

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 02.07.2019
CORAM
THE HONOURABLE Mr.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE Mr.JUSTICE SUBRAMONIUM PRASAD

W.P.No.17619 of 2019

D.Riyas Ahmed

... Petitioner

Vs.

- 1.The Secretary to Government,
Department of School Education,
St.George Fort, Chennai - 600009.
 - 2.The Secretary to Government,
Information and Public Relation Department,
Secretariat, St.George Fort, Chennai.
 - 3.The District Collector,
Krishnagiri District,
Krishnagiri.
 - 4.District Educational Officer,
Krishnagiri District,
Krishnagiri.
- ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance for a Writ of Mandamus directing the respondents not to conduct any sort of exhibition as proposed in the premises of the Boys Government Higher Secondary School, Krishnagiri Town, Krishnagiri commencing from 16.06.2019 and further direct the 1st and 2nd respondents to ensure that no such exhibitions are henceforth conducted in the school premises anywhere in the state.

For Petitioner : Mr.A.Mohamed Ismail

For Respondents: Mr.E.Manoharan
Additional Government Pleader.

ORDER

(Order of the Court was made by S.MANIKUMAR.J.,)

Instant writ petition has been filed for a Writ of Mandamus, directing the respondents, not to conduct any sort of exhibition as proposed in the premises of the Boys Government Higher Secondary School, Krishnagiri Town, Krishnagiri, commencing from 16.06.2019 and

further, to direct the 1st and 2nd respondents, to ensure that no such exhibitions are henceforth conducted in school premises anywhere in the state.

2. In the supporting affidavit, petitioner has contended that he recently came across a paper publication inviting tenders, for the purpose of conducting an exhibition on behalf of the Government, commencing from 16.06.2019 and to be held for about 29 days in the premises of Government Boys Higher Secondary School, Krishnagiri Town, Krishnagiri District. When, tremendous efforts have been taken by the government and parents of the students, to impart quality education to the children, the respondents themselves on several occasions have come out with programmes and schemes, that literally spoil the education of the students. One such hindrance, is the frequent programmes, such as exhibition by government to display their achievements and also other entertainment activities, being conducted in the school premises all over the State, and the same is required to be curtailed.

3. Petitioner has further contended that in the present-day competitive scenario, particularly, after the introduction of competitive NEET examination, students and parents, are put to tremendous pressure and they are toiling with a hope of getting admission into high education courses. Every year, State of Tamil Nadu, witnesses several cases of suicide by innocent frustrated students, who marginally miss their goal. After the introduction of NEET, there is steep raise in unsuccessful students unable to face their family and the society and out of frustration committing suicide. In such an environment, the government themselves cannot be a distractor to the students by conducting such entertainment and self-serving exhibitions in the school premises.

4. Petitioner has further contended that, this Hon'ble Court, on several occasions, has also insisted and directed that the government cannot conduct such programmes in the school premises and that the educational institutions would be allowed as it is, without interference from government. He further contended that, this Court has reiterated that the academic atmosphere should not be vitiated and that if the government intends to conduct any exhibition to demonstrate any achievement or whatever it may be, the same can be done elsewhere and not in education institutions. The education institution is only for imparting education and not for other activity.

5. Petitioner has further contended that, in such circumstances, the District Collector, Krishnagiri District/the 3rd respondent herein, is organising an

exhibition to demonstrate the achievements of the government, with other entertainment programmes in the exhibition.

6. Petitioner has further contended that there are several other public places in the town of Krishnagiri, where such an exhibition could be conducted. But, the District Educational Officer, Krishnagiri District/the 4th respondent herein, has chosen the Boys Higher Secondary School, Krishnagiri, which would disturb and distract the students of the school, of all standards.

7. For the abovesaid reasons, petitioner has made a representation, dated 10.06.2019, requesting the respondents, to drop organising of such an exhibition, but the respondents did not take any action. Hence, petitioner has filed the instant writ petition, for the prayer, stated supra.

