

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

DB PIL Petition No.9923/2013
(Smt. Anita Singh Vs. State of Raj. & Ors.)

Date of Order :: 18/06/2013

HON'BLE MR. JUSTICE R.S. CHAUHAN
HON'BLE MR. JUSTICE VEERENDR SINGH SIRADHANA (V.J.)

Mr. Punit Singhvi, for the petitioner.

The petitioner, Smt. Anita Singh, a Member of the Rajasthan Legislative Assembly, has challenged the order dated 4.6.2013, whereby the respondents have allotted funds to different *Panchayat Samities* within Bharatpur District.

The brief facts of the case are that in order to ensure the social, economic and infrastructural development of Mewat region of Rajasthan, the State of Rajasthan had created a programme known as "Mewat Regional Development Programme" as far back as 1987-1988. With the approval of the Governor of the State, a Mewat Regional Development Board was also constituted. In order to give impetus to the development of the said region, in 2013-14 the budget was increased from Rs.25 Crores to Rs.60 Crores. The government invited proposals from various *Panchayat Samities* and *Zila Parishads* with regard to implementation of the development programmes. Consequently, the petitioner had sent a proposal for the *Panchayat Samiti*, Nagar and the *Panchayat Samiti*, Deeg. It is the petitioner's case that although according to the letter dated 9.5.2013 the meeting of the Board was scheduled

to be held on 5.6.2013, but by order dated 4.6.2013 an amount of Rs.561.2 Lacs only has been allotted to the *Panchayat Samiti*, Nagar. Hence, this petition before this court challenging the said order.

Mr. Punit Singhvi, the learned counsel for the petitioner, has vehemently raised the following contentions before this court: firstly, the Government has laid down certain guidelines for allocation of funds for social, economic and infrastructural development of the region. Therefore, the respondents are duty bound to adhere to the said guidelines.

Secondly, a Board has been constituted for making recommendation for future development of the region, for supervising the implementation of the programme. But the recommendation of the Board have been over-looked.

Thirdly, according to the letter dated 9.5.2013, the Board meeting was scheduled to be held on 5.6.2013. However, a day earlier the budget for *Panchayat Samiti*, Nagar has been announced.

Fourthly, the respondent No.4, Mr. Ratan Singh, who happens to be a Member of Parliament from Bharatpur, and the respondent No.5, Ms. Zahida Khan, who happens to be a Member of Legislative Assembly, Kaman have exerted their political clout, in a malafide manner, for getting budgets for the *Panchayat Samities* in which they were interested. According to the learned counsel, although the *Panchayat Samiti*, Kaman was entitled to merely a budget of Rs.1210.39

Lacs, but according to the order dated 4.6.2013, it has been allotted a budget of Rs.1309.70 Lacs. Thus, the *Panchayat Samiti*, Kaman has been allotted more budget than it actually could have been given by the Government. This clearly shows that the *Panchayat Samiti*, Kaman has been favoured over and above the other *Panchayat Samities*.

Fifthly, allotment of budget has to be done fairly, reasonably and proportionately as development of the entire region is in question. Therefore, the respondents could not adopt a policy of pick and choose. Hence, sudden allotment of budget, by order dated 4.6.2013, suffers from hostile discrimination: it is in violation of Article 14 of the Constitution of India.

Heard the learned counsel for the petitioner and perused the documents submitted alongwith the petition.

It is, indeed, trite to state that the scope of judicial review is a limited one especially where the policy decisions of the government are challenged before this court. The development of a particular area of the State, the pace of development, the nature of development and the allocation of funds for such development are clearly the concern of the government. Since progress and protection of the people is a fundamental duty of the State and more specifically that of the Executive, the judiciary is well advised to stay away from such an arena. For, only fools tend to rush in, where angels fear to tread.

In catena of cases, the Hon'ble Supreme Court has also opined that the guidelines are merely advisory in nature and are not mandatory provisions of law. Considering the fact that Mewat happens to be a rather backward area of the State, in 1987-88 the government, in its wisdom, had framed a development programme for the said area. Although the aim of the programme is to develop the entire region, but discretion has been left to the government to select a part of the area for development. Thus, the guidelines do not have the force of law which can bind the State. After all, while deciding the scope and ambit of development of an area, "a flexibility at the joints" has to be given to the Executive to exercise its discretion.

