
(2010) 10 AHC CK 0400
In the Allahabad High Court
Case No : C.M.W.P. No. 49106 of 2010

Nagar Palika Parishad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-10-2010

Acts Referred:

Constitution of India, 1950 — Article 243W
Uttar Pradesh Municipalities Act, 1916 — Section 30, 34

Citation : (2010) 10 AHC CK 0400

Hon'ble Judges : Vineet Saran, J; Abhinava Upadhyaya, J

Bench : Division Bench

Advocate : Suneet Kumar, for the Appellant; A.K. Sinha, C.S.C., for the Respondent

Judgement

Vineet Saran and Abhinava Upadhyaya, JJ.—The Petitioner-Nagar Palika Parishad is an elected body constituted under the Uttar Pradesh Municipalities Act, 1916 (hereinafter referred to as the "Act"). By order dated 19.6.2010 passed by Additional District Magistrate (Respondent No. 3), the Executive Officer of the Parishad has been directed to stop all payments regarding the contracts for the construction work given by the Nagar Palika Parishad during the pendency of enquiry instituted by the District Magistrate. Then by order dated 26.7.2010, the Additional District Magistrate has issued directions to the Executive Officer of the Parishad, Chandpur to the effect that the resolutions passed by the Nagar Palika Parishad in its meeting on 21.7.2010 be not given effect to. Again by order dated 29.7.2010 passed by the Additional District Magistrate, the Nagar Palika Parishad has been restrained from auctioning the shops for certain areas as specified in the said order. Aggrieved by the said orders dated 19.6.2010, 26.7.2010 and 29.7.2010 passed by the Additional District Magistrate, this writ petition has been filed.

2. We have heard Sri Suneet Kumar, learned Counsel for the Petitioner as well as Sri A. K. Sinha, learned standing counsel appearing for the Respondents and

have perused the record. Pleadings between the parties have been exchanged and with consent of learned Counsel for the parties, this writ petition is being disposed of finally at this stage.

3. Learned Counsel for the Petitioner has submitted that the Petitioner-Nagar Palika Parishad is an independent autonomous body and the Additional District Magistrate has no authority in law to interfere with the working of the Nagar Palika Parishad. It is submitted that it is only in circumstances enumerated u/s 34 of the Act that the District Magistrate can interfere and in the present case, the said circumstances do not exist and as such, the orders passed by the Additional District Magistrate (Respondent No. 3) are wholly without jurisdiction and are liable to be quashed.

4. It is contended that under the Constitution of India, the powers, authority and responsibilities of municipalities have been defined in Article 243W. Twelfth Schedule of the Constitution provides for such duties, which are to be performed by the municipalities. It is submitted that the Petitioner-Nagar Palika Parishad has been performing its duties, which are required to be performed and the Additional District Magistrate, by passing the impugned orders, is not permitting the Petitioner to perform such duties, which it is obliged in law to perform. It is also contended that vide communication dated 28.4.1997 issued by the State Government to all the District Magistrates, the State Government has directed that except in very special circumstances, the district authorities should not interfere with the day-to-day functioning of an elected Nagar Palika Parishad.

5. Sri A. K. Sinha, learned standing counsel appearing for the Respondents, however, states that the said impugned orders have been passed by the Additional District Magistrate on account of the fact that the State Government has been funding the projects, which the Nagar Palika Parishad is to execute and since the same were not being properly executed, the Additional District Magistrate had the power to stop payment of the contracts given by the Nagar Palika Parishad and also to stop the execution of the resolutions passed by the Nagar Palika Parishad. He further states that such powers have been exercised u/s 34 of the Act and as such, the passing of the said impugned orders is fully justified.

