
(1988) 04 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 469 of 1987

Ganesh Dutt and Others

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 26-04-1988

Acts Referred:

Constitution of India, 1950 — Article 225

Citation : AIR 1989 HP 35 : (1988) 1 ShimLC 241

Hon'ble Judges : P.D. Desai, C.J.; R.S. Thakur, J

Bench : Division Bench

Advocate : R.K. Gautam, for the Appellant; P.N. Nag, General, L.S. Panta Dy. A.G. and A.K. Goel, for the Respondent

Judgement

P.D. Desai, C.J.—The location of a Government School at one site or another is not a matter which ordinarily calls for interference in the exercise of writ jurisdiction. In an exceptional case, however, the Court may be left with no alternative but to interpose in order to check arbitrariness in the administrative decision taken in that regard, especially when it appears that there are no defined policy, norms or guidelines governing the selection, of the site or if there be any, they are not being followed, and that consequently changes take place in the location of a Government school as a result of conflicting directions emanating from high quarters from time to time without due regard to all the relevant factors. The facts set out hereinbelow, which speak for themselves, justify the Court's intervention in the present case.

2. The Gram Panchayat Ratwari comprises about 15 revenue villages. A Government Primary School had been functioning within its local limits at village Ratwari since about 1952. The School was upgraded to a Government Middle School by an order dated Feb. 6, 1987, Annexure PB. On and from Mar. 31, 1987, the Government Middle School started functioning in the same building in which the Government Primary School was located

3. On June 22, 1987, the District Education Officer, Solan, addressed a letter,

Annexure PH, to the Block Education Officer, Nalagarh, stating that it had been reported that the local Gram. Panchayat had constructed a Middle School building in village Kothi and that it was desired that the school be shifted to the said newly constructed building immediately. The Block Education Officer was directed to take the follow up action immediately. The school was consequently shifted to village Kothi and it actually . started functioning there soon thereafter.

4. On Aug. 26, 1987, the Under Secretary to the State Government in the Education Department addressed a letter to the Director of Education, Himachal Pradesh, Annexure PN informing him that the State Government had decided that the Government Middle School should be shifted back to village Ratwari. Pursuant to the communication aforesaid, the School was again shifted to village Ratwari and it thereafter started functioning there.

5. On Oct. 12, 1987, the Under Secretary to the State Government in the Education Department addressed a communication to the Director of Education, Himachal Pradesh, intimating that his proposal to shift the Government Middle School back to village Kothi had been approved by the State Government. A copy of the said letter has since been placed on the record of the case under the directions of the Court. The result was that the School again went back to village Kothi.

6. The present petition was thereupon instituted by 72 residents of village Ratwari on Oct. 30, 1987, challenging the decision aforesaid with respect to the shifting of the Government Middle School to village Kothi and seeking a writ, order or direction to the effect that the said School should continue to function at village Ratwari.

7. Having regard to the frequent changes in the decision with regard to the location of the Government Middle School for which no apparent reason was manifest, the Court, while issuing notice of the petition on Nov. 3, 1987, directed the respondents to produce the original record relating to the decisions taken from time to time with regard to the location of the School in question both at the Government level as well as at the Directorate level Pursuant to these directions, the original record has been produced for the perusal of the Court.

8. The record of the District Education Officer, Solan, shows that the Block Education Officer, Nalagarh, had submitted an investigation report to the District Education Officer, Solan, on June 15, 1987, with respect to the location of the school after visiting village Ratwari under prior intimation to the concerned parties. The report indicates, inter alia, that there were two factions interested in the selection of the site for the school building and that they consisted of the people of village Ratwari on one hand and the Pradhan of the Gram Panchayat on the other. One Shri Mathura Dass, son of Shri Mahanta, resident of village Ratwari, was willing to donate his land for the construction of the school building and the willingness was conveyed to the District Education Officer, Solan, by means of his letter dated May 27, 1987. The residents of the village had already

