

(2003) 07 SHI CK 0016

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1528 of 2002

Shri Dara Singh and Another

APPELLANT

Vs

Commissioner-Cum-Secretary (Education) and Another

RESPONDENT

Date of Decision : 07-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 2 ShimLC 368

Hon'ble Judges : V.K. Gupta, C.J.; R.L. Khurana, J

Bench : Division Bench

Advocate : J.R. Thakur, for the Appellant; Ashutosh Burathoki, A.A.G. and R.M. Bisht, Dy. A.G. for Respondent No. 1 and Ramakant Sharma, for Respondents No. 2, for the Respondent

Judgement

V.K. Gupta, C.J.—On 22nd May, 2003, while dealing with the Petitioners' contention about the location of Government Primary School and its upgradation to the level of middle school at Badhera instead of Majheli in the District of Hamirpur, we had made observations that in a large number of cases, issues, questions and problems relating to the location of the schools in particular areas come up for consideration by this Court from time to time. We also made observations about the paramount need for setting up of a Standing Committee to look into all such problems and to handle all such situations as also to take decisions thereupon. The following observations made in that order are apposite. We quote:

We have noticed that in a large number of cases, issues, questions and problems relating to the location of the schools in particular areas come up for consideration of this Court from time to time. We are of the view that if the State Government constitutes a permanent Standing Committee to look after all these problems and to handle all such situations, and to take decisions, of course based on objective criteria and in public interest about the locations of the schools etc. and with regard to all other connected issues, that might be in the

overall public interest and if such a Committee is indeed constituted, the matters in controversy can be easily referred to such a committee for its decision. The Committee has to be at the State level in the sense that it may be a single Member or multi-member Committee at the State level, aided and assisted in the discharge of its obligations and performance of its duties, in the Districts by the Deputy Commissioner or his nominee and the District Education Officer or his nominee. We accordingly direct the learned Advocate General to inform us the response of the State Government to this suggestion of the Court by the next date.

2. In pursuance of the aforesaid observations and directions, notification No. Shiksha-II (Chha) 5-1/2003 dated the 5th July, 2003 has been issued by the Government of Himachal Pradesh, the copy whereof has been produced before us for our perusal. The copy is taken on record.

3. As per this notification, the State Government has constituted two committees, one at the State level and the other at the District level to sort out the issues of location, or the opening of Primary, Middle, High and Senior Secondary Schools as also the upgradation of the schools from a lower level to a higher level. As per this notification, the State Level Committee is required to inspect the locations recommended by the District Level Committee by taking the views of the general public of the area and in case of any dispute, finalise the location keeping in view the genuiness and the demands of the public. The District Level Committee similarly has been authorised to decide the locations as per the norms for the setting up of a school and the need of the educational institutions in the areas to fulfil the objective of providing education facilities. The District Level Committee is required to send its recommendation to the State Level Committee which in turn had been authorised to take final decision.

4. Disputes and issues regarding location of a particular school in a particular area some times assume such dimensions as might require investigation about the claims and the needs of the people constituting that area and also the claims or counter claims of the residents of one locality vis-a-vis the other. Similarly, the issues relating to the upgradation of the schools and the location of the upgraded school on the same parameters might also require investigation. It was with this in view that this Court observed on 22nd May, 2003 the paramount need to constitute such committees so that these Committees comprising of experts on the subject and persons well versed, and associated with ground level realities would be in a better position to understand, appreciate and examine all these parameters and take a decision on objective assessment. If need be, the Committees can also visit the locations physically to get first hand knowledge of the actual issues, disputes or problems and their dimensions. We are, therefore, of the considered opinion that the constitution of the State Level Committee and the District Level Committee is a right step in the aforesaid direction.

5. Because of the constitution of these two Committees vide the aforesaid notification dated 5th July, 2003, the people have now available to them an

alternative remedy, which is equally efficacious and, therefore, henceforth, this Court in normal circumstances would not be entertaining a petition directly concerning the aforesaid issues because anyone desirous of seeking any action with respect to any such issue would be well advised to first approach the concerned committee and thereafter, if feeling aggrieved of the decision of the Committee or the Government, as the case may be, to approach this Court by invoking this Court's extra-ordinary jurisdiction under Article 226 of the Constitution by assailing the decision of the Committee available on grounds in law to such a person. We have no manner of doubt that the District Level Committee and the State Level Committee shall conduct themselves with fairness and objectivity and whenever either is called upon to decide any issue referred to it, it will do so by passing a detailed speaking and reasoned order, so that whenever its order is proposed to be challenged in this Court, this Court has the advantage of knowing and appreciating the views of the Committee. We have also no manner of doubt whatsoever that these committees having been thus constituted as per the orders passed by this Court, and with a view to determine and decide the above referred contentious issues, all the decisions taken by these committees shall be based purely on their merits and totally uninfluenced by any extraneous considerations, including the considerations of local politics, or the influence of persons not directly connected with, or involved in the matter of determination of the issues, disputes or the questions referred for the consideration of the Committees. The State Level Committee having thus been constituted by the State Government, even though the notification does not mention so specifically, we do wish to observe and direct that the decisions of the Committee shall be binding upon the State Government, unless the State Government for reasons to be recorded in writing specifically decides to disagree with the decisions of the Committee and then to take recourse to alternative means, including the alternative of referring the matter afresh to the Committee for its reconsideration.

6. Whenever the Committee(s), either the District Level Committee or the State Level Committee is referred any issue, question or dispute for its consideration or whenever any representation is made to any such committee for its decision, undoubtedly the committee shall take decision thereupon within a reasonable period of time, expeditiously and in any case within a period of three months from the date issue or dispute or question is referred to it, or the representation is received by it. The disposal of any representation naturally would be communicated to the Applicant/Petitioner who has made the representation.

7. Because the Committee has now been constituted, we permit the Petitioners herein to approach the Committee for consideration of the Petitioners' grievances. If the Petitioners do so within three weeks from today, we direct the committee to dispose of the Petitioners' representation within three months from the date of its receipt.

8. Petition is disposed of. No orders as to costs.

CMP No. 2263 of 2002:

In view of the disposal of the writ petition, the present application stands disposed of.