

A GULSHAN & ANR. ETC.
v.
ZILA PARISHAD & ORS.

OCTOBER 16, 1987

B [A.P. SEN AND M.N. VENKATACHALIAH, JJ.]

C *Uttar Pradesh Kshetra Samiti and Zila Parishads Adhiniyam, 1961: Section 239(2)(E)(a)—Utilisation of carcass of dead animals in rural area—Bye-law framed providing for public auction right to trade in—Zila Parishads—Competency of—Whether Bye-law offends Art. 19(1)(g) of Constitution of India—State Government Circular dated June 7, 1986—Effect of.*

D In exercise of the powers conferred by Section 239(2)(E)(a) of the Uttar Pradesh Kshetra Samiti and Zila Parishads Adhiniyam, 1961, various Zila Parishads framed a bye-law, providing that right to trade in carcass utilisation in the rural area of the respective Zila Parishads shall be put to public auction. Such activities comprised of taxing of the carcass of dead animals to a specified place, skinning of the carcass, storage of bones and skins, curing and dyeing of such skins and preparation of leather goods.

E In a writ petition challenging the validity of the said byelaw, a Single Judge of the High Court struck down the latter part of the bye-law framed by one of the Zila Parishads, providing for farming out of the privilege of utilisation and disposal of carcass of dead animals on the ground that it created a monopoly in favour of an individual or group of individuals.

F A Division Bench reiterated that view in two writ petitions fed before it, and distinguished the decision of this Court in *State of Maharashtra v. Mumbai Upnagar Gramodyog Sangh*, [1969] 2 SCR 92 taking a contrary view on the ground that the restrictions were reasonable within the meaning of Art. 19(6), in the context of the thickly populated metropolitan city.

H The correctness of the said decision of the Division Bench was open to question. Another Division Bench referred the matter to a full Bench, which expressly repelled the aforesaid view, and held that it was competent for the Zila Parishads to frame such bye-laws in exercise of the powers conferred by s. 239(2)(E)(a) of the Act.

Against the various judgments and orders of the High Court, special leave petitions and appeals by special leave challenging the constitutional validity of the aforesaid bye-law, were filed in this Court.

In SLP(C) No. 1900 of 1981, this Court, in order to protect the interests of persons traditionally engaged in the work of skinning, tanning etc., directed the State Government to frame a Model Scheme for carcass utilisation in the Etawa district at the village panchayat level on an experimental basis, and passed certain incidental directions as to the price payable for skins, bones and horns. As nothing further was done, in partial modification of its earlier orders, this Court directed the Zila Parishad, Etawa to issue licence to any person who applied for the same.

In the meantime, the Government of Uttar Pradesh issued a Circular dated June 7, 1986 stating that in future the licences for disposal of carcass of animals should be granted only to registered industrial cooperative societies formed by the persons engaged in this work.

Disposing of the Special Leave Petitions and civil appeals,

HELD: It is plain upon the reading of the Circular dated June 7, 1986 issued by the State Government that the contract system envisaged by the impugned bye-law framed by the different Zila Parishads in the State has been virtually abandoned, and the State Government proposes to replace the system of auction by a system of licensing, giving preferential right to cooperative societies consisting of members of the traditional occupation, for the disposal of carcass of dead animals. [544E-F]

In view of the subsequent policy decision taken by the State Government, the present controversy no longer survives. It would be open to different Zila Parishads, in view of the directive of the State Government, to frame the appropriate Bye-laws consistent with and for the implementations of the policy declared by the State Government. The Zila Parishads, while considering the question, shall keep in view the directions issued by this Court on April 15, 1983, and also the order passed introducing the licence-system in the Zila Parishad, Etawa on an experimental basis. 544F-G]

For a meaningful effectuation of the policy-decision of the Government, which is taken in the larger interests of a sizeable segment of the weaker sections of the society, it is of utmost importance that the

- A** work of formation of cooperative society of the members of the traditional-occupation, who lack the will and the ability to organise themselves, should be taken up by the social welfare department of the State Government and every effort should be made to bring the members of the traditional occupation within the fold of these cooperative societies. The social welfare department shall take effective steps to
- B** organise such cooperative societies. [544H; 545A-B]