started constructing a room on the said land but the construction was still not complete. The location of the school at the said place was reported to be convenient to the population of village Ratwari, Jabbal, Jhalla, Rajwin, Ghat, Manwal and other villages. It was, however, found that the water and electricity facilities were not available at the site and that considerable amount would be needed to be spent for levelling the school ground. One Shri Ram Chand, son of Shri Santu, resident of village Kothi, had donated land admeasuring 1-11 bighas situate in that village to the Education Department by a registered deed dated May 19, 1987 for the construction of the school building. The Gram Panchayat by a majority had resolved on May 21, 1987 that the school building be located at village Kothi. The construction of the school building on the said land was in progress. One room was near completion and the foundation of the other room had also been laid. The school, if located at that site, would serve the population of villages, Ratwari Kothi, Kohata, Larkot, Taili, Bhar, Daroli, Chaboli, Banar, Saraur etc. The position with regard to the water and electricity facilities and the levelling of the ground was the same as at the other site in village Ratwari. The report concluded with the following observations:

"The opinion of the members of the staff GMS Ratwari and myself also sharing with them is that it would have been better if the construction work of school building of GMS Ratwari been taken upon the land just to the upper side of the Building of GPS Ratwari, seeing the ground, water and other facilities available there."

In other words, the Block Education Officer and the members of the staff of the Middle School were of the opinion that the School building should be located near the existing Primary School building in village Ratwari.

9. On the record of the District Education Officer, Solan, there is a note dated June 22, 1987 recorded by a Senior Assistant of the office in the following terms :

"On 20th June, 1987, at 5.40 PM, Hon"ble Minister of Education, Shri Sagar Chand Nayar, desired that the building of GMS Ratwari (Nalagarh) has been made available by the Panchayat. The School should be shifted to the new building with the consultation of the public representative of the illaqua within 2 days. EO is requested to kindly take further action in the matter."

It is not stated in so many words but the historical context suggests that the direction was to shift the School to village Kothi at the site where a room was nearly under completion on the land of Shri Ram Chand. It is not known whether any representation was received by the Minister or whether he passed this order on the basis of any private information which had reached him. There is nothing on the record to show whether the School was shifted to village Kothi pursuant to these directions, which were followed by the formal orders, Annexure PH, in consultation with the public representative of the illaqua as the Minister had desired. For want of any material, it is not unreasonable to assume that the order was carried out without the precondition of consultation with the public

representatives of the local area having been complied with.

10. On the record of the Education Department of the State Government there is a letter dated July 14, 1987 addressed by Shri Vijayendra Singh, the MLA elected from the concerned area, addressed to the Minister of Education, the material part of which reads as follows :

"Reportedly owing to very unhealthy political interference during my absence from the country, MS Ratwari in my constituency was shifted to some other place. I am aware of the problems of this institution, more so because it is situated in the HEART of my constituency. The controversy will be amicably settled by the undersigned. Meanwhile, it is requested that the orders may be kindly reversed at the earliest."

The Education Minister recorded his minutes on the margin of the letter in the following words :

"P1. do it as desired."

Pursuant to these directions, the School was ordered to be shifted back to Ratwari by the formal order issued on Aug. 26, 1987, Annexure PN.

11. On Sept. 11, 1987, Shri Vijayendra Singh, MLA, addressed another letter to the Education Minister which reads as follows :

"Some confusion has been taking place regarding the location of MS Ratwari in my constituency. To finally sort out the matter, I recently visited the area and determined matters first hand by meeting the Gram Sabha Members and other residents of the locality. It has now finally been decided that the middle classes are to be held in village KOTHI (GP Ratwari) in the building constructed for the purpose. Orders to this effect may be issued."

In the margin of the said letter, the Education Minister passed the following order on the same day :

"The School may be shifted to Kothi."

