
(2015) 05 SHI CK 0036
In the High Court Of Himachal Pradesh
Case No : CWP No. 618 of 2013

Jagjeevan Singh and Others

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 01-05-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2015) 05 SHI CK 0036

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : R.K. Sharma, Senior Advocate and Gaurav Thakur, for the Appellant; Virender Kumar Verma, Rupinder Singh, Additional Advocate Generals and Parul Negi, Dy. Advocate General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J.—By medium of this petition, the petitioner has sought writ of certiorari for quashing order dated 2.2.2013 (Annexure P-27) whereby the State Government in its Cabinet meeting decided to shift back the Divisional Office of HPPWD (for short "Division") from Balakrupi to Tanda.

2. The petitioners have averred that in teeth of more than 25 resolutions of various Panchayats, the decision of the respondents to shift back the division from Balakrupi to Tanda is illegal, malafide, discriminatory and appears to be a political motivated to harass the public or else such a decision would not have been arrived at.

3. In response to the writ petition, the respondents in their reply have stated that shifting of the division to Tanda is a conscious decision taken by the Cabinet keeping in view the work load of Kangra Division which has the jurisdiction over six sub-divisions. The present work load in this division is of Rs. 4279.62 lacs. Moreover, because of the Medical College at Tanda, more attention to the building works was required to be paid as the sanctioned work of these buildings alone

was Rs. 4863.64 lacs.

4. I have heard learned counsel for the parties and also gone through the records of the case carefully.

5. Mr. V.K. Verma, learned Additional Advocate General has raised preliminary objection regarding the very maintainability of the writ petition on the ground that impugned decision regarding shifting of division is a policy matter and, therefore, should not be interfered with by the Courts. While on the other hand, learned counsel for the petitioners would argue that this Court can always exercise powers of judicial review even in policy matters when the same is contrary to law or is in violation of the provisions of the Constitution or is arbitrary or irrational and Courts must perform their constitutional duties by striking it down.

6. A similar question came up for consideration before the learned Division Bench of this Court (of which I was one of the member) in CWP No. 621 of 2014 titled Nand Lal and another v. State of H.P. and others reported in 2014 (2) HLR (DB) 982 where the petitioners therein had challenged the decision of the Government to open a Government Degree College at Diggall on the ground that the same should be opened at Ramshehar (Nalagarh) because the Panchayats of the area of Ramshehar had made demand for sanctioning and opening of the College at Ramshehar which was more feasible and centrally located. This Court held as under:

"4. Heard. The moot question for consideration in this writ petition is-whether the petitioners can question the decision made by the Government for opening a Government Post Graduate College at Diggall, District Solan?

5. During the process of consideration of the issue, the residents of various Gram Panchayats of Ramshehar area made resolution(s) and represented to the Government for sanctioning and opening a Degree College at Ramshehar (Nalagarh), District Solan, instead of at Diggall, District Solan. After considering all the documents and keeping in view the policy-norms, governing the field, the respondents made decision to open the said college at Diggall.

6. The petitioners are aggrieved for the reason that the State Government has not made decision in accordance with the facts, their contentions read with norms and policy.

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

8. It is averred that Panchayats of the area of Ramshehar have made demand for sanctioning and opening the said college at the said place, which is centrally located and is feasible also.

9. The Apex Court in Sidheshwar Sahakari Sakhar Karkhana Ltd. Vs. Union of

India (UOI) and Others, (2005) 99 ECC 74 : (2005) 181 ELT 304 : (2005) 3 JT 31 : (2005) 3 SCC 369 : (2005) 3 SCR 317 , has laid down the guidelines and held that Courts should not interfere in policy decision of the Government, unless there is arbitrariness on the face of it.

10. The Apex Court in a latest decision reported in Manohar Lal Sharma Vs. Union of India and Another, (2013) 5 ABR 125 : (2013) 5 AD 528 : (2013) 3 CompLJ 10 : (2013) 8 JT 266 : (2013) 3 RCR(Civil) 112 : (2013) 6 SCALE 776 : (2013) 6 SCC 616 : (2013) 120 SCL 69 , 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."

14. The Apex Court in the case titled as Mrs. Asha Sharma Vs. Chandigarh Administration and Others, (2011) 10 JT 82 : (2012) 1 RCR(Civil) 25 : (2011) 9 SCALE 549 : (2011) 10 SCC 86 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 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 Subhas Chandra Bose Vs. The State of West Bengal and Others, AIR 2000 SC 3313 : (2000) 1 JT 181 Supp : (2000) 6 SCALE 504 : (2000) 8 SCC 262 : (2000) 3 SCR 424 Supp : (2001) 1 UJ 391 : (2000) AIRSCW 3590 : (2000) 6 Supreme 425 ."

15. It appears that the respondents have examined all aspects and made the decision. Thus, it cannot be said that the decision making process is bad. The Court can not sit in appeal and examine correctness of policy decision. The Apex Court in the case titled as Bhubaneswar Development Authority and Another Vs. Adikanda Biswal and Others, (2012) 6 JT 35 : (2012) 11 SCC 731 laid down the same principle. It is apt to reproduce para 19 of the judgment 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.""

