

(1997) 07 AHC CK 0137
In the Allahabad High Court
Case No : Writ Petition No. 1288 of 1994

Gaon Sabha, Bhaunakpur, Rampur

APPELLANT

Vs

Chief Development Officer, Rampur and another

RESPONDENT

Date of Decision : 08-07-1997

Acts Referred:

Constitution of India, 1950 — Article 243, 40, 47

Citation : (1998) 1 AWC 140

Hon'ble Judges : V.P. Goel, J;Ravi S. Dhavan, J

Bench : Division Bench

Advocate : A.B.L. Gour, for the Appellant;

Final Decision : Allowed

Judgement

Ravi S. Dhavan, J.—The facts of this case reflects on what local Government ought to be and the fact that in the fiftieth year of independence the administration has yet to get attuned and oriented to the aspect that Government is by the people, of the people and for the people and not otherwise an administration by persons in power and officials in position, sans the people.

2. The issue reflected upon in this case is simple : There is a small village Bhaunakpur in tehsil Milak, district Rampur. The village has a primary school on plot No. 286. The plot belongs to the Gaon Sabha. The correct terminology would be "Gram Sabha". (Article 243(b) of the Constitution of India).

3. There is no issue on facts that the school is on the Gram Sabha land and that the school has been therefore a very long time. There is also no issue that the building of the school was dilapidated and on a decision taken by the village body, the Gram Sabha, it was decided by a resolution that the school building would be reconstructed. For this, the State administration sanctioned a sum of Rs. 90,000. The first installment of this grant, a sum of Rs. 30,000 had been received by the Gram Sabha and conveyed to the Principal of the primary school and the construction of the building had even begun. The construction of the

school building had reached the plinth stage. This position is accepted by the respondents, particularly the District Inspector of Schools, Primary Education, who in his reply, in context, says, "Kathan sweekar hat". Implying that the averments are accepted. When the petitioner states that one third of the building had been completed in reply, the respondent as above submits that no information has been made available to him.

4. No issue was raised when the Gram Sabha made a request that the dilapidated primary school building, otherwise in shambles, needs to be reconstructed. No issue was raised by the Department of Education when a sum of Rs. 90,000 was allocated for the reconstruction of the building nor any issue was raised by this Department when one third of the grant had been received by the Gram Sabha and the reconstruction of the primary school had been undertaken.

5. All of a sudden, the administration of the school was told that the construction of the building must now cease and the school shifted to another area. The reason : there is a liquor shop next to the school. This was putting the cart before the horse. An issue was manufactured that the primary school must be closed from its present site, because of the liquor shop, and taken elsewhere. The village Gram Sabha is now being embroiled in a controversy, as if to solve the riddle, which came first the chicken or the egg. A vested interest in the local administration appears to protect the liquor shop whose managers have arranged to establish it next to the primary school.

6. Audacity apart and illegality notwithstanding, the reply of the State respondents even submits that the Chief Development Officer, Rampur has directed the District Inspector of Schools, Primary Education, to shift the school to the village Khalihan. Not only this, as if to rub the nose of each Gram Sabha member to the ground, in the style of oriental affrontory, these officials between them have also decided to by-pass the village Gram Sabha and wrest the charge of the construction of the school building from the Gaon Sabha, and instead, give it to the Gram Panchayat Adhikari (Village Panchayat Officer) and the Head Master of the School.

7. This approach of the bureaucrats of district administration at Rampur only shows the scant respect and the lack of understanding they have in the concept of local Government, the law and the Constitution of India.

8. A village Khalihan in India is as sacrosanct as the village green in rural England. Khalihan is people's land which is common ground of the village to temporarily store the freshly reaped harvest and to winnow the grain. The conforming use of a Khalihan is so sacrosanct that even the Gram Sabha cannot change it. Then, in this case, an arrogance of power had been displayed to its limit when in the counter-affidavit there has been no humility in accepting and recognising a Gram Sabha whose identity is preserved under the Constitution of India in the new added Chapter IX, THE PANCHAYATS. The district administration

appears to be ignorant that local Government at the village is now a basic feature of the Constitution. By no stretch of imagination ; the district administration could short-circuit the Gram Sabha and assert its authority by shifting a village school next to the Panchayat house and put it on the village Khalihan merely because the liquor shop had been surreptitiously installed next to a school.

