

(2019) 04 UK CK 0131
In the Uttarakhand High Court
Case No : Writ Petition (PIL) No. 46 Of 2019

Khilap Singh And Others

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 24-04-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 04 UK CK 0131

Hon'ble Judges : Ramesh Ranganathan, CJ; N.S. Dhanik, J

Bench : Division Bench

Advocate : Devendra Singh Bohra, Paresh Tripathi

Final Decision : Disposed Off

Judgement

Ramesh Ranganathan, CJ

1. Heard Sri Devendra Singh Bohra, learned counsel for the petitioners and Sri Paresh Tripathi, learned Chief Standing Counsel for the State of Uttarakhand and, with their consent, this writ petition is being disposed of at the stage of admission.

2. The second petitioner is the Pradhan of Village Paithani, Narayanbagar Block and Tehsil in Chamoli district. She, along with two others, has invoked the jurisdiction of this Court to quash the Government Order dated 15.11.2018 in so far as it related to shifting of the Government High School, Paithani to the Government Inter-College, Aserh-simli, Narayanbagar Block, Chamoli district.

3. A policy decision appears to have been taken by the Government of Uttarakhand, vide Government Order dated 15.11.2018, to merge Government High Schools, in which the strength of students is less than 30, with other schools located within a radius of five kilometers. Consequently, the Government High School, Paithani was directed to be merged with the Government Inter-College, Aserh-simli, Narayanbagar Block, Chamoli district.

4. The petitioners' complaint in this writ petition is that, while the Government Order dated 15.11.2018 requires schools, which have students' strength of less than 30 in each year at the High School level, to be merged with schools located in close proximity thereto (within a distance of five kilometers), the subject school is sought to be merged with a school located at a distance of more than six kilometers. It is further stated that, as against 27 students studying in Classes IX & X, ten are girls, and asking them to travel each day for a distance of more than 12 kilometers, to and fro the school (passing through hilly terrains with a part of the journey not even accessible by roads) would be wholly unjustified.

5. While the Government Order, prescribing these restrictions, is applicable to the entire State of Uttarakhand, the petitioners' complaint, as put forth by Sri Devendra Singh Bohra, is that a distinction should be made between the hilly parts of the State vis-à-vis the plain areas of the State; and prescription of a five kilometers distance in hilly areas, more so those which are not accessible by roads and some of which pass through dense forests, is not justified. It does appear from a bare reading of the Government Order that the decision of the Government is in view of the expenditure required to be incurred by it in maintaining the schools, and because the Government considers it not economically feasible to run schools which have students' strength of less than 30 in each class.

6. As expenditure is required to be incurred by the Government in providing infrastructure and other facilities to the school, besides regular monthly payment of salaries to teaching and non-teaching staff thereat, this Court, in exercise of its power of judicial review under Article 226 of the Constitution of India, would not issue a mandamus compelling the Government to incur needless expenditure. The decision, regarding location of schools, lies in the executive realm, and are not matters for Courts to dictate.

7. We, however, find considerable force in the submission of Sri Devendra Singh Bohra, learned counsel for the petitioner, that the Government should examine whether the parameters for merger of a school which has less than 30 students in each class, with a school in close proximity, should be applied uniformly both to the plains and hilly areas of the State.

8. Admittedly, the subject school is located in the hilly part of the State of Uttarakhand. If the petitioners' contention, that a part of the distance between the existing school and the school with which it is to be merged, does not even have motorable roads, is true, the present G.O. may well result as a disincentive for students, more particularly girls, to pursue education, as expecting them to travel, for a distance of more than 12 kilometers each day, may well result in their deciding not to pursue education any further.

9. We consider it appropriate, in such circumstances, to request the first respondent to re-examine the feasibility of continuing the subject school at the

existing place bearing in mind its location in hilly areas, and the fact that the strength of students in each class is not insignificant.

10. The first respondent shall take an appropriate decision in this regard within a period of one month from the date of receipt of a certified copy of this order. Till a decision is taken afresh by the State Government, the impugned order, merging the present school with another, shall be kept in abeyance.

11. The writ petition stands disposed of accordingly. No costs.

12. Let a certified copy of this order be furnished to the parties, on payment of the prescribed charges, within two days.