
(2016) 08 AHC CK 0195
In the Allahabad High Court
Case No : Misc. Bench No. 19745 of 2016

Sarojini Devi

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 24-08-2016

Acts Referred:

Uttar Pradesh Gram Panchayat and Zila Panchayat Act, 1961 — Section 63, 64, 65, 65-57, 66, 67, 68

Uttar Pradesh Zila Panchayats (Formation of Committees) Rules, 1997 — Rule 18

Citation : (2016) 8 ADJ 705 : (2016) 6 AILLJ 113 : (2017) 1 AllWC 861 : (2016) 133 RD 215

Hon'ble Judges : Amreshwar Pratap Sahi and Dr. Vijay Laxmi, JJ.

Bench : Division Bench

Advocate : Abhinav Singh and Pramod Kumar Khare, Advocates, for the Petitioner; C.S.C, Madhulika Yadav, S.K. Sharma and Shivam Sharma, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

1. This petition questions the exercise of floating of a tender notice dated 08.08.2016 as published on 13.08.2016 praying for quashing of the same with a further direction for initiating tenders for a sizeable quantity of development work in the Zila Panchayat, district Sitapur through some independent agency as the Zila Panchayat has conducted itself through the present Chairman in an absolutely unfair manner in inviting the tenders for the same as enlisted in the tender notice.

2. The background in which this challenge has arisen saw a precursor of this litigative battle in Writ Petition No.5839 (M/B) of 2016, Sarojini Devi v. State of U.P. and others, when the Zila Panchayat had proceeded to issue a tender notice for almost the same work on 23.02.2016. It had been issued by the Zila Panchayat without the same having been processed through the statutory committees/sub-committees that are to be constituted in terms of Section 65 of the Uttar Pradesh Zila Panchayat Act, 1961 and the Rules framed in this regard.

3. On the filing of Writ Petition No.5839 (M/B) of 2016, the tender notices were withdrawn and again a fresh notice dated 13.04.2016 was issued without following the aforesaid process of constituting the committees and then processing the projects and the proposed tenders. The petitioner preferred a second Writ Petition No.9070 (M/B) of 2016 challenging the same wherein orders were passed on 28.04.2016 directing the Zila Panchayat to proceed with the tenders if necessary but the same would not be finalised till orders are passed in that writ petition. The order passed therein, is extracted herein under:-

"Heard Sri Gaurav Mehrotra, learned Counsel for the petitioner.

An identical issue has been raised in Writ Petition No. 5839 (M/B) of 2016, Sarojani Devi v. State of U.P. in relation to tender notice dated 23.02.2016. The said tender has been withdrawn by the respondent-Zila Panchayat, Sitapur and now fresh tender notice dated 13.04.2016 has been issued with certain modifications but the arguments on behalf of the petitioner remains the same.

The tender notice according to the petitioner has not been preceded by any deliberations by the statutory committee that is required to process projects before they are finalised and executed by the Zila Panchayat.

Ms. Madhulika Yadav, learned Counsel for the Zila Panchayat, Sitapur submits that the power has been delegated by the Zila Panchayat referable to Section 57 of the U.P. Kshetriya Panchayats and Zila Panchayats Act, 1961.

Having perused the same, we also find a reference to the schedule. Prima-facie, on a perusal thereof, we do not find any such powers available with the Zila Panchayat to delegate the powers of such committees, as are involved herein, on the Adhakshya of Zila Panchayat.

Consequently, in the absence of any such material to demonstrate that the impugned tender notice was preceded by any such process having been adopted, we provide that the tender process may go on but the same shall not be finalised till orders are passed in this writ petition.

All the respondents may file their counter affidavits within three weeks. Rejoinder affidavit, if any, may be filed within two weeks thereafter.

List thereafter."

4. The stand that had been taken then was about the delegation of power on the Adhyaksha (Chairman) of the Zila Panchayat in this regard under Section 57 of the 1961 Act. On the passing of the said order the Zila Panchayat again withdrew the tender notice impugned therein and has now resorted to the issuance of a fresh notice after the purported compliance of the formation of the committee and processing the proposals through such committee.

