

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6267 OF 2012

[Arising out of SLP (Civil) No. 34988 of 2010]

State of Kerala and Others

.. Appellants

Versus

The Tribal Mission

.. Respondent

J U D G M E N T**K. S. RADHAKRISHNAN, J.**

1. Leave granted.

2. We are, in this case, concerned with the question whether the State is duty bound to grant recognition to an unaided educational institution on the touchstone of Article 21A of the Constitution of India overlooking the procedure laid down under Rule 2 and Rule 2A of Chapter V of the Kerala Education Rules (for short 'KER').

3. Respondent established a school by name Betham English Medium School in the year 2001 at Attappady in the Palakkad District,

State of Kerata in the unaided sector. An application for recognition was submitted by the respondent school in the year 2003 before the Government. The Deputy Direction of Education, however, forwarded a report/letter No. B1/8863/07 dated 19.10.2007 to the State Government pointing out existence of a three recognized schools within a distance of 5 km from the respondent school following Tamil and Malayalam mediums having Standard 1 to 7, of which one is situated within a distance of 2.5 km. Further, it was pointed out that the respondent school though was having sufficient infrastructure, granting recognition would adversely affect the other aided schools functioning in that area and the possibility of division fall in these schools could not be ruled out.

4. The Government rejected the application for recognition on the ground that it would violate the Government's Policy referred to in GO (P) No.107/07/G Edn dated 13.06.2007. Further, it was also pointed out that the procedure for granting recognition to new schools is laid down in Chapter V of KER and as per sub-rule (2) of Rule 2A of Chapter V of KER, an application for opening a school should be in response to the notification under sub-rule (1) of Rule 2A of Chapter V.

Consequently, the application was rejected by the Government vide GO (Rt) No. 5321/07/G.Edn. dated 22.11.2007.

5. Aggrieved by the said order, the respondent along with various others approached the learned single Judge of the High Court who upheld the order. Respondent took up the matter before the Division Bench of the High Court. The Division Bench of the High Court, vide its judgment dated 18.8.2010 allowed the appeal stating that the respondent has satisfied the various conditions laid down in the Government's Policy dated 13.6.2007 and therefore, directed the Government to grant recognition to the respondent school as an unaided self-finance English medium school to run classes from standard 1 to 10 from the academic year 2010-11 onwards. The State is aggrieved by that judgment and hence this appeal.

6. We have heard Ms. Bina Madhavan for the appellant and Shri M. P. Vinod for the respondent. Chapter V of KER deals with the opening and recognition of schools. For easy reference, we may extract Rule 2 and Rule 2A of Chapter V as under:

"2. Procedure for determining the areas where new schools are to be opened for existing schools upgraded - (1) The Director may, from time to time, prepare two lists, one in respect of aided schools and the

other in respect of recognized schools, indicating the localities where new schools or 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; 26

(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.

(2) A list prepared by the Director under Sub-rule (1) shall be published in the Gazette, inviting objections or representations against such list. Objections, if any, can be filed against the list published within one month from the date of publication of the list. Such objection shall be filed before the Assistant Educational Officers or the District Educational Officers as the case may be. Every objection filed shall be accompanied by chalan for Rs. 10/- remitted into the Treasury. Objections filed without the necessary Chalan receipt shall be summarily rejected.

(3) The Assistant Educational Officer and the District Educational Officer may thereafter conduct enquiries, hear the parties, visit the areas and send their report with their views on the objections raised to the Director within two months from the last date of receipt of the objections. The Director, if found necessary, may also hear the parties and finalise the list and send his recommendations with the final list to Government within two months from the last date of the receipt of the report from the Educational Officers.

(4) The Government after scrutinizing all the records may approve the list with or without modification and forward the same to the Director within one month from the last date for the receipt of the recommendations of the Director. The list as approved by the Government shall be published by the Director in the Gazette.

(5) No appeal or revision shall lie against the final list published by the Director.

Provided that the Government may either suo motu or on application by any person objecting to the list published by the Director under sub-rule (4) made before the expiry of thirty days from the date of such publication review their order finalizing such list and make such modifications in that list as they deem fit by way of additions or omissions, if they are satisfied that any relevant ground has not been taken into consideration or any irrelevant ground has been taken into consideration or any relevant fact has not been taken into account while finalizing the said list:

Provided further that no modification shall be made under the preceding proviso without giving any person likely to be affected thereby an opportunity to make representation against such modifications.

2A. Applications for opening of new schools and upgrading of existing schools - (1) After the publication of the final list of the areas where 8[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 [x x x] 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 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."

