
(2016) 07 RAJ CK 0075

In the Rajasthan High Court

Case No : Civil Writ Petition (P.I.L.) No. 7725 of 2015

Teja Ram

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 11-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 WLN 121

Hon'ble Judges : Govind Mathur and Kailash Chandra Sharma, JJ.

Bench : Division Bench

Advocate : Mr. Sandeep Shah, with Mr. Abhimanyu Singh Rathore, Advocates, for the Petitioner; Mr. Rajesh Panwar, Additional Advocate General with Mr. Sunil Joshi, Advocates, for the Respondent Nos. 1 and 2; Mr. Rajendra Katariya, Advocate, for the Respondent Nos. 3

Final Decision : Allowed

Judgement

1. Instant petition for writ is preferred by the residents of Village Jaisindher Station, a small village situated at the Indo-Pak Border. The cause espoused is about the unreasonable interference by the State functionaries at the instance of the present Member Parliament (respondent No.5) with the objective decision taken by the State of Rajasthan and the Kendriya Vidhyalaya Sangathan to establish a Kendriya Vidhyalaya at Jaisindher Station.

2. The facts necessary to be noticed are that the Collector Barmer under a communication dated 13.04.2010 made a request to the Principal Secretary to the Government of Rajasthan, Department of Education for establishment of Kendriya Vidhyalaya at Jaisindher Station. The village Jaisindher Station is at the distance of 10 kms from the Indo - Pak checkpost, Munabao and was found a place suitable to establish Kendriya Vidhyalaya as per the norms prescribed for opening of Kendriya Vidhyalaya in civil sector. It also happens to be headquarter of adarsh Gram Panchayat and is also chosen to be a site to develop residential colonies for various Central and State Government departments.

3. Acting upon the recommendation, the Kendriya Vidhyalaya Sanghathan constituted a committee consisting of three members to examine feasibility to open a new Kendriya Vidhyalaya at Village Jaisindher station. The committee under a letter dated 01.11.2010 forwarded its report to the Assistant Commissioner, Kendriya Vidhyalaya Sanghathan, Regional Office, New Delhi with observation that the land earmarked for Kendriya Vidhyalaya at the site concerned is quite appropriate; the same is situated just opposite to green belt (garden with numerous trees being developed by Gram Panchayat with the aid of the Central Government) and the model Village Jaisindher Station and the adarsh Gram Panchayat are having good concentration of para-military forces and other Government employees in the catchment area and as such, is a place ideal for opening Kendriya Vidhyalaya. It was also observed that the Kendriya Vidhyalaya shall serve dual purpose, i.e quality education for the wards of children of priority categories of parents (as per KVS admission guidelines) and for the wards of SC/ST/Minority communities localised in the international border area.

4. The Administrative Commandant, Station Headquarters Jalipa Military Station under a communication dated 05.12.2010 also strongly recommended for opening a new Kendriya Vidhyalaya at Jaisindher Station. The Station Commandant while making recommendation for establishing Kendriya Vidhyalaya at Jaisindher Station mentioned that Army will be more than happy to have Kendriya Vidhyalaya at the site concerned as that will cater the need of local children as well as the wards of Army personnel.

5. Having considered the initiation taken for establishing a Kendriya Vidhyalaya at Village Jaisindher Station, the Director, Department of Education (Secondary) allowed the Kendriya Vidhyalaya Sanghathan to use a building of the Education Department to establish Kendriya Vidhyalaya on temporary basis till availability of appropriate place at Jaisindher Station. In the meantime, the Collector Barmer also set apart 30.05 bighas of land as per the provisions of Section 92 of the Land Revenue Act, 1956 for the purpose of establishing the Kendriya Vidhyalaya.

