

# RAJASTHAN HIGH COURT

Parents Teachers Assocn.

Vs.

Chairman, Kendriya Vidyalaya Sangathan,

Civil Special Appeal (Writ) No. 552 of 1999  
(Dr. A.R. Lakshmanan, C.J. and Ashok Parihar, J.)

06.11.2000

## JUDGEMENT

**Dr. A.R. Lakshmanan, C.J.**

1. The unsuccessful writ petitioners are the appellants in this appeal. The writ petition was filed by the Parents Teachers Association, Kendriya Vidyalaya Jobner to quash the order dated 31-3-1999 (Annexure-1) and to direct the respondents to take regular classes of the students who have been given admission in the school and for other consequential reliefs. The main grievance of the appellants is that the respondents vide order dated 31-3-1999 have closed the Kendriya Vidyalaya, Jobner w.e.f. 1-4-1999 without giving any reason and without giving any notice to the parents of the students or to the association for closure of the school.

2. The brief facts of the case are that the Kendriya Vidyalaya, Jobner was opened in the year 1987 in civil sector in the name of Kendriya Vidyalaya Civil Sector and students are the wards of the Central Government Employees such as the Railways, Post Office employees, Ex. Militarymen, Bank Employees etc. other students are also studying in the school. All the essential facilities like land, building, residential quarters for staff, library etc. have been provided by the S.K.N. College of Agriculture, Jobner without charging any revenue from the school. The school was also opened for providing educational facilities to the wards of the Scientists of National reputation engaged in research and training, teaching and extension of agriculture education who have come from different parts of the country in S.K.N. College of Agriculture, Jobner. When the students went to attend their classes on 3rd of April, 1999 they were told that the school had been closed by the authorities vide order dated 31-3-1999. According to the appellants, the respondents have closed the

school without proper information or notice to the parents of the wards who are studying in the school. Aggrieved from the impugned order dated 31-3-1999, the appellants filed the writ petition with the prayers above mentioned.

3. It is the contention of the appellants that because the respondents have charged the fees and give admission to the students in Ist class as well as in higher classes, they are bound to provide facility for imparting education to the students and they cannot close the school in this manner. There is violation of Article 14 of the Constitution and that the appellants are not being treated equally as other persons to whose children the education facilities are being provided by running central school. The impugned order has taken away their right of education which is provided under the Constitution under Article 15(1) read with Article 29(2) of the Constitution. Hence, it is submitted that closure of the school is against the constitutional rights of students as well as of their parents. No opportunity of hearing was given to the petitioners before issuance of the letter dated 31-3-1999 (Annexure-1) and, thus, the respondents have violated the principles of natural justice.

4. Annexure-1 is the order dated 31-3-1999 which reads as follows:-

"KENDRIYA VIDYALAYA SANGATHAN

18, Institutional Area

Shaheed Jeet Singh Marg,

New Delhi - 110 016

F. No. 1-15(6)/86 -KVS (Admn. I)Dated 31-3-1999

OFFICE ORDER

Approval of the Chairman, Kendriya Vidyalaya Sangathan is hereby conveyed for the closure of Kendriya Vidyalaya, Jobner (Rajasthan) under Civil Sector with effect from 1-4-1999.

Sd/-

(R. N. SHARMA)

SR. ADMINISTRATIVE OFFICER"

5. A reply to the writ petition was filed on behalf of the answering respondents. A preliminary objection was raised by the respondents in regard to the maintainability of the writ petition on the ground that the appellant (Parents-Teachers Association) is not a registered and recognized association and, therefore, they have no fundamental right

to approach this Hon'ble Court under Article 226 of the Constitution. In support of his contention, Sri V. S. Gurjar the learned counsel for the respondents relied on the judgments of the Apex Court in the case of *Mahinder Kumar Gupta v. Union of India*,<sup>1</sup> and the Full Bench Judgment of this Court in the case of *RSEB Accountant's Association of Rajasthan v. The RSEB*<sup>2</sup>. Another decision of the Supreme Court in the case of *S. P. Gupta v. Union of India*,<sup>3</sup> was also relied upon. Learned counsel further invited our attention through the detailed reply submitted by the respondents.