7. The scope of the above mentioned rules came up for consideration in the case of ***State of Kerala & Others v. K. Prasad & Another*** (2007) 7 SCC 140, wherein this Court held as follows:

10. The two Rules, quoted above, lay down a comprehensive procedure for opening of new schools in particular areas, their recognition and upgradation. It is manifest that a decision in this behalf has to be taken primarily by the Government on an application made for that purpose under Rule 2-A. The Rules also lay down the guidelines which are to be taken into consideration for preparing the list in terms of sub-rule (1) of Rule 2. On the lists being finalised, after their publication and consideration of objections, if any, the same have to be sent to the Government for its approval, with or without modification. Nevertheless the decision by the Government, whether opening of new school is to be sanctioned or whether an existing school is to be allowed to be upgraded has to be taken on consideration of the matters enumerated in Clauses (a) to (e) of Rule 2(1) of the Rules. Similarly, an application for either opening of new school or for upgradation of an existing aided school can be submitted only after the Director publishes a final list of areas where new schools are to be opened or existing schools are to be upgraded under sub-rule (4) of Rule 2. Any application received otherwise cannot be considered. In view of such comprehensive procedure laid down in the statute, an application for upgradation has necessarily to be made and considered strictly in a manner in consonance with the Rules. It needs little emphasis that the Rules are meant to be and have to be complied with and enforced scrupulously. Waiver or even relaxation of any rule, unless such power exists under the rules, is bound to provide scope for discrimination, arbitrariness and favouritism, which is totally opposed to the rule of law and our constitutional values....."

8. The Government's Policy issued vide GO(P) No.107/07/G Edn. dated 13 June, 2007 with regard to up-gradation of existing schools and recognition of unaided schools applies to respondent school as well. The operative portion of the same which applies to unaided schools and grant of NOC for CBSE/ICSE Schools reads as follows:

"Recognition of Un-aided Schools and NOC for CBSE/ICSE Schools:

1. As a policy unaided recognized Schools need not be given recognition in future.
2. For those schools functioning in the state now whether they may be considered for recognition at all a policy decision may be taken at Govt. level.
3. Since many of them may be answering to the demand for English medium and better quality education in the rural areas, those having facilities as per Kerala Education Rules and maintaining better academic standards may be considered for recognition, if the local bodies also recommend recognition of a school acknowledging the need for such a school in the local body's jurisdiction. Further steps can be as in Chapter V Kerala Education Rules, which also envisages the setting up of recognized schools."

9. Para 3 above will not give any *Carte Blanche* to start a school in the unaided sector and then seek recognition as a matter of right because para 1 above indicates that as a policy unaided schools need

not be given recognition in future. In the instant case, it is after starting the school in the unaided sector, the respondent school is pressing for recognition which, in our view, is not a correct procedure. Assuming that the respondent school has satisfied all the requirements stipulated in Para 3, still it has to undergo the procedure laid down under Rule 2 and Rule 2A of Chapter V, otherwise, as held by this Court in **K. Prasad** case (supra), it is bound to provide scope for discrimination, arbitrariness, favouritism and also would affect the functioning of other recognized schools in the locality.

10. The Division Bench of the High Court has expressed the view that once the respondent satisfies Para 3 of the Policy, the State Government has to grant recognition which in our view would go contrary to the view expressed by this Prasad Case (supra) and violates Rule 2, 2A of Chapter V of KER. The question, as to whether, the grant of recognition would affect the existing schools is also a relevant consideration. The State spends large amounts by way of aid, grant etc. for running schools in the aided sector as well as the State owned schools. Indiscriminate grant of recognition to schools in the unaided sector may have an adverse affect on the State owned schools as well as the existing schools in the aided sector, by way of division

fall, retrenchment of teachers etc. Therefore, the procedure laid down in Rules 2, 2A of Chapter V of KER cannot be overlooked.

11. The State Government, in the instant case, has already granted recognition to the respondent school for conducting the classes from 1 to 10 in the academic year 2010-11 onwards, of course, subject to the result of this SLP. Considering the fact that the local body has also recommended recognition and large number of students are now studying in the school, and the same is situated in a Tribal area, we find no reason to interfere with the recognition already granted to the respondent school as a special case, but we make it clear that this order shall not be treated as a precedent. Appeal is disposed of as above. There will be no order as to costs.

JUDGMENT

.....J.
(K. S. RADHAKRISHNAN)

.....J.
(DIPAK MISRA)

New Delhi
September 4, 2012