



2024/KER/28148

C.R.

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE GOPINATH P.
MONDAY, THE 29TH DAY OF JANUARY 2024 / 9TH MAGHA, 1945**

WP(C) NO. 37554 OF 2015

PETITIONER/S:

- 1 THE MANAGER
KADAMBUR HIGHER SECONDARY SCHOOL, EDAKKAD, KANNUR - 670
663.
- 2 THE HEADMISTRESS
KADAMBUR HIGHER SECONDARY SCHOOL, EDAKKAD, KANNUR - 670
663.
BY ADVS.
SRI. GEORGE POONTHOTTAM (SR.)
SRI. NISHA GEORGE
SRI. VISHNU B. KURUP

RESPONDENT/S:

- 1 KERALA STATE COMMISSION FOR PROTECTION OF CHILD RIGHTS
SREEGANESH, T.C. 14/2036, BEHIND OLYMPIC ASSOCIATION
BUILDING, VANROSS JUNCTION, KERALA UNIVERSITY P.O.,
THIRUVANANTHAPURAM - 34, REPRESENTED BY ITS REGISTRAR.
- 2 STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
- 3 THE DIRECTOR OF PUBLIC INSTRUCTIONS
THIRUVANANTHAPURAM - 695 001
- 4 THE DEPUTY DIRECTOR OF EDUCATION
KANNUR - 673 001
- 5 MR. V. V. PRABHAKARAN
SECRETARY, JANAKEEYA PRATHIKARANA VEDI
REG. NO. 201/97, MUNDAYAD P.O., KANNUR - 673 001
BY ADVS.
SRI. A. DINESH RAO
GOVERNMENT PLEADER
SRI. R. SREEHARI

SRI. THOUFEEK AHAMED (R1),
SRI. VENUGOPAL V (GP FOR R2, R3, R4),
SRI R SREEHARI (R5)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
29.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**C.R****JUDGMENT**

The Manager and the Headmistress of the Kadambur Higher Secondary School, Kannur, are before this Court, challenging Ext.P4 proceedings of the Kerala State Commission for Protection of Child Rights (hereinafter referred to as 'the Commission') and Ext.P5 letter issued by the Registrar of the Commission, calling upon the persons mentioned in Ext.P5, including the petitioners herein, to furnish action taken report, in terms of the provisions contained in Rule 45 of the ***Kerala State Commission for Protection of Child Rights Rules, 2012*** (hereinafter referred to as 'the State Rules').

2. The brief facts of the case are as follows:-

The Kadambur Higher Secondary School, is an



aided school, situated at Edakkad in Kannur District. According to the petitioners, the student strength of the school is approximately 5000, as of the date of filing of this Writ Petition. According to the petitioners, since the school is situated in a remote area and considering the transportation problems, the school had purchased about 45 buses to transport the students. It is stated that around 90% of the students studying in the school are using the facility and are coming to the school using the school bus. It is stated that the school collects a small fee for the maintenance of the bus services. It is stated that, in addition to fuel expenses, the school also spends significant amounts of money on bus repairs, insurance and other charges. It is stated that each student pays only a small amount towards the services rendered and the school is not making any profit out of the amount collected from the students. It is stated that the school also provides several additional facilities to the students, beyond what is provided by other institutions. It is stated



that *'toilet facilities'* have been provided, for which two bore wells have been dug, in addition to the water being availed from the Kerala Water Authority. It is stated that the school is providing computer labs and has more than 100 computers in the computer lab. It is submitted that the school is spending a significant amount of money towards electricity charges, and no reimbursement is provided by the Government, in respect of such expenses. Medical facilities have also been arranged to take care of emergency medical situations. It is stated that all these are additional facilities not provided by any other aided institution. It is submitted that whenever the Government conducts the annual school *'Kalolsavam'*, there is a practice of collecting amounts from the students by issuing coupons. It is submitted that the amounts are supposed to be collected from the students by issuing coupons and the Kadambur Higher Secondary School does not distribute coupons to the students and instead deposits the value of coupons issued to it, with the State



treasury. It is submitted that, for the Kalolsavam held in the year 2014, the school paid a total amount of Rs.1,26,886/- (Rupees one lakh twenty-six thousand eight hundred and eighty-six only) at the insistence of the educational authorities. It is submitted that Exts.P1 and P1(a) will substantiate this fact. It is submitted that the 5th respondent, claiming to be a public-spirited citizen, addressed a complaint dated 02.03.2015, to the Commission, pointing out that the school was indulging in the practice of collecting bus charges and other infrastructural charges from the students, contrary to the provisions of the Kerala Education Rules. The complaint also stated that one girl student, studying in the 10th standard of the school was unjustly not permitted to appear at the 10th standard examination. A complaint preferred by the father of the said student was also annexed to the complaint. The complainant also produced a copy of the communication dated 12.12.2014, submitted by the 2nd petitioner to the Deputy Director of



Education, Kannur, where it has been admitted that charges for providing bus facilities and other infrastructural facilities are being collected from the students, towards the services being provided by the school. The complaint filed by the 5th respondent is on record as Ext.P2.