6. According to the learned counsel for the respondents, the scheme for establishing central schools was approved by the Government of India in 1962 with the idea of encouraging the growth of secondary schools with a common syllabus and medium of instruction for the benefit of the children of Central Government Employees liable to frequent transfers. Learned counsel has also invited our attention to the main features of the scheme. It was also pointed out that none of the appellants are transferable Central Government Employees. It is submitted that the justification for opening the Kendriya Vidyalaya was examined by the Accountant General of Rajasthan whereby the authority in exercise of powers under Section 20(1) of the Act of 1971 vide its report dated 12-9-1996 after inquiring into various facts and expenditure incurred in opening the school at Jobner and continuing Kendriya Vidyalaya at Jobner, was concluded to have caused a loss of Rs. 33 Lakhs to Kendriya Vidyalaya Sangathan (hereinafter referred to as 'the KVS'), New Delhi. It was concluded by the expert body that the very object of opening of Kendriya Vidyalaya at Jobner was illegal, irregular and contrary to the aims and objects of the Kendriya Vidyalaya Sangathan as contained in Memorandum of Association and the objects for which the KVS was brought into existence. It was further mentioned in the report that in the session 1988-89 only three children of the Central Government Employees were available for fresh admission to the school and the total number of wards of Central Government Employees w.e.f. session 1991-92 to 1995-96 was only 79. These facts were not brought to the knowledge of the Deputy Commissioner, KVS, New Delhi by Assistant Commissioner, KVS Regional Office, Jaipur. The fact that there is no Central Government Department and Defense Force Establishment at Jobner was also taken into account. Hence, it was opined that the expenses of the amount as a waste in view of the aims and objects of KVS by the experts. Therefore, the recommendation based on the facts and materials which were brought to the knowledge of the competent authority for necessary action. The relevant recommendations and findings arrived by the Accountant General of Rajasthan dated 12-9-1996 are annexed as Annexure R/1.

It was in view of these documents, facts, circumstances and material present on record led the experts and the competent authority to take a policy decision in respect of justification of opening and continuing the Kendriya Vidyalaya at Jobner. The matter was examined by the Board of Governors, which is charged with the responsibility of carrying out the objects of the KVS as set forth in the Memorandum of Association. The Minister of State or the Deputy Minister in the Ministry of Education and Culture is the Chairman of the KVS. He is also the Chairman of the Board of Governors. Thus, the competent authority after a careful examination of the facts, circumstances and material present on record and keeping in view the opinion of the experts based on facts, had arrived at the conclusion to grant approval for closure of the Kendriya Vidyalaya at Jobner under the Civil Sector w.e.f. 1-4-1999. Therefore, it is submitted that the policy decision arrived at by the competent authority is not open to challenge by the appellants as there are no grounds to sustain the challenge.

7. A preliminary objection in regard to maintainability of the writ petition was also taken in the reply to which a reply was also filed by the petitioners. Hon'ble Mrs. Justice Gyan Sudha Misra vide order dated 30-9-99 dismissed the writ petition for the detailed reasons recorded in the order. However, a liberty was reserved to the appellant association to represent before the competent authority of the Board or any other authority who may look into the interest of the students and their parents and the residents of Jobner locality as to whether it would be possible to review their decision taken for closure of the school.

8. Being aggrieved by the above decision, the writ petitioners have filed the above appeal.

9. On the above pleadings, the following questions of law may arise for our decision they are as under :-

1. Whether, the KVS has a right to close the Kendriya Vidyalaya, Jobner?
2. Whether the action of the respondents in closing the school at Jobner can be justified on the ground that the school was running in loss?
3. Whether the students and their parents had any right to be heard or show cause before closing of the school, if so, what is the effect of its violation?
4. Whether the School at Phulera at a distance of 18 Kms. from Jobner can be said to be efficacious or alternative remedy for the children of the School ?

10. On the above questions amongst others, arguments of learned counsel appearing on the either side were heard.

11. Before proceeding further we shall now consider the preliminary objection raised by the learned counsel for the respondents in regard to the maintainability of the writ petition at the instance of the appellants- petitioners which is undoubtedly an unregistered and unrecognized institution.

