

CASE NO.:
Appeal (civil) 1272 of 2002

PETITIONER:
State of U.P. & Ors

RESPONDENT:
Chaudhari Ran Beer Singh & Anr

DATE OF JUDGMENT: 10/03/2008

BENCH:
Dr. ARIJIT PASAYAT & C.K. THAKKER & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

CIVIL APPEAL No. 1272 OF 2002

Dr. ARIJIT PASAYAT, J

1. Challenge in this appeal is to the order passed by a Division Bench of the Allahabad High Court. The controversy related to creation of a new district i.e. Baghpat in the State of Uttar Pradesh.

2. By the impugned order the High Court disposed of the writ petition as follows:

"In view of the order passed in W.P. No. 5004 of 1999 Mohd. Tariq v. State of U.P. no further order is required in this petition. Petition is disposed of."

3. Since the order is practically unreasoned, it is necessary to take note of the factual background. On 15.9.1997 a Notification was issued under Section 11 of the U.P. Land Revenue Act, 1901 (in short the 'Act') read with Section 21 of the Uttar Pradesh General Clauses Act, 1904 (in short the 'General Clauses Act'). The Governor directed creation of a new District by the name of Baghpat with effect from the date of publication of the Notification. A Writ Petition No. 9085 of 1999 was filed challenging the aforesaid Notification. There were essentially two prayers i.e. one was to quash the Notification dated 15.9.1997 and the other not to permit Baghpat District to continue. A Writ Petition Civil Misc. No. 39756 of 1998 had been filed wherein creation of a new District "Sant Kabir Nagar" was challenged in Ram Milan Sukla & Ors. By order dated 15.1.1999 a Division Bench of the High Court quashed the Notification dated 9.11.1998 and directed a fresh consideration. The operative portion of the judgment reads as follows:

"On the facts and circumstances of the case, we allow this petition, quash the order dated 9.11.1998 and direct the State Government to reconsider the matter and decide whether there was any good administrative and financial grounds to issue the notification dated 5.9.1997 for creation of Sant Kabir district. If the State Government again decides

to continue Sant Kabir Nagar and other districts created by the previous Government then it must introduce a bill in the State Legislature for this purpose. Until and unless such a bill is introduced and passed the notification dated 5.9.1997 shall remain in abeyance."

4. The matter was carried to this Court in SLP(C)No. CC 1384/1999 and by order dated 26.3.1999 this Court dismissed the writ petition noting as follows:

"Permission to file SLP is granted in Special Leave Petition\005\005\005(CC 1364/99).

Looking to the facts and circumstances as set out by the High Court in the impugned judgment, no intervention is called for under Article 136. Hence the Special Leave Petitions are dismissed."

5. In the Civil Misc. Writ Petition No. 9085 of 1999 to which the present dispute relates, counter affidavit was filed on 16.3.1999. Another Civil Misc. Writ Petition No. 5004 of 1999 was filed before the High Court challenging the creation of Kausambi District. The said writ petition was disposed of by order dated 12.4.1999 with reference to the order passed by the High Court in Ram Milan Shukla's case referred to above.

6. Learned Advocate General of the State submitted before the High Court when the writ petition was being heard that the Government will comply with the orders of the High Court made in Ram Milan Shukla's case. It was further stated that Budgetary provisions have been made in respect of certain districts and the budget has been presented and passed. It was further stated that certain districts created by the previous Government were being retained while others were not.

7. The Division Bench noted that the facts of the said case were covered by the Division Bench's judgment in Ram Milan's case decided on 15.1.1999. However the High Court made certain observations which we feel were not necessary to be made while dealing with the writ petition. They related to the District Magistrate and Superintendent of Police and other officials of the District living at Allahabad and it was also noted that similar was the position in the case of Sant Kabir Nagar's officials. These observations about where the officer should stay and similar other observations really had no relevance. When the writ petition to which this case relates i.e. Civil Misc. Writ Petition No. 9085 of 1999 was taken up, the High Court as noted above disposed of the same with reference to Mohan Tariq's case i.e. Writ Petition No. 5004 of 1999. It is relevant to note that on 7.1.2000 the Cabinet of the State Government took the following decisions:

"The Cabinet decision dated 7.1.2000 as contained in the original letter dated 10.1.2000 of the Joint Secretary (Confidential) issued on behalf of the Chief Secretary and Cabinet Secretary states that ;

"Cabinet in its meeting dated 10.1.2000 after discussion decided that new districts and Divisions

created in the year 1997 shall be continued as it is and with regard to them further steps as necessary regarding placing of Ordinance/Bill be taken."

8. It appears that there was a contempt petition filed before the High Court i.e. Contempt Petition No. 1449 of 1999 in CMWP No. 39756/1998 which was disposed of inter-alia with the following observations:

"In supplementary counter affidavit filed by Ajit Kumar Shahu, Secretary, Revenue Department of Uttar Pradesh, Lucknow, dated 13.3.2002, it has been stated that pursuant to the judgment of this Court, the Cabinet had constituted a sub-Committee under the Chairmanship of Revenue Minister regarding the consideration of utility, viability and expenditure along with facilities of public in general, which submitted a report and it was decided that the new Districts and Commissionery constituted and established in the year 1997 shall be retained and continued as it is. The decision of the Cabinet dated 7.1.2000 as circulated, is also filed as Annexure SCA \026II to the supplementary counter affidavit. It is also the supplementary counter affidavit. It is also stated that in view of the decision of the Cabinet based on the report of the Sub-Committee, and passing of the regular annual financial statements (Budget appropriation Bill, the order dated 15.1.1999 is complied with. Thus in view of the averment made in the supplementary counter affidavit, the Court is not inclined to proceed any further in the contempt proceedings. The notice earlier issued is discharged and the contempt petition is dismissed."

9. Learned counsel for the appellant-State submitted that the approach of the High Court is clearly erroneous. In matters of policy- decision like creation of a District/State, the High Court should not have interfered and that too on wholly irrelevant grounds. So far as Ram Milan's case is concerned this Court did not interfere because there was a direction for re-consideration. The re-consideration has been done and the decision of the Cabinet has been taken on 7.1.2000.

10. Learned counsel for the respondents submitted that creation of a district should not be done in a routine manner and the High Court has rightly taken note of several factors.

11. In Ram Milan's case the High Court had directed re-consideration which apparently has been done as is evident from the Cabinet's decision.

12. Cabinet's decision was taken nearly eight years back and appears to be operative. That being so there is no scope for directing reconsideration as was done in Ram Milan's case, though learned counsel for the respondents prayed that such

a direction should be given. As rightly contended by learned counsel for the State, in matters of policy decisions, the scope of interference is extremely limited. The policy decision must be left to the Government as it alone can decide which policy should be adopted after considering all relevant aspects from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown. Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the government the Court cannot interfere even if a second view is possible from that of the Government.

13. The appeal is accordingly disposed of.