

(2000) 08 AHC CK 0102
In the Allahabad High Court
Case No : C.M.W.P. No. 21988 of 1999

Mathai Lal Dube

APPELLANT

Vs

District Magistrate, Sant Ravidas Nagar and others

RESPONDENT

Date of Decision : 24-08-2000

Acts Referred:

Constitution of India, 1950 — Article 225, 226
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 115A, 115B, 115C, 117, 122A
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 115A, 115B, 115C

Citation : (2000) 4 AWC 2752 : (2000) 3 UPLBEC 2604

Hon'ble Judges : V.M. Sahai, J

Bench : Single Bench

Advocate : Shailendra Singh, J. Sahai, M.M.L. Srivastava and S. Tewari, for the Appellant; A.P. Sahi, G.K. Singh, Anuj Kumar, V.K. Tiwari, Gyan Prakash, R.K. Pandey, S.Cs., R.N. Singh and Vinay Malviya, for the Respondent

Final Decision : Allowed

Judgement

V.M. Sahai, J.—The petitioner is a member of Gaon Sabha, Chauri Khas, Tehsil Bhadohi, district Sant Ravidas Nagar (in brief gaon sabha). He has filed this petition for quashing transfer of gaon sabha land, by the respondents, in favour of a private samiti for opening a girls college under the Government scheme for encouraging education amongst girls in "asevit vikas khand". The order is challenged as it is against the Government policy, is arbitrary and the land has been transferred to the respondent No. 3 under political pressure.

2. In 1994, the Government issued an order for encouraging higher education for girls in rural areas. It permitted private bodies to open and establish colleges in such areas and if someone was willing to make land available, the Government was willing to grant rupees ten lakhs. This order is not on record. It was modified on 31.5.1995. The conditions for grant for establishing a private institution under Government order 1995 provided that the private institution could be established

only if the block was known as "asevit vikas khand" and there was no other private high school/college from before. Paragraph 2 of the schedule provided that the department would decide in any financial year, on availability of fund, the blocks in which private institutions could be established and get its decision published in local newspapers inviting applications from willing societies. Paragraph 3 laid down the conditions to be fulfilled by any society making an application, the main being that the society should be registered and it should have income to run the institution. Paragraph 4 provided the procedure for making application. Clauses (a) and (b) of the paragraph provided that the society having its own land, etc. would be given preference. Paragraph 5 provided that all the applications received within time shall be placed for consideration before a committee presided by the District Magistrate (in brief D.M.), with Sub-Divisional Magistrate (in brief S.D.M.) and District Inspector of Schools (in brief D.I.O.S.) as other members. The committee was required to decide within fifteen days in the light of priorities laid down, as to which society was entitled to establish the institution. It further provided that the committee, through the D.I.O.S. would forward its recommendation to the Director of Education who in his turn would forward the papers relating to transfer of land and sanction of grant with his comment to the State Government and for recognition to Secondary Education Board. Paragraph 7 of the order mentioned the facilities which the State would provide to the selected society for establishing the institution. Clause (a) of this paragraph laid down that if the selected society did not have any land of its own, the State in case of necessity would make one acre or more land or gram samaj available to it. Clause (b) provided that in case no land of gram samaj was available or it was not available at a proper place then it would be acquired for such society.

3. On 20.12.1998 another order for establishing private institutions in "asevit vikas khand" was issued. It superseded the earlier orders issued in 1994 and 1995 but permitted the proceedings initiated under earlier orders to continue and provided that it shall be deemed to be under 1998 order. Paragraph 3 of the order explained "asevit vikas khand" to mean a block where there was no private or Government high school or intermediate college. This order permitted establishing of more than one institution in a block irrespective of the fact whether the earlier institution was Government or private, with condition that there would not be more than two institutions in one block. Clause (d) of paragraph 8 provided that the facility of making available gram samaj land or for acquisition of land was being withdrawn. The society would have to arrange its own land. The amount of grant was increased to Rs. twenty lakhs.

4. In 1997 Sri Rang Nath Misra who was State Energy Minister, and elected representative from the area wrote a letter to the D.I.O.S. for opening a Government girls college in the Bhadohi. This letter is not on record. But it appears that suggestion was supported by the pradhan of the gaon sabha and the District President of the Bhartiya Janta Party. In pursuance of this letter, the D.I.O.S. wrote on 24.11.1997 to the S.D.M.. referring to the proposal of the

Minister and requesting that one acre land may be made available for the purpose. It was mentioned that there was a district scheme of opening a Government college in every block. The gaon sabha on 2.1.1998 unanimously resolved that plot No. 298 area one bigha and plot No. 307 area one bigha two biswa be reserved for opening of Rajkiya Uchhattar Madhyamik Kanya Vidhyalaya. Chauri (in brief government college) as there was no Government college in the area. This resolution was approved on 3.2.1998 by the S.D.M.. Bhadohi. On 10.3.1998 the name of gram panchayat was expunged and the name of Government girls school was recorded in Khatauni 1401 fasli to 1406 fasli.

