

(2014) 08 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : LPA No. 52 Of 2013 and I.A. No. 49 Of 2013

Shazia Aziz

APPELLANT

Vs

State of J&K and Others

RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Citation : (2014) 4 JKJ 525

Hon'ble Judges : Muzaffar Hussain Attar, J; Ali Mohd. Magrey, J

Bench : Division Bench

Advocate : Jehangir Iqbal Ganaie, Advocates for the Appellant; Mir Suhail, GA, Advocates for the Respondent

Judgement

Muzaffar Hussain Attar, J.—Government has issued Government Order No. 1628-Edu of 2003 dated 24th October, 2003, in which, it is

prescribed that in the case of Urban areas the unit for selection of Rehbar-e-Taleem (R-e-T) shall be a Ward as defined in the Jammu and

Kashmir Municipal Corporation Act, 2000 and the Jammu and Kashmir Municipal Act, 2000 or Rules thereunder. It is further provided in the said

Government order that for the purpose of selection of R-e-T, Ward Committees (analogous to the Village Committees) shall be constituted by the

Director School Education, Kashmir/Jammu in accordance with the R-e-T Scheme. The Government order is taken note of:

Government of Jammu and Kashmir

Civil Sect. Education Department

Subject:- Guidelines regarding Selection of Rehbar-e-Taleem Scheme.

Government Order No. 1628-Edu of 2003

Dated: 24-10-2003

In continuation of Government Order No. 396-Edu of 2000 dated 28-04-2000, it is hereby ordered that:--

In the case of urban areas the unit of selection of Rehbar-e-Taleem (R-e-T) shall be a Ward as defined in the Jammu and Kashmir Municipal

Corporation Act' 2000 and the Jammu and Kashmir Municipal Act' 2000 and/or Rules there under. For the purpose of selection of R-e-T, Ward

Committees (analogous to the Village committees) shall be constituted by the Director School Education, Kashmir/Jammu.

By order of the Government of Jammu and Kashmir.

Sd/-

Additional Secretary to Government

Education Department.

On 13th June, 2011, the Zonal Education Officer, Uri put up a proposal for opening of new school under Sarva Shiksha Abhiyan (SSA) Scheme.

Revenue Village Bandi was also identified for the said purpose. The school was to be opened in Lower Bandi. At that time Revenue Village Bandi

was a local area as defined in the Municipal Act, 2000 and entire village constituted Ward No. 1.

2. The Chief Education Officer, Baramulla vide Order dated 17th February, 2012, accorded sanction to the opening of new primary schools in the

school less Habitations under SSA Scheme. The school was to be opened in school less Habitation Lower Bandi. Advertisement notice was

issued on 22nd March, 2012 by the Zonal Education Officer, Uri, wherein and whereunder applications were invited from desirous candidates of

Habitation/Pati/Hamlet Lower Bandi Ward No. 03.

3. The appellant-writ petitioner was aggrieved of the aforesaid notification on the ground that at the time, the school was sanctioned, the entire

village Lower Bandi constituted Ward No. 1, so the notification could be issued for Ward No. 1 and not for Ward No. 3. The Lower Bandi, by

issuance of de-limitation notification came to be bifurcated into three Wards viz. Ward Nos. 1, 2 and 3.

4. It is not in dispute that the area of Lower Bandi which was school less Habitation and in which school was to be opened was constituted as

Ward No. 3 in terms of the aforesaid delimitation notification.

5. The learned Writ Court in view of the fact that delimitation notice was issued on 24th March, 2012, directed that the Advertisement Notification

dated 22nd March, 2012 shall not be acted upon. The learned Writ Court further directed the respondents to issue fresh advertisement notification

in respect of Ward No. 3 where the school is located.

6. It is admitted that appellant-writ petitioner is not resident of Ward No. 3 which has come into existence in pursuance to the delimitation

notification dated 24th March, 2012.

7. Mr. Jehangir Iqbal Ganaie, learned counsel for the appellant submitted that at the time school was sanctioned, Lower Bandi constituted Ward

No. 1, so advertisement notification was to be issued in respect of Ward No. 1 making appellant eligible to seek consideration for being

selected/appointed as R-e-T in Middle School Bandi. Learned counsel further submitted that the learned Writ Court in fact accepted the claim of

the appellant-writ petitioner and directed that the impugned notification shall not be acted upon. Learned counsel submitted that, however, illegality

has been committed by directing the respondents to issue fresh advertisement notification. Learned counsel also submitted that at the time of

according sanction for opening of new school, the population of the entire habitation was taken into consideration which was 319 persons and

population of Ward No. 3 is now lesser than that. Learned counsel accordingly prayed for allowing of this Appeal.

8. Learned State counsel submitted that the school was to be provided to school less Habitation, which in this case, came within the jurisdiction of

Ward No. 3 in terms of the delimitation notification issued on 24th March, 2012. Learned counsel further submitted that the population which is

mentioned in the proposal of Zonal Education officer, Undated 30th July, 2011 has reference to Census of 2011. Learned counsel further

submitted that the first advertisement notice was issued in terms of Government Order No. 288-Edu of 2009 dated 8th April, 2009.

9. The purpose of both R-e-T and SSA Scheme is to provide school to the school less Habitation so as to enable the children of those areas to

equip themselves with education. In this case, the school less area has come within the territorial jurisdiction of Ward No. 3 in terms of delimitation

notification dated 24th March, 2012. The school was to be, thus, provided to the

said area. It appears that in anticipation of the aforesaid decision which must have been in pipeline at that time, the Zonal Education Officer issued advertisement notification on 22nd March, 2012. The Court has to look to the purpose sought to be achieved. In this case the purpose sought to be achieved is to provide school to the school less Habitation, which, admittedly, now falls in Ward No. 3. The appellant-writ petitioner, admittedly, is not resident of Ward No. 3, but resident of Ward No. 1. He has no claim in law for seeking consideration for being selected/appointed as R-e-T in Ward No. 3. The over enthusiasm displayed by the official respondents in issuing advertisement notification in respect of Ward No. 3, where the school is located without waiting of issuance of delimitation notification has been properly taken care of by the learned Writ Court by directing that the notification impugned in the writ petition shall not be acted upon.

10. The direction issued by the learned Writ Court for issuing of fresh notification cannot be found fault with.

11. While the judgment was being dictated, learned counsel for the appellant, at this stage, submitted that appellant has filed the affidavit, indicating therein that Lower Bandi is comprised of Ward Nos. 1 and 3. This assertion, however, has been denied by the Municipal Committee in their reply.

This submission would be of no consequences, as admittedly, the school is located in Ward No. 3 and in terms of Government Order No. 1628-

Edu of 2003 dated 24th October, 2003, the zone of consideration for making selection and engagement as R-e-T is restricted to Ward. The

appellant, admittedly, not being the resident of Ward No. 3, is not eligible candidate, thus, having not suffered infraction of any of his legal rights by

the impugned judgment. For our above recorded reasons, we hold that this Appeal is not maintainable and is, accordingly, dismissed along with

connected I.A.'s.