

(2011) 04 AHC CK 0458

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 20755 of 2011

Tansir Khan

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: April 8, 2011

Acts Referred:

- Gram Panchayat Act, 1994 - Section 111, 112, 36, 37, 9
- Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 - Section 239, 36
- Uttar Pradesh Panchayat Raj Act, 1947 - Section 34(2)
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 117

Citation: (2011) 5 ADJ 563 : (2011) 4 AWC 3859 : (2011) 113 RD 565 : (2011) 3 UPLBEC 1879

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

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Amitava Lala, J.

The writ petition is made by the Petitioner for quashing the impugned notification dated 7.3.2011 published by the Respondent No. 4, Additional Chief Officer, District Panchayat Bulandshahar, District Bulandshahar for making an auction to appoint the collector of tehbazari.

2. The Petitioner's case is that he was selected by Gram Panchayat in respect of a mandi on a Gram Panchayat land. The Petitioner, being the highest bidder, succeeded and the contract was executed in his favour for collection of tehbazari. On the same day, the copy of the resolution was sent to the District Panchayat for issuing a license but instead of issuing the licence by the Zila Panchayat, the impugned notification was published for collection of tehbazari of the concerned Gram Sabha in the District of Bulandshahr ignoring the resolution passed earlier on 15.2.2011 by the Gram Panchayat to entrust the work in favour of the Petitioner.

3. The contention of the Petitioner is that u/s 34(2) of U.P. Panchayat Raj Act 1947, it has been held that "All markets and fairs or such portion thereof as are held upon public land shall be managed and regulated by the [Gram Panchayat] and the [Gram Panchayat] shall receive to the credit of the Gram Fund all dues levied or imposed in respect thereof." Heading of Section 34(2) says that this has been done in respect of the property vested in the Gram Panchayat.

4. It has been further contended by learned Counsel appearing for the Petitioner that u/s 117 of U.P Zamindari Abolition and Land Reforms Act, 1950, it has been held that certain lands are required to be vested with the Gaon Sabha by the State.

5. The Petitioner further contended that Section 36 of U.P. Kshettra Panchayat & Zila Panchayat Act should be read with Section 239 of the said Act. The Petitioner has also shown to us that u/s 239 of the U.P. Kshettra Panchayat & Zila Panchayat Act, 1961, Zila Panchayat has power to make bye laws in respect of Zila Panchayat itself and also in respect of Kshettra Panchayat but this section is not applicable in respect of Gram Panchayat. u/s 36 of the Act, power to sanction bye-laws framed by the [Gram Panchayats] and their tax proposals have been inserted vide Act No. 9 of 1994, which is as follows:

36. Power to sanction bye-laws framed by [Gram Panchayats] and their tax proposals.--Notwithstanding anything contained in the United Provinces Panchayat Raj Act, 1947 (U.P. Act XXVI of 1947), and any Rules made thereunder or any other law for the time being in force--

(a) the power to approve and sanction the proposal of a [Gram Panchayat] in a district to impose any tax or rate described in Section 37 of the said Act and the power under Sections 111 and 112 of the said Act to frame and sanction the bye-laws for any [Gram Panchayat] within the district shall as from the appointed date vest in and belong to the Zila Panchayat of the district; and

(b) [x x x]

6. From the plain reading of Sections 36 and 37 of this Act, it is evident that the Zila Panchayat has power only in respect of approval and sanction of the proposal of a Gram Panchayat in a district to impose any tax or rate described in Section 37 and bye laws framed under Sections 111 and 112 of the Act. There is nothing in these Sections with regard to management of markets and fairs to be held on public land of a Gram Panchayat. The provisions contained in these two Sections are strictly in respect of taxes and rates and framing and sanctioning of bye laws.

7. Against this background, a dispute regarding the power of the Gram Panchayat vis-a-vis Zila Panchayat arose before us. The learned standing counsel has contended before us that as per Section 56 of the U.P. Kshettra Panchayat & Zila Panchayat Act, 1961 this dispute can be resolved by the State Government. Section 56 of the said Act is quoted herein:

56. Exercise of Power of Zila Panchayats.--(1) The powers, duties and functions specified in the Second Column of Schedule IV, with the exception of those against which an entry is shown in the third column of that Schedule, may be exercised and shall be performed by Zila Panchayat by resolution passed at a meeting and not otherwise.

(2) The following powers, duties and functions of a Zila Panchayat shall be exercised and performed by the Adhyaksha of the Zila Panchayat namely-

(a) the determination, in accordance with the provisions of this Act and any regulations in this behalf of questions arising in respect of the service, leave, pay, allowance and other privileges of servants of the Zila Panchayat in respect of whom the appointing authority u/s 43, is the Zila Panchayat;

(b) the submission to the prescribed authority, the District Magistrate or the State Government, any statements, accounts reports, copies of documents, copies of resolutions passed by a Zila Panchayat or any committee thereof or proposals and objections required to be submitted under this Act;

(c) such of the powers, duties and functions referred to in the second column of Schedule IV, as are required under the third column thereof to be exercised or performed by the Adhyaksha or as they are delegated by the Zila Panchayat u/s 57 of the Adhyaksha"

(d) all other powers, duties and functions of the Zila Panchayat not expressly required to be exercised or performed by resolution which have not been specified in the second column of Schedule IV and which have not been delegated by the Zila Panchayat u/s 57 to any authority other than the Adhyaksha.

(3) The powers, duties and functions, specified in the second column of Schedule V, shall be exercised and performed on behalf of the Parishad, by the Mukhya, Adhikari.

8. According to us, whether Zila Panchayat can control and supervise the Gram Panchayat in respect of the dispute in question is altogether different the powers of the State cannot be ignored irrespective of such issue Since only the State, by its own notification, can declare a land to be the land of Gram Sabha, it clinches the mind of the Court that a role of supervision is not available but there is possibility, by necessary implication, that there is no supervision of the Zila Panchayat over the Gram Panchayat The State Government is the proper authority to take a decision in respect of the above including a dispute between a Zila Panchayat and other local authority.

9. Having so, the writ petition is disposed of with a direction upon the State Government to take a decision in the matter upon giving fullest opportunity of hearing and by passing a reasoned order thereon within a period of six weeks from the date of communication of a certified copy of this order.

No order is passed as to costs.