

(1964) 03 AHC CK 0015

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 5051 of 1963

Gauri Shanker Prasad Rai

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 09-03-1964

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Kshetra Samiti and Zilla Parishad Adhiniyam, 1961 — Section 37

Citation : AIR 1965 All 436

Hon'ble Judges : D.D. Seth, J

Bench : Single Bench

Advocate : S.C. Khare and Rajendra Prasad Rai, for the Appellant; L.N. Pandey, B.L. Gupta and Lakshmi Saran, J.S.C., for the Respondent

Final Decision : Allowed

Judgement

D.D. Seth, J.—This is a petition under Article 226 of the Constitution and arises out of the following circumstances. .

2. The petitioner is the Pradhan of Gaon Sabha Pandah, District Ballia, and is member of the Kshettra Samiti Pandah. u/s 5 of the U. P. Kshettra Samiti and Zila Parishads Adhiniyam 1961 (hereinafter called the Adhiniyam) the State Government, "by a notification in the Gazette, established a Kshettra Samiti for Pandah Khand in July 1962. The composition of the Kshettra Samiti has been completed and the opposite party No. 5 to the petition has been elected as Pramukn of the Samiti.

3. After the establishment of the Kshettra Samiti for Pandah Khand the Head Office of the Samiti, according to the petitioner, has been located in village Pandah and all the meetings of the Samiti have been held there. The petitioner contends that out of the villages comprised in the Khand, Pandah being situated on a pucca road, is most conveniently approachable from all the villages within the Khand.

4. On 30th August, 1962 the Kshettra Samiti, by a resolution, appointed a sub-committee in order to select a suitable site for the establishment of the Office of the Samiti. The petitioner was one of the five members of the sub-committee which could not function as two of its members resigned after some time. Their resignations were accepted by the Kshettra Samiti on 1st November, 1962 and it decided to finalise the selection of the site for its central office itself and, therefore passed a resolution the same day to the effect that its central office will be situated in village Poor and, therefore, they made a representation in that regard to the State Government. By a letter dated 4th December, 1963 the Assistant Development Commissioner directed the District Planning Officer of Ballia that the matter of the selection of the site of the office of the Samiti be placed at a meeting of the Kshettra Samiti after giving previous notice to the members and further directed that the resolution should be taken up in the agenda at the first place. The Kshettra Samiti was accordingly about to convene a meeting of its members but a subsequent direction was received on telephone by the District Planning Officer in January, 1963 from the Development Commissioner directing that the proposed meeting of the Samiti should not be held and its former decision should not be reconsidered. On 24th October, 1963 the Development Commissioner of this State wrote to the District Planning Officer to the effect that the State Government had decided that the headquarters of the block will continue to be located at Poor as had been previously decided by an order dated 28th May, 1962. A copy of this letter was sent to the Block Development Officer, Pandah for information and requiring him to shift the office of the Samiti immediately to Poor, after contacting the Pradhan of the Gaon Sabha Poor. It is alleged in the petition that the Office of the Samiti, after its establishment, has always been located at Pandah and that there was no office at village Poor at any time, hence the question of the continuation of the Office at Poor did not arise. It may be mentioned here that before the establishment of the Kshettra Samiti under the provisions of the Adhiniyam the State Government had, by administrative orders, established Block Development Committees and the office of one of such committees was situated at Pandah. The Committee had passed a resolution that its office should be shifted from Pandah to Poor and on the basis of that resolution the State Government had issued the letter dated 28th May, 1962, a reference of which has been made in the letter dated 24th October, 1963 of the Development Commissioner.

5. The petition mentions that the office of the Block Development Committee was not shifted from Pandah to Poor and that the site selected for the office at Poor was subsequently inspected by the officers of the Government and was rejected.

6. Aggrieved by the order of the Development Commissioner dated 24th October, 1963 the petitioner has come to this Court and has prayed that certiorari be issued and that order be quashed. It has also been prayed that the opposite parties be directed not to shift the office of the Kshettra Samiti, Pandah from Pandah to Poor.

7. Counter affidavits have been filed by the Pradhan of the Gaon Sabha Poor, by the District Planning Officer, Ballia and the Deputy Secretary in the Planning Department of the State Government on behalf of the State. The petitioner has filed his rejoinder affidavits.

8. I have heard Sri S. C. Khare, learned counsel for the petitioner, Sri Brij Lal Gupta, learned counsel for opposite party No, 6, viz., Pradhan of the Gaon Sabha Poor and Sri Lakshmi Saran, learned Junior Standing Counsel appearing for the State.

9. The learned counsel for the petitioner submitted that the right to decide where the office of the Kshettra Samiti shall be established vests in the corporation of the Kshettra Samiti and the State Government has, therefore, no jurisdiction to direct that the Office of the Samiti shall be situated at a particular place. He, therefore, urged that the Kshettra Samiti, Pandah has already passed a resolution to the effect that the Central Office of the Samiti shall be situated at Pandah and the State Government cannot interfere with that decision.

