
(2008) 07 KL CK 0076

In the High Court Of Kerala

Case No : Writ Petition (C) No. 18332 of 2008

Zeeshan

APPELLANT

Vs

District Educational Officer and Others

RESPONDENT

Date of Decision : 10-07-2008

Acts Referred:

Kerala Education Rules, 1959 — Rule 10, 5, 9
Citizenship Act, 1955 — Section 5(1)
Constitution of India, 1950 — Article 21A, 29(2), 5, 6, 8
Kerala Education Act, 1958 — Section 22

Citation : AIR 2008 Ker 226 : (2008) 3 ILR (Ker) 288

Hon'ble Judges : K.T. Sankaran, J

Bench : Single Bench

Advocate : S. Abdul Salam, for the Appellant; P. Parameswaran Nair, ASG and A.J. Varghese, GP, for the Respondent

Final Decision : Dismissed

Judgement

K.T. Sankaran, J.—The question involved in this Writ Petition is whether a child, who is a citizen of Pakistan by birth, is entitled to be admitted in a school in Kerala during the stay of the child along with his mother and grand-mother in India pending consideration of their application u/s 5(1)(f) of the Citizenship Act, 1955.

2. The Writ Petition and the affidavit filed by the petitioner on 3-7-2008, reveal the following facts:

The petitioner, Zeeshan, is a minor aged 11 years represented by his mother Zuhra. The petitioner was born to Zuhra while she was in Pakistan. Zuhra's father Abooty migrated to Pakistan several years ago. Abooty's wife, Aysha, had also migrated to Pakistan. Abooty died in the year 2007 at Karachi. It is stated that Zuhra, Zuhra's mother Aysha, the minor petitioner Zeeshan and his sister came to India on 17-08-2007. Zuhra was born in Pakistan. Zuhra was married to Subair Arangoth who is stated to be an Indian citizen and who is now working

abroad. It is stated that recently the marriage between Zuhra and Subair ended in divorce. It is also stated that Aysha and Zuhra have no interests in Karachi at present and that they are staying at Kannur along with Aysha's relatives. It is admitted that Abooty and his wife Aysha acquired Pakistani Passport in 1969.

3. Ext. P4 application dated 24-5-2008 was made by the petitioner represented by his mother Zuhra before the Assistant Educational Officer, Thalassery praying for issuing a direction to the Headmaster, Indian Public School, Peringadi, to admit the petitioner, Zeeshan, to standard V of the School. Ext. P5 application dated 3-6-2008 was submitted by Zuhra, mother of the petitioner, to the Headmaster of the Indian Public School, Peringadi, seeking admission. The Headmaster rejected the request on 6-6-2008 stating that the child sought to be admitted in the school is not an Indian citizen and, therefore, admission cannot be granted. The petitioner contends that he was studying in standard V in Play way Grammar School, G-25, Rizwan Garden, Karachi and Ext. P3 School Leaving Certificate was issued to him on 8-8-2007.

4. Heard Shri. Abdul Salam. S, the learned Counsel for the petitioner, Shri. P. Parameswaran Nair, Assistant Solicitor General of India and Shri. A.J. Varghese, the learned Government Pleader. Though the Central Government is not a party to the proceedings, on a request made by the Court, the Assistant Solicitor General of India addressed the Court.

5. The contention of the learned Counsel for the petitioner is that Zeeshan is a child within the meaning of Section 22(ii) of the Kerala Education Act. "Child" is defined in Section 22(ii) of the Kerala Educational Act as follows: "Child - means a boy or girl between the ages of 6 and 14 at the beginning of the academic year". Counsel also relies on Rule 10 of Chapter VI of the Kerala Education Rules, the relevant portion of which reads as follows:

10. Admission of pupils migrating from other States - Pupils migrating from schools in other States of India or outside India with transfer certificate or other equivalent document countersigned by the Inspecting Officer may be admitted to the Standard corresponding to the one to which they are eligible according to the transfer certificate or equivalent certificate provided:

- (1) those schools are institutions recognised by the respective Governments;
- (2) that not more than two months have elapsed since the issue of the transfer certificate or equivalent document;

Note: Such admission after the lapse of two months require the sanction of the Education Officer.

(3) xxx xxxxx xxxxxxxx

(4) that the pupils are tested and found fit for admission to that Standard.

(5) that the pupils have completed the minimum age as prescribed in Rule 5 or 9.

