
(1998) 07 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 414 of 1998

Amar Singh and Others

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 23-07-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 226
General Clauses Act, 1897 — Section 14

Citation : (1998) 2 ShimLC 508

Hon'ble Judges : D. Raju, C.J.; Kamlesh Sharma, J

Bench : Division Bench

Advocate : Om Prakash Sharma and Ashok Chaudhary, for the Appellant;
Sanjay Karol, General, for the Respondent

Final Decision : Dismissed

Judgement

Kamlesh Sharma, J.—The Petitioners are residents of different villages in Tehsil Jawali, District Kangra. Being provoked by the tour programme of the Hon'ble Chief Minister that he would inaugurate S.E. Office Shahnehar, Fatehpur at Sihali on 28.6.1998, the Petitioners have hastened to file this writ petition on 26.6.1998 with a prayer to restrain Respondent No. 1 from shifting the Circle Office of Shahnehar Project from Jawali to Sihali. The writ petition was taken up for admission on 29.6.1998 when we issued notice to the Respondents and asked them to file their reply. We also observed that material shifting of Circle headquarters from Jawali to Sihali will not be done till we get to know the stand of the Respondents from their reply. Now, the reply-affidavit of the Respondents is on record, to which rejoinder has also been filed by the Petitioners. Therefore, we are finally disposing of this matter after hearing the learned Counsel for the parties.

2. It is alleged in the writ petition that Shahnehar Project Circle with headquarters at Jawali was created by notification dated 14th October, 1997 (Annexure P-1). As stated in this notification, Shahnehar Project Circle comprised

of the Divisions and six Sub-Divisions as follows:

1 Shahnehar Project Division No. I Sansarpur-Terrace

i. Shahnehar Project Sub-Division Sansarpur-Terrace.

ii. Shahnehar Project Sub-Division Sathana.

iii. Shahnehar Project Sub-Division Ray.

2. Shahnehar Project Division No. II Badhukar

i. Shahnehar Project Sub-Division Badhukar.

ii. Shahnehar Project Sub-Division Ghandran.

iii. Shahnehar Project Sub-Division Thakurdwara.

3. It is further stated in the writ petition that Jawali is most suitable place for the location of Shahnehar Circle Office as it is not only centrally located but also has all the amenities of life which promote general public convenience. According to the Petitioners, Jawali is a fast developing town. Besides headquarters of Sub-Division number of Government Offices, such as, Office of Deputy Superintendent of Police, Tehsil Office, Treasury, three Offices of Executive Engineers of Irrigation & Public Health, Himachal Pradesh State Electricity Board and Public Works Departments, Employment Exchange Office, Forest Range Office, etc. etc. are located there. It is also stated that there are branches of three nationalized banks, Post Office, Senior Secondary School, three rest houses of the Government, etc. etc. at Jawali. There is also Railway Station at Jawali, which is on railway line from Pathankot to Jogindernagar. The population of Jawali town is about 25,000/-. The Office of Superintending Engineer, Shahnehar Project at Jawali was functioning in a building consisting of seven rooms and one covered shed having a covered area of more than 3,000/- sq. feet. All the employees of the Circle Office at Jawali were having accommodation for their families there.

4. It is also stated in the writ petition that the Circle Office of Shahnehar Project had successfully functioned at Jawali for more than eight months and there are no valid reasons for shifting it to Sihali after renaming a Circle Office of Shahnehar Project, Fatehpur at Sihali. It is alleged by the Petitioners that shifting of Circle Office to Sihali is not in the public interest and will not promote either administrative convenience or public convenience and it has been done just on the "fancy whims of some interested person". According to the Petitioners, village Sihali, where Circle Office is proposed to be shifted, is in the interior of Fatehpur Tehsil having no facilities, in the absence of which the staff of the Circle Office and the public visiting the Circle Office for attending to their needs and problems will face great hardship. There is also no pucca link road between Jawali and Sihali. There is also no suitable accommodation available at Sihali for housing the Circle Office as well as its employees. It is also pointed out that the people of Jawali are agitated on the proposed shifting of the Circle Office from