5. What appears to have been done, and which has not been disputed by the learned counsel for the Zila Panchayat, is that the Zila Panchayat itself convened a meeting and circulated an Agenda dated July 13, 2016 informing the members

of a meeting to be held on 23.07.2016 for constituting the committees. The same agenda incorporated the meeting of the Planning and Development committee that was to be constituted as well as the business to be discussed and transacted by it.

6. The meeting of the Zila Panchayat was convened on 23.07.2016 and on the very same day, the committees were constituted and these newly constituted committees met on the same day namely, the Planning and Development committee at 02:30 p.m., to consider the spending of an amount received under the 13th Finance Commission on the basis of proposals of members of the Zila Panchayat and the projects to be finalised accordingly. The second agenda was with regard to a meeting at 04:00 p.m. on the same day by the Planning and Development committee to approve such proposals. Thus, according to the agenda itself, the constitution of the committees, the discussion on the projects and proposals and then its approval were all to be simultaneously carried out within a span of one and half hours between 02:30 p.m. and 04:00 p.m. on the same day.

7. The respondents appear to have run through the aforesaid exercise that has give rise to the present writ petition. The petitioner contends that the said exercise has been done in a hurry without any deliberations worth the name in relation to 174 projects as per the tender notice dated 13.08.2016 and other decisions relating to the spending of money received under the 13th Finance Commission. The petitioner alleges that not even half a minute had been devoted to each of the 174 projects between 02:30 p.m. and 04:00 p.m. nor any exercise to assess the financial implications was undertaken and the entire decision making process was abruptly concluded which was a mere paper exercise and a completion of a formality, the patent defects whereof had been pointed out earlier.

8. The petitioner has also alleged that the constitution of the committees are invalid and without the participation of the Zila Panchayat members.

9. We heard the matter on 23.08.2016 and the arguments were advanced by Sri P.K. Khare for the petitioner and Sri O.P. Srivastava, learned Senior Counsel for the Zila Panchayat. We accordingly passed the following order on hearing the learned counsel:-

"Heard Sri P.K. Khare, learned counsel for the petitioner and learned standing counsel for the respondent No.1, 4 and 5. Smt. Madhulika Yadav has filed her power on behalf of the respondent No.2, 3 and Sri Shivam Sharma for the respondent No.5.

This petition questions the proceedings of the respondent Zila Panchayat of issuing tender notice dated 08.08.2016 and 13.08.2016 on the ground that the issuance of the notice is vitiated by an erroneous exercise of constituting the committees as envisaged in terms of Section 65 of the Uttar Pradesh Zila Panchayats Act, 1961 read with the Government order dated 29.07.1999

notifying the committees. Apart from a challenge raised to the constitution of the committees, the method adopted by the Zila Panchayat and its Adhyaksh in proceeding to do so, has also been described as hasty resulting in arbitrariness without the participation of all the members of the Zila Panchayats. It is also urged that the sub-committees which were yet to be constituted and function under the Rules framed under the Act, even their agenda was circulated without the committees coming into existence and the subject matter being considered by them and, therefore, the very process of such agenda being circulated being vitiated, the subsequent resolutions passed that have been done simultaneously and hurriedly in terms of the said agenda, have to fall through. It is also urged that the information given to the petitioner, vide letter dated 26.07.2016, is an intimation of the predetermined exercise undertaken by the respondents that stands vitiated for the reasons mentioned herein above.

It is urged by Sri P.K. Khare, learned counsel for the petitioner that this has been done to somehow or the other execute the work without following the procedure prescribed in law inasmuch as, 174 projects have been notified in the tender notice about which the time to be devoted for the purpose of finalising the project and issuance of tender, was also surprisingly fixed in the same disputed agenda without any sense of proportion of time to be devoted for the said purpose. Thus, the action of the respondents is also being challenged on serious mala fides as alleged.

Replying to the said submissions raised, Sri O.P. Srivastava, learned Senior Counsel for the Zila Panchayat has submitted that the constitution of the committees are in accordance with law and any dispute with regard to the same can be redressed by approaching the Commissioner under Rule 18 of the 1997 Rules which are applicable to the controversy and not governed by the 1984 Rules.

