

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

C. P. No. D – 1768 of 2010

[Muhammad Aslam Khan v. Province of Sindh and others]

**Present:**

**Mr. Nadeem Akhtar, J.**

**Mr. Muhammad Faisal Kamal Alam, J.**

Date of hearing : 09.05.2018  
Date of Decision : \_\_\_\_\_  
Petitioner : Muhammad Aslam Khan through Mr. Haji Shamsuddin Rajper, Advocate.  
Respondents : Government of Sindh and others through Mr. Mehboob Ali Wassan, A.A.G.

**ORDER**

**Muhammad Faisal Kamal Alam, J:** Through this petition, the Petitioner has called in question the decision of official Respondents (Respondent No.1 to 5) for changing/re-naming the name of Government Boys Degree College Karoondi situated at District Khairpur to ‘*Shaheed Fakir Iqbal Hussain Heesbani Government Boys Degree College Karoondi, District Khairpur*’. Following relief has been sought\_

“(a) To declare that the act of the Respondents for changing the name of Government Boys Degree College Karoondi, District Khairpur, in the name of Shaheed Fakir Iqbal Hussain Heesbani Government Boys Degree College Karoondi, District Khairpur is illegal, improper, ab initio void and without any lawful authority.

(b) To grant interim injunction restraining the Respondents from changing the name of Government Boys Degree

127  
College Karoondi, District Khairpur, in the name of Shaheed Fakir Iqbal Hussain Heesbani Government Boys Degree College Karoondi, District Khairpur, through themselves, their agents, servants or any other agency acting on their behalf, till the final decision of main Petition.

- (c) To grant any other relief, which this Honourable Court deems fit and proper in circumstances of the case.
- (d) To award the costs of the Petition.”

2. The Petitioner has been represented by Mr. Haji Shamsuddin Rajper, Advocate, who has argued that Petitioner had donated his six acres of agricultural land to Respondents for construction of subject College for the noble cause to impart education, particularly to the people of the area. It has been further argued so also pleaded that even the College Management Committee (“CMC”) in its Meeting held on 23.07.2010, had unanimously opposed the proposal of the official Respondents No.1 to 5 to re-name the subject College (a copy of the Minutes of Meeting is available at page-17 of the Court file); despite this the official Respondents and particularly the then senior Minister for Education of Sindh Government accorded approval for change of name which was implemented vide the impugned Notification dated 03.09.2010, appended as Annexure ‘D’ with the Parawise Comments, which was issued by the Secretary to Government of Sindh- Respondent No.1.

3. On the other hand, learned A.A.G. opposed the arguments of Petitioner’s side and in compliance of the order dated 07.03.2018, has filed a Statement dated 27.03.2018, under which, *inter alia*, the Policy / Guideline for re-naming (changing) the name of a government

educational institute has also been filed. It would be advantageous to reproduce herein under the above Policy:

*"No.SO(B&U)/08-37-2014  
GOVERNMENT OF SINDH  
EDUCATION & LITERACY DEPARTMENT  
Karachi, the dated the 13<sup>th</sup> May, 2014.*

- i) *The Director General (Colleges), Sindh,  
Karachi.*
- ii) *The Director School Education, (All) in Sindh,  
Karachi/Hyderabad/Sukkur/Larkana/Mirpurkhas.*

Subject: **POLICY GUIDELINE REGARDING RENAMING OF  
SCHOOLS/COLLEGES AND OTHER INSTITUTES IN SINDH.**

*I am directed to refer to the subject noted above and to inform that this department has framed the following policy guideline regarding renaming of Schools/Colleges and other Institutes in Sindh Province which is as under: -*

- i) *The cases of renaming of Government Schools/Colleges and others Institutions shall be forwarded by the concerned District Education Officer/Director Colleges or Head of Institutes along with their comments/Views and recommendations to the Education & Literacy Department Government of Sindh.*
- ii) *The Education & Literacy Department, Government of Sindh shall examine the case for renaming of any Government Educational Institute in the following cases:-*
  - i) *The proposal for renaming any Educational Institute will be considered having proper Government's established building.*
  - ii) *The Government Educational Institute shall be considered for renaming on the name of donor of the land for Schools/Colleges to the Government of Sindh on condition that he has not claimed any compensation.*
  - iii) *The case regarding renaming of Government Educational Institutes recommended on the name of person who rendered meritorious services to the institute, Shuhada of armed and other forces and is respectable citizen of the respective area where such educational institute is situated.*
  - iv) *The recommendation of the Institution/NGO and notable must be with full justifications made in favour of person who renders rendered services to the area where the Educational institute is situated.*
  - v) *Before renaming, advertisement shall be made in the leading daily newspapers for initiating objection from other parties, if any and the expenses of advertised much be borne by the applicant.*
  - vi) *The secretary Education will constitute a committee to consider the renaming and submit its recommendations for approval to the senior Minister Education/Minister Education.*
  - vii) *The case regarding renaming of institutions up to High School shall be submitted to the senior Minister Education/Minister Education through note, and the Higher Secondary Schools, Colleges and other institutions shall be submitted to Chief Minister Sindh in the shape of summary through Senior Minister Education for approval.*

02. *It is therefore requested to adopt the aforementioned policy guideline regarding renaming of Schools/Colleges and other Institutes in Sindh Province, in future.*

03. This may please be assigned on Top-Priority.

(INAYATULLAH MANGRIO)  
SECTION OFFICER (B&U)

A copy forwarded for information to

- i. The PS to Honourable, Senior Minister for Education & Literacy Department Government of Sindh, Karachi.
- ii. The PS Secretary, Education & Literacy Department, Government of Sindh Karachi.
- iii. The PS to Special Secretary (all), Education & Literacy Department, Government of Sindh Karachi.
- iv. The PA to Additional Secretary (A&T) Education & Literacy Department, Government of Sindh Karachi.

