
(1995) 08 AHC CK 0163
In the Allahabad High Court
Case No : C.M.W.P. No. 20887 of 1995

Bhagwan Deen Nishad and Another	APPELLANT
Vs	
Commissioner, Kanpur Division and Others	RESPONDENT

Date of Decision : 11-08-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Section 228, 238(1), 242, 242(5)

Citation : (1996) AWC 388 Supp

Hon'ble Judges : S. Rafat Alam, J; Palok Basu, J

Bench : Division Bench

Advocate : Arun Tandon, for the Appellant;

Final Decision : Allowed

Judgement

Palok Basu, J.—Sri Bhagwan Deen Nishad himself as Adhyakshya Kshetriya Kewat (Mallah) Vikas Samiti, village Daulatpur, Tahsil Bhuganipur, Kanpur Dehat along with Kshetriya Kewat (Mallah) Vikas Samiti, village Daulatpur, " Tahsil Bhuganipur, Kanpur Dehat are two Petitioners in this writ petition filed under Article 226 of the Constitution of India, whereby it has been prayed that the order dated 18.5.1995 passed by the District Magistrate, Kanpur Dehat should be quashed. Further prayer in this writ petition is that all the Respondents should be commanded not to interfere in the peaceful exercise of the fishing rights conferred upon the Petitioners over water of river Jamuna in the area concerned as was advertised.

2. Sri Arun Tandon, learned Counsel for the Petitioners has been heard at length in support of this petition, which has been opposed by Sri H. R., Mishra, learned standing counsel. When this writ petition was filed on 2.8.1995, a counter-affidavit was called upon. Sri H. R. Mishra has filed counter-affidavit sworn by Sri Ramji Lal Mishra, alleging himself as Deputy Collector, Kanpur Dehat, A rejoinder-affidavit has also been filed by the Petitioners.

3. The matter being of extreme urgency and also having involved one question of law and two allied questions of fact, the petition is being decided finally at the admission stage as prayed for by the learned Counsel for the parties.

4. The principal controversy in the instant writ petition is confined to the point whether once the Petitioner had bid at open auction held under the statutory authority and fishing rights were settled inasmuch as the Petitioners paid the entire auction amount, can by the impugned order, the said rights be divested?

5. Short facts are that river Jamuna divides two districts in the area covered by District Kanpur Dehat and Jalaun, Tahsil Bhugnipur falls on the Kanpur side whereas Tahsil Kalpi falls on Jalaun side. The Petitioners, as indicated above are of the Kanpur Dehat side. It is not in dispute that in the State of U.P. an enactment called as Uttar Pradesh Kshetra Panchayats and Zila Panchayats Adhiniyam, 1961 (in short Act) has been in vogue since the year 1961, in which substantial amendments have been incorporated from time to time, and provides for the establishment of Kshetra Samitis and Zila Parishad (now known as Kshetra Panchayats and Zila Panchayats respectively at the Block and District level). These bodies will be in addition to discharging the local Governmental functions at the block and district level, had the responsibility of preparing plans of development and executing them in their respective areas themselves. They can also be entrusted with the work of others departments of the government. The Act envisages co-relating of powers and functions of the Gaon Sabhas with Kshetra Panchayats and Zila Panchayats. In this connection, it may be mentioned that Section 228 of the Act literally carries forward the aforesaid objects and reasons. It provides as under:

228. Power of prescribed authority to suspend action under the Act.--

(1) The prescribed authority may, within the limits of its jurisdiction by order in writing, prohibit the execution or further execution of a resolution or order passed or made under this or any other enactment by a Zila Panchayat, or committee of a Zila Panchayat or Joint committee, or servant of a Zila Panchayat or a Joint committee, if in its opinion such resolution or order is patently Illegal or ultra vires or inconsistent with any order or direction given by the State Government under this Act or is of a nature to cause or tend to cause obstruction, annoyance or injury to the public or to any class or body of persons lawfully employed, or danger to human life, health or safety, or a riot or affray and may prohibit the doing or continuance by any person of any act in pursuance of or under cover of such resolution or order.

(2) Where an order is made under Sub-section (1), a copy thereof, with a statement of the reasons for making it, shall forthwith be forwarded by the prescribed authority to the State Government which may, after calling for an explanation from the Zila Panchayat considering the explanation, if any, made by it, rescind, modify or confirm the order.

(3) Where the execution or further execution of a resolution or order is

prohibited by an order made under Sub-section (1) and continuing in force, it shall be the duty of the Zila Panchayat or the committee of the Zila Panchayat or the joint committee, or any officer or servant of the Zila Panchayat, or of the committee of the Zila Panchayat or of the joint committee, if so required by the authority making the order under the said sub-section, to take any action which it would have been entitled to take, If the resolution or order had never been made or passed, and which is necessary for preventing any person from doing or continuing to do anything under cover of the resolution or order of which the further execution is prohibited.

