

(2021) 08 SHI CK 0189
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No.4353 Of 2020

Rajinder Singh Rana And Others

APPELLANT

Vs

State Of H.P And Others

RESPONDENT

Date of Decision : 18-08-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 08 SHI CK 0189

Hon'ble Judges : Tarlok Singh Chauhan, J; Satyen Vaidya, J

Bench : Division Bench

Advocate : Sk.S. Banyal, A.K. Sharma, Vijender Katoch, Ashok Sharma, Rajinder Dogra, Hemanshu Misra, Shiv Pal Manhans, Bhupinder Thakur, Ajay Sharma, Amit Jamwal, Bhuvnesh Sharma, Ramakant Sharma

Final Decision : Disposed Of

Judgement

Tarlok Singh Chauhan, J

1. This is a pro bono publico petition filed on behalf of the elected representatives and one social worker for grant of the following reliefs:-

â??(i) That the respondent No.3 and 4 may very kindly be directed to get the construction of additional accommodation started on a digged

site marked with florescent colour â??Bâ?? according to tender work awarded vide annexure P-5 to respondent No.5 dated 12.10.2017.

(ii) That the respondent No.5 may very kindly be directed to complete the work of additional accommodation Civil Hospital Jwalamukhi

awarded to him vide Annexure P-5 in a shortest possible time, failing which the respondent No.5 should be black listed for his acts of

omission and commission.

(iii) That the respondent No.3 and 4 may very kindly be directed to get the work

allotted to respondent No.5 vide Annexure P-5 without any change of block site, and it should be on the original approved site contour plan in the ends of justice and also without changing any facility especially mortuary provided in the original site plan in the basement of the block.

(iv) That respondent No.2 may very kindly be directed to take stern action against the defaulting officers who is directly responsible in not

getting the additional accommodation constructed and completed within time frame provided in Annexure P-5.

(v) That the entire record i.e. original approved site plan and contour plan of the Civil Hospital Jwalamukhi be summoned for an

appropriate adjudication of the matter in public interest.â??

2. It is averred that vide Office Order dated 21.02.2014, respondent No.1 ordered the upgradation and opening of various health institutions in public

interest which included the upgradation of Community Health Centre, Jwalamukhi to 50 bedded Civil Hospital. The Civil Hospital was thereafter again

upgraded to 100 beds and for this purpose even posts were sanctioned. Not only this, respondent No.1 conveyed an administrative approval of

Rs.10,84,57,000/- and the same was sanctioned in October, 2017, for construction of 100 bedded additional accommodation. This work after

completion of all procedural formalities was awarded to 5th respondent. However, since then much progress has not been achieved, save and except,

the work of digging at site about 30 mtrs x 13mtrs and 11 feet deep, has been done, hence this petition.

3. Respondents No.1 to 4 have filed the reply wherein the factual position has not been disputed and it is averred that after the site development work

had been started by respondent No.5 and while the cutting of earth was being done, then the site was rejected on technical grounds by a Committee

empowered by the Government. Secondly, the site was touching the National Highway which could be widened to four lane in the near future,

therefore, the work was stopped by respondent No.5 because it was proposed to change the site.

4. A Committee was framed by the Government to finalize the new site. The new site was finalized adjoining to old site within the same campus and

respondent No.5-Contractor had mobilized its resources to start the work

adjoining the old site within the same campus, but in the meantime, the petitioners had filed the present petition and obtained the status quo orders.

5. As regards the merits of the case, the respondents have reiterated the submissions already made in the preliminary submissions.

6. To similar effect is the reply filed on behalf of respondent No.5.

7. We have heard the learned counsel for the parties and gone through the material placed on record.

8. At the outset, it needs to be noticed that the petitioners appear to be irked because of non-completion of the project of great public importance.

There are no allegations of mala fides or even for that matter the allegations of impropriety or breach of provisions of law.

9. Even though, in ordinary circumstances, it would not lie within the jurisdiction and competence of this Court to go into the question as to whether

there has been any undue delay in execution of the project. However, since this is a public interest litigation petition, we would venture to go into this question.

10. It would be noticed that the Hospital was earlier functioning as a Community Health Centre (CHC) adjoining to the main Bus-stand, Jwalamukhi

and was shifted to the old building of 'Matri Chhaya/Yatri Niwas' on 22.06.2013 in compliance to the directions of the Government dated

24.04.2013 and 20.05.2013.

