
(2013) 06 SHI CK 0076
In the High Court Of Himachal Pradesh
Case No : CWP No. 1468 of 2013

Dhrub Dev Sharma and Others	Vs	APPELLANT
State of Himachal Pradesh and Others		RESPONDENT

Date of Decision : 18-06-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2013) 4 SCT 264 : (2014) 1 ShimLC 153

Hon'ble Judges : Ajay Manikrao Khanwilkar, C.J.;Kuldip Singh, J

Bench : Division Bench

Advocate : R.K. Sharma, Neel Kamal Sharma, Adarsh K. Sharma, Anshul Bansal, V.B. Verma, Vikas Rajpur, Amar Parth, Ms. Vidhushi Sharma and Anita Parmar, for the Appellant; Shrawan Dogra, Advocate General and Mr. Romesh Verma, Additional Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

1. By this common Judgment, we propose to dispose of all these eight writ petitions together as the same involve similar and overlapping questions. These writ petitions have been filed by the students/parents of the students of the respective eight Government Degree Colleges, who claim to be affected by the decision of the State Government of closing down the said Colleges-as they were pursuing degree courses therein for the academic year 2012-2013. In all these 8 petitions, the State Government, by issuing notification on different dates between 23rd June, 2012 to 6th September, 2012, started new Government Degree Colleges in Rewalsar, Nihri, Ladbharol, Baldwara, in District Mandi, Sarahan in Sirmaur District, Nankhari in District Shimla, Kasauli in District Solan and Kotla Behar in District Kangra, respectively. Pursuant to the concerned notification, the 8 Colleges were started on different dates from academic year 2012-2013, purportedly in public interest. After opening of the Colleges, the admission process was taken forward, which, however, resulted in admission of only 19, 14, 37, 10, 12, 4, 2 and 16 students in the respective 8 Colleges. This factual position is not in dispute. It is also not in dispute that each of these eight

Colleges have been started in a make-shift 3 to 5 rooms premises for the College set apart from building of the Government Senior Secondary Schools operated in the concerned area; and in the case of newly started College at Nihri, District Mandi, from four rooms of the premises of a Cooperative Society. In other words, admittedly, none of these Colleges have their own building for running the College. As a matter of fact, the arrangement was purely temporary to effectuate the notification issued by the Secretary (Education), to the Government of Himachal Pradesh, to open the concerned new Government Degree College.

2. As aforesaid, inspite of due publicity, only limited number of students could be admitted in the concerned Colleges. The State Government, therefore, after review of the situation, decided to close down the said Colleges by issuing order, dated 2nd March, 2013, thereby denotifying the opening of the said eight new Government Degree Colleges primarily on three grounds: firstly because of very low enrollment of students; secondly due to lack of infrastructure; and thirdly having found that there are other Colleges in close proximity. This decision of the State Government is the subject matter of challenge in these eight petitions, concerning the respective Colleges.

3. The challenge is on the argument that the students who were admitted in the concerned eight new Colleges have legitimate expectation to continue their degree course in the said Colleges. Secondly, the plea taken by the State Government in the reply-affidavit about the financial difficulty can be no basis to overturn the decision taken by the previous ruling political party, which is now in Opposition. According to the petitioners, the plea taken by the State Government in the reply-affidavit filed to oppose these petitions about financial inability and, more particularly, that no budgetary provision has been made for opening of the new Colleges, is belied by the official documents indicative of opening of DDO accounts for the concerned College, which presupposes that it was done only after budgetary arrangement was in place. In other words, the decision was replete with political vendetta and not for any legal and tangible consideration. Further, one of the ground stated in the impugned decision for closing of the concerned Colleges, of close proximity of other Colleges, is completely misleading and contrary to the ground reality. In that, in some cases, the students will have to travel the distance of almost 50 kilometers everyday to attend the other College-where they would be accommodated after closure of the present College. According to the petitioners, each of these Colleges were started by the State Authorities after due deliberations and after assessing the requirement to start such College in the concerned area. The impugned decision of closure of the concerned eight new Government Degree Colleges, therefore, ought to be quashed and set aside. To buttress the above submissions, the petitioners would rely on the decisions of the Apex Court in the cases of Miss. Mohini Jain Vs. State of Karnataka and others, Siddhu Matriculation Hr. Secondary School Vs. K. Shyam Sunder and Others, and Ujwal Bahuuddeshiya Shikshan Sanstha versus Shambhu Shikshan Sansthan and others (2005) 10 SCC 293.

4. The respondents have opposed these writ petitions by filing reply-affidavit and also reiterating the stand taken in the said reply-affidavit, inter alia, that the decision of the State Government to open the said 8 new Government Degree Colleges was taken in undue haste and without making necessary budgetary arrangement to meet the expenses for construction of the building and for other infrastructure and including the recurring expenditure. The said 8 newly set up Government Degree Colleges, in the academic year 2012-2013, mostly admitted students by way of migration from other Colleges. The State Government, on review of the position, was satisfied that the opening of the said 8 new Government Degree Colleges was not in public interest, as no budgetary provision was made nor sufficient infrastructure was provided. The classes in the newly opened Colleges were started in class rooms carved out of the Government Senior Secondary School of the concerned area. That has been done by jeopardizing the efficacy of the Government Senior Secondary School, which had to give up part of the rooms, though required for its own use for proper functioning. That was done only to facilitate opening of the new Colleges. That was not conducive either to the school students or for the college students. Moreover, no infrastructure for the new Government Degree Colleges has been created nor it is possible to do so in the near future. For financial year 2013-2014, the Government has set apart only about Rs. 192.00 crores for higher education, which amount will have to cater to the requirements of 67 Government Degree Colleges in the entire State, 1327 Senior Secondary Schools and 848 High Schools. Out of that amount, only Rs. 60 crores have been earmarked for civil works. It is further stated that for setting up any new College, a minimum investment of Rs. 5.00 crores, at the initial stage, for the commencement of construction work is imperative. Considering the fact that the previous Government, in undue haste, decided to open 8 new Government Degree Colleges and if that decision was required to be taken forward, it would entail in budgetary provision of Rs. 40.00 crores for commencement of civil works only, which is not contemplated while finalizing the budget for higher education, for the financial year 2013-2014. Thus, in view of budgetary constraints, the Government decided to review the situation and after assessing the availability of existing Colleges in the concerned areas, decided to close down the said 8 Colleges.

