

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP Nos. 2232, 2320 & 2379 of 2018

Reserved on: 05.11.2020.

Decided on: 12.11.2020.

1. CWP No 2232 of 2018

Ashok Negi

.....Petitioner.

Versus

State of Himachal Pradesh & anr.Respondents.

2. CWP No. 2320 of 2018

Ms. Poonam Chanderika & anr.

.....Petitioners.

Versus

State of Himachal Pradesh & ors.Respondents.

3. CWP No. 2379 of 2018

B.R. Sharma & ors.

.....Petitioners.

Versus

State of Himachal Pradesh & anr.Respondents.

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, *Judge.*

The Hon'ble Ms. Justice Jyotsna Rewal Dua, *Judge.*

Whether approved for reporting?¹ Yes.

For the petitioner(s) : Mr. Shrawan Dogra, Senior Advocate
with Mr. Deven Khanna, Advocate, for
the petitioner in CWP No. 2232 of
2018.

¹ *Whether the reporters of the local papers may be allowed to see the Judgment?*

Mr. Kush Sharma, Advocate, for the petitioners in CWP No. 2320 of 2018.

Mr. Rupinder Singh Thakur, Advocate, for the petitioners in CWP No. 2379 of 2018.

For the respondents : Mr. Ashok Sharma, Advocate General with Mr. Vinod Thakur, Mr. Shiv Pal Manhans, Addl. AGs, Ms. Bhupinder Thakur, Ms. Seema Sharma and Mr. Yudhbir Singh Thakur, Dy. AGs.

Jyotsna Rewal Dua, Judge

These writ petitions have been filed *pro bono publico* claiming inaction on part of the respondent-State Government in not opening certain Colleges, which were announced by the previous government during the year 2017.

2. Involving common submissions, these writ petitions are taken up together for decision. For convenience facts of CWP No. 2232 of 2018 are being considered hereinafter.

On 15.8.2017, the then Hon'ble Chief Minister announced opening of a Government Decree College (in short 'GDC') at Jeori, District Shimla. Opening of this new College was notified on 6.9.2017 from academic session 2017-18. From the record appended with the writ petition, it appears that the Sub Divisional Magistrate, Rampur was requested on 30.8.2017 by the Principal, GDC, Rampur to identify the land for the already announced new College at Jeori. A report furnishing details of colleges and schools existing in the area/Sub Division alongwith

their distances from Jeori and the number of students enrolled in the schools was furnished to the department on 1.9.2017. On 12.9.2017 with handing over of four rooms of Government Senior Secondary School, Jeori to Government Decree College, Jeori, the Principal of GDC, Jeori announced start of newly opened GDC, Jeori. The State accorded consolidated administrative approval of Rupees fifteen crores and consolidated expenditure sanction for a sum of Rupees three lacs out of lump-sum budget provision made during the FY 2017-18 for construction of buildings of three Colleges including the newly announced GDC, Jeori vide letter dated 18.9.2017. The College was inaugurated by the then Hon'ble Chief Minister on 19.9.2017. On 22.9.2017 certain teaching and non-teaching posts were created for the College. Some staff was subsequently deployed there. On 31.10.2017 Rupees one lac was sanctioned and remitted for the construction work of College building.

4. The grievance raised in the writ petition is that with change of political guard, the situation in respect of functioning of the College also changed. The construction work of College building did not start. The staff deployed/posted in the newly opened College was transferred elsewhere. The college did not function despite the fact that 13 students including 10 girls had taken admission in the College for the academic year 2018-19. It

is against this background that the writ petition has been instituted for the following prayers:

- "i) That the respondents be directed to immediately initiate and complete in a time bound manner the selection procedure for the recruitment of Teaching as well as Non-Teaching staff and fill up the sanctioned posts at the Government Degree College, Jeori;*
- ii) That this Hon'ble Court may please direct the respondent to complete the process of transfer of identified land in the name of the GDC and begin and complete the construction work of the College building in a time-bound manner;*
- iii) That till such time as the recruitments are made against the sanctioned regular posts as per prayer clause (i) supra, the respondents may kindly be directed to deploy required staff on deputation basis as a stop-tap measure as was done at the time of opening of the College in September 2017;*
- iv) That in view of the news report, Annexure P-19, the respondents may be directed to not take any decision in the nature of closing of the College on this pretext or that except with the leave of this Hon'ble Court."*

The matter was listed on 20.9.2018, when following order was passed:

"Learned counsel for the petitioner undertakes to remove the objections, if any raised by the Registry. Such undertaking is taken on record.

