
(2014) 05 SHI CK 0171
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 621 of 2014

Nand Lal and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 21-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 05 SHI CK 0171

Hon'ble Judges : Mansoor Ahmad Mir, Acting C.J.; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : R.K. Gautam, Senior Advocate and Gaurav Gautam, Advocates for the Appellant; Shrawan Dogra, Advocate General, Romesh Verma, V.S. Chauhan, Additional Advocate Generals and Kush Sharma, Deputy Advocate General, Advocates for the Respondent

Judgement

Mansoor Ahmad Mir, Actg. C.J.

1. By the medium of the present writ petition, the petitioners have called in question the decision made by the Government (Annexure P-18), whereby it was decided to open a Degree College at Diggall, District Solan, on the grounds taken in the memo of the writ petition.
2. Precisely, the case of the petitioners, is that the respondents have not examined the case of the petitioners, while making decision for sanctioning and opening a Degree College at Diggall. The decision-making process is wrong, arbitrary, discriminatory and against the public interest.
3. The respondents have filed reply to the writ petition.
4. Heard. The moot question for consideration in this writ petition is-whether the petitioners can question the decision made by the Government for opening a Government Post Graduate College at Diggall, District Solan?
5. During the process of consideration of the issue, the residents of various Gram

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

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

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

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

9. The Apex Court in *Sidheshwar Sahakari Sakhar Karkhana Ltd. Vs. Union of India (UOI) and Others*, , has laid down the guidelines and held that Courts should not interfere in policy decision of the Government, unless there is arbitrariness on the face of it.

10. The Apex Court in a latest decision reported in *Manohar Lal Sharma Vs. Union of India and Another*, , also held that interference by the Court on the ground of efficacy of the policy is not permissible. It is apt to reproduce paragraph 14 of the said decision as under:

"14. On matters affecting policy, this Court does not interfere unless the policy is unconstitutional or contrary to the statutory provisions or arbitrary or irrational or in abuse of power. The impugned policy that allows FDI up to 51% in multi-brand retail trading does not appear to suffer from any of these vices."

11. The respondents in their reply have specifically averred that they have considered the issue and it was found that Village Ramshehar is at the distance of 19 kilometers from the existing Government College at Nalagarh, whereas the distance between the Government College Nalagarh and Diggall is 40 kilometers and the justification for opening a Government College at Diggall was found more appropriate than at Ramshehar, as per the norms and policy. It is apt to reproduce paras 3 to 5 of the reply herein:

"3 to 5. That in reply to these paras, it is submitted that on the demand of the people of Ramshehar area feasibility report was sought from Principal, Govt. College Nalagarh through Director of Higher Education. From the perusal of report it is revealed that Ramshehar is at the distance of 19 km from the existing Govt. College Nalagarh. As per norms/guidelines the distance of existing nearby College to proposed college shall not be usually less than 25 Kms. The distance condition can be relaxed depending upon the need of the area/town where the existing Colleges are overcrowded and having the enrolment of students more

than 3000 but the enrolment of G.C. Nalagarh is only 1855 which is at a distance of 19 Km from Ramshehar. Keeping in view the norms for opening of new Govt. College and on the basis of report submitted Principal of Govt. College Nalagarh, the proposal was examined carefully and was turned down."

12. The petitioners have filed rejoinder to the reply filed by the respondents and have not specifically denied the said pleadings contained in the reply.

13. The respondents have also specifically pleaded in their reply that the decision was made after taking all aspects in view. It is apt to reproduce paras 6 & 7 of the reply herein:--

"6 & 7. That in reply to this para it is submitted that both the proposals/feasibility reports in respect of opening of new Govt. College at Ramshehar and at Diggal was received. From the perusal of the report it is gathered that GC Nalagarh is at the distance of 19km from Ramshehar, whereas nearest Colleges to Diggal are GC Nalagarh and GC Arki at the distance of 38 and 40km respectively. Hence if the College is notified at Ramshehar instead of Diggal then the genuine demand of the people of Diggal area would be ignored, who are in dire need of College. It is worthwhile to mention here that out of 13 feeding Senior Secondary Schools of Ramshehar area 6 schools i.e. Digal, Badhalag, Chandi, Chmadhar, Goyla and Chhiachhi are more approachable/near to Diggal instead of Ramshehar."

14. The Apex Court in the case titled as Mrs. Asha Sharma Vs. Chandigarh Administration and Others, has held that policy decision cannot be quashed on the ground that another decision would have been more fair, wise, scientific or logical and in the interest of society. It is apt to reproduce para 10 herein:

"10. The Government is entitled to make pragmatic adjustments and policy decisions, which may be necessary or called for under the prevalent peculiar circumstances. The Court may not strike down a policy decision taken by the Government merely because it feels that another decision would have been more fair or wise, scientific or logic. The principle of reasonableness and non-arbitrariness in governmental action is the core of our constitutional scheme and structure. Its interpretation will always depend upon the facts and circumstances of a given case. Reference in this regard can also be made to Netai Bag and Others Vs. The State of West Bengal and Others, ."

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

"19. We are of the view that the High Court was not justified in sitting in appeal over the decision taken by the statutory authority under Article 226 of the

Constitution of India. It is trite law that the power of judicial review under Article 226 of the Constitution of India is not directed against the decision but is confined to the decision making process. The judicial review is not an appeal from a decision, but a review of the manner in which the decision is made and the Court sits in judgment only on the correctness of the decision making process and not on the correctness of the decision itself. The Court confines itself to the question of legality and is concerned only with, whether the decision making authority exceeded its power, committed an error of law, committed a breach of the rules of natural justice, reached an unreasonable decision or abused its powers."

16. It is not known that in which capacity, the petitioners have filed the present writ petition and whether they have sought permission to file the writ petition in the representative capacity or as Public Interest Litigation.

17. We find no ground for interference in this writ petition, hence it is dismissed alongwith all pending application(s), if any.