5. In the reply-affidavit, it is further highlighted that the previous Government decided to open four new Government Degree Colleges in District Mandi alone. That decision was questionable also because there were already eight Government Degree Colleges in the said District, in addition to five private Degree Colleges. The total strength of Government Degree Colleges in the entire State, however, as of present, was 67 only. Such disparity would obviously result in unequal distribution of resources and dispensation to cater to the needs of higher education for the remaining 11 Districts of the State. Notably, there are only 10 Legislative Assemblies in Mandi District and there are already 13 Degree Colleges. The reply-affidavit also highlights that there are other Colleges in the

proximity and the students who are likely to be affected by the closure of the said 8 new Government Degree Colleges would not be inconvenienced much less denied of higher education.

6. In the reply-affidavit, it is stated that the State Government took overall view of the matter before deciding to close down the said 8 new Government Degree Colleges in public interest. According to the respondents, the elected Government in office is free to take independent decision after taking into consideration availability of its means and resources; and decision so taken in public interest cannot be made subject matter of judicial review. Moreover, the petitioners before this Court claim to be students of the said 8 newly opened Colleges, which are ordered to be closed. Assuming that they have a right to pursue higher education, that right cannot be superior to the public interest. The decision taken by the State Government, being in furtherance thereof, no interference was warranted. Notably, the State Government is committed to accommodate each of the students in the nearest College of their choice.

7. The respondents would thus contend that the decision to open the said 8 Colleges was taken in undue haste and inevitably compromised the interests of the students' community. Considering the nature of make-shift arrangement, it was obvious that the said Colleges were not in a position to impart quality education. In other words, the decision of the then ruling party to open the said 8 Colleges was completely a political decision; bereft of need based requirement of the region or for that matter catering to the requirement of the State as a whole. Such ad hoc decision inevitably results in imparting quality education to be a casualty. If all these factors have been taken into account by the State Government before issuing the impugned order, which obviously is in public interest, the scope of interference by this Court must be circumscribed and this Court should be loath to interfere at the instance of few students admitted in those Colleges.

8. To buttress the above arguments, the learned Advocate General has pressed into service exposition of the Apex Court in the cases of State of Kerala and Others Vs. K. Prasad and Another, , State of H.P. and Others Vs. Himachal Pradesh Nizi Vyavsayik Prishikshan Kendra Sangh, , Bhubaneswar Development Authority and Another Vs. Adikanda Biswal and Others, , Villianur Iyarkkai Padukappu Maiyam Vs. Union of India (UOI) and Others, and BALCO Employees Union (Regd.) Vs. Union of India and Others,

9. After having considered the rival submissions, the first core issue that needs to be examined is-whether the impugned decision of the State Government is legal? There can be no difficulty in conceding to the executive power of the State Government to undo its earlier decision after review of the situation, if it is so imperative and more so in public interest. That power, however, has to be exercised reasonably and in good faith.

10. According to the petitioners, however, the impugned decision taken by the

State Government was replete with political vendetta and not in good faith at all. The argument, though attractive at the first blush, on closer scrutiny of the factual position, which is indicative of matter having been analyzed at the highest level in the State Government, does not warrant such inference. No doubt, after the change of Government in December, 2012, a blanket decision was taken to review all the Cabinet decisions taken by the previous Government in the last six months period before the elections. Indubitably, the succeeding Government is entitled to review those decisions and more so, taken in the recent past just before the commencement of the elections, which may or may not be in public interest, to set the house in order.

11. From the original file, which was ordered to be produced to reassure ourselves that the impugned decisions were not the outcome of any undue haste or taken in a casual manner, it is noticed that the new Government in the first week of January, 2013 took a conscious decision to review all the Cabinet decisions taken by the previous Government during the last six months before the elections. It was not confined to one specific issue of opening of eight new Colleges, but was a general decision to review all the previous Cabinet decisions, taken during the last six months, on policy matters or otherwise. On receipt of communication from the Secretary (GAD), to the Government of Himachal Pradesh, the concerned departments submitted their response to give inputs to the new Cabinet of Ministers. The Department of Higher Education also submitted its response in similar manner. The response was accompanied by the analysis of the concerned Authorities, which formed part of the record before the Cabinet meeting, dated 19th February, 2013. The said inputs mentioned the state of affairs of the eight new Government Degree Colleges; and about the background in which the same were opened. From the inputs provided to the Cabinet of Ministers which considered the matter in the meeting, dated 19th February, 2013, clearly revealed the inadequate strength of students in the said 8 new Colleges as also about the lack of infrastructure, much less the make-shift accommodation provided to the said Colleges set apart from the premises of the Government Senior Secondary School in the concerned area, as also the proximity of other Colleges from the said Colleges. After having considered those matters, the Cabinet in its meeting dated 19th February, 2013, took a conscious decision to denotify the said 8 new Colleges in public interest. That is the subjective satisfaction of the Executive at the highest level of which judicial review is not possible.

12. Suffice it to note that we are not inclined to accept the grievance of the petitioners that the said decision was purely because of political vendetta. That is only a vague and unsubstantiated allegation. Once it is found that the Government has had the intrinsic power to review the earlier decisions including the decisions taken by the previous Government, it is not open to lightly brush aside the subjective satisfaction of the Executive. Thus, it is neither a case of casual decision taken by the new Government nor because of any political vendetta, but purely on the basis of the record considered during the Cabinet

meeting in which the said decision has been taken. The record reinforces the position on all counts, namely, strength of students, lack of infrastructure and close proximity of other colleges.

13. The learned Advocate General has justly relied on the exposition in the case of Villianur Iyarkkai Padukappu Maiyam (supra). In paragraphs 167 to 170 of this decision, the Apex Court observed thus:

167. In the matter of policy decision and economic tests the scope of judicial review is very limited. Unless the decision is shown to be contrary to any statutory provision or the Constitution, the Court would not interfere with an economic decision taken by the State. The court cannot examine the relative merits of different economic policies and cannot strike down the same merely on ground that another policy would have been fairer and better.

168. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or malafide, a decision bringing about change cannot per se be interfered with by the court.

169. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review. In matters relating to economic issues the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within the limits of the authority. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts.

170. Normally, there is always a presumption that the Governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the court by proper and adequate material. The court cannot lightly assume that the action taken by the Government is unreasonable or against public interest because there are large number of considerations, which necessarily weigh with the Government in taking an action.