Notice returnable for 25th October, 2018. Mr. Adarsh K. Sharma, learned Additional Advocate General, appears and waives service of notice on behalf of the respondents-State. Response be positively filed within a period of two weeks and rejoinder thereto within two week thereafter.

*List on 25th October, 2018. In the meanwhile, **status quo as on date shall be maintained**. Also any decision taken, adversely affecting the College in question, shall not be implemented without leave of the Court."*

CWP No. 2320 of 2018 and CWP No. 2379 of 2018 instituted with similar issues pertain to Government Degree College, Powabo, District Shimla and Government Degree College, Narag, District Sirmour, respectively. Opening of these two new Colleges was also announced in September 2017 but steps required to be initiated in furtherance of decision to open the Colleges were not taken. It is alleged that decision has been taken by the respondents to de-notify the newly opened Colleges. Hence citing public need to make the new colleges functional, these writ petitions have been preferred challenging the decision to de-notify the newly opened colleges.

5. We have heard learned Counsel for the parties and gone through the record. The gist of submissions made on behalf of petitioners is that government runs in continuity. It is the prerogative of the State to frame policies and to review them. However, the decision making process has to be objective, reasoned and has to abide by the settled legal principles. In the instant case, notification announcing opening of new colleges was the outcome of careful consideration and analysis of all relevant aspects. Continued inaction on part of State to make these colleges functional is against principles of the welfare state and Rule of law. Public cannot be made to suffer due to lackadaisical attitude of State. In support of the submissions and prayers made in the writ petition, reliance was placed upon

(2006) 4 Supreme Court Cases 683, titled *State of Karnataka and Another versus All India Manufactures Organization and Others*, *(2005) 1 Supreme Court Cases 625*, titled *Bannari Amman Sugars Ltd. Versus Commercial Tax Officer and others*, *(1978) 1 Supreme Court Cases 405*, titled *Mohinder Singh Gill and another versus The Chief Election Commissioner, New Delhi and others*, *(2011) 8 Supreme Court Cass 737*, titled *State of Tamil Nadu and others versus K. Shyam Sunder and Others*, *(2011) 9 Supreme Court Cases 286*, titled *Andhra Pradesh Dairy Development Corporation Federation versus B. Narasimha Reddy and others*, *(2018) 15 Supreme Court Cases 1*, titled *Chintpurni Medical College and Hospital and another Versus State of Punjab and Others* and *ILR 2015(4) HP 635*, titled *Asha Ram and another versus State of H.P. and others*.

Learned Advocate General referred to a notification dated 2.1.2014 whereby guidelines with respect to opening of new educational institutions/Government Degree Colleges were notified to achieve the objectives of access, equity and quality in Higher Education. These guidelines were framed pursuant to a judgment delivered by this Court in CWP No. 1468 of 2013 alongwith other connected matters, titled *Dhrub Dev Sharma and others versus State of Himachal Pradesh and others*. While delving on the issue of de-notification of eight newly opened

Government Colleges, following was observed in the aforesaid judgment:

“17. It was then argued that somehow in this State it has become routine that the succeeding State Government reverses the decisions taken by the previous Government. In a given case that can be frowned upon as improper and inappropriate. But, it cannot be the basis to interdict the impugned decision of the Government taken after due deliberations and reviewing the fact situation, unless it is further shown that the same is contrary to any statutory provision or the Constitution or for that matter mala fide exercise of power. Nothing of that can be stated in the present case.

