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Court : Kerala

Decided On : Jun-07-1999

Reported in : AIR1999Ker413

Judge : Ar. Lakshmanan, Actg. C.J. and; S. Sankarasubban, J.

Acts : Constitution of india - Article 226

Appeal No. : W.A. No. 1057 of 1999

Appellant : Arun S. Nair and Ors.

Respondent : Headmaster, St. Michael's Anglo-Indian High School, Kannur and Ors.

Advocate for Def. : Alexander Thomas, Govt. Pleader,; K.L. Narasimhan and Anil Xavier

Advocate for Pet/Ap. : K. Balakrishnan and; I. Sheeladevi, Adv.

Disposition : Appeal dismissed

Judgement :

Ar. Lakshmanan, Actg. C.J.

1. Heard Mr. K. Balakrishnan for the appellants and M/s. K.L. Narasimhan and Anil Xavier for the contesting respondents.

2. The unsuccessful petitioners in the Original Petition are the appellants herein. Aggrieved by the action taken by respondents 1 and 2 herein, which, according to them, would result in denial of admission to them to the 1 Standard of the St. Michael's Anglo-Indian High School, Kannur, which is an aided school run by the 2nd respondent, the appellants/petitioners approached this Court. According to the appellant, the school is bound by the provisions of the Kerala Education Act and the Rules and the Manager of the school is bound by the statutory duties contained therein. Any action taken by the Manager contrary to the statutory provisions, according to the appellants, is amenable to correction at the hands of this Court. Our attention was also drawn to Chapter VI-A, Rules 1, 4, 6 and 11 of the Kerala Education Rules.

3. Per contra, the management submitted that the process of selection to the first standard, where the education begins, based on entrance test -- written or oral -- is with the intention of selecting meritorious students among the applicants, and that the management, which is an authority under Article 12 of the Constitution of India, which is also a Minority Institution, is entitled to frame its own regulations including the matter of regulating admission to schools established by it. It is submitted further that the special rules for Anglo-Indian Schools in Kerala State was published in Kerala Gazette No. 37, dated 10th September, 1974 and it provides for making such regulations. As regards the submission made by learned Counsel for the appellant that the school being an aided school, the provisions of Chapter VI of the Kerala Education Rules regarding admission of pupils in the school is applicable, it is submitted that the said rules are silent as to the method of selection of students to Standard I where the applicants exceed the number of seats available, and that the merit list is prepared on the basis of the entrance test as the number of students applied for admission to Standard I is much more than that could be accommodated. The appellants have also no case that there was irregularities in conducting the entrance test and therefore, the selection is illegal.

Learned counsel for the management drew our attention to Clause 16 of the application for admission to St. Michael's Pre-Primary School (U.K.G.), wherein it is specifically stated that 'there is no guarantee for admission from pre-primary school to primary school and that the primary school will hold tests before admission at its discretion'. It is further stated that the admission to U.K.G. is also based on a screening based mainly on learning and comprehension, as stated in Clause 15 of the application form. Along with their counter affidavit, the management has filed Exts. R2 (a) to (c), which are photocopies of the application form for admission to U.K.G. in St. Michael's Pre-Primary School; pages 1 and 11 of the Diary of St. Michael's Anglo Indian High School; and the registration form for tests for admission to Standard I of St. Michael's Anglo Indian High School, Kannur. It is seen from Ext. R2 (b) that the students are admitted only at the start of the academic year on the basis of the performance in the entrance test. The note appended to Ext. R2 (c) registration form states that the candidates will have to appear for a written test for the subjects English and Mathematics; that the admission is granted on merits and that recommendations or donation of any kind will affect the chance of admission adversely.

4. The learned single Judge (K.S. Radhakrishnan, J.) disposed of the Original Petition on merits following a Division Bench decision of this Court reported in *Midhun Murali v. FACT*, (1998) 2 KLT 705 : (AIR 1999 Ker 36). The learned Judge held that the management has not meted out any discriminatory treatment to the appellants and that the fact that the appellants did their U.K.G. course in the pre-primary school of the same management does not mean that they should be admitted to first standard. The learned Judge rejected the contention of the counsel for the petitioners/appellants herein that when test is the criterion for admission to first standard, the management is acting arbitrarily.

5. According to counsel for the appellants, the Division Bench decision relied on by the learned single Judge has no application to the facts of this case. He submitted that the school involved in the said case was not an aided school, but it was following the C.B.S.E. syllabus. Another distinguishing feature pointed out by the learned counsel is that the school in the said case was established and run by a public sector company receiving no aid from the Government to cater the needs of

the children of the employees of the company and only when seats are available after admitting the children of the employees, students from among the public are admitted. Counsel drew our attention to the rules in Chapter VI of the Kerala Education Rules regarding admission to standard I. Rule 1 provides that no student shall be admitted except on an application by his parent/guardian. Rule 4 provides that admission shall be made during summer vacation. Rule 5 prescribes the age limit for admission. Rule 11 deals with the conditions of the admission. But the rules are silent as to the method of selection of students to Standard I, where the applicants exceed the number of seats available. The contention of counsel for the appellants is that the manager being an agent of the state in the field of education, in the light of the decision of the Supreme Court in *Unnikrishnan J.P. v. State of A.P.*, AIR 1993 SC 2178 : (1993 AIR SCW 863), is bound by the mandate of Article 14. It is submitted further that the question of admission test or the result in a particular class or school for the purpose of admission would arise only if a student of one institution goes for admission in some other institution.

6. We are unable to countenance the said submission. We have already referred to the annexures filed along with the counter affidavit. The registration form for the test for admission contains a note, which specifically states that admission is granted only on merits and the appellants, after having applied for the test knowing fully well that admission to Standard I is on the basis of merit assessed by an entrance test, cannot now turn round and say that the entrance test is illegal. In paragraph 9 of the counter affidavit the management has furnished the details regarding the number of seats available and other particulars. It is further submitted that though the Manager of Pre-Primary (L.K.G. and U.K.G.) and the High School are the same, the Pre-Primary and the High School Sections are two different institutions under the same management and that the pre-primary section is unaided and unrecognised, the administration of which is not controlled by the provisions of the Kerala Education Rules. We are of the opinion that the appellant cannot contend that pupils who successfully completed the pre-primary course in St. Michael's School would automatically get admission to Standard I in the High School without undergoing any selection test. The process of selection for admission to the first standard, where education begins, is prescribed with the intention of selecting meritorious students among the applicants. Therefore, as

rightly pointed out by a Division Bench of this Court to which one of us was a party, (AR. Lakshmanan, J.) in *Midhun Murali v. FACT*, (AIR 1999 Ker 36) (*supra*), the management is entitled to prescribe restrictions in the matter of regulating admissions which can also include an assessment consisting of written and oral tests. As pointed by the learned counsel for the management, the appellants are not denied admission, but they have to participate in the test to be conducted for all the applicants. Those who come out successful in the test will be admitted to the first standard in the order of merit. It is submitted by counsel for the management that out of the 27 appellants herein, except appellant Nos. 13, 16 and 22, all others come out successful in the test and they were admitted to the first standard in the school.

7. The various grounds taken by the appellants and the decisions cited by counsel in support of those contentions are not applicable to the facts of the case on hand. We are of the view that the management of a minority institution has every right to restrict the admissions to the first standard, where education begins by conducting entrance test and, therefore, we confirm the judgment of the learned single Judge and dismiss the writ appeal as devoid of any merit.