
(1993) 08 KL CK 0037

In the High Court Of Kerala

Case No : O.P. No's. 10248 of 1991-T and 8653 of 1993-E

P. Cherriyakoya

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-08-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226, 41, 45

Citation : AIR 1994 Ker 27 : (1994) 2 ILR (Ker) 717

Hon'ble Judges : K.G. Balakrishnan, J

Bench : Single Bench

Advocate : Ramakumar and C.S. Abdul Sammad, for the Appellant; N.N. Sugunapalan, Govindh K. Bharathan and K.P. Dandapani, for the Respondent

Final Decision : Dismissed

Judgement

K.G. Balakrishnan, J.—Petitioner in O. P. 10248 of 1991 is a resident of Kavarathi Island in Lakshadweep Islands. Petitioner in O. P. 8653/93 is the President of an association in Kavarathi. In the year 1972, a college by names Jawaharlal Nehru College was established at Kavarathi, which is the capital of the group of Lakshadweep Islands. According to the petitioners, for the establishment of this college the people of the locality had given liberal contribution of money and land and this college became a full-fledged educational institution with library, laboratory, hostel and playgrounds. According to the petitioners, Kavarathi Island is a centrally located island having easy access to the persons of other islands and most of the students studying in this college hail from Kavarathi Island and many of them are children of the employees working in the Administration. The Petitioners further allege that the Administrator of the Lakshadweep Island due to extraneous pressure by some powerful persons decided to shift the college from Kavarathi to Kadamat. Petitioners contend that the Kadamat is an inaccessible Island in most of the seasons especially during heavy monsoon and it is an unhealthy area with large incidence of leprosy and there is also scarcity of drinking water. Petitioners allege that Administration is taking hurried steps to

shift the college to Kadamat. Petitioners made various representations to the Administrator not to shift the college to Kadamat. Therefore petitioners seek for a writ of mandamus against respondents 1 and 2 from shifting Jawaharlal Nehru College from Kavarathi to Kadamat.

2. On behalf of the respondent a detailed counter-affidavit is filed. It is alleged in the counter-affidavit that in 1964-65 a higher secondary school affiliated to the Central Board of Education was established in the Island. Students from other islands were selected for admission to this school. Free hospital accommodation was available to the students admitted from various islands. There was strong demand for starting a junior college. The suggestion was approved by the Ministry on condition that the existing higher secondary school should be abolished so that no additional financial commitment would be there for staff and building on that account. The junior college was started in 1973. Postgraduate teachers in the higher secondary school were appointed as Junior Lecturers of the college. Play grounds. Laboratory, library and other staff of the higher secondary school were made available for the functioning of the college. The allegation in the original petitions that the members of the public contributed for the construction of the building is denied. The decision for shifting the college from Kavarathi to Kadamath was taken only after weighing the pros and cons of the issue involved in the matter. There were deliberations both at official level and also by the Administrator's Advisory Council. Administrator's Advisory Council unanimously passed resolutions urging the Government to shift the college to Kadamat. Service organisation also submitted memorandum for immediate shifting of the college. Decision was taken as early as in 1988. The matter was taken up with the Registrar of Calicut University for approval. There was constant pressure from the public and from service organisation to shift the college and other offices from the Headquarter island to a less congested area like Kadamath. The local political party also submitted a memorandum to the Hon'ble President of India to expedite the shifting of the college to Kadamath. Steps were taken to construct a new building for the college at Kadamath. The construction work was taken up by the School of Planning and Architecture, New Delhi. An officer was appointed specially to manage the shifting of the college. The averment in the original petition that Kadamath island is inaccessible and unhealthy are flimsy and without valid grounds. There are three passenger ships sailing between the islands and there is regular helicopter service. There is Vayudoot service between the island and the main land. Kadamath is one of the tourist resorts centre in Lakshadweep. The President of India stayed at Kadamath during his visit to Lakshadweep. Tourist huts are arranged for the stay of tourists under the package tour programme. The Administrator is bound to honour the unanimous decision of the Advisory Council and the Pradesh Council. Necessary budgetary provision is also made to shift the college in this year itself. It is further contended that the decision to shift the college was taken after due deliberation of issues involved in the matter. The administration has taken decision to shift the college on the basis of several representations received from

various groups. It is stated that the shifting of the college will not in any way hamper the higher studies of the ward of the petitioners as there is free educational facilities for Island students seeking admission from various Islands.