6. Since much of the arguments depend upon the interpretation of Section 242 of the Act, it should also be noticed here for ready reference:

242. Confirmation, etc. of regulations and bye-laws made by the Zila Panchayat.--

(1) The power of a Zila Panchayat to make regulations under clauses (c) to (g) of Sub-section (1) of Section 238 shall be subject to the conditions of the regulations not taking effect until they have been confirmed by the State Government.

(2) The power of a Zila Panchayat to make bye-laws shall be subject to the conditions of the bye-laws being made after previous publication and of their not taking effect until they have been confirmed by the prescribed authority and published in the Gazette.

(3) The prescribed authority in confirming a bye-law, or the State Government in confirming a regulation, may make any change in its form that appears necessary.

(4) No alteration or rescission of a regulation made under clauses (c) to (q) of Sub-section (1) of Section 238 shall have effect unless and until it has been confirmed by the State Government and likewise no alteration or rescission of a bye-law by a Zila Panchayat shall have effect unless and until It has been confirmed by the prescribed authority.

(5) The State Government may, after previous publication of Its Intention, rescind any regulation or the prescribed authority, may similarly rescind any bye-law, which it has confirmed, and, thereupon, the regulation or bye-law shall cease to have effect.

7. To complete the legal aspects involved, it may be noted that a new set of bye-laws came to be passed by the Zila Panchayat in the year 1994. in view of the aforesaid provisions contained in Section 242 of the Act, the said bye-laws were forwarded to State Government for approval. After due consideration, the State Government accorded its approval and gazetted the said bye-laws in the Official Gazette dated 9.3.1994. It follows, therefore, that in view of the new bye-laws, the Zila Panchayat was empowered to auction fishing rights in river Jamuna falling within the area covered by borders of the said Zila Panchayat. Translated into English, clause 5 of the new set of bye-laws could read as under:

It is only after Zila Parishad settles right to fishing in an open auction that the concerned Thekedar shall obtain licence, to exercise fishing rights to the extent of indicated number. The power to determine number of licence-holders will vest in Upar Mukhya Adhikari, Zila Parishad Kanpur Dehat. in this connection, all the registered co-operative societies shall be preferred for settling the Theka in terms of the directions given by the State Government from time to time. (Translation by Court)

It was in the exercise of the aforesaid powers that Zila Panchayat, Kanpur Dehat held that public auction on 30.11.1994 in which the Petitioner No. 2 also participated and its bid being highest to the tune of Rs. 425,00 was accepted. Consequently, the Zila Panchayat, Kanpur Dehat entered into agreement with the Petitioner No. 2, which in turn deposited the entire amount and started functioning under the agreement thereby exercising its rights of fishing. During course of arguments, the court was Informed that the area covered could be only about one km. in length and in width, it will be half of the width of river Jamuna because the other side will fall within the jurisdiction of District Jalaun.

8. Incidentally, it may be mentioned that some other individuals and associates, which had bid but could not compete or for some reason were unable to participate filed two writ petitions in this Court. After hearing those Petitioners' counsel, both the writ petitions, viz., Writ Petition Nos. 41348 of 1994 and 40949 of 94 were dismissed summarily. It has been held by the Division Bench of this Court that the procedure adopted at the said auction was valid and that the settlement of rights of fishing with the Petitioners was held to be wholly in accordance with law.

9. The trouble has its beginning in the letter dated 18.5.1995 which as noted above, is sought to be challenged. It contained narration that the settlement of auction held by the Zila, Kanpur Dehat was not in accordance with law and consequently, the agreement with the Petitioner was also illegal. It was noted therein that Zila Parishad had gone beyond its jurisdiction in settling the rights over river Jamuna. It was pointed out that Commissioner, Kanpur Division has rescinded the aforesaid clause 5 in the bye-laws by order dated 21.5.1994. It was, therefore, opined in the said letter that the said agreement between Zila Parishad and the Petitioner should be deemed to have come to an end. It further states that since in the current year, the auction of river Jamuna was to be held only by district authorities of Jalaun, the action of Zila Panchayat was illegal. By this letter, it was further directed that the District Magistrate concerned should settle the fishing rights afresh.