12. The appellants-petitioners have not placed before this Court any document to show that the Parents-Teachers Association is a registered and recognized association. The writ petition has been allegedly filed in public interest and the alleged large interest of the students. It is evident that the so-called Parents-Teachers Association is an unregistered and unrecognized association and, therefore, in our view, has no fundamental right to approach this Court under Article 226 of the Constitution. This point has been concluded by the decision of the Apex Court in the case of Mahinder Kumar Gupta, (1994 AIR SCW 5139) (supra) and by the decision of Full Bench of this Court in the case of RSEB Accountant's Association (1995 (3) WLC1) (supra). A reply to the preliminary objection raised by the respondents was also made by the appellants. It is stated that the Parents-Teachers Association has been recognized by the KVS and that the Principal is the Vice Chairman of the said Association and hence, the Association is competent to file the writ petition on behalf of the students. In our view, the above reason cannot be considered as a valid reason for maintaining the writ petition. It is not in dispute that the Association is not a registered body and recognized Association. Thus, after examining this point of law in detail and placing reliance on various judgments delivered by the Apex Court from time to time, the Full Bench of this Court in the case of RSEB Accountant's Association (supra) held as under :-

"It may also be observed that an unregistered association has no fundamental right to approach this Court under Article 226 of the Constitution and this point is concluded by the decision in the case of *Shri Mahinder Kumar Gupta v. Union of India, Ministry of Petroleum and Natural Gas*<sup>4</sup> A decision in the case of *Akhil Bharatiya Soshit Karamchhari Sangh v. Union of India*,<sup>5</sup> was relied where the non-registered Association was held to apply under Article 32 of the Constitution. We may observe that there had been number of the instances of public interest litigation where large body of persons is having the grievance

against inaction of the State. Even letters have been considered to be a writ petition but all these are the matters where large section of public is affected and the personal interest of any person or a smaller section as in the present case, is not involved. Even in the case of *People's Union for Democratic Rights v. Union of India*,<sup>6</sup> when the question of *locus standi* was considered, the Hon'ble Supreme Court had taken into consideration the poverty, illiteracy and the ignorance obstructing and impeding accessibility of the judicial process and on that ground it was considered that the writ petition can be filed. In *D. S. Nakara v. Union of India*,<sup>7</sup> the old pensioners individually were unable to undertake journey through labyrinths of costly and protracted legal judicial process for allowing to espouse their cause. In case of *S. P. Gupta v. Union of India*,<sup>8</sup> poverty, helplessness and disability or social or economic disadvantaged, position was considered a sufficient ground for maintaining the writ petition. There had been other decisions of the Apex Court as well and principles which emerge from all of them are as under :-

- (a) That the members of the said association should have sufficient strength so as to come in the category of a large sect of public.
- (b) That the members should be identifiable.
- (c) That the members must be of the category of poor/illiterate/helpless or disabled.
- (d) That the individual member must not be capable of filing a writ petition.
- (e) That the entire body of the members must authorise the association to protect their legal rights.
- (f) That such an association must have its own Constitution, and
- (g) That there must be authority to file a writ petition on behalf of all the members."

13. In the instant case, none of the grounds mentioned above in (a) to (g) have been satisfied by the present appellants to maintain the writ petition. Since the above conditions are not fulfilled such an unregistered association cannot file writ petition in respect of the legal rights of the said association for the alleged breach of fundamental right as the association itself has no fundamental right of its own.

14. We have already referred to the main objectives of the KVS and the main features of the scheme. The main objectives and main features of the scheme are extracted

hereunder :-

"Main objectives of the Kendriya Vidyalayas:

- (i) to meet the education needs of the children of transferable Central Government employees, including defense personnel, by providing a common programme of education ;
- (ii) to develop the Vidyalayas as model schools in the context of the national goals of Indian education ;
- (iii) to initiate and promote experimentation in education in collaboration with other bodies like CBSE and NCERT etc.; and
- (iv) to promote national integration.

