

(2016) 02 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : CWP No. 7995 of 2010

Jagdish Kumar Dhiman and Ors.

APPELLANT

Vs

State of H.P. and Ors.

RESPONDENT

Date of Decision : 25-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 2 HimLR 1243 : (2016) ILRHP 484

Hon'ble Judges : Mansoor Ahmad Mir, C.J.; Sureshwar Thakur, J.

Bench : Division Bench

Advocate : Anup Rattan, Romesh Verma, Additional Advocate Generals with J.K. Verma, Deputy Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J. (Oral) - By the medium of this writ petition, the petitioners have called in question the scheme for lifting the water supply, namely, LWSS-Malwar and LWSS Bhatoli-Baih, Dhamaan, framed by the Government, which is a policy decision made by the Government. The policy appears to be in the public interest.

2. It is beaten law of the land that policy decision of the Government cannot be made subject matter of a writ petition, unless arbitrariness is shown in the decision making process.

3. The Apex Court in Sidheshwar Sahakari Sakhar Karkhana Ltd. v. Union of India and others, 2005 AIR SCW 1399, has laid down the guidelines and held that Courts should not interfere in the policy decision of the Government, unless there is arbitrariness on the face of it.

4. The Apex Court in a latest decision reported in Manohar Lal Sharma v. Union of India and another, (2013) 6 SCC 616, also held that interference by the Court on the ground of efficacy of the policy is not permissible. It is apt to reproduce paragraph 14 of the said decision as under:

"14. On matters affecting policy, this Court does not interfere unless the policy is unconstitutional or contrary to the statutory provisions or arbitrary or irrational or in abuse of power. The impugned policy that allows FDI up to 51% in multi-brand retail trading does not appear to suffer from any of these vices."

5. The Apex Court in the case titled as Mrs. Asha Sharma v. Chandigarh Administration and others, reported in 2011 AIR SCW 5636 has held that policy decision cannot be quashed on the ground that another decision would have been more fair, wise, scientific or logical and in the interest of society. It is apt to reproduce para 10 of the aforesaid judgment herein:

"10. The Government is entitled to make pragmatic adjustments and policy decisions, which may be necessary or called for under the prevalent peculiar circumstances. The Court may not strike down a policy decision taken by the Government merely because it feels that another decision would have been more fair or wise, scientific or logic. The principle of reasonableness and non-arbitrariness in governmental action is the core of our constitutional scheme and structure. Its interpretation will always depend upon the facts and circumstances of a given case. Reference in this regard can also be made to Netaji v. State of West Bengal, (2000) 8 SCC 262 : AIR 2000 SC 3313."

6. It appears that the respondents-State Government have examined all aspects and made the decision. Thus, it cannot be said that the decision making process is bad. The Court cannot sit in appeal and examine the correctness of the policy decision.

7. The Apex Court in the case titled as Bhubaneswar Development Authority and another v. Adikanda Biswal and others, reported in (2012) 11 SCC 731 has laid down the same principle. It is apt to reproduce para 19 of the judgment, supra, herein:

"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."

8. This Court in the judgments delivered in CWP No. 621 of 2014, titled as Nand Lal and another v. State of H.P. and others and CWP No. 4625 of 2012, titled as Gurbachan v. State of Himachal Pradesh and others, decided on 15.07.2014, has also laid down the same proposition of law.

9. Applying the test to the instant case, the writ petition merits to be dismissed. Accordingly, it is dismissed along with pending applications.