8. District Collector, Krishnagiri District, the 3rd respondent herein, has filed a counter affidavit dated 28.06.2019, which reads thus:-

"(i) It is submitted that the 27th All India Mango Fruit Exhibition is carried out in the ground bearing Survey Filed No.75 with an extent of about 7.15 acres. This playground is next to the Government Boys Secondary School, Krishnagiri.

(ii) It is submitted that the exhibition is carried out in around 2 acres of land in the playground, away from the school. The exhibition is also carried out from 5 p.m. to 10.00 p.m., so that there is no hindrance to the school children.

(iii) It is submitted that out of 7.15 acres of land, around 5 acres of land would be demarcated and would be utilized for the purpose of Government High School, Krishnagiri and the remaining land, reclassified and be used for public purpose.

(iv) It is submitted that no other new function would be permitted to be carried out in that ground until the reclassification is made in the revenue records."

9. Heard the learned counsel for the parties and perused the materials available on record.

10. Order of the Writ Court, in W.P.No.3664 of 2017, dated 14.02.2017, relied on by the petitioner is

reproduced:-

"This writ petition has been filed by Mr.K.A.K.Jiyaudeen seeking issuance of a mandamus under Article 226 of the Constitution of India, directing the District Collector, Tiruvarur District, the first respondent herein, the Block Development Officer, Needamangalam Taluk, the second respondent herein and the District Educational Officer, Tiruvarur, the third respondent herein to remove the shops that are being put up by the fourth respondent-Dargha, their men, agents and subordinates inside the Panchayat Union Middle School, Podakkudi (South), Needamangalam Union, Tiruvarur District forthwith with a consequential direction to the respondents 1 to 3 not to allow the said school premises to be utilized for any other private festivals or functions by any persons.

2. Learned counsel for the petitioner submitted before this Court that for the purpose of celebrating Urs and Santhanakoodu festival on 17th and 18th Moon days of the Muslim month, namely, on 14th and 15th February 2017, the Committee of organizers under the fourth respondent, without getting temporary licences from the respondents 1 to 3, have put up the temporary shops on the Government land areas and also are collecting rents from the temporary shopkeepers. Moreover, they have also ensured that the school building in which the Santhanakoodu festival is going to be conducted is also closed down.

3. Taking note of the fact that the school building is going to be used/misused without getting prior permission from the educational authorities, this Court directed Mr.R.Rajasekaran, learned Special Government Pleader to take instructions. Accordingly, on taking instructions from the officers, namely, Mr.S.Selvam, Additional Elementary Educational Officer, Needamangalam and Mr.P.Gopal, Deputy Block Development Officer, Needamangalam, who are also present before this Court today, the learned Special Government Pleader submitted that a local holiday has been declared on 15.2.2017 by the District Administration for celebrating the Santhanakoodu festival, therefore, no prejudice is going to be caused to either the school going children or the school administration.

4. In reply, the learned counsel for the petitioner submitted that although the Santhanakoodu festival is going to be conducted on a local holiday declared by the District Administration, still, the organizers under the fourth respondent have put up the temporary shops and bunks preventing the children and teachers from entering into the school, therefore, they should be directed to remove the shops and bunks.

5. This Court finds no justification for any such request to be entertained. The reason is that when the District Administration has declared a local holiday on 15.2.2017 to facilitate the conduct of Santhanakoodu festival, this Court finds no merit in the writ petition. Accordingly, the writ petition fails and it is dismissed. Consequently, W.M.P.No.3723 of 2017 is also dismissed. No costs."

11. District Collector, Krishnagiri District, vide letter in R.C.No.AGP-9/2019-2020, dated 26.06.2019, addressed to the learned Additional Government Pleader, High Court, Madras, has stated as hereunder:-

"From To
Dr.S.Prabhakar, I.A.S., The Additional
Government Pleader
District Collector, Hon'ble High Court,
Krishnagiri-635 115. Chennai-600 001.

Rc.No.AGP-9/2019-2020 Dated: 26-06-2019

Sir,

Sub: Krishnagiri District - 27th All India
Mango Exhibition at Krishnagiri -
to be held from 16-06-2019 to 15-07-2019 -
details submitted - regarding.