- Wherever it is not possible to implement the policy-decision and there is likely to be a loss of revenue or other compelling reason, it would be open to the Zila Parishads, as a purely transitory measure and with the prior concurrence of the State Government, to arrange for carcass utilisation by auction if the Bye-laws permit such auction. It is
- C** only where, for any compelling reason, the said policy-decision cannot be implemented effectively in any area, that the concerned Zila Parishad could, with the prior sanction of the State Government, continue the present contract system subject to such variation as may be necessary till the cooperative societies are formed. [545C-D]

- D** CIVIL APPELLATE JURISDICTION: Special Leave Petition No. 1900 of 1981 etc.

From the Judgment and Order dated 3.2.1981 of the Allahabad High Court in C.M.W.P. No. 1924 of 1981.

- E** P.P. Rao, Ambrish Kumar, Mrs. Rani Chhabra, M. Qamaruddin, Mrs. Qamaruddin, A.K. Sriyastava, B.B. Tawakley, Mrs. Subhadra, S.N. Singh, C.K. Ratnaparkhi, S.K. Gupta, Uma Dutt, C.P. Lal, M.K. Garg, and Lokesh Kumar for the Petitioners.

- F** Anil Dev Singh, O.P. Rana, B.P. Maheshwari, Mrs. S. Dikshit, P.K. Pillai, R. Ramachandran, A.K. Srivastava, S.C. Birla, S. Wasim, A. Qadri, N.N. Sharma, Shakeel Ahmad and K.K. Gupta for the Respondents.

The following order of the Court was delivered:

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ORDER

- The main issue involved in this batch of appeals by special leave and the connected special leave petitions, directed against various judgments and orders of the Allahabad High Court, is as to the constitutional validity of a particular bye-law framed by different Zila
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Parishads in the State in exercise of the powers conferred by s. 239(2)(E)(a) of the Uttar Pradesh Kshetra Samiti and Zila Parishads Adhiniyam, 1961, prohibiting the use of any place in default of a licence granted by the Zila Parishad or otherwise than in accordance with the conditions of licence so granted. The impugned bye-law provides that the right to trade in carcass utilisation in the rural area of the respective Zila Parishads shall be put to public auction. Such activities comprise of taking of the carcass of dead animals to a place specified, skinning of the carcass, storage of bones and skins, curing and dyeing of such skins and preparation of leather goods. In *Jagat Dhari & Anr. v. Zila Parishad, Pratapgarh & Ors.*, A.I.R. 1975 All. 135 a learned Single Judge struck down the latter part of bye-law no. 11 framed by the Zila Parishad, Pratapgarh which provided for farming out of the privilege of utilisation and disposal of carcass of dead animals, on the ground that while s. 239(2)(E)(a) of the Act empowers a Zila Parishad to frame bye-laws to regulate or control the offensive trade for maintaining the health, safety and convenience of inhabitants of the rural areas lying within its jurisdiction, by prohibiting the user of any place in default of a licence granted by the Zila Parishad or otherwise than in accordance with the conditions of a licence, it did not authorise the Zila Parishad to put the right or privilege to carry on such trade to public auction inasmuch as it created thereby a monopoly in favour of an individual or group of individuals. The view expressed in *Jagat Dhari's* case was reiterated by a Division Bench in *Mohammad Iqbal & Ors. v. The Zila Parishads, Varanasi and Mirzapur & Ors.* (Civil Misc. Writ Petition No. 2086 of 1976 decided on January 7, 1977) and in *Suraj Pal v. Zila Parishad, Banda & Ors.* (Writ Petition No. 1540 of 1974 decided on November 26, 1977) and it held that s. 239(2)(E)(a) and the other provisions of the Act did not confer on the Zila Parishad the power to create a monopoly in the trade of carcass utilisation. In *Suraj Pal's* case, the Division Bench distinguished the decision of this Court in *State of Maharashtra v. Mumbai Upnagar Gramodyog Sangh*, [1969] 2 SCR 392 taking a view to the contrary, on the ground that the analogous bye-law framed by the Municipal Corporation of Bombay regulating the trade of carcass utilisation viz. the activity of removing carcass to the prescribed place for the purpose of skinning, dyeing and tanning and also the activity of storing skins, horns and bones were reasonable restrictions within the meaning of Art. 19(6) of the Constitution in the context of thickly populated metropolitan city of Greater Bombay where such restrictions were necessary in the interests of the general public for maintaining public health, sanitation and hygiene. It however held that the considerations which weighed with the Court in *State of Maharashtra v. Mumbai Upnagar Gram-*

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A *odyog Sangh*, (supra), were of no relevance in determining the reasonableness of the restrictions on such trade in sparsely populated rural areas. The correctness of the decision of the Division Bench in the cases of *Mohammad Iqbal and Suraj Pal* following the view in *Jagat Dhari's* case that the impugned bye-law offended against Art. 19(1)(g) was open to question. A Division Bench accordingly referred the matter to a Full Bench.

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The Full Bench decision was rendered by the Lucknow Bench of the High Court in *Jaggu & Ors. v. Zila Parishad, Gonda & Ors.*, [1981] All. LJ. 1 (FB). The Full Bench while disagreeing with the earlier decisions of the High Court held that the considerations of public health, safety and convenience were equally relevant to the rural areas and therefore the individual's right to trade in the putrefying carcass of a dead animal which was an obnoxious thing was necessarily subject to the State's police power and accordingly it was competent for the Zila Parishads to frame bye-laws in exercise of the powers conferred by s. 239(2)(E)(a) of the Act to provide that no person shall store bones of dead animals or shall skin the carcass or shall cure and dye skins or shall prepare leather goods in the rural areas except unless he has obtained a licence for the same. It expressly repelled the view earlier taken that the effect of the impugned bye-law for farming out the right or privilege of carcass utilisation was to create a monopoly in favour of an individual or group of individuals i.e. the highest bidder at the auction. In substance, the Full Bench held that carcass of dead animals is nothing but a putrefying organic matter and a dangerous thing and is therefore subject to the State's police power to regulate the manner of their disposal in public interest for maintaining public health and hygiene.

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There has been protracted hearing of these matters before different benches lasting over several days. In *Gulshan & Ors. v. Zila Parishad, Etawa*, (S.L.P. [C] No. 1900/81) the Court passed an order dated April 3, 1981 directing the State Government to frame a Model Scheme for Carcass Utilisation in the Etawa district at the village panchayat level at an experimental basis. In devising the proposed scheme, the Court's concern was to ensure that persons like the petitioners traditionally engaged in the work of skinning, tanning and preparing articles of leather goods, are not deprived of their means of subsistence and do not become the victims of exploitation by contractors. It was directed that the State Government may under the scheme set apart places in each block or other regions for the purpose of storing skins and arrange for Government tanneries or other institu-

tions or organisations to purchase skins from the petitioners and others at a reasonable price so that they may get a fair recompense for the work done by them, as also for the skins. An undertaking was given on behalf of the Zila Parishads that they would render full cooperation to the State in formulating such scheme and implementing it so as to eliminate any middlemen who might become an instrument of exploitation. On April 27, 1981 the Court passed another order in that case directing the State Government to furnish information to the Court in full detail as to how many centres had been set up in Etawa district under the Model Scheme for Carcass Utilisation at village panchayat level, the places where such centres had been located, the activities carried on by these centres, as to how many persons were taking advantage of the scheme etc. On that day, learned counsel for the State Government read out a Government order showing that various cooperative societies had been formed for the purpose of *Charma Shodhan*. The Court accordingly passed certain incidental directions as to the price payable for skins, bones and horns. Eventually, the Court on August 12, 1981 appointed a Commission consisting of Dr. Upendra Baxi and Shri Krishan Mahajan to make an indepth study of the socio-legal problem.

In compliance of the aforesaid directions made by the Court, the State Government on August 25, 1981 convened a meeting at the Secretariat which proceeded on the basis that the directions made by this Court with regard to formulation of a Model Scheme for Etawa district should also govern the Zila Parishads in other districts, namely, Kanpur, Muzaffar Nagar, Meerut, Hardoi, Lucknow etc. At the meeting, it was decided *inter alia* to organise one industrial cooperative society of skin curing and leather craft industry each at the block level in the districts and to examine the feasibility of the Khadi Gramodyog and U.P. Village Industries Board rendering financial assistance. The minutes of the meeting were forwarded by the Government to the concerned District Magistrates for immediate action. Apparently, nothing further was done. The Court was therefore constrained on September 3, 1984 in partial modification of the earlier orders, to direct the Zila Parishad, Etawa to issue a licence to any person who applied for the same. At the hearing, learned counsel for the State Government gave an undertaking that upon the licence being so granted, no one including the contractor would obstruct the licensees from carrying on their activities authorised by the licence, including collection of dead animals, skinning the same and selling the skins, bones etc. or by private negotiation in accordance with the rules. This direction was made on an experimental basis and was con-

A fined to Zila Parishad, Etawa and other matters were kept pending.

After the matters were heard before us at quite some length, our attention was drawn to Circular no. 2670G dated June 7, 1986 issued by the Special Secretary to the Government of Uttar Pradesh addressed to the Commissioners in the State, to the following effect:-

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"I have been directed to invite your attention to the above subject and state that the disposal of carcasses of animals is performed by the District Boards under their own Bye-laws and the District Boards generally get this work performed by taking recourse to auction. *With a view to safeguarding the interest of the persons, who are traditionally engaged in this work, the Government after due consideration have decided that in future the licences for disposal of carcasses of animals should be granted only to registered industrial cooperative societies formed by the persons engaged in this work and for this purpose the average income of such society during the last three years enhanced by 15% thereof should be treated its potential income. Apart from this, care should be taken to ensure that orthodox contractors are not allowed to enter this society in pseudo-form.*"

E It is plain upon the reading of the aforesaid Circular that the contract system envisaged by the impugned bye-law framed by the different Zila Parishads in the State has been virtually abandoned, and the State Government proposes to replace the system of auction by a system of licensing, giving preferential right to cooperative societies consisting of members of the traditional occupation, for the disposal of carcass of dead animals.

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G In view of the subsequent policy decision taken by the State Government, the present controversy no longer survives and it would be open to different Zila Parishads, in view of the directive of the State Government, to frame the appropriate Bye-laws consistent with and for the implementation of the policy declared by the State Government. The Zila Parishads while considering the question, shall keep in view the directions issued by this Court in Writ Petition No. 499 of 1983 decided on April 15, 1983. It shall also keep in view the order passed by this Court in *Gulshan's* case introducing the licence-system in the Zila Parishad, Etawa on an experimental basis.

H For a meaningful effectuation of the policy-decision of the Gov-

ernment, which is taken in the larger interests of a sizeable segment of the weaker sections of the society, it is of the utmost importance that the work of formation of cooperative society of the members of the traditional-occupation, who owing to their illiteracy, penury, and social disadvantages lack the will and the ability to organise themselves, should be taken-up by the social welfare department of the State Government and every effort should be made to bring the members of the traditional occupation within the fold of these cooperative societies. The social welfare department shall take effective steps to organise such cooperative societies.

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Wherever it is not possible to implement the policy-decision and there is likely to be a loss of revenue or other compelling reason, it would be open to the Zila Parishads, as a purely transitory measure and with the prior concurrence of the State Government, to arrange for carcass utilisation by auction if, of course, the Bye-laws of the Zila Parishad concerned permit such auction. It is only where, for any compelling reason, the said policy-decision cannot be implemented effectively in any area, that the concerned Zila Parishad could, with the prior sanction of the State Government, continue the present contract system subject to such variation as may be necessary and that too only till the cooperative societies are formed in that area.

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The special leave petitions and the appeals are disposed of accordingly. No costs.

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N.P.V.

Petitions and Appeals disposed of.