
(2020) 03 UK CK 0064

In the Uttarakhand High Court

Case No : Special Appeal No. 50 Of 2020, Writ Petition (M/S) No. 1754 Of 2018

Sukhdev Singh & Others

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 19-03-2020

Acts Referred:

Uttarakhand Panchayati Raj Act, 2016 — Section 22(1)(xii), 29(2), 46(5)(d), 46(11), 104, 104(9), 106(1), 106(2), 106(2) D(a), 106(2) D(e), 125(b)

Citation : (2020) 03 UK CK 0064

Hon'ble Judges : Ramesh Ranganathan, CJ; R.C. Khulbe, J

Bench : Division Bench

Advocate : S.K. Mandal, S.S. Chaudhary, B.D. Kandpal, N.S. Pundir

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. S.K. Mandal, learned counsel for the appellant-fifth respondent, Mr. B.D. Kandpal, learned counsel for the respondent-writ petitioner,

Mr. N.S. Pundir, learned Standing Counsel for the Zila Panchayat, Udham Singh Nagar and Mr. S.S. Chaudhary, learned Brief Holder for the State of Uttarakhand.

2. This intra-Court appeal is preferred against the order passed by the learned Single Judge in Writ Petition (M/S) No. 1754 of 2018 dated 07.01.2020.

The respondent-writ petitioner filed Writ Petition (M/S) No. 1754 of 2018 seeking a writ of certiorari to quash the license dated 04.06.2018 granted in

favour of the appellant herein; a writ or direction declaring the bye-laws dated 13.01.2018 as illegal and without authority of law; and for a writ of

prohibition directing the respondents not to interfere with the respondent-writ petitioner running a Haat market, on Saturdays, on his private land in

Ittawa Village, Bazpur Tehsil, Udham Singh Nagar district.

3. The appellant-fifth respondent was granted a license by the Zila Panchayat in terms of the bye-laws framed by it, among others, in the exercise of the powers conferred on it under Section 106(2) of the Uttarakhand Panchayati Raj Act, 2016 (for short the "2016 Act"). While the validity of the said bye-laws has, no doubt, been subjected to challenge in the Writ Petition, the learned Single Judge has not, in the order under appeal, suspended operation of the bye-laws. He has, however, relied on the earlier order passed in Writ Petition (M/S) No. 580 of 2017 whereby the rights to hold a Haat market was given to a Gram Sabha. After having noticed that the said order, in Writ Petition (M/S) No. 580 of 2017, had been stayed by a Division Bench in Special Appeal No. 539 of 2018, the learned Single Judge observed that the respondent-writ petitioner had challenged the functioning of the village fair at the hands of the private respondent, who had been granted license by the Zila Panchayat; and he was earlier running a Haat market. The learned Single Judge directed that the respondent-writ petitioner also be permitted to run a Haat market, on his private land, in accordance with law, for which he shall deposit the requisite fee with the concerned authority i.e. the Gram Panchayat. Aggrieved thereby, the present Special Appeal.

4. Mr. S.K. Mandal, learned counsel for the appellant-fifth respondent, would submit that, under Section 106(1) of the 2016 Act, the Zila Panchayat has the power to frame bye-laws regulating Haat markets; in terms of the bye-laws, a license is required to be obtained from the Zila Panchayat concerned; and the appellant-fifth respondent made an application to the Zila Panchayat, which granted him a license to run a Haat market.

5. It does appear that, though the respondent-writ petitioner had also submitted an application in the year 2018, for grant of a license to run a Haat market, no action appears to have been taken by the Zila Panchayat in this regard resulting in the appellant alone running a Haat market during the financial year 2019-20 on the basis of the license granted in his favour by the Zila Panchayat.

6. Mr. B.D. Kandpal, learned counsel for the respondent-writ petitioner, would submit that the writ petitioner has been running a Haat market in his private land for the past six months and, since the 2016 Act does not obligate a

license to be obtained in the absence of any bye-laws being framed by the Gram Panchayat, his fundamental right to carry on business, on his private land, cannot be interdicted by the official respondents.

7. Since the earlier order of the learned Single Judge, in Writ Petition (M/S) No. 580 of 2017, has been stayed by a Division Bench in Special Appeal

No. 539 of 2018, it is unnecessary for us to express any opinion on the order passed in Writ Petition (M/S) No. 580 of 2017. Suffice it to note, for the

purpose of disposal of this Special Appeal, that, in terms of Section 106(1) of the 2016 Act, the Zila Panchayat has been conferred the power to make

bye-laws for its own purposes, and for the purposes of the Zila Panchayats applicable to the whole or any part of the rural areas of the district,

consistent with the 2016 Act and any Rule made under the 2016 Act.