5. After the land was entered in name of the Government girls college, a private society, in the name of Sri Keshav Prasad Misra Smriti Seva Samiti (in brief samiti) with fifteen members was registered on 14.7.1998. Sri Rang Nath Misra the then State Energy Minister, now the State Home Minister is shown as manager of the society. His brother-in-law (wife's brother) Sri Gopal Krishna Dubey and his wife Smt. Dubey are shown as President and Vice President of the society. Smt. Savitri Misra Wife of Sri Rang. Nath Misra is shown as member of the society. I may also mention that Sri Keshav Prasad Mishra was none other than father of Sri Rang Nath Misra. This society comprising, prominently, of the family members of Sri Misra submitted a proposal for opening a private institution in village Chauri. A copy of the proposal has been filed as Annexure-SCA-2 to the supplementary counter-affidavit. The date of submitting the proposal is not clear. But it must have been after 17.7.1998, it is again not clear from the endorsement in the bottom of this recommendation in favour of samiti but on 23.7.1998 the D.I.O.S. proposal as to on what date the D.I.O.S. sent a letter to the S.D.M. (copy of which has been filed as Annexure-SCA-3 to the supplementary counter-affidavit) that the State Government had not allotted any fund, during the year, to any district for opening a Government school and in view of shortage of girls schools in the area, the land reserved for Government girls school be transferred to the samiti. The secretary of the society also moved an application before the S.D.M, that in view of the letter by D.I.O.S. the land reserved for Government college may be transferred in favour of the society. This letter has been filed as Annexure-SCA-4 to the supplementary counter-affidavit. The S.D.M. on the same day issued direction to Chairman of the Land Management Committee (in brief L.M.C.) to transfer land in name of the Government college in favour of the samiti as funds were not available with the Government for opening a college. The Chairman was further directed to get a resolution passed by the gaon sabha and contact him immediately. A report was submitted by Naib-Tehsildar to Tehsildar on 24.7.1998 that the Chairman of the L.M.C. read the notice and refused to accept it. On this report, the Tehsildar on same day recommended that the land reserved for the Government college may be transferred in favour of the selected society on a premium of Rs. 200 per annum. This recommendation of the Tehsildar was accepted by the S.D.M. on same day who exercising powers under Sections 126 and 127 of the U. P.

Zamindari Abolition and Land Reforms Act, 1950 (in brief Act) issued orders for transfer of land reserved for Government college in favour of samiti. It is explained in the affidavit filed by the S.D.M. that this order was passed as the Chairman L.M.C. had refused to accept the notice. This fact is not admitted by the Chairman of the L.M.C. who as pradhan has filed counter-affidavit supporting the petition. In view of the order of S.D.M., the name of Government girls school was expunged on 24.7.1998 from khatauni 1401 fasli to 1406 fasli and name of samiti was recorded. The villagers of Gram Panchayat, Chauri Khas protested before the S.D.M. against order dated 24.7.1998. The committee of the D.M., S.D.M. and D.I.O.S. in the meeting held on 12.8.1998 declared Bhadohi to be "asevit vikas khand". The committee decided that since there was no other applicant and the respondent No. 3 satisfied the criteria laid down in the 1995 order, it passed a resolution permitting respondent No. 3 to open Pt. Deen Dayal Upadhyaya Balika High School/Inter College, Chauri, Sant Ravidas Nagar (in brief private college) and authorised the D.I.O.S. to send the proposal to the State Government. The D.I.O.S. on 13.8.1998 instead of sending it to the Director of Education sent the proposal to the Education Secretary. Its copy was no doubt forwarded to the Director of Education. In the meantime, the Government order dated 28.12.1998 had come into force. The Education Minister, thereafter, returned the papers for consideration by the committee under the new order. The D.I.O.S. on 28.1.1999 informed the D.M. that the proposal has been approved by the Education Minister but under G.O. dated 28.12.1998. the committee of larger number of members were required to examine and approve the proposal, therefore, another meeting was convened on 2.2.1999 and the committee consisting of District Magistrate. Chief Development Officer. Sub-Divisional Magistrate, Gyanpur, Sub-Divisional Magistrate Bhadohi, Executive Engineer, Public Works Department and District Inspector of Schools, reiterated the earlier resolution and resolved that when the funds for the proposed private school is received from the Government, the same shall be released by the D.M. On 30.3.1999 the D.I.O.S. sent a letter to S.D.M. that the land should have been in the name of the private college but by mistake, it has been recorded in the name of samiti, therefore, in accordance with the new Government order, the land be recorded in the name of the private college. On the letter of D.I.O.S, dated 30.3.1999, resolution of the samiti and letter of the President of the Private School the S.D.M. on 9.4.1999 called for a report from Tehsildar and on the same day, directed that the name of samiti be expunged and the name of the private college be recorded. On 12.4.1999 in khatauni 1401 fasli to 1406 fasli name of private school was mutated. The petitioner has challenged in this petition the orders dated 9.4.1999/ 12.4.1999 and 24.7.1998 passed by the respondents and has prayed that the respondents may not be allowed or permitted to use gaon sabha land. It has been prayed that such other reliefs as the Court may deem fit, and proper in the circumstance of the case, may be granted.

6. After this petition was filed, the gaon sabha moved an application for impleadment which was allowed. The pradhan of the gaon sabha who is also the

Chairman of the L.M.C. has filed counter-affidavit. He has supported the petition. It has been stated that the land of gaon sabha was allotted on 2.1.1998 for setting up a Government college and the S.D.M. approved this resolution on 3.2.1998. Subsequently, the S.D.M. without affording any opportunity to gaon sabha and without there being any resolution of gaon sabha has allotted the land reserved for Government college to a private society/respondent No. 3 without giving any opportunity to gaon sabha on a nominal premium of Rs. 200 per annum. It is alleged that the State Government did not issue any direction to gaon sabha to allot the land to the private society/respondent No. 3. It has been stated in paragraph 10 of the counter-affidavit that Government order dated 31.5.1995 provides that if in the same block, there is a girls school/college run by private society, no other girls school/college by a private society will be sanctioned. Village Chauri Khas is situated in block Bhadohi where a private G.B. Pant Balika Girls Inter College already exists, therefore, no other college run by a private society could be sanctioned. Further in the Government order issued in 1998 it was provided that the selected society had to arrange its own land. Therefore, the respondent No. 3 could not have been selected either under 1995 or 1998 order.

