

(2001) 05 KL CK 0018

High Court Of Kerala

Case No: O.P. No. 20092 of 2000

Gopinathan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: May 31, 2001

Acts Referred:

- Constitution of India, 1950 - Article 19(1), 300A
- Kerala Education Act, 1958 - Section 14, 14(1), 14(2), 7, 7(6)
- Kerala Education Rules, 1959 - Rule 24(2)

Citation: AIR 2002 Ker 116

Hon'ble Judges: R. Bhaskaran, J

Bench: Single Bench

Advocate: T.D. Rajalakshmy and E.R. Venkiteswaran, for the Appellant; P.K. Santhamma, Government Pleader, V. Chitambaresh and T.C. Suresh Menon, for the Respondent

Final Decision: Allowed

Judgement

R. Bhaskaran, J.

Petitioner is the Manager of Hemambika Junior Basic School, Palakkad. He sent Ext. P1 notice under S. 7(6) of the Kerala Education Act proposing to close down his school with effect from the next academic year. The Director of Public Instruction by Ext. P3 communication dated 20.5.2000 informed the petitioner that the notice to close down the school is rejected. According to the petitioner, there is not provision in the Kerala Education Act and Rules to reject the notice under S. 7(6) and to compel the Manager to continue the school after one year of the issue of notice. Since the petitioner apprehended that the educational authorities may break open the gate and re-start the school after the period of notice, he filed O.S.No. 473 of 2000 before the Munsiff's Court, Palakkad, for necessary reliefs. After the filing of the suit, the second respondent passed Exts. P4 and P5 orders appointing the Deputy Director of Education Palakkad, as Ex-officio Manager of the school and also taking over the

management for a period of five years. The petitioner challenges Ext. P4 rejection of the notice issued by the petitioner and also the orders by which the management of the school is taken over for a period of five years by the Government.

2. In the Kerala Education Act, there is no provision to compel the Manager to run the school after the period of one year of giving notice under S. 7 of the Act. R.24(2) of Chapter V of Kerala Education Rules had provided for granting permission of the closure of the school. That provision was held to be ultra vires of the Act by this Court in the decision in Krishnakumar v. State of Kerala (1972 KLT 496) as early as on 31.5.1972. For the last more than 29 years, the Legislature has not thought it fit necessary to amend the Act and to have a provision for continuing the school in the interest of the general public.

3. The question whether the Manager has the right to close down the school after the period of one year of the notice and the further question whether the Government can take over the management for five years for the reason that the Manager has issued the notice have come up for consideration before a Division Bench of this Court and it has been found that the Government cannot take over management merely for the reason that the Manager has issued notice of closure of the school.

4. Even before the Division Bench held so, Justice M.P. Menon had considered the question in subramanian v. State of Kerala (1986 KLT 359) and found that there is no necessity for getting permission from the Government or the Educational Authorities for closing the school and the only condition is that the Manager should give notice giving time expiring with 31st May of the Year. An attempt to take over the management for the reason that the Manager has issued the notice under S. 7(6) of the Act was held to be illegal by this Court.

5. In Balakrishnan v. Ramaseshan (1993 (1) KLT 519), a Division Bench of this Court affirmed the reasoning in Krishnakumar's case (1972 KLT 496) and Subramanian's case (1968 KLT 359) and held that the action taken under S. 7(6) of the Act by the Manager cannot be treated as an act of neglect within the meaning of S. 14(1) of the Act. It has been held in Balakrishnan's case that S. 14(2) is also to be considered in the light of S. 14(1). S. 14 of the Kerala Education Act reads as follows:

"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 given 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-s.(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-s.(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 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-s. (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 S. 15 for payment of compensation.

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

Subsequently, the question was again considered by another Division Bench in *Parent Teacher Association v. State of Kerala* (2000 (1) KLT 804). It was found that S. 14(1) of the act does not enable the Government to take over the management of the school for the reason that the Manager has issued a notice under S. 7(6) to close down the school after one year of the notice.

6. In view of the binding precedents quoted above, I have to allow this Original Petition. In this case, there is an additional factor also in favour of the petitioner. The orders to take over the management were passed after the expiry of the period in Ext. P1 notice.

7. Before closing the O.P., I have to point out certain aspects in the interest of the students studying in such schools and also the teachers working there. In Subramanian's case, Justice M.P. Menon proceeded on the basis that Manager's right to manage the school has something to do with Article 19(1)(g) of the Constitution of India. But in [Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.](#), the Supreme Court struck a different note. The right to get education upto 14 years has been recognised as a fundamental right and therefore the State has a duty to provide education to all the children upto 14 years of age. The right to property is removed from Part III of the Constitution of India. Still the right of the educational agency over the school and its premises cannot be taken away except by authority of law. It may be contended that temporary deprivation of the right of management to comply with the provisions of a Statute enacted to control the system of education will not be violative of Art. 300A of the Constitution. However in the light of the interpretation to S. 14 of the Kerala Education Act by the two Division Bench decisions of this Court, it cannot be said in this case that the provisions of the Statute has been complied with while taking over the management of the school. Therefore, I think that this is a case where the attention of the Government is to be drawn to have proper provisions in the Kerala Education Act to deal with such situations.

8. Though the Act of the Government in taking over the management of the school is illegal, I think it is only proper to direct in the interest of the students and the teachers to permit the present position to continue till the end of the next academic year 2001-2002. This is on condition that the respondents shall pay the rent of the school to be fixed by the District Collector within two months from the date of receipt of a copy of this judgment and also on further condition that the respondents shall hand over the building to the petitioner on the last day of the academic year.

9. In the result, I quash Exts.P3, P4 and P5 and allow the Original Petition subject to the observations made above.