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The Manager vs the State of Kerala

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Court : Kerala

Decided On : Jun-30-2022

Judge : Honourable Mr. Justice Raja Vijayaraghavan V

Appeal No. : WP(C)/20319/2022

Appellant : The Manager

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V THURSDAY, THE 30TH DAY OF JUNE 2022 / 9TH ASHADHA, 1944 WP(C) NO. 20319 OF 2022 PETITIONER: THE MANAGER CAUP SCHOOL, MAMPAD, KIZHAKKANCHERY, PALAKKAD DISTRICT. BY ADVS. K.T.SHYAMKUMAR HARISH R. MENON K.N.ABHA A.G.PRASANTH K.S.SREEJA OASHIN LALAN RESPONDENTS: 1 THE STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001. 2 THE DEPUTY DIRECTOR OF EDUCATION CIVIL STATION, PALAKKAD DISTRICT, PIN - 678 001. 3

THE ASSISTANT EDUCATIONAL OFFICER ALATHUR, ERATTAKULAM, ALATHUR, PALAKKAD DISTRICT, PIN - 678 541. SMT NISHA BOSE, SR GOVERNMENT PLEADER THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.06.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner states that he is functioning as the Manager of the CAUP

School, Mampad, an aided school governed by the provisions of the Kerala Education Act and the Rules framed thereunder. According to the petitioner, the school originally belonged to a certain Chellan, who was the approved manager of the school. As per a Will executed in the year 1979, registered at the Alathur Sub Registrars Office, the aforesaid Chellan bequeathed his rights in favour of his children. It is stated that a suit was instituted before the jurisdictional civil court challenging the Will and the same was dismissed by

Ext.P1. Consequent thereto, the sister of the petitioner, a certain Smt.M.C.Lakshmi, was appointed as the Manager of the School and the same was approved by the 3rd respondent as is evident from Ext.P2. Though the said order was challenged before the DPI, the same was confirmed by Ext.P3 order. The aforesaid Lakshmi continued as Manager till the year 2016. After the expiry of the term of the aforesaid Lakshmi, an application was filed to approve the petitioner herein as the Manager of the school with the consent of the remaining legatees. In the meantime, Ext.P4 bye-law was framed for the functioning of the Corporate Educational Agency. On the strength of the bye-law so framed, the petitioner was approved as the Manager of the school

for a period of 5 years with effect from 20.08.2016 as per Ext.P5 order. On the expiry of the term, the petitioner submitted Ext.P6 application for approval of managership for a further period of five years along with Ext.P7 consent letter issued by the remaining legatees. However, instead of granting approval, the petitioner was directed by the 3rd respondent to produce the

Constitution of the Educational Agency and also the Minutes Book. The petitioner in the said circumstances produced Ext.P12, copy of the Constitution and contended that he has already been approved as the Manager and what he is seeking for is an extension. However, his request was

again rejected as is evident from Ext.P10 letter. In the said circumstances, the petitioner is stated to have preferred Ext.P11 representation before the 2nd respondent along with Ext.P12 copy of the Constitution. However, he was served with Ext.P13 calling upon him to produce the copy of the approved Constitution. According to the petitioner, there is no justification in delaying the grant of approval for the reasons mentioned in Ext.P13. It is in the afore circumstances that the petitioner is before this Court seeking the following reliefs:

1.Declare that in the light of Exhibit P5 order approving the appointment of the petitioner as Manager of the CAUP School, Mampad, Palakkad District for a period of 5 years, the respondents 2 and 3 ought to have granted approval for extension of his tenure for the next 5 years in the light of Exhibit P7 consent letter issued by the members of the educational agency.

2. Issue a writ of mandamus or any other appropriate writ, order

or direction, directing the 3rd respondent to pass orders approving the extension of the petitioners tenure as Manager of the CAUP School, Mampad, Palakkad District as requested in Exhibit P6 application as expeditiously as possible at any rate within a time limit to be prescribed by this Honourable Court.

2. The learned Government Pleader, on instructions, pointed out

that in Ext.P4 bye-laws, reference is made to Rule 8 of the Constitution of the CAUP School, Mampad. Reliance is also placed on Rule 2 of Chapter III of the KER to justify the stand taken by the DEO.

