
(1989) 11 AHC CK 0072
In the Allahabad High Court
Case No : Writ Petition No. 2593 of 1989

Pashu Shav Chhedan Audyogik Utpadan Sahkari Samiti Ltd.	APPELLANT
Vs	
Nagar Palika and Another	RESPONDENT

Date of Decision : 17-11-1989

Acts Referred:

United Provinces Municipalities Act, 1916 — Section 301, 301(2)

Citation : (1990) 1 AWC 734

Hon'ble Judges : U.C. Srivastava, J;S.H.A. Raza, J

Bench : Division Bench

Advocate : Rakesh Kumar and Sanjay Kumar, for the Appellant; U.K Srivastava and Ravi Srivastava, for the Respondent

Final Decision : Allowed

Judgement

1. By means of this writ petition the Petitioner has prayed for quashing the Theka granted to opposite party No. 2 for the year 1989-90 in respect of Nagar Palika, Nawabganj, district Barabanki. It has been further prayed that opposite party No. 2 may be restrained from lifting dead animals within the municipal limits of Barabanki.
2. The facts of the case are that the Petitioner applied for grant of said Theka on 13-2-89 but nothing was done and as such he gave two reminders still no action was taken and Theka was granted to opposite party No 2. The grievance of the Petitioner is that theka should have been granted by inviting tenders or through publication of notice in respect of hides and bones and the contract should not have been granted in this manner secretly to any person; even otherwise no theka could have been granted without taking into consideration Petitioner's applications or other applications.
3. On behalf of opposite parties appearance has been put in by Sri. Abdul Mateen. We have heard learned Counsel for the parties despite time granted to the opposite parties, no counter affidavit has been filed though arguments were

advanced. There is no denial of the fact that the Petitioner was a licensee for collection of hides and bones for the year 1986-87. In that year licence was granted to it after writ petition was filed by it and an interim order was granted. In the year 1987-88 again Petitioner's society filed a writ petition and an interim order was passed, where after Theka was granted to it. Under the bye-laws framed by the Municipal Board which have been duly approved by the Commissioner u/s 301 Sub-section (2) of the United Provinces Municipalities Act, 1916 Bye-law 5 of the bye-laws framed under the said Act it is provided : The "Medical Officer of Health" or Veterinary Officer shall issue licences only with the approval of the Circle Deputy Director, Animal Husbandry, Uttar Pradesh, or an Officer duty authorised by him in this respect. It has been stated by the Petitioner that apart from Deputy Director, Animal Husbandry no other office has been authorized for approving the grant of licence.

4. On behalf of the Petitioner reference was made to writ petition No. 63 of 1983 in which this Court observed that it is clearly desirable that only preference should be given to a cooperative society in matter of "granting licences but it should further be ensured that after such a licence is granted to a cooperative society, other middle men should not be allowed to enter into the field in the same area and thereby make a venture of the cooperative society unprofitable. It has been contended that despite above directions, without making any publication or notice, theka has been granted to opposite party No. 2.

5. On behalf of the Petitioner reference has been made to Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation, . In that case the court observed:

The State and the public authorities should undoubtedly act fairly. Their actions should be legitimate. Their dealings should be above board. Their transactions should be without aversion or affection Nothing should be suggestive of discrimination. Nothing should be done by them which gives an impression of bias, favouritism or nepotism Ordinarily these factors would be absent if the matter is brought to public auction or sale by tenders...

In the instant case earlier preference was given to the cooperative society and that is why the Petitioner's cooperative society which constitute 120 members all of them belonging to a particular caste dealing with hides and bones and sell it, this year even if it was proposed to grant licence without restoring to the auction or inviting tenders, obviously when Petitioner had applied for grant of theka and moved application for the said purpose, licence could not have been granted without any public notice surreptitiously or without considering the application of the Petitioner. As such the grant of Theka to opposite party No. 2 is arbitrary and illegal and same deserves to be quashed.

6. In these circumstances, the writ petition is allowed. The licence granted to opposite party No. 2 for the year 1989-90 is quashed. The opposite party No. 1 is directed either to invite tenders or put it to public auction and take into consideration the case of the Petitioner and opposite party No. 2 as well. Let it be

done within ten days from the date of production of a certified copy of this order before opposite party No. 1. It will be open for the opposite party No. 1 to make some local arrangement with the specification that this arrangement will automatically lapse whenever some licensee is selected and the person in whose favour the said arrangement will be made, will not claim any right over the same. However, there will be no order as to costs.