3. In O. P. 8653/93 petitioner challenges Ext. P1 order passed by the University permitting the Lakshadweep Administration to shift the college to Kadamath Island. According to the petitioner, in this original petition Ext. P 1 resolution passed by the Syndicate of the Calicut University is without jurisdiction and liable to be declared invalid. It is alleged by the petitioner therein that the University has not considered all the relevant aspects and the meeting of the Syndicate was held on- a Saturday while most of the members were away from Calicut. Petitioner alleges that a matter of considerable importance to the entire student community of the Lakshadweep Islands was decided in a hurry and there was no proper application of mind. Petitioner also prays for a declaration that the shifting of the college from Kavarathi to Kadamath is violative of the right to education protected under the Constitution

4. I elaborately heard the petitioners' counsel the Standing Counsel for the Lakshadweep Administration and also the counsel for the University, of Calicut. The petitioners' counsel contended that by the shifting of Jawaharlal Nehru College from Kavarathi to Kadamath the right to education guaranteed under the constitution is seriously violated. Reference was made to several decision to establish that the right to education is part of the fundamental rights. In *Miss. Mohini Jain Vs. State of Karnataka and others*, the Supreme Court held : at page 1864 (of AIR):

"The right to education is a concomitant to the fundamental rights enshrined under Part-III of the Constitution. The Directive Principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under Part-III. These principles have to read into the fundamental rights. Both are supplementary to each other. The State is under a constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under Part-III could be enjoyed by all. Without making "right to education" under Article 41 of the Constitution a reality of the fundamental rights under Chapter-III shall remain beyond the reach of the large majority which is illiterate".

The above view expressed by the Supreme Court was re-affirmed by the Constitution Bench of the Supreme Court in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, . It is observed :

"In order to treat a right as a fundamental right it is not necessary that it should be expressly stated as one in Part III of the Constitution. The provisions of Parts III and IV are supplementary and complementary to each other. Fundamental rights are but a means to achieve the goal indicated in Part IV and must be construed in the light of the directive principles."

It is further observed that though the right to education is not stated expressly in

Constitution it is a right guaranteed under Article 21 having regard to the broad interpretation given by the Court:

"The right to education has been treated as one of transcendental importance in the life of an individual has been recognised not only in this country since thousands of years, but all over the world. In *Miss. Mohini Jain Vs. State of Karnataka* and others, the importance of education has been duly and rightly stressed.We agree with the observation that without education being provided to the citizens of this country, the objectives set forth in the Preamble to the Constitution cannot be achieved. The Constitution would fail".

5. From the two important decisions of the Supreme Court, it is now well established that even though it is not expressly stated in Article 21 regarding the right to education, it forms part of the concept of "right to life". The right to education is implicit in the right to life and personal liberty guaranteed under Article 21. This right to education is to be understood in the background of Articles 45 and 41 of the Constitution and the State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right. However, the Court held:

"Right to education, understood in the context of Articles 45 and 41, means; (a) every child / citizen of this country has a right to free education until he completes the age of fourteen years and (b) after a child/citizen completes 14 years, high right to education is circumscribed by the limits of the economic capacity of the State and its development".

Article 21 acts as shield against the deprivation of such right. Therefore, there cannot be two opinions as to whether right to education is part of the fundamental rights. The question that principally debated at the hearing of these petitions was whether by the shifting of the college from Kavarathi to Kadamat this right to education is seriously infringed.

