
(2015) 02 RAJ CK 0126
In the Rajasthan High Court
Case No : Civil Writ Petition No. 106/2015

Kanika Gehlot and Others	Vs	APPELLANT
State of Raj. and Others		RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 02 RAJ CK 0126

Hon'ble Judges : Arun Bhansali, J.

Bench : Single Bench

Advocate : G.R. Punia, Senior Advocate assisted by Pritam Solanki, for the Appellant; M.R. Singhvi, Senior Advocate, P.S. Bhati, A.A.G and S.S. Rathore, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Arun Bhansali, J.—This writ petition under Article 226 of the Constitution of India has been filed by few students of Government College, Jodhpur ("the College") challenging shifting of the College presently functioning at Government Higher Secondary School, Chainpura, Jodhpur ("Chainpura School") to the premises of Government Primary School, First Puliya, Kamla Nehru Nagar, Chopasani Housing Board, Jodhpur ("K.N. School").

2. The writ petition has been filed with the following prayers:-

"1. By an appropriate writ, order or direction, the impugned order dated 19.12.2014 (Annexure-13) and 26.12.2014 (Annexure-21) and other orders passed subsequent thereto may kindly be quashed and set aside.

2. By an appropriate writ, order or direction, the respondents may be directed to not to shift the present College functioning at Government Primary School, Kamla Nehru Nagar, First Puliya, Chopasani Housing Board, Jodhpur.

3. By an appropriate writ, order or direction, the respondents may kindly be

directed to allot the land for the construction of new Government College, Jodhpur in the vicinity of Gram Mandore.

4. Any other appropriate writ, order or direction, which this Hon''ble Court deem just and proper may also kindly be passed in favour of the Petitioners.

5. Writ petition may kindly be allowed with Costs."

3. The petitioners have, inter alia, averred in the petition that with a view to establish a Government College at Jodhpur, in the Budget 2013-14, the State Government made an announcement to establish the said College and with an intention to begin the College in the Session 2013-14 itself, various proposals were exchanged in finding a suitable place for the establishment of the College temporarily and in view of the fact that there was no nearby College in village Mandore, it was decided that the classes of the Government College would be held at existing Chainpura School; two temporary committees were constituted for undertaking the admission process, selection of land and building and for other necessary decisions; permission dated 31.05.2013 was granted by the Director, College Education, Rajasthan Jaipur to start graduation level faculties pertaining to the subjects Arts, Commerce and Science; it is claimed that for the Session 2013-14 in the three faculties 555 students were admitted; in a meeting dated 04.08.2013 it was decided that in the first shift i.e. 07:30 AM to 12:30 PM classes of the Higher Secondary School would be held and in the second shift the College would function.

4. The petitioners have thereafter indicated that there are 18 rooms in all at Chainpura School, wherein each room can accommodate 60 to 70 students, three operational laboratories, a big hall, a play ground and a stadium adjacent to the College campus and a indoor stadium is under construction nearby; the process for allotment of land for construction of permanent building for the College is also under way; for the Sessions 2014-15 368 students took admission in the I year and the students admitted in the previous year proceeded to II year and presently there are 923 students including 250 girl students.

5. It is then alleged that after the change of Government in December, 2013, certain influential people started movement to shift the College from Chainpura School to some other place to deprive the students residing in the vicinity of present College; it is alleged that without there being any reason, demand or complaint and without taking consensus of the students, an order dated 19.12.2014 granting conditional permission upon approval of competent authority to shift the College to K.N. School was passed; on coming to know of the order dated 19.12.2014, the students, their parents and local residents started peaceful agitation; it is also indicated in the petition that names of five possible places, where the College could be shifted, were suggested by the Principal of the College and it was also proposed on 14.06.2014 that if the entire premises of the existing campus could be handed over, the same would satisfy the requirement of the College; on various applications made under the Right to

Information Act, it was disclosed that by order dated 19.12.2014 the Government College has been shifted to K.N. School; further averments have been made that by order dated 26.12.2014 the premises of K.N. School have been temporarily allotted for the functioning of the College for a period of five years with the stipulation that if the building was required by the Education Department, the same would be vacated within one month.

6. Various pleas have been raised challenging the transfer including the fact that the new premises were at a distance of about 17 Kms.; from one temporary premises, College has been shifted to another temporary premises, the facilities at K.N. School were not upto the mark and shifting would cause great hardship to the girl students, who are studying at the College from the nearby villages; newspaper reports indicating unwillingness of the students to shift to the new College have also been attached.

