The High Court Of Madhya Pradesh

WP No. 26272 of 2021

(ADITYA SINGH SOLANKI Vs *THE STATE OF MADHYA PRADESH AND OTHERS)*

Indore, Dated : 02-12-2021

Mr Ajinkya Dagaonkar, learned counsel for the petitioner.

Mr Pushyamitra Bhargava, learned Additional Advocate General for the respondents/State.

Heard on admission.

01. Learned counsel for the petitioner submits that the order dated 22-11-2021 (Annexure-P-1) is issued without considering the ground reality of Covid situation. By placing reliance on the Newspaper cuttings filed alongwith the petition, learned counsel for the petitioner submits that Covid cases are on rise and in this grave situation, the impugned order dated 22-11-2021 is issued whereby Schools are decided to be opened. The "Consent Letter" (Annexure-A-2) is also criticized by contending that whole burden is shifted on the shoulders of the parents, which is bad in law. The S.O.Ps are either not issued or not circulated to the parents, is another limb of argument. Lastly, learned counsel for the petitioner submits that there exists no policy for vaccination of children and adolescents. Shri Dagaonkar, learned counsel placed reliance on Constitution of India (Second Edition) Volume-1 (by Dr L.M. Singhvi) page 940 which relates with 'Right to Life'. He urged that

there is a strong link between Article 21 and Right to know particularly where secret Government decisions may affect health, life and livelihood. **Essar Oil Ltd., Vs. Halar Utkarsh Samiti & Others (AIR (2004) SC 1834)** is relied upon which is mentioned in the said Article.

02. Shri Pushyamitra Bhargava, learned Additional Advocate General submits that Government has taken a policy decision by taking into account the relevant factual backdrop of Covid situation prevailing in Madhya Pradesh. The petitioner has filed this petition by placing reliance on various Newspaper cuttings which are related to other States. He relied on Annexure-A-3 which is a Newspaper cutting of Jaipur, whereas other Newspaper cuttings are related to Bengaluru, Bhubaneshwar and New Delhi. Learned counsel for the State submits that Government is periodically examining the Covid situation and on the basis of situation prevailing, issuing S.O.Ps and directions. This has been the practice in all the Departments. It is further submitted that Clause-3 of order dated 22-11-2021 shows that previously, an order was issued for the purpose of vaccination in all the Schools. In all fairness, the petitioner should have filed the said order alongwith this petition.

03. In rejoinder submissions, Shri Dagaonkar, learned counsel for the petitioner submits that he could not lay his hands on any

Government notification/order/information in the website regarding vaccination of children and adolescent. He placed reliance on pleadings about decision of World Health Organization (W.H.O.).

04. No other point is pressed by learned counsel for the parties.

05. On a specific query from the Bench, learned counsel for the petitioner was unable to show any pleadings which may support his contention that petitioner made effort to get information regarding vaccination of children and adolescent from Government of Madhya Pradesh or Government of India website but no such information is available on the website.

06. The scope of interference in a case of this nature is very limited. The Government is best suited to decide the mode and methods of running administration. As per the Covid situation prevailing, Government takes decision and also modifies it. The unprecedented Covid crisis was handled in this manner during the entire period. This court cannot conduct a roving inquiry or sit as an appellate authority to examine the decision dated 22-11-2021. The principle canvassed by Shri Dagaonkar that there is a strong link between Article 21 and Right to Know particularly where secret Government decision may affect health cannot be doubted. However, in this case, it is not argued that the Government has prepared any secret document which needs to be brought to the

notice. On a specific query Shri Dagaonkar, learned counsel fairly submitted that he has not brought **Essar Oil Ltd., Vs. Halar Utkarsh Samiti & Others** reported in **AIR (2004) SC 1834**. This practice is totally unknown to the Courts where a judgment is relied upon without bringing the journal or judgment in the Court. The citations are not "*Mantras*". Unless the factual backdrop and *ratio decidendi* of said case is clearly shown, merely citing a judgment will not serve any purpose.

07. We find force in the argument of learned A.A.G that policy decision of the government cannot be interfered with on mere asking. The petitioner has filed the newspaper cuttings of other States to show rise of Covid cases. It is a matter of common knowledge that number of Covid cases may vary from place to place and, therefore, the minimum expectation was that petitioner will demonstrate the gravity of Covid situation prevailing in Madhya Pradesh. In absence of showing the illegality with accuracy and precision, policy decision cannot be axed. Lord MacNaughten in *Vacher & Sons Ltd.*v. *London Society of Compositors* [*Vacher & Sons Ltd.*v. *London Society of Compositors*, 1913 AC 107: (1911-13) All ER Rep 241 (HL)] has stated: (AC p. 118):

> '… Some people may think the policy of the Act unwise and even dangerous to the community. … But a judicial tribunal has nothing to do with the policy of any Act which

> it may be called upon to interpret. That may be a matter for private judgment. The duty of the court, and its only duty, is to expound the language of the Act in accordance with the settled rules of construction.'
>
> (emphasis supplied)

08. The litmus test laid down by Lord MacNaughten was quoted with profit by Supreme Court in the matter of ***Centre for Public Interest Litigation Vs. Union of India (2016) 6 SCC 408***. It is apposite to take into account the legal journey on the question of scope of judicial review on a policy decision of the government.

