
(2014) 10 KL CK 0325

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 24671 of 2014 (H)

V.P. Paul

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

Citation : (2014) 10 KL CK 0325

Hon'ble Judges : Dama Seshadri Naidu, J

Bench : Single Bench

Advocate : R.K. Muraleedharan and Pramji Paul Vazhappilly, Advocate for the Appellant

Judgement

Dama Seshadri Naidu, J.—A very long drawn legal battle craves to have a quietus put on it.

2. Briefly stated, in 1974, the petitioner established a school in the name and style of "National Lower Primary School" at Manali, Thrissur District. Soon after its establishment, the local Panchayat and the Block Panchayat were said to have resolved to recommend to the Government the upgradation of the petitioner's school, which they did, essentially on the ground that in the radius of four kilometres there was no Upper Primary School. But nothing tangible has materialised thereafter.

3. In 1985, the Government invited applications through Exhibit P14 notification from notified Panchayats with a view to upgrading the Lower Primary Schools to Upper Primary Schools. Since the Panchayat in which the petitioner's school is situated was also notified in Exhibit P14, the petitioner is said to have submitted an application. Even the Council of Ministers has also recommended the case of the petitioner's school through Exhibit P4. The Government, however, in Exhibit P1 order, did not include the petitioner's school in the list of the schools that were permitted to be upgraded. Aggrieved, the petitioner filed O.P. No. 3197/2002, which was dismissed by this Court. Questioning the said dismissal,

the petitioner carried an intra-court appeal. Eventually the writ appeal too was dismissed through Exhibit P2 judgment, but with an observation that as and when the Government would take a policy decision to upgrade the schools, the petitioner's request should also be considered in accordance with law.

4. In course of time, when four other schools were upgraded, complaining of violation of the direction given in Exhibit P2 judgment, the petitioner initiated contempt proceedings in C.C. No. 249/2006, which was, however, dismissed by a learned Division Bench of this Court. Under those circumstances, when the petitioner further carried the matter in Special Leave Petition before the Hon'ble Supreme Court, through Exhibit P3 order, apart from dismissing the Special leave Petition, the Apex Court has nevertheless reiterated the observation of the Division Bench in Exhibit P2 that the petitioner could apply for up-gradation as and when the Government relaxes its policy. Under those circumstances, having submitted one more representation, later in point of time, the petitioner filed W.P. (C) No. 11755/2007 seeking early consideration of the petitioner's representation. Indeed, this Court, through Exhibit P5 judgment, directed the authorities concerned to take an appropriate decision on the petitioner's application to upgrade the school in question. In compliance with the direction in Exhibit P5 judgment of this Court, the Government passed Exhibit P6 order, once again rejecting the claim of the petitioner to have the school upgraded.

5. Undeterred, the petitioner once again submitted Exhibit P7 representation reiterating his request, citing the perceived discrimination dished out to the petitioner, and also the numerous recommendations in favour of upgradation of the petitioner's school. In response to Exhibit P7 representation, the Government once again passed Exhibit P8 order of rejection, which came to be assailed in W.P. (C) No. 34373/2011. The said writ petition, too, was dismissed by this Court through Exhibit P9 judgment; nevertheless, this Court in the said judgment observed that nothing contained in the judgment shall stand in the way of the petitioner from moving the competent authority under the Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009) and the Kerala Right of Children to Free and Compulsory Education Rules, 2011.

6. Thus, taking advantage of the provisions of the Act 35 of 2009 and the Rules made thereunder, the petitioner submitted Exhibit P10 application under Rule 14(14) of the Rules 2011. Consequently, the fourth respondent, in compliance with the statutory terms, conducted a survey and submitted a "survey and visit report" in Exhibit P11 recommending the up-gradation of the petitioner's school. In the light of Exhibit P11 recommendation, the third respondent forwarded Exhibit P10 application along with the "Survey and Visit Report" to the second respondent.

7. Under those factual circumstances, the learned counsel for the petitioner submits that as per Act 35 of 2009, the second respondent, after scrutinising Exhibit P10 application of the petitioner, forwarded it to the first respondent Government, who in turn, has to take a decision whether or not to upgrade the

school of the petitioner. In fact, it is the specific grievance of the petitioner that so far the second respondent has not forwarded it to the first respondent despite the petitioner's compliance in that regard.

8. At this juncture, the learned Government Pleader has submitted that Exhibit P10 application was very recently submitted, and as such, it does not lie in the mouth of the petitioner to contend that there is inordinate delay on the part of the second respondent in forwarding Exhibit P10 application. The learned Government Pleader, on instructions, has further submitted that Exhibit P10 application is incomplete inasmuch as certain necessary documents, such as school mapping report, were not attached to the application.

9. The learned counsel for the petitioner has, however, contested the said statement and stated that had it been a case of submitting a deficit application, the second respondent could have communicated it to the petitioner pointing out the deficiencies, thereby giving an opportunity to the petitioner to rectify the alleged shortcomings.

10. Be that as it may, given the fact that Exhibit P10 is a statutory application required to be considered by the first respondent in terms of Act 35 of 2009, this Court does not desire to make any observation touching upon the merits of the matter. Suffice it to say that the second respondent, who cannot be said to have tarried on the matter inasmuch as the application was received very recently, may consider Exhibit P10 application of the petitioner and forward it to the first respondent for further processing in accordance with law.

11. As has been pointed out by the learned Government Pleader, if there are any deficiencies in Exhibit P10 application, the second respondent may as well communicate them to the petitioner, thus giving him an opportunity to make good those deficiencies. Once the application, complete in all respects, is submitted, it is hoped that, given the fact that the petitioner has been agitating for decades together, the second respondent may expedite the entire process and see that the petitioner is not driven to another round of litigation. It is further hoped that once the application reaches the first respondent, the authorities may expedite the process of finalising Exhibit P10 application by passing appropriate orders thereon concerning up-gradation of the petitioner's school as expeditiously as possible.

With the above observations, the writ petition stands disposed of. No order as to costs.