(1972) 05 AHC CK 0023

In the Allahabad High Court

Case No : Sp. A. No''s. 250, 272, 273 and 279 of 1972

Mandi Samiti APPELLANT

Vs

Lal Pratap Singh and Others RESPONDENT

Date of Decision : 15-05-1972

Acts Referred:

Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 17, 40
Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 17, 40
Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 17, 40

Citation : (1972) 42 AWR 506

Hon'ble Judges : Satish Chandra, J;K.N. Seth, J

Bench : Division Bench

Advocate : B.D. Mandhyan, for the Appellant; S.P. Gupta and S.C., for the Respondent

Final Decision : Allowed

Judgement

1. Section 5 of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964, authorised the State Govt. to declare an area, wherein transactions of sale and purchase of any agricultural produce were carried on, as market areas, if it was of the opinion that it was necessary or expedient in the public interest to regulate the sale and purchase thereof in those areas. Section 12 of the Act contemplated the constitution of a Committee called Market Committee as a body corporate. Section 16 laid down the functions and the duties of the Committee while Section 17 conferred certain powers on that Committee. Clause (b) of Sub-section (3) authorised the Committee to levy and collect market fees in the market yards.

2. In these four connected appeals the State Govt. declared certain areas to be market areas and market yards and constituted the requisite Market Committees. In due course the Market Committees framed bye laws specifying the rate of the market fee that will be leviable by the Market Committee. The various dealers carrying on trade in the respective market yards came to this Court Under Article 226 of the Constitution and challenged the constitution of the

Market Committees as well as the power of the Committees to levy market fee by their bye laws. A learned Single Judge of this Court repelled the various submissions raised in support of the writ petitions, but accepted one of them. He held that in view of the provisions of the Act, the Market Committee had no power to lay down the rate of the market fee by its bye laws. Such bye laws were illegal. On this view the writ petitions were partly allowed and the Market Committees were directed not to insist upon the collection and deposit of the market fee on the strength of the bye laws framed by it and not to prosecute the Petitioners for their failure to deposit the market fee fixed by the bye laws. Aggrieved, the Mandi Committee has come up in appeal in each of these cases.

3. Section 17 of the Adhiniyam provides:

A Committee shall, for purposes of this Act, have the power to

(i)...(ii)...(iii) Levy and

collect:

(a) such fees as may be prescribed for the issue or renewal of licenses, and

(b) market fees on transactions of sale or purchase of specified agricultural produce in the Principal Market Yard and Sub-Market Yards from such persons and at such rates as may be prescribed, but not exceeding one-half of one percentum of the price of the specified agricultural produce sold or purchased therein.

4. It is clear that the rate of the market fee was to be prescribed. Clause (n) of Section 2 defines the word "prescribed" to mean prescribed by rules made under this Act. Section 40 authorises the State Govt. to make rules for carrying out the purposes of the Act. Sub-section (2) details various matters on which the rules may be framed. Clause (viii) of Sub-section (2) provides for licence fees and market fees which may be levied and realised by the Committee and their mode of recovery.

5. These provisions indicate that the State Govt. was conferred the authority to lay down the rates of market fee by rules. Rule 66 of the Rules framed by the State Govt. provided:

Market fee-

(1) The Market Committee shall have the power to levy and collect fees on the specified agricultural produce brought and sold in the market yards at such rates as may be specified in the bye laws, but not exceeding one-half of one percentum of the price of the specified agricultural produce:

Provided that the market fee shall be payable by the seller,

Provided further that no market fee shall be levied and charged prior to the date on which the provisions of Section 10 of the Act are enforced.

6. It will be seen that the rule does not actually fix the rate of the market fee. It leaves it to be done by the bye laws. The question is whether this delegation was permissible and valid.

7. Section 39 provided for bye laws thus:

39 (1). A Market Committee may make bye laws not inconsistent with this Act and the Rules made thereunder, to provide for-

(i)...(ii)...(iii)...

(iv) Any other matter which by or under this Act is required to be provided for by bye-laws.

Provided that no bye laws shall be valid unless approved by the Director.

8. It is settled that the phrase "matter which by this Act is required to be provided for" refers to the provisions of the Act itself, while the phrase "or under this Act" means and refers to the subordinate legislation which may be authorised by the provisions of the Act. Any matter which is required to be provided for by the bye laws by the rules framed under this Act would be a matter within the purview of Clause (iv) that is, a matter which is under this Act required to be provided for by the bye laws. This clause, therefore, furnishes the necessary authority to the rules (and to the authority entitled to make the rules) to require any matter to be provided for by the bye laws. Section 39(1)(iv) of the Act thus confers expressly power upon the rule making authority to delegate to the Bye-laws any of the matters for which it had, in the first instance, been conferred the authority to make rules by any provision of the Act.

9. Section 17(3)(v) confers power on the State Govt. to prescribe the rates by rules. In its turn Rule 6 requires the rates to be fixed by the bye laws. This sub-delegation if it may be called that, is clearly authorised and permitted by Section 39(1)(iv) of the Act. It cannot, hence, be said that Rule 66 was invalid in so far as it sub-delegated the authority to fix the rate of market fee.

10. Learned Counsel for the Respondents invited our attention to several decisions. Two of them namely Ganpati Singh Ji v. State of Ajmer AIR 1955 SC 188 and State of Bombay (Maharashtra) Vs. Shivbalak Gourishanker Dube and Others, were cited for the proposition that a delegate who has received the authority from the principal, cannot in turn delegate his own authority to a delegate of his own. There can be no quarrel with the proposition simpliciter, but this does not apply to a case where the delegate has been expressly authorised to sub-delegate his functions by the Legislature itself. This is made clear by the decision of the Supreme Court in Chief Settlement Commissioner, Rehabilitation Department, Punjab and Others, etc. Vs. Om Prakash and Others etc., where it was held that under our constitutional system the authority to make the law is vested in the Parliament and the State Legislatures and other law making bodies and what ever legislative power the executive administration possesses, must be derived directly from the delegation of the Legislature and exercised validly only

within the limits prescribed. Thus, it is to be in accord with these principles that the Legislature, by Section 39(1)(iv), expressly authorised sub-delegation.

11. In Bimal Chandra Banerjee Vs. State of Madhya Pradesh etc., it was ruled:

No tax can be imposed by any bye law or rule or regulation unless the statute under which the subordinate legislation is made, specially authorises the imposition even if it is assumed that the power to tax can be delegated to the executive. The basis of the statutory power conferred by the statute cannot be transgressed by the rule making authority.

This principle is fully satisfied by the provisions of the Act. Section 17 imposes or levies the market fee. It delegates the power to fix the rates, in the first instance, to the rule making authority. Section 39(1)(iv) at the same time permits the rule making authority of further delegate the question of actual fixation of the rates to the bye laws. The Act, therefore, expressly authorises the bye law making authority to fix the rate. The bye laws in the present case cannot, hence, be held invalid.

12. In the result, the appeals succeed and are allowed. The judgment of the learned Single Judge in so far as it holds the bye-laws fixing the rate of the market fee to be invalid is set aside. This writ petitions are dismissed. The learned Single Judge decided several other points raised in support of the writ petitions against the Petitioners. They have filed special appeals of their own. We are, however, in these appeals, not concerned with the points that may be raised in the other appeals. Those points will be adjudicated when the other appeals and heard. The Appellants would be entitled to their costs from the contesting Respondents.