11. One Krishan Dass along with others filed Civil Writ Petition No. 8148 of 2013 against shifting of CHC, Jwalamukhi to this place i.e. 'Matri

Chhaya' building located in Jwalamukhi town. This writ petition was dismissed by this Court as misconceived. Thus, the CHC remained functional

in the 'Matri Chhaya' building and later on it was this CHC which was upgraded to 50 bedded hospital and then eventually Rs.10,84,57,000/-

were sanctioned for the construction of 100 bedded additional block at the Civil Hospital, Jwalamukhi (Matri Chhaya) which after completion of all

codal formalities resulted in awarding of tender in favour of 5th respondent.

12. It is not in dispute that 5th respondent commenced the work by cutting/ carrying out excavation at the site. However, thereafter the Director,

Health Services, wrote a letter to the Deputy Commissioner, Kangra, to examine the feasibility of shifting back the Civil Hospital Jwalamukhi from

Temple trust building (Matri Chhaya) to its original place vide its letter dated 06.09.2018. He also requested that the concerned SDM and Executive

Engineer, HPPWD, Division Dehra, be directed to make convenient to attend the Civil Hospital, Jwalamukhi on 10.09.2018 at 10.00 A.M. along with

necessary record for their opinion.

13. Subsequently, the proposal for construction of Civil Hospital building, Jwalamukhi was revised due to shifting the site in the same campus keeping

in view the existing structure on the recommendation of the Standing Committee as constituted by the Government vide Notification dated 20.07.2019.

The Standing Committee earlier held a meeting on 08.07.2019.

14. Thereafter, respondents No. 3 and 4 prepared the revised drawing/site plan as well as preliminary estimate amounting to Rs.14,25,07,000/- as per

the guidelines of the Govt. vide Notification dated 20.07.2019 and recommended for getting final administrative approval and expenditure sanction

from the competent authorities.

15. Respondent No.1 conveyed revised administrative approval amounting to Rs.14,25,07 lac vide office letter dated 22.08.2020 after completion of all

codal formalities and the same was conveyed to respondent No.4 through proper channel. An administrative approval and expenditure sanction

amounting to Rs. 1084.57 lacs was accorded by respondent No.1 for the construction of 100 bedded hospital building during October, 2017.

16. This building was proposed to be constructed adjoining the existing â??Matri Chhayaâ?? building where the CHC was earlier shifted during 2013.

The Public Works Department was assigned the job to construct this building being the premium building and road construction agency of the State

Govt.

17. After completion of all codal formalities, the work was awarded to respondent No.5 by respondent No.4 for an overall amount of Rs.5,18,28,910/-

vide its letter dated 12.10.2017.

18. Finally, when the site was handed over, the contractor started cutting/ excavation of earth to clear the site and in this process, he dug the site 30

mtrs x 13 mtrs app. 11 feet deep. The MLA, Jwalamukhi Constituency visited the site of work on 02.01.2018 along with respondent No.4, SDM and

Tehsildar, Jwalamukhi. A copy of letter dated 09.01.2018 of Assistant Engineer, HPPWD, Sub Division, Jwalamukhi addressed to respondent No.4.

19. During the visit of MLA, Jwalamukhi, people of the area requested to change the site of this 100 bedded hospital. Subsequently, on 07.01.2018, the

construction work of this 100 bedded hospital was inspected by the Health and Family Welfare Minister, H.P., along with the local MLA, Jwalamukhi.

The people of the area again raised the issue that the proposed site of this 100 bedded hospital was located at a far off place from the main bus stand,

hence, the people would find it difficult to come and get back as they will have to pay additional money on account of the transportation charges.

20. Another issue that was raised by the people that the proposed site for 100 bedded hospital was located adjoining the "Matri Chhaya" building

just touching the boundaries of the National Highway 503 and, therefore, the proposed building would experience continuous noise pollution and

vibrational effects which would create disturbance to the patients and the para medial staff.

21. It was also in the proposal that this National Highway was to be upgraded to four lanning project and its widening in near future could create a

serious threat to this hospital building. Therefore, respondent No.5 had to stop the work at the excavation stage as the new site was being proposed. In

this context, respondent No.4 wrote a letter to the CMO, Dharamshala vide letter dated 09.01.2018.