7. A reply to the writ petition has been filed by the respondents, inter alia, denying the averments made in the writ petition; it is also indicated that the Government decided to establish Government College at Jodhpur and the same was not meant for any specific area of Jodhpur; at the time of establishing the College, six class rooms of the Chainpura School were made available in the second shift as a temporary arrangement; the requirement of the premises as per the guidelines laid down by the University and University Grants Commission are required to be fulfilled; the Chainpura School having large premises, are of no use to the College, as only six rooms including a veranda have been made available; as during the First Session only I year students were there, six class rooms were enough, but for the new Session class rooms for the I year as well as II year students are required and, therefore, the Principal communicated with the District Administration for shifting the College to a suitable accommodation; the allegations regarding shifting of the College on account of change of Government have been vehemently denied and it has been submitted that it is only for the welfare of the students that the College is being shifted to the new premises; it is also submitted that on account of merger of K.N. School with Adarsh School, the building became available and the same has been allotted to the College; it is further indicated that as per the requirement, a College should run for seven hours a day and on account of the fact that the College was being run in the second shift, it was not possible to run the College for seven hours; the complete building of the School could not be handed over to the College looking to the fact that a School was already functioning there.

8. Besides the reply, additional submissions have also been filed on behalf of the respondents, wherein, the maintainability of the writ petition has been questioned as disputed questions of fact have been raised; there was no violation of any law and/or any fundamental right and, therefore, the petition was misconceived; the K.N. School has got 24 rooms and adequate space; the premises at Chainpura School made available to the College were highly inadequate for running the College; on account of the fact that merger of certain

Schools took place, whereby, three schools running at Chopasani Housing Board i.e. Nayaon Ki Bagechi, Upper Primary, Kamla Nehru Nagar and Primary Rajeev Hattha became vacant and there are about 26 rooms in the premises; the premises have been appropriately prepared for being used as a College; various documents have been filed indicating the requirement for a new premises and inadequacy of premises at Chainpura having only six rooms.

9. A rejoinder has been filed by the petitioners, inter alia, reiterating the issues raised in the writ petition emphasizing that the College was to be established at particular place; it was, inter alia, indicated that the entire premises at Chainpura School were available, however, only six rooms were utilized; the guidelines sought to be relied on by the State pertain to private Colleges and not to Government College; it is alleged that political influence is clearly reflected from the communications; the facts about distance between the two locations have also been reiterated; the act of State in merging the Schools have also been questioned; suggestions have been given regarding other Schools running nearby Chainpura School, which premises could be utilized; emphasis has been relied on the initial allotment letter dated 26.08.2013, wherein, the entire premises could be utilized.

10. A rejoinder to the additional submissions has also been made essentially reiterating the facts alleged in the petition.

11. During the pendency of the writ petition and in view of the fact that allegations were made in the petition regarding the status of the building premises of the K.N. School, Mr. C.S. Kotwani, Advocate was appointed Commissioner to submit his report.

12. The learned Commissioner submitted his report pointing out the status of the building; whereafter, in response to the report of the Commissioner, the State has given its response and has indicated that the certain deficiencies pointed out in the Commissioner report have also been cured.

13. It is submitted by learned counsel for the petitioners that the entire material available on record clearly indicates that the College was adequately and properly operating at Chainpura School, however, the same is sought to be shifted at a distance of 17 kms. against the interests of the students; it is submitted that the College was established at the Chainpura School vide Annexure-8 dated 26.08.2013, wherein, there was no restriction regarding the premises and the entire premises having 18 rooms, laboratory, playing area etc. could very well be used by the College and it was specifically indicated that the School would run in the first shift and the College would run in the second shift; however, on the one hand the available facility has not been utilized, the premises are sought to be shifted far off, resulting in total inconvenience to the students; great emphasis was laid on the fact that once the College was established in one part of the city, wherein, there were no Colleges in the close vicinity, the same cannot be shifted to other part of the city, wherein, Colleges in

close vicinity are available; further, the College could not be shifted from one temporary location to another temporary location and with a reference to the arrangement entered into regarding the new premises, it is indicated that the same has been allotted for five years and is liable to be vacated from one month's notice, which further puts the future of the students in a jeopardy; great emphasis was also laid on the fact that at the Chainpura School premises were adequately equipped as far as the class rooms and the basic amenities like toilet etc. were concerned, however, the building of K.N. School was in a very shabby condition and cannot even be used as a College; learned counsel also tried to make submissions regarding alleged political interference with reference to certain documents; emphasis were also laid regarding the fact that qua the building of K.N. School another litigation was pending, wherein, the merger of the said School with the Adarsh School has been challenged and, therefore, the entire exercise is essentially in futility; it was prayed that the action of the respondents regarding shifting of the College from Chainpura School to K.N. School be set aside.

