

SUPREME COURT OF INDIA

Nafis Ahmad

Vs.

State of U.P

C.A.No.2843 of 2008

(R.M.Lodha and Anil R.Dave, JJ.)

26.07.2012

JUDGMENT

R.M.Lodha, J.

1. The appellants are in appeal, by special leave, against the judgment and order dated December 12, 2007 passed by the Allahabad High Court whereby the Division Bench of that Court quashed the licence issued to them by respondent no.2 -Zila Panchayat, Muzaffarnagar - for holding private cattle market in Village Gujjarpur Taparana at Khasra No. 2478 on Tuesdays for the period October 23, 2007 till March 31, 2008 and any subsequent order for the above purpose and directed the Zila Panchayat, Muzaffarnagar to hear the present respondent nos. 3 and 4 and the present appellants and decide the matter afresh.

2. The respondent nos. 3 and 4 are the owners of Khasra No. 637 situate in village Kheri Karamu Pargana, Tehsil Shamli, Distt. Muzaffarnagar. They were granted licence by the Zila Panchayat, Muzaffarnagar to hold private cattle market at the above place on Tuesdays on payment of fixed fee. The licence issued to respondent nos. 3 and 4 has been renewed year after year. For the period 2007- 2008, the licence given to these respondents was renewed from April 1, 2007 to March 31, 2008.

3. The appellants are owners of Khasra No. 2478 situate in Village Gujjarpur Taparana, Tehsil Shamali, Distt. Muzaffarnagar. On their application, they were given licence by the Zila Panchayat, Muzaffarnagar to hold private cattle market in their land on every Monday. The appellants wanted to hold the private cattle market on Tuesdays instead of Mondays. As their request was not acceded to, they filed a writ petition before the Allahabad High Court for a direction to Zila Panchayat Muzaffarnagar to modify the licence and permit them to hold the private cattle market on Tuesdays. The High Court vide its order dated August 18, 2006 directed the appellants to make representation to the competent authority and the competent authority was directed to consider such representation in accordance with law.

4. The appellants accordingly made a representation before the Collector, Muzaffarnagar but the said representation was rejected on October 11, 2006. The appellants then filed another writ petition before the Allahabad High Court aggrieved by the order dated October 11, 2006 passed by the Collector. The High Court disposed of the writ petition on February 14, 2007 by observing that the appellants may make representation to Chairman, Zila Panchayat, and Muzaffarnagar. The appellants then made a representation to the Chairman, Zila Panchayat, Muzaffarnagar. Their representation was allowed by the Chairman, Zila Panchayat Muzaffarnagar on July 11, 2007 and the licence was issued to them on October 23, 2007 permitting them to hold cattle market in their land in Gujjarpur Taparana, Tehsil Shamali, Distt. Muzaffarnagar on every Tuesday.

5. The respondent nos. 3 and 4 initially filed a suit seeking permanent injunction against Zila Panchayat, Muzaffarnagar but after some time filed a writ petition before the Allahabad High Court challenging the order dated October 23, 2007 whereby Zila Panchayat, Muzaffarnagar granted licence to the appellants permitting them to hold private cattle market in their land on Tuesdays and the suit was withdrawn. The impugned order has been passed in this writ petition.

6. Before the High Court, the question was whether there has been a valid exercise of power on the part of Zila Panchayat, Muzaffarnagar in passing order/granting licence dated October 23, 2007 to the appellants permitting them to hold private cattle on Tuesdays.

7. The principal submissions of the writ petitioners (respondents no. 3 and 4 herein) before the High Court were twofold; one, as per bye-law 34 notified by Zila Panchayat Muzaffarnagar, called Zila Parishad, Muzaffarnagar Pashu Pait Bye Laws framed under the provisions of U.P. Kshetra Samiti and Zila Parishad Adhinyam, 1961 (Act No. 33 of 1961), no cattle fair shall be held within 8 kms. from another cattle market. According to writ petitioners, the distance between the land where they have been granted licence to hold private cattle fair and the land of the appellants where the appellants have been granted licence to hold private cattle fair is less than 8 kms., precisely 5.043 kms. and, therefore, the licence granted to the appellants was illegal and two, Zila Panchayat, Muzaffarnagar before granting licence to the appellants did not afford any opportunity of hearing to the writ petitioners although they were vitally concerned in the matter.

8. On the other hand, on behalf of the appellants (respondent nos. 3 and 4 before the High Court), it was submitted that (1) writ petition was not maintainable; (2) the order dated October 23, 2007 was appealable under U.P. Kshetra Samiti and Zila Parishad Adhinyam, 1961 (Act No. 33 of 1961); and (3) having regard to the scheme of bye-law 34 the relevant distance between the cattle markets is the distance by way of road and not the aerial distance

and seen thus the distance between their land where they have been granted licence to hold cattle market fair and the land of respondents nos. 3 and 4 is 9.25 kms.

9. The High Court overruled the objections raised by the appellants with regard to the maintainability of writ petition and the availability of alternative remedy by way of appeal against the order/licence dated October 23, 2007 granted to the appellants. The High Court then proceeded to consider the merit of the matter as follows:

“So far as the merit is concerned, the petitioner’s licence for cattle market to be held on Tuesday of the week was granted from 1st April, 2007 which is going to expire on 31st March, 2008. Previously, the cattle market of the private respondent/s was running in some other day which was by way of consideration of representation on 30th August, 2007, directed to continue also on Tuesday and ultimately the license was issued in their favour to hold cattle market on every Tuesday from 23rd October, 2007. Therefore, during the period of license in favour of petitioners for the period of the private respondents were accommodated. Learned counsel for the petitioners contended before this Court, that as per the Government Order there should not be any second cattle market within the radius of 8 kilometers from the existing market/s. In support of his case, Mr. Khanna argued before this Court that as he is already within the area of 5.043 kilometers on the basis of report (Annexure-9 to the writ petition) being dated 13th September, 2007, however, the respondents have contradicted this report with a further report dated 26th September 2007 by saying that aerial distance might be 5.043 kilometers but not the road distance. Mr. Krishna Mohan, learned counsel appearing for respondent no. 2 contended before this Court that in this context the byelaws will be considered reasonably. Cattle cannot move on the basis of the aerial distance but by way of road so the road distance is to be appropriate to take into consideration as a distance between the cattle markets. Mr. Khanna stated before this Court that the dictionary meaning of ‘distance Webster Dictionary of Law is “the degree or amount of separation between two points, lines, surface, or objects in geometrical space measured along the shortest path joining them”. He also contended that in absence of meaning of distance, the General Clauses Act, 1897 will be followed and, therefore, if we go by Section 11 of the said General Clauses Act, the distance could be aerial distance between the two markets. However, let us consider the submissions of Mr. Anurag Khanna and Mr. Krishna Mohan as to what was the cause of granting such license to the private respondents in spite of existence of the license in favour of the petitioners. Learned counsel for the respondent No. 2 submitted that the petitioners are holding their cattle market in their own land whereas the respondents were allowed to hold cattle market in the land given by the Gram Panchayat. He further submitted that if somebody holds cattle market in his own land,

nominal charge will be obtained by the Panchayat, they will be able to earn more revenue. Therefore, the respondent was allowed and granted license for the purpose. Further, as per several orders of this High Court in the writ petitions, the respondents' contention were considered and the appropriate orders were passed. On query, we have come to know that the petitioners were not the parties to any of the writ petitions in which such orders were passed”.

10. The High Court then held that the interest of the writ petitioners (respondent nos. 3 and 4 herein) cannot be ignored and since the order/licence dated October 23, 2007 has been passed infringing the rights of the writ petitioners, the said order cannot be sustained. The operative portion of the High Court order reads as follows:-

“Therefore, their interest cannot be ignored nor equitable justice say so. Therefore, we are of the view that the order impugned and any further order in connection thereto infringing the rights of the petitioners cannot be sustained without due consideration of the cause by giving reasonable opportunity of hearing to all the concerned and come to a decision once more. Therefore, such order is quashed. Accordingly, the concerned respondent is directed to consider and decide the matter positively within one month from the date of communication of the order after affording fullest opportunity of hearing to all the concerned parties. For the purpose of effective adjudication, a copy of the writ petition alongwith its annexure and the affidavits filed herein along with annexure can be treated to be part and parcel of the consideration. However, passing of this order will not in any way affect holding market by the petitioners where they are continuing, as per the license till the last date of license, i.e. 31st March, 2008 or till the date of communication of the order to be passed by the authority whichever is earlier”.

