

Javed Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Apr-05-2005

Reported in : 2005(3)ESC1533

Judge : B.S. Chauhan and ;Dilip Gupta, JJ.

Acts : Uttar Pradesh Municipalities Act, 1916 - Sections 34(1B), 95, 127, 153, 235, 296, 298 and 301A; [Constitution of India](#) - Articles 14, 16, 32, 136 and 226

Appeal No. : C.M.W.P. No. 26275 of 2005

Appellant : Javed

Respondent : State of U.P. and ors.

Disposition : Petition dismissed

Judgement :

1. This writ petition has been filed for quashing the directions contained in the communication dated 11.2.2005 sent by the Principal Secretary, Government of U.P. to the Divisional Commissioners/District Magistrates and for a direction to the Nagar Palika Parishad, Khatauli, district Muzaffarnagar to execute the agreement of Tehbazari for the year 2005-2006 in favour of the petitioner.

2. The petitioner has brought on record the communication dated 11.2.2005 sent by the Principal Secretary. Government of U.P. It has been pointed out that the

State Government after a careful consideration has taken a decision that the yearly contracts of Tehbazari for Nagar Palika Parishad/Nagar Panchayats should be stopped and that the same should be collected through their own officers. This policy is being sought to be challenged on the ground that the State Government had no power to regulate the procedure of collection of Tehbazari.

3. We have heard the learned Counsel for the petitioner and the learned Standing Counsel appearing for respondent Nos. 1 and 2.

4. Learned Counsel for the petitioner submitted that the State Government had no authority to issue the directions contained in the order dated 11.2.2005 and in support of his contention, he placed reliance upon the provisions of Section 296 of the U.P. Municipalities Act, 1916 (hereinafter referred to as the 'Act'). Elaborating his submission, he contended that under Section 296 of the Act the State Government could make Rules consistent with the provisions of the Act only in respect to the matter described in Sections 95, 127, 153 and 235 of the Act and, therefore, the State Government had no power to make Rule with regard to the use and occupation of public street by vendors which power solely vests with the Municipality. Learned Counsel for the petitioner further contended that the policy decision of the State Government is arbitrary since it restricts the yearly collection of Tehbazari through the officers of the Nagar Palika Parishad/Nagar Panchayats.

5. Learned Standing Counsel, on the other hand, invited our attention to the various provisions of the Act and contended that the State Government could issue such directions. He further contended that the State Government had taken a policy decision after a careful consideration of all the matters and since the policy decision is neither arbitrary nor unreasonable, the Court should not interfere.

6. We have carefully considered the submissions advanced by the learned Counsel for the parties. We do not agree with the submission advanced by the learned Counsel for the petitioner that the State Government had no authority to issue the directions as contained in the order dated 11.2.2005. A conjoint reading of Sections 34 (1-B), 298 and 301-A of the Act clearly reveals that the State Government could issue the directions to the Nagar. Palika Parishad/Nagar

Panchayats in respect of the collection of Tehbazari. We make it clear at this stage that the Nagar Palika Parishad has not questioned the authority of the State Government to issue such directions.

7. We now come to the next submission of the learned Counsel for the petitioner that the policy decision of the State Government contained in the Circular dated 11.2.2005 is liable to be quashed. For examining this submission, we consider it appropriate to refer to the decision of the Supreme Court wherein the scope of interference in policy matters has been dealt with.

8. The Hon'ble Supreme Court in the case of Maharashtra State Board of Secondary and Higher Education and Anr. v. Paritosh Bhupesh Kurmarsheth, etc. etc., AIR 1984 SC 1543, examined the scope of interference in policy matters and held as follows :

'It would be wholly wrong for the Court to substitute its own opinion for that of the legislature or its delegate as to what principle or policy would best serve the objects and purposes of the Act and to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the regulation-making body and declare a regulation to be ultra vires merely on the ground that, in the view of the Court, the impugned provisions will not help to serve the object and purpose of the Act. So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the Statute, the Court should not concern itself with the wisdom or efficaciousness of such rules or regulations. It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. It is not for the Court to examine the merits or demerits of such a policy because its scrutiny has to be limited to the question as to whether the impugned regulations fall within the scope of the regulation-making power conferred on the delegate by the Statute..

The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any draw-backs in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity. In the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution.'

9. The famous 'Wednesbury Case' *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation*, (1947) 2 All ER 680 (CA), is considered to be the landmark in so far as the basic principles relating to judicial review of administrative or statutory direction are concerned. We quote a passage from the judgment of Lord Greene which is as follows :

'It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers of the authority....In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another.'

