
(2011) 04 AHC CK 0501

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19943 of 2011

Ruchi Sharma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 34(1B), 96, 97, 98

Citation : (2011) 7 ADJ 627 : (2011) 3 UPLBEC 1956

Hon'ble Judges : Ashok Srivastava, J; Amitava Lala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amitava Lala, J.—This writ petition has been filed by the Petitioner to quash the order dated 15.2.2011 passed by the District Magistrate, Bulandshahar staying the execution of the resolution Nos. 456, 457 and 471 dated 25.11.2010 of the concerned Nagar Palika Parishad. A further prayer is made to allow the Petitioner to carry on her work of contract etc.

2. The case of Petitioner is that the order impugned which has been passed by the District Magistrate is, at the best, u/s 34 (1-B) of the U.P. Municipalities Act, 1916 and the resolution has been passed by the Nagar Palika Parishad, being a Board, u/s 96 of the Act. u/s 96 of the Act, the Nagar Palika Parishad is the final authority for execution of the contract and the District Magistrate is not empowered to interfere with it. She has relied upon a judgment of the Division Bench of this High Court in Har Pal Singh Vs. The State of U.P. and Another, whereunder a Division Bench of this Court has held that the legislature has drawn a distinction between a resolution and a contract, when it postulates that before a contract is entered into by the Board it must be preceded by a resolution. Section 34(1-B) empowers the State Government to cancel a resolution and it is not possible to read into it that it has power to cancel a contract entered into by the Board with a third party, in accordance with the provisions of Sections 96, 97 and 98 of the Act. Therefore, the ratio of the

judgment states that the State can interfere with the resolution but not with regard to contract.

3. Upon going through the factual aspects of the matter, we are of the view that initially there was a contract and by virtue of the resolution No. 456 the period of such contract had been extended for a further period of three years. Accordingly, a complaint was made before the concerned Commissioner who forwarded the matter to the District Magistrate concerned with his observations and certain directions. The observations made in the order impugned passed by the District Magistrate, speaks that there should have been a transparency in respect of execution of the contract. He has further observed that it is not known as to why no advertisement for the auction was publicized. In the absence of such public notice, extension of the contract for a further period of three years, in favour of a particular individual, was not proper. The District Magistrate has not cancelled the contract but only stayed the resolution from giving effect. Therefore, factually it cannot be said that contract was cancelled but the District Magistrate has only interfered with the resolution.

4. According to us if the executive power of the State authorities, in executing or not executing the contracts, seems to be arbitrary or a coloured exercise of power, the Supreme Court on numerous occasions has said that the Court can interfere with it.

5. Moreover, the order of stay in this case, has not attained finality but the same has been passed for the purpose of making an inquiry before passing a final order. At this stage with the aforesaid background, we cannot hold that the order impugned can be interfered with, particularly when the Nagar Palika Parishad supports the contention of the State Government. Therefore, in totality the writ petition cannot be sustained and hence it is dismissed, however, without imposing any cost.

Ashok Srivastava, J.

6. I agree.