

(1976) 11 AHC CK 0036

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 10015 of 1975

Har Pal Singh

APPELLANT

Vs

The State of U.P. and Another

RESPONDENT

Date of Decision : 15-11-1976

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 34(1B), 96

Citation : AIR 1977 All 302

Hon'ble Judges : C.S.P. Singh, J;B.N. Sapru, J

Bench : Division Bench

Advocate : A.S. Kapoor and S.C. Khare, for the Appellant; L.P. Naithani, S.D. Agrawal and H.S. Nigam, for the Respondent

Final Decision : Allowed

Judgement

1. The Municipal Board. Musscorie has a ropeway connecting the Mall Road to Gunhill. On 24-3-1972, tenders were invited by the Board for running the ropeway. The petitioner's tender was the highest. The tender was accepted and thereafter on 14-6-1972, an agreement was entered into between the petitioner and the Board for running the ropeways for three years with effect from 15-6-72 to 14-6-1975. Amongst the various conditions of the agreement, one of the conditions stipulated was that the ropeways were to be given to the petitioner in a running condition and thereafter the contractor would be responsible for the maintenance and upkeep of the ropeways. The ropeway was handed over to the petitioner on 19-6-1972. It thereafter transpires that the petitioner informed the Board that the ropeway was not in a fit condition and as such the royalty fixed under the agreement should be reduced. This the petitioner did by his letter dated 13-11-1972. On 4-12-1973, the President of the Municipal Board wrote a letter to the petitioner saying that the State had directed that ropeway be completely stopped from operation. On 27-12-1973, the petitioner informed the Board that an amount of Rs. 60,000 will be required for repairs of the ropeway and in case the Board was not prepared to spend the same, the lease in favour of

the petitioner may further be extended by five years and in that event the petitioner would get it repaired at his own costs. On 28-12-1973, a meeting of the Board took place, and it was resolved that as the Board did not have sufficient funds, it was not in a position to repair the ropeways. It further resolved that the petitioner may carry out the repair of the ropeways and the lease be extended for a period of five years from 1-1-1974. This resolution was later on confirmed by the Board on 8-1-1974. Subsequently a registered agreement was entered into between the petitioner and the Board on 1-1-1974 (sic). On 27-8-1975, the State Govt. purporting to act in exercise of powers conferred on it u/s 34 (I-B) of the U. P. Municipalities Act (hereinafter referred to as the Act) cancelled the resolutions of the Board dated 8-12-1973 and 8-1-1974 by which it had decided to extend the lease of the petitioner for a period of five years. The petitioner has challenged this order of the State Government.

2. Counsel for the petitioner has contended that inasmuch as the resolution of the Board had already been executed by a subsequent contract having been entered into between the petitioner and the Board, the State Government had no jurisdiction, in exercise of powers conferred on it u/s 34 (I-B) of the Act to cancel the resolution. Section 34 (I-B) of the Act may be quoted at this stage:--

"34. Powers of the State Government or the Prescribed Authority or the District Magistrate to prohibit execution of or further execution of resolution or order of Board-

"(I-B). The State Government may, of its own motion or on report or complaint received by order prohibit the execution or further execution of a resolution or order passed or made under this or any other enactment by a Board or a Committee of a Board or a joint committee or any officer or servant of a Board or of a joint committee, if in its opinion such resolution or order is prejudicial to the public interest, or has been passed or made in abuse of powers or in flagrant breach of any provision of any law for the time being in force, and may prohibit the doing or continuance by any person of any act in pursuance of or under cover of such resolution or order."

This section came up for consideration before the Supreme Court in the case of Municipal Board, Kannauj Vs. The State of Uttar Pradesh and Others, . In that case, the Municipal Board, Kannauj had dismissed 74 sweepers. Subsequently, the State Government in the purported exercise of its powers u/s 34 (I-B) of the Act cancelled the resolution dispensing with the service of the sweepers. It was held by the Supreme Court that Section 34 (I-B) of the Act did not confer power on the State Government to cancel a resolution which did not require any further execution. They approved of the decision of this Court in the case of Shujaat Ullah Khan v. State of U. p. 1966 All LJ 499. That case related to a resolution passed by the Board exonerating the Executive Officer of the Board, from certain charges and it was held that Section 34 (I-B) of the Act did not authorise the State Government to cancel off rescind such a resolution, as the resolution became effective as soon as it was passed and executed. It is clear from these

authorities that the State Government can only pass an order in reaped of a resolution or an order passed by the Board which requires execution or further execution, and not where the resolution or order passed by the Board does not require any further act to be done in its pursuance. It is also clear that it cannot apply to a case where the resolution or order passed by the Board has already been carried into effect. In our view, the section does not authorise the State Government to undo an act which has already been completed in pursuance of a resolution. In the present case after the resolution of the Board was passed in consonance with the provisions of Sections 96, 97 and 98 of the Act, a registered agreement was entered into between the parties. This was so because contracts have to be sanctioned by a resolution and thereafter the Board and the contracting parties have to enter into an agreement which is then registered. After the resolution sanctioning lease of the petitioner for a further period of five years was passed the only act that had to be done in execution of that resolution was to enter into an agreement with the petitioner in accordance with Sections 97 and 98 of the Act. That agreement was entered into much before the State Government passed the impugned order. Thus, when the order came to be passed no further act was required to be done in pursuance to the resolution. The rights of the parties after agreement had been reached came to be governed by the agreement and not by the resolution as has been contended for by the Standing Counsel. A perusal of Section 96 of the Act shows that the legislature has drawn a distinction between a resolution and a contract, for it postulates that before a contract is entered into by the Board it must be preceded by a resolution. Section 34 (I-B) empowers the State Government to cancel a resolution and we cannot read into it a power to cancel a contract entered into by the Board and a third party, in accordance with the provisions of Sections 96, 97 and 98 of the Act.

3. The impugned order passed by the State Government dated 27-8-1975 cannot as such be sustained and is accordingly quashed. The petition is accordingly allowed and the impugned order passed by the State Government dated 27-8-1975 is quashed. The petitioner is entitled to his costs. The stay order is discharged.