10. Sri Brij Lal Gupta and Sri Lakshmi Saran on the other hand, contended that the State Government has the legal authority to decide where the office of a Kshettra Samiti shall be situated. Sri Brij Lal Gupta urged that the functions which are discharged by Kshettra Samiti are the functions of the Government which the Government has delegated to them and the Government, being the fountain head of all such functions, can always issue directions to the Samiti in respect of all matters including the location of their central office. According to Sri Gupta the Kshettra Samiti are only the instruments of the Government which can always supervise the actions of the Samiti's and can issue directions to it to function in a particular manner and at a particular place. In this connection Sri Gupta submitted that since the State Government has to bear the expenses of erecting the building for the Central Office of the Samiti it can give directions where that office will be located.

It was further urged by Sri Brij Lal Gupta that there has been no manifest injustice in this case and there is no error apparent on the face of the record and as such the petition is liable to be dismissed. According to the learned counsel the petition is also liable to be dismissed as it contains misstatements and suppression of fact inasmuch as it has not been mentioned that the Pandah block consists of 55 Gaon Sabhas within a radius of about 10 miles and the village Poor which has the biggest population is situated in the centre of the block and also that the village Pandah is situated at a distance of about two miles from the pucca road and is in the extreme north eastern corner of the block.

11. It was also urged that village Poor being in the centre of the block was more suitably situated for the location of the Central office of the Samiti than Pandah and that out of 55 Gaon Sabhas 32 had supported the decision of the Block Development Committee to have the office at Poor.

12. The object of the Adhinyam is the furtherance of the principle of democratic

decentralisation of Governmental functions and for ensuring proper municipal government in rural areas.

13. Section 5 of the Adhiniyam deals with establishment and incorporation of Kshettra Samiti and runs as follows :--

"(1) The State Government shall, by notification in the Gazette and with effect from a date to be specified in the notification, establish a Kshettra Samiti for each khand bearing the name of the Khand for which it is established.

(2) Every Kshettra Samiti shall be a body corporate having perpetual succession and common seal . and, subject to any restriction or qualification imposed by any other enactment, will have the power to acquire, hold and dispose of property and-to enter into contracts and it may, by its corporate name, sue and be sued."

14. Section 31 of the Adhiniyam deals with the exercise of powers and performance of functions under the Act and provides as follows :--

"(1) Every Kshettra Samiti and Zila Parishad shall exercise the powers and perform the functions conferred and entrusted or delegated to it by or under this Act.

(2) Notwithstanding anything contained in this or any other law for the time being in force, the State Government may at any time entrust to any Kshettra Samiti or all Kshettra Samitis or to any Zila Parishad or all Zila Parishads any of the functions for the time being performed by any of its departments below or at the district level and to withdraw the function so entrusted."

15. Section 32 deals with general powers and functions of the Kshettra Samitis and provides that every Kshettra Samiti shall, within the Khand exercise powers and perform the functions specified in Sen. I.

16. Schedule I of the Adhiniyam enumerates the powers and functions of the Kshettra Samitis which have been conferred, entrusted and delegated to them by the Government. Article 1 (10) of Schedule I mentions

"public works--construction, maintenance and repairs of roads, bridges, buildings and planting and preservation of trees."

17. Section 37 says: --

"Nothing in this Act shall--

(1) confer on any Kshettra Samiti or Zila Parishad any right in respect of any work or institution carried out and maintained by any agency not under the control of such Kshettra Samiti or Zila Parishad; or

(2) entitle a Kshettra Samiti or Zila Parishad to exercise within the limits of any Nagar Mahapalika, municipality, notified area, cantonment or town area any authority which is vested in the Nagar Mahapalika, municipal board, notified area committee, cantonment board, district magistrate, any other magistrate or town

area committee, as the case may be provided that the Kshettra Samiti or Zila Parishad may nevertheless:--

(a) have its office within the aforesaid limits,

(b) construct, maintain and control within the aforesaid limits any school, library, hospital, dispensary, poor house, asylum, orphanage, inspection house or other building or institution which is not maintained exclusively for the benefit of persons re-siding within the aforesaid limits, and

(c) do anything within the aforesaid limits the doing of which is necessary for the efficient discharge of its functions under this Act."

(17a) The section quoted above gives an indication that it is for the Samiti to decide about the location of its Central Office.

18. Section 79 of the Adhiniyam deals with the exercise of power of Kshettra Samitis and says :

"(I) The powers, duties and functions specified in the Second column of Schedule VI, with the exception of those against which an entry is shown in the third column of that schedule may be exercised and shall be performed by a Kshettra Samiti by a resolution passed at a meeting and not otherwise"

19. According to Sri Brij Lal Gupta, there is no mention of the power to decide about the location of its office by Kshettra Samiti in the Second column of Schedule VI, He, therefore, submits that the Adhiniyam does not envisage that the matter is to be decided by Kshettra Samiti. I am afraid I cannot agree with this proposition. A statutory corporation can do anything which it has been specifically authorised to do or which is ancillary or incidental to it. A corporation can only do corporate acts at a corporate meeting, unless a special method is authorised by its constitution. A corporation is a distinct entity and is governed by its own rules. The statutory duties of a corporation cannot be interfered with by the State Government. The role of the State Government is only advisory.