A copy of the aforesaid letter with the endorsement by the Education Minister thereon was forwarded to the Director of Education who wrote to the Financial Commissioner (Education) on Sept. 25, 1987 giving a brief history of the case and seeking directions of the Government regarding the shifting of the School to Village Kothi. Those instructions were conveyed vide letter dated Oct. 12, 1987, which has been referred to earlier. The Government orders were duly implemented and the School went back to village Kothi.

12. Before proceeding further, it would be pertinent to mention that it is not in dispute that Shri Mathura Dass executed a gift deed in respect of 2-17 bighas of land situate in village Ratwari in favour of the Education Department on June 19, 1987. Besides, one Shri Bhagu, s/o Smt. Gaura, has also admittedly executed a gift deed on Sept. 25, 1987 in favour of the Education Department with respect

to 4 bighas of land which is stated to be just adjacent to the existing Government School building in Village Ratwari.

13. An affidavit-in-reply on behalf of respondents Nos. 1 to 3 has been filed by respondent No. 2 (Director of Education). The sum and substance of the case set out in the affidavit is that the land situate in village Ratwari, which has been transferred to the Education Department by Shri Mathura Dass and Shri Bhagu, is not convenient for the location of the Government Middle School. The land of Shri Mathura Dass is situate in a corner and is bereft of amenities like electricity and water. The land donated by Shri Bhagu is not adequate in extent and there may be no scope for future expansion as well as for a playground if the School is located at that place. It has also been submitted that the location of the Government Middle School in village Kothi will benefit a vast majority of people and a large number of villages. The decision with regard to the location of the School in village Kothi is stated to have been arrived at on the request of the representative of the people of the area.

14-15. It cannot be gainsaid that the location of a Government school is a matter which must be decided primarily on the basis of the need and convenience of the people of the locality. A school established out of public funds, which is intended to cater to the educational needs of their children, must have a situs which subserves the purposes. The considerations which must ordinarily weigh in determining the location are the antecedent background, the geographical or topographical factors including the distance from various extremities and easy accessibility, the availability of adequate accommodation and requisite facilities and services, the need of setting up a school on the site having regard to the population and distance from the other existing school, if any, and the estimated classwise enrolment of students in the proposed school. The relevant data on these points must be collected through the official agency. The considered opinions of the departmental authorities including the District Education Officer and the Director of Education must be obtained and given due weight. The elected representative(s) of the people may express or be invited to express an opinion on the advisability of locating the school at one place or the other within his constituency. Such opinion may also be taken into consideration since it would be legitimate to presume that ordinarily his views reflect the wishes of the people ascertained in an impartial manner and that even otherwise it must have been based on an objective assessment of the local situation. However, it is no more than one of the factors to be taken into consideration. It cannot be the decisive consideration. It cannot override the public interest which has to be judged on the basis of the relevant considerations hereinabove mentioned which must prevail in the final analysis. Besides, the decision of the competent authority must necessarily be based on objective data which should be reflected on the official record. Frequent changes in the decision with respect to the site of an existing school would affect the school going children of tender years and are bound to result in hardship and inconvenience to them as well as to the teaching staff. They would also lead to uncertainties in administration and

may tend to encourage factionalism and political manoeuvrings. These must be avoided in the larger public interest.

16. The factual background of the present case points in the direction that the decision, with regard to the selection of a site for the Government Middle School has been subjected to frequent changes at the Government level without due regard to the relevant factors and considerations. The main consideration which has apparently prevailed is the voice of the MLA elected from the concerned area which has substantially, if not solely, weighed and has greatly influenced, if not virtually governed, the decision. The factor relating to the availability of land and the amenities is more or less common so far as both the villages are concerned and so is the factor relating to the construction carried out thereon. The record does not reveal that at any stage the factual data having a bearing upon the various factors abovementioned was collected and placed before and was taken into consideration at the Government level. The record of the Government does not contain any other objective data. The views of the District Education Officer do not appear to have been sought although a local dispute had arisen on the location of the school. The detailed report of the Block Education Officer does not appear to have been placed before the Government before the final decision was arrived at. In fact, the impression which is left on the mind of the Court is that the frequent changes in the decision were more or less the result of extraneous influences and pressures and pulls which appear to have had their origin in the local politics and factionalism. It is unfortunate that a Government Middle School has become a pawn in the game of chess played by the local mandarins. The decision arrived at under the aforementioned circumstances and against the aforementioned background to locate the School in question at village Kothi cannot, therefore, be allowed to stand. A fresh decision will be required to be taken as to the site on which the School should be located in view of all the relevant considerations.