(Emphasis supplied)

14. In the response filed in these writ petitions, the State Government has additionally contended that it would be financially unviable for the State Government to honour the commitment made by the previous Government to run the said eight new Government Degree Colleges; firstly because no

budgetary arrangement has been made in that behalf and the decision to start those Colleges was taken mainly at the behest of and under dictation of the then Chief Minister. In other words, the decision to open the said 8 new Colleges were not because of need based requirement of the area, but the ipse dixit of the then Chief Minister disregarding the serious financial implications. In that, for construction of building for each of these Colleges, the initial amount of minimum Rs. 5.00 crores was required; and it is not possible for the State to set apart such huge amount of around Rs. 40.00 crores as against the amount of Rs. 60.00 crores earmarked for civil works, out of the budgetary allocation for higher education for the entire State, which is only about Rs. 192.00 crores. That would result in serious imbalance and including difficulty in meeting the day-to-day expenses of the existing Colleges, which are about 67 in number. However, this is not the ground stated in the impugned decision. Keeping in mind the exposition of the Apex Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, it is not open to the respondents to press into service this additional ground. That, however, does not mean that the impugned decision is vitiated.

15. As noticed earlier, the impugned decision has been taken by the Cabinet of Ministers of the State Government after considering the materials placed before it, which would justify that course of action, in public interest. Considering the matter from any angle, it is not possible to take the view that the said decision is unreasonable or arbitrary or against any legal provision or mandate of law. The argument of the petitioners, however, is that since the petitioners and similarly placed students have already been admitted in the concerned College, they have a legitimate expectation that the said Colleges would be continued for the successive academic years so that they can pursue their academic career in the same College. We are afraid, the individual rights of the petitioners must give way to the decision taken by the State Government at the highest level, which, on the face of it, is in public interest. We have no hesitation in holding that if this argument of the petitioners were to be accepted, the inevitable consequence would be that the Court would end up in directing the State to act contrary to public interest-which must be eschewed.

16. It was then argued that somehow in this State it has become routine that the succeeding State Government reverses the decisions taken by the previous Government. In a given case that can be frowned upon as improper and inappropriate. But, it cannot be the basis to interdict the impugned decision of the Government taken after due deliberations and reviewing the fact situation, unless it is further shown that the same is contrary to any statutory provision or the Constitution or for that matter mala fide exercise of power. Nothing of that can be stated in the present case.

17. Indeed, the petitioners may be justified in contending that the State Government cannot be permitted to raise the bogey of financial implications and unviability to run those 8 new Colleges. However, in the present case, the reason

recorded by the Authority in the impugned decision is not about financial inability, but about low enrollment of students, lack of infrastructure and close proximity to other Colleges, which is completely independent of that. As regards the first justification about low enrollment in the respective Colleges, that is indisputable. In that, only 19, 14, 37, 10, 12, 4, 2 and 16 students have been admitted in the respective 8 Colleges for the academic year 2012-13. These figures are self eloquent and reinforce the reason so stated in the impugned decision. On that singular reason, the State Government, in our opinion, could have sustained the impugned decision, as it has come on record that even these admissions were not direct admissions, but students were taken in the said Colleges by way of transfer, from the other institutions in the neighbourhood. The argument of the petitioners, however, is that, low number of students in the respective Colleges is because of late starting of the College. That does not commend to us. For, the College at Kotla Behar was opened, vide order dated 23rd June, 2012, just about the same time when the academic year commenced and yet only 16 students were admitted in that College. The Colleges at Rewalsar, Nihri, Ladbharol in District Mandi and Sarahan in District Sirmour were started in terms of decision, dated 20th July, 2012. But, even those Colleges could admit only 19, 14, 37 and 12 students, respectively.

18. It is not only matter of low enrollment of students, but the decision was warranted also because of lack of infrastructure, inasmuch as each of these eight new Colleges were started in the premises of 3 to 5 rooms set apart from the Government Senior Secondary School building in the same locality. Such arrangement was carved out only to honour the directions given by the then Chief Minister. Such arrangement inevitably impacted the quality education imparted in the said Schools. It is not clear from the record as to whether the said Government Senior Secondary Schools had excess rooms after adhering to the norms and standards for schools specified in the Right of Children to Free and Compulsory Education Act, 2009; and moreso have not breached any of the specified conditions thereof by setting apart premises consisting of 3 to 5 rooms from the buildings of their respective Schools, which, obviously, has been done under dictation. If it is a case of breach of the provisions of the Act of 2009, that would be a serious matter warranting appropriate action against the concerned officials and Authorities, who have taken such a drastic decision to compromise on the quality education of the students studying in those Schools. Be that as it may, it is unfathomable that a full fledged College can be run from 3 to 5 rooms, which is expected to have a complete set up as per the University Grants Commission norms, before grant of affiliation. Whether the provisional affiliation granted by the University to these eight new Colleges also must come under scanner, is a matter to be considered by the Appropriate Authority of the University and proceed against the erring officials in that behalf, in accordance with law.

19. We have no manner of doubt that neither the argument of legitimate expectation of the petitioners nor the grievance of the petitioners that the

impugned decision is the outcome of political vendetta can be countenanced. It is not a case where the State Government has taken the impugned decision without due consultation and consideration. The original record produced before us does not permit us to take that view. The argument of the petitioners that the State must curtail its expenses on other heads (such as buying new high end vehicles for the Ministers); and instead honour the commitment already made and more so, because the Colleges have already started in which the petitioners and similarly placed students have taken admission, is only an argument of desperation. That cannot be the basis to interfere with the impugned decision of the Executive taken at the highest level and which is backed by relevant inputs indicative of running of the said Colleges would be at the cost of public interest and, more particularly, compromising on quality of education to be imparted in such Colleges. Indeed, the counsel for the petitioners were at pains to persuade us that the opinion recorded in each of the impugned orders is identical. That does not mean that the decision is unreasonable and mala fide. The factual position emerging from the record supports the said opinion in respect of each of these Colleges.

20. The counsel for the petitioners had argued that the reason recorded in the impugned decisions about the close proximity of other Colleges is factually incorrect. However, after having perused the records, we are in agreement with the submission made by the learned Advocate General that the manner in which the petitioners were computing the distance between the two Colleges was inappropriate. In a given case, even if the distance was more than 35 kilometers, as was suggested in the case of College at Nankhari, District Shimla (CWP No. 1953 of 2013), that by itself cannot be the basis to hold that the impugned decision by the Executive was vitiated. The strength of students admitted in that College is only four and more so that College has been set up in 4 rooms set apart from the building of the Government Senior Secondary School in that locality. Even in case of College at Baldwara, District Mandi (CWP No. 1535 of 2013), it is not in dispute that only 10 students have been admitted in that College, which is being run from 4 rooms set apart from the premises of the Government Senior Secondary School in that area. Thus understood, it is not a case of unreasonable or arbitrary decision taken by the Executive or for that matter, decision taken in breach of some legal provision.

