

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

WA.No. 2321 of 2009 () IN WP(C).9662/2008

AGAINST THE JUDGMENT IN WP(C) 9662/2008 of HIGH COURT OF KERALA
DATED 28-08-2009

APPELLANT/6TH RESPONDENT::

THE MANAGER, M.C.M.U.P.SCHOOL,
MAYYANNUR.

BY ADVS.SRI.KURIAN GEORGE KANNANTHANAM (SR.)
SRI.TONY GEORGE KANNANTHANAM

RESPONDENT(S):APPELLANT & RESPONDENTS 1 TO 5

1. O.BALAN, ASSISTANT TEACHER (RETIRED)
M.C.M.U.P.SCHOOL, MAYYANNUR.

2. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT
THIRUVANANTHAPURAM.

3. THE DIRECTOR OF PUBLIC INSTRUCTIONS
THIRUVANANTHAPURAM.

4. THE DISTRICT EDUCATIONAL OFFICER,
VADAKARA.

5. ASSISTANT EDUCATIONAL OFFICER,
THODANNUR.

6. K.P.RAVEENDRAN, M.C.M.U.P.SCHOOL,
MAYYANNUR.

R,R6 BY ADV. SRI.R.K.MURALEEDHARAN

R BY SRI.M.VIJAYAKUMAR

R2-R5 SENIOR GOVERNMENT PLEADER SRI SHYSON P.MANGUZHI

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 03-09-2015
ALONG WITH W.A.NOS.2335/2009, 2822/2009 AND 2848/2009, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WA.No. 2321 of 2009 IN WP(C).9662/2008

A P P E N D I X

APPELLANT'S EXHIBITS

ANNEXURE-A1: COPY OF LETTER DT.22.7.2009 OF A.E.O, THADANUR.

ANNEXURE-AII: COPY OF RECEIPT DT.22.7.2009 OF -DO-

ANNEXURE-AIII: COPY OF LETTER DT.12.10.2009 OF AEO, THANDANUR.

RESPONDENTS' EXHIBITS

NIL.

/TRUE COPY/

P.S TO JUDGE

ANTONY DOMINIC & P.V ASHA, JJ.

**W.A Nos.2321, 2335, 2822 and
W.A No.2848 of 2009**

Dated this the 3rd day of September, 2015

JUDGMENT

Antony Dominic, J.

The respondents in Writ Petition Nos.9662 and 11407 of 2008 have filed these appeals challenging the common judgment rendered in the above Writ Petitions, whereby the learned Single Judge has quashed the Government Order recognising the Mayyannur Central Mappila Upper Primary School, Mayyannur, as a minority educational institution and issued further directions to appoint Headmaster, in accordance with the seniority of the teachers in the school.

2. The grievance of Sri Balan, the petitioner in W.P(c) No.9662 of 2008 was that overlooking his seniority, Sri Raveendran, the 5th respondent in these Writ Petitions, was appointed as Headmaster w.e.f 1.6.2004. Similarly in so far as Sri K.Bhaskaran, who is the petitioner in W.P(c) No.11407/2008, is concerned, his contention was that on the retirement of Sri Balan, he was the next senior most teacher entitled to be appointed as Headmaster of the school in question.

3. From the pleadings, we find that on an earlier occasion the issue regarding the minority status of the school was considered and contrary to the stand taken by the Under Secretary to the Government, the Principal Secretary to the Government had issued order dated 30.06.2005, holding that the school is eligible for minority status and accordingly accorded minority status to the school. That order was challenged before this Court in W.P(c) No.22337 of 2005 and 22857 of 2005. The Writ Petitions were disposed of by judgment dated 13.03.2007 setting aside the Government Order mentioned above and directing reconsideration of the matter. This judgment was affirmed in W.A No.587 of 2005. It was accordingly that the Government heard all the parties and passed G.O(Rt) No.5939/07/G.Edn. dated 31.12.2007, according minority status to the Mayyannur Central Mappila Upper Primar School.

4. Producing the aforesaid Government Order as Ext.P14, W.P(c) No.9662 of 2008 was filed by Sri Balan challenging the same. While Sri Bhaskaran filed W.P(c) No.11407 of 2008 producing the same Government Order as Ext.P5. It was these Writ Petitions which were disposed of by the learned Single Judge as per the impugned common judgment

quashing the Government order and declaring that the school is not a minority educational institution and that the appointment of Headmaster of the school shall be only by promotion in accordance with the provisions of Chapter XIVA of the Kerala Education Rules.

