Ram Milan Shukla and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Jan-15-1999

Reported in : 1999(1)AWC723

Judge : M. Katju and ;R.K. Singh, JJ.

Acts : Constitution of India - Articles 148, 151, 198, 199, 202, 204, 204 (3), 206, 207, 266, 266 (3) and 267; Uttar Pradesh Land Revenue Act, 1901 - Sections 11

Appeal No. : C.M.W.P. No. 39756 of 1998

Appellant : Ram Milan Shukla and Others

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Vivek Mishra and ;Brijesh Chandra Naik, Advs.

Judgement :

M. Katju, J.

1. This writ petition had been filed as a public Interest litigation for quashing the impugned order/notification dated 9.11.1998 and 5.9.1997 Annexures-1 and 13 to the writ petition. By the notification dated 5.9.1997. the State of U. P. has passed an order under Section 11 ofthe U. P. Land Revenue Act creating a district called

Sant Kabir Nagar which has been carved out of district Basti.

2. In this case on 24.11.1998, this Court granted one month's time to learned standing counsel to file counter-affidavit but no counter-affidavit was filed. Hence we presume the allegations in the writ petition to be correct and are disposing of the writ petition finally.

3. In our opinion, there is, no doubt, power in the State Government to create a district by virtue of Section 11 of the U. P. Land Revenue Act, but this power like any other administrative power, cannot be exercised arbitrarily. It is settled by a series of decisions of the Supreme Court, e.g. Barium Chemicals Ltd. v. Company Law Board. AIR 1967 SC 295 ; Rohtas Industries v. S. D. Agarwal. AIR 1969 SC 707, etc. that administrative powers cannot be exercised arbitrarily but must be exercised on relevant considerations. In Maneka Gandhi v. Union of India, AIR 1978 SC 597, the Supreme Court held that arbitrariness violates Article 14 of the Constitution.

4. In paragraph 14 of the writ petition, it is staled that district Basti was created in 1986 after bifurcating a part of district Gorakhpur consisting of six Tahsils. In paragraph 15, it is stated that in 1989 district Siddharth Nagar was created out of district Basti. It is alleged in paragraph 19 of the writ petition that creation of district Sant Kabir Nagar was politically motivated. In paragraph 21 of the writ petition, it is stated that even the Cabinet was not taken into confidence by the then Chief Minister before creating the district.

5. In paragraph 23, it is stated that the then Chief Minister created several districts in 1997 but no essential facilities could be provided like medical, educational, etc. In paragraph 24, it is stated that the Government is not able to provide space for construction of administrative offices and accommodation for the officers andemployees for the reason that not only practically and physically it is not possible to do so but also it does not have funds to meet the requirements. In paragraph 25, it is stated that as a result of creating these districts the development projects announced by the Government such as construction of bridges, roads, public schools, hospital, etc. have been adversely affected.

6. In paragraph 32, it is stated that creation of a single district costs about 200 crores of rupees to the public exchequer apart from the recurring expenses. In paragraph 37, it is stated that till date no proceedings for acquisition of land has been initiated. In paragraph 38, it is stated that the decision for creating the new districts is based on collateral and political reason having no co-relation to the norms determined by the State Government to create a new district. In paragraph 48 of the writ petition, it is stated that the State Government does not have the financial means for meeting the financial requirements/liability for creation of the new district.

7. We are of the opinion that although creation of a new district is an administrative act under Section 11 of the U. P. Land Revenue Act yet such administrative powers must be exercised on relevant considerations and not arbitrarily. In this connection, reference may be made to the White Paper issued recently by the U. P. Government regarding income and expenditure of the State Government for the year 1998-99. In page 11 of the White Paper, it has been stated that the annual income of the U. P. Government is Rs. 7,000 crores while the annual expenditure on salary, pension, etc. of the employees is about Rs. 11,000 crores. Thus, the expenditure of the U. P. Government is far in excess of its income. This means that the deficit has to be covered by taking loans from some source and such loans carry liability for payment of interest. This practice of taking loans has been continued for several decades both by the Central and StateGovernment and the result is that now they have to take loans simply to pay the interest on the previous loans. This, the U. P. Government is paying Rs. 6.000 crores annually as interest on its Rs. 50,000 crores debt (vide Northern India Patrika dated 14.1.1999). This is leading to debt trap such as in the countries of South America. In our opinion, the time has now come for strict financial discipline by the Central and State Governments and by public authorities. It must be remembered that every entity runs on finance, whether that entity is a household, a business concern or a Government. Unless strict financial discipline is now imposed, our country will be in very serious difficulty.

8. Unfortunately, several political leaders have not cared for financial discipline. To take the present case as an illustration, creation of a district involves expenditure

of several hundred crores for creating an infra-structure and other facilities. After all, when a new district is created, a large number of buildings have to be constructed, roads have to be made, water supply and sewerage system has to be built, accommodation has to be provided for the officers and employees, hospitals and schools for their families have to be built etc. Unfortunately, all this was not taken into consideration and suddenly a large number of districts were created in 1997 apparently for extraneous considerations, by the previous Government in U. P.