Ref: Telephone message from Chennai,
Dated: 26-06-2019

I wish to state that, the All India Mango exhibition is conducted by the District Administration every year during the month of June/July, in the Krishnagiri Government Boys Higher Secondary School Ground to encourage the mango growing farming community by giving

various technologies of mango cultivation and to display the various activities of the government to the public, as this district is pioneer in mango cultivation, and the 27th All India Mango Exhibition is also organized during this year, and scheduled to be conducted from 16-06-2019 to 15-07-2019.

The Exhibition ground measuring 7.15 Acres is situated adjacent to the Government Boys Higher Secondary School. The Chief Educational Office is situated in the ground and it has separate entrance and the activities conducted in the ground will not affect the school programmes. The School has separate entrance and play ground and this ground is additionally used by the students. The play ground is connected to the school through separate entrance, and the distance will be around 100 meters.

Moreover, the Exhibition is conducted only after the school timings i.e. 05.00 P.M. to 10.00 P.M., and therefore it will not have any impact on the activities of the School. The exhibition is being conducted in the same place for the past 26 years and lakhs of public are visiting the place to know the various schemes implemented by the government to the public and so far there is no objection from any of the Krishnagiri public or others. This is for kind information.

For District Collector,
Krishnagiri."

12. Let us consider the rule position regarding the use of the school property,

(i) Chapter IX of the Code of Regulations for Matriculation Schools, deals with buildings, which states that the premises of an educational institution or any subsidiary building apportioning to it or a play ground or vacant site belonging to a Matriculation School whether adjacent or remote from it shall, ordinarily, be used only for the purposes of functions conducted by such institution and that in no case shall the use of such buildings, play ground or vacant site be given for political meetings. The Schools will make available their halls for the conduct of examinations, if required.

(ii) Rule 15 of the Right of Children to Free and Compulsory Education Rules, 2010 prescribes certain conditions for recognition to school, in which, clause (d) states that the school buildings or other structures

or the grounds are used only for the purposes of education and skill development.

(iii) Rule 81 of the Tamil Nadu Educational Rules, deals with use of buildings and the said rule is extracted hereunder:

"81. The premises of an educational institution, or any subsidiary building appertaining to it or a playground or vacant site belonging to the institutions, whether adjacent to or remote from it, shall ordinarily be used only for purpose of functions conducted by such institution. But the executive authority of the local body, the District Educational Officer or the Inspectress of Girls's Schools, as the case may be, in the case of a Government institution other than a Government college, the Principal in the case of Government college, the Manager or Correspondent in the case of an aided Secondary or Special Institution and the Principal in the case of an aided college, is empowered to grant permission, on such conditions as he deems fit to impose, for the use of such building or ground or site belonging to the institution for holding public functions arranged by the management or by a Department of the State or the Union Government or for any non-political purposes.

The authority concerned should obtain the orders of the Director of School Education or Director of Collegiate Education as the case may be in doubtful cases.

In no case shall the use of such buildings, play-grounds or vacant site be given for political meetings.

Note:- This rule is applicable to all institutions under different management recognized under Tamil Nadu Educational Rules."

(iv) In State of A.P. v. V.Sarma Rao & Ors. reported in 2007 (2) SCC 159, the Hon'ble Supreme Court held that the expression "ordinarily" may mean "normally", as has been held by this Court in Kailash Chandra v. Union of India [(1962) 1 SCR 374] and Krishan Gopal v. Prakashchandra [(1974) 1 SCC 128] but, the said expression must be understood in the context in which it has been used. It was further stated as follows:

"When in a common parlance the expression "ordinarily" is used, there may be an option. There may be cases where an exception can be made out. It is never used in reference to a

case where there is no exception. It never means "primarily". In *Kailash Chandra v. Union of India* [(1962) 1 SCR 374 : AIR 1961 SC 1346] it is stated: (SCR p. 379)

"This intention is made even more clear and beyond doubt by the use of the word 'ordinarily'. 'Ordinarily' means 'in the large majority of cases but not invariably'."