Main Features of the Scheme :

- (i) The schools are established at places having sizeable concentration of transferable Central Government employees including defense personnel. The schools in the defense sector are established on the recommendation of the Ministry of Defense whereas those in the civil sector are established on the recommendation of the various Ministries of the Government of India or the concerned State Governments, Kendriya Vidyalayas are also opened in the campuses of public sector undertakings and institutes of higher learning (project schools) only when these agencies agree to provide physical facilities in terms of plant and equipment as per the norms prescribed for Kendriya Vidyalayas and to bear all the recurring and non-recurring expenditure.
- (ii) The schools give priority in admission to the children of transferable Central Government employees including defense personnel. In the case of project schools, children of employees of these agencies get the first preference.
- (iii) The quality of teaching is kept reasonably high by an appropriate teacher-pupil ratio and provision of suitable teachers with high academic qualifications.
- (iv) Instruction is imparted through the media of Hindi and English, the ultimate object being to enable the pupils to achieve proficiency in both the languages.
- (v) The same syllabus and test books are followed in all the Kendriya Vidyalayas.
- (vi) The Kendriya Vidyalayas prepare students for the All India Secondary School (X) and all India Senior School Certificate (XII) Examinations conducted by the Central Board of Secondary Education, New Delhi.
- (vii) These Vidyalayas are intended to be partly residential in character. Hostel facilities have been provided in a few Kendriya Vidyalayas in different parts of

the country for the benefit of students particularly those, whose parents are transferred in the middle of the session, to stations which do not have a Kendriya Vidyalaya.

(viii) Education up to Class VIII is free in Kendriya Vidyalayas. Tuition fee at varying rates based on the income of the parents are chargeable from students of classes IX, X, XI and XII respectively."

15. A bare perusal of the objectives of the Kendriya Vidyalayas it is apparent that the Kendriya Vidyalayas are to meet the educational needs of the children of transferable Central Government Employees, including Defense Personnel by providing a common program of education and priority in admission to the children of transferable Central Government Employees including the Defense Personnel is to be given. It is not in dispute that none of the petitioners are transferable Central Government Employees. Therefore, in our opinion, a writ petition on their instance is not maintainable and merit rejection on this count as well. As already noticed the justification for closure of the school was examined in detail by the authority concerned and they came to the conclusion to grant approval for closure of the Kendriya Vidyalaya, Jobner. Therefore, as rightly pointed out by the learned counsel for the respondents, the policy decision as arrived at by the competent authority after taking into account the various facts and circumstances and the material placed on record which also involved the element of financial constraints, is not open to challenge by the petitioners and the grounds raised by them are not sustainable in law or amenable to challenge. This Court will not weigh the pros and cons of the policy or test the degree of its financial or equitable deposition for the purpose of varying, modifying or annulling it based on howsoever, good or sound reasons. It is also pointed out by the respondents that when the Government forms its policy it is based on the background of special circumstances of facts, law including financial constraints based on its reason and it is also based on expert opinion, this Court sitting in the jurisdiction of Article 226 of the Constitution would not test the utility, beneficial effect of the policy or its appraisal based on facts set out in the writ petition. The opinion formed by the competent authority based on relevant facts and circumstances and on the advise of the expert body does not call for any interference. The law in this regard is well settled.

16. The Apex Court in the case of *State of Punjab v. Ram Lubbhaya Bagga*,<sup>9</sup> has dealt with the issue in regard to the policy and the right of the Government to frame its policy. The Court in para No. 22 of the Judgment held as under :-



"Now we revert to the last submission, whether, the new State policy is justified in not reimbursing an employee, his full medical expenses incurred on such treatment, if incurred in any hospital in not being a Government hospital in Punjab. Question is whether the new policy which is restricted by the financial constraints of the State to the rates in AIIMS would be in violation of Article 21 of the Constitution of India. So far as questioning the validity of governmental policy is concerned in our view it is not normally within the domain of any Court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When government forms its policy, it is based on number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if Court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints."

In para 28 it observed as follows:

"The next question is whether the modification of the policy by the State by deleting its earlier decision of permitting reimbursement at the Escort and other designated hospital's rate is justified or not? This of course will depend on the facts and circumstances. We have already held that this Court would not interfere with any opinion formed by the Government if it is based on relevant facts and circumstances or based on expert advice."

17. In view of the above decision, we are of the opinion that the present writ petition and the further appeal are misconceived and merited rejection.