14. Vehemently opposing the submissions made on behalf of the petitioners, learned counsel for the respondent - State submitted that the writ petition filed by the petitioners is not maintainable; none of the legal rights of the petitioners have been affected, the petitioners may be unhappy with the decision of the respondents to shift the premises from the Chainpura School to K.N. School, but the said aspect does not affect their rights and, therefore, the petitioners cannot maintain the petition; the issue as to in which premises the College should be run is solely the domain of the Government and the said aspect being a policy decision, is not open to judicial review; on merits, it was submitted that with 923 students already studying with the College and another batch of students likely to join within a short span of 2-3 months, it was virtually impossible for the respondents to run the College with only six rooms at their disposal at Chainpura School and the Principal was seeking alternative arrangements since January, 2014 and after making various efforts in this regard by various authorities, when on account of merger of certain Schools, the K.N. School premises were available, a conscious decision to shift the College in the said premises was taken; it was submitted that the premises were made available on 26.12.2014 and its repairs, renovation etc. were undertaken in the right earnest and the minor deficiencies indicated in the Commissioner report have also been rectified; learned counsel further emphasized that the students cannot claim a right to have the location of the College at a particular place and in view of the fact that the College could not be run in a proper manner at Chainpura School, the respondents were left with no alternative but to shift the College to K.N. School, which are adequate for running the College; it was further submitted that the new College building cannot come up overnight and till such time that the permanent building of the College comes up, the College has to be run appropriately and it is not expected that a College could be housed in six rooms; it is prayed that the writ petition filed by the petitioners be dismissed.

15. Reliance was placed on The State of Maharashtra and Another Vs. Lok Shikshan Sansatha and Others, , Raj Shiksan Prasarak Mandal v. State of Maharashtra and Ors. : (2001) 10 SCC 75 and Delhi Bar Association (Regd.) Vs. Union of India (UOI) and Others, .

16. I have considered the rival submissions made by learned counsel for the parties and have perused the voluminous material placed on record.

17. The fundamental aspect, which emerges from the material available on record is that a Government College was sanctioned for the city of Jodhpur vide the office order dated 21.05.2013 (Annexure-3) issued by the Directorate, College Education indicating sanctioning of 31 posts under various categories; whereafter, by order dated 31.05.2013 (Annexure-5) the permission for commencement of studies under three faculties - Arts, Commerce and Science was granted and vide meeting dated 04.08.2013 /the minutes dated 26.08.2013 (Annexure-8), it was decided to operate the Government College, Jodhpur at Chainpura School till the permanent building was arranged; whereafter the College started functioning at Chainpura School and on account of its location was being described as Government College, Chainpura, Jodhpur and it is only on account of the said fact that in the Master Development Plan 2031 (Proposed), Jodhpur region (Annexure-30) it has been described as "Government College, Chainpura, Jodhpur" and the same by itself cannot mean and be emphasized by the petitioners that the Government College was sanctioned for a particular part of Jodhpur by the State Government; it is only fortuitous that the College started functioning at Chainpura School at its inception, which by itself cannot and does not lead to any conclusion that the Government College was to be located at a particular place in the city of Jodhpur.

18. The emphasis of the students in the writ petition has been that the College was being shifted from one temporary location to another temporary location, the distance is about 17 kms., that the facilities at K.N. School were not comparable to the facilities at Chainpura School and the building was not in a proper shape; however, during course of submissions, the political interference was also sought to be alleged and emphasized.

19. From the material available on record and on a specific query put to the learned counsel for the petitioners, it was fairly conceded that the College at Chainpura was being run in six rooms only; as to under what circumstances 923 students can study in a College having only six rooms at its disposal; a reflection can be seen from a newspaper report filed by the respondents as Annexure-R/6 (page 126), wherein, it is reported that the students were studying in the open, under the trees and in the veranda of the School, sitting on the floor.