Shri Abdul Salam, learned Counsel for the petitioner, also contends that a child as defined in the Kerala Education Act includes not only a citizen of India but any child having citizenship of any other country. He submits that the right to get education is a fundamental right and that right is available to any child, irrespective of citizenship. Article 21A of the Constitution of India is also relied on by the counsel for the petitioner, in support of the contentions.

6. Learned Counsel for the petitioner relied on a decision of the Supreme Court in *National Human Rights Commission Vs. State of Arunachal Pradesh and Another*, and a decision of this Court in *Abubacker v. Union of India* 2000 (1) KLT 448. In *National Human Rights Commission's* case (supra) the Supreme Court was dealing with the case of Chakma refugees whose stay in the territories of India who being threatened by a group of people. The Supreme Court issued certain directions for the protection of the Chakma refugees. In that context, the Supreme Court held in paragraph No. 20 of the judgment thus-

20. We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise, and it cannot permit any body or group of persons, e.g. the AAPSU, to threaten the Chakmas to leave the State, failing which they would be forced to do so....

7. In (1996) 2 SCC 742, the Supreme Court was dealing with the case of right to life of persons. Here the right to life is not the question involved, but a right to get education. The Kerala Education Act provides for setting up of the Educational Institutions, infrastructure to be provided in the schools, appointment of teaching and non-teaching staff, facilities to be provided to the students and other staff of the schools, qualification of teachers, etc. etc. All these are intended to provide education to the citizens of India. Article 21A of the Constitution of India provides that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. Article 21A of the Constitution of India does not mean that the State has a duty to provide education whether free or compulsory to a citizen other than a citizen of India. "Child" within the meaning of Section 22(ii) of the Kerala Education Act would mean only a child who is a citizen of India. The meaning of the word "Child" in the Kerala Education Act as suggested by the learned Counsel for the petitioner, if accepted, would defeat the provisions in the Constitution of India and various laws in force in India. There cannot be any right to a child other than a citizen of India to get admission in the schools in India. Article 29(2) of the Constitution of India which provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them, would also justify this conclusion. What is provided in

Rule 10 of Chapter VI of the Kerala Education Rules, is admission to pupils migrating from schools in other States of India or outside India with transfer certificate or other equivalent document countersigned by the Inspecting Officer, provided those schools are institutions recognized by the respective Governments and certain other conditions as provided in the Rules are satisfied. Rule 10 of Chapter VI of the Kerala Education Rules does not apply to a case where a citizen of Pakistan who has made an application u/s 5(1)(f) of the Citizenship Act, 1955 before the Government of India, and who is awaiting orders thereon. The dictum laid down in Abubacker's case (supra) is on a entirely different point and does not come to the assistance of the petitioner.

8. It is contended by the learned Counsel for the petitioner that the minor petitioner and his mother Zuhra filed W.P.(C) No. 6230 of 2008 which was disposed of as per judgment dated 2-7-2008, by which the respondents in the Writ Petition were restrained from deporting the petitioners therein, pending consideration of the application u/s 5(1)(f) of the Citizenship Act, 1955. The learned Counsel for the petitioner submitted that the judgment in W.P.(C) No. 6230 of 2008 would impliedly confer a right on the petitioner to make an application for getting admission to the school during the period in which the application u/s 5(1)(f) of the Citizenship Act is under consideration. I find myself unable to accept this contention. Whether the application u/s 5(1)(f) of the Citizenship Act could be entertained on merits and whether it could be disposed of in favour of the petitioner, are all matters coming under the Citizenship Act and that does not give a right to the person who has applied u/s 5(1)(f) of the Citizenship Act, to apply for admission in the school. If such an interpretation is accepted, the very purpose of the Citizenship Act and the stringent provisions therein and also the provisions in the Constitution of India, particularly Articles 5, 6, 8 and 9, would be defeated.

9. It is submitted by the counsel for the petitioner that the child requires education and that there is nothing wrong in admitting the child in a school in India. Learned Counsel contends that the domicile of the father of the minor is the domicile of the minor and, therefore, the child can be admitted in the school. A person having citizenship of another country cannot claim that he has domicile in India so as to claim admission in a school. The above submission, to my mind, is without any merit. Misplaced sympathy should not result in bad precedents. I am not inclined to accept the contentions put forward by the petitioner. The Writ Petition lacks merits and it is dismissed. It is made clear that the dismissal of this Writ Petition would not stand in the way of the Central Government in disposing of the application filed by Zuhra and other u/s 5(1)(f) of the Citizenship Act, 1955; which shall be disposed of as directed in the judgment dated 2-7-2008 in W.P.(C) No. 6230 of 2008.