6. The Board of Governors of the Kendriya Vidhyalaya Sanghathan in their 90th meeting held on 30.08.2011 resolved to establish a Kendriya Vidhyalaya at Jaisindher Station, District Barmer in civil sector and necessary approval was also taken from the Ministry of Home Affairs. In response to the resolution, the Collector Barmer conveyed to the Commissioner, Kendriya Vidhyalaya Sanghathan, New Delhi under a letter dated 23.09.2011 about the arrangements already made to start Kendriya Vidhyalaya at Village Jaisindher Station for the educational session 2011-12.

7. After completing all the formalities, the Kendriya Vidhyalaya Sanghathan under an office order dated 04.03.2014 decided to establish a new Kendriya Vidhyalaya in civil sector at Village Jaisindher Station. Necessary compliance order was also passed by the Additional Commissioner (Administration), Kendriya Vidhyalaya Sanghathan, New Delhi on 31.03.2014.

8. Pertinent to notice that the Additional Commissioner (Administration), Kendriya Vidhyalaya Sanghathan while granting approval to establish Kendriya Vidhyalaya made it clear that necessary land must be transferred in favour of Kendriya Vidhyalaya Sanghathan within a period of one year, failing which the approval shall stand withdrawn and shall be utilised for some other suitable location. There was some dispute about the land proposed, therefore, one among the petitioners surrendered 25 bighas of his own land for establishment of a Kendriya Vidhyalaya and that land was transferred to the State Government and is available for establishment of Kendriya Vidhyalaya.

9. After completing all the formalities as above, the Joint Commissioner (Personnel) under an office order dated 12.03.2015 communicated sanction of the Commissioner to start Kendriya Vidhyalaya in civil sector at Village Jaisindher Station with effect from 01.04.2015. Accordingly, under an order dated 17.03.2015, necessary staff was made available for Kendriya Vidhyalaya and the officers posted also resumed duties at Jaisindher Station in the third week of March 2015.

10. When this process was going on, the Member Parliament (respondent No.5) by a letter dated 12.03.2015 communicated to Hon'ble Minister of Human Resource Development, Government of India that Village Jaisindher Station is not a location suitable to establish a Kendriya Vidhyalaya as there is no approach road to the site. The Member Parliament also made a request to the Chief Minister of Rajasthan to instruct the district administration Barmer to earmark a suitable piece of land at Chohatan so that students of entire district can avail facilities of premier institution like Kendriya Vidhyalaya. On asking to furnish clarification, the Deputy Commissioner, Kendriya Vidhyalaya Sanghathan, Regional Office, Jaipur on 19.03.2015 conveyed to the Joint Commissioner (Personnel), Kendriya Vidhyalaya Sanghathan (Headquarters), New Delhi that before establishing Kendriya Vidhyalaya at Jaisindher Station, all necessary formalities were observed and no objection with regard to opening of Kendriya Vidhyalaya at Jaisindher Station was ever raised even by the Member Parliament. The Deputy Commissioner also provided complete details on basis of which decision was taken to establish Kendriya Vidhyalaya at Jaisindher Station. The Deputy Commissioner also pointed out that Kendriya Vidhyalaya is already available at Uttarlai as well as at Jalipa in District Barmer. The details given by the Deputy Commissioner deserve to be quoted, which are as under :-

"As regards for opening of new KV at Jaisindhar, it is stated that:-

i) The correspondence for opening of new KV at Jaisindhar has been taken up since 2010 on the recommendation of Shri Harish Choudhary, Hon'ble M.P., Barmer vide his letter dated 06.04.2010 and in reference to KVS (HQrs) new Delhi letter No. 21072-4(RAJS) of 2010-KVSHQ (Admn.I) of 614 dated 19.05.2010, the proposal for opening of new KV at Jaishindhar was sent to KVS(HQrs) vide this office letter dated 08.12.2010.

ii) KVS (Hqrs) New Delhi vide letter dated 16.05.2014 directed this office to send the feasibility report in the prescribed proforma and accordingly, this office vide letter dated 27.11.2014 was sent the said report after the inspection of the proposed piece of land by the committee constituted for the purpose for further course of action.

