

(2018) 02 GUJ CK 0017
In the Gujarat High Court
Case No : 21958 of 2016

SARDAR PATEL GRAM VIKAS TRUST

APPELLANT

Vs

UNION OF INDIA & 4

RESPONDENT

Date of Decision : 20-02-2018

Acts Referred:

[Constitution of India](#), [Article 226](#), [Article 227](#) - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court
[Andhra Pradesh Dis](#)

Citation : (2018) 02 GUJ CK 0017

Hon'ble Judges : N.V.Anjaria

Bench : Single Bench

Advocate : GM JOSHI, RASESH RINDANI, ?KSHITIJ M AMIN

Final Decision : Dismissed

Judgement

1. By filing the present petition under Article 227 of the Constitution, the petitioner wants this Court to set aside the decision on part of the

respondents to establish a secondary school under Rashtriya Madhyamik Shiksha Abhiyaan Scheme as unreasonable and arbitrary.

2. The premise of the challenge is that the new school is being established within a short distance of the existing school which is run by the petitioner Trust.

3. The petitioner is a charitable Trust engaged in running educational activities and has its school named as Shri Vivekanand Vidya Mandir in the area of Santalpur Taluka, Nr.Village Ganjisar, which is a nongrantable school. It runs classes for standards 9 to 12. The petitioner Trust was also permitted to start a hostel. As stated by the petitioner, in total 133 students have been studying. The petitioner has further stated about the

infrastructural facilities made available in the campus such as class-rooms, library, laboratory, hostel accommodation, independent toilet block etc.

A huge expenditure has been incurred, avers the petitioner.

3.1 The Central Government floated two Schemes called the Sarva Shiksha Abhiyaan for primary schools and Rashtriya Madhyamik Shiksha

Abhiyaan for secondary and higher secondary level schools. The Central Government has been helping the State Governments to implement these

policies. Under the Rashtriya Madhyamik Shiksha Abhiyaan, a new school is proposed to be started and the students have already been enrolled

for standard 9. It is the case of the petitioner Trust that the proposed school is hardly 100 meters away from the petitioner's school and that the

construction activity is likely to commence. Therefore, it is the grievance that the newly proposed school to be started within 100 meters area,

would virtually mark a functional death for the petitioner's school. The petitioner seek a relief that the new school may not be allowed to be

established for the various grounds and reasons.

4. Learned advocate Mr.Gautam Joshi for the petitioner vehemently submitted that the authorities ought to have applied their mind before taking

decision to start a school under the Scheme within such near peripheral distance. He highlighted the contents stated in paragraph 2.2 of the petition

about the total population of the village where the new school is proposed, the possible number of students as well as actual number of students

studying in the existing school. He further submitted with reference to the policy guidelines for implementing the scheme that it was intended to

achieve a balanced educational development, for which a survey was required to be undertaken before a new school could be started at a

particular place. Highlighting from the various clauses in the policy document placed on record, it was submitted that new school could not have

been established within short radius of the school already in existence and that certain aspects were to be examined in the appraisal process before

decision to start a new school could be taken.

4.1 On the other hand, learned Assistant Government Pleader Mr.Rasesh Rindani submitted so as to oppose the petition that State Government

had been implementing policy which had the object of creating more educational facilities in the rural areas and the grantable schools were being

opened in the villages selected. It was submitted that merely because petitioner was running a school in the area, it could not object against the implementation of the policy. Learned Assistant Government Pleader seriously questioned the locus standi of the petitioner. He submitted that it was a policy decision bona fide taken for which the grievance of the petitioner was totally misplaced.

4.2 Respondent No.4 Joint Director " Rashtriya Madhyamik Shiksha Abhiyaan Scheme, in its affidavitin- reply stated that new secondary school was being set up under the Central Government Scheme, having the object of universal excess to quality education at the secondary and higher secondary school level and that a survey was scientifically undertaken to select the village and the place to start the new school. It is stated that in order to implement the Central Government policy, the Education Department of the State Government issued Resolution dated 23rd January, 2009.

4.3 It is further stated that after GIS mapping the competent authority issued the letter dated 01st January, 2014 to the District Education Officer Patan for verifying the location of the schools in his district and for giving his opinion. The District Education Officer verified the location and made recommendations for opening the proposed new school in the village Ganjisar, taluka Santalpur. After receiving the recommendation from the District Education Officer, the competent authority sent future plan for the academic year 2016-17 to the Ministry of Human Resource Development of the Central Government for the purpose of sanction. On receiving the proposal of State Government the Project Approval Board considered the same and issued the sanction letter dated 19th February, 2016. It was given out that In the schools to be established under the Scheme, the students will be getting free education including free distribution of text books, uniforms and scholarships, free bicycles etc.

4.4 In the rejoinder affidavit the colour of the grievance of the petitioner was found to have been changed a bit. It was contended that despite possessing complete infrastructure since 2001 and that though the application was made for giving grantable status to the school as back as in the year 2004 and again last proposal given in the year 2014 along with the recommendation of the District Education Officer, the case of the

petitioner to be recognised as grantable was not accepted by the authorities. Giving certain names and instances of the schools which were made

grantable by the authorities in the past, the petitioner contended that it deserved similar treatment.