09. In the matter of ***State of M.P. Vs. Nandlal Jaiswal (1986) 4 SCC 566,*** the Apex Court has held as under:-

> "34……..The Government, as was said in *Permian Basin Area Rate cases* [20 L Ed (2d) 312] is entitled to make pragmatic adjustments which may be called for by particular circumstances. The Court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The Court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide. It is against the background of these observations and keeping them in mind that we must now proceed to deal with the contention of the petitioners based on Article 14 of the Constitution."
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> (emphasis supplied)

10. The Apex Court in the matter of ***State of Punjab Vs. Ram Lubhaya Bagga (1998) 4 SCC 117*** has held as under:-

> "25…….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 a 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."
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> (emphasis supplied)

11. Reference may be made to ***Ugar Sugar Works Ltd. Vs. Delhi Admn; (2001) 3 SCC 635*** in which the Supreme Court has held as under:-

> "18……...It is well settled that the courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt business interests of a party, does not justify invalidating the policy. In tax and economic regulation cases, there are good reasons for judicial restraint, if not judicial deference, to judgment of the executive. The courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the State."
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> (emphasis supplied)

12. Supreme Court in the matter of ***State of Orissa Vs. Gopinath Dash (2005) 13 SCC 495*** has opined as under:-

> "**7.** The policy decision must be left to the Government as it alone can adopt which policy should

> be adopted after considering all the points from different angles. In the matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown the courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government."
>
> (emphasis supplied)

13. In the matter of ***State of U.P. Vs. Chaudhari Ran Beer Singh (2008) 5 SCC 550***, the Supreme Court held thus:-

> "13……...As rightly contended by learned counsel for the State, in matters of policy decisions, the scope of interference is extremely limited. The policy decision must be left to the Government as it alone can decide which policy should be adopted after considering all relevant aspects from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown, courts will have no occasion to interfere and the court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the court cannot interfere even if a second view is possible from that of the Government."

14. In the matter of ***Parisons Agrotech (P) Ltd. Vs. Union of India (2015) 9 SCC 657***, it has been held as under:-

> "14…….However, once it is found that there is sufficient material for taking a particular policy decision, bringing it within the four corners of Article 14 of the Constitution, power of judicial review would not extend to determine the correctness of such a policy decision or to indulge into the exercise of finding out whether there could be more appropriate or better alternatives. Once we find that parameters of Article 14 are satisfied; there was due

> application of mind in arriving at the decision which is backed by cogent material; the decision is not arbitrary or irrational and; it is taken in public interest, the Court has to respect such a decision of the executive as the policy making is the domain of the executive and the decision in question has passed the test of the judicial review.
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> (emphasis supplied)

15. In the matter of ***Centre for Public Interest Litigation Vs. Union of India (2016) 6 SCC 408***, the Apex Court has held as under:-

> "**22.** Minimal interference is called for by the courts, in exercise of judicial review of a government policy when the said policy is the outcome of deliberations of the technical experts in the fields inasmuch as courts are not well equipped to fathom into such domain which is left to the discretion of the execution. It was beautifully explained by the Court in *Narmada Bachao Andolan* v. *Union of India*[*Narmada Bachao Andolan* v. *Union of India*, (2000) 10 SCC 664] and reiterated in *Federation of Railway Officers Assn.* v. *Union of India* [*Federation of Railway Officers Assn.* v. *Union of India*, (2003) 4 SCC 289] in the following words: (SCC p. 289, para 12)
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> > "*12*. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise the court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the court will not interfere with such matters."
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> > (emphasis supplied)

16. As noticed above, the petitioner, an Advocate has filed this PIL without undertaking proper homework and exercise. The PIL

appears to have been filed to gain publicity. Thus, admission is declined. In ***S.P. Anand Vs. H.D.Deve Gowda (1996) 6 SCC 734*** the Apex Court deprecated the practice of filing half-baked petitions without proper research. Similarly in ***Dattaraj Nathuji Thaware Vs. State of Maharashtra (2005) 1 SCC 519*** the Apex Court opined that such petitions must be dismissed by imposing exemplary costs. Thus, the **petition is dismissed with Rs.5000/- (five thousand only) as costs**. The cost shall be deposited before High Court Legal Aid Committee within thirty days from today, failing which, the said Committee shall bring this to the notice of this Court.

Certified copy as per rules.

(SUJOY PAUL)
J U D G E

(PRANAY VERMA)
J U D G E

Rashmi