

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

W.P.(C).No.25492 of 2015 (J)

PETITIONER(S):-

REGHUNATH K.M., AGED 49 YEARS, S/O. LATE MADHAVAN,
KANNOLI HOUSE, POST INJAMUDY,
THRISSUR-680 564.

BY ADVS.SRI.ELVIN PETER P.J.
SRI.T.G.SUNIL (PRANAVAM)
SRI.K.R.GANESH.

RESPONDENT(S):-

1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
2. THE DEPUTY DIRECTOR OF EDUCATION,
CIVIL STATION, THRISSUR-680 003.
3. THE DISTRICT EDUCATIONAL OFFICER,
PALACE ROAD, THRISSUR-680 001.
4. K.G.DHANANJAYAN, S/O. GANESAN,
KANNOLI HOUSE, POST INJAMUDY, THRISSUR-680 564.
5. SATHYRATNAM K.G., W/O. DR.K.V.DEVADAS,
VYSAKHAM, I.M.O. ROAD., KUNNAMKULAM, THRISSUR-680 503.
6. ANITHA K.M., W/O. ACHUTHAN,
6D, TEMPLE TREES APARTMENTS,
PAZHAYA NADAKKAVU, THRISSUR-680 002.
7. SUDHA K.M., W/O. K.R.SHELLY, VYSAKHAM, CHEYYARAM P.O.,
KOORKANCHERRY, THRISSUR-680 007.

8. K.M.RADHAKRISHNAN, S/O. MADHAVAN,
KANNOLY HOUSE, KUMBILAVU P.O., THRISSUR-680 564.
 9. K.M.SREELATHA, W/O. A.K.SANKARANARAYANAN,
303, LOVESHORE ENCLAVE,
SAW MILL ROAD, THANKAMANI, KOORKANCHERRY-680 007.
 10. K.M.GEETHA, W/O. T.K.ASOKAN,
NADUVILKARA, VADANAPALLY, THRISSUR-680 013.
 11. RAMACHANDRAN NAIR,
DEPUTY SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTICORRUPTION BUREAU, THRISSUR CIRCLE,
THRISSUR-680 001.
- R1 TO R3 BY GOVERNMENT PLEADER SMT.J.RAJASREE.
R4 & R5 BY ADVS.SMT.V.P.SEEMANDINI [SENIOR ADVOCATE],
SRI.M.R.ANISON
SMT.K.P.GEETHA MANI
SRI.AUGUSTUS BINU
SMT.PA.RINUSA.
R8 BY ADV. SRI.P.V.CHANDRA MOHAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
02-11-2015, ALONG WITH WP(C). 30672/2015-H, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P1 : COPY OF COMPROMISE PETITION DTD.11.12.1985 ENTERED
BETWEEN THE AFFECTED PARTIES.
- EXT.P2 : COPY OF JUDGMENT DTD.21.12.1985 IN OS NO.280/1985 OF THE
MUNSIFF COURT, THRISSUR.
- EXT.P3 : COPY OF APPLICATION DTD.28.6.2014 ISSUED BY THE
3RD RESPONDENT.
- EXT.P4 : COPY OF ORDER DTD.3.8.2012 ISSUED BY THE
3RD RESPONDENT.
- EXT.P5 : COPY OF ORDER DTD.30.1.2015 ISSUED BY THE
3RD RESPONDENT.
- EXT.P6 : COPY OF OBJECTION DTD.3.6.2015 SUBMITTED BY THE
PETITIONER BEFORE THE 3RD RESPONDENT.

RESPONDENT(S)' EXHIBITS:-

- EXT.R5(a) TRUE COPY OF THE LETTER DATED 19.06.2015 ISSUED BY
THE 3RD RESPONDENT.

Vku/

[true copy]

K. Vinod Chandran, J

W.P.(C).Nos.25492 of 2015-J & 30672 of 2015-H

Dated this the 02nd day of November, 2015

JUDGMENT

Sibling rivalry is the only cause of action for these litigations. Admittedly a Corporate Agency was running “Swami Bodhananda High School” for long as per a partition deed No.19/1971 dated 01.01.1971. Two brothers, Kannoly Madhavan and Kannoly Ganesan, constituted the Corporate Agency. They had an understanding between themselves that Madhavan, the elder, would continue as Manager unless Ganesan, the younger, raised a request for Managership, in which event the Managership would be conferred on them in the alternate years.