He further submits that the agenda is in conformity with the Government order dated 29.07.1999 and the entire development work of the Zila Panchayat has been held up on account of the objections raised by the petitioner and such other members who are opposing the majority decision. He also contends that the meeting which was convened even if under the agenda dated 13.07.2016 would not vitiate the same as the decision has been taken by the duly constituted committees in the wake of the projects which are pending. He, therefore, contends that even if there is a noticeable irregularity, the same would not vitiate the process adopted by the committee or its final decision which is in the larger public interest and in the interest of the Zila Panchayat. The allegation of mala fide therefore, should not be countenanced keeping in view the aforesaid larger interest of the Zila panchayat the work whereof, has been held up for quite some time.

Learned standing counsel has also appeared on behalf of the State who has pointed out the Uttar Pradesh Zila Panchayat Rules, 1962.

The issue, therefore is, as to whether the inclusion of item No.3 and 4 in the agenda dated 13.07.2016 is in conformity with law or does it amount to a mala fide act which was unauthorized and was predetermined as alleged by the petitioner. The other issue is of the validity of the constitution of the committees and the Rules applicable in this regard.

Sri O.P. Srivastava prays that the matter be taken up tomorrow.

Put up tomorrow as fresh."

10. Learned counsel for the respondent Sri O.P. Srivastava has urged that there is absolutely no discrepancy and merely because the decision was taken on the same day, the same cannot be said to be unlawful, unauthorized or irregular. He, however, submits that he does not propose to file any counter affidavit on behalf of the respondent Zila Panchayat on going through the records that were made available to him inasmuch as, once the committees have been validly formed, then any dispute with regard to the formation of a committee has to be raised before the Commissioner in terms of Rule 18 of the Uttar Pradesh Zila Panchayats (Formation of Committees) Rules, 1997.

11. He then submits that so far the conduct of the meeting is concerned, once the agenda of the Zila Panchayat contained the proposal for constitution of committees, then a simultaneous consideration for constituting sub-committees and the subject matter to be discussed therein cannot be said to be irregular, more so when the meeting was held by a validly constituted Planning and Development sub-committee. He, therefore, submits that even if it was a simultaneous exercise, then it is neither illegal nor is it irregular and the Zila Panchayat and the committee validly constituted are authorised to do so.

12. He then submits that the work of the Zila Panchayat has been held up for long on account of these obstructions created by those who are in opposition and are in a minority. They are creating obstacles in order to impede the progress of the work of the Zila Panchayat. It is therefore urged that the writ petition be dismissed and the Zila Panchayat be allowed to carry out its work.

13. Replying to the aforesaid submissions of Sri O.P. Srivastava, Sri P.K. Khare for the petitioner has invited the attention of the Court to Sections 63, 64, 65, 66, 67 and 68 of the 1961 Act read with the Uttar Pradesh Kshettra Panchayat and Zila Panchayat Construction Work Rules, 1984, the Uttar Pradesh Zila Panchayats (Formation of Committees) Rules, 1997, the notification dated 29.07.1999 which is Annexure-4 to the writ petition and the Uttar Pradesh Zila Parishad (Conduct of Proceedings) Rules, 1962. He submits that when the Rules provide for the constitution of the sub-committees, then they have to be constituted in that manner and their function has to be independently governed and conducted under the Rules aforesaid. The Zila Panchayat itself cannot assume the authority and jurisdiction of these committees which are independent statutory committees under the 1961 Act itself. He therefore, submits that the Zila Panchayat could not have issued the agenda No.3 and 4 in the notice dated

13.07.2016 and any consequential action taken pursuant thereto, in a hasty manner, cannot sustained. This was done deliberately to somehow the other defray the money which has been received under the 13th Financial Commission by favouring contractors and is a device to misappropriate the Zila Panchayat funds by those who are in power. He, therefore, submits that this entire exercise should be struck down and the relief as prayed for, be granted.

14. We have considered the submissions raised and what we find is that so far as the issue of constitution of committees is concerned, there is no direct relief claimed for quashing of the constitution of such committees by the Zila Panchayat in the meeting that was held on 23.07.2016. For this relief any aggrieved person has a remedy to approach the Commissioner under Rule 18 of the 1997 Rules as extracted herein under:-

"18. Disputes relating to election.-Any petition relating to the result of the election shall if required within a period of six weeks from the date of election, be referred by the Adhyaksha, to the Commissioner of the division concerned, whose decision shall be final and binding."