Jawali to Sihal and are sitting in Dharnas in front of the present Circle Office at Jawali and if the proposal materialises, there is great apprehension of disturbance of peace and law and order. In this view of the matter, the working of Shahnehar Project will also suffer badly, which will be against the interest of the State. Therefore, it is alleged that the proposed shifting of Circle Office from Jawali to Sihal is actuated mala fide as well as extraneous reasons and is colourable exercise of powers. Lastly, it is alleged that in the absence of any notification of the State Government either to rename the Circle Office from Shahnehar Project Circle with Headquarter at Jawali to Superintending Engineer Office Shahnehar Project, Fatehpur at Sihal or shifting of Circle Office from Jawali to Sihal, the action of the Government is wrong, illegal and cannot be sustained on judicial review.

5. In their reply filed on the affidavit of Shri S.D. Bhatoa, Under secretary (IPH) to the Government of Himachal Pradesh, the Respondents have made preliminary submissions besides reply on merits that the writ petition is misconceived and not maintainable as the Headquarter of Shahnehar Project Circle, Jawali has been shifted to Fatehpur and not to Sihal vide notification dated 27th June, 1998 (Annexure RA). It is also stated that the Petitioners, who hail from Jawali Tehsil of Kangra District, have no locus standi to file this writ petition as no area in Jawali Tehsil is to be irrigated by Shahnehar Project and its entire area falls in Fatehpur and Indora Tehsils of Kangra District. In view of this, on the basis of administrative and functional considerations Jawali was not at all suitable place for location of Circle Headquarter of Shahnehar Project. Besides shifting the Circle Headquarter of Shahnehar Project the administrative and technical control of Sidhata Project has also been transferred to Shahnehar Project Circle, Fatehpur from IPH Circle, Nurpur vide notification dated 27th June, 1998 (Annexure RA) in respect of which the Petitioners have not made any averment in their writ petition. According to the Respondents, the action of the Government is well considered, in public interest and bona fide. Since change of Circle Headquarter of Shahnehar Project is a policy decision, it is not amenable to writ jurisdiction under Article 226 of the Constitution. The objection of suppressio veri to deliberately suppress and distort the basic facts in respect of location of Sihal and facilities available there has also been taken.

7. On merits, it is stated that Shahnehar Project is the first major irrigation project in Himachal Pradesh catering to two Tehsils, namely, Fatehpur and Indora in District Kangra with a culturable command area of 15287 h.a. and an estimated cost of Rs. 143.32 crores, which will be shared by the Punjab Government to the extent of Rs. 88.49 crores. The entire command area of the project is in Fatehpur and Indora Tehsils and Jawali Tehsil was not at all covered by the project, whereas, the Circle Headquarter was at Jawali. The two Divisions of the Circle at Bhadukar and Sansarpur Terrace are in Fatehpur Tehsil and Dehra Tehsil respectively and each Division has three Sub-Divisions but none of these six Sub-Divisions fall under Jawali Tehsil. Therefore, geographically and functionally there is no justification for the Circle Office to be at Jawali. So far

Sidhata Project is concerned, it is an important irrigation project with targetted command area of 3150 h.a. and estimated cost of Rs. 33.62 crores, which no doubt is situated in Tehsil Jawali.