2. When Ganesan raised a desire to be the Manager, Madhavan refused, which led to a suit being filed as O.S.No.280 of 1995. Madhavan and Ganesan died pending the suit. The legal heirs of Madhavan and Ganesan, who are now at loggerheads, at that point wisely compromised the suit. The compromise petition dated 11.12.1985 and the compromise

decree dated 21.12.1985, are produced as Exhibits P1 and P2 in W.P.(C).No.25492 of 2015.

3. The compromise petition and the decree together lists out the requirement of Rule 2 of Chapter III, where Corporate Educational Agencies have to have Rules which would prescribe, among other things:

- “(a) the manner in which the proprietary body shall carry out its functions relating to the management of the institutions; and
- (b) the manner in which the managing body shall be elected or appointed, the conditions and tenure of their office and their duties and powers with respect to the management of the institution”.

4. A reading of the compromise petition and the decree would indicate that the Managership has to be alternated between the legal heirs of Madhavan and Ganesan and the Manager being the eldest of such legal heirs. The arrangement was continuing smoothly from 21.12.1985, the date of decree.

5. In the academic year 2013-14, Ganesan's legal heirs were holding the Managership. In 2014-15 when the academic year commenced and the eldest amongst the legal heirs of Madhavan was entitled to be posted as Manager, the earlier Manager, being the eldest amongst the legal heirs of Ganesan, filed Exhibit R7(c) in W.P.(C).No.30672 of 2015, contending that the eldest among Madhavan's legal heirs was one Smt.Padmakshi.A.C., who is aged 93 and laid up with age old diseases. On the basis of Exhibit R7(c) and Exhibit R7(d), the Managership was not conferred on the legal heirs of Madhavan in the academic year 2014-15. By Exhibit R7(c), the District Educational Officer directed Padmakshi, the eldest legal heir of Madhavan, to submit a bye-law for approval. After the close of the academic year, again the issue of Managership arose when Ganesan's legal heirs were entitled to it. The Educational authorities having taken a similar stand as in Exhibit R7(d), the legal heirs of Ganesan were before this Court by W.P.(C).No.30672 of 2015. Before that, the legal heirs of Madhavan also filed a writ petition, W.P.(C) No.25492 of 2015, to pre-empt any person from Ganesan's family being

appointed as Manager for the year 2015-16, since they were also deprived of the Managership for an year by reason of there being no bye-laws.

6. The learned Senior Counsel appearing for Ganesan's legal heirs would contend that the compromise petition and the decree should be deemed to be a bye-law and approved by the Educational Authorities. The learned counsel for the legal heirs of Madhavan would, however, contend that in fact the other party had raised the dispute before the District Educational Officer and there could be no Manager appointed for this year; or they should be compensated for the year they lost.

7. At the outset, it has to be noticed that Madhavan's legal heirs, on being deprived of the Managership, for reason of Exhibit R7(d), did not take any proceedings before the appropriate forum. They could have approached the higher Educational Authorities or this Court to assert their claim for Managership in that year. They having not done so, now seek to interdict the legal heirs Ganesan for the next academic year, when they are entitled even as per the compromise and

the decree. There can be no compensation as to the one year lost, since that was a consequence of the said group not having taken up the matter appropriately before the forums in which they could have agitated their cause and asserted their claim.

8. As far as the bye-laws are concerned, suffice it to notice that the Civil Court has passed a compromise decree as early as in 1985, listing out the manner in which the management has to be carried out in the alternative years by the legal heirs of the deceased brothers. There is also provision that the eldest of them should be appointed as Manager. The eldest being incapacitated, either by consensus among the legal heirs of each brother or the next eldest among them shall be appointed as Manager. In the context of there existing a decree, what is required is only a formal order under Rule 2 of Chapter III of the Kerala Education Rules. Either of the petitioners shall produce a copy of the compromise petition and the decree before the Educational Authorities and the Educational Authorities shall approve the same as the bye-law and the Managership conferred to the two sets of persons

alternatively as has been laid down in the decree. The eldest amongst Ganesan's legal heirs shall be approved as Manager for the academic year 2015-16.

The writ petitions would stand disposed of as above. Parties are left to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge.

vkul/-

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