9. In this case, the issue is not so much on what is more important--the liquor shop or the school. The district administration apparently finds the liquor shop more important. The district administration ought to have a little respect for the Constitution of India, particularly Articles 40 and 47 under Part IV, the chapter on the DIRECTIVE PRINCIPLES OF STATE POLICY. Even if the newly added chapter on the Panchayats had not been inserted. Article 40, in no uncertain term, states, in effect, that it will be the obligation of the State to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-Government. Thus came the insertion as an amendment to the Constitution of India on Panchayats and giving the Gram Sabha of the village paramouncy, within the confines of law. to function as a nucleus of self-Government in the village. Article 47 discourages intoxicating drinks and drugs which are injurious to health. But, in the case before the Court, the school as a first step of education for the children which has existed for a long time and had received a grant for reconstruction, was pushed and cast away to make way for a liquor shop. This approach of the State respondents is not only disrespect to local Government, the Gram Sabha of the village Bhaunakpur, particularly, but shows arrogance of power shorn of understanding of the law and the Constitution of India.

10. Least the approach of the district administration at Rampur may become a precedent in administration in the other districts of the State, the Court needs to remind those in charge of power and administration that there are certain aspects in the fabric of village life which are exclusive to the domain of the Gram Sabha and are not to be interfered by the district administration or the State capital. These are matters, like a village school, a village road, a village tank, even questions like whether a village ought to have a liquor shop or not. These are matters which are the basic feature of the Constitution to establish self-governing villages.

11. A licence to run a liquor shop, at best, operates only for a year. Thus, the same licence to run a liquor shop in village Bhaunakpur could not be beyond a year. No body in the administration even bothered to find out whether the premises where the liquor shop has been housed, were rented and, if so, who was the landlord. It cannot be assumed that the person who is running the liquor shop by a licence would continue to hold it even beyond the period of the licence. In this ugly display of power by the district administration, the possibility cannot be ruled out that the grants for the purpose of reconstructing the village school, and shifting it to the village Khalihan may have lapsed. Who will be answerable

for this? Who will be responsible for the construction which could not take place and was left at the plinth level and of the rising cost in completing the school building now? The responsibility of the inflation which had overshoot the grant and the need now for additional grant for the unconstructed school? All this has happened because the liquor shop happened to be more important to the Chief Development Officer, Rampur, who will not file his affidavit in this writ petition and the Primary Education Officer (Basic Shiksha Adhikari) who so readily agreed to dismantle the old primary school of the village and have it installed on the village common land (Khalihan).

12. The two respondents, the Chief Development Officer and the Primary Education Officer, ran haywire beyond their powers and further showed disrespect to the Gram Sabha which is the local Government and now part of the basic feature of the Constitution.

13. The Pradhan of the village rightly brought this cause by a writ petition, before the High Court. The direction given by the Primary Education Officer. (Basic Shiksha Adhikari), Rampur by his communication dated 20 December. 1993 (Annexure "4" to the writ petition) suffers from a manifest error apparent on the face of the record, disrespect to local Government of the Gram Sabha and the Constitution of India. Thus, by a writ of certiorari this communication of 20 December. 1993 is quashed. The respondents are directed by a writ of mandamus not to interfere in the reconstruction of the primary school at its original and old site at Plot No. 286, Village Bhaunakpur, tehsil Milak, district Rampur.

14. The writ petition succeeds. The Court considers it appropriate, regard being had to the circumstances of the case and the misplaced power displayed by the respondents between the Chief Development Officer, Rampur and the Primary Education Officer (Basic Shiksha Adhikari). Rampur, respondent Nos. 1 and 2 respectively, that they shall pay costs quantified at Rs. 5,000 to be credited to the account of the Gram Sabha of the village Bhaunakpur which costs will be utilised in the reconstruction of the Primary School Building.

15. Petition is allowed with costs as above.