7. The aforesaid judgment was followed by the learned Division Bench of this Court (of which I was one of the member) in CWP No. 4625 of 2012 titled *Gurbachan v. State of H.P. and others*, decided on 15th July, 2014, which pertained to the shifting of the veterinary dispensary from village Kosri to village Lunus, in Tehsil Nalagarh, District Solan, H.P. This Court after reiterating what had been stated in *Nand Lal's case* (supra) refused to interfere and observed that this Court cannot sit in appeal and examine the correctness of a policy decision.

8. The scope of judicial review and its exclusion was a subject matter of a recent decision by three Judges of the Hon'ble Supreme Court in *Census Commissioner Vs. R. Krishnamurthy*, (2014) 4 RCR(Civil) 991 : (2014) 10 SCJ 222 and it was held that it is not within the domain of Courts to embark upon enquiry as to whether particular public policy is wise and acceptable or whether better policy could be evolved, Court can only interfere if policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded on ipse dixit offending Article 14. It was held as under:

"23. The centripetal question that emanates for consideration is whether the High Court could have issued such a mandamus commanding the appellant to carry out a census in a particular manner.

24. The High Court has tried to inject the concept of social justice to fructify its direction. It is evincible that the said direction has been issued without any deliberation and being oblivious of the principle that the courts on very rare occasion, in exercise of powers of judicial review, would interfere with a policy decision.

25. Interference with the policy decision and issue of a mandamus to frame a policy in a particular manner are absolutely different. The Act has conferred power on the Central Government to issue Notification regarding the manner in which the census has to be carried out and the Central Government has issued Notifications, and the competent authority has issued directions. It is not within the domain of the Court to legislate. The courts do interpret the law and in such interpretation certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The court may also fill up the gaps in certain spheres applying the doctrine of constitutional silence or abeyance. But, the courts are not to plunge into policy making by adding something to the policy by way of issuing a writ of mandamus. There the judicial restraint is called for remembering what we have stated in the

beginning. The courts are required to understand the policy decisions framed by the Executive. If a policy decision or a Notification is arbitrary, it may invite the frown of Article 14 of the Constitution. But when the Notification was not under assail and the same is in consonance with the Act, it is really unfathomable how the High Court could issue directions as to the manner in which a census would be carried out by adding certain aspects. It is, in fact, issuance of a direction for framing a policy in a specific manner.

26. In this context, we may refer to a three-Judge Bench decision in Suresh Seth Vs. Commissioner, Indore Municipal Corporation and Others, AIR 2006 SC 767 : (2005) 9 JT 210 : (2005) 13 SCC 287 : (2005) AIRSCW 6380 : (2005) 7 Supreme 134 wherein a prayer was made before this Court to issue directions for appropriate amendment in the M.P. Municipal Corporation Act, 1956 so that a person may be debarred from simultaneously holding two elected offices, namely, that of a Member of the Legislative Assembly and also of a Mayor of a Municipal Corporation. Repelling the said submission, the Court held: (SCC pp. 288-89, para 5)

"5.In our opinion, this is a matter of policy for the elected representatives of people to decide and no direction in this regard can be issued by the Court. That apart this Court cannot issue any direction to the legislature to make any particular kind of enactment. Under our constitutional scheme Parliament and Legislative Assemblies exercise sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation. In Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another, AIR 1990 SC 334 : (1989) 3 JT 188 : (1989) 2 LLJ 506 : (1989) 2 SCALE 107 : (1989) 4 SCC 187 : (1989) 3 SCR 488 : (1990) 1 UJ 40 it has been held that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated legislative authority. This view has been reiterated in State of Jammu and Kashmir Vs. A.R. Zakki and others, AIR 1992 SC 1546 : (1992) 1 JT 59 : (1991) 2 SCALE 1331 : (1992) 1 SCC 548 Supp : (1991) 3 SCR 216 Supp . In A.K. Roy and Others Vs. Union of India (UOI) and Others, AIR 1982 SC 710 : (1982) CriLJ 340 : (1981) 4 SCALE 1904 : (1982) 1 SCC 271 : (1982) 2 SCR 272 , it was held that no mandamus can be issued to enforce an Act which has been passed by the legislature."

27. At this juncture, we may refer to certain authorities about the justification in interference with the policy framed by the Government. It needs no special emphasis to state that interference with the policy, though is permissible in law, yet the policy has to be scrutinized with ample circumspection.

