

Through: Shri Jitendra Chaudhary vs State Of Uttarakhand on 20 July, 2022

Author: Sanjaya Kumar Mishra

Bench: Sanjaya Kumar Mishra

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition (MS) No. 2073 of 2016

Navid Qureshi.Petitioner.

Through: Shri Jitendra Chaudhary, learned
counsel for the petitioner.

-Versus-

State of Uttarakhand
and others.Respondents.

Through: Shri Yogesh Pandey, learned Addl.
CSC for the State of Uttarakhand /
respondents.

Date of Hearing and Judgment : 20.07.2022

Shri Sanjaya Kumar Mishra, J.

(Upon hearing of learned counsel for the parties, the Court has passed the following judgment):

1. By filing this writ petition, the petitioner has prayed for the following reliefs:

"i. Issue a writ, order or direction in the nature of certiorari calling for the original record and pleased to quash the impugned order dated 08.06.2016 (Annexure - 2) passed by the respondent no. 2 i.e. District Magistrate, Uttarakashi, District Uttarkashi.

ii. Issue a writ, order or direction in the nature of Mandamus directing and commanding the respondents that they shall not interfere in the peaceful business activities i.e. in running the mutton shop in his house situated at the roadside of Gangotri National Highway without any valid reason.

iii. Issue a writ, order or direction in the nature of Prohibition making declaration to the effect that after central enactment of the Food Safety and Standards Act, 2006 the bye-laws no. 3 framed by the respondent Zila Panchayat became illusory and same are not applicable for the purpose of regulating food safety activities in rural area, therefore, no license from respondent Zila Panchayat is required to do business."

2. The facts of the case, not disputed at this stage, are that petitioner is a resident of village Hina Gaon, Police Station - Maneri, District - Uttarkashi. His father was recorded tenure holder having bhumidhari land bearing Khasra Nos. 1555 and 1556, situated in the aforesaid village. He was running a mutton shop since 2006 in a rented accommodation in village - Hina Gaon, after getting license from Zila Panchayat. Though, according to him, license was not required after enforcement of Food Safety and Standards Act, 2006 (hereinafter referred to as "FSS Act, 2006" for brevity). In the year 2012, he also obtained a license from the designated authority under the FSS Act, 2006. Till the year, 2015, he ran his shop at aforesaid rented premises and after construction of his own shop over the bhumidhari land, he shifted his business of butchering and selling mutton into it. On 27.02.2016, respondent no. 3 - Zila Panchayat, Uttarkashi, through Additional Mukhya Adhikari, issued a notice to the petitioner to shift his mutton shop, within 7 days to another place, as his shop is situated 105 metre away from the bank of river Ganga, which is violative of the existing by-laws. As per the by-laws, operation of mutton / chicken shop within 500 metres from the bank of river Ganga is prohibited. On 15.03.2016, petitioner being aggrieved by the notice, preferred a Writ Petition (MS) No. 651 of 2016, which was disposed of, in limine, by this Court by giving opportunity to the petitioner to file a representation before the Authorities and with a direction to the Authorities to dispose of the same. Thereafter, on 09.05.2016, the petitioner served a copy of the aforesaid order on respondents no. 2 and 3 and prayed for issuance of license for the next financial year 2016-17 but the respondent no. 2 - District Magistrate, Uttarkashi vide order dated 09.05.2016 rejected the representation of the petitioner on the basis of the Resolutions of meeting held on 04.05.2016.

Feeling aggrieved by the aforesaid order dated 09.05.2016 and minutes of meeting dated 04.05.2016, the petitioner preferred a Writ Petition (MS) No. 1383 of 2016 wherein respondents were directed to file counter affidavit within four weeks and the said writ petition is still pending. In the meantime, petitioner again represented before respondent no. 2 - District Magistrate, Uttarkashi to grant him no objection certificate, which was again rejected. The said order of the learned District Magistrate, Uttarkashi is assailed in this writ petition.

3. Learned counsel for the petitioner would submit that the only ground on which his application for grant of no objection certificate has been rejected by the District Magistrate, Uttarakashi is that his shop is situated within 500 metre from the bank of river Ganga. According to the petitioner, after passing of the FSS Act, 2006, the jurisdiction of Zila Panchayat is ceased to operate and it is only the Designated Authority, under the FSS Act, 2006 has authority to grant license or reject it in favour of the petitioner for running a shop for selling and butchering the animals. Therefore, he prayed that annexure no. 2 to the writ petition be quashed and it be declared that FSS Act, 2006 shall have overriding effect on the by-laws issued by the Zila Panchayat.

4. Learned counsel for the State would submit that petitioner was granted license by the Designated