6. Section 34 of the Uttar Pradesh Municipalities Act, 1916 is quoted below:

34. Power of the State Government or the Prescribed Authority or the District Magistrate to prohibit execution or further execution of resolution or order of Municipality.-(1) The Prescribed Authority may, by order in writing, prohibit the execution or further execution of a resolution or order passed or made under this or any other enactment by a Municipality or a committee of a Municipality or a Joint Committee or any officer or servant of a Municipality or of a Joint Committee if in its opinion such resolution or order is of a nature to cause or tend to cause obstruction, annoyance or injury to the public or to any class or body of persons lawfully employed and may prohibit the doing or continuance by

any person of any act in pursuance of or under cover of such resolution or order. (1A) The District Magistrate may, within the limits of his district, by order in writing, prohibit the execution or further execution of a resolution or order passed or made under this or any other enactment by a Municipality or a committee of a Municipality or a committee of a Municipality or a Joint Committee or any officer or servant of a Municipality or of a Joint Committee if in his opinion such resolution or order is of a nature to cause or tend to cause danger to human life, health or safety, or a riot or affray, and may prohibit the doing or continuance by any person of any act, in pursuance of or under cover of such resolution or order. (1B) The State Government may, on 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 Municipality or a committee of a Municipality or a Joint Committee or any officer or servant of a Municipality 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.

(2) Where an order is made under Sub-section (1) or (1A), a copy thereof with a statement of the reasons for making it, shall forthwith be forwarded by the Prescribed Authority or the District Magistrate through the Prescribed Authority, as the case may be, to the State Government which may thereupon, if it thinks fit, rescind or modify the order.

(3) * * * * *

(4) Where the execution or further execution of a resolution or order is prohibited by an order made under Sub-section (1), (1A) or (1B) and continuing in force, it shall be the duty of the Municipality, if so required by the authority making the order under the said Sub-sections to take any action which it would have been entitled to take, if the resolution or order had never been made or passed, and which is necessary for preventing any person from doing or continuing to do anything under cover of the resolution or order of which the further execution is prohibited.

7. From a bare reading of said Section 34, it is clear that the District Magistrate has power to interfere with only such resolutions or orders of the Nagar Palika Parishad if the same are likely to cause or tend to cause "obstruction, annoyance or injury to the public....." or "danger to human life, health or safety or a riot or affray". Awarding a contract in favour of a person cannot be matter, which may cause obstruction, annoyance or injury to the public or danger to human life, health or safety etc. Even directions to make payment with regard to contract given by the Nagar Palika Parishad or execution of resolutions passed by the Nagar Palika Parishad, which include cleaning of drains and repairing of roads etc. also would not fall in the category of cases enumerated u/s 34 of the Act under which the District Magistrate can invoke the powers u/s 34 of the Act.

8. The Constitution of India as well as the Uttar Pradesh Municipalities Act, 1916 envisage that the Nagar Palika Parishads are to work independently and carry on the functions and duties, which it is obliged in law to perform. Interference by the District Magistrate or the State Government would only be permissible if the circumstances enumerated u/s 34 of the Act prevail.

9. In our considered opinion, the power, which has been exercised by the Additional District Magistrate in the present case, would not fall within the ambit of provisions of Section 34 of the Act. The members of the Nagar Palika Parishad are duly elected and interference by the executive would only be to the extent permissible in law. Since we are of the opinion that the orders passed by the Additional District Magistrate are outside the purview of the provisions of Section 34 of the Act and the learned standing counsel has not placed any other provision of law under which the Additional District Magistrate could have passed the said orders, which clearly interfere with the functioning of the Nagar Palika Parishad, the said orders would be liable to be quashed.

10. In the end, Sri A. K. Sinha, learned standing counsel has submitted that the State Government also has power to dissolve the municipality u/s 30 of the Act.

11. Be that as it may, if any statutory dictate provides for the State Government to interfere in the functions of the municipality to the extent of even dissolving it, then if the circumstances as enumerated in Section 30 of the Act or any other provisions of law exist, then it is for the State Government to take appropriate decision. However, in the present case, the Additional District Magistrate could not have exercised the power of directing stoppage of payment or staying of the resolutions passed by the Nagar Palika Parishad or stopping them from auctioning the shops, which all powers and duties are within the exclusive domain of the Nagar Palika Parishad.

12. As such, this writ petition deserves to be allowed and is accordingly allowed. The impugned orders dated 19.6.2010, 26.7.2010 and 29.7.2010 passed by the Additional District Magistrate are quashed. However, we may only mention that the State Government or any other authority provided in law shall have liberty to proceed against the Petitioner-Nagar Palika Parishad in accordance with law, if, after following the procedure as provided in the Act, it is found that the Nagar Palika Parishad is misusing the funds or not performing its duties prescribed in law or contravening any provision of law.

There shall be no order as to costs.