7. In the counter-affidavit and supplementary counter-affidavit filed by the S.D.M., it is stated that the D.I.O.S., Sant Ravidas Nagar (Bhadohi) wrote a letter on 29.11.1997 that in block Bhadohi, the Government Girls Inter College is to be opened under the scheme of the Government. Under the scheme, the State Energy Minister had sent a proposal, supported by the Pradhan of the Gaon Sabha, Chauri Dani Patti and Sri Shiv Shankar Dubey, President. B.J.P., Mandal Bhadohi. It is further stated that the D.I.O.S. on 23.7.1998 informed the S.D.M. that the Government has not allotted any funds in the year to any district for opening any school. And in the district Sant Ravidas Nagar there is dearth of girls institution, therefore, the land recorded in favour of Government Girls Uchhattar Madhyamik Vidyalaya. Chauri, be transferred to Sri Keshav Prasad Misra Smriti Seva Samiti. A copy of this letter has been filed as Annexure-3 to the supplementary counter-affidavit. The affidavit further states that an application had been moved by the secretary of the samiti before the Collector for allotment of the land to the society in pursuance of letter of D.I.O.S. It is stated that on 23.7.1998 the S.D.M. directed the Chairman of the L.M.C.. Chauri Khas. that in view of letter dated 23.7.1998 of the D.I.O.S. it was necessary to transfer the land in the name of private society Sri Keshav Prasad Misra Smriti Seva Samiti, therefore, the L.M.C. should get this approved and contact the S.D.M. without any delay. It is stated that the Chairman of the L.M.C. refused to accept the notice dated 23.7.1998 issued by the S.D.M. The Naib Tehsildar brought this to the notice of the Tehsildar who submitted a report on 24.7.1998 to the S.D.M. that since the secretary of samiti has requested for one acre land and since the selected society has to be allotted one acre or more land of goon sabha the land reserved for Government college may be transferred in favour of the samiti on a premium of Rs. 200 with condition that the ownership shall continue to be of the

State. This report was accepted by the S.D.M. on same day. It has been stated in the affidavits that since the L.M.C. has refused to accept the notice, the S.D.M. as delegate of State Government passed the order in exercise of the powers under Sections 126 and 127 of the Act. In paragraph 20 of the supplementary counter-affidavit It has been stated that all the documents along with relevant papers were submitted before the District Committee as contemplated under the Government orders through D.I.O.S. and the committee decided on 12.8.1998 that since under the Government order of 1995 only Sri Keshav Prasad Misra Smriti Seva Samiti has proposed to open Pt. Deen Dayal Upadhyay Balika High School/Inter College. Chauri, Sant Ravidas Nagar and it is found eligible, therefore, it is selected and the D.I.O.S. is authorised to send the report of the committee to the State Government. The D.I.O.S. on 13.8.1998 sent the report of the committee to the State Government. In paragraph 21 of the supplementary counter-affidavit it is stated that since there was change in the procedure for disbursement of grant under the Government order, therefore the D.I.O.S. on 28.1.1999 requested the D.M. to convene another meeting in" this regard. On 2.2.1999 the larger committee again reiterated the proposal in favour of the samiti. On 19.2.1999 the S.D.M. sent report to the D.M. about the availability of land in name of samiti and the D.I.O.S. was directed to issue necessary orders in this regard. On 30.3.1999 the D.I.O.S. issued a letter to the S.D.M. that the land has been recorded in the name of samiti though it should have been in the name of proposed private college. In view of new Government order the land be recorded in the name of private college in place of samiti. The S.D.M. on 9.4.1999/12.4.1999 corrected the revenue record accordingly.

8. In the rejoinder-affidavit filed by the petitioner, it is asserted that the samiti was neither eligible under the Government order of 1995 nor it satisfied the conditions of the Government order of 1998. The allegation that no Government grant was made is denied as Rs. ten lakhs were released by the Government in favour of the samiti. The petitioner alleges that in fact every step was taken by the officers of the district to favour the respondent No. 3 under the influence of Sri Rang Nath Misra as is clear from the direction issued on 24.7.1998 by the S.D.M. to the Chairman L.M.C. to transfer the land of gaon sabha in favour of the samiti when in fact the committee under the 1995 order selected the society only on 12.8.1998, it is alleged that no notice was served on the gaon sabha nor there was any order or direction from the State Government to allot the gaon sabha land in favour of the samiti. In supplementary rejoinder-affidavit it is stated that in the revenue records the name of the samiti is shown to have been recorded in pursuance of the order passed by the S.D.M. on 24.7.1998 as it was the selected society (chayanit sanstha). In other words, the selection had been made on 24.7.1998 and the meetings held subsequently for selection of eligible samiti was only a formality. It is also stated that the authorities were so much under the pressure of the Minister that the application of the respondent No. 3 was not only entertained but it was selected without following the mandatory procedure of advertising and inviting applications from willing, societies. During

pendency of the proceedings, an application was filed on behalf of respondent No. 3 by Sri Sheo Shankar Dubey as caretaker of respondent No. 3 for vacation of the order and in the affidavit filed in support of the application it was alleged that Sri Rang Nath Misra did not pressurise the officers for passing the orders. The allegation is denied in the rejoinder-affidavit.