3. The Commission issued notices to the educational authorities and the petitioners herein. The petitioners objected to the proceedings, stating that the charges were being levied only to provide additional services. Regarding the complaint, regarding one student, who was not permitted to sit for the examination, it is pointed out that the said student has subsequently passed out of the school. It was alleged that the complaint had been registered for *mala fide* reasons and at the behest of persons, who had vested interests in the matter. Ext.P3 is the objection filed by the 1st petitioner. The Commission proceeded to consider the



complaint and issued Ext.P4 order, recommending that the charges being collected from the students towards bus charges, electricity charges and on account of other facilities allegedly provided to the students, should be immediately stopped and the educational authorities must immediately issue necessary instructions in this regard. It further recommended that the educational authorities, inducing the Secretary to Government in the General Education Department should issue orders prohibiting the collection of any charges, other than those, which are legally permitted, from the students. It further directed that the steps taken in this regard shall be intimated to the Commission in terms of the provisions contained in Rule 45 of the State Rules.

4. Sri. George Poonthottam, the learned Senior Counsel appearing for the petitioners, on the instructions of Adv. Nisha George would contend that Ext.P4 proceedings before the Commission are unsustainable in



law. It is submitted that the findings of the Commission that, charges were being collected illegally and contrary to the stipulations contained in the ***Right of Children to Free and Compulsory Education Act, 2009*** (hereinafter referred to as the 'RTE Act, 2009'), is unsustainable in law. It is submitted that a complaint at the instance of the 5th respondent could not have been maintained before the Commission. It is submitted that the Commission constituted under the provisions of the ***Commission for Protection of the Child Rights Act, 2005*** (hereinafter referred to as 'the 2005 Act'), which also exercises jurisdiction in respect of the provisions of the RTE Act, 2009, indicates that, any decision of the Commission must be of the majority, and two members of the Commission, cannot, by themselves issue proceedings in the nature of Ext.P4. It is submitted that the nature of the recommendations in Ext.P4 indicates that the Commission had issued an order directing certain things to be done, which is beyond the powers of the



Commission under the provision of the 2005 Act. It is submitted that the provisions of the RTE Act, 2009, do not prohibit the collection of bus charges and other charges for providing certain additional facilities in the school. It is submitted that it is only when such charges prevent a student from availing of elementary education, that the provisions of the RTE Act, 2009, are violated. It is submitted that the school cannot function without the necessary infrastructural facilities. It is submitted that the provision of transport facilities, the computer lab, internet access, toilet facilities, adequate water supply and adequate electric supply, are essential for the proper running of the school and the collection of some nominal charges, on account of the provision of such facilities cannot be termed to be against the provisions of the RTE Act, 2009, or the 2005 Act. It is submitted that the proceedings of the Commission show a total lack of understanding of the concept of child rights, which they are required to enforce. It is submitted that schools



which are affiliated to the Central Board of Secondary Education, are allowed to collect fees for the services provided by them. It is submitted that discrimination against the aided schools in the State is patently unsustainable. It is therefore contended that Ext.P4 proceedings are liable to be set aside, in the exercise of jurisdiction vested in this Court under Article 226 of the Constitution of India.

5. The learned Government Pleader appearing for respondents 2, 3 and 4, refers to Section 3(2) of the RTE Act, 2009 to contend that the provisions indicate that no child shall be liable to pay any kind of fee or charges or expenses, which may prevent him or her from pursuing and completing the elementary education. It is submitted that under Rule 9 (3) of Chapter III of the ***Kerala Education Rules, 1959*** (hereinafter referred to as '*the KER*'), an aided school manager has to provide site, building, staff, equipment etc. and to comply with such