20. Besides the above, a letter Annexure-R/M by the Principal of the School to the Principal of the College also reflects the state of affairs, wherein, the School Principal has informed the College Principal that half yearly examination of the School would be held from 12.12.2014 to 24.12.2014 in two shifts and,

therefore, three rooms may be vacated for the said purpose, essentially resulting in the College required to function in three rooms only with 923 students.

21. From the above, the inadequacy of the premises at Chainpura School for running a Government College, presently having 923 students and number likely to go up in near future is writ large, and the same cannot be said to be adequate from any stretch of imagination. The petitioners have emphasized that in terms of the understanding dated 26.08.2013 (Annexure-8), the entire premises having 18 rooms were available to the College, however, only six rooms were utilized and that the entire premises can be directed to be made available to the College; the said aspect sought to be suggested/raised by the students, does not take into consideration the fact that seeking the entire premises for the College necessarily results in closing down the existing Higher Secondary School, which presently is catering to hundreds of small students essentially of the nearby areas. To accommodate the Government College, which was given space by the School by way of temporary arrangement, asking the School to vacate the premises for the College is essentially asking too much without taking into consideration the fallout on the little students studying therein, who are protected under the Right of Children to Free and Compulsory Education Act, 2009. As such, from the above, it is apparent that the premises for running the College are absolutely inadequate and the entire School premises cannot be made available to the College.

22. This aspect has been considered despite the objection raised by the learned counsel for the respondents that the issue regarding shifting of College/location of College is essentially a policy matter and the petitioners have no locus standi to direct as to where the College should be located.

23. Hon'ble Supreme Court in Lok Shikshan Sansthan (supra) has observed as under:-

"9. Before we deal with the above contentions advanced before us on behalf of both sides, it is necessary to state that the High Court in the judgment under attack has made certain observations regarding what according to it should be the policy adopted by the educational authorities in the matter of permitting the starting of a new school or of an additional school in a particular locality or area. It is enough to state that the High Court has thoroughly misunderstood the nature of the jurisdiction that was exercised by it when dealing with the claims of the two writ petitions that their applications had been wrongly rejected by the educational authorities. So long as there is no violation of any fundamental rights and if the principles of natural justice are not offended, it was not for the High Court to lay down the policy that should be adopted by the educational authorities in the matter of granting permission for starting schools. The question of policy is essentially for the State and such policy will depend upon an overall assessment and summary of the requirements of residents of a particular locality and other categories of persons for whom it is essential to provide facilities for education. If the overall assessment is arrived at after a proper classification on

a reasonable basis, it is not for the courts to interfere with the policy leading up to such assessment." 24. Again in *Raj Shikshan Prasarak Mandal* (supra) Hon"ble Supreme Court observed that shifting of the school from one place to the other or having an ashram school at one place is not governed by any statutory rules and it is in fact a policy decision of the Government and so long as the government decision is not actuated with any malice or is not the outcome of an arbitrary and whimsical act, the same should not be interfered with. The relevant extract of the judgment reads as under:-

"3. The grievance of the appellant is that on consideration of all relevant materials, the appropriate authorities having accorded permission for shifting of the school from Mallapur to Ardahpur and the same having been cancelled because of issuance of a contempt notice by the High Court, the appropriate authorities having exercised their jurisdiction vested in law and having focussed their attention to the relevant materials, the impugned order of cancellation is not in accordance with law. It is undisputed that the order of cancellation emanated because of issuance of a notice under the contempt proceeding. The shifting of the school from one place to the other or having an ashram school at one place is not governed by any statutory rules and it is in fact a policy decision of the Government. So long as the government decision is not actuated with any malice or is not the outcome of an arbitrary and whimsical act, the same should not be interfered with by a court of law under Article 226 of the Constitution of India. This being the position and on the relevant materials, the appropriate authority having considered the interest of the public at large and having allowed the shifting of the school from Mallapur to Ardahpur, the same could not have been cancelled on the pretext that the High Court issued a notice of contempt in the matter. In that view of the matter, the order of cancellation has to be set aside and we accordingly quash the same. Since the parents of the students studying in the ashram school at Mallapur had made a grievance, the appropriate authority may reconsider their grievance and, if it is found that they are justified in their grievance, may pass appropriate orders with regard to the prayer for cancellation of the permission granted. This may be done within a period of three months from today and until final orders in that respect are passed, the school which is now functioning at Mallapur school be allowed to continue at Mallapur. The appropriate authority should also consider the question whether the recognition granted should be allowed to continue or not. The appeals stand disposed of accordingly." 25. The submissions made by learned counsel for the petitioners that College cannot be shifted from one temporary location to another temporary location also apparently has no basis so as to give them any enforceable right to contend that the action of the respondents is bad in law; the principle sought to be adopted appears to be based on the principle laid down in service law that one set of temporary employees should not be replaced by other set of temporary employees, which principle apparently has no application to the present case; admittedly, the facilities/accommodation at Chainpura School is highly inadequate and the said inadequacy further becomes acute during the