17. Having considered the matter in all its relevant aspects, the Court is of the opinion, on the facts and in the circumstances of the case, that the decision with regard to the selection of the site for the school in question should be arrived at on the basis of a report made by the Director of Education to the Court after holding an on the spot enquiry and after ascertaining the views of the people of the area. Under the circumstances, the Court issues the following directions :

(1) The Director of Education, Himachal Pradesh, will visit every village comprising the Gram Sabha in question after giving prior intimation; he will hold a meeting of the j voters of the Gram Sabha residing in each of i such villages and ascertain their wishes at i such meeting by means of votes; the voting shall take place not only with respect to the location of the school at village Ratwari or village Kothi but at any other place in the Gram Sabha which according to them meets the requirement of the people of the area; a proper record of the proceedings of such meetings will be kept and maintained.

(2) The Director of Education will inspect the existing site of the Government

Primary School at village Ratwari and also the land donated by various persons and/or such other land which may be offered for donation or is otherwise readily available anywhere with a view to ascertaining whether the location of the Government Middle School at any of those places anywhere would be suitable having regard to the relevant factors abovementioned; he will also consult the Block Education Officer and the District Education Officer.

(3) The Director of Education will submit an objective report to the Court, along with the record of the meetings and of the inspection held by him, incorporating therein his recommendations as to the proper location of the school in the concerned Gram Sabha area; he will not entertain any reservation or restraint or constraint on account of the previous decisions taken at Government level with respect to the location of the school; the only guiding factors for the formulation of his opinion will be those which have been indicated hereinabove. The report to be submitted on or before February 1, 1988.

(4) All the local authorities including the District Panchayat Officer, the Block Development Officer, the Tehsildar (Election) etc. will render all assistance required by the Director of Education and they will comply with all reasonable requests made to them in order to discharge the functions entrusted to the Director vide this order.

(5) The Government Middle School will be meanwhile transferred back to village Ratwari and it will start functioning in the Government Primary School building.

(6) The selection of a proper site for a school or the location of a school building will, at all times and in all cases, be made in future bearing in mind the guiding factors hereinabove set out. 26-4-1988

18. No further orders are required to be passed on this writ petition in view of the order of the Supreme Court of India passed on March 21, 1988 in petition for Special Leave to Appeal (Civil) No. 1417 of 1988. The writ petition stands disposed of accordingly.

19. While disposing of the writ petition as aforesaid, this Court would like to observe and clarify that it reads the order abovementioned passed by the Supreme Court and, more particularly, the observations therein contained to the effect that the procedure indicated by the High Court need not be followed, as applicable only to directions Nos. (1) to (5) in the interim order issued in the present case. The justification for reading the order of the Supreme Court accordingly is to be found in the fact that:

(1) the appellants themselves submitted before the Supreme Court that in compliance of the interim order the school will also be opened within three months at the place directed in the said order, that is, village Ratwari and

(2) no notice of the Special Leave Petition, therefore, appears to have been issued to the respondents) and the SLP has been disposed of without granting leave and without setting aside the interim order which was sought to be

questioned in the appeal.

20. The effect of reading the order of the Supreme Court accordingly is that the direction given in Para (6) of the interim order dated November 25, 1987 passed by this Court herein, which is of a general nature and refers to the guidelines laid down at pages 8 and 9 of the said order, will continue to remain operative and they will be followed by the State Government at all times and in all future cases, while selecting the site for a school or the location of a school building.