21. Notably, from the original record, which was produced before us, it is evident that first public announcement was made by the then Chief Minister and then the process of paper work was commenced; and to fulfill the said commitment, a make-shift arrangement was worked out for opening of the new Colleges in the premises of the Government Senior Secondary School of the concerned area. That was obviously done under dictation. This is the common pattern emerging from the record. No doubt, the formality of submission of report before issuance of a formal order/notification for opening of new Colleges was undertaken. That, however, cannot justify the action taken in undue haste and bereft of any policy of the Executive in that behalf. What is significant to notice is that in a short

span, decision was taken to open as many as four new Colleges in Mandi District alone; notwithstanding the fact that there were already eight Government Degree Colleges operating in that District, in addition to five private Degree Colleges, which were catering to the requirement of the residents of Mandi District. This clearly shows the ad hoc, lopsided and populist decision taken because of the whims and fancies of the then party in power completely disregarding the need or necessity to open new Government Degree Colleges across the State-where in relative terms it may be more necessary and deserving. The decision of the previous Government was obviously not need based, but out of political compulsions, which was passed off as a policy decision taken in public interest.

22. Indubitably, decision to open a new Government Degree College must be taken after due deliberations and keeping in mind all the attending circumstances. It cannot be a casual decision-not only because it may have financial ramifications for the State but also result in unhealthy situation affecting quality education imparted to the students of the concerned area, because of lack of infrastructure and proper logistical support, and non-compliance of the high standards specified by the University and University Grants Commission. Ideally, the decision must be backed by a perspective plan reflecting the higher education policy of the State Government to open new Government Degree Colleges across the State commensurate with the need of the area concerned. It must not be a haphazard decision, much less resulting in having cluster of colleges only in some Districts and denial of that fundamental facility to the aspiring students of other Districts in the State. We may hasten to add that starting of a new Government Degree College cannot be an unplanned expenditure or expenditure required to be incurred in some unforeseen situations or for disaster management as such. It cannot be gainsaid that the expenditure for starting a new Government Degree College would involve setting up of infrastructure and substantial capital investment as also providing for adequate staffing pattern and other facilities requiring recurring expenditure. When it is a case of planned expenditure, it ought to be in consonance with the policy and action plan of the Government of the day. No doubt, the Executive may have discretion to make modification or variation to such action plan due to compelling circumstances and for correcting some anomaly in the plans noticed at a later stage. That discretion must be exercised by the Executive in public interest and not arbitrarily. An ad hoc decision taken on the spot or because of political compulsions, whilst compromising on the Constitutional obligations of the State of good governance, cannot be countenanced. Indeed, while drawing up the action plan or perspective plan for creating opportunities of higher education across the State, it must necessarily mirror holistic approach and, more particularly, to ensure, as far as possible, equal distribution of resources (budgetary allocation) across the State and prioritizing the spending on need based of the concerned region in the State.

23. The perspective plan must reflect the macro as well as micro level higher

education need of the people of the concerned areas across the State. While drawing up the perspective plan for higher education in the State, the State must remind itself of its constitutional obligation to secure equality of opportunity to its citizens and also justice-social, economic and political. Securing opportunity of education and spreading education across the length and breadth of the State is the only way to empower the masses and to secure a social order for the promotion of welfare of the people. It is the obligation of the State to minimize the inequalities in facilities and opportunities amongst the individuals and groups of people residing in different areas in the State. The budgetary allocation (material resources) must be so utilized and distributed as best to subserve the common good and not result in spending of wealth of the State in few pockets-be it urban areas. The State may have to move on to the next level of education-both primary and higher-at the door steps of the students community, as is the policy regarding dispensing justice at the door steps of the litigants. That will empower the rural masses by providing opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity. It may be possible for the students community of areas presently completely robbed of the opportunities of higher education, to question the decision of the Authority to allow starting of a new College and committing itself for spending of public exchequer therefor in an area already having adequate number of Colleges-Government and Private-on the doctrine of proportionality and prioritization or being discriminatory and arbitrary approach of the Authorities of the day. A perspective plan in place can address such misapprehensions or misinformation and strengthen the decision of the Authority in the given case.

24. No doubt, the State Government and, more particularly, the elected Government of the day, has the prerogative to formulate its policy and it is not open for the Court to undertake judicial review of such policy decision; at the same time, the policy decision has to meet the cardinal tenets predicated by the Constitution of India that it must be just, reasonable and non-discriminatory. Decisions taken due to political compulsions, which are not backed by the policy of the Executive, would be certainly vulnerable to such challenge.

25. While formulating the perspective plan for higher education in the State, it may be useful to keep in mind the principle expounded by Apex Court in the case of Superstar Education Society Vs. Stats of Maharashtra and Others, while dealing with the decision of the Executive granting permission for 1495 new higher Secondary Classes/Schools by one common order, on non-grant basis, in paragraph 8, as follows:

8. The objects of regulating permissions for new private schools are: (i) to ensure that they have the requisite infrastructure, (ii) to avoid unhealthy competition among educational institutions; (iii) to subject the private institutions seeking entry in the field of education to such restrictions and regulatory requirements, so as to maintain standards of education; (iv) to promote and safeguard the interests of students, teachers and education; and

(v) to provide access to basic education to all sections of society, in particular the poorer and weaker sections; and (vi) to avoid concentration of schools only in certain areas and to ensure that they are evenly spread so as to cater to the requirements of different areas and regions and to all sections of society.

26. The principle underlying the abovesaid exposition must, *proprio vigore*, apply even for opening any new Government Degree Colleges. Perhaps, stricter conditions ought to apply for starting a new Government Degree College to ensure that the Colleges are evenly spread out across the State—need based—so as to cater to the requirements of all its citizens and keeping in mind the challenging geographical conditions of State of Himachal Pradesh.

27. From the material on record, as observed earlier, it is more than evident that the decision to open the stated 8 new Government Degree Colleges was not due to compelling need of the concerned area, but due to political compulsions. In that case, the succeeding ruling party was within its right to review the situation and take an objective decision, in public interest. The reasons recorded in the decision taken in the meeting of Cabinet of Ministers, by no stretch of imagination, can be said to be untenable, unreasonable, unrealistic, intangible and replete with political vendetta. None of these factors can be attributed to that decision on the basis of which the impugned orders have been passed to close down the concerned eight Government Degree Colleges in public interest. The decision so taken is backed by the material considered by the Cabinet in the said meeting. As a result, the question of interfering with such decision, that too by way of judicial review thereof, will be completely in excess of writ jurisdiction. It is well established position that the judicial review can be of decision making process and not of the decision of the Executive itself. Thus understood, the challenge to the impugned decisions in the respective petitions will have to be stated to be rejected.

