

PETITIONER:
GULSHAN & ANR. ETC.

Vs.

RESPONDENT:
ZILA PARISHAD & ORS.

DATE OF JUDGMENT 16/10/1987

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
VENKATACHALLIAH, M.N. (J)

CITATION:
1988 SCR (1) 538 1987 SCC Supl. 619
JT 1987 (4) 334 1987 SCALE (2) 1466

ACT:

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.

HEADNOTE:

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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 taking 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.

In a writ petition challenging the validity of the said bye-law, 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.

A Division Bench reiterated that view in two writ petitions filed before it, and distinguished the decision of this Court in State of Maharashtra v. Mumbai Upnagar Gramodyog Sangh, [1969] 2 SCR 392 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.

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,

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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

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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 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 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 D1]

JUDGMENT:

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.

P.P. Rao, Ambrish Kumar, Mrs. Rani Chhabra, M. Qamaruddin, Mrs. Qamaruddin, A.K. Srivastava, 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.

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: