
(1974) 05 AHC CK 0016

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 2867 of 1972

Jagat Dhari and Another

APPELLANT

Vs

Zila Parishad, Pratapgarh and Others

RESPONDENT

Date of Decision : 06-05-1974

Acts Referred:

Constitution of India, 1950 — Article 19, 19(6)
Uttar Pradesh Kshetra Samiti and Zilla Parishad Adhiniyam, 1961 — Section 239, 239(2)

Citation : AIR 1975 All 135

Hon'ble Judges : H.N. Seth, J

Bench : Single Bench

Advocate : Maqbool Ahmad, for the Appellant; Standing Counsel, T.P. Asthana and G.D. Srivastava, for the Respondent

Final Decision : Allowed

Judgement

H.N. Seth, J.—By this petition under Article 226 of the Constitution, the petitioners Jagatdhari and Bisale, residents of rural areas lying within the jurisdiction of Zila Parishad Pratabgarh, seek to challenge the validity of certain bye-laws framed by the Zila Parishad, in purported exercise of its powers u/s 239 (2) E (a) (i), (ii) of the U. P. Kshetra Samiti and Zila Parishad Act and published in the U. P. Gazette dated 13-11-1971.

2. The two petitioners are Chamars by caste. They claim that since time immemorial they and their ancestors have been carrying on the business in bones which is the only source of their livelihood. According to them, if any animal died in a rural area, information was sent to one of the Chamars, like the two petitioners who took the dead body of the animal free of cost. The Chamar concerned disposed of the dead body after skinning it and taking out its bones and horns which they stored at places far away from the village habitation. In due course, the bones and hides so collected were sold to various dealers. Previously the Zila Parishad Pratabgarh granted licence to every one who carried

on this type of work on payment of Rs. 5 as licence fee. However, by the notification published in the U. P. Gazette dated 13-11-1971, the Zila Parishad amended its bye-laws. The new bye-laws provide that the right to collect bones and hides etc. in rural areas shall be auctioned and the highest bidder alone, to the exclusion of all others, will have the right to collect bones, hides etc.

3. Learned counsel seeks to challenge the validity of the aforesaid bye-laws inter alia, on the following grounds :

(1) Various activities mentioned in the bye-laws cannot be regulated by the Zila Parishad u/s 239 of the U P. Kshetra Samiti and Zila Parishad Act.

(2) These bye-laws ,are invalid as they have been framed without following the procedure for the purpose as laid down in U. P. Kshetra Samiti and Zila Parishad Act and

(3) The impugned bye-laws enable the Zila Parishad to create monopoly in favour of the highest bidder which under the law it cannot do.

4. Relevant portion of Section 239 of the Kshetra Samiti and Zila Parishad Act runs thus:--

"(1) Parishad may, and where required by the State Government shall, make bye-laws for its own purpose and for the purpose of the Kshetra Samiti applicable to the whole or any part of the rural area of the District consistent with this Act, and in respect of matters required by this Act to be governed by the bye-laws and for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the rural area of the district and for the furtherance of the administration of this Act in the Khand and the district.

(2) In particular and without prejudice to the generality of the powers conferred by Sub-section (1) the Parishad may, in the exercise of the said power, make any bye-laws described in the list below

A

B

C

D

E--Offensive trades-

"(a) Except where and so far as is inconsistent with anything contained in the Petroleum Act, 1934, or in rules made thereunder, prohibiting the use of any place, in default of a licence granted by the Parishad or otherwise than in accordance with the conditions of licence so granted, as a factory or other places of business-

(i) for boiling and storing offal, blood, bones, guts or rags,

(ii) for the manufacture of leather or leather goods

.....
..... For any other purpose if such use is likely to cause a public nuisance or involve the risk of fire
.....

....."

5. It is thus clear that Section 239 empowers the Zila Parishad to frame bye-laws for the purposes of storing of offal and bones. It also empowers the Zila Parishad to frame bye-laws for any other purpose if such use is likely to cause public nuisance. The submission of the learned counsel for the petitioner is that this section merely empowers the Zila Parishad to frame bye-laws for storing offal, blood, bones, guts or rags. The impugned bye-laws regulate not only the storing of bones but also that of hides and horns. Horns and hides are neither bones nor offal, blood, guts or rags. He contends that in these circumstances the Zila Parishad could not regulate the work of storing of hides and bones, and to auction the same. This argument overlooks Sub-clause (x) reproduced above, which empowers the Zila Parishad to frame bye-laws for any other purpose if such use is likely to cause public nuisance. It cannot be disputed that unrestricted use of places for storing hides, bones and horns of dead animals is likely to cause public nuisance. In the circumstances even the work of storing of hides and horns could be regulated by framing of bye-laws u/s 239. Learned counsel for the petitioner urged that the Zila Parishad had specifically framed these bye-Laws in exercise of its power under clauses (i) and (ii) of Sub-clause (a) under the head E of Sub-section (2) of Section 239. It did not purport to derive its authority from Sub-clause (x). In the circumstances the bye-law cannot be justified in the purported exercise of power under Sub-clause (x). I am unable to accept this submission. A bye-law framed by a competent authority cannot be struck down merely because the source of power under which it had been framed has been misquoted. Even if the notification does not refer to Sub-clause (x), but if the Zila Parishad had the right to frame the bye-law under that Sub-clause the notification would not in my opinion be invalid on that account.

6. The impugned bye-laws have been framed by the Zila Parishad Pratabgarh, in exercise of the powers conferred on it by Section 239 (2) (a) (i), (ii) of the Kshetra Samiti and Zila Parishad Act, with a view to regulate the following activities:--

- (1) disposal of dead bodies of animals dying in rural areas within its jurisdiction.
- (2) Skinning the dead bodies.
- (3) Curing and dyeing of hides.
- (4) manufacture of leather goods and
- (5) storing of hides, bones and horns.

A perusal of the petition indicates that the claim of the petitioner is that they

carry on the work of collecting bones, hides and horns etc., in rural areas lying within the jurisdiction of Zila Parishad and it is this activity of theirs which, because of the impugned bye-laws, is being illegally interfered with. The petition does not indicate that the two petitioners are aggrieved in so far as the bye-laws purport to regulate other activities mentioned therein. Although during the hearing of the writ petition, learned counsel for the petitioners tried to urge that regulation of all the activities mentioned in the bye-laws was illegal, but in view of the facts stated in the writ petition I would limit the consideration of the arguments advanced by the learned counsel only to the question whether the restrictions imposed by the bye-laws on the activity of storing of hides, bones and horns is valid or not.

7. Learned counsel for the petitioner next contended that Section 239 merely empowers the Zila Parishad to frame bye-laws for maintaining the health, safety and convenience of inhabitants of the rural area and in that connection it could regulate certain offensive trades by framing bye-laws in respect of the matters enumerated in Section 239 (2) E (a). That is it could make bye-law prohibiting the use of any place in default of a licence granted by the Parishad or otherwise than in accordance with the conditions of licence so granted. The Zila Parishad has not been enabled to deprive any person who is prepared, to and is fit to carry on an offensive trade in accordance with the conditions of a licence, of the right to carry on that trade or to create a monopoly in favour of one particular person or collection of persons who is prepared to pay the maximum amount to the Parishad for carrying on that activity.

8. Bye-law No. 2 provides that unless a person has obtained licence from the Zila Parishad, he cannot carry on certain activity mentioned therein in the rural area lying within its limits. It also lays down that no one shall collect or store in a rural area bones, horns and hides, unless he has obtained a Theka (contract) for doing that work from the Zila Parishad. The activities sought to be regulated by the bye-laws have thus been divided in two classes viz. (1) Activities for carrying on which a person is required to take licence and (2) Activity like that of storing of hides, bones and horns for which a Theka has to be obtained from the Zila Parishad. Bye-law No. 9 lays down that the aforesaid Theka for storing of hides etc. would be granted for one year and according to bye-law No. 11 the place or places where such activity can be carried on will be determined by the licensing authority. This bye-law further provides that the fee payable for the aforesaid contract will be determined either by auction or by inviting tenders, and further authorizes the Zila Parishad to grant the Theka either individually or to several persons jointly. I find that the effect of the bye-law No. 2, in so far as the business of storing of hides, bones and horns is concerned, is that the persons concerned are not required to take a licence for carrying it on. Under the clause a licence is required to be taken out by persons who carry on activity of disposal of the bodies of dead animals, skinning them, doing the work of curing or dyeing of hides or that of manufacturing of leather goods. So far as the activity of storing of hides, bones and horns is concerned, such activity can be carried on only after

obtaining a contract from Zila Parishad. This is also evident from bye-law No. 10 which while providing for licence fee for certain types of activities does not provide for any licence fee for the activity of storing of hides, bones and horns. Bye-law No. 11 provides that fees for giving the contract for storing hides, bones and horns may be determined by auction or tender. This necessarily means that the bye-laws contemplate that the activity of storing of hides, bones and horns in a rural area, within the jurisdiction of the Zila Parishad -can be carried on only by the person who has been given the contract by the Zila Parishad on the basis of tender or auction. It follows that persons other than those who do not succeed in getting the contract are prohibited from doing the work of storing hides, bones and horns. This bye-law certainly creates & monopoly in favour of the person whose bid or tender has been accepted by the Zila Parishad. It is true that bye-law No. 11 contemplates the grant of Theka either individually or jointly to certain persons but nonetheless it results in creation of monopoly in favour of the person or persons to whom Theka is given. In my opinion Section 239 of the Act merely enables the Zila Parishad to regulate offensive trades in rural areas lying within its jurisdiction by prohibiting the use of any place in default of licence granted by the Parishad or otherwise than in accordance with the condition of a licence. It contemplates that if an offensive trade is to be so regulated every person who is in a position to carry it on in accordance with the condition of licence to be issued by the Parishad should be allowed to carry on that trade. It does not authorize the Zila Parishad to form a monopoly in respect of such trade in favour of an individual or group of individuals.