18. We have perused the grounds of challenge. The order under challenge cannot be attacked on any ground worth the name. Moreover, the number of wards of the Central Government Employees was found to be 79 over a spell of six academic sessions

which did not justify, in the opinion of the experts the opening and continuance of Kendriya Vidyalaya at Jobner. Further Bank Employee's wards referred to in the writ petition do not fall within the category for whose benefit the KVS is obliged to establish the Kendriya Vidyalaya. The details of the fresh admission made in respect of class 1 to class 10 for the sessions of 1994-95, 1995-96, 1996-97, 1997-98 and 1998-99 have been filed and marked by way of a chart which is annexed to the reply filed by the respondents and marked as Schedule 'A'. We have perused the same. In our opinion, there is another school within a distance of 18 Kms. from Jobner which can cater to the needs of the petitioners. More-over, none of the employees of the SKN College of Agriculture fall within the category (i) for whose benefit the KVS has been brought into existence. The claim of the appellants, in our opinion, is thoroughly misconceived. A bare perusal of the main objectives of the KVS as set out in the Memorandum of Association of the KVS will go to show that they are to provide, establish, endow, maintain, control and manage schools, i.e. the Kendriya Vidyalayas for the children of transferable employees of the Government of India. The eligible categories which receive priorities in admission to Kendriya Vidyalayas are as under :-

1. Kendriya Vidyalaya in Defense and Civil Sectors.

(i) Children of transferable Central Government employees including Defense/CRPF/BSF Personnel in uniform and employees of All India Services and Indian Foreign Service.

(ii) Children of transferable employees of autonomous bodies and Public Sector undertakings fully financed by Central Government.

(iii) Children of non-transferable Central Government employees including Defense/ CRPF/BSF Personnel.

(iv) Children of other floating population which includes civilian population desirous of joining the patter of studies adopted in the Kendriya Vidyalayas.

19. It is apparent on the face of the record that the claim of the appellants is without any substance. It is also specifically stated in para 14 of the reply that in the session 1999-2000 there was not even a single ward of a transferable Central Government Employee, who had applied for fresh admission to Kendriya Vidyalaya at Jobner. The order impugned in the writ petition and in this special appeal has been issued by the competent authority keeping in view the aims, objects and the main features of the KVS, which is a registered society. The Board of Governors, which is the competent body to take a decision and the governing body has taken the right decision. The

Minister of Human Resources Development of Government of India is the Chairman of the Board of Governors. Thus, the policy decision taken by the competent authority keeping in view the entire facts and circumstances of the case is not open to challenge before this Court in view of the law laid down by the Apex Court in the case of *State of Punjab v. Ram Lubhaya Bagga*, ( AIR 1998 Supreme Court 1703) (supra). It will not be out of place to mention here that the Accountant General of Rajasthan has specifically dealt with reasonableness of establishing and continuing the school at Jobner in view of the very object of the Kendriya Vidyalayas providing for establishment of Kendriya Vidyalayas keeping in view the object of a uniform syllabus for transferable Central Government Employees throughout the country. It is also specifically stated in para N of the reply that the students of category 1 or 2 have all been given admission at Kendriya Vidyalaya Jaipur/Phulera or at Kendriya Vidyalayas where they had desired for admission. The entire staff of the school after its closure w.e.f. 1-4-1999 has been adjusted in other Kendriya Vidyalayas where their services can be better utilized keeping in view the aims and objects of Kendriya Vidyalayas. In our opinion, there is not even an iota of evidence on record on the basis of which the action of the respondents can be said to be arbitrary or against the constitutional provisions.

20. In view of the policy decision taken by the respondents, there is no need and necessity to hear either the students or their parents before taking the policy decision of closure of the school. Thus, there is no violation of natural justice.

21. The writ petition, in our opinion is not maintainable in view of the law laid down by the Apex Court and also by the Full Bench of this Court in the case of Mahinder Kumar Gupta, (1994 AIR SCW 5139) (supra) and RSEB Accountant's Association (1995 (3) WLC 1) (supra) respectively and that the order under challenge is perfectly legal, valid and does not call for any interference. The writ appeal fails and is dismissed. No costs.

Appeal dismissed.

Cases Referred.

1. (1995) 1 JT (SC) 11: (1994 AIR SCW 5139)
2. (1995) 3 WLC 1
3. AIR 1982 SC 149

4. (1995) 1 JT (SC) 11: (1994 AIR SCW 5139)
5. AIR 1981 SC 298
6. AIR 1982 SC 1473
7. AIR 1983 SC 130
8. AIR 1982 SC 149
9. (1998) 2 JT (SC) 136: (AIR 1998 SC 1703)