Moreover in the garb of power of judicial review, this court cannot sit as an appellate court. This court is not concerned with the legality or illegality of the decision per se. This court can only examine if the procedure adopted for reaching the decision is legal or not? Therefore, this court would not be justified in substituting its decision for the decision of the government. After all, the courts are not equipped and do not have sufficient information and knowledge to decide on issues or policies. Hence, it is a settled position of law that in the garb of exercise of judicial review the courts should be weary of interfering with the policy decision of the government. The courts are permitted to interfere only if it is clearly made out that the decision is an

unfair, unjust, unreasonable, arbitrary, mala fide, or has failed to adhere to the procedure established by the law, or is so illogical that no reasonable person could have taken such a decision. Thus, there are clear demarcations of the power of judicial review. The said power is neither a unruly horse, nor an unbridled one. It has to be exercised within well defined limits. [Ref. to **DDA Vs. Joint Action Committee, Allottee of SFS Flats (2008) 2 SCC 672; Villianur Iyarkkai Padukappu Maiyam Vs. U.O.I. (2009) 7 SCC 561; Brij Mohan Lal Vs. U.O.I. (2012) 6 SCC 502**].

The learned counsel for the petitioner has strenuously argued that since the budget was allotted a day prior to the scheduled meeting on 5.6.2013, the allotment of budget is legally unsustainable. Although at the first blush this argument is attractive, but on a deeper analysis the said argument is misplaced. For, a bare perusal of the constitution of the Board clearly reveals that the power of the Board is limited to merely supervise the implementation of the development programme, to authenticate the actual work which has been undertaken, and to make further recommendation for future development of the area. Hence, the Board does not have any power with regard to allocation of budget. Moreover, the respondents had called for proposals from the concerned *Panchayat Samities*. The petitioner had submitted the proposal with regard to *Panchayat Samities* Nagar and Deeg. It is only after considering her proposal that

an amount of Rs.561.2 Lacs were allotted to *Panchayat Samiti*, Nagar. Thus, the petitioner cannot argue that her proposals were either ignored or overlooked. Hence, even if the budget were allotted prior to the meeting of the Board, the allocation of budget could not be illegal.

The learned counsel has also contended that while distributing the funds, a proportionality has to be kept in mind by the respondents. According to him, budget should be allocated on the ground of "backwardness of an area". According to him, the backwardness of Nagar has been ignored by the respondents. However, the word "backwardness" is a relative term. There is no evidence on record to show that the *Panchayat Samiti*, Nagar happens to be the most backward area of District Bharatpur. Furthermore, there is no evidence to show the comparative backwardness of Nagar vis-a-vis the other backward areas of Bharatpur. Moreover it is for the respondents to apply their mind with regard to the case of development of a particular area. Therefore, this court, possibly, cannot go into the issue whether Nagar happens to be more backward than Kaman and other *Panchayat Samities* of District Bharatpur or not. After all, it is a disputed question of fact which cannot be gone into by this court while exercising its writ jurisdiction. Suffice it to say that since *Panchayat Samiti*, Nagar has been allotted a particular amount, it clearly proves that the proposal sent by the petitioner was duly considered and a budget was, indeed, allotted to the

Panchayat Samit, Nagar.

Merely because *Panchayat Samiti, Kaman* was entitled to a budget of Rs.1210.39 Lacs and merely because it has been given a budget of Rs.1309.70 Lacs would not, ipso facto, lead to the conclusion that the *Panchayat Samiti, Kaman* has been favoured only because of intervention of the respondents No.4 and 5. In absence of any cogent evidence, such a conclusion would be far fetched. According to the letter dated 9.5.2013, *Panchayat Samiti, Kaman* was entitled to a budgetary allocation between Rs.1210.39 Lacs to Rs.1815.59 Lacs. Hence, if a budget of Rs.1309.70 Lacs has been granted to the *Panchayat Samiti, Kaman*, it cannot be said that the respondents have granted more budget to *Panchayat Samiti, Kaman* than it actually deserved. Therefore, the contention raised by the learned counsel that Kaman has been favoured due to the interference of respondents No.4 and 5 is unacceptable. Further, respondent No.4 happens to be the Member of Parliament from Bharatpur. Thus, obviously he represents the interest of the entire district. Therefore, it cannot be claimed that he has interfered in order to favour one particular *Panchayat Samiti* over another.

For the reasons stated above, this court does not find any merit in this petition. It is, hereby, dismissed.

(VEERENDR SINGH SIRADHANA)VJ.

(R.S. CHAUHAN)J.

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All corrections made in the judgment/order have been incorporated in the judgment/order being emailed.

Govind Sharma, PA