

(2018) 08 J&K CK 0075

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No.1734 Of 2018, Ia No.1 Of 2018

Shaheen Akhter and anr @APPELLANT@Hash State of J&K and ors

Date of Decision : 29-08-2018

Acts Referred:

Citation : (2018) 08 J&K CK 0075

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. In this petition, the petitioners have assailed the report of respondent No. 5 bearing No. ADCP/PS/1145 dated 01.02.2018 and the communication of

respondent No. 4 bearing No. DCP/SO/357 dated 09.08.2018 addressed to respondent No. 3.Â

2. In brief, the facts of the case are that the petitioners invoked the writ jurisdiction of this Court by way of SWP No. 2707/2012 for challenging the corrigendum dated 27.02.2012, whereby it had been clarified that instead of â?? Village/Panchayatâ? as occurring in Clause 05 of the Advertisement

Notice dated 12.07.2011 it would be read as â??Revenue Villageâ?. The petition was allowed by this Court vide judgment dated 18.02.2016. State

preferred an LPASW No. 100/2016 against the aforesaid judgment and the Honâ??ble Division Bench allowed the appeal and quashed the judgment

dated 18.02.2016. The Honâ??ble Division Bench while disposing of the appeal, directed the Deputy Commissioner, Poonch to decide whether

Village Nabinar is a habitation in terms of Government Order No. 288-Edu of 2009 dated 08.04.2009. It was also enjoined upon the Deputy

Commissioner, Poonch to afford an opportunity of hearing to all the candidates. A Further direction was issued that the Deputy Commissioner, Poonch

after determination of the aforesaid question would issue necessary directions to the ZEO Poonch with regard to the preparation of the merit list.Â

3. In compliance to the Division Bench judgment dated 04.07.2017, the Deputy Commissioner, Poonch constituted a Commission for spot verification

regarding the status of habitation Mohalla Nabinar of Village Mankote. The Commission was consisted of Additional Deputy Commissioner, Poonch,

Deputy Education and Planning Officer, Poonch and Tehsildar Mankote. The Commission, as is apparent from the record, visited the spot and

submitted its fact finding report to the Deputy Commissioner, Poonch with the recommendation that Mohalla NabinarÂ could not be considered as a

habitation for the purposes of applicability of Government Order No. 288Edu of 2009 dated 08.04.2009. Feeling aggrieved of the findings of the

Commission, the petitioners filed their objections. They were heard in the matter through their learned counsel and, accordingly, the Deputy

Commissioner, Poonch concurred with the finding returned by the Commission and vide its communication dated 09.08.2018 impugned in this petition

intimated to the ZEO concerned that Mohalla Nabinar could not be considered as a habitation for the purposes of applicability of Government Order

No. 288-Edu of 2009 dated 08.04.2009 and, therefore, he can proceed ahead with the preparation of the select panel at the village level.Â

4. The petitioners, who had all along been contending that Mohalla Nabinar was a habitation as envisaged under Government Order No. 288-Edu of

2009 dated 08.04.2009 appear not to be happy with the report of the Deputy Commissioner, Poonch and are, therefore, before this Court by way of

this petition.Â

5. Learned counsel for the petitioners advanced his arguments on the following three points:-

(i) The report of the Deputy Commissioner, Poonch was vitiated as no opportunity of hearing was ever given to the petitioners, as directed by the

Division Bench of this Court.Â

(ii) The report of the Deputy Commissioner, Poonch impugned is factually incorrect, inasmuch, as the Deputy Commissioner, Poonch has failed to

take note of the relevant certificates issued by the Assistant Executive Engineer with regard to the distance and the Block Development Officer with

regard to the population.Â

(iii) The import of Government Order No. 288-Edu of 2009 dated 08.04.2009 was not correctly appreciated by the Deputy Commissioner, Poonch.Â

6. I have considered the submissions made by the learned counsel for the parties and perused the record.Â

7. The Division Bench while disposing of LPASW No. 100/2016 had directed the Deputy Commissioner, Poonch to decide whether village Nabinar

was a habitation in terms of Government Order No. 288-Edu of 2009 dated 08.04.2009. The Deputy Commissioner, Poonch was also put under an

obligation to afford an opportunity of hearing to all the candidates including the petitioners herein. The Deputy Commissioner, with a view to take the

aforesaid decision, constituted a Commission consisting of three senior officers of the district. The Commission, as is apparent from its report, visited

the habitation concerned and inquired into the matter from the villagers concerned. The report was submitted by the Commission to the Deputy

Commissioner, Poonch. The Deputy Commissioner, Poonch did not accept the report of the Commission as it is but invited objections from the

aggrieved candidates. Admittedly, the petitioners submitted their detailed objections and even engaged services of a lawyer to argue on their behalf.

The Deputy Commissioner, Poonch after affording full opportunity to the lawyer engaged by the petitioners, ultimately concurred with the report of the

commission and found that Mohalla Nabinar was not a habitation for the purposes of applicability of Government Order No. 288-Edu of 2009 dated

08.04.2009 and, therefore, directed the ZEO concerned to proceed ahead with the selection on the basis of revenue village. The plea of the petitioners

that the report was formulated by the Deputy Commissioner, Poonch in violation of the principles of natural justice is totally misconceived and,

therefore, rejected. From the perusal of the impugned report, it is abundantly clear that ample opportunities were granted to the petitioners to represent

their case which they quite well availed and put up their stand before the Deputy Commissioner, Poonch through a duly constituted attorney, i.e.,

Advocate engaged by the petitioners.Â

8. In that view of the matter, it does not lie in the mouth of the petitioners to say that they were not heard in the matter by the Deputy Commissioner,

Poonch. The other argument of the learned counsel for the petitioners that the Deputy Commissioner, Poonch did not take into consideration the

certificates earlier issued by the Assistant Executive Engineer and Block Development Officer concerned, is also devoid of any substance. There was no direction issued by the Division Bench to take into consideration the earlier certificates issued by the Assistant Executive Engineer and the Block Development Officer concerned. Since those certificates were not believed by the Court and, therefore, direction was issued to conduct fresh enquiry by the Deputy Commissioner, Poonch.Â

9. The other argument of the learned counsel for the petitioners is that the contours of Government Order No. 288-Edu of 2009 dated 08.04.2009 were not kept in view while appreciating the evidence collected by the Commission with regard to the status of Mohalla Nabinar. It may be stated that from the perusal of the report of the commission as well as the communication of the Deputy Commissioner, Poonch impugned, it is apparent that both the Commission as well as the Deputy Commissioner were alive to the provisions of Government Order No. 288-Edu of 2009 dated 08.04.2009. It was only after it was found that Mohalla Nabinar where the school was located was situated at a distance of less than 01 kilometre from the nearest Mohalla/Habitation and that its population was less than 300, the decision was taken that Mohalla Nabinar did not qualify to be a habitation in terms of Government Order No. 288-Edu of 2009 dated 08.04.2009. The plea raised on behalf of the petitioners before the Deputy Commissioner, Poonch that the population of nearby Mohallas, i.e Gayian, Khor and Basni which fall in Mohra Nabinar, should have been taken into consideration, was correctly rejected by the Deputy Commissioner, Poonch for the purposes of applicability of Government Order No. 288-Edu of 2009 dated 08.04.2009. The habitations even if they are constituted in one ward/mohra cannot be clubbed for the purpose of working out the total population for the purposes of applicability of Government Order No. 288-Edu of 2009 dated 08.04.2009. It is now well settled.

10. For the reasons stated above, there is no merit in this petition and the same is, accordingly, dismissed.