5. We heard the learned counsel for the appellants, the learned Government Pleader and the learned counsel appearing for the writ petitioners. According to the learned counsel for the appellants, the school was established on 30.08.1943 and P.Ammed was the Manager. It is stated that the school changed hands and subsequently, in 1985, the present management purchased the school and is administering the school since then. According to him, therefore the school was established and administered by a minority and therefore it is entitled to be recognised as a minority educational institution as contemplated under Article 30(1) of the Constitution of India. The learned counsel made reference to Ext.R6(d), the Service Book of one Sri T.Moidu, and according to him, in the initial 2 years of the school only students from the Muslim community were admitted. He also referred to Ext.R6(g), the inspection report, which according to him shows that the school in question was

established for the welfare of the members of the Muslim community. He also sought to contradict claim of the D.E.O that Ammad was the Manager of another school in the neighbourhood, by referring to Ext.R5(c). According to him, in any case, as is evident from Ext.R5(a), Smt.Vilasini, a teacher senior to the writ petitioners, had preferential claim for appointment as Headmistress in the school and that therefore the writ petitioners did not have locus standi to maintain any claim in the matter. Relying on these materials and also the pleadings in the writ petitions, the learned counsel for the appellants contended that the learned Single Judge ought not have interfered with the Government Order impugned in the Writ Petitions.

6. The learned counsel for the writ petitioners contended on the contrary. According to him, materials including Ext.P10 in W.P(c) No.9662 of 2008 established beyond any doubt that on establishment of the school one Krishnan Master was the Manager. It is stated that Krishnan Master transferred the management to his wife Mathu and it was only in 1985 that Mathu transferred the school to the present management. In so far as the argument of the writ appellants regarding locus standi

of the writ petitioners is concerned, the learned counsel for the writ petitioners referred to us the judgment of this Court in W.A No.587 of 2005, where the entitlement of the respondent in W.A No.2848 of 2009 for consequential benefits, in the event his case that the school is not a minority educational institution is upheld, has been recognised by this Court.

7. We have considered the submissions made. Law is settled that, in order to claim minority status for an educational institution, it must be proved beyond any doubt that the educational institution was established by a minority. (See in this connection the decision reported in **St.Thomas U.P School v. Commissioner and Secretary to Government** [2002(1) KLT 655(SC)].) Therefore enquiry that is required to be conducted is to find out as to who had established the school way back in 1943. In so far as this aspect of the matter is concerned, there is no clear material in any of these proceedings. On the other hand, the indication contained in Ext.P10 in W.P(c) No.9662 of 2008 is that it was Krishnan Master. However genuineness of this document is seriously disputed by the appellants.

8. Ext.P14 in Writ Petition No.9662 of 2008 is the Government Order by which minority status was recognised in

favour of the school. Reading of this order shows that the Government did not make any enquiry whatsoever to find out who had established the school. On the other hand, the Government had merely recorded the rival submissions made by the parties and concluded in paragraph 8 of this order that it is of the view that the school is eligible for minority status and is pleaded to accord minority status to the school. Not only that the view taken by the Government in Ext.P14 is contrary to the view taken by it in Ext.P9 in W.P(c) No.9662 of 2008, but also the conclusion is not supported by reasons.

9. Our endeavour is only to indicate that Ext.P14 has been passed by the Government without conducting any enquiry on the vital aspect as to whether the school was established by a minority or not. For that reason itself, we are unable to sustain Ext.P14.

10. Once Ext.P14 is invalidated on the ground of non consideration of relevant aspects, according to us, proper course that should have been adopted by the learned Single Judge was to have remitted the matter to the Government with a direction to reconsider the matter with notice to the parties concerned and after hearing them. Instead, the learned Single Judge has

gone into the merits of the matter and has arrived at his own conclusions. This, in our view, should not have been done.

11. Accordingly we hold that Ext.P14 is unsustainable in the absence of any enquiry as to whether the school in question was established by a minority. Therefore, vacating the findings of the learned Single Judge, we remit the case back to the Government, with a direction to hear the parties and to take a decision afresh on the issue of minority status claimed by the school in the light of the observations in this judgment. The judgment of the learned Single Judge will stand vacated and the matter will stand remitted to the Government as directed above.

The Writ Appeals are disposed of accordingly.

Sd/-
ANTONY DOMINIC
Judge

Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge