section (4) says all existing schools shall be deemed to have been established in accordance with the Act. Existing school is defined under Section 2(3) as meaning "any unaided, recognised or Government school established before the commencement of the Act and continuing as such at such commencement". Sub section (5) indicates that after the commencement of the 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 the 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. "Private school" is defined under Sub section (7) of Section 2 as aided or recognised school. "Aided school" is defined under Section 2(1) as meaning, a private school which is recognised by and is receiving aid from the Government. The Act does not prohibit any person from starting a school. A person can start a school but the prohibition is that it will not be recognised. This is clear from the language used in Section 3(5). When Section 3(4) indicates that all existing schools shall be deemed to have been established in accordance with the Act, Sub section (5) indicates that after the commencement of the Act, new schools can be established only in accordance with the provisions of the Act and

any school or higher class established or opened otherwise than in accordance with the provisions shall not be recognized by the Government. In *Syed v. D.E.O, Ernakulam* (1991 (2) KLT 452), a learned Single Judge of this Court had occasion to consider whether an unaided school comes within the jurisdiction of the authorities under the Kerala Education Act and the Rules framed thereunder. After referring to Section 38 of the Act, it was held that for application of the Act, it has to be either a Government school or a private school. Section 38 reads as under;

"38. Saving - Nothing in this Act shall apply to any school which is not a Government school or a private school".

Therefore, the provisions of Kerala Education Act or the Rules does not apply to a school which is not recognized under the Kerala Education Act and the said contention of the learned counsel for the petitioners cannot be accepted.

13. Another argument raised is based on the provisions of the 2009 Act. On a perusal of the writ petition, we do not find any contention urged in regard to denial of admission to any children based on the 2009 Act. This being an unaided school not receiving any kind of grant or aid from the local authority, it comes under the definition of 2(n)(iv) of the 2009 Act. Section 18 clearly indicates that no school, other than a school established by the Government or local authority shall be established or shall function, without a certificate of recognition from such authority, by making an application in such form as may be prescribed. Petitioners have a case that the school has no recognition. Documents are filed indicating that they have already applied for recognition which is pending consideration. It is for the competent authority under the Act as envisaged under Section 18 to consider the same and if an application is already filed, it is for the authority concerned to take appropriate action in the matter for which this Court need not interfere.

14. Substantially the petitioners have sought for a direction to the Government to take over the school. Reference is made to Sections 14 and 15 of the Kerala Education Act. It is apparent from a bare reading of the aforesaid provisions that Section 14 applies only in respect of an aided school which will not apply to the fact situation. Section 15 enables the Government to acquire any category of schools. This is for the purpose of standardising general education in the State for improving the level of literacy in any area for effectively managing the aided educational institutions. No such eventuality had occurred in the case on hand. Under such circumstances, the prayer for directing the Government to take over the School will not apply to the fact situation. Though learned counsel on either sides relied on various judgments, since we have on facts come to a finding that the petitioners are not entitled for any relief sought for, there is no reason to consider such judgments in detail.

Having regard to the aforesaid factual consideration, we do not find any reason to issue any directions as sought for as the petitioners had not ventilated a case

for interference in this Public Interest Litigation. Accordingly, the writ petition is dismissed.