9. I have heard at length Sri Janardan Sahai, the learned counsel for petitioner Sri R.N. Singh senior advocate assisted by Sri A.P. Sahi, the learned counsel for respondent Nos. 3 and 4. Sri Vinay Malviya the learned standing counsel for respondent Nos. 1 and 2 and Sri Anuj Kumar, learned counsel appearing for respondent No. 5.

10. The questions that arise for consideration on the arguments advanced by the learned counsel for parties and the facts narrated earlier are whether the S.D.M. could exercise powers under Sections 126 and 127 of the Act directing the L.M.C. to allot gaon sabha land, whether selection of respondent No. 3 was in accordance with law, whether the entire proceedings were vitiated due to pressure exercised by the minister, whether the orders are ultra vires as the authorities passed them on extraneous considerations, whether the petitioner who is a member of gaon sabha had locus standi to file this petition and whether the petition is barred by alternative remedy.

11. I will take up each of the questions in order I have mentioned above. The first question, therefore, is whether the S.D.M. could have passed the order under Sections 126 and 127 of the Act. Before dealing with these Sections, it is necessary to point out that the Government orders of 1995 and 1998 were issued by the education department and not under the Z. A. Act. These orders did not delegate the power of State Government to S.D.M. nor they empowered the S.D.M. to exercise such power. In paragraph 7 of the 1995 order, the direction to gram sama/ to allot one acre or more land could be issued by the State Government alone. The allegation in the petition and the counter-affidavit filed by the pradhan that the State Government did not issue any direction to the gram samaj to allot or transfer gram samaj land to the respondent No. 3 has not been denied.

12. The S.D.M. in the counter and supplementary counter-affidavit claims to have exercised the powers as delegate of the State Government under Sections 126 and 127 of the Act and notifications issued under them In 1954. It is, therefore necessary to examine whether the claim of S.D.M. is correct. Sections 126 and 127 are extracted below :

Section 126, Gaon Panchayat or the Committee to carry out orders and directions of the State Government.--(1) The State Government may issue such orders and directions to the Land Management Committee as may appear to be necessary for purposes of this Act.

(2) It shall be the duty of the Land Management Committee and its office bearers to forthwith carry out such orders and comply with such directions.

Section 127.--Alternative arrangement for carrying on the work of the Gaon Panchayat or the Committee in certain circumstances.--(1) if at any time the State Government is satisfied that :

(a) the Land Management Committee had failed without reasonable cause or excuse to discharge the duties or to perform the functions imposed or assigned by or under this Act :

(b) circumstances have so arisen that the Land Management Committee is rendered unable or may be rendered unable to discharge the duties or perform the function imposed or assigned by or under this Act ; or

(c) It is otherwise expedient or necessary to do so, it may, by notification in the Gazette, declare that the duties, powers and functions of the Land Management Committee under this Act shall be discharged, exercised and performed by such person or authority and for such period and subject to such restrictions as may be specified.

(2) The State Government may make such incidental and consequential provisions as may appear to be necessary for this purpose.

13. A reading of the two sections indicates that the power under the two sections are different. One is general for carrying out purposes of the Act and the other is specific to be exercised if the Government is satisfied that the L.M.C. has failed to discharge its" duties and functions. The power u/s 126 was delegated to Collector or S.D.M. who is also Assistant Collector first class in charge of a sub-division by Notification No. 6374-1-B-1 192-53 dated 8.3.1954. But the State Government or its delegate could exercise the power only for the reason mentioned in the section, namely, for purpose of the Act. The section is widely worded but the question is whether the order directing the L.M.C. to transfer goon samaj land in favour of a private samiti can be considered to be a direction for purposes of the Act. The L.M.C. is constituted under Panchayat Raj Act but it is empowered u/s 122A of the Act with general superintendence, management, preservation and control of all land vested in the goon sabha u/s 117 of the Act. It is one of the duties of L.M.C. u/s 122A (2) of the Act to settle and manage the land. Rules 115A, B, C. framed under the Act empower the Government to issue directions to the L.M.C. for purposes of public utility. Explanations J and 2 to the rules declare that the L.M.C. manual and goon samaj manual would be directions of the State Government under Rule 115A. These directions are for carrying out purpose of the Act. If the L.M.C. or the gaon sabha are found to act against the provisions of "the Act or rules or the L.M.C. manual or the Gaon Samaj Manual, the State Government of the S.D.M. as delegate of the Government can issue directions to act in accordance with the provisions of the Act. It may be illustrated further. Section 122C obliges the L.M.C. to settle land in favour of Scheduled Castes or Scheduled Tribes in accordance with priorities mentioned under the Act and the rules. Where the L.M.C. or the goon samaj is found acting contrary to it. the S.D.M. can interfere. Similarly there are other duties and

functions of the L.M.C. And if the State Government or its delegate finds that the L.M.C. has failed to act properly, it may issue directions. If the power is exercised, thus, then, only it can be said that the direction issued by the S.D.M. are for carrying out purposes of the Act. The learned counsel for the respondents failed to show that transferring of gaon samaj land in favour of a private party or a registered private society or samiti is one of the purposes of the Act. The Government scheme for encouraging education amongst girls in rural area is no doubt a laudable objective but it is not one of the purposes of the Act, therefore, any direction issued for it was not covered in Section 126 of the Act. The learned counsel for the respondents vehemently argued that the S.D.M. in directing the land to be transferred in favour of respondent No. 3 acted in accordance with the Government order of 1995. He submitted that clause 4 of the order made it obligatory on the State Government to allot one acre land in favour of selected samiti. He further submitted that the S.D.M. took precaution of protecting the State interest by directing that the ownership of the land shall continue with the State Government. The argument cannot be accepted as the power to issue direction under 1995 order was of State Government. The 1995 order, is not an order issued under the Act. The order establishing a private educational institution is not one of the purposes of the Act, therefore, the S.D.M. could not act as a delegate of the State Government and claim that he had passed the order for carrying out purposes of the Act.