28. In N.D. Jayal and Another Vs. Union of India (UOI) and Others, (2003) 2 JT 1 Supp : (2003) 7 SCALE 54 : (2004) 9 SCC 362 : (2003) 3 SCR 152 Supp , the Court has observed that in the matters of policy, when the Government takes a

decision bearing in mind several aspects, the Court should not interfere with the same. In *Narmada Bachao Andolan Vs. Union of India and Others*, AIR 2000 SC 3751 : (2000) 2 JT 6 Supp : (2000) 7 SCALE 34 : (2000) 10 SCC 664 : (2000) 4 SCR 94 Supp : (2000) AIRSCW 4809 : (2000) 7 Supreme 264 , it has been held thus: (SCC p. 762, para 229)

"229. "It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution."

29. In this context, it is fruitful to refer to the authority in *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, AIR 1970 SC 564 : (1970) 40 CompCas 325 : (1970) 1 SCC 248 : (1970) 3 SCR 530 , wherein it has been expressed thus: (SCC p. 294, para 63)

"63....It is again not for this Court to consider the relative merits of the different political theories or economic policies... This Court has the power to strike down a law on the ground of want of authority, but the Court will not sit in appeal over the policy of Parliament in enacting a law".

30. In *Premium Granites and Another Vs. State of Tamil Nadu and Others*, AIR 1994 SC 2233 : (1994) 1 JT 376 : (1994) 1 SCALE 393 : (1994) 2 SCC 691 : (1994) 1 SCR 579 : (1994) 2 UJ 145 while dealing with the power of the courts in interfering with the policy decision, the Court has ruled that: (SCC p.715, para 54)

"54. it is not the domain of the court to embark upon uncharted ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy could be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be. The court is called upon to consider the validity of a public policy only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution of India or any other statutory right."

31. In *M.P. Oil Extraction and Another Vs. State of M.P. and Others*, AIR 1998 SC 145 : (1997) 6 JT 97 : (1997) 4 SCALE 515 : (1997) 7 SCC 592 : (1997) 1 SCR 671 Supp : (1997) 2 UJ 438 , a two-Judge Bench opined that: (SCC p. 611, para 41)

"41..... The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of

the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State."

32. In *Narmada Bachao Andolan Vs. State of Madhya Pradesh and Another*, AIR 2011 SC 1989 : (2011) 6 JT 379 : (2011) 5 SCALE 624 : (2011) 7 SCC 639 : (2011) 3 UJ 1977 : (2011) AIRSCW 4473 , after referring to the *State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc.*, AIR 1998 SC 1703 : (1998) 2 JT 136 : (1998) 2 SCALE 33 : (1998) 4 SCC 117 : (1998) SCC(L&S) 1021 : (1998) 1 SCR 1120 : (1998) AIRSCW 1480 : (1998) 2 Supreme 231 , the Court ruled thus: (SCC pp. 670-71, para 36)

"36. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies [pic]are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power. (See *Ram Singh Vijay Pal Singh and Others Vs. State of U.P. and Others*, (2007) 2 CTLJ 1 : (2007) 6 JT 302 : (2007) 6 SCALE 389 : (2007) 6 SCC 44 : (2007) 5 SCR 1060 , *Villianur Iyarkkai Padukappu Maiyam Vs. Union of India (UOI) and Others*, (2009) 8 JT 339 : (2009) 7 SCC 561 : (2009) 10 SCR 225 : (2009) 8 UJ 3627 and *State of Kerala and Another Vs. Peoples Union for civil Liberties, Kerala State Unit and Others*, (2009) 9 JT 573 : (2009) 10 SCALE 25 : (2009) 8 SCC 46 : (2009) 12 SCR 142 "

33. From the aforesaid pronouncement of law, it is clear as noon day that it is not within the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be evolved. The court can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded ipse dixit offending the basic requirement of Article 14 of the Constitution. In certain matters, as often said, there can be opinions and opinions but the Court is not expected to sit as an appellate authority on an opinion."

9. Aforesaid exposition of law would go to show that policy matters cannot normally be interfered with by the Courts, except where the policy is contrary to law or is in violation of the provisions of the Constitution or is arbitrary or irrational and the Courts must then perform their constitutional duties by striking it down.

10. Therefore, the moot question required to be considered is as to whether merely because certain section of the general public does not subscribe and approve the decision of the Government for transferring the division from Balakrupi to Tanda, can the same be nullified on this ground alone. It is more than settled that individual interest must yield in favour of societal and public interest and this Court would only interfere with policy decision if the petitioners

can carve out a case falling within the parameters as set out in para 9 supra.

11. The requirement of having a full fledged Government Medical College at Tanda is of paramount importance as the same shall cater to the medical needs of nearly half of the State because of its strategic location. Once an amount of Rs. 4863.64 lacs is being spent on the building works of this College, it is then obvious that these works will have to be overseen, monitored and supervised. Therefore, in such circumstances, no fault can be found with the decision of the respondents whereby they took a decision to transfer the Divisional Office of the HPPWD from Balakrupi to Tanda. The petitioners have failed to point out as to how and in what manner this decision is either arbitrary or irrational much less capricious or whimsical.

12. In view of the aforesaid discussion, I find no ground to interfere in this petition, hence the same is dismissed along with pending application(s) if any. The parties are left to bear their own costs.