
(2007) 06 AHC CK 0062
In the Allahabad High Court

Pratap Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-06-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 06 AHC CK 0062

Hon'ble Judges : S.P. Mehrotra, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

S.P. Mehrotra, J.—The present Writ Petition has been filed by the petitioner under Article 226 of the Constitution of India, inter alia, seeking quashing of the Resolutions Nos. 4, 5, 9, 10, 12, 13, 14, 15, 16, 18, 19, 22, 24, 25, 26, 29, 30, 34, 35, 40 and 41 passed in the meeting of the Nagar Palika Parishad, Hapur, Ghaziabad held on 19.5.2007.

2. Copies of the said Resolutions are part of Annexure-2 to the Writ Petition.

3. grievance of the petitioner is that the said Resolutions have delegated power of sanctioning various contracts to the Chairman, Nagar Palika Parishad, Hapur, Ghaziabad, and such delegation is in contravention of various provisions of the U.P. Municipalities Act, 1916, particularly, Sections 96, 111, 112 and Schedule-1 thereof.

4. I have heard Shri K.M. Mishra, learned Counsel for the petitioner and Shri Suresh Singh, learned Standing Counsel appearing for the respondents Nos. 1, 2 and 3, and perused the record.

5. Shri Suresh Singh, learned Standing Counsel appearing for the respondents Nos. 1, 2 and 3 has raised a preliminary objection that the petitioner has got an alternative remedy u/s 34(1-B) of the U.P. Municipalities Act, 1916 to challenge the impugned Resolutions mentioned above.

6. Shri K.M. Mishra, learned Counsel for the petitioner submits that the said alternative remedy will not be available to the petitioner in the present case.

7. I have considered the submissions made by the learned Counsel for the parties.

8. Sub-section (1-B) of Section 34 of the U.P. Municipalities Act, 1916 lays down as under:

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)....

[1-A]....

(1-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 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) to (4)....

9. Thus, Sub-section (1-B) of Section 34 of the U.P. Municipalities Act, 1916, inter alia, provides that 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 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

(i) is prejudicial to the public interest or

(ii) has been passed or made in abuse of powers or

(iii) in flagrant breach of any provision of any law for the time being in force.

10. It is further provided under the said provision that the State Government may prohibit the doing or continuance by any person of any act in pursuance of or under cover of such resolution or order.

11. It is, thus, evident that in view of the provisions of Sub-section (1-B) of Section 34 of the U.P. Municipalities Act, 1916, it is permissible to make a complaint to the State Government on the ground that the Resolution has been passed in flagrant breach of any provision of any law for the time being in force.

12. The grievance of the petitioner in the present case is that the impugned

Resolutions have been passed in violation of the various provisions of the U. P. Municipalities Act, 1916.

13. Such a case, in my opinion, will be covered under Sub-section (1-B) of Section 34 of the U.P. Municipalities Act, 1916 as the petitioner is impugning the validity of the Resolutions on the ground of flagrant breach of the provision of the U.P. Municipalities Act, 1916 as in force. Hence, the petitioner has got an alternative remedy under Sub-section (1-B) of Section 34 of the U.P. Municipalities Act, 1916 to challenge the impugned Resolutions mentioned above.

14. In the circumstances, no interference is called for in the present Writ Petition on account of the availability of alternative remedy to the petitioner under Sub-section (1-B) of Section 34 of the U.P. Municipalities Act, 1916.

15. It will be open, to the petitioner to file a complaint to the State Government under Sub-section (1-B) of Section 34 of the U.P. Municipalities Act, 1916 within two weeks from today alongwith a certified copy of this order.

16. On the complaint being so made by the petitioner, the State Government will proceed to pass appropriate orders under Sub-section (1-B) of Section 34 of the U.P. Municipalities Act, 1916 expeditiously preferably within six weeks of the receipt of the complaint.

17. With the aforesaid observations, the Writ Petition is disposed of finally.