18. Indeed, the petitioners may be justified in contending that the State Government cannot be permitted to raise the bogey of financial implications and unviability to run those 8 new Colleges. However, in the present case, the reason recorded by the Authority in the impugned decision is not about financial inability, but about low enrollment of students, lack of infrastructure and close proximity to other Colleges, which is completely independent of that. As regards the first justification about low enrollment in the respective Colleges, that is indisputable. In that, only 19, 14, 37, 10, 12, 4, 2 and 16 students have been admitted in the respective 8 Colleges for the academic year 2012-13. These figures are self eloquent and reinforce the reason so stated in the impugned decision. On that singular reason, the State Government, in our opinion, could have sustained the impugned decision, as it has come on record that even these admissions were not direct admissions, but students were taken in the said Colleges by way of transfer, from the other institutions in the neighbourhood. The argument of the petitioners, however, is that, low number of students in the respective Colleges is because of late starting of the College. That does not commend to us. For, the College at Kotla Behar was opened, vide order dated 23rd June, 2012, just about the same time when the academic year commenced and yet only 16 students were admitted in that College. The Colleges at Rewalsar, Nihri, Ladbharol in District Mandi and Sarahan in District Sirmour were started in terms of decision, dated 20th July, 2012. But, even those Colleges could admit only 19, 14, 37 and 12 students, respectively.

19. *It is not only matter of low enrollment of students, but the decision was warranted also because of lack of infrastructure, inasmuch as each of these eight new Colleges were started in the premises of 3 to 5 rooms set apart from the Government Senior Secondary School building in the same locality. Such arrangement was carved out only to honour the directions given by the then Chief Minister. Such arrangement inevitably impacted the quality education imparted in the said Schools. It is not clear from the record as to whether the said Government Senior Secondary Schools had excess rooms after adhering to the norms and standards for schools specified in the Right of Children to Free and Compulsory Education Act, 2009; and moreso have not breached any of the specified conditions thereof by setting apart premises consisting of 3 to 5 rooms from the buildings of their respective Schools, which, obviously, has been done under dictation. If it is a case of breach of the provisions of the Act of 2009, that would be a serious matter warranting appropriate action against the concerned officials and Authorities, who have taken such a drastic decision to compromise on the quality education of the students studying in those Schools. Be that as it may, it is unfathomable that a full fledged College can be run from 3 to 5 rooms, which is expected to have a complete set up as per the University Grants Commission norms, before grant of affiliation. Whether the provisional affiliation granted by the University to these eight new Colleges also must come under scanner, is a matter to be considered by the Appropriate Authority of the University and proceed against the erring officials in that behalf, in accordance with law.*

22. *Notably, from the original record, which was produced before us, it is evident that first public announcement was made by the then Chief Minister and then the process of paper work was commenced; and to fulfill the said commitment, a make-shift arrangement was worked out for opening of the new Colleges in the premises of the Government Senior Secondary School of the concerned area. That was obviously done under dictation. This is the common pattern emerging from the record. No doubt, the formality of submission of report before issuance of a formal order/notification for opening of new Colleges was undertaken. That, however, cannot justify the action taken in undue haste and bereft of any policy of the Executive in that behalf. What is significant to notice is that in a short span, decision was taken to open as many as four new Colleges in Mandi District alone; notwithstanding the fact that there were already eight*

Government Degree Colleges operating in that District, in addition to five private Degree Colleges, which were catering to the requirement of the residents of Mandi District. This clearly shows the ad hoc, lopsided and populist decision taken because of the whims and fancies of the then party in power completely disregarding the need or necessity to open new Government Degree Colleges across the State – where in relative terms it may be more necessary and deserving. The decision of the previous Government was obviously not need based, but out of political compulsions, which was passed off as a policy decision taken in public interest.

23. *Indubitably, decision to open a new GDC must be taken after due deliberations and keeping in mind all the attending circumstances. It cannot be a casual decision - not only because it may have financial ramifications for the State but also result in unhealthy situation affecting quality education imparted to the students of the concerned area, because of lack of infrastructure and proper logistical support, and noncompliance of the high standards specified by the University and University Grants Commission. Ideally, the decision must be backed by a perspective plan reflecting the higher education policy of the State Government to open new Government Degree Colleges across the State commensurate with the need of the area concerned. It must not be a haphazard decision, much less resulting in having cluster of Colleges only in some Districts and denial of that fundamental facility to the aspiring students of other Districts in the State. We may hasten to add that starting of a new GDC cannot be an unplanned expenditure or expenditure required to be incurred in some unforeseen situations or for disaster management as such. It cannot be gainsaid that the expenditure for starting a new GDC would involve setting up of infrastructure and substantial capital investment as also providing for adequate staffing pattern and other facilities requiring recurring expenditure. When it is a case of planned expenditure, it ought to be in consonance with the policy and action plan of the Government of the day. No doubt, the Executive may have discretion to make modification or variation to such action plan due to compelling circumstances and for correcting some anomaly in the plans noticed at a later stage. That discretion must be exercised by the Executive in public interest and not arbitrarily. An ad hoc decision taken on the spot or because of political compulsions, whilst compromising on the Constitutional obligations of the State of good governance,*