28. The argument of the petitioners that no complaint has been received from any of the Government Senior Secondary School about any inconvenience caused to the concerned School, in our opinion, will be of no avail. Considering the fact that the said institutions are Government run schools and controlled by the State Government, it is unfathomable that the officials of the said School may venture to make such grievance which will be against the wishes of the persons in authority at the highest level, at whose instance the arrangement was required to be worked out. Similarly, the argument of the petitioners that the problem of low enrollment is also prevalent in at least 7 Government Degree Colleges in the State, list whereof was handed in to the Court during the course of arguments, also does not commend to us. In the first place, no foundation in this behalf is laid in the memo of writ petition as filed. Moreover, the justification given by the learned Advocate General, in rebuttal of that argument, appears to be plausible. According to the learned Advocate General, most of those Colleges are in hilly or tribal area in District Lahaul and Spiti, Kangra, Chamba, Sirmaur etc. It is not the case of the petitioners that the said Government Degree Colleges are operating

in similar make-shift arrangement and bereft of adequate infrastructure or that there are other Government Colleges in the neighbourhood, which are the additional grounds stated in the impugned orders against the respective subject Government Degree Colleges. Even the argument of the petitioners that it is the consistent practice of the State Government-be it of the present ruling political party or of the earlier political party in power-similar ad hoc decisions have been taken and the Colleges were opened in make-shift premises to start with, to be later on run from properly constructed building for the College, cannot be the basis to quash the impugned decisions after finding the same to be just, proper and reasonable.

29. We may now turn to the facts of the respective petitions. In the leading writ petition No. 1468 of 2013, it is noticed that after receipt of instructions from the office of the then Chief Minister, the office of the Director of Higher Education moved into action and prepared a favourable report suggesting that opening of new Degree College, as proposed, would be viable and can be so done in the Government Senior Secondary School complex in the same locality, which was ready to spare 4-5 rooms if the Government was to make such announcement. In this backdrop, the decision to open the said new Government Degree College at Ladbharol in District Mandi was taken and formal notification was issued on 28th July, 2012. No doubt, this decision was not challenged by any one. That does not mean that the decision was not taken in undue haste or out of political compulsion and presumably being oblivious of the fact that there are already eight Government Colleges in District Mandi, in addition to five private Degree Colleges. As a matter of fact, Lad Bharol area falls within Joginder Nagar Legislative Assembly which already has four degree colleges sufficient to meet the requirements of 17 Panchayats of Lad Bharol area. Moreover, all these colleges are on national highway and are functional. After elections, if the Government of the day reviewed that position and was convinced that it was not in public interest to continue running of the said College and the manner in which the same has been started and, in particular, for the reasons recorded in the impugned decision to close the same, which we find to be just and proper and not opposed to any legal or constitutional provision, it is not open for this Court to interfere with the same on the specious grounds urged by the petitioners before us that they have legitimate expectation to pursue their degree course in the same College or that the impugned decision of the government was replete with political vendetta.

30. The counsel for the petitioner in this petition relied upon the decision of the Apex Court in the case of Miss Mohini Jain (*supra*) to contend that it is the fundamental right of the students enshrined in the Constitution of India to pursue education in College of their choice. We have already dealt with this aspect of the matter. Moreover, this decision was reconsidered by the Constitution Bench of the Apex Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., and which, in turn, was reconsidered in the case of T.M.A. Pai Foundation and Others Vs. State of

Karnataka and Others, Reliance placed on this decision by the learned counsel and more particularly, on the proposition sought to be canvassed, in our opinion, is ill-advised in the fact situation of the cases on hand.

31. Counsel for the petitioner then relied on the decision of the Apex Court in the case of *Ujwal Bahuuddeshiya Shikshan Sanstha* (supra). The observations in this decision are in the context of Rule 2.5 of the Secondary School Code of that State. The petitioners are not relying on any express provision, which permits opening of a new Degree College in a shared accommodation taken on temporary basis and which need not have its own accommodation. Moreover, in that case, the State Committee made recommendation for allowing the concerned school to continue. In the present case, the authorities have taken a conscious decision to close down the College for the three prominent reasons recorded in the order, which we have found to be unexceptionable.

32. Similarly, in the second writ petition No. 1953 of 2013, which was argued before us by the same counsel in the leading case, pertaining to the order of closure passed in respect of newly started Government Degree College at Nankhari in District Shimla, the situation is no different. Even in respect of this College, communication was received by the Principal Secretary (Education), Government of Himachal Pradesh from the office of the then Chief Minister on 22nd August, 2012 forwarding copy of the letter received from K.D. Kashmir, Senior Vice President, BJP Mandal Rampur, District Shimla, H.P., for taking necessary action. Significantly, the decision to start this College was taken and notification came to be issued on 5th September, 2012 on the basis of some preceding inter departmental communication between the Principal, Government P.G. College and the Director of Higher Education, dated 8th November, 2010, suggestive of possibility of opening the new College in the building of Government Senior Secondary School of the locality. For the reasons already recorded, while rejecting the similar arguments canvassed by the petitioners in the leading petition, for the same reasons even this petition deserves to be rejected being devoid of merits.

33. Notably, the number of students who have taken admission in this College for the academic year 2012-13 are only 4, enrolled in B.A. 1st year. For imparting degree course to these four students, four rooms from the building of the Government Senior Secondary School of the concerned area have been set apart for this College. The reply-affidavit filed by the State Government unambiguously states that the said Senior Secondary School requires 14 rooms for its proper functioning. Setting apart of four rooms, for accommodating the new College, is neither conducive to the school students nor to the college students. If the Government, on review and consideration of such matters, has taken a decision to close down the College, it would be too much for this Court to intervene and direct the State to continue to run the said College, which, obviously, would result in loss to public exchequer and also compromise the quality education imparted in the Senior Secondary School, which has set apart four rooms for

running of this College. As a result, this petition must follow the same suit as in the leading petition.