examinations of the School as noticed hereinbefore, and the setting up of permanent building/premises for the College is not yet decided and, even if once it is decided, the same is likely to take up time for the building/facilities to come up and till such time the petitioners cannot insist that the College should continue to run with the inadequate/insufficient/meager/skeleton facilities at Chainpura School.

26. As to whether the College should be shifted to any location/School in or around the existing location at Chainpura School or to K.N. School, it is apparent from the material placed on record that necessity of shifting the College to any other School and to share facilities with another existing School would result in the same operational difficulties, once a vacant premises at K.N. School became available on account of merger of the School with Adarsh School, the action of the respondents in deciding to shift the School to a vacant premises, cannot be said to be arbitrary and/or whimsical so as to attract the principles laid down by Hon''ble Supreme Court in the case of Raj Shikshan Prasarak Mandal (supra) calling for any interference in the said decision.

27. So far as the other ground raised by the petitioners, which ground essentially pertains to the necessary requirements for the students themselves i.e. status of the building and the attending facilities at the K.N. School is concerned, the Commissioner appointed by this Court in his report dated 07.02.2015 along with photographs, though indicated certain deficiencies regarding the cleanliness and the goods lying in two rooms, indicated availability of 26 rooms and adequate open space; subsequent thereto, a response has been filed by the State dated 13.02.2015, indicating that the two rooms occupied by goods indicated by the Commissioner have been got vacated and cleaned, the toilet facilities etc. have also been made adequate and the minor deficiencies pointed out have also been rectified.

28. The Commissioner report and the subsequent response filed by the respondents also clearly indicate that ever since the filing of the petition by the petitioners, the premises have been adequately made up by the respondents for being used as a College having adequate space for the class rooms etc.

29. So far as the issue raised by the petitioners regarding political interference and influence is concerned, it would be seen that the allegation made in the petition pertains to use of influence by certain person "to deprive the students residing in the vicinity of present College" (para 20), the allegation made in the petition does not find any support from the entire material placed on record and has in fact been subsequently abandoned in the rejoinder and the emphasis has been shifted to political intervention and alleged colourable exercise in order to satisfy the political will of its local leaders, who belong to ruling party and due to their personal interest, the College is being shifted, reliance has been placed on the communications, in which, strong recommendations have been made by the local leaders.

30. Besides the fact that the allegations do not form part of the petition, in the nature the same are sought to be raised in the rejoinder, the alleged persons having political interest and exercising political intervention, have not been impleaded as party, who are necessary party for adjudicating the above allegation and, therefore, in absence of any allegation in the writ petition and in absence of necessary parties, the allegations cannot and need not be examined in the present writ petition.

31. A reference has been made by the petitioners regarding the fact that the merger of K.N. School with the Adarsh School itself is in limbo, inasmuch as, litigation in this regard is also pending and an interim order has been passed in the said matter also and the counsel for the petitioners also made submissions regarding the merits of the merger of the School and the consequence of the orders passed in the litigation pertaining to the merger of the K.N. School. It would be sufficient to indicate that the present writ petition has been heard and the pleas raised therein have been scrutinized based on the material available qua the College and the pendency of the litigation pertaining to the merger of the School cannot detain the adjudication of the present matter, which essentially is independent of the said litigation pertaining to merger of the K.N. School, as the interim order came to be passed much after the decision regarding the shifting of the College from Chainpura School to K.N. School, was taken by the respondents.

32. In view of the above discussion, no case for exercise of jurisdiction under Article 226 of the Constitution of India has been made out by the petitioners and, consequently, the writ petition has no substance and the same is, therefore, is dismissed. No order as to costs.