iii) KVS (Hqrs) New Delhi vide letter dated 17.12.2014 has further directed this office to complete other formalities relating to transfer of land in favour of KVS and Shri A.S. Bhati, Principal, KV No.2 AFS Jodhpur was deputed vide this office letter dated 22.12.2014 for the said purpose.

iv) Shri Bhati, Principal after inspecting of the proposed site has submitted that Jaishindhar is a small village near to Border. Land allotted for the opening of KV at Jaisindhar is also surrounded by sand dunes. Approach road is also not proper for that site and accordingly a report for non suitability of the site was sent vide this office letter dated 23.01.2015 to KVS (Hqrs) New Delhi on the basis of report submitted by Sh. A.S. Bhati, Principal, KV No.2, AFS, Jodhpur vide his letter dated 15.01.2015.

v) After that the District Collector of Barmer has modified the allotment of the land in the name of Kendriya Vidyalaya Sangathan (Hqrs) New Delhi instead of KVS (RO) Jaipur vide his letter dated 25.01.2015 and on the basis of that letter dated 25.01.2015 of the District Collector, Barmer as well as request letter dated 18.02.2015 submitted by Sh. Teja Ram Kodecha, Pradhana, Panchayat Samiti, Gadra Road, Barmer vide this office letter dated 18.02.2015, Sh. A.S. Bhati, Principal, KV No.2 AFS, Jodhpur was again directed vide this office letter dated 18.02.2015 to meet the District Collector, Barmer and obtain Handing over/ Taking over certificates indicating plot boundaries, dimension and area in acres as required by the Executive Engineer, KVS (Hqrs) New Delhi, vide his letter no.F.110111/296 of 2014-KVS (HQ)/Works/ 741 dated 17.12.2014 for onward transmission to KVS (Hqrs) New Delhi for necessary action.

vi) Accordingly Sh. A.S. Bhati Principal, KV No.2 AFS, Jodhpur met the District Collector, Barmer on 25.02.2015 and obtained all requisite documents from the state authorities including other certificates for suitable facilities for opening of KV at Jaisindhar as well as providing the approach road & all other essential facilities as required by KVS before opening of new Kendriya Vidyalaya at Jaisindhar. Sh. A.S. Bhati, Principal, Kendriya Vidyalaya No.2, AFS, Jodhpur has submitted his report dated 27.02.2015 and the said report was sent to KVS (HQ) New Delhi vide letter dated 27.02.2015.

vii) During the entire aforesaid period, Col. Sona Ram Choudhary, Hon"ble MP Never raised any objection/reason for not opening of KV at Jaishindhar."

11. After examining the entire issue the Joint Commissioner (Personnel), Kendriya Vidhyalaya Sangathan, New Delhi under a communication dated 27.04.2015 communicated to the Deputy Commissioner, Kendriya Vidhyalaya Sangathan, Regional Office, Jaipur that the competent authority has decided to

act as per the sanction issued under the Kendriya Vidhyalaya Sanghathan letter No.F.11029-06 of 2013-KVS/ (HQ)/ (Admn-1)/ Vol-II dated 12.03.2015 i.e. to establish Kendriya Vidhyalaya at Jaisindher Station.

12. Despite the clarification made by the Kendriya Vidhyalaya Sanghathan, the Collector Barmer under a letter dated 10.03.2015 communicated to the Government of Rajasthan that the land allotted for establishing Kendriya Vidhyalaya at Jaisindher Station is surrounded by sand dunes and density of population is also too thin and as such, the same is not a place suitable to establish a Kendriya Vidhyalaya. Suffice to mention that the entire initiation for establishing Kendriya Vidhyalaya was earlier taken by the Collector Barmer only. Be that as it may, the Special Secretary to the Government of Rajasthan, Department of Education, Group-6 under a letter dated 06.05.2015 requested the Commissioner Kendriya Vidhyalaya Sanghathan, New Delhi to take appropriate steps in accordance with the letter of the Collector Barmer dated 10.04.2015. The Collector Barmer then issued the order impugned dated 22.05.2015 directing the Principal, Kendriya Vidhyalaya, Jaisindher Station not to raise any kind of construction to establish Kendriya Vidhyalaya at Jaisindher Station as the issue was pending consideration.