34. We may now turn to the third petition argued before us being writ petition No. 1535 of 2013 in respect of College at Baldwara, District Mandi. Even in respect of this College, the proposal started rolling out with the communication sent from the office of the then Chief Minister, dated 2nd July, 2012, addressed to the Principal Secretary (Education), for taking necessary action in respect of the enclosed communication from Col. Inder Singh, M.L.A. The Department immediately moved into action and the decision to start the said College was taken. Then a formal order was issued on 4th August, 2012. Even this College was started on the same pattern as the other two Colleges by setting apart four rooms from the Government Senior Secondary School in the locality. Notably, 10 students took admission in this College for the academic year 2012-13. Thus understood, the reason recorded in the impugned decision about the low enrollment, lack of infrastructure and other colleges in the close proximity taken at the highest level after due scrutiny of the record cannot be lightly interfered with for the same reasons. This College is one of the four new colleges opened during the same time and in the same manner in District Mandi. Accordingly, for the reasons noted earlier in respect of other Colleges, even this petition should follow the same suit.

35. The learned counsel for the petitioner in this petition relied on the exposition of the Apex Court in the case of State of Tamil Nadu and others versus K. Shyam Sunder and others (supra), in particular, on paragraphs 31, 32 and 35. In paragraph 31, the Apex Court, advertent to the dictum in the earlier decision in the case of Onkar Lal Bajaj Vs. Union of India (UOI) and Another etc. etc., in paragraph 36 thereof, noticed that the Government has to rise above the nexus of vested interests and nepotism and eschew window-dressing. These observations may be more apposite in connection with the decision of the then ruling party to start the eight new Government Degree Colleges and not to the decision impugned in the present petitions, which is to close down the said Colleges because of low enrollment, lack of infrastructure and proximity to other Colleges, in public interest. In paragraph 32 of this reported decision, the Court adverted to the observation in the case of State of Karnataka and Another Vs. All India Manufacturers Organization and Others, , wherein the Court examined the question as to under what circumstances the Government should revoke a decision taken by an earlier Government. It held that an instrumentality of the State cannot have a case to plead contrary from that of the State and the policy in respect of a particular project adopted by the State Government should not be changed with the change of the Government. However, in matters such as the present one, if the succeeding Government finds that the previous regime had taken decisions just for asking and not in public interest, in our view, the above-quoted principle cannot be invoked to question that act of the next Government. In the present case, the impugned decision has been taken after due deliberations and review of the prevailing situation, which cannot be said to be

arbitrary or mala fide as such. Even the observations in paragraph 35 of this reported decision may be more favourable to the respondent State than the petitioners themselves. The same reads thus:

35. Thus, it is clear from the above, that unless it is found that act done by the authority earlier in existence is either contrary to statutory provisions, is unreasonable, or is against public interest, the State should not change its stand merely because the other political party has come into power. Political agenda of an individual or a political party should not be subversive of rule of law.

(Emphasis supplied)

36. In the present case, as found earlier, from the documents on record, it is noticed that the impugned decision has been taken in public interest. Further, the impugned decision is neither unreasonable nor against any statutory provision. On the other hand, the earlier decision of the then dispensation in power of opening of Government Degree College and manner in which it has been taken and executed evidences that it was against public interest and also unreasonable and impracticable to comply, as has been found upon review. Accordingly, reliance placed on this decision by the petitioners is inapposite.

37. We may now turn to the next writ petition No. 1732 of 2013 in relation to Government Degree College at Kasauli, District Solan. Even in respect of this College, the decision to open was at the behest of the then Chief Minister, if not under dictation. The Department of Higher Education immediately moved into action and submitted a favourable report suggesting possibility of opening new Government Degree College at Kasauli in three rooms to be set apart from the building of the Government Senior Secondary School. The formal notification was issued on 6th September, 2012. Notably, only two students were admitted in this College for the academic year 2012-13. If the Government of the day, upon review, decided to close down such College and for the reasons recorded in the impugned decision, which cannot be painted as unrealistic or false, even this writ petition should follow the same suit as the other cases.

38. As regards the writ petition No. 1758 of 2013, in respect of Government Degree College at Nihri, District Mandi, it is noticed from the records that the Chief Minister made announcement in the first place which propelled the proposal for opening of new Government Degree College at Nihri. Only thereafter, proposal from the office of the Director of Higher Education was mooted which culminated with the notification dated 28th July, 2012. Notably, this is one of the four Colleges newly started in District Mandi alone during the same time. This College, however, has been started in four rooms set apart from a Cooperative Society premises. The students admitted in this College for the academic year 2012-13 are only 14 in number. Thus, the reason recorded in the impugned decision for closure of this College cannot be said to be perverse or politically motivated. It is a different matter that a formal report was prepared which has been placed on record as Annexure P-1. The fact remains that the College does

not fulfill the requirement of a viable college and the norms prescribed by the University Grants Commission, if it could admit only 14 students for the concerned academic year. The argument in companion cases that because of belated decision to open the College, the enrollment rate was low cannot be pursued in the present petition as the decision to open this College was taken just around the commencement of new academic year itself. Be that as it may, even this petition should follow the same suit as other cases.

39. That takes us to writ petition No. 1525 of 2013 in relation to Government Degree College at Sarahan, District Sirmour. The facts of this petition are somewhat different. In this case, since no favourable response was received, writ petition was filed in this Court, being CWP No. 2534 of 2012, which was disposed of by the learned Single Judge with the following order:

Mr. Vikas Rathore, learned Dy. A.G. has placed on record a copy of communication dated 19th August, 2012 and notification dated 4th August, 2012. The text of the notification reads as under:-

The Governor Himachal Pradesh is pleased to order the opening of new Government Degree College in Sarahan, Distt. Sirmour, H.P. with immediate effect, in public interest.

2. It is evident from the aforesaid notification that the State Government has now decided to open a new college in Sarahan, District Sirmour. Consequently, the writ petition is disposed of with a direction to the respondent-State to make the college fully functional by next academic session-2013-2014-by appointing teaching staff, ministerial staff and also providing suitable accommodation. Pending application(s), if any, also stands disposed of. No costs.

(Emphasis supplied)

40. On plain reading of this order, it is amply clear that the Court disposed of the writ petition on account of the decision already taken by the State Government to open new Government Degree College in Sarahan. The fact that the Court then proceeded to observe that the State Government must make the said College fully functional by next academic session 2013-14, by appointing teaching staff, ministerial staff and also providing suitable accommodation, in our opinion, was no impediment for the Government to review the decision already taken and decide to close down the College because of low enrollment, lack of infrastructure and other Colleges in the proximity, in public interest. For, the latter observation made by the learned Single Judge were consequential and not after deciding the controversy on merits, muchless on the question sweep of Executive power to review its earlier decision, in public interest.

