

(2005) 08 J&K CK 0009

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 248 of 2003

Mohd. Maqbool Mir

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 12-08-2005

Acts Referred:

Citation : (2010) 3 JKJ 902

Hon'ble Judges : Bashir. A. Kirmani, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bashir Ahmad Kirmani, Judge

1. Under the Central Scheme of Serva Shiksha Abhiyan as many as 12 Primary Schools of Mattan were selected for being provided with the

services of 'Rehbar-e-taleem' in accordance with the criterion laid down under different Govt. orders and notifications etc. issued from time to time,

according to which the whole village where the earmarked school was located was to be taken as the basic Unit for selection of candidates under

the scheme, and not a particular mohalla or area thereof, and those having Post Graduation were to have preference over the graduates including

B.Ed, with merit to be assessed in accordance with percentage of marks obtained in the academic degree. Under the aforesaid criterion,

respondents 7 and 8 were selected for appointment as 'Rehbar-e-taleem' for a primary school of village "Mattan" located in "Mir Check" Mohala

and accordingly included in the provisional list of select candidates circulated by Dy Commissioner through a Local Daily, inviting objections

thereto.

2. Feeling aggrieved thereby, petitioner challenges the selection of said respondent as such on the ground that they were not the locals of 'Mir

Check' where the school was located, but 'Machbawan', which, as per notification issued by the Govt., had been included in the notified area,

declared to be so u/s 283 of the Municipal Act; while 'Mir Check' was not so included in the said area, and that being so, the aforesaid

respondents could not fall within the consideration zone as being residents of a notified area and not the concerned village; and as such he alone fell

within the consideration zone as being a native of 'Mir Check' where the school is situated. Relying upon the eligibility criteria as laid down under

the scheme, the petitioner contends that after its inclusion in the notified area, the village 'Machbawn' where respondents 7 & 8 reside, ceased to

be a part of the village where the school is situated, because with its declaration as a notified area the 'village' shrinks down to the boundaries of

'Mir Check' only, within which, he being the highest qualified person, acknowledged as such by the concerned Village Level Committee, was the

only person eligible for appointment as RT in the said school while respondents 7 and 8, who admittedly possess Post Graduation degree along

with B.Ed, did not fall within the local area as indicated and would, not come within the consideration zone, hence not be eligible for being

appointed as RT in the aforesaid school. In combination of all these contentions, the petitioner challenges the provisional select list aforesaid and

seeks to have it quashed, along with a direction to the respondents for his engagement as RT in the said School.

3. In their objections, the respondents, while defending inclusion of respondents 7 and 8 in the provisional select list aforesaid have also pleaded

that they were the two candidates with highest merit within the zone of selection, which covered the whole area of village Mattan, and as such were

selected purely on the basis of merit, while the petitioner was dropped as being far down below them in order of merit at serial No. 6t. During

course of hearing, Id. Counsel besides reiterating the contents of their respective pleadings and materials annexed therewith also agreed that the

matter could be finally considered in light of material in record wherein no further addition or improvement is expected and accordingly the matter

is taken up for final disposal.

4. I have heard learned counsel, gone through the records and considered the matter.

Before proceeding ahead, it will be appropriate to notice the undisputed features of the controversy. First, that the petitioner is a resident of 'Mir

Check' which alongwith 'Matawan' falls in estate Mattan; secondly, that respondents 7 and 8 are residents of 'Machbawan' and not 'Mir Check';

thirdly, that the locality where respondents 7 and 8 reside is included in the area notified by Govt. Under Sec. 283 of Municipal Act, for which a

Notified Area Committee"" has also been constituted; fourthly, that the School concerned is located in that part of Mattan estate which is known as

Mir Check"" where the petitioner resides' fifthly, that ""Mir Check"" is not included in the Notified area; and if considered to be a ""village"" in the

sense the word village is used in the relevant scheme, then petitioner ranks No. 1 in order of academic qualification and merit; and finally, that if the

'village' as aforesaid includes 'Matawan' along with 'Mir Check', then respondents 7 and 8 are the toppers in order of merit and petitioner trails far

behind them.

5. In view of the aforesaid admitted position, the sole question that falls for determination is as to what exactly is the area that should form the

consideration zone for selection of RTs for the Primary School located at 'Mir Check'. If it is that particular locality only, then petitioner appears to

have an arguable claim as against the respondents 7 and 8, and if 'Machbawan' is found to be included therein, then he is out of reckoning and has

no case against the said respondents. Determination of these two aspects would directly depend upon, first, as to what should be the definition of

the term 'village' as mentioned in the eligibility criterion prescribed under the Scheme where under it is the basic unit as catchment area of

candidates for selection of RTs'; and secondly, as to what is the effect of declaration of any part of particular village as Notified area u/s 283 of the

Municipal Act and Constitution of a 'Notified Area Committee' therefore.

6. 'Village' according to ""Shorter Oxford Dictionary means a self contained group of houses and associated buildings, not being a hamlet or a

town. As obtainable from definition clauses [Sec. 3(1) (10)] of Land Revenue Act of 1996, village implies an estate for which a separate record of

rights has been prepared, and which is separately assessed to land revenue.