13. Prior to issuance of such directions, the process of admitting the students was already started and was in currency. As per the petitioners, all necessary committees of staff and parents were constituted and about 400 students too were admitted to the school.

14. Apprehending closure of the school, the petitioners approached this court by way of filing the instant petition for writ. This court by an interim order dated 23.07.2015, directed the respondents to continue with the process of admissions and to commence the educational session as usual. On 28.03.2016, this court further issued interim directions directing the respondent Kendriya Vidhyalaya Sanghathan to continue with the process of admission of the students for the educational session 2016-17 at Kendriya Vidhyalaya Jaisindher Station.

15. On behalf of the State of Rajasthan, Kendriya Vidhyalaya Sanghathan and respondent No.5, the Member Parliament from Barmer Lok Sabha Constituency separate replies to the writ petition have been filed. The Kendriya Vidhyalaya Sanghathan in its reply mentioned that the policy decisions of the Sanghathan are to be taken by the Board of Governors consisting of eminent educationists and administrators from all over the country and a decision was taken by the Board to establish a Kendriya Vidhyalaya at Jaisindher Station and no decision contrary to the earlier decision is yet taken. It is also stated that the location of Jaisindher Station at the first instance was chosen by the Government of Rajasthan and thereafter the same was approved by the Central Home Ministry, the Ministry of Human Resource Development and also by the Kendriya Vidhyalaya Sanghathan. Nothing has been stated by the Kendriya Vidhyalaya Sanghathan about non-feasibility of opening a school at Jaisindher Station or suitability to open Kendriya Vidhyalaya at Chohatan, the location for which the

respondent No.5 has made a proposal.

16. As per the reply filed on behalf of the respondent State of Rajasthan and its functionaries, Village Jaisindher Station is very close to Indo-Pak Boarder and is thinly populated, whereas Chohatan is a large town and establishment of a Kendriya Vidhyalya at this place may cater the need of higher number of population. It is further submitted that the decision taken by the State Government to change the location of the school is in public interest and is looking to the need of the civilians of District Barmer.

17. In reply to the writ petition filed on behalf of the respondent No.5, it is stated that being Member Parliament from Barmer Constituency he raised the issue for reconsideration as establishment of school at Jaisindher Station shall not satisfy public interest and also the actual need of the civilians of District Barmer.

18. Heard learned counsel.

19. The preliminary objection raised by all the counsels appearing on behalf of the respondents is that the direction given for not proceeding with the work to establish Kendriya Vidhyalaya at Jaisindher Station and further to shift it to Chohatan, is purely an administrative matter and that is not open for judicial review under Article 226 of the Constitution of India. It is asserted that the court is supposed to clip off its wings in such matters otherwise that shall amount to encroachment within the domain of the executive. Shri Rajesh Panwar, learned Additional Advocate General and Shri L.D. Khatri, appearing on behalf of the respondent No.5 submit that in the instant matter a decision has been taken by the executive after considering different aspects about the appropriate location for Kendriya Vidhyalaya and that should not be reviewed in judicial side.

20. True it is, the policy matters are not supposed to be interfered by the courts in normal course, however, if any administrative decision causes injury to any party and affect its rights adversely, then such decision is open for examination by a writ court. Our constitutional scheme is founded to ensure the primacy of the rule of law. If any administrative decision is not rational or is having no justifiable reason to substantiate the same or it is an outcome of extraneous, malicious or colourable exercise of powers or is apparently outcome of unreasonable exercise of discretion, then such a decision is open for examination under Article 226 of the Constitution of India and a writ court may invoke its extraordinary authority to erase the mischief or wrong with a view to protect objectivity in public deeds by public authorities. The system of governance under our constitutional scheme is founded on basic principle of "Rule of Law" and the rule of law always demands rationality, objectivity and fairness in every action, may that be administrative or otherwise. The administrative decision, if fails to qualify the qualities noticed above, then such a decision deserves to be set aside.