41. From the original record produced before us, it is noticed that even in respect of this College, the proposal was mooted on the basis of the note made by the then Chief Minister on some loose file. Because of that noting, the proposal was prepared and submitted by the office of Director of Higher Education providing

for the similar arrangement of setting apart five rooms from the premises of the local Government Senior Secondary School. Even, in respect of this College, the total strength of the students admitted during the academic year 2012-13 is only 12. The latter observation noted while disposing the said writ petition, in our opinion, cannot be construed as a binding decision on the State Government so as to refrain from exercising its executive power to review the situation and take corrective steps in the matter, in public interest. To put it differently, the Court cannot direct the State to act contrary to public interest. The fact situation, in the present case, is no different than the other petitions under consideration and, therefore, even this petition must follow the same suit as other cases.

42. We may now turn to writ petition No. 1526 of 2013 in respect of Government Degree College at Kotla Behar in Kangra District. The original record produced before us contains a communication, purported to be dated 15th June, 2012, sent from the office of the then Chief Minister addressed to the Principal Secretary (Education), mentioning that during the tour to Dehra, District Kangra, on 9th June, 2012, the (then) Chief Minister made announcement to start a Government Degree College at Kotla Behar, Tehsil Jaswan, District Kangra, from current academic session i.e. 2012-13. The communication calls upon the Principal Secretary (Education), Government of Himachal Pradesh, to take immediate action to comply with the said announcement made by the (then) Chief Minister and send compliance report within 15 days. It is in this backdrop, the Department moved into action and after completing the necessary paper work, issued notification on 23rd June, 2012 within the prescribed time. Notably, the decision to start new College is sought to be justified on some report prepared in the year 2003. However, no attempt was made by the dispensation to examine other relevant factors before taking the final decision. The Government Senior Secondary School was, obviously, compelled to set apart three rooms from its building to accommodate the College. That inevitably compromised the quality education imparted to its students. Besides, only 16 students were finally admitted in this College for the academic year 2012-13. In other words, the three reasons recorded for closing this College cannot be discarded nor can be said to be mala fide or unreasonable. The fact that the local Gram Panchayats were supportive of setting up the said College cannot be the basis to ignore the opinion recorded in the impugned decision, which is taken in public interest. Accordingly, even this petition ought to fail for the same reasons.

43. We are now left with the last writ petition, being writ petition No. 1320 of 2013, in relation to Government Degree College at Rewalsar in District Mandi. This is one of the four Colleges opened during the same time in District Mandi. Only 19 students have been enrolled in this College for the academic year 2012-13. It has been started in four rooms of Government Senior Secondary School at Rewalsar in terms of notification dated 28th July, 2012. Even in respect of this College, the decision to start was taken because of the intervention of the then Chief Minister, which is evident from the original record produced before us. The office of the then Chief Minister sent communication dated 29th May, 2012

to the Principal Secretary (Education), whereafter the proposal was expedited. The said letter forwards representation received from the Pradhan, Gram Panchayat, Sidhyani, Development Block Balh at Neer Chowk, Tehsil Sadar, District Mandi. In the reply-affidavit filed by the respondent State, the same justification has been given for supporting the decision to close down this College as in the case of other three new Colleges opened in the Mandi District during the same time. However, interestingly, some departure in the reply of the State is found in this case. It states that the "present Chief Minister" has recently made announcement to open College at Rewalsar in District Mandi. Four factors to justify that decision have been noted. On the basis of this stand taken by the State in the affidavit, the counsel for the petitioner was emboldened to submit that the petition may be disposed of with direction to the State to consider the case of opening of the new College at Rewalsar on its own merits. We cannot and are not putting our seal of approval to this stand taken by the State Government. No doubt, it is for the Executive to review the position, but having done so and a conscious decision to close down the existing colleges on the stated grounds, having been taken as recently as March, 2013, which we are upholding in respect of other seven colleges and in particular three other Colleges started at Mandi during the same time and in the same manner, in terms of this judgment, it is intriguing to notice this turn around stand taken by the State. We find that even in this case, the same grounds obtain namely, low enrollment of students, lack of infrastructure and close proximity to other Colleges. Further, the stand of the Government in other three Colleges started and now closed in District Mandi, is that, there are enough number (eight) Government Degree Colleges in District Mandi, in addition to the five private Degree Colleges in the same area. We refrain from expressing any final opinion on this matter except to note that the reply-affidavit mentions about excess students strength in Government College, Mandi, but it makes no reference to the strength of students in other Government Degree Colleges in District Mandi at all. The students strength of other 7 Government Degree Colleges in District Mandi and in the five private Degree Colleges in the same District is not forthcoming. In this context, we may only remind the State Authorities of the factors to be borne in mind while taking a call on the issue of opening a new College as predicated by the Apex Court in the case of Superstar Education Society (supra) in paragraph 8, which are reproduced hitherto.

44. The persons in authority must be guided by the policy articulated by the Government and not resort to ad hoc decisions much less disregarding the more acute requirement of other areas of the State. A holistic macro as well as micro level perspective plan for higher education for the entire State on need based basis must be prepared by the Department at the earliest. It must be remembered that setting up of a new Degree College should be in conformity with the State's obligation to secure equitable distribution of resources and funds across the State and not create cluster of Colleges in one District, which would be antithesis to good governance and observance of rule of law. The

attempt of the succeeding Government should not be to march over the decisions taken by the outgoing ruling party, but must be guided by sound policies and doctrine of good governance for the State. The vesting of executive power in the new Government does not warrant reversal of all the decisions of the outgoing ruling party. Such act cannot be passed off in the name of public interest and policy decisions of the new Government. As observed by the Apex Court in the case of Onkar Lal Bajaj (supra), the principles of governance have to be tested on the touchstone of justice, equity and fair play. Even if the decision may look legitimate, but as a matter of fact, if the reasons are not based on values but to achieve popular accolade, that decision cannot be allowed to operate.

45. A priori, even though we may uphold the decision impugned in the present petitions, we may record a word of caution that the State Government should not resort to pick and choose by doing review of its reviewed decision limited to starting of new Government College at Rewalsar in District Mandi, in place of the closed Government Degree College in terms of order dated 2nd March, 2013. Such individual review may be counter productive and possibly be at the cost of public interest.