(v) In *Commissioner of Customs v. J.D. Orgochem Ltd.*, reported in 2008 (6) SCC 576, the Hon'ble Supreme Court, at Paragraph 13, held as follows:

"13. The expression "ordinarily" may mean "normally". It has been held by this Court in *Kailash Chandra v. Union of India* [AIR 1961 SC 1346] and *Krishan Gopal v. Prakashchandra* [(1974) 1 SCC 128] that the said expression must be understood in the context in which it has been used and, thus, "ordinarily" may not mean "solely" or "in the name", and thus, if under no circumstance an appeal would lie to the Principal District Judge, the Court would not be subordinate to it. When in a common parlance the expression "ordinarily" is used, there may be an option. There may be cases where an exception can be made out. It is never used in reference to a case where there is no exception. It never means "primarily"."

(vi) In *Union of India v. Hemraj Singh Chauhan* reported in 2010 (4) SCC 290, at Paragraphs 40 and 41, the Hon'ble Supreme Court held as follows:

"40. This Court is not very much impressed with the aforesaid contention. The word "ordinarily" must be given its ordinary meaning. While construing the word the Court must not be oblivious of the context in which it has been used. In the case in hand the word "ordinarily" has been used in the context of promotional opportunities of the officers concerned. In such a situation the word "ordinarily" has to be construed in order to fulfil the statutory intent for which it has been used.

41. The word "ordinarily", of course, means that it does not promote a cast-iron rule, it is flexible (see *Jasbhai Motibhai Desai v. Roshan Kumar* [(1976) 1 SCC 671] at SCC p. 682, para 35). It excludes something which is extraordinary or special (*Eicher Tractors Ltd. v. Commr. of Customs* [(2001) 1 SCC 315] at

SCC p. 319, para 6). The word "ordinarily" would convey the idea of something which is done "normally" (Krishan Gopal v. Prakashchandra [(1974) 1 SCC 128] at SCC p. 134, para 12) and "generally" subject to special provision (Mohan Baitha v. State of Bihar [(2001) 4 SCC 350 : 2001 SCC (Cri) 710] at SCC p. 354)."

13. From the legal pronouncements it could be used that the term "Ordinarily", used in the rules only means, 'Normally' and that there could be an exception. It does not mean 'solely' nor it means, 'primarily'. In the case on hand, the Exhibition ground measuring 7.15 Acres is situated adjacent to the Government Boys Higher Secondary School. The Chief Educational Office is situated in the ground and it has separate entrance and the activities conducted in the ground will not affect the school programmes. The School has separate entrance and play ground and this ground is additionally used by the students. The play ground is connected to the school through separate entrance, and the distance will be around 100 meters. Moreover, the Exhibition is conducted only after the school timings i.e. 05.00 P.M. to 10.00 P.M., and therefore it will not have any impact on the activities of the School. The exhibition is being conducted in the same place for the past 26 years and lakhs of public are visiting the place to know the various schemes implemented by the government to the public and so far there is no objection from any of the Krishnagiri public or others.

14. It is further stated by the District Collector, Krishnagiri District that out of 7.15 acres of land, around 5 acres of land would be demarcated and would be utilized for the purpose of Government High School, Krishnagiri and the remaining land, reclassified and be used for public purpose. It is submitted that no other new function would be permitted to be carried out in that ground until the reclassification is made in the revenue records.

15. In view of the decisions and discussion, we are of the view that there is no total prohibition in the rules, to have a government programme, Mango Exhibition, to encourage the mango growing farming community by giving various technologies of mango cultivation and to display the various activities of the government to the public, as this district is pioneer in mango cultivation.

16.Writ petition is dismissed. No Costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

dm

To

- 1.The Secretary to Government,
Department of School Education,
St.George Fort, Chennai - 600009.
- 2.The Secretary to Government,
Information and Public Relation Department,
Secretariat, St.George Fort, Chennai.
- 3.The District Collector,
Krishnagiri District,
Krishnagiri.
- 4.District Educational Officer,
Krishnagiri District,
Krishnagiri.

+1cc to Mr.A.Mohamed Ismail , Advocate SR.No. 55795
+1 cc to Government Pleader Sr.No. 55181

A.SK(23/07/2019)

W.P.No.17619 of 2019

सत्यमेव जयते

WEB COPY