4.5 Dealing with the above aspect raised in the rejoinder, at this stage itself, the grievance that the school is not being made grantable is a separate

issue distinct from the subject matter of this petition. This Court has neither any occasion or material to examine the said issue. The claim of the

petitioner school for conversion into non-grantable to grantable is obviously not negated by this order, to be examined on its own merits for

which the rights and contentions of the petitioner shall stand unaffected.

5. Now, from the facts emerging and from the contents of the rival submissions, what is quite discernible is that the respondent authorities have

been implementing policy under the scheme known as Rashtriya Madhyamik Shiksha Abhiyaan of the Central Government for upgrading the

quality and expanding the availability of school education at the secondary and higher secondary levels in the rural areas. A new school is being

established in the vicinity of the school run and managed by the petitioner Trust. What is to be underlined is that the impugned action is a pure

policy measure which seeks to achieve a laudable purpose.

5.1 In addition to the aspect that a policy is being acted upon and implemented by a kind of joint action on part of the Central Government and

state governments, it could also be gathered and seen from the reply of the respondents that the decision for selection of place of the new school

was preceded by survey and examining necessary data. As noticed, respondent No.4 in his affidavit-in-reply stated that the State Government

conducted GIS Mapping for deciding the location of the new secondary school under the Scheme. It was stated that upon receipt of data in that

regard, the villages of unserved areas were selected for establishment of new school and the schools are being established in such needy areas

including where the grant-in-aid schools were not available within the periphery of five kilometers of the village.

6. The Supreme Court in J.R. Raghupathy v. State of Andhra Pradesh [(1988) 4 SCC 364] dealt with the question relating to location of

Mandalhead Quarter in the State of Andhra Pradesh under Section 3(5) of the

Andhra Pradesh Districts (Formation) Act, 1974. The Court dealt with the issue whether the location of Mandalhead Quarter was a purely governmental function and therefore whether amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution. It was observed that The guidelines issued by the State Government had no statutory force and they were merely in the nature of executive instructions for the guidance of the Collectors.

6.1 It was observed, ""In a matter like this, conferment of discretion upon the Government in the matter of formation of a Revenue Mandal or location of its headquarters in the nature of things necessarily leaves the Government with a choice in the use of the discretion conferred upon it.

Therefore, the approach of the High Court under Article 226 in assuming to itself the function of the Government in weighing the comparative merits and demerits in the matter of location of the Mandal Headquarters was not proper."" (Paras 18 and 31)

6.2 The Supreme Court ruled,

The High Court was not justified in interfering with the location of Mandal Headquarters and in quashing the impugned notifications on the ground

that the Government acted in breach of the guidelines in that one place or the other was more centrally located or that location at the other place

would promote general public convenience or that the headquarters should be fixed at a particular place with a view to develop the area

surrounded by it. The High Court had no jurisdiction to sit in appeal over the decision of the State Government to locate the Mandal Headquarters

at a particular place. This decision is dependent upon various factors. The High Court could not evaluate for itself the comparative merits of a

particular place as against the other for location of the Mandal Headquarters."" (Paras 9 and 31)

6.3 The governmental decisions in certain areas happen to be purely administrative in nature or they are for policy implementation. One of the

categories of such class of decisions is the selection of site for locating a government office or headquarter or setting up school or college to be run

by government authorities or shifting of such office, headquarter or school. Unless a patent arbitrariness is shown or mala fides are established in

respect of such action or decision, the Court would not interfere in exercise of

jurisdiction under Article 226 of the Constitution. In all ordinary circumstances, decisions of such nature being in the realm of administration and the policy in absence of statutory infraction, gross

unreasonableness or manifest irrationality, the power of judicial review may not extend to examine merits and de-merits of such decisions.

6.4 Thus when when a school is being set up and started under the governmental policy by selecting a particular place in the village, it being a

policy decision of administrative nature, could not be subjected to judicial review under the writ jurisdiction, more particularly in absence of

allegations of mala fide. The State cannot be restrained from implementing policy so as to establish a new school and to spread education in the

rural area. A writ of mandamus would not lie. The policy is implemented as a socio-educational measure which is a function-cum-duty of the

welfare State.

6.5 Merely because the petitioner's school is in existence in the vicinity, it does not by itself render the decision to start a new school as

unreasonable or arbitrary. The locus to raise such challenge would be absent and it is difficult to accept the proposition in law that a private person

or a private school management such as petitioner could object against start of new school under the policy on whatever ground. In the facts of the

case, it could hardly be said that petitioner has any enforceable right so as to prevent the establishment of a new school by the government under

the policy by seeking such relief by invoking writ jurisdiction.

7. In view of above reasons, the prayer lacks merit. The petition is liable to be dismissed and is hereby dismissed. Notice is discharged. There shall

be no costs.