14. Section 127 is a specific power to be exercised in the circumstances mentioned in it. The power was delegated to the Collector of the district by Notification No. 6374/1-A-1192-53 dated 13.5.1954. But before the power could be exercised, it was necessary for the State Government or its duty to be satisfied that the L.M.C. failed without reasonable cause or reason to discharge its function and duties under the Act. The expression "is satisfied" and "without reasonable cause or reason" are restrictions on exercise of power. Both these expressions used in different Acts and rules have been interpreted by the Apex Court and High Courts, requiring the authority exercising power to act objectively and on material as would indicate that the exercise of power was reasonable and necessary. It cannot be exercised whimsically. There is neither any allegation in the affidavit filed by the S.D.M. nor any material has been filed before this Court which could Justify the exercise of power by the S.D.M. The respondent has to stated that since the circumstances mentioned in the section were made out. therefore, he exercised the power u/s 127. The allegation in the affidavit filed by the S.D.M. that after having gone through the entire record and file, he exercised the power u/s 127 as delegate of State Government did not meet the requirement of law. The power could not be exercised only on perusal of record but on satisfaction that the circumstances mentioned in section existed. Consequently, the S.D.M. could not in exercise of power u/s 127 direct the Chairman or the L.M.C. to transfer gaon sabha land or Government land in favour of respondent No. 3. The power was exercised on non-existing circumstances. The report of the lekhpal, who is secretary of the L.M.C.. to the

Naib-Tehsildar that the Chairman of the L.M.C. after reading directions of the S.D.M. refused to accept it could not furnish material for giving rise to an inference that the L.M.C. had failed to discharge its duties and functions under the Act. Even if the L.M.C. would have failed to discharge its functions and duties, the S.D.M. could not have issued any direction transferring gaon sabha land or Government land in favour of any private person or respondent No. 3 as such direction would be contrary to Act and the rules framed thereunder. The delegation of power by the State Government did not empower the S.D.M. to claim that he could exercise these powers whereafter there was a provision permitting State Government to allot gram samaj land. A delegate, under law has limited powers. It can be exercised only for the purpose for which it has been delegated. The S.D.M.. therefore, could not exercise powers of the State Government under the 1995 order. The S.D.M. in the circumstances acted not only arbitrarily but in excess of his power u/s 127. The directions issued by him were thus illegal.

15. The next question is whether resolution of the committee selecting the respondent No. 3 for opening a private school in the village Chauri was in accordance with the Government scheme framed in 1995 or 1998. I would first take up 1995 order and examine whether the authorities followed any procedure or not and if so whether their action resulted in making the selection of respondent No. 3 and transfer of gaon sabha land in its favour invalid and illegal. I have already mentioned briefly the circumstances in which a private school could be opened, the method of inviting applications the manner of its examination by the committee and finally its recommendation to the State Government through the Director of Education. A perusal of [he letters exchanged between D.I.O.S. and S.D.M., the two principal officers who were associated with it and the material brought, on record shows that the authorities did not follow any procedure. For instance, a private school or college could be opened in an "asevit vikas khand" only if the block was known "asevit" and it had no school or college. What is meant by "asevit vikas khand" was explained in 1998 order. It could not have been different under 1995 order. In any case, the letter sent by the D.I.O.S. on 24.11.1997 did not mention Bhadohi as "asevit" block. It was named as "asevit" for the first time in the meeting held on 12.8.1998. It is not denied that a private institution by name of G. B. Pant Balika Girls Inter College was already in the block. Therefore, both the requirements for opening a private institution in the block were absent.

16. The next requirement, that the department on the basis of availability of funds would decide in any financial year as to how many institutions shall be opened under the scheme and, thereafter, get it published in the local news papers of those area inviting applications from willing societies was not only ignored but the D.I.O.S. acted in complete breach of it. The proceedings started on a letter sent by the State Minister for opening a Government college in village Chauri. I have already mentioned that this letter is not on record. The respondents have not filed the scheme referred by the D.I.O.S. in her letter

dated 27.11.1997. It is not stated whether the scheme permitted the D.I.O.S. to initiate the proceedings for opening a Government college and make request to the S.D.M. to make one acre land available for the proposed college. The D.I.O.S. who is a senior officer of the district and in charge of educational institutions must have been aware that the procedure for opening a Government college was different and provided in different Acts and regulations and not under the 1995 order issued by the Government. She further must have been aware that the Government was not making any budgetary provision for opening Government college. Yet on receiving the letter of the Minister, she immediately wrote to the S.D.M. for sanctioning one acre land for opening a Government college. The S.D.M. has filed counter-affidavit and supplementary counter-affidavit but has failed to explain under which provision and under what authority the D.I.O.S. made the request to the S.D.M. to make one acre land available for Government college and under what provision he proceeded further. The request appears to have been made obviously, under the 1995 order but it did not permit opening of a Government college. The land, thus, was obtained from the gaon sabha without apprising it of correct facts. From the resolution dated 2.1.1998, it is clear that gaon sabha agreed to reserve the land because there was no Government college in the area. It is doubtful that the gaon sabha would have agreed to part with its land for opening a private school by the samiti. Whether this was deliberate or not but what happened subsequently does support the submission of the learned counsel for the petitioner that the authorities appear to have lost their own discretion and passed the orders on extraneous considerations. Although it is difficult to say on the material on record whether the obtaining of land from gaon sabha for opening a Government college and its subsequent transfer in favour of respondent No. 3 were linked with each other but it cannot be denied, as argued by the learned counsel for the petitioner, that the letter for opening the Government college in the area and the application for permission to open a private college had one thing in common that the letter was written by the Minister and he happened to be the manager of the society as well. In administrative decisions, impartiality and fairness of public authorities is necessary otherwise the action is rendered arbitrary. In any case, the land having thus been entered in name of Government college respondent No. 3 was registered on 17.7.1998. Immediately after registration, the secretary of the society, whose manager was none other than the Minister himself, made an application to the S.D.M. for transferring the land reserved for Government college in favour of respondent No. 3 for opening a private college in the village, under the Government order of 1995. Once an application was made by a private samiti, the D.I.O.S. should have forwarded it to the department to decide whether the area/khand was "asevit" as there was no other school/college, therefore, it was necessary to permit a private samiti to open a college/school. After arriving at such a decision, the department was required by clause to publish such decision in the local newspapers and invite applications from eligible samitis. But the D.I.O.S. who was the best person to have been aware of the order and its requirements decided not only to ignore it but acted in such