cannot be countenanced. Indeed, while drawing up the action plan or perspective plan for creating opportunities of higher education across the State, it must necessarily mirror holistic approach and, more particularly, to ensure, as far as possible, equal distribution of resources (budgetary allocation) across the State and prioritizing the spending on need based of the concerned region in the State.

28. From the material on record, as observed earlier, it is more than evident that the decision to open the stated 8 new Government Degree Colleges was not due to compelling need of the concerned area, but due to political compulsions. In that case, the succeeding ruling party was within its right to review the situation and take an objective decision, in public interest. The reasons recorded in the decision taken in the meeting of Cabinet of Ministers, by no stretch of imagination, can be said to be untenable, unreasonable, unrealistic, intangible and replete with political vendetta. None of these factors can be attributed to that decision on the basis of which the impugned orders have been passed to close down the concerned eight Government Degree Colleges in public interest. The decision so taken is backed by the material considered by the Cabinet in the said meeting. As a result, the question of interfering with such decision, that too by way of judicial review thereof, will be completely in excess of writ jurisdiction. It is well established position that the judicial review can be of decision making process and not of the decision of the Executive itself. Thus understood, the challenge to the impugned decisions in the respective petitions will have to be stated to be rejected.

52. Even the observations found in another decision of the Apex Court pressed into service in the case of Villianur Iyarkkai Padukappu Maiyam (supra), in paragraphs 167 to 171, which have been reproduced in the earlier part of this judgment, are indicative that the Executive or the Government of the day must work under some policy and not on the basis of sporadic and impromptu announcements made in disregard of the ground reality only for receiving popular accolade."

The stand of the respondent-State is that in the meeting held on 4.8.2018 under the chairmanship of Hon'ble

Chief Minister, the issue of opening of new Colleges announced in the year 2017 including the ones involved in these three writ petitions was deliberated. Factual position was that enrollment of students in these Colleges was either very less or practically nil. The land was also not available for these Colleges. Therefore, it was not considered appropriate to make these newly announced colleges functional in academic session 2018-19. Accordingly, the staff posted for these Colleges was shifted to other Colleges. The proceedings of this meeting have been placed on record of CWP No. 2320 of 2018 by the petitioners therein.

Opening of a Government College is a policy decision of the Government permitting limited scope of judicial review. The respondents did not start the Colleges as the enrollment of the students in these Colleges was very less. College had neither any building/land nor any infrastructure. It is for this reason that respondents did not start the College for the academic year 2018-19. The decision taken in the meeting dated 4.8.2018, therefore, cannot be termed as unreasoned, untenable, unrealistic or in contravention to the pronouncement in Dhrub Dev's case *supra*. We have been informed during hearing of the case that as of now no final decision has been taken either regarding making these Colleges functional or closing them. In the meeting chaired by the Hon'ble Chief Minister on 4.8.2018 the decision for not making the Colleges functional was confined

to academic year 2018-19. Subsequently on 20.9.2018 '*status quo order*' was passed by the Court. Since no final decision in the matter has yet been taken, therefore, without going further in the matter, we dispose of these writ petitions by vacating the interim order forthwith to enable the respondents to consider the matter and take appropriate final decision in accordance with law with respect to the Colleges involved in these writ petitions, which were announced in the year 2017.

Pending application(s), if any, shall also stand disposed of.

(Tarlok Singh Chauhan),
Judge.

(Jyotsna Rewal Dua),
Judge.

November 12th, 2020,
(vs)