10. In *Union of India and Anr. v. International Trading Company and Anr.*, (2003) 5 SCC 437, the Supreme Court pointed out that the Policy of the Government, even in contractual matters, must satisfy the test of reasonableness and every State action must be informed by reason. In this connection paragraphs 14, 15 and 16 of the judgment are reproduced below :

'14. It is trite law that Article 14 of the Constitution applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional.

15. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualised than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.

16. Where a particular mode is prescribed for doing an act and there is no impediment in adopting the procedure, the deviation to act in a different manner which does not disclose any discernible principle which is reasonable itself shall be labeled as arbitrary. Every State action must be informed by reason and it follows that an act uninformed by reason is per se arbitrary.'

11. In *Union of India v. Dinesh Engineering Corporation and Anr.*, (2001) 8 SCC 491, the Supreme Court observed as follows :

'There is no doubt that this Court has held in more than one case that where the decision of the authority is in regard to a policy matter, this Court will not ordinarily interfere since these policy matters are taken based on expert knowledge of the persons concerned and Courts are normally not equipped to question the correctness of a policy decision. But then this does not mean that the Courts have to abdicate their right to scrutinise whether the policy in question is formulated keeping in mind all the relevant facts and the said policy can be held to be beyond the pale of discrimination or unreasonableness, bearing in mind the material on record....

Any decision, be it a simple administrative decision or a policy decision, if taken without considering the relevant facts, can only be termed as an arbitrary decision. If it is so, then be it a policy decision or otherwise, it will be violative of the mandate of Article 14 of the Constitution.'

12. In *Ugar Sugar Works Ltd. v. Delhi Administration and Ors.*, AIR 2001 SC 1447, it has been held that in exercise of their power of judicial review, the Courts do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on the ground of malafide, unreasonableness, arbitrariness or unfairness etc. Indeed arbitrariness, irrationality, perversity and malafide, render the policy unconstitutional. However, if the policy cannot be touched on any of these grounds, the mere fact that it may affect business interests of party does not justify invalidating the policy.

13. In *State of Himachal Pradesh and Anr. v. Padam Dev and Ors.*, (2002) 4 SCC 510 ; and *State of Rajasthan and Ors. v. Lata Arun*, AIR 2002 SC 2642, the Supreme Court held that unless a policy decision is demonstrably capricious or arbitrary and not informed by any reason or discriminatory or infringing any Statute or the Constitution, it cannot be a subject of judicial interference under Articles 32, 226 or 136 of the Constitution. In *Balco Employees' Union (Regd) v. Union of India and Ors.*, AIR 2002 SC 350; and *Federation of Railway Officers Association v. Union of India*, (2003) 4 SCC 289, a similar view has been reiterated.

14. The Supreme Court in *Kailash Chandra Sharma v. State of Rajasthan and Ors.*, AIR 2002 SC 2877, upheld the Full Bench judgment of the Rajasthan High Court in *Deepak Kumar Suthar v. State and Ors.*, 2000 Lab IC 1, wherein the Court had struck down the policy decision of the Government granting bonus marks on the ground of residence in public employment being ultra vires the provisions of Articles 14 and 16 of the Constitution. The Supreme Court held that policy decision giving weight age to the candidates in public employment on the ground of residence was impermissible in view of the Constitutional provisions. The policy decision was, therefore, bad and in such a case judicial review was found to be warranted.

15. In *People's Union for Civil Liberties and Anr. v. Union of India and Ors.*, 2004 AIR SCW 379, while dealing with the same issue, the Hon'ble Supreme Court observed as under :

'The jurisdiction of this Court in such matter is very limited. The Court will not normally exercise its power of judicial review in such matters unless it is found that formation of belief by the statutory authority suffers from malafide, dishonesty or corrupt practice. The order can be set aside if it is held to be beyond the limits for which the power has been conferred upon the authorities by the Legislature or is based on the grounds extraneous to the legislation and if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction required thereunder.'

16. We have carefully examined the contents of the Circular dated 11.2.2005. It does not take away the power of the Nagar Palika Parishad to recover the Tehbazari. All that it provides is that henceforth the yearly contracts of Tehbazari for Nagar Palika Parishad/Nagar Panchayats should be stopped and should be collected through their own officers. We fail to understand how such a policy decision can be termed as arbitrary or unreasonable. This apart, the policy decision is not being challenged by the Nagar Palika Parishad or Nagar Panchayat but is being challenged by a person who could at the most be a prospective contender for the award of Tehbazari contract. We, therefore, find no force in this submission of the learned Counsel for the petitioner and accordingly reject it.

For the reasons stated above, there is no merit in this petition. It is, accordingly, dismissed.

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