10. It was contended by the learned Counsel for the Petitioner that there is no basis whatsoever for the aforesaid directions inasmuch as the Petitioner was already continuing with fishing rights ever since December, 1994. It was insisted upon by the learned Counsel for the Petitioner that formalities having been completed and the Petitioner having deposited his money, the threatened action in pursuance of the letter dated 18.5.1995 is not only ultra vires the provisions of

the Act, it also amounts to interfering with the legal and constitutional rights of the Petitioner. The learned standing counsel has, however, asserted that the State Government has superior rights and it was open to the State Government to amend any wrong or invalid action committed by any of its officials and in that view of the matter, the subsequent actions should be interpreted to have nullified the agreement between Zila Parishad and the Petitioner, and therefore, the directions contained in the letter dated 18.5.1995 should be permitted to be executed.

11. There is no doubt that Zila Parishad, now known as Zila Panchayat, has to act in accordance with the provisions contained in the Act. Therefore, when it passes bye-laws, it had to get it passed approved through the State Government. Relevant provisions contained in Section 242 of the Act have already been noted above. It is fantastic, if not reprehensible, to find that on the one hand, the State Government has approved the bye-laws and on the other, it wants to undo the contract and consequent actions under the bye-laws. It may appear very easy for the Respondents to blow hot and cold together and try to equate casually legality with the illegality, this Court, however, has to be on guard to protect the interest of the citizens and prefer the view under which the local-self Government administration is compelled to run through rule of law. While it is true that Government is empowered to cancel a bye-law but then it will not and cannot enforce it in a way so as to have retrospective effect. Sub-section (5) of Section 242 of the Act itself provides "thereupon" the regulation or bye-laws shall cease to have effect" (emphasis supplied). It follows that so long the bye-law is not rescinded, it shall have the force of law. Likewise any action done or taken under the bye-law should also continue until the period for which the said action is to operate is over. It may be noticed here that in the instant case, public auction was held for the period ending 31.3.1996. Under the circumstances, the rights conferred on the Petitioner cannot be interfered with until completion of the aforesaid period.

12. One further argument raised by Sri H. R. Misra, on behalf of the Respondents must be noticed. It was argued that since the State Government has ultimately rescinded the order, the Commissioner being delegatee of the State Government, can terminate the rights of the Petitioner, and therefore, the directions be not interfered with. If this argument is accepted, it is likely to work to the detriment of the citizens. An action in presenti cannot take away, the rights created under the contract with retrospective effect unless such an action is permissible under the law. There is no provision to the contrary than what has been noticed above. Thus, it has to be held that once the lawfully executed action of the Zila Panchayat settling the fishing rights with the Petitioner has come into play, it must continue until the period covered by the said agreement is exhausted. In other words, the Petitioner's right of fishing in the area covered under the agreement shall continue till 31st March, 1996.

13. It may be mentioned here that viewed from a little different angle, the

approval of the State Government accorded to the new set of bye-laws Indicates tacit approval of the public auction to be held by the Zila Panchayat, Kanpur Dehat. It is not in dispute that the state is the repository of the said power to settle the rights of fishing in Yamuna River. It could thus be conducted by the District Magistrate on behalf of the State of Uttar Pradesh. in fact, it is admitted that under some administrative instructions, in one year the auctions were conducted by authorities of District Kanpur Dehat and in the next year, by authorities of District Jalaun. Process of Public auction, therefore, had to be gone into and thus, to that extent, there is no illegality. The State should, therefore, be taken to be bound by the contract entered Into by the Zila Panchayat under the bye-laws which had the approval of the State Government. It will thus not be permissible for the State to denounce the legal rights of citizens by executive instructions in the absence of legislative empowerment to undo such rights retrospectively. For this added reason, the directions contained in the letter dated 18.5.95 cannot be sustained.

14. But before parting, it must be pointed out that the officials who were responsible for permitting the passing of new bye-law by Zila Panchayat, Kanpur Dehat, and those who permitted the approval of the State Government to sneak in appear to have been oblivious of the provisions of the relevant laws as also the earlier administrative directions being filed for the past several years. It is difficult to countenance such a callous attitude of the officers with such heavy administrative responsibilities fastened upon them. Their action indicates a voluntary inertia which may have been procured by extra legal tactics.

15. In view of the aforesaid discussions, the writ petition succeeds and is allowed. The letter dated 18.5.1995 in so far as it affects the Petitioner's agreement to carry on with fishing rights in the area covered by Zila Panchayat, Kanpur Dehat is quashed, and the Respondents are commanded not to interfere with those rights till 31.3.1996.

In the circumstances of the case, the parties are directed to bear their own costs.

A certified copy of this order may be given to the learned Counsel for the parties on payment of usual charges.

Further, the Registrar is directed to send a copy of this judgment to the Chief Secretary with a request to enquire and fix responsibility of the officers who are connected with this unwanted episode and deal with them as sternly as possible under the law.