15. We, therefore, at this stage would not like to delve into the merits of the Constitution of the sub-committees including the Planning and Development committee which shall be open for consideration before the Commissioner in case any such objection is filed. The said issue has also been settled by a Division Bench of the High Court at Allahabad, vide judgment dated 04.07.2016 in Writ-C No.29823 of 2016, Sunil Charora and two others v. State of U.P. And others.

16. The next question is as to whether the Zila Panchayat could have issued the agenda on 13.07.2016 with regard to the business of the Planning and Development that was yet to be constituted and had not come into existence. The petitioner raised an objection on 21.07.2016. The Zila Panchayat on 26.07.2016 responded to the said objection, a copy whereof is Annexure-9 to the writ petition. Strangely enough, this is an answer give subsequent to the date of meeting when the meeting itself was held on 23.07.20126. The same refers to the Uttar Pradesh Zila Panchayats (Formation of Committees) Rules, 1997 and also to the guidelines dated 31.07.2015 that are to be followed in this regard. The said letter purports to inform that the meeting would be held properly, as if in future. It is not understood as to why such a reply was give after the meeting had already been convened on 23.07.2016 and when the resolution had been passed. It appears as if the reply had been prepared earlier but was issued on 26.07.2016 with proper recitals.

17. The second letter dated 26.07.2016 was issued informing the petitioner and other members that the committee had already been constituted and the entire projects were discussed and got approved by the Planning and Development Committee that are in accordance with law.

18. We are unable to comprehend this simultaneous exercise of the committee and clearing of all the 174 projects in one sweep by it within 1? hours that was

clearly a paper transaction without any serious deliberations. To that extent Sri P.K. Khare is justified in relying on the judgment of the Apex Court including the judgment in the case of Zenit Mataplat Private Limited. v. State of Maharashtra & Ors.: (2009) 10 SCC 388, which rules that any action taken in undue haste can also be termed arbitrary and cannot be condoned in law. We, therefore, find that the agenda item No.3 and 4 of the notice dated 13.07.2016 that was conducted on 23.07.2016 was absolutely in haste and without any proper deliberations.

19. Apart from this, if the very existence of the committee was not there till 23.07.2016, there was no occasion for the Zila Panchayat to have taken over the task of issuing the agenda of a notice pertaining to the subject matter of the Planning and Development Committee that was yet to come into existence. This is not in conformity with the procedure of holding the meeting of such committees formed by the Zila Panchayat as per Rule 41 of the U.P. Zila Parishad (Conduct of Proceedings) Rules, 1962.

20. We may put on record that the learned standing counsel for the State had pointed out these Rules to urge that the said Rules still hold the field. Accordingly, for the aforesaid reason also, the Committee that has been constituted, did not follow the 1962 Rules in conducting its meeting and the entire process appears to have been carried out in haste. It is settled law, including the law of meetings, that if a meeting has to be convened in a particular manner, then the same should be resorted to in that manner and not otherwise. The said rules clearly provide for at least three days prior notice. In the instant case, the committee was constituted and it completed all the deliberations in less than two hours on the same day.

21. We cannot appreciate the taking of such decision relating to a huge number of 174 projects in such a short period of time and the action clearly appears to be an eye wash resulting in arbitrariness. The Committee so constituted, ought to have followed the procedure under the 1962 Rules and, therefore, the decision to proceed with the proposals and issue of a fresh tender notice is clearly vitiated.

22. Thus, for all the reasons aforesaid, we leave the issue relating to the constitution of committees to be taken up if raised, before the Commissioner as per Rule 18 of the 1997 Rules but so far as the impugned tender notices are concerned, they cannot be sustained as the very meeting of the committee that has resolved to issue the tender notice has violated the procedure while processing the same. Consequently, the action taken by the committee as per item No.3 and 4 of the agenda dated 13.07.2016 is hereby annulled and the impugned tender notice dated 08.08.2016 as published on 13.08.2016 is hereby quashed.

23. The writ petition is partly allowed to the aforesaid extent and subject to the observations made therein. It shall be open to the committee so constituted to proceed with the processing of the projects and proposals received in accordance with the Rules referred to herein above, which shall be subject to any further

orders by higher authorities or by any Court of law if raised before it.