other orders that may be issued by the Government and the Department from time to time, in conformity with the provisions of the ***Kerala Education Act, 1958*** (*hereinafter referred to as 'the KE Act'*), and the KER. It is submitted that the Director of Public Instructions has issued a Circular dated 10.11.2010, regarding the purchase of computers and related equipment, using special fees amount, for Upper Primary schools. It is submitted that it is clear from the provisions of Rule 11(7) of Chapter IX in the KER, that, if any fee is to be collected from the students, on the instructions of the educational authorities, such fee has to be collected by the Headmistress / Headmaster of the school and it has to be paid into the treasury. It is submitted that the manager has no right to collect any amount as a fee to meet any expenses in connection with the school. It is submitted that the Commission under the 2005 Act, has been empowered under the provisions of Section 31 of the RTE Act, 2009, to enquire among other things into



complaints relating to a child's right to free and compulsory education. It is submitted that the said power is available to the National Commission, as well as to the State Commission, constituted under the provisions of the 2005 Act.

6. Learned Government Pleader also referred to G.O(MS) No.126/07 issued by the Department of General Education dated 25.06.2007, which deals with the constitution of a Parent Teachers Association (PTA) and the utilization of PTA funds for the purposes that are referred to in Clause 3.20 of the said Government Order. It is pointed out that the funds for maintenance of school vehicles, computers, computer labs, payment of any additional charges etc., had to be met from the PTA funds and subject to the decision of the executive committee of the Parent Teachers Association and not by way of collecting additional amounts from each student. The learned Government Pleader also pointed out that,



considering the number of students who are studying in the School in question, even the collection of a small amount from each student will result in a situation wherein a huge amount is being collected by the management without the authority of law. It is also pointed out that, Ext.P2(a) letter issued by the Headmistress of the School to the Deputy Director of Education, Kannur will indicate that, in a particular year, nearly Rs.60 lakhs had been collected by the Manager from about 4500 students.

7. The learned Standing Counsel appearing for the 1st respondent, would submit that the contention taken by the learned Senior Counsel appearing for the petitioner, that the Commission has to make decisions by majority and therefore, Ext.P4 proceedings issued by two members of the Commission cannot be sustained is only to be rejected. Reference is made in this regard to Rule 18(6) of the State Rules. It is pointed out that the said



Rule contemplates that the Commission or some members may transact business at places outside its headquarters, as and when previously approved by the Chairperson and provides that the parties have to be heard in connection with any enquiry under the Act, at least two members shall function as a Bench of the Commission for the said purpose. It is submitted that the provisions of the said Rules are a sufficient indication that the Commission can exercise its authority through a bench of two members and every decision of the Commission needs not be by a majority of all its members. It is submitted that the Commission has only exercised the jurisdiction within the parameters of the powers conferred on it, and having regard to the powers and functions as contemplated by the RTE Act, 2009 and the provisions of the 2005 Act. It is submitted that the functions of the Commission, as delineated in Rule 17 of the State Rules, indicate that the present proceedings before the Commission were clearly within its



jurisdiction. It is submitted that the contention taken that the 5th respondent has no right to initiate a complaint before the Commission, is also incorrect, as the provisions of Rule 2(e) of the State Rules indicate that, a complaint before the Commission means all petitions or communications received by the Commission from a victim, or any other person on his/her behalf, in person or by post or telegram or fax, or by any other means, whatsoever, alleging violation of child rights as defined in Clause (b) of Section 2 of the 2005 Act. Therefore, it is submitted that the Commission committed no irregularity, whatsoever, in entertaining the complaint filed by the 5th respondent.

8. The learned Counsel appearing for the 5th respondent would submit that, the 5th respondent had only brought to the notice of the Commission, the malpractices being committed by the manager of the school in collecting fees, illegally and on the premise that



certain services are being offered to the students.

9. The learned Senior Counsel appearing for the petitioners, would submit, in reply, that no student has been denied any elementary education and the collection of fees, which has not been objected to, by any student of the school or by any parent, cannot be stated to be an act, which would constitute a violation of Sub-Section (2) of Section 3 of the RTE Act, 2009. It is also submitted that there is no express prohibition in the KER, regarding the collection of fees for additional facilities provided by the school. It is also submitted that it is clear from Ext.P2(a) itself that the amount stated to have been collected so far has been utilized only for the welfare of the students and not for the personal benefit of the manager.