(INAYATULLAH MANGRIO)  
SECTION OFFICER (B&U)"

4. In rebuttal, the learned counsel for the Petitioner has stated that in the present case, the person in whose name the educational institute is to be renamed, has not rendered any meritorious services to the society but was a notorious figure for his illegal activities.

5. Arguments heard and record perused.

6. Respondent No.6-Principal of the subject College has supported the stance of Petitioner by filing his separate parawise comments. However, other official Respondents have filed their parawise comments and have attempted to justify their above impugned action, primarily, on the grounds that the Petitioner has no interest in the matter merely because he donated a piece of the land for construction of subject College so also CMC does not enjoy any power to surpass the directions of a 'worthy Secretary'.

On 04.10.2010, this Court while granting ad-interim injunction, suspended the operation of the impugned Notification; thus the impugned action through the afore-referred Notification could not have taken the effect till date and even if it has, the same would be subject to the judicial scrutiny.

7. Perusal of the Policy Guideline dated 13.05.2014 (*ibid*), leads to the conclusion that the impugned Notification was issued in pursuance of the directions of the then senior Minister of Education and Literacy Department and communicated through a correspondence by the Deputy Secretary (A&T), which is appended with the above Statement as Annexure 'E', is violative of the Policy Guidelines, because this correspondence does not mention any reason for re-naming the subject College, except that the senior Minister for Education and Literacy Department had '*desired*' to re-name the College. One of the considerations (as per the Policy Guidelines) for renaming or changing the name of the Government educational institute in the name of some individual, is that the said individual / person has rendered meritorious services to the institute, Shuhada of armed and other forces, or is a respectable citizen of the respective area where such educational institute is situated. Even a Government educational institute can be renamed in the name of donor of the land, provided he has not claimed any compensation. The other prerequisite is that before renaming, an advertisement should be published in newspapers inviting objections from public at large. The renaming of an educational institute can only be done by a Committee which shall forward its recommendations to the Minister for Education.

8. There is a plethora of case law on the issue that even the discretionary powers are to be exercised by the concerned Government officials in a fair, just and reasonable manner and considering this well established legal position, the legislature has amended the General Clauses Act, 1897, by inserting Section 24A, which fortifies the above principle. It is not out of place to reiterate that in a constitutional dispensation, the discretion of a Minister or Government Officials is a

structured one and is subject to what has been stated herein above. In a Muslim Polity like ours, this aspect is applied coupled with an element of accountability, in order to advance the well-known concept of 'government of laws and not men'. The lame grounds for the impugned action as mentioned in the parwise comments of Respondents and argued by their legal team is devoid of merits. For the argument's sake, even if the above mentioned Policy guideline was not there at the relevant time when the impugned action of re-naming the subject College was taken, still the impugned action is without jurisdiction, *inter alia*, (i) in view of the above discussion, (ii) the objection raised by the Petitioner, who is a plot donor and is not seeking re-naming of the subject College in his name and more particularly (iii) the unanimous decision of the CMC; (iv) the learned AAG and the Official Respondents have failed to place any document on record in support of their defence that the impugned decision was taken after due deliberation and was as per the rules (if any) existing at the relevant time; or the individual in whose name the subject College is / was to be named had rendered meritorious service to the society or is a well-known social figure. The Minister is required to exercise his authority only within the parameters of law and particularly in terms of the Sindh Government Rules of Business, 1986. Even if the Minister for Education had 'desired' the renaming of the subject College then it was the obligation and responsibility of other officials including the then Secretary Education (Respondent No.1) to apprise and advise the concerned Minister about the proper procedure, as Respondent No.1 is not required to follow/obey any wish or desire of a Minister; *inter alia*, Rules 22 and 23 of the afore-referred Rules of Business, 1986, are quite specific in this regard, in particular, sub-Rule (i) and (iv) of Rules 22 and 23 respectively, direct the government functionaries including the Respondents to point out the contravention of any law, rule or policy to

the concerned authority, who has passed any such order. Government servants are not duty bound to obey illegal orders of their superiors because they are not their servants but are servants of the State and its citizens. In these circumstances, the 'desire or decision' of the concerned Minister as mentioned in the afore-referred correspondence of the Deputy Secretary (A&T) followed by the impugned Notification are the acts tainted with *mala fide* and lacks reasonableness, therefore, are liable to be set-aside in the present proceeding.

9. The upshot of the above is that the impugned Notification dated 03.09.2010 for renaming the subject College is violative of the aforesaid Policy Guideline and since is based on a 'desire and wish' of the Minister concerned, therefore, it has no legal sanctity and is without jurisdiction, hence, is hereby set aside and the present Constitutional Petition is accepted. The name of the Government Boys Degree College Karoondi at District Khairpur is restored.

10. Foregoing are the reasons for the short order through which the present petition was allowed on 09.05.2018.

Sukkur,  
Dated: 21.6.2018

Riaz / P.S.\*