

Kerala High Court

T.R.Padmakumar vs The Kerala State Road Transport on 12 October, 2010

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 18369 of 2010(U)

1. T.R.PADMAKUMAR, (PRACHARAK NO.3786),
... Petitioner

Vs

1. THE KERALA STATE ROAD TRANSPORT
... Respondent

2. THE STATE OF KERALA, REPRESENTED BY

3. THE DTO KERALA STATE ROAD TRANSPORT

For Petitioner :SRI.R.RAJASEKHARAN PILLAI

For Respondent :SRI.V.V.NANDAGOPAL NAMBIAR,SC, KSRTC

The Hon'ble MR. Justice C.T.RAVIKUMAR

Dated :12/10/2010

O R D E R

C.T. RAVIKUMAR, J

W.P.(C)No.18369 OF 2010

Dated this the 12th day of October, 2010

J U D G M E N T

The petitioner who is a Pracharak of the Kerala Hindi Prachara Sabha filed this writ petition mainly seeking issuance of a writ of mandamus commanding the first respondent and its officers to extend the benefit of student concession to the students of the petitioner's institution namely, Pragathy Hindi Vidyalaya, Padmalayam in Kollam District. In fact, the question of entitlement of students of Pragathy Hindi Vidyalaya was a subject matter of two writ petitions before this Court, namely, in

WP(C) No.14270/2008 and WP(C) No. 22963/2008. As per common judgment the said writ petitions were disposed as per Ext.P3. Admittedly, the student concession facilities have been extended by the Kerala State Road Transport Corporation to the students by virtue of Government Order G.O(P)35/2005 Tran. dated 24.11.2005. After adverting to the relevant clause thereunder viz., Clause G of the said Government Order and the rival contentions raised therein, it was held in Ext.P3 as WPC.No.18369/2010 hereunder:-

"By Ext.P1 certificate produced by the petitioners from the Kerala Hindi Prachar Sabha, the Kerala Hindi Prachar Sabha has certified that the petitioner's institution is recognised by the Kerala Hindi Prachar Sabha, the institution is recognised by the Kerala Hindi Prachar Sabha and that the institution is conducting classes for various examinations such as Hindi Pravesh, Hindi Bhooshan and Sahityacharya, which are considered as full- time classes. It is also stated therein that the students of these courses are not given any stipend. The institutions run by the Kerala Hindi Prachar Sabha directly and the institutions like the petitioner's institutions are preparing the students for the same courses, same examinations and same certificates. That being so, I am of opinion that the Kerala State Road Transport Corporation cannot discriminate between the students of direct branches of Hindi Prachar Sabha and franchisees of Hindi Prachar Sabha like the petitioner. That being so, the students studying in the petitioner's institution are also entitled to the equal treatment like the students of branches of Hindi Prachar Sabha in the matter of student concession.

Accordingly, I direct the Kerala State Road Transport Corporation to extend student concession facilities to the students studying in the Pragathi Hindi Vidyalaya, Padmalayam conducted by the petitioner in WP (C) No. 14270/2008 with immediate effect. The writ petitions are allowed as above"

2. As per Ext.P3 it was held that the student concession facilities is available to the students in the institutions run by the Kerala Hindi Prachar Sabha and also in institutions like the petitioner's institutions. Consequently, direction was also given to extend the students concession facilities to the students of Pragathi Hindi Vidyalaya conducted by the petitioner with immediate effect. Feeling aggrieved by Ext.P3 judgment the matter was taken in appeal as per WA WPC.No.18369/2010 No.2563/2009. A perusal of Ext.P4 judgment would reveal that the Corporation had raised the contention therein that the institution run by the petitioner was not recognized by the Hindi Prachar Sabha. It is evident from Paragraph 4 of Ext.P4 judgment that the factum that the Corporation had been extending the benefit of student concession to the students of the 12 branches of Hindi Prachar Sabha was also taken note of by the Division Bench. The contention of the Corporation that the institution run by the petitioner herein and the institution run by the Hindi Prachar Sabha are different and was not accepted by the Division Bench as it is seen from Ext.P4 judgment. The operative portion of Ext.P4 judgment assumes relevant and it reads thus:-

"Since learned Standing Counsel for the Corporation submits that certain clarifications may have to be obtained from the Government as regards the status of the students of institutions like respondent No. 1 run by Hindi Pracharaks,

particularly in view of Ext.R1(h) we make it clear that it will be open to the Corporation to approach the Government and seek appropriate clarification, if found necessary. Therefore, this order shall remain in force only during the academic year 2009-2010.

With the above modification/clarification in the impugned judgment, the writ appeal is closed."

3. It is relevant to note that as per Ext.P4 judgment virtually the judgment in Ext.P3 was affirmed by the Division Bench and it was thereafter that taking note of the fact that WPC.No.18369/2010 the corporation had sought certain clarifications from the Government and that such clarifications were yet to be received that the operation of the judgment was limited to the academic year 2009-10. It is a common case that the said situation continues even now.

4. The learned counsel for the petitioner also made available a copy of the memorandum No. TR2/026901/2006 dated 1.7.2010. It would reveal that even those students studying at the office campus centres are being extended the student concession by the Corporation.

5. The respondents have filed a statement and produced Annexure R1 along with the same. Annexure R1 is a letter from the Chairman and Managing Director of the Corporation to the Government dated 9.12.2009. Essentially it carried a request for furnishing clarifications sought for and referred to in Ext.P4 judgment. However, it is the admitted position that despite the receipt of Annexure R1 no clarifications have been given by the Government as per G.O(P) 35/2005 Tran. dated 24.11.2005. According to the respondents the present issue of the student concession is being governed by G.O(MS)11/2003 Tran. dated 17.3.2003. It is contended that the students WPC.No.18369/2010 studying in the institution of the petitioner are now falling under the purview of the said Government Order dated 17.3.2003. Therefore, the Corporation is not bound to extend the concession facility to the students studying in the petitioner's institution. However, it is a fact that the entitlement of the student concession facilities to the institutions run by the petitioner was upheld by this Court and that was virtually affirmed by this court in Ext.P4 judgment though it was restricted to the academic year 2009-10. It was so limited for the reason that Government did not furnish certain clarifications sought for by the Corporation. A scanning of contentions of the corporation would reveal that they did not have a case that pursuant to their request for clarifications, Government have clarified the points and by virtue of such clarifications the students studying in the petitioner's institutions are disentitled to get student concession facilities. In the absence of any such contentions, I am of the view that the position obtained in the light of Ext.P3 and P4 is to be continued. In short, so long as the situation that was available at the time of disposal of the Writ Appeal No.2563/2009 continues, I am of the view that Ext.P3 WPC.No.18369/2010 judgment shall hold the field. In that view of the matter, there is no reason for not extending the students concession facilities to the students of Pragathy Hindi Vidyalaya as long as the said position continues.

Disposed of accordingly.

Sd/-

(C.T. RAVIKUMAR, JUDGE) jma //true copy// P.A to Judge