Under ""Village Panchayat Act 1958"", the term 'village' has been described as a parcel or parcels of land having a separate name in the revenue records with known limits, and not included in the limits of a 'Municipality', 'Cantonment', or 'Town area'. Under this definition, therefore, the areas notified u/s 283 of the Municipal Act are not excluded from definition of 'village' like Municipal area or areas notified as town areas or cantonments. Similarly under J&K Chowkidari Act 1956, the word 'village' means a residential area (entered as Mohalla in the revenue records) of which bound arise have been defined. Thus according to above mentioned definitions cumulatively, the term 'village' would mean an area with groups of houses and buildings which is neither a hamlet nor a town, constituted as an estate under Land Revenue Act and assessed to Land revenue separately, but not included in a municipal area, cantonment area or Town area. So a cluster of hamlets constituting or adjoining the main village and assessed to land revenue therewith would not fall within the definition of a 'village' but would simply constitute 'mohalas' or 'patties' as they are generally known unless included within a municipal area, cantonment, or town area. No judgment of this Court or any other Court taking a contrary view has been brought to my notice.

7. In that sense, in the present case the village as basic unit for selection of RTs under SSA Scheme would be the estate of Mattan including all the adjoining hamlets like 'Machbawan' where the respondents 6 and 7 reside, and 'Mir Check' where the petitioner resides, and as such the whole area would form the consideration zone for selection of teachers; in schools of Mattan those have been selected for appointment of RTs under the aforesaid scheme. On contrary, if the adjoining hamlets like 'Mir Check' and 'Machbawan' etc. are considered to be 'villages' in the meaning in which the term has been used in the scheme, then in every village area a large segment of population would be left out of consideration under the scheme because in that case the selection would have to be made from amongst candidates available from the particular 'mohalla' in which the concerned school is located, which by necessary implication would limit the choice of selectors to a comparatively smaller group of candidates may be with lower academic qualifications, which would result in selection of lesser talent and exclusion of meritorious candidates from the fray. That

would also result in constitution of the 'Village Level Committee' from amongst the inhabitants of that particular 'mohalla' only, to the exclusion of the larger part of the population residing outside that 'mohalla' but within the 'village' itself. This sort of situation would, besides resulting in bad selection of candidates also exclude larger areas of 'village' from reckoning, particularly in view of the known fact, that almost all villages comprise of many 'Mohalas', and the village schools are everywhere located in a particular 'Mohalla' only. Construing that particular 'Mohalla' as being a village for the purpose of the scheme would perhaps be against the very spirit thereof according to which the RTs' have been conceptualized as community workers rather than mere school teachers.

8. So far as the effect of notifying a specific area u/s 283 of the Municipal Act is concerned, the only visible implication appears to be that such area would qualify for expenditure of municipal funds for improved arrangements with respect to certain matters upon which municipal fund can be expended. Such notification does not imply that after being notified a particular area would automatically cease to be the part of an estate or village as aforesaid which it used to be, unless it is detached there from by a competent notification. To exclude it from the parent village for the purpose of SSA Scheme it has to be a ward of the Notified Area with a separate school, otherwise it may be deprived of the benefits of the SSA Scheme, by neither falling in the Village nor a ward, of the Notified area; the two entities recognized there under.

9. In addition to that the subject requires to be considered from this standpoint also, that the Scheme under SSA where under 'Rehbar-e-taleem' are appointed, does not operate in a vacuum. Instead, it has a socio-economic-educational purpose, aimed at better education for the children and better social understanding and communication at the community level, and appears to operate in a specific social perspective with a declared purpose. This perspective cannot change by change of nomenclature of a particular area, for the simple reason, that change of nomenclature can not by itself change, alter or improve the socio-economic environs or substratum of a particular locality, nor can it automatically result in its educational upliftment, which is the focus of scheme under SSA; and which only determines the identification of the beneficiary area.

10. Besides that, in the instant case, the fact that the whole estate and not a particular 'Mohala' or 'Path' of Mattan would be the basic unit for

selection of candidates had been clearly mentioned in the eligibility criterion contained in the relevant advertisement notice, which must have been

within petitioner's knowledge; and having accepted it and participated in the selection process with that declared criterion, he can not turn round to

find fault with the criterion of eligibility after he failed to measure up. against private respondents, who have admittedly higher academic

qualification. In that view of the matter also, petitioner's claim does not appeal.

11. In totality of what has been discussed above, the contention advanced by petitioner can not sustain. The result therefore is that the Mattan

village having been the basic unit for selection of candidates under the aforesaid scheme, the respondents 7 and 8 who have admittedly higher merit

than petitioner appear to have been rightly selected as against him. That being so, writ petition does not appear to have sufficient force and is

accordingly dismissed along with all connected CMPs, however with the observation that nothing contained herein shall be deemed to adversely

effect anyone not party to this litigation.