10. Having heard the learned Senior Counsel appearing for the petitioners, the learned Government Pleader appearing for respondents 2, 3 and 4, the learned



Standing Counsel appearing for the 1st respondent and the learned Counsel appearing for the 5th respondent, I am of the view that the petitioners have not made out any case for grant of reliefs. The contention of the learned Senior Counsel appearing for the petitioners, that two members of the Commission could not have issued proceedings in the nature of Ext.P4 cannot be sustained. The said contention is raised on the strength of the provisions contained in Section 10 of the 2005 Act. Sub Section (2) of Section 10 of the 2005 Act indicates that, all decisions at the meeting of the Commission shall be taken by the majority. The provisions of Sub Section (2) of Section 10 do not indicate that a proceeding like Ext.P4 can be issued only in a sitting consisting of all the members of the Commission and by the majority, in such a meeting. The only meaning that can be ascribed to the provisions of Sub-section (2) of Section 10 of the 2005 Act is that, where the proceedings are held before the members of the Commission consisting of more than one,



the decision of the Commission shall be the decision of the majority of the members, constituting such meeting or sitting. That apart, the provision of Section 9(c) of the 2005 Act indicates that any irregularity in the procedure of the Commission not affecting the merits of the case will not invalidate the proceedings of the Commission. There is nothing in Section 17(2) of the 2005 Act which would indicate that the contention of the learned Senior Counsel appearing for the petitioner that the decision of the Commission can only be by a majority of all its members is to be accepted. That apart, as rightly pointed out by the learned Standing Counsel appearing for the 1st respondent, the provisions of Rule 18(6) of the State Rules indicate that a complaint can be inquired into by two members of the Commission. It is seen from Ext.P4 that the complaint in this case was inquired into by two members of the Commission, including its Chairperson. There is no irregularity or illegality in the said proceedings that may vitiate those proceedings.



11. Coming to the contention that the complaint before the Commission was not maintainable at the instance of the 5th respondent, I believe that the definition of '*complaint*' in Rule 2(e) of the State Rules will indicate that a complaint can be brought before the Commission even on behalf of persons who may be affected by any act regarding which a complaint is made. There is no challenge in this writ petition to the provisions of Rule 2(e) of the State Rules. In such circumstances, it must be held that the complaint filed by the 5th respondent was in accordance with the provisions contained in the Rules and there is no illegality whatsoever in the Commission entertaining the complaint at the instance of the 5th respondent.

12. Coming to the merits of the matter, it is seen that the provisions of Sub Section (2) of Section 3 of the RTE Act, 2009 indicate that no child shall be called upon to pay any kind of fee or charges or expenses which may



prevent him or her from pursuing and completing the elementary education. Sub Section (2) of Section 3 of the RTE Act, 2009 provides:-

“ 3. Right of child to free and compulsory education.

(1) Every child of the age of six to fourteen years, including a child referred to in clause (d) or clause (e) of section 2, shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education.

(2) For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education.

.....

.....”

The Supreme Court while enunciating the scope of the RTE Act held in ***Society for Unaided Private Schools of Rajasthan v. Union of India***, (2012) 6 SCC (1) held :-

“ 11. An educational institution is charitable. Advancement of education is a recognised head of charity. Section 3(2) has been enacted with the object of removing financial barrier which prevents a child from accessing education. The other purpose of enacting Section 3(2) is to prevent



educational institutions from charging capitation fees resulting in the creation of a financial barrier which prevents a child from accessing or exercising its right to education which is now provided for vide Article 21-A. Thus, sub-section (2) provides that no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing or completing the elementary education.”

While the learned Senior Counsel appearing for the petitioners may be right in contending that there is no indication that the collection of fees for additional services rendered by the school did prevent any child from undergoing education it must be noted that the intent and purpose of Sub Section (2) of Section 3 is that no fee shall be collected from the students over and above that permitted by law. Admittedly, the petitioner school is an aided school. The learned Government Pleader is therefore right in contending that the provisions of Rule 9 of Chapter III of the KER would indicate the Manager must provide site, buildings, staff, equipment, furniture etc. as per Rules issued under the



KE Act and as per orders that may be issued from time to time by the Government in the Education the Department in conformity with the provisions of the Act and the Rules issued thereunder. Section 7 (2) & (3) of the KE Act reads as follows:-

“7. Managers of schools.

(1)

(2) The Manager shall be responsible for the conduct of the school in accordance with the provisions of this Act and the rules thereunder.

(3) The properties of the school shall be in the possession and control of the Manager who shall be responsible to maintain them in proper and good condition.”

Rule 9 of Chapter III of the KER (to the extent it is relevant) reads as follows:-

“9. Duties and powers of the managers of Aided Schools

(1)

(2)

(3) The Manager shall provide site, building, staff, equipments furniture etc. as per Rules issued under the Education Act and as per orders that may be issued from time to time by the Government and the Department in conformity



with the provisions of the Act and the rules issued thereunder.