8. Section 106(2) of the 2016 Act relates to matters for which a Zila Panchayat has been conferred power to make bye-laws. Head â??Dâ?, in

Section 106(2) of the 2016 Act, relates to markets, slaughter-houses, sale of food etc, and clause (a) thereunder prohibits the use of any place as a

slaughter-house, or as a market or shop for the sale of animals intended for human food or of meat, or of fish, in default of a licence granted by the

Zila Panchayat or otherwise than in accordance with the conditions of a licence so granted. Sub-clause (e) of Head â??Dâ?, in Section 106(2) of the

2016 Act , empowers the Zila Panchayat to prescribe conditions subject to which the areas or locality in respect of which licences for the purposes of

sub-head â??Dâ? may be granted, refused, suspended or withdrawn. Section 104 of 2016 Act relates to the powers, functions and duties of the Zila

Panchayat and, under Section 104(9), a Zila Panchayat has been conferred the power to categorize as a Haat market, a Haat of a Gram Panchayat

market and Zila Panchayat Haat market for working of Haats and markets in rural areas.

9. On a conjoint reading of Section 104(9) with Section 106(1) and 106(2) D (a) and (e) of the 2016 Act, the Zila Panchayat appears to have been

conferred the power to grant a license for running of a Haat market. While it is true that, besides Section 106(2) of the 2016 Act, the bye-laws framed

by the Zila Panchayat also traces its power to the 1961 Act which has since been repealed, it is settled law that, as long as power exists, mere quoting

of a wrong provision would not denude the authority of the power to frame bye-

laws. (Pine Chemicals Ltd. v. Assessing Authority : (1992) 2 SCC 683).

10. The power of the Gram Panchayat to frame bye-laws, under Section 22(1) (xii), Section 46(5)(d) and Section 46 (11) of the 2016 Act is traceable

to Section 29(2) and, in view of Section 125 (b), it appears that any bye-laws, to be framed by the Gram Panchayat, requires approval of the Zila

Panchayat concerned. It is unnecessary for us, however, to dwell on this issue, since it is not in dispute that the subject Gram Panchayat has not made

any such bye-laws till date and, unless and until the bye-laws framed by the Zila Panchayat, are held illegal, the said bye-laws would operate and

govern the grant of licenses for running of Haat markets in the rural areas of the concerned district.

11. We find considerable force in the submission of Mr. B.D. Kandpal, learned counsel for the respondent-writ petitioner, that, since the Gram

Panchayat has been granted power under the 2016 Act to frame bye-laws, the order now passed by this Court may not be construed as disabling the

Gram Panchayat from framing bye-laws. We, therefore, make it clear that we have not expressed any opinion on the applicability of the bye-laws, if

any, made by the Gram Panchayat since, admittedly, no such bye-laws have been framed by the subject Gram Panchayat till date.

12. While the Zila Panchayat appears to have the power to frame bye-laws regulating establishment of Haat markets, the question which would

necessitate examination is the manner of its exercise. The subject Zila Panchayat appears to have adopted a pick and choose method in the grant of

licenses for, in the present case, both the appellant and the respondent-writ petitioner had submitted applications for grant of license and yet the Zila

Panchayat, for reasons not known, has chosen to grant a license to the appellant herein, and not to the respondent-writ petitioner. Exercise of power

by the Zila Panchayat, in granting a license to the appellant alone, appears to arbitrary and illegal when examined in the light of the fact that, in the

earlier years, both the appellant and the respondent-writ petitioner were granted licenses to run Haat markets on their private lands.

13. Conferment of power apart, the Zila Panchayat is bound to exercise its powers in a fair and reasonable manner, and not on its whims and fancies.

A fair and transparent mode of grant of licenses should be adopted by the Zila

Panchayat, and the person to whom the largesse of a license should be granted must be selected by a legally acceptable procedure. It is unnecessary for us to dwell on this aspect any further since the license period is for one year from the 01st of April to 31st of March, and the license granted in favour of the appellant is due to expire by the 31st of March, 2020 i.e. a little more than ten days from now. As the respondent-writ petitioner claims to have been running a Haat market on his private land for the past six months and, since the annual license fee collected by the Zila Panchayat from the appellant is Rs. 20,000/- for the financial year 2019-20, the Zila Panchayat shall permit the respondent-writ petitioner also to operate the Haat market till 31.03.2020, provided the respondent-writ petitioner pays the license fee for six months i.e. of Rs. 10,000/- to the Zila Panchayat forthwith. In case the respondent-writ petitioner fails to pay the said amount by 23.03.2020, it is open to the Zila Panchayat to prohibit him from running the Haat market.

14. For the ensuing financial year 2020-21, which is due to commence from the 01st of April, 2020, the Zila Panchayat shall grant licenses, for establishment of Haat markets, by adopting a fair and transparent mode of grant of such licenses. In the absence of any prohibition in the bye-laws, for grant of licenses to more than one person, it is open to the Zila Panchayat to grant a license to one or more persons by adopting a fair, reasonable and transparent process.

15. Mr. B.D. Kandpal, learned counsel for the respondent-writ petitioner, would fairly state that, in view of the order now passed by this Court, the cause in the Writ Petition no longer survives; and this Court may consider closing the Writ Petition leaving the questions of law, raised in the Writ Petition, open for consideration, if need be, in subsequent legal proceedings.

16. The order under appeal is, accordingly, modified to the extent indicated hereinabove, and both the Special Appeal and the Writ Petition are disposed of, leaving the questions of law, raised in the Writ Petition, open for consideration, if need be, in subsequent legal proceedings.

17. No costs.