manner that it casts serious doubt if such person should be entrusted with such important responsibility. She without any regard to the Government order deliberately did not forward papers to the department and did not inform the D.M. that there was another college in the village rather suggested for transfer of Government land earmarked for Government college in favour of the samiti. The suggestion in her letter dated 23.7.1998 that there was dearth of girls schools is not supported by any material. No attempt has been made to Justify it in the affidavit filed by the respondent.

17. Even the procedure for selection provided in the order was not followed. The committee presided over by the D.M. was required to select the society provided it satisfied the criteria laid down in the order. But the S.D.M. and D.I.O.S. who were members of the committee had already selected respondent No. 3 as early as 24.7.1998 much before the committee met on 12.8.1998. This is clear from the report of the Tehsildar dated 24.7.1998 wherein it is mentioned in his recommendation that the land reserved for Government college may be transferred in favour of selected society. The respondent No. 3 is shown as selected society in revenue records on basis of order dated 24.7.1998 passed by S.D.M. These two facts are clinching material to show that respondent No. 3 stood selected at least on 24.7.1998 itself. What is surprising that the D.M. who is a senior officer of the district and who as Chairman of the committee was required to decide whether the society satisfied the criteria did not raise any finger and he too agreed with the illegal manner in which the S.D.M. and D.I.O.S. had selected the society on their own against the provisions of the order.

18. Further, the committee after selecting the eligible society was required to forward papers through the D.I.O.S. to the Director of Education who in his turn was required to send the papers relating to allocation of land and sanction of grant to State Government and for recognition to Secondary Education board for necessary action at their end. In the affidavits filed on behalf of the respondents. It is nowhere stated that the recommendation of the committee was forwarded to the Director of Education as required by the 1995, order, who in turn forwarded it with his recommendation to the State Government for allotment of land and to Secondary Education Board for recognition. On the other hand, the S.D.M. in the affidavit filed by him has admitted that the recommendation of the committee was sent to the Education Secretary of the Government.

19. The most surprising action of the authorities was transfer of gaon sabha land reserved for Government college in favour of respondent No. 3. It is nowhere claimed that respondent No. 3 had any land in the block for establishing a school or college. Under the Government order of 1995. the State Government could extend this facility to a selected society in case of necessity. That is, the allotment or allocation of land or direction to gram samaj to make one acre land available to a society could be made by State Government in favour of a society after every process was completed. It was to come in the end. But the authorities that is the D.I.O.S. and S.D.M. without any power did not take any

chance and completed the last act first and directed transfer of land as early as 24.7.1998 even before the committee completed the formality of selecting respondent No. 3. It is thus clear that the entire proceedings were started and completed illegally and in complete disregard of 1995 order. The selection of respondent No. 3 was not only illegal and invalid, but arbitrary.

20. In 1998 another order was issued on this subject. I have already mentioned that it superseded earlier order but permitted the proceedings started earlier to be completed. The authorities in disregarding this order went still further. This order for the first time permitted that two schools could be opened in an "asevit" area but it withdrew the earlier provision of allotting one acre Government land or acquiring equivalent area and substituted it with a provision that the permission could be granted only to a society which had its own land. Since the respondent No. 3 had no land of its own, it could not be selected under the 1998 Government order. But the S.D.M. in paragraph 21 of the supplementary counter-affidavit has stated that availability of land was reported to D.M. on 19.2.1999 and the D.I.O.S. was also apprised of it and directions were issued to D.I.O.S. to issue necessary orders in this regard. This was complete distortion of facts as the respondent No. 3 did not have any land of its own as provided by 1998 order. It was the gaon sabha land which has been illegally transferred by the S.D.M. in its favour on 24.7.1998. The S.D.M. was aware of it. Yet he informed the D.M. that the samiti had its own land and the committee reiterated earlier resolution on this incorrect information. The selection of respondent No. 3, thus, was illegal as the committee did not follow either the norm or procedure provided in 1995 or 1998 order.