22. Thereafter, the MLA Jwalamukhi, in consultation with the local people proposed the same construction site from where the CHC had earlier been

shifted during 2013 i.e. near the existing Mini Sect. Building adjoining the under construction parking complex Jwalamukhi where this hospital was

earlier functioning as CHC till 2013. Consequently, respondent No.4 prepared a fresh contour site plan of this newly proposed site for the construction

of 100 bedded hospital and sent the same for approval to the Chief Medical Officer, Kangra at Dharamshala vide letter dated 15.01.2018, but, nothing

was conveyed by the CMO, Dharamshala in this regard. Respondent No.4 again sent a reminder to CMO, Dharamshala to convey his decision

regarding the shifting of hospital with a copy to the Director Health Services, H.P., Shimla.

23. The Superintending Engineer 9th Circle, HPPWD, Nurpur, vide its office letter dated 10.07.2018 also wrote to the Director, Health Services, H.P.,

Shimla, to clarify the decision regarding continuing of work of the 100 bedded hospital at the present site or to shift this building to another site, so that

the work awarded to the Contractor could be closed to avoid any legal complications.

24. The Additional Director, Health Services, H.P. vide its office letter dated 6th September, 2018, addressed to the Deputy Commissioner, Kangra at

Dharamshala with a copy to the Chief Medical Officer, Kangra at Dharamshala and to the Assistant Controller (F&A) office of the H&FW

conveyed that the Government has desired and requested this Directorate to examine the feasibility of shifting back the Civil Hospital, Jwalamukhi

from Temple Trust to its original place (near Bus Stand) which was earlier shifted by the Government to Matri Chhaya Temple Trust building

on 22.06.2013 after recommendation of Committee constituted by your good office vide letter dated 27.02.2018.

In order to revert the said Civil Hospital to its original place the Committee constituted for the same shall visit Jwalamukhi on 10th September in order

to examine the feasibility of the same along with assessment of financial and infrastructural requirements. It is, therefore, requested that the

concerned Sub Divisional Magistrate and Executive Engineer, HPPWD, be directed to make convenient to attend the Civil Hospital Jwalamukhi on

10th September, 2018 at 10.00 a.m. along with necessary record so that their opinion could also be taken into consideration for the above said

purpose.

25. The copies of this letter were also circulated to the Chief Medical Officer, Kangra at Dharamshala, H.P. for information and necessary

compliance and to the Assistant Controller (F&A) office of the H&FW, H.P., for information and with the direction to ensure his presence as a

Committee Member on the above mentioned scheduled date and time at Civil Hospital, Jwalamukhi, District Kangra.

26. The Additional District Magistrate further conveyed the matter to SDM, Jwalamukhi and to respondent No.4 to remain present in the meeting on

the scheduled date and time along with the relevant record vide its letter dated 07.09.2018. Aggrieved with this situation, respondent No.5 represented

to respondent No.4 vide its letter dated 17.02.2018. However, the new site could not be finalized and thus respondent No.5 had to stop the work and

the matter regarding finalization of the site remained indecisive for a long time.

27. The Additional Chief Secretary (Health) to the Government of Himachal

Pradesh constituted a Committee vide notification dated 20.07.2019 to finalize the basic requirements of the proposed building and to evaluate the utility with specified aspects. The meeting of the above Committee was held on 16.07.2020 in the office of the Chief Medical Officer, Kangra. The Committee recommended as under:-

As per verbal directions by the higher authorities the Committee reconsidered and revised architectural drawings after inspecting the selected site for new building being underground water logging at the site where some digging has been carried out, due to change the plinth area had increased with cost escalation with the provision of the GST as applicable. As a follow up of this meeting, another meeting was held on 08.08.2019 to check the feasibility of the site proposed by the above Committee for the construction of 100 bedded hospital and the following Officers participated in this meeting:-

1. Chief Medical Officer, Kangra.
2. Sub Divisional Magistrate, Jwalamukhi.
3. Executive Engineer, HPPWD Dehra.
4. Senior Architect Kangra Zone at Dharamshala.
5. BMO Jwalamukhi.
6. Tehsildar Jwalamukhi.

28. As per the proceedings of this meeting, it was concluded as under:-

The above committee members agreed with the suggested alternative site in the same campus adjoining the existing Hospital building.

After finalization of this site, respondent No.4 had to send the case to receive revised administrative approval and expenditure sanction vide letter dated 23.10.2020.