21. In the instant matter, on scrutiny of the relevant facts, we are satisfied that the decision taken by the State Government to dislocate Kendriya Vidhyalaya from Jaisindher Station is neither an outcome of objective considerations nor is

founded on any rational. As already stated, in the year 2010, the Collector Barmer made a request to the State Government to establish a Kendriya Vidhyalaya at Village Jaisindher Station. The Collector substantiated his request with sufficient reasons by mentioning that the State Government as well as the Central Government is going to establish several colonies in the area concerned and establishment of the school at Jaisindher Station shall satisfy the need of the persons posted as well as of then civilians of the area. On basis of the recommendation made by the Collector, the Kendriya Vidhyalaya Sanghathan constituted a committee and that committee examined viability to establish a Kendriya Vidhyalaya at Jaisindher Station and submitted its detailed report. The committee gave several reasons to have Kendriya Vidhyalaya at Jaisindher Station including that Village Jaisindher Station is a model village, headquarter of adarsh Gram Panchayat and establishment of Kendriya Vidhyalaya there shall prove a boon for the Central and State Government Departments to develop their residential colonies. The reports furnished by the delegations of Central Home Ministry and the Ministry of Human Resource Development also supported opening of Kendriya Vidhyalaya at Jaisindher Station. The Board of Governors of the Kendriya Vidhyalaya Sanghathan considered the report given by the committee in its 90th meeting and decided to grant approval for establishing Kendriya Vidhyalaya at Jaisindher Station in civil sector. The decision of the Board of Governors also received approval from the Ministry of Human Resource Development on 04.03.2014 and acting upon that, necessary compliance order was also issued by the Kendriya Vidhyalaya Sanghathan on 04.03.2014 itself. After having sanction, the land was also transferred in favour of the Kendriya Vidhyalaya Sanghathan and the school was also opened in a temporary premises. The Kendriya Vidhyalaya Sanghathan also posted staff for the school and about 400 students were admitted. Till such process, no adverse report/remarks/view was received by the Kendriya Vidhyalaya Sanghathan or even by the State Government for choosing Jaisindher Station as a location to establish Kendriya Vidhyalaya. The State Government, the Kendriya Vidhyalaya Sanghathan or even the respondent No.5 in their reply to the writ petition did not place anything on record to establish that the feasibility and viability reports availed by the Kendriya Vidhyalaya Sanghathan, on basis of which a decision was taken to establish Kendriya Vidhyalaya at Jaisindher Station, were wrong. Even no comparative study among Jaisindher Station and Chohatan, the place proposed by the respondent No.5 is available to establish better claim of Chohatan to have Kendriya Vidhyalaya.

22. On minute consideration, we do not find any material or just reason to alter a well considered decision of the Kendriya Vidhyalaya Sanghathan to establish Kendriya Vidhyalaya at Jaisindher Station and to uproot a school already established. The impugned action, as such, is apparently unjust and arbitrary and we are having no hesitation in setting aside the same.

23. Accordingly, this petition for writ is allowed. The respondent Kendriya Vidhyalaya Sanghathan is directed to establish Kendriya Vidhyalaya at Village

Jaisindher Station, District Barmer as already approved by the Board of Governors. The Government of Rajasthan is directed to provide all necessary support to the Kendriya Vidhyalaya Sanghathan to run Kendriya Vidhyalaya at Village Jaisindher Station. The directions given by the Collector Barmer to stop raising construction of the building for Kendriya Vidhyalaya at Village Jaisindher Station are also set aside. The respondents, if think appropriate, may have one more school at Chohatan, if norms permit for that.

24. No order as to costs.