
(2004) 11 AHC CK 0270
In the Allahabad High Court
Case No : C.M.W.P. No. 40590 of 1997

Beche Lal	Vs	APPELLANT
Commissioner and Others		RESPONDENT

Date of Decision : 30-11-2004

Acts Referred:

Constitution of India, 1950 — Article 162, 243G
Uttar Pradesh Panchayat Raj Act, 1947 — Section 11, 95A, 96A
Uttar Pradesh Panchayat Raj Rules, 1947 — Rule 31, 32, 33, 35A

Citation : (2005) 2 AWC 1605 : (2005) 1 RD 155

Hon'ble Judges : V.C. Misra, J

Bench : Single Bench

Advocate : M.D. Misra, for the Appellant; R.K. Awasthi, S.C., for the Respondent

Final Decision : Allowed

Judgement

V.C. Misra, J.—Heard Shri M. D, Misra, learned counsel for the petitioner, and Shri R. K. Awasthi, learned standing counsel on behalf of respondents No. 1 and 2. No one has put in appearance on behalf of respondent No. 3 inspite of notice having been served upon it.

2. This writ petition has been filed challenging the order dated 5.11.1997 (Annexure-7 to the writ petition) passed by the respondent No. 1, Commissioner, Bareilly division, Bareilly in Appeal No. 71 of 1997. The opposite party No. 3 was granted a licence under the U. P. Scheduled Commodities Dealers (Licencing and Restriction of Hoarding) Order, 1989 (hereinafter referred to as the Control Order) for the purposes of distribution of sugar and kerosene on fair price shop to the members of Gaon Sabha, the allegation was made against respondent No. 3 for not distributing the sugar and kerosene properly to the residents of the Gaon Sabha and was selling the scheduled commodities in black market after charging excessive price for the same. Looking into the difficulties of the people due to the said allegations, a meeting of the Gaon Sabha was convened in accordance with the provisions of Section 11 of the U. P. Panchayat Raj Act,

1947. In the said meeting dated 24.6.1995 a resolution was passed that the extending licence of the licensee Bhograj may be cancelled and in his place a licence may be granted to Beche Lal petitioner. The concerned Khand Vikas Adhikari endorsed the said resolution and recommended the cancellation of the licence of Bhograj and granted a licence in favour of the petitioner. In pursuance of the aforesaid recommendation the licence of Bhograj-respondent. No. 3 and Ram Pal was cancelled vide order dated 7/8.9.1995 and granted licence to Beche Lal and Ram Murti.

3. Being aggrieved, Bhograj and Ram Pal filed a writ petition before this Court, which was dismissed with the observations that the petitioners could file an appeal before the Commissioner and in pursuance of the same, both the persons filed Appeal Nos. 11 and 12 of 1995. The Commissioner vide its judgment and order dated 13.2.1997 allowed both the appeals separately in part and remanded the case to the Sub-Divisional Officer, Bareilly, on the technical ground that the Sub Divisional Officer while cancelling the licence of the opposite party No. 3 failed to give any show cause notice to it. On the remand of the case, the Sub-Divisional Officer, Bareilly vide its order dated 8.4.1997 cancelled the licence of the opposite party No. 3 on the ground that resolution dated 24.6.1995 seeking cancellation of the licence of opposite party No. 3 and grant of licence to the petitioner did not bear the signature of the Secretary and the Observer and violated the provisions of the Government order No. F-3967/29 dated 3.7.1990. The petitioner filed an appeal before the Commissioner and obtained an interim stay order on 1.5.1997. In pursuance of the stay granted by the Commissioner, the petitioner continued lifting the quota of the goods. Ultimately, vide order dated 5.11.1997 the Commissioner dismissed the appeal of the petitioner merely on the technical ground contained in the Government order.

4. Being aggrieved, the petitioner has filed the present writ petition on the ground inter alia that the authorities had failed to consider the method and procedure for convening the meeting of the Gaon Sabha as laid down u/s 11 of the Act and Rules 31, 32, 33 and 35A of the Rules, as alleged, the Government order cannot supercede the statutory provision in the Act.

5. Learned counsel for the petitioner has submitted that the impugned order dated 5.11.1997 (Annexure-7 to the writ petition) has been passed on the basis of Government order No. F-3967/29 dated 3.7.1990 wherein the Gaon Sabha has been authorized to convene an open meeting and seek the opinion of the members of the village community and thereafter on its basis propose the name of the incumbent. As per Clauses 5 and 5 (1) of the Government order to ascertain as to whether the meeting was held in open or not, the Gram Panchayat Adhikari along with a high ranking officer as an observer shall remain present in the meeting, and it shall be the duty of the observer to make available the so passed proposal of the Gaon Sabha to the Sub-Divisional Officer. This procedure was admittedly not followed.

6. Learned counsel for the petitioner has submitted that in case the procedure

aforesaid as laid down in the Government order, is not complied with as such and the proposal has been passed in accordance with the provisions of Rules 31, 32, 33 and 35A of the Panchayat Raj Rules and Section 11 of the U. P. Panchayat Raj Act, 1947, then under the said circumstances the licence of the petitioner could not be cancelled.

7. Learned counsel for the respondents has submitted that the Government order is absolutely valid as per Article 162 of the Constitution of India and the same has not been challenged. The Government order framed exercising the powers under Article 162 read with Article 243G of the Constitution of India is regarding the public distribution system, which finds place at serial No. 28 in the 11th Schedule. Learned counsel for the respondents has further referred to Sections 95A and 96A of the U. P. Panchayat Raj Act wherein the State Government may delegate any of its powers under this Act to any officer or authority subordinate to it, under such condition as it may deem fit to impose. Learned counsel for the respondents in rebuttal has stressed that the authorities below have failed to consider the fact that the Government order has been issued to ensure the genuineness of the meeting and the resolution passed and as such contemplates endorsement of the higher authorities, in the present case. The block development authority has already endorsed the meeting and recommended the matter to the Sub-Divisional Officer.

8. I have looked into the record of the case and find that the meeting of the Gaon Sabha was convened in accordance with the provisions of Section 11 of the Panchayat Raj Act, the validity of which was duly endorsed by the concerned Khand Vikas Adhikari and the petitioner who had been granted the licence by the concerned authority was functioning till the appeal was dismissed by the Commissioner merely on technical ground without any basis. The Commissioner failed to apply its mind to the question that the licence of the petitioner could not be cancelled merely on the ground that the technical procedure laid down in the Government order had not been complied with though the Gaon Sabha had passed the proposal in accordance with the provisions of Rules 31, 32, 33 and 35A of the Rules read with Section 11 of the Act.

9. In view of the above said facts and circumstances of the case and observations made hereinabove, the impugned order dated 8.4.1997 (Annexure-4 to the writ petition) and the order of the Commissioner dated 5.11.1997 (Annexure-7 to the writ petition) are hereby quashed. The case is remanded back to the authority concerned to proceed and dispose of the same afresh in accordance with law under the terms and conditions laid down in Uttar Pradesh Panchayat Raj Act, 1947 and the Rules and Government order dated 3.7.1990, preferably within a period of two months from the date a certified copy of this order is placed before it.

10. The writ petition is allowed. No order as to costs.