Accordingly, the architectural drawings were modified to incorporate a new changes as per the changed grounds conditions. Provisions of all the desired facilities as approved by the Health Authorities were provided in the new architect drawings.

29. The above Committee members agreed with the suggested alternative site in the same campus adjoining the existing Hospital building. After

finalization of this site, respondent No.4 had to send the case to receive revised administrative approval and expenditure sanction vide his office letter

No. 7009-12 dated 23.10.2020. Accordingly, the architectural drawings were modified to incorporate a few changes as per the changed ground conditions.

Provisions of all the desired facilities as approved by the Health Authorities were provided in the new architectural drawings. However, before respondent No.5 could start the work, the same was stayed whereby the respondents were directed to maintain status quo vis-a-vis the approved apposite plans.

30. The aforesaid narration of the facts would go to show that there has been no intentional or deliberate inaction on the part of the respondents in commencing with the work of proposed hospital accommodation. Even though the same has been considerably delayed, but the respondents are not to be blamed for the same.

31. Having set out the factual background and present status regarding construction, we may now advert to the legal issue regarding the scope of judicial review in such cases.

32. It is more than settled that choosing a site for a hospital, school, colleges etc. is a policy matter and, therefore, should normally be not interfered with by the Courts.

33. A similar question relating to opening of a Govt. College came up for consideration before the learned Division Bench of this Court (of which I was one of the members) in CWP No. 621 of 2014 titled Nand Lal and another vs. State of H.P. and others reported in 2014 (2) HLR (DB) 982 where the petitioners therein had challenged the decision of the Government to open a Government Degree College at Diggal on the ground that the same should be opened at Ramshehar (Nalagarh) because the Panchayats of the area of Ramshehar had made demand for sanctioning and opening of the College at Ramshehar which was more feasible and centrally located. This Court held as under:

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 Diggal, 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 and others*, 2005 AIR SCW 1399, 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*, (2013) 6 SCC 616, 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.”

14. The Apex Court in the case titled as *Mrs. Asha Sharma versus Chandigarh Administration and others*, reported in 2011 AIR SCW 5636

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 nonarbitrariness 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 *Netaji Subhas Chandra Bose v. State of West Bengal* [(2000) 8 SCC 262 : (AIR 2000 SC 3313)].

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 versus Adikanda Biswal and others, reported in (2012) 11 SCC 731 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.

34. The law on the subject was again reiterated in CWP No. 4044/2015 titled *Gramin Janta Kalyan Samiti, Kuthera vs. State of H.P. and others*,

decided on 28.03.2016. This case related to the shifting of Gram Panchayat, Kuthera to village Kuthera from Makriri.

35. In CWP No. 3862 of 2014 titled *Surinder Kumar vs. State of H.P. and others*,

decided on 15.07.2015, the issue therein was that the Sub Division had been created at Jole in Tehsil Bangana in District Una with the prayer that the same be set up at Chowki Minar in Tehsil Bangana, District Una.

36. It is more than settled that in the policy matters which are in the exclusive discretion, domain and jurisdiction of the State, the Courts are loath to interfere in such policy decisions of the Government which if taken with myriad of facts merely because it is not to the liking of the petitioner, they cannot invite the Courts to interfere in such matters except on limited grounds i.e. if it is not found on well settled grounds like the decision is arbitrary, malafide and unreasonable or irrational.

37. The Government is always entitled to make pragmatic adjustments and policy decision(s) 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 fairer or wise or more scientific or logical. The principle of reasonableness and non-arbitrariness in governmental action is the core of our constitutional scheme and structure and its interpretation will always depend upon the facts and circumstances of a given case.

38. The decision of the Government to commence the construction of the hospital at another site cannot be termed to be capricious or not informed by reasons or formed on ipse dixit of the respondents. It is not within the domain of any of the Courts to weigh the pros and cons of the policy, except as observed above, where it is arbitrary or violative of any constitutional, statutory or any other provisions of law. The Court would dissociate itself from entering into the realm of policy which belongs to the Executive.

39. In view of the aforesaid discussion, we find no merit in this petition and the same is accordingly dismissed, leaving the parties to bear their own costs. Pending application(s), if any also stand disposed of.

40. However, before parting, it needs to be observed that since the work of execution of project was awarded nearly four years back on 12.10.2017 and no material progress has been achieved, therefore, in the given facts and circumstances, we hope and trust that the respondents would execute the work as expeditiously as possible and in no event beyond the period set out in the tender.