46. We may now advert to the decisions pressed into service by the learned Advocate General. He first relied on the decision in the case of State of Kerala and others versus K. Prasad and another (supra). Emphasis was placed on paragraphs 12 and 13 of this decision, which read thus:

12. Having examined the instant matter on the touchstone of the aforementioned settled principles, we find it difficult to hold that the decision of the appellant not to sanction upgradation of the respondents' schools because of paucity of funds was either arbitrary or unreasonable or manifestly erroneous to warrant interference by the Court. There is no denying the fact that opening of new schools or upgradation of aided schools does involve considerable financial commitment for the State. Moreover, insofar as the present cases are concerned, indubitably, applications for upgrading the existing schools had not been invited by the Director as stipulated in sub rule (2) of Rule 2A and, therefore, the representations made by the respondents for upgrading their schools could not be considered by the government unless it was shown that the Director or the State Government were not finalizing the list in terms of Rule 2A for some extraneous considerations, which was not the case of the respondents. Thus, in the absence of gazette notification, calling for applications for raising of the grade of an existing school, the question of consideration of the respondents' applications/representations did not arise. In fact, sub rule (2) of Rule 2A puts a complete embargo on consideration of an application which is submitted otherwise than in response to notification under sub rule (1) of Rule 2A. We are constrained to observe that the Division Bench of the High Court has failed to keep all these aspects in mind while issuing the impugned directions.

13. We may now deal with the plea of the respondents that they have been discriminated against. It is true that Article 14 of the Constitution embodies a

guarantee against arbitrariness but it does not assume uniformity in erroneous actions or decisions. It is trite to say that guarantee of equality being a positive concept, cannot be enforced in a negative manner. To put it differently, if an illegality or irregularity has been committed in favour of an individual or even a group of individuals, others, though falling in the same category, cannot invoke the jurisdiction of the writ courts for enforcement of the same irregularity on the reasoning that the similar benefit has been denied to them. Any direction for enforcement of such claim shall tantamount to perpetuating an illegality, which cannot be permitted. A claim based on equality clause has to be just and legal.

For the reasons already recorded, it is not necessary to dilate any further on the abovequoted exposition in this reported judgment.

47. Reliance is then placed on the decision in the case of State of H.P. & Others versus Himachal Pradesh Nizi Vyavsayik Prishikshan Kendra Sangh (supra). Reliance is placed on paragraphs 11 and 12 of this decision, which read thus:

11. The High Court has lost sight of the fact that education is a dynamic system and courses/subjects have to keep changing with regard to market demand, employability potential, availability of infrastructure, etc. No institute can have a legitimate right or expectation to run a particular course forever and it is the pervasive power and authority vested in the Government to frame policy and guidelines for progressive and legitimate growth of the society and create balances in the arena inclusive of imparting technical education from time to time. Inasmuch as the institutions found fit were allowed to run other courses except the three mentioned above, the doctrine of legitimate expectation was not disregarded by the State. Inasmuch as ultimately it is the responsibility of the State to provide good education, training and employment, it is best suited to frame a policy or either modify/alter a decision depending on the circumstance based on relevant and acceptable materials. The Courts do not substitute its views in the decision of the State Government with regard to policy matters. In fact, the Court must refuse to sit as appellate authority or super legislature to weigh the wisdom of legislation or policy decision of the Government unless it runs counter to the mandate of the Constitution.

12. With regard to the importance of human resources, especially manpower requirement in various professional and technical fields, the Government is free to frame its policy, alter or modify the same as to the needs of the society. In such matters, the Courts cannot interfere lightly as if the Government is unaware of the situation. Apart from these aspects, procedurally also the High Court has committed an error in quashing the Cabinet decision dated 18.07.2009 which was not challenged in the writ petition by raising valid grounds. Further, both parties were not afforded opportunity to put-forth their stand as to the subsequent development, namely, Cabinet decision dated 18.07.2009. For all these reasons, the impugned order of the High Court is to be interfered with. However, we permit the respondent's association or its members to challenge the said decision/order of the Government by way of fresh proceeding, if they so

desire.

(Emphasis supplied)

48. No doubt, this decision supports the stand taken by the State for opposing the present writ petitions challenging the impugned decision of closure of the concerned Colleges, at the same time it highlights the fact that education is a dynamic system. It also predicates that the authority vested in the Government to frame policy and guideline must be for progressive and legitimate growth of the society and create balances in the arena. It is the responsibility of the State to provide good education, training and employment. The policy must be framed which is best suited to those tenets and in keeping with the circumstance based on relevant and acceptable materials. The power to alter or modify the existing policy does not mean that it can be exercised by the State without tangible reasons.

49. Reliance is then placed on the decision in the case of Bhuvneshwar Development Authority (*supra*), in particular, paragraph 19, which reads thus:

19. We are of the view that the High Court was not justified in sitting in appeal over the decision taken by the statutory authority under Article 226 of the Constitution of India. It is trite law that the power of judicial review under Article 226 of the Constitution of India is not directed against the decision but is confined to the decision making process. The judicial review is not an appeal from a decision, but a review of the manner in which the decision is made and the Court sits in judgment only on the correctness of the decision making process and not on the correctness of the decision itself. The Court confines itself to the question of legality and is concerned only with, whether the decision making authority exceeded its power, committed an error of law, committed a breach of the rules of natural justice, reached an unreasonable decision or abused its powers.

(Emphasis supplied)

50. We have already taken the view that it is not open for this Court to sit over the impugned decisions of the State Government, which have been taken after review of all aspects, to close down the stated Colleges.

51. Even the observations found in another decision of the Apex Court pressed into service in the case of Villianur Iyarkkai Padukappu Maiyam (*supra*), in paragraphs 167 to 171, which have been reproduced in the earlier part of this judgment, are indicative that the Executive or the Government of the day must work under some policy and not on the basis of sporadic and impromptu announcements made in disregard of the ground reality only for receiving popular accolade.

52. Reliance is also placed on the exposition in paragraph 92 of the decision in Balco Employees Union's case (*supra*), which reads thus:

92. In a democracy, it is the prerogative of each elected government to follow its own policy. Often a change in government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the Court.

The reasons recorded by us in upholding the impugned decision of the State Government is consistent with the dictum in this decision.

53. While parting, we may place on record our concern about the students who are going to be affected because of the closure of the said eight new Government Degree Colleges. In response, the Advocate General submitted that the State Authorities would do the needful and ensure that each of those students are absorbed in the existing Colleges in close proximity to the residence of the concerned student to minimize inconvenience and hardship to them. We hope and trust that the State Authorities would be well advised to ensure fulfillment of this commitment. Except expressing this hope, nothing more is required to be done in the present petitions. Accordingly, all these petitions should fail and the same are dismissed. The interim relief operating in each of these petitions is vacated forthwith. All pending applications are also disposed of.