9. Learned counsel for the Zila Parishad urged that bye-laws Nos. 2, 9, 10, 11 do not have the effect of creating a monopoly qua the trade of storing of hides, bones and horns. These bye-laws merely authorize the Zila Parishad to specify a place where bones, horns and hides of dead animals can be stored and to put that place under the management of the persons who enter into a contract for the purpose with the Zila Parishad. Any one who has not obtained a contract can store the bones and hides collected by him at the place managed by Parishad's contractor. I am unable to accept this interpretation of the bye-laws as suggested by learned counsel for the respondent. It is true that under bye-law No. 11 hides etc. can be stored at the place or places indicated by the Zila Parishad after the Theka for the purpose had been obtained from the Zila Parishad. Bye-law No. 2 clearly prohibits any person from doing the work of storing of hides etc. unless he has obtained Theka for the purpose from the Zila Parishad. There is nothing in the bye-law to indicate that the person who has taken the contract for storing hides, bones and horns is bound to store such, hides, bones and horns which have been collected by others. The object underlying these bye-laws clearly is to regulate the carrying on of the activity by individuals, of storing hides etc. and that that activity can be carried on only by a person or a combination of persons who have succeeded in obtaining the contract from the Zila Parishad. Of course the contractor too is not given a free hand to store these articles wherever he likes. He too has to store it only at the place specified by the licensing authority.

These bye-laws cannot be construed as meaning that the persons who have not been able to obtain contract from Zila Parishad can as of right store the hides, bones and horns which may become their property at the place of the contractor.

10. Apart from the fact that Section 239 does not contemplate regulation of such a trade by creating a monopoly such regulation would also be in contravention of the Constitution. A similar question arose for consideration before the Supreme Court in the case of Rashid Ahmed Vs. The Municipal Board, Kairana, in connection with a similar bye-law making power contained in the U. P. Municipalities Act. In that case the Municipal Board, Kairana framed a bye-law providing that no person shall establish a market for wholesale transaction in vegetable except with the permission of the Board. Further, in bye-law No. 4 it made a provision for the grant of monopoly to a contractor to deal in wholesale transaction at the place fixed as a market. The Supreme Court struck down that bye-law as contravening the provisions of Article 19(6) of the Constitution. In this connection it made the following observations:--

"The net result is that the prohibition of this bye-law, in the absence of any provision for issuing licence becomes absolute. Further bye-law No. 4 contemplates the grant of a monopoly to a contractor to deal in wholesale transactions at the place fixed as a market. Acting upon that provision the respondent Board has granted monopoly to Habib Ahmad and has put it out of its power to grant a licence to the petitioner to carry on wholesale business in vegetable either at the fixed market place or at any other place within the Municipal limits of Kairana. This certainly is much more than reasonable restrictions on the petitioner as are contemplated by clause (6) of Article 19. This being the position the bye-laws would be void under Article 13(1) of the Constitution."

11. In the instant case also I find that once acting upon bye-law No. 11 the Zila Parishad grants a contract to a person for carrying on the activity of storing of hides, bones and horns at the places indicated by it, it puts it out of its power to grant a licence or Theka to the petitioner to carry on its trade of storing of hides, bones, and horns either at the places specified in the contract or at any other place in the rural area within the jurisdiction of the Zila Parishad. It undoubtedly has the affect of creating monopoly in favour of the contractor. Accordingly these provisions would be void under Article 13(1) of the Constitution, as observed by the Supreme Court in the aforementioned case.

12. Next objection of the learned counsel for the petitioner is that the bye-laws have been framed without following the procedure laid down in the Kshetra Samiti and Zila Parishad Act for framing them. According to the petitioner the defect in the procedure adopted by the Zila Parishad consisted in non-publication of the draft of the impugned bye-laws thereby depriving the petitioner of an opportunity of filing objections against their framing.

13. In paragraph 15 filed on behalf of the respondents it has been stated that

necessary draft of the amended bye-laws was published in the local newspaper Saptahik Avadh dated 28th April, 1971 and it was only after its publication as no objections were received that the bye-laws were subsequently promulgated. The petitioner has not filed a rejoinder affidavit controverting the aforesaid allegations made in paragraph 16 of the counter-affidavit. In these circumstances it is not possible for me to accept the petitioners' submission that the bye-laws are invalid because before framing them they were not published thereby denying to the petitioner an opportunity to object to their being framed.

14. In the result the petition succeeds and is allowed with costs. The latter part of bye-law No. 2 which provides that no person shall do the work of storing of hides, horns and bones unless he has obtained a contract for doing that work from the Zila Parishad as also bye-law No. 11 as published in U. P. Gazette dated 13th November, 1971 are quashed. The remaining bye-laws are severable and would not be affected by this order.