

**The Manager, Palathingal M.L.P. School, Parappanangadi Vs. Sethumadhavan P.K. and Ors.**

**[Civil Appeal No(S). 11359 of 2017 @Special Leave Petition (C) No.11894 of 2016]**

Deepak Gupta, J.

1. Leave granted.

2. This appeal is directed against the judgment dated 29th March, 2016 whereby the Writ Appeal No.669 of 2016 filed by the appellant herein was dismissed and the judgment dated 22nd February, 2016 of the learned Single Judge in Writ Petition (Civil) No. 20027 of 2015, filed by the respondent No.1 herein was allowed.

3. The undisputed facts are that the appellant school was a junior primary school up to the level of Class IV. Vide order dated 16th June, 2015 the appellant school was upgraded to the level of upper primary school i.e. it was permitted to run from Class V to Class VIII also. The order of the government dated 16th June, 2015 permitting the school to be upgraded was challenged by respondent No.1, who is the Manager of a school being run in the vicinity. The main ground of challenge was that the procedure prescribed under the Kerala Education Rules, 1959 (for short 'KER'), had not been followed and no notice was given to the schools in the vicinity to raise any objection with regard to the upgradation.

The learned Single Judge allowed the writ petition mainly on the ground that the procedure prescribed in Rule 2 of Chapter V of KER was not followed. The order of the State Government was set aside but permission was given to the appellant school to permit the students already admitted, to continue their education in the school till the next academic year. The learned Single Judge also directed that it would be open to the Government to take a fresh decision in the matter after following the procedure prescribed under Rule 2 of Chapter V of KER. The appellant filed Writ Appeal No.669 of 2016 which was dismissed. Hence this appeal.

4. Mr Huzefa Ahmadi, learned senior counsel appearing for the appellant school urged that both the courts have lost sight of the fact that the Government of Kerala specifically exercised the powers of relaxation vested in it under Rule 3 of Chapter I of KER. A perusal of the order dated 16th June, 2015 shows that it is a detailed order and the appellant school had made a request that to meet the needs of the children of the locality it may be permitted to be upgraded as an upper primary school. In the order it is mentioned that the appellant school is situated in an economically backward area and the students mainly belonged to the minority Muslim community. It is also observed that the students studying in this school have to attend schools at a distance of 2.5 kilometres to 6 kilometres after passing Class IV.

It was also noticed that there are 268 students studying in the school from Class 1 to Class IV. After considering all these aspects and after taking into consideration Rule 2 and Rule 2A of Chapter V of KER, which prohibit opening and upgradation of new schools except in terms of the said rules, the government has taken a conscious decision to make relaxation in favour of the appellant school and exempted it from the provisions of Rule 2 and Rule 2A of Chapter V of KER and it has been upgraded to an upper primary school from the academic year 2015-2016.

Shri Ragenth Basant, learned counsel appearing for the respondent No.1 urged that without giving an opportunity to the respondent No.1 no upgradation order could have been passed in favour of the appellant school. Shri Prashant Bhushan, learned counsel appearing for respondent No. 6, the Parent Teachers Association, supported the appellant and wanted that the children should go to the appellant school which is located in their locality.

5. It appears that the attention of the High Court was not drawn to the last two paragraphs of the impugned order which makes specific reference to Rule 2 and Rule 2A of Chapter V of KER as well as Rule 3 of Chapter I of KER and the conscious decision of the State to relax the rigours of the rules. There was no specific challenge to the order of relaxation. Even otherwise, we are clearly of the view that the Government had the authority and jurisdiction to grant such a relaxation in terms of Rule 3 of Chapter 1 of KER, which reads as follows:

"3. Where the Government are satisfied that the operation of any rule under these Rules causes undue hardship in any particular case, the Government may dispense with or relax the requirements of that rule to such extent and subject to such conditions as they may consider necessary for dealing with the case in a just and equitable manner."

6. We may also mention that we have gone through the file of the case especially the map (Annexure P-13), showing the distance of the various schools and we find that no other school is at a distance of less than 3 kilometres from the appellant school. Even the school of respondent No. 1, as per the averments made in the map, is at a distance of 3 kilometres if one crosses a level crossing and is at a distance of 4.5 kilometres if this journey is undertaken by a bus. We cannot expect children in the age group of 10 to 14 years to walk 3 kilometres or more to attend school. The right of education up to the age of 14 years is now a fundamental right under article 21A of the Constitution of India and if this right is to be meaningful then efforts must be made to open upper primary schools in such a manner that no child has to walk 3 kilometres or more only to attend school.

7. In view of the above discussion we are clearly of the view that the learned Single Judge was not justified in allowing the writ petition. We accordingly set aside the judgment of the Division Bench as well as of the learned Single Judge and allow the instant appeal. Pending application(s) stand(s) disposed of.

.....J. (MADAN B. LOKUR)

.....J. (DEEPAK GUPTA)

New Delhi

September 08, 2017