11. This Court on January 25, 2008 issued notice on the special leave petition and stayed the order of the High Court in the meantime. Subsequently leave was granted and the interim order has been continued which continues till date.

12. We have heard Mr. Naushad Ahmad Khan learned counsel for the appellants, and Mr. Triloki Nath Razdan learned counsel for the respondent nos. 3 and 4.

13. Learned counsel for the appellants argued, which was also argued before the High Court, that bye-law 34 of the Bye Laws should be reasonably construed. Cattle cannot be transported by air; they move from one place to the other on surface and, therefore, the road distance is appropriate and bye-law 34 should be construed by holding that the road distance between two cattle markets must not be less than 8 kilometers by giving appropriate meaning to the word ‘distance’. He referred to Section 11 of the General Clauses Act, 1897. Learned

counsel relied upon a decision of the Kerala High Court in *Dr. M. Hassainar Haji v. The Tehsildar, Taliparamba and ors*[1]. and a decision of Madras High Court in *P.G. Murugesan v. The Assistant Commissioner (Excise) Coimbatore* [2]. He also relied upon the decision of this Court in *Bajaj Hindustan Limited v. Sir Shadi Lal Enterprises Limited and Anr*[3]. in support of the proposition that policy cannot be changed by the High Court by interpretation of provisions of law.

14. On the other hand, Mr. Triloki Nath Razdan, learned counsel for the respondent nos. 3 and 4 stoutly defended the order of the High Court. He relied upon a decision of the Bombay High Court in *St. Philomena Convent High School, Nashik v. Union of India and Ors.* (Writ Petition No. 4734 of 2004) and a decision of the Andhra Pradesh High Court in *Gorle Ramu V. Commissioner of Prohibition*[4] to explain the meaning of word ‘distance’.

15. Bye-law 34 is in Hindi. The respondent No. 2 - Zila Panchayat, Muzaffarnagar in their counter affidavit before the High Court quoted the said bye-law which reads as follows:-
“Kisi Pashu Paith Ke esthal Se 8. K.M. Ke Bhitari Koi Annaya

Pashu Paith Ayojit Nahi Ki Jai Sakti. Esa Upniyam Ke Lagu Hone Se Purwa Ayojit Pashu Paitho Par Yah Pratibandh Lagu Nahi Hoga. Yadi Uska Licence Esa Naye Upniyam Hone Se 6 Month Purva 34 Ke Gazette Se Prakashan Prapta Kar Liya Gaya Hai”.

16. The English translation of the bye-law 34 (Annexure P1) placed by the appellants reads as under:-

“No other cattle fair shall be held within 8 kms from another cattle market. These bye laws shall not be applicable to the cattle markets being held when it came in force. Provided that the said license has been notified within six months prior to the gazette of 34”.

17. The word ‘distance’ does not occur in the English translation of bye-law 34 placed by the appellants on record. The Hindi version of bye-law 34 quoted by the respondent No. 2 in their counter affidavit before the High Court does not have the word ‘distance’; it contains the word ‘distance’. The authentic version of bye-law 34 of the Bye-Laws has not been placed before us. In this view of the matter we do not think it is appropriate for us to place any interpretation on the language of bye-law 34 when the High Court has sent the matter back to Zila Panchayat, Muzaffarnagar for deciding the matter afresh after giving reasonable opportunity of hearing to all concerned.

18. We have carefully perused the judgment and order of the High Court and we find that High Court has not placed any construction on the language of bye-law 34. The contention of the learned counsel for the appellants that the High Court has placed an erroneous

interpretation on the language of bye-law 34 is wholly misplaced and unfounded. The High Court has noted the arguments of the parties but has not given any interpretation on the language of bye-law 34. The High Court cannot be said to be in error in adopting the course by sending the matter back to Zila Panchayat, Muzaffarnagar as impugned order/licence to the appellants was granted on October 23, 2007 without hearing the respondent nos. 3 and 4.

19. In view of the above, Civil Appeal has no merit and is dismissed with no order as to costs. The respondent no. 2 - Zila Panchayat, Muzaffarnagar shall now act as per the order of the High Court dated December 12, 2007. Time given by the High Court to respondent no. 2 for hearing and disposal shall stand extended by three months from the date of receipt of the copy of this order.

Judgment Referred

[1] AIR 1994 Kerala0139

[2]1998 2 CTC 0661

[3] (2011) 1 SCC 0640

[4]2002 6 ALD 0233