8. The Respondents have further stated in the reply that prior to creation of Shahnehar Project Circle at Jawali the location of its Headquarter was changed quite a few times, originally it was at Dharamshala then shifted to Nurpur in April, 1986 when other works of Irrigation and Public Works Department were also assigned to it. The Respondents have annexed site plan (Annexure RB) with their reply to show that Jawali is far away from the point where work of Shahnehar Project has been started and by shifting Circle Headquarter to Fatehpur this distance has been reduced to half and two irrigation projects of Shahnehar and Sidhata have come closer to circle office. According to the Respondents, the Government took a conscious decision to locate the Circle Headquarter at Fatehpur, which is an ideal location, where besides numerous offices all modern facilities are available. Though the proposal received from the Chief Engineer, I&PH Department was for shifting Circle Headquarter to Fatehpur at Sihai but in view of non-availability of certain facilities at Sihai, the Government took decision to locate the Circle Headquarter at Fatehpur, which is at a distance of 3.5 kms. from Sihai. As stated by the Respondents, Fatehpur has all amenities of Sub-Treasury, Bank, Post Office and STD, as there are branches of State Bank of India and Kangra Central Co-operative Bank, Post Office and Telegraph Office. Besides Tehsil and Block Headquarters there are offices of HP PWD (B&R) Division and I&PH and H.P.S.E.B. Sub-Divisions, Office of Divisional Manager of H.P. State Forest Corporation, Office of Soil Conservator, Block Primary Education Officer, etc. etc. Primary Health Centre and Senior Secondary School are also there. In view of this, the shifting of Circle Headquarter from Jawali to Fatehpur is in public interest and in administrative convenience and also for better supervision and speedy implementation of the project. Fatehpur is also located on Mukerian-Talwara Highway, whereas, Jawali is located on a side road. Since both the Divisions and six Sub-Divisions of the project continued where they were, shifting of Circle Headquarter, which has only 19 employees, will not cost any locational disadvantage and functional inconvenience. According to the Respondents, a small group of people have resorted to some sort of agitation, whereas, some farmers who have their land holdings in the culturable command area, have appreciated the action of the Government by writing letters expressing their gratitude.

9. It is further stated that a regular and frequent bus service is available for Fatehpur, as such, it is easily accessible and no inconvenience will be caused to the general public. In the end, it is explained that the proposal for shifting the Circle Headquarter to Sihai was under consideration of the Government and the tour programme of Hon'ble Chief Minister was issued in advance. However, after considering all pros and cons, the Government took final decision of shifting the Circle Headquarter from Jawali to Fatehpur on 25.6.1998 and inauguration was held on 28.6.1998, wherein it was publically announced that Circle Headquarter

has been shifted from Jawali to Fatehpur. It is further stated that the Government will take immediate necessary steps to hire good building at Fatehpur as it had done at Jawali.

10. The Petitioners have filed rejoinder to the reply of the Respondents reiterating their allegations made in the writ petition and further supplementing them by the resolutions of different Panchayats of Tehsil Jawali (Annexure P-3 to P-22). It is stated that no policy is involved for shifting the Headquarter from one place to Anr. and it has been done to please B.J.P. M.L.A of Jawali Constituency. It is specifically stated that Sidhata Project, which is situated in Tehsil Jawali and requires constant supervision, as its construction involves high technical skill, will be adversely affected by shifting of Circle Headquarter from Jawali to Fatehpur, which is at a long distance from the command area of this project.

11. On the basis of allegations made in the petition and rejoinder, learned Counsel for the Petitioners Pt. Om Prakash, has urged that the decision of the Government to shift the Circle Headquarters from Jawali to Sihal, as stated in the tour programme (Annexure P-2) or even to Fatehpur is mala fide, for extraneous reasons, colourable exercise of powers and not in public interest. The learned Counsel has relied upon the observations in Para 29 of the judgment in Kumari Shrulekha Vidyarthi and Others Vs. State of U.P. and Others, in support of his submission, wherein relying upon their earlier judgments, the learned Judges of the Supreme Court have observed that, "...while the discretion to change the policy in exercise of the executive power, when not tramelled by the statute or rule, was held to be wide, it was emphasised as imperative and implicit in Article 14 of the Constitution that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone, irrespective of the field of activity of the State, has long been settled. Later decisions of this Court have reinforced the foundation of this tenet and it would be sufficient to refer only to two recent decisions of this Court for this purpose." Those two decisions are in Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, and Mahabir Auto Stores and others Vs. Indian Oil Corporation and others,

12. We are unable to appreciate how the judgment cited by the learned Counsel for the Petitioners helps him as the Government in its reply has made out sufficient reasons for taking decision to shift the Circle Headquarters from Jawali to Fatehpur, which is a Tehsil Headquarte