Ayodhya Prasad Vajpai

Vs

State of U.P. & Another

Civil Appeal No. 1805 of 1967

(CJI M. Hidayatullah, R. S. Bachawat, C. A. Vaidialingam, K. S. Hegde, A. N. Grover JJ)

13.03.1968

JUDGMENT

HIDAYATULLAH, C.J.-

This is an appeal against the judgment of a division Bench, October 20, 1967, in a Special Appeal (No. 864 of 1967) of the High Court of Allahabad affirming the dismissal of 61 writ petitions by a learned single Judge of the High Court. This appeal arises from one such petition. The appellant was elected Pramukh of Sarwan Khera Kshettra Samiti and his term of office which was co-terminus with the term of the Samiti, extended to five years. He challenges in this appeal, (as he did in the High Court), two Government notifications issued by the Government of Uttar Pradesh under the Uttar Pradesh Kshettra Samitis and Zila Parishads Adhiniyam, 1961 (Act 33 of 1963). By these notifications the Government of Uttar Pradesh has redivided the rural area in the district to which the matter relates into new Khands specifying the limits and constituents of their areas and as a consequence has abolished a few khands and created new Khands in their place. The Khand relating to the appellant's Samiti has been abolished by the first notification and by the second notification the term of the Samiti has also been brought to a close. Both the notifications are of July 1, 1966. The appellant challenges these notifications as also Ss. 3 and 8 of the Act on various grounds. To understand his contentions we may begin by setting out how the Act is constructed.

The Act was passed in 1961 for the establishment of Kshettra Samities and Zila Parishads in Uttar Pradesh. It was intend to make democracy broad-based and to give training in the art of administration and running democracy to the rural population. It is a long Act of 274 sections and 8 schedules. It is not possible to give more than a brief idea of the constitution of the Samitis and their functions and organisation. The preamble of the Act states as follows :

> "Whereas it is expedient to provide for the establishment of Kshettra Samitis and Zila Parishads in the districts of Uttar Pradesh to undertake certain governmental functions at Kshettra and district levels respectively in furtherance of the principle of democratic decentralisation of governmental functions and for ensuring proper municipal government in rural areas, and to correlate the powers and functions of Gaon Sabhas under the United Provinces Panchayat Raj Act, 1947, with Kshettra Samitis and Zila Parishads;"

The Act goes on to define a Kshettra Samiti as a Kshettra Samiti established under s. 5 of the Act and a Khand as an area of the district specified as such by the State Government under s. 3 Chapter II of the Act deals inter alia with the establishment of Kshettra Samitis and s. 3 provides as follows :-

> "The State Government shall by notification in the Gazette divide the rural area of each district into khands specifying each Khand by a name and the limits or constituents of its area and may likewise change the names or make modifications in the areas and limits of the Khands by including therein or excluding therefrom areas or create new Khands."

This section allows the State Government to divide the rural area of each district into Khands. It also enables the Government to change the name of a Kshettra Samiti and to make modifications in the areas and limits of the Khands and to create new Khands. Section 4 specifies the effect of change in Khands and the temporary and permanent consequences thereof are provided for. Section 5 then deals with the establishment and incorporation of Kshettra Samitis for each Khand bearing the names of the Khand for which it is established. It says inter alia that every Kshettra Samiti is a body corporate having perpetual succession and common seal and subject to any restrictions or qualifications imposed by any other enactments, possesses the power to acquire, hold and dispose of property and to enter into contracts and may by its corporate name sue and be sued. Section 6 details the composition of Kshettra Samitis providing for elections and cooptions. Section 7 lays down the procedure for the election of the Pramukhs and the Up-Pramukhs of the Kshettra Samitis and its members and s. 9 in the same way deals with the term of the Pramukhs and the Up-Pramukhs. Section 10 then enables the Government to arrange for the constitution of the first Kshettra Samiti for every Khand and for the reconstitution thereof on the expiry of the first and each subsequent terms or when otherwise required under the Act having regard to the provisions of s. 6. Sections 11-16 deal with the resignation of Pramukhs, Up-Pramukh and members, filling of casual vacancies, disqualifications for being chosen or co-opted as members, disputes as to membership or disqualification and motion of non-confidence in Pramukh or Up-Pramukh and removal of Pramukh or Up-Pramukh. In this way complete local self-government is established.