3. I have considered the submissions advanced and have gone through the records.

4. From the records, it appears that the Educational Agency was

being managed by Smt.M.C.Lakshmi consequent to Ext.P1 judgment rendered by the Sub Court, Palakkad. The 3rd respondent had granted approval and the said order was confirmed by the DPI by Ext.P3 order. It was thereafter that the petitioner was approved as the Manager of the school for a period of 5 years with effect from 20.8.2016 as per Ext.P5 order. The petitioner has sought for extension for a further period of 5 years and it was on the said application that directions were issued to place on record the approved

constitution. The case of the petitioner is that the Educational Agency is a creation of Ext.P14 registered Will and the said Will is the Constitution of the Educational Agency. It appears that by Ext.P3 order, the DPI had upheld the change of management of the school. Though the petitioner has placed before the 2nd respondent Ext.P12, which is a copy of the Constitution, the

same is not an approved one. As per the mandate of the Statute, the Corporate Educational Agency is required to have a Constitution insofar as it relates to the management of the school and the constitution is required to be subject to the rules approved by the Director and prescribing the matters mentioned in Rule 2 of Chapter III. Admittedly, the Educational Agency do not have an approved Constitution. In that view of the matter, the stand taken by the 3rd respondent cannot be faulted.

5. In order to prevent a stalemate and considering the fact that the

petitioner has been functioning as the Manager since 2016, I am of the view that breathing time has to be granted to the petitioner to get the Constitution of the Educational Agency approved by the Director. Until then, necessary directions can be issued to respondents 2 and 3 to provisionally grant approval for the extension of the tenure of the petitioner. However, the Educational Agency will have to frame a Constitution in tune with the

stipulations in Rule 2 Chapter III of the KER and place it before the concerned respondent and get the same approved.

6. In view of the discussion above, this writ petition is disposed of by issuing the following directions:

a) The petitioner shall frame a constitution of the Corporate Educational Agency and place it before the competent authority for approval within a period of three months from today. b) The Director shall consider the grant of approval and take a decision within a period of two months from the date of submission. c) The respondents shall extend the tenure of the petitioner as Manager of the CAUP School, Mampad, for a period of six months subject to conditions above, on the petitioner produces consent letters from the members of the Educational Agency.

Sd/- RAJA VIJAYARAGHAVAN V, IAP JUDGE APPENDIX OF WP(C) 20319/2022 PETITIONERS EXHIBITS: Exhibit P1 TRUE COPY OF THE JUDGMENT DATED 27-11 2002 IN O.S.NO.290/1996 OF THE SUB COURT, PALAKKAD. Exhibit P2 TRUE COPY OF THE ORDER DATED 12-9-2003 Exhibit P3 TRUE COPY OF THE ORDER DATED 9-3-2004 ISSUED BY THE DIRECTOR OF PUBLIC INSTRUCTIONS. Exhibit P4 TRUE COPY OF THE BYLAW APPROVED BY THE 3RD RESPONDENT ON 26-10-2016. Exhibit P5 TRUE COPY OF THE ORDER DATED 8-11-2016 Exhibit P6 TRUE COPY OF THE APPLICATION DATED 2-8-2021 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT. Exhibit P7 TRUE COPY OF THE CONSENT LETTER DATED 29-6-2021. Exhibit P8 TRUE COPY OF THE LETTER DATED 8-9-2021 Exhibit P9 TRUE COPY OF THE LETTER DATED 21-11-2021 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT. Exhibit P10 TRUE COPY OF THE LETTER DATED 1-2-2022 ISSUED BY THE 2ND RESPONDENT. Exhibit P11 TRUE COPY OF THE REPRESENTATION DATED 8-3-2022 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT. Exhibit P12 TRUE COPY OF THE CONSTITUTION OF THE EDUCATIONAL AGENCY SUBMITTED BEFORE THE 2ND RESPONDENT. Exhibit P13 TRUE COPY OF THE LETTER DATED 30-4-2022 Exhibit P14 TRUE COPY OF THE REGISTERED WILL NO. OFFICE. RESPONDENTS EXHIBITS: NIL

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