21. The last question is whether the allotment of Government land in favour of respondent No. 3 and its selection by the committee under Government order of 1995 or 1998 was done under political pressure. If so its effect. The learned counsel for the petitioner argued with great vehemence that the entire proceedings beginning from the letter of Sri Rang Nath Misra, the then State Energy Minister to the D.I.O.S. to selection of respondent No. 3 under the scheme and resolution of the committee were at the behest of the Minister who by his influence on the district administration succeeded in not only grabbing gaon sabha land on a nominal premium but was responsible for illegal orders passed by the authorities and got Rs. 10 lakhs released from the Government, therefore, the entire proceedings were liable to be quashed. The submission, in my opinion, has no substance as even though the petitioner has alleged in various paragraphs that Sri Rang Nath Misra, the Minister was interested in the land and pressurised respondents to pass orders in favour of respondent No. 3 of which he was himself manager but he did not implead him as party nor any notice was issued to him. One of the basic principles of natural Justice is that no order can be passed against a person without hearing him. The allegations are also vague. The petitioner has not brought on record any material to substantiate it. The averment that the minister was interested, in absence of any reliable material, is insufficient to warrant any finding that the orders were passed in

favour of the respondent No. 3 at his instance.

22. But the submission that requires careful consideration is, whether if the entire events are considered in their proper perspective, then they do not leave any doubt that the different authorities acted illegally against the Government policy and orders, on extraneous considerations, therefore, their action was not bona fide, consequently biased and ultra vires. The facts have already been narrated in detail. It may, however, be necessary to mention some of them again to decide whether the proceedings were bad because the authorities passed orders on extraneous considerations or the power was exercised against law to benefit respondent No. 3. An order or decision by an administrative authority is liable to be struck down if the facts taken individually or collectively give rise to an irresistible inference that the authorities did not act independently, but were influenced by the circumstances and reasons which cannot be accepted to be valid in law. While examining the legal issues. It has been held that the authorities were guilty of exercising their power arbitrarily. In *Nedurimilli Janardhana Reddy Vs. Progressive Democratic Students' Union and Others*, , the Apex Court held that where the exercise to grant permission to run a college was dubious and the circumstances indicated that the authorities proceeded with a pre-determined approach because the appellant was brother of the Chief Minister and his wife was treasurer and Government reduced itself into a signing machine only, the entire proceedings were attributed to bias to favour one of the societies, therefore, invalid. The facts of this case, mentioned earlier, make out a more stronger case of dubious grant of permission to the samiti for establishing a private college. The learned counsel for the petitioner may be right or not in his submission that the allotment of gaon sabha land in favour of Government college at the instance of the Minister and its subsequent transfer in favour of a society of which he was the manager were part of chain movement but it cannot be denied that Sri Rang Nath Misra as Minister had proposed for opening of a Government college in the village Chauri and he was the manager of the society which was registered after the gaon sabha land was transferred in name of Government college, and its secretary moved the application before S.D.M. for transferring the land reserved for Government college in favour of respondent No. 3. This by itself might be insufficient to draw any inference against selection of respondent No. 3, but the illegal manner in which the proceedings were completed within twenty four hours beginning from the letter of D.I.O.S. on 23.7.1998, to order of the S.D.M. directing transfer of land on 24.7.1998 in favour of respondent No. 3 do indicate a predetermined approach.

23. An administrative action against provisions of law is illegal but it appears to have been taken purposely to benefit someone, then it becomes an order on extraneous considerations. Such bias is apparent in this case. The society had only been registered, no other formality had been gone through, it had not been selected as yet, no meeting had taken place of the authorities mentioned in the 1995 order, yet the D.I.O.S. suggested that the Government land be transferred in favour of respondent No. 3 and it was accepted by the S.D.M. on the

recommendation of the tehsildar made on 24.7.1998. It exposes the authorities. The report of the tehsildar mentioning respondent No. 3 as selected samiti, the entry in the revenue extract showing the name of the samiti in pursuance of selection made on 24.7.1998 and the direction of the S.D.M. on 24.7.1998 leave no room for doubt that the decision to select respondent No. 3 had been made either before or immediately when the application was made and the authorities were only making a show of following the procedure. In public law, the power is conferred on the authorities to be exercised bona fide and not otherwise. The letter of the D.I.O.S. dated 23.7.1998 to S.D.M. and the direction by him on 24.7.1998 to L.M.C. to transfer land in favour of respondent No. 3 were an abuse of power for obvious reasons. The two senior officers of the district appear to have entered into race for going out of way in exercising their power for extraneous reason. It is thus clear that if the entire circumstances are considered, then they demonstrate unquestionably that the entire proceedings of allotment of land in favour of respondent No. 3 were not only contrary to law but they were based on irrelevant and extraneous considerations, therefore, they were ultra vires and cannot be upheld. The reason mentioned in the counter-affidavit filed by the S.D.M. shows the extent to which the rules were bent to favour respondent No. 3. It is stated that since no Government funds were available the purpose of allotment stood frustrated and the purpose for which allotment was made came to an end. If that was true the land should have reverted to the gaon sabha. It could not be transferred to respondent No. 3 unless the gaon sabha in whom the land vests passed a resolution to that effect. The D.M. and other authorities too, abdicated their power as the committee chaired by him on two occasions once on 12.8.1998 and then on 2.2.1999 without the least compunction either for the rules or law endorsed transfer of government land to a private samiti and selected it for running a private institution in disregard of the provisions of Government order 1995. The abdication of discretion is further apparent when the matter was taken up by the committee in 1999 as it forgot that the fresh Government order which permitted opening of two schools in a block superseded the earlier provision and made it obligatory that the private samiti must have its own land. This difficulty was overcome by the S.D.M. by informing the D.M. and the D.I.O.S. that the committee was possessed of land. As pointed out earlier, it was obviously a deliberate incorrect information on facts. The land was none other than the one which has been transferred by him on 24.7.1998 in favour of the samiti. It was gaon sabha land. Even when this land was transferred in favour of respondent No. 3, the S.D.M. himself had directed that the ownership in the land would continue to vest in the State Government, therefore, it was not the land of the samiti. Yet the S.D.M. did not hesitate in treating it to be land of the samiti. It was this basically incorrect information which led the committee to reiterate the earlier resolution under the impression that respondent No. 3 satisfied the relevant criteria of 1998 order. In law, such error of primary facts is known as error of jurisdiction which results in rendering the entire proceedings as invalid. The earlier resolution was invalid as only one institution was permissible in one