In 1965 by a Sanshodan Adhiniyam, 1965 certain changes were introduced in the parent Act. In s. 8 a second proviso was inserted which read :

> "Provided further that where the State Government is of opinion that it is necessary or expedient so to do with a view to re-organisation of Khands, it may by notification in the Gazette determine the term of all or any Kshettra Samitis."

The Amending Act also added section 8A of which the second sub-section is material for our purpose and may be read here.

> "Where on account of changes in the areas of the Khands under section 4, a Khand ceases to exist, or where under the second proviso to sub-section (1) of Section 8 the term of the Kshettra Samiti of any Khand is determined, the Pramukh and the member of the Kshettra Samiti of such Khand who are members of the Zila Parishad under clauses (i) and (ii) respectively of sub-section (1) of Section 18 shall, notwithstanding anything contained in Sections 18 and 20, continue to be members of the Parishad for the residue of the term of the Parishad."

When the Kshettra Samitis were formed Khands were established and the appellant was the Pramukh of Kshettra Samiti relating to a Khand called Sarwan Khera. By the impugned notifications, the Khand and its Kshettra Samiti have been abolished and the appellant loses the office of Pramukh of the Kshettra Samiti concerned. He challenged in the High Court the two notifications as ultra vires and repugnant to the scheme and the purpose of the Act. He challenged

also Ss. 3 and 8 as suffering from excessive delegation of legislative functions and involving a violation of Art. 14 of the Constitution. These arguments were repelled concurrently in the High Court and his further allegation that the action was mala fide was also discountenanced. He urged the same arguments before us.

Mr. R. K. Garg on behalf of the appellant took us through the provisions of the Act pointing out that the Samiti once constituted had a corporate existence with perpetual succession and it was not possible for the State Government to destroy a corporation so set up and which owned property and a fund and whose existence for five years was contemplated under the Act with possibility of further continuance. It is not necessary to refer to these sections because they are to be found in all legislation dealing with the establishment of corporate local self-Government bodies. The question is not whether Kshettra Samitis enjoy perpetual succession. The question is whether the Kshettra Samitis once established enjoy perpetual existence. The scheme of the Act clearly indicates that the area of the district is required to be divided into many Khands with a Kshettra Samiti in each Khand. Sections 3, 4, 8 and 8A confer power upon the State Government to alter the area of the Khand, constitute new Khands and re-establish old ones. This power is given by the legislature advisedly so that the working of democracy in the rural areas in the Kshettra Samitis and Zila Parishads may be smooth and without difficulty. The reorganisation of the Khands may become necessary because of circumstances too numerous to mention here. Power has, therefore, been reserved to Government to make the alterations as stated above. It will be seen that the latter part of s. 3 gives specific power to create new Khands in addition to the change of areas of the existing Khands which means that new Khands may be brought into existence and old Khands abolished. In fact, Ss. 4 and 8A and the newly added proviso to section 8 bear upon the abolition of existing Khands. In other words, what the State Government did was by an express grant from the legislature. The other provisions of the Act to which our attention was drawn merely indicate what Kshettra Samiti is required to do as long as the Kshettra Samiti exists. Similarly the term of the Kshettra Samitis is to apply to a Kshettra Samiti which is not abolished but continues. The perpetual succession in this context means successions of one Kshettra Samiti to another but in fact it does not entail perpetual existence of any Samiti or any Khand notwithstanding the inadvisability of continuing it for administrative or other valid reason. The power exercised by the Government in issuing the two notifications flow clearly from the provisions of the law under which Government was acting.