9. To take an example, Allahabad District was bifurcated in 1997 and district Kaushambi was created, but even till today the District Magistrate and S. S. P.. Kaushambi live in Allahabad City. There is not even drinking water facility at the Head Quarter of district Kaushambi which was formerly Manjhanpur Tahsll. Water has to be taken from wells. There are no proper roads, water supply system, sewerage system, hospitals, schools, offices, residential accommodation, etc. at Kaushambi. Similar is the situation in most of the newly created districts.In Baghpat (which was also created as a district in 1997), the. District Magistrate is living in a guest house of a sugar factory, and the S.P. in the house of an A.P.O. There is no house or Court room for the O.S.D. (who will take over shortly as the District Judge, Baghpat) and presently he lives in Meerut, 50 km. away. The District Magistrate, Baghpat has taken over the office of the S.D.M.. Baghpat as his own office. Kanpur Dehat head quarter which was created over a decade ago is still located in Kanpur City. Surely a district Head Quarter cannot function properly without a proper infrastructure but it seems that this factor was not taken into consideration before creating the new districts. Moreover.' finance is required for creating a district but the financial position of the U. P. Government as disclosed in the White Paper issued recently shows that the U. P. Government is not in a position to create any new district. In fact, the present U. P. Government has taken a decision recently on 23.12.1998 to reconsider the creation of the recently made districts, and a sub-committee has been set up for this purpose.

10. We may also mention that expenditure of heavy amounts should form part of the budget and discussed in the Legislatures, otherwise there is no sense in having a budget, but what is seen is that very often heavy unbudgeted

expenditures are incurred, by administrative orders often from the contingency fund, when in fact there is ho situation justifying such expenditure. Contingency, as is evident from Article 267, means an unforeseen happening like a flood. drought, earthquake, etc. and not planned projects. All this must now stop and strict financial discipline imposed by the authorities concerned. It must be remembered that in a democracy, all authorities are servants of the people and they hold offices of trust on behalf of the people, and hence they cannot act as they please but in accordance with the Constitution. All authorities in this country are accountable to the people and to the system, and they will be held liable ifthey commit breach of this public trust.

11. In our opinion, before creating a district a serious exercise must be carried out about the available financial resources and an infrastructure must be created otherwise it will be putting the cart before the horse. Till the infrastructure facilities have been arranged and worked out, the decision to create a new district cannot and ought not to be implemented, and the notification under Section 11 of the U. P. Land Revenue Act should not be issued. Further to bring about transparency in administration, the Government must disclose the compelling administrative, political and economic compulsions for taking such a decision, but that has not been done in this case. Experience has shown that districts have been created on the spur of the moment actuated by collateral and extraneous political reasons resulting in dislocation of finances and administrative problems.

12. There is another aspect, which must be considered. When the U. P. Land Revenue was enacted in 1901, the country was under British rule and the Constitution of India did not exist. After the promulgation of the Constitution, all laws hitherto existing must be in accordance with the Constitution, as the Constitution is the supreme law of the Land.

13. Under the Constitution,financial matters pertaining to theState are dealt with by Articles 198, 199 and 202 to 207. These provisions lay down the procedure which mustbe followed, and they alsoincorporate the democratic principleof 'No taxation withoutrepresentation' which was one of theslogans under which the greatBritish, American and FrenchRevolutions were fought out.

14. In our opinion, before any notification under Section 11 of the U. P. Land Revenue Act is issued, an appropriation bill under Article 204 of the Constitution or a bill for supplementary or additionalexpenditure under Article 205 or a vote on account under Article 206 must be introduced in the Legislature and passed. This is necessary because Section 11 cannot be read in isolation, but it must be read along with the constitutional provisions. After all, creation of a new district involves heavy expenditure, and for this, the constitutional provisions must be followed. These constitutional provisions relating to financial matters have been made to ensure strict fiscal discipline and accountability. In our opinion, a district, cannot be created by a simple executive fiat at the whims and fancies of a particular individual or individuals. As already observed above, creation of a new district has serious administrative and financial implications, and it is an exercise which has an impact on the future also.

15. Article 204(3) of the Constitution states : 'Subject to the provisions of the Articles 205 and 206, no money shall be withdrawn from the Consolidated Fund of the State except under appropriation made by law passed in accordance with the provisions of this Article.'

16. This is a principle of high constitutional importance in a democracy. It implies that every rupee spent by the Government orany public authority must be strictly accounted for to the people's representatives. In our opinion, this principle in Article 204(3) and in Article 266(3) is one of the basic features of the Constitution. This principle implies strict fiscal discipline. It is the minimum requirement of the Constitution that public money must be spent for public purposes, and. when this minimum vanishes, the entire system exists only in name or as a shell. When those entrusted with the power of running the Constitution fail to observe fiscal discipline, the Constitution becomes unworkable.

17. The Constitution has provided in Article 148 for a Comptroller and Auditor General of India with the same high independent status as Judges of the Superior Courts and hisduty is to keep a check on the accounts of the Union and the States, and report to the Legislatures vide Article 151. This also indicates that fiscal discipline was given the highest importance by the Founding Fathers, and it

is a basic feature of the Constitution.

18. 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 ground to issue the notification dated 5.9.1997 for creation of Sant Kabir Nagar 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.