block and the latter was invalid as no Government land could be acquired or allotted to a private samiti. But all these are relevant consideration where the committee acts in accordance with law and not where it succumbs and abdicates its function for extraneous reasons. Even the State Government instead of playing any effective role acted as a signing machinery endorsing the illegality of the committee without any application of mind. Administrative fairness is necessary as any decision either by the executive or administration must exclude not only reasonable bias but even likelihood of bias. I have already held that there was no material on record to establish that Sri Rang Nath Misra pressurised the authorities to pass the order. But the order in law would still be bad and vitiated by bias. If it is found, as argued by the learned counsel for the petitioner, that the authorities acted illegally and against the provisions of law, on their own, to favour respondent No. 3 because its manager was the Minister. Bias arises where the circumstances are so glaring that any reasonable man would think that the orders were made to favour someone unfairly. Of that there is little doubt. The attitude, approach and action of the authorities does not leave any option but to hold that they did not act fairly and impartially in passing orders in favour of respondents. For these reasons, the conclusion is irresistible that the authorities were guilty of not only passing illegal orders against the provisions of the two orders issued by the Government but they also acted against law in exceeding their jurisdiction and directing transfer of land in favour of respondent No. 3 and selecting it for opening a private institution in Chauri. In passing the orders, the authorities did not act impartially and passed orders in favour of respondent No. 3 only because its manager was a Minister. Such approach is considered in law to be against good faith and consequently founded on extraneous reasons, therefore, ultra vires.

24. The questions that remained to be examined are about locus standi and alternative remedy. Both the objections raised by the respondents are without any substance. The law on focus standi was widened by the Apex Court in *S.P. Gupta Vs. President of India and Others*, and *Bangalore Medical Trust Vs. B.S. Muddappa and others*, The petitioner who is admittedly a member of gaon sabha cannot be considered as busy body. The land of gaon sabha cannot be considered as busy body. The land of gaon sabha is public property and if the authorities for extraneous reasons transfer it in favour of a private body, then they fail to perform their statutory duty in accordance with law and their action can be challenged by any member of the gaon sabha in public interest. Similarly the Apex Court has held in *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others*, , that where an order is without Jurisdiction or palpably erroneous, it can be challenged under Article 225 of the Constitution. It has been seen that the order passed by the S.D.M. was not only illegal but without Jurisdiction, therefore, the bar of alternative remedy did not apply. In fact the S.D.M. could not have exercised power as delegate of the State Government while exercising power under the 1995 or 1998 order, therefore, the argument of alternative remedy is without any merit.

25. The respondents were in such great hurry and were so powerful as well that they succeeded in not only getting the allotment order in their favour in twenty days but they could get grant of Rs. ten lakhs released immediately after passing of the order. And they proceeded with speed to raise constructions on the plot to create equity in their favour. On 15.12.1999, this Court appointed a Commissioner to submit a report after making spot inspection. That report dated 17.12.1999 is on record. It appears the boundary wall has been raised. One room has also been constructed. But this cannot be a reason to deny relief to the petitioner either because the Government later permitted opening of more than one girls school in a block or as argued by Sri R.N. Singh because it would serve the public interest if another college or school is opened in the area. In a democratic society, the maintenance of rule of law is of prime importance. If the authorities are permitted to act contrary to law only because an influential person is interested and the Courts are persuaded to deny relief on such considerations, then it would erode the confidence of common man in "efficacy of the system. In fact the D.I.O.S. and the S.D.M. could have been held accountable but they too have not been impleaded as respondents in person.

26. For the reasons stated above, this writ petition succeeds and is allowed. The entire proceedings including the orders dated 24.7.1998. 12.8.1998. 9.4.1999/12.4.1999 and 2.9.1999 and consequent proceedings relating to selection of respondent No. 3 under 1995 and 1998 Government orders, the transfer of gaon sabha land in its favour and grant of sanction by State Government are quashed. The following directions further are necessary in ends of Justice.

(1) Plot No. 298 area 1-0-0 (one bigha) and plot No. 307 area 1-2-0 (one bigha, two biswa) shall stand restored in the name of gaon sabha. The revenue records shall be corrected accordingly.

(2) It shall be open to gaon sabha to retain the constructions, made over the land in dispute. If it retains the possession, its value shall be determined and the respondent No. 3 shall be given adjustment of it while refunding the amount.

(3) If the gaon sabha is not interested in the construction, it shall be removed by the respondent No. 3 at its own cost within three months from today. In case of failure to remove it within the time allowed the gaon sabha shall get it removed and recover the cost incurred in such removal from respondent No. 3.

(4) Respondent No. 3 shall refund the amount after adjusting the amount mentioned in paragraph 2 to the State Government within three months. But if gaon sabha is not interested in the constructions, the respondent No. 3 shall refund entire amount including the amount incurred by the gaon sabha in removal of constructions.

(5) If the amount is not refunded as indicated above the District Magistrate/Collector. Sant Ravidas Nagar, shall recover the amount from respondent No. 3 as arrears of land revenue.

The petitioner shall be entitled to his costs from respondent No. 3 which is assessed at rupees ten thousand.