6. Before going into the merits of the contentions it is apposite to consider the broad outlines of judicial review in matters of this nature. The Standing Counsel for the Lakshadweep Administration contended that the shifting of the college from Kavarathi to Kadamat was made after due deliberation and it is a policy decision which cannot be subjected to judicial review. It was also contended that the court should presume that all governmental action is reasonable and in public interest and the burden is heavy on the petitioner to establish the contrary. On this aspect, the Supreme Court has expressed its opinion in several cases. In *Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, It was held at para 28:

"But, there is always a presumption that governmental action is reasonable and in public interest and it is for the party challenging its validity to show that the action is unreasonable, arbitrary and contrary to professed norms or not informed by public interest and the burden is a heavy one".

In an earlier decision reported in *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, the Court observed at page 2000 (of AIR):

"There may be an infinite variety of considerations which may have to be taken into account by the Government in formulating its policies and it is on total evaluation of various considerations which should weigh with the Government in taking particular action, that the court would have to decide whether the action of the Government is reasonable and in public interest".

The counsel for the petitioners contended that the decision of the Administration to shift the college is highly unreasonable and arbitrary. It is pointed out that it would seriously affect the right to education of the inhabitants of Kavarathi Island. In order to establish that the decision is arbitrary exercise of power, the counsel for the petitioners pointed out that Kadamath Island is situated about more than 50 miles away from Kavarathi and it is not possible for the inhabitants of Kavarathi Island to pursue their studies at Kadamath. The counsel also pointed out that there is no hostel facilities at Kadamath. These contentions are denied by the counsel for the Lakshadweep Administration. Under the Lakshadweep Group of Islands there are about 10 inhabited Islands. All these islands are scattered at various places in Arabian Sea. The inter-island distance is ranging from 50 to 200 K. Ms. There are 4 Islands in the Amindivi group of Islands and Kadamath is one of such Islands. The entire native people of the Lakshadweep Islands are members of the Muslim community and they are classified as Scheduled Tribes. Free education is imparted to all students. At the college level there are hostels for the students and they are given free boarding and lodging. It is pointed out by the counsel for the Lakshadweep Administration that in Kadamath a new college building has been constructed with all modern facilities and several crores of rupees have been spent for the same. It is further pointed out that hostel buildings are ready for occupation and they are not fully furnished as the furniture items have to be brought from Kavarathi and as soon as the shifting of the college is over the hostel would be fully furnished. It is contended by the counsel for the Administration that play grounds and other facilities would be provided at the earliest and there is sufficient land available for the purpose. As regards computer and library facilities which are now available at Kavarathi, it is argued that, could be made available to the students of Kadamath also when the entire process of shifting is over. The 2nd respondent has filed a detailed counter reiterating all these facts. The decision of the Administration to shift the college is to be appreciated on the above facts. There is also evidence to show that the Administration has actively considered the question of shifting of the college and the initial decision was taken as early as in 1986. Ext. R 2(a) is the copy of the minutes of the meeting of the Advisory Council associated with the Administrator, Lakshadweep held on 8-11-86 and 9-11-86. It may be noticed that the Advisory Council was the body consisting of the representatives of the inhabitants of the Island. One of the items for discussion was the shifting of the college from Kavarathi to Kadamath. From Ext. R. 2(c) it is clear that the

members Advisory Council were strongly in favour of the shifting of the college to Kadamath. Ext. R. 2(b) is the minutes of the meeting of the various heads of departments held on 21-11-86. The Principal of the Jawaharlal Nehru College also was one of the participants.

7-8. Ext. R. 2(c) is a letter addressed to the Registrar Of the University of Calicut from the Lakshadweep Administration. It is stated therein that the Administrator's Advisory Council after careful consideration and with the unanimous approval decided to shift the college from Kavarathi to Kadamath and the Administration sought for formal approval of the University. In Ext. R. 2(c) various reasons have also been given which moved the Administration to shift the college from Kavarathi to Kadamath. It is stated that there has been steep rise in the building activities in Kavarathi in recent years. The headquarters of the Administration were shifted from Calicut to Kavarathi during 1963-64. Till then the number of staff working in this island was a very few. Year after year the number of officers and staff posted in Kavarathi have increased manifolds. Along with this, other central Government Departments viz. P & T, ICAR MPSAF, Navy etc. had also set up their establishments. In fact, this phenomenal increase in population from 2828 as per 1961 Census to 6604 as per 1981 Census can be largely attributed to the increase in number of government employees. It is further stated in the letter that crowding has generated a number of problems in the island. No land is available for expansion of any office building. Health and hygien problems have also arisen due to increase in population. It is stated that under the above circumstances it was decided to shift the college from Kavarathi to Kadamat. The 2nd respondent has also produced various other documents which are marked as Exts. R. 2(a) to R2(j). I do not make reference to alt these documents as I am satisfied that the decision of the Administration to shift the college from Kavarathi to Kadamat cannot be said to be arbitrary or unreasonable.

