
(1999) 08 AHC CK 0020
In the Allahabad High Court
Case No : C.M.W.P. No. 27921 of 1999

Amil Rashid

APPELLANT

Vs

Nagar Panchayat, Ajuha and others

RESPONDENT

Date of Decision : 19-08-1999

Acts Referred:

Constitution of India, 1950 — Article 243W

United Provinces Municipalities Act, 1916 — Section 96

Uttar Pradesh Municipalities Act, 1916 — Section 296, 297, 297(1), 298, 301

Citation : (1999) 4 AWC 2935 : (1999) AWC 2935 : (1999) RD 574

Hon'ble Judges : Aloke Chakrabarti, J

Bench : Single Bench

Advocate : H.N. Singh, for the Appellant; Pradeep Kumar, Addl. Chief Standing Counsel, for the Respondent

Judgement

Aloke Chakrabarti, J.—The petitioner contends that being the highest bidder In the auction held for collection of Tahbazari within municipal area of Nagar Panchayat, Ajuha and having completed all formalities including deposit of one-fourth amount being the first Instalment and making several representations, formal grant is not being made and the petitioner is deprived of collection of Tahbazari. Petitioner also challenges the order dated 19.5.1999 passed by the District Magistrate on a contention that the District Magistrate has no power to intervene in the matter of such grant by the Municipal authorities.

2. As only question of law has been raised, learned standing counsel agreed to final disposal of the writ petition at this stage without filing a counter-affidavit.

3. Mr. H. N. Singh. learned counsel for the petitioner contended that the Nagar Panchayat authorities are required to function on their own and in the matter of collectors of Tahbazari after the auction is held and the petitioner is selected as the highest bidder and he completes requisite formalities, the Nagar Panchayat authorities are required to complete the grant and the District Magistrate has no power to Intervene at this stage directing stoppage of collection of Tahbazari on

the alleged ground of absence of approval by the District Magistrate as the District Magistrate has no power to grant approval in respect of such grant by the Nagar Panchayat authorities. Learned counsel for the petitioner referred to Section 96 of United Provinces Municipalities Act, 1916. as amended up-to-date and also the powers of the Municipalities as provided by the said Act and the provisions of law as contained in Article 243W of the Constitution of India.

4. In support of his contention, learned counsel for the petitioner referred to Sections 296, 297 and 298 of the said Act showing the extent of State control and the powers of intervention by the State at different stages. It has been contended relying on the said law that Section 296 empowers the State Government to make rules consistent with the said Act in respect of matters specified therein. It has been contended that the said rule making power does not include the power of Municipality for sanctioning strength as contained in Section 96 and execution of contracts as contained in Section 97 of the said Act.

5. Reference was made to Section 297 of the said Act dealing with power to make regulations. Subsection (1) of the said Section 297 empowers the Municipality to make regulations. The only power provided there for the State Government is to make regulations in regard to specified items which do not include the subjects governed by Sections 96 and 97.

6. Reference was also made to Section 298 providing for power of Municipality to make bylaws. The said section only empowers the State Government to require the Municipality to make bylaws consistent with the said Act and Rules framed thereunder, for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the Municipal area. In view of the aforesaid provisions of law. It has been contended by the learned counsel for the petitioner that the District Magistrate is not having any power to approve any particular grant relating to collection of Tahbazari.

7. In this connection, further law has relied on behalf of the petitioner as decided In the case of M/s. Ester Industries Ltd. v. U. P. State Electricity Board and others. JT (1996) 9 SC 288 and M/s. Real Food Products Ltd. and others, etc. etc., Vs. Andhra Pradesh State Electricity Board and others, .

8. The bylaws framed u/s 298 has been also referred to as annexed to the writ petition at Annexure-IB of the supplementary affidavit and relying on the same it has been contended that the said bylaws did not provide for any requirement of approval by the District Magistrate.

9. The learned counsel for the petitioner contended that any exercise of power by the Secretary of the State Government as has been done in the circular dated 11.8.1998 (Annexure-1A to the writ petition) having not been issued by or in the name of the Governor. Is not a proper exercise of the power by the State Government as required by Article 166 of the Constitution of India.

10. Mr. Pradeep Kumar. learned Additional Chief Standing Counsel, contended

that the State Government and the District Magistrate are having overall power to stop execution of any particular agreement if there are complaints. In support of such contention reference was made to Section 301 of the said Act contending that the State Government Is entitled to incorporate changes at the time of confirmation of the bylaws. Further reference was made to Section 34 of the said Act and in particular sub-section (1A) of the said section for contending the existence of power of the District Magistrate to interfere in such matters.

11. After considering the aforesaid contentions of the respective parties and the law relied on by them, I find that Section 301 of the said Act provides for confirmation by the State Government of the bylaws framed by the Municipal authorities. Undoubtedly, the State Government is empowered to incorporate changes in such bylaws at the time of confirmation. The present action admittedly is not at the stage of confirmation of bylaws by the State Government and, therefore, is not protected by Section 301.

12. With regard to power u/s 34 (1A), I find that the same empowers the District Magistrate to prohibit execution or further execution of a resolution or order only when in the opinion of the District Magistrate, such resolution or order Is of a nature to cause or tend to cause danger to human life, health or safety or a riot or affray. The said section has not provided for any other circumstance entitling the District Magistrate to exercise the said power. In the present case, the order at Annexure-8 admittedly does not indicate existence of any circumstance as provided in Subsection (1A) of Section 34 nor. any material has been disclosed enabling a conclusion of existence of such a circumstance.

13. In view of the aforesaid finding and in view of the law as decided in the cases referred to by the learned counsel for the petitioner. I am of the opinion that the District Magistrate is not entitled to exercise any powers as has been done by issuing the order at Annexure-8 to the writ petition. Undoubtedly, the District Magistrate can exercise such power provided circumstance specified in Section 34 (1A) exists. In the present impugned order, no such circumstance having been disclosed the same is liable to be quashed.

14. The writ petition is, therefore, allowed and the Impugned order dated 19.5.1999 at Annexure-8 to the writ petition is hereby quashed. The Municipal authorities are directed to take appropriate decision and pass appropriate order in respect of the claim of the petitioner for collection of Tahbazari upon completing all requisite formalities and to communicate such decision to the petitioner forthwith. There will be no order as to costs.