(19a) Sections 225 to 236 of the Adhiniyam give details when supervision can be exercised by the State Government. If the State Government had all the powers of supervision there was no necessity for the Legislature to confer the powers mentioned specifically in Sections 225 to 236 on it. Powers of supervision of the Executive Government are always defined in Statutes regarding local self-Government. A statutory corporation can do those things which it has been authorised to do by the Statute directly or by implication. The power to decide about the location of its office by a Kshettra Samiti can reasonably be inferred from the provisions of the Adhiniyam. It is a power which may fairly be regarded as incidental to or consequential upon those things which the Legislature has authorised the corporation to do.

"Where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its

execution." (See the Interpretation of Statutes by Sir Peter Benson Maxwell, Ninth Edition p. 380).

In my view, the Kshettra Samiti though completely subordinate to the State Government, are independent of the executive in appointment and to some extent, in their decisions and can exercise an independent control over their affairs. Powers not specifically forbidden by the Statute to a corporation can be exercised by them. It must be held that the Kshettra Samiti being corporations, can take decisions regarding the management of details while the determination of principles and general supervision are left to the State Government. Kyd in "A Treatise on the Law of Corporations" defines corporation as follows:--

"A corporation or a body politic or body incorporate is a collection of many individuals united into one body under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual, particularly of taking and granting, property, of contracting obligations, and of suing and being sued, of enjoying privileges and immunities in common, and of exercising a variety of political rights more or less extensive, according to the design of its institution or of the powers conferred upon it, either at the time of its creation, or at any subsequent period of its existence."

20. It is, therefore, obvious

"that the corporation is a creature of some superior body, and can be destroyed as well as developed by the body which made it, and, secondly that its privileges are defined by some instrument, and except for the doctrine of reasonable implication, defined restrictively."

When powers, privileges or property are granted by Statute, everything indispensable to their exercise or enjoyment is impliedly granted also. The right to decide where the location of its central office shall be must, by implication, be held to vest in the Kshettra Samiti. Kshettra Samiti in the instant case, having pass-ed a resolution that its office shall be situated at Pandah, has taken a decision in that respect and in my view it is not open to the State Government to direct that its office shall be situated not at Pandah but at Poor. The order of the State Government dated 24th October, 1963, is therefore, clearly illegal and without jurisdiction.

21. The argument of Sri Brij Lal Gupta that since Poor is situated in the centre of the block it will be more convenient to have the central office of the Samiti there, also, does not appeal to me. The question of convenience is immaterial and irrelevant. Moreover the Kshettra Samiti must have considered this question before passing the resolution for having the office located at Pandah. It is significant that the State Government established the Kshettra Samiti for Pandah Khand i.e., it associated the name of Pandah with the Kshettra Samiti. If Pandah was not of any significance it was not necessary for the State Government to associate its name with the Kshettra Samiti. The submissions of Sri Brij Lal

Gupta that there has been no manifest injustice in this case and that there is no error apparent on the face of the record and, therefore, the petition is liable to be dismissed have also no merit. If the order passed by the Development Commissioner is illegal and without jurisdiction it follows that it has resulted in manifest injustice and an error apparent on the face of the record will be deemed to be in the order,

22. Sri Brij Lal Gupta contended that wrong facts have been mentioned in the petition and that some facts have been suppressed and therefore, the petition is liable to be dismissed. The mis-statements of fact pointed out are that it has been said in Para. 5 of the petition that Pandah is a village situated on a Pucca road while in the counter affidavits the fact has been denied and it had been stated that it is not on a pucca road and further that the petition does not mention that the Pandah block consists of 55 Gaon Sabhas out of which 32 Gaon Sabhas had supported the resolution of the Block Development Committee to shift the office to Poor. These mis-statements are very minor. Moreover there are some mis-statements in the counter-affidavit filed on behalf of the opposite parties also, e. g., it has been mentioned in paragraph 16 of the counter-affidavit filed by the Pradhan of the Gaon Sabha, Poor, that Pandah is situated at a distance of about two miles from the pucca road while in paragraph 7 of the counter-affidavit filed by the District Planning Officer it is mentioned that Pandah is in fact situated at a distance of about 1/2 a mile from the pucca road. There is, therefore, mis-statements of fact in the counter-affidavit also. The petition, therefore, cannot be thrown on this ground.

23. For the above reasons I am of the opinion that this petition must succeed. It is accordingly allowed with costs and the order of the Development Commissioner dated 24th October, 1963 is quashed. The opposite parties are directed not to shift the office of Kshettra Samiti, Pandah from that village to village Popr on the basis of the order dated 24th October, 1963.