..... ”

In ***Roopa v. State of Kerala***; 2014 (1) KLT 483 a

Division bench of this court observed as follows:-

“We are of the view that a conjoint reading of Section 7(2) of the KE Act and Rule 9 of Chapter III and Rule 7 of the Chapter XXIV(B) of KER will show that the Manager shall be responsible for the conduct of the school in accordance with the provisions of the KE Act and the KER thereunder. If such a view is not adopted, it will certainly result in absurdities.”

Therefore, it does not lie in the mouth of the Manager to contend that the provision of toilets, provision of computer facilities, provision of internet access and the provision of transport facilities are beyond his duties in terms of the provisions contained in Rule 9 of Chapter III of the KER. That apart, the learned Government Pleader is right in contending that the provisions of Chapter IX Rule 11 indicate beyond doubt that it is only the Headmaster, who can collect any fee from students in an



aided school. The said Rule (Rule 11 (vii) of Chapter IX of the KER) also indicates that the amounts collected shall forthwith be remitted to the Treasury. The relevant provision of Chapter IX Rule 11 of KER reads as follows:-

"11. Headmaster's/vice-principal's duties

The Headmaster's / Vice Principal's duties shall include the following:-

.....

.....

(vii) to collect fees from the pupils through the teachers and remit the amount into the Treasury in the case of the Government and aided schools (or send it to the Educational Agencies in the case of recognised schools) as per detailed instructions regarding levy, collection, and remittance of fees;

.....

....."

A Division Bench of this Court in **V. K Vasudevan**

Namboodiri v. V. K Sarojini Amma, 1967 SCC OnLine

Ker 86 held as follows:-

" Unlike as under the P.S.S Scheme which preceded the Act, the entire collection from an aided school by way of fees etc. is to be collected



by the Headmaster and made over to Government, for paying the salary of the employees, the manager being allowed only a grant, called maintenance grant, subject to certain conditions.”

A Division Bench of this Court in ***Sreya Vinod v. Director of Public Instruction***; 2012 SCC OnLine Ker 19318 held as follows:-

“There will be nothing wrong in the Government or local authority providing safe vehicles and staff to Government Schools, and even to Aided Schools if they do not have fund for it, because education up to the age of 14 has to be provided by the Government at their cost, which not only means coaching in the Schools but the entire facility of Schooling. Since the Government feels that noon meals and other facilities are to be compulsorily provided, we see no reason why transportation should not also be covered. ”

The learned Government Pleader is also right in contending that the Manager has no right to interfere with the academic matters relating to a school of which he is a Manager. A cumulative reading of all these



provisions read with the provisions of Sub Section (2) of Section 3 of the RTE Act, 2009 leads me to conclude that the collection of charges on the ground that the school was providing transport facilities, that it was providing toilets, that it was providing computer labs with internet access, that it was paying energy charges for which it was meeting expenses cannot be sustained in law.

Resultantly, I find no illegality, whatsoever, in Ext.P4. The writ petition fails and it is accordingly dismissed. Respondent Nos.2 to 4 will forthwith take further steps in the matter as contemplated by the law, also taking note of Ext.P.4 recommendations of the Commission without further delay.

Sd/-
GOPINATH P.
JUDGE

NB/ajt



APPENDIX OF WP(C) 37554/2015

PETITIONER ANNEXURES

- EXT.P-1: TRUE COPY OF THE COVERING LETTER NO.KHS-97/14 DATED 26.11.2014
- EXT.P-1(a): TRUE COPY OF THE RECEIPT NO.100 DATED 10.12.2014 ISSUED BY THE ASST.EDUCATIONAL OFFICER, KANNUR SOUTH.
- EXT.P-2: TRUE COPY OF THE COMPLAINT DATED 2.3.2015 ALLEGEDLY PREFERRED BY THE 5TH RESPONDENT BEFORE THE COMMISSION ALONG WITH ANNEXURES
- EXT.P-3: TRUE COPY OF THE OBJECTION FILED BY THE 1ST PETITIONER BEFORE THE COMMISSION DATED 27.7.15
- EXT.P-4: TRUE COPY OF THE ORDER DATED 5.11.2015 IN C.R.M.P NO.914/13/L.A2/2015/LeSCPCR
- EXT.P-5: TRUE COPY OF THE LETTER NO.914/13/LA2/2015/Ke SCPCR DATED 16.11.2015