9. The decision to shift the college in a way is a policy matter. If it is a policy matter the scope of interference at the hands of the High Court under Article 226 is very limited.

However, if the decision directly affects individual or private rights, duties and interests it is open to judicial review.

10. The counsel for the petitioners contended that the decision to shift the college from Kavarathi to Kadamat is an arbitrary exercise of power and it is highly unreasonable. It is true that any arbitrary action whether in the nature of administrative or legislative or quasi-judicial power is liable to attract the provision under Article 14 of the Constitution (See the decisions in E.P. Royappa Vs. State of Tamil Nadu and Another, , Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, and Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, . However, the parameters of judicial review have been well established by the various decisions of the Supreme Court. The exercise of power whether legislative or administrative will be set aside if there is

manifest error in the exercise of power by such machinery or the exercise of the power is manifestly arbitrary. Similarly, if the power has been exercised on non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous. If a power whether legislative or administrative is exercised on the basis of facts which do not exist, which are patently erroneous, such exercise of power will stand vitiated. The Supreme Court in *M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others*, observed :

"If the decision of the authority does not agree with that which the court considers to be the right one, the finding of law by the authority is liable to be upset. Where it is finding of fact, the court examines only the reasonableness of the finding. Without that finding is found to be rational and reasonably based on evidence, in the sense that all relevant material has been taken into account and no irrelevant material has influenced the decision, and the decision is one which any reasonably minded person, acts on such evidence, would have come to, then judicial review is exhausted even though the finding may not necessarily be of the court would have come to as a trier of fact".

If the decision of the authority is viewed in that angle it cannot be said that the Laksha-dweep Administration has taken any irrelevant matter or has failed to take into consideration any relevant factors for deciding the question of shifting of the college. The increase in the population and want of sufficient land in the Island have caused too much problem and right from 1986 the Advisory Council decided to shift the college. It is also not possible to assume that the decision is unreasonable. All the facilities which the students hitherto enjoyed at Jawaharlal Nehru College Kavarathi are being extended to the students who join at Kadamat. All the students are given free hostel accommodation. I do not think that these students would be put to any sort of difficulties. The fact that the University had extended its recognition to shift the college is also indicative of the fact that all facilities are available at Kadamat. Therefore, I do not think that the decision of the Lakshadweep Administration is unreasonable or contrary to public interest. It cannot be said to be illegal or contrary to accepted principles. Moreover, the decision of an authority cannot be struck down on the mere plea of unreasonableness. Therefore, the prayer sought for in the original petition 10248 of 1991 cannot be allowed.

11. In O. P. No. 8653 of 1992, the petitioner challenges the decision of the University in granting permission to shift the college from Kavarathi to Kadamat. It is for the Administration to decide as to where they should start the college. The University can refuse the recognition only if the facilities provided to the students are not adequate or not upto the standard suggested by the University. In the instant case, the University sent a team to study the situation and only on the basis of the report submitted by the study team the syndicate decided to grant permission to shift the college. Even in Ext. P 1 it is stated that the Administration should fulfil all conditions regarding the hostel facilities and play

ground facilities within a stipulated time. There is nothing in evidence to show that Ext. P 1 decision of the University is tainted by illegality. Therefore, O.P. No 8653 of 1993 also is without any merit.

Original petitions are dismissed, however, without costs.