It is for this reason that the attack of Mr. Garg was next directed against Ss. 3 and 8 of the Act. He compared the power to make new Khands and to reorganise the old ones with the other scheme of the Act under which the Kshettra Samitis are required to function with right to hold property, to possess fund and to carry on administration. All this does not show that the power given by the act to reconstitute Khands is in any way impaired or frustrated. The two powers are quite distinct. The first power exists when the Samitis are established and continue. The second power comes into play when the need for reconstitution of the Khand emerges. The provisions of Ss. 3 and 8 cannot thus be said to negative the other provisions to which our attention was drawn.

It was next contended by Mr. Garg that Ss. 3 and 8 were invalid because they involved excessive delegation of legislative functions to the State Government and being not supported by adequate safeguards or guides, must be struck down. This argument is not valid. The Act speaks for itself and is self-contained. Its policy is stated in clear terms and the power to create Khands must be read with the power to abolish Khands and create new Khands in their place. The details of how big a Khand should be, what territory it should involve and so on and so forth cannot be the subject of detailed legislation. The Act gives ample indication of what the purpose of making a Khand is and

the duties which the Kshettra Samitis must perform. On this subject the legislative will has been sufficiently expressed and must, therefore, guide the State Government in making its notifications. This case is analogous to the one reported in State of Bhopal and others v. Champalal and others [[1964] 6 S.C.R. 35.]. In that case it was observed that the preamble and long title of the Act made it clear that the enactment was "for the reclamation and the development of the land by the eradication of Kans weed in certain areas in the State." The purpose being specified as the eradication of kans in area infested with it, the Act was said to be valid although the selection of the land was left to the Executive. The legislative policy behind the provisions of law were held to be writ large on it, and what remained or was left to the Executive was to carry out the mandate and give effect to the law to achieve the purpose of the Act.

In present case also the underlying policy and the objective of the legislation is clearly set out and the details of the duties of the Kshettra Samitis are indicated. It has, however, been left to the State Government to determine what the Khands should be and how many Kshettra Samitis should be constituted in each district. This is not a subject for detailed legislation because it is eminently a matter which can be left to the determination of the Executive which is to act in conformity with the wishes of the local people, the political exigency of the situation and the requirements of administrative control. In our opinion, the Act has not erred by conceding unfettered or uncanalised power to the State Government as is contended. On the other hand, it has itself spoken on the relevant subject in full detail so as to outline its own will which alone the Executive is supposed to implement.

It was next contended that Ss. 3 and 8 violate Art. 14 because they furnish an indirect method of removal of the Pramukh, the Up-Pramukh and the Members of a Kshettra Samiti without having to take recourse to the provisions for their removal as laid down in the Act. Reliance in this connection is placed upon a decision of this Court in Ram Dial and others v. State of Punjab [[1965] 2 S.C.R. 858.]. That case is easily distinguishable.

There the Punjab Municipalities Act contained two provisions for the removal of a member in the public interest. By one provision he was entitled to a hearing and by the other not. This Court held that as it was open to choose one method rather than other and that there was room for arbitrary action. Here the provision on the subject of removal of members of the Kshettra Samitis are not congruous with the subject of reorganisation of Khands. The two provisions operate in entirely different fields. One is concerned directly with the removal of the Pramukh, Up-Pramukh and the members. The other is directly concerned with the abolition of the Khands and reconstitution of different Khands. These are two different powers and cannot be compared at all. It may be that by abolishing a Khand and its Kshettra Samiti the members also must go, but that is a consequence of the exercise of quite a different power. Of course, if the action in abolishing the Khand could be shown to be directly connected with the removal of the Pramukh, Up-Pramukh or a member of the Kshettra Samiti the action of the Executive Government can be struck down as mala fide. It was for this purpose that the appellant pleaded in the High Court mala fides on the part of the Government. The two judgment now under appeal negative the existence of any mala fide intention. No material was placed before us to establish mala fides nor could the findings be attacked since they were concurrently reached. In this view of the matter we must hold that the State Government in exercising it powers acted honestly and within the four corners of its jurisdiction.

In the result the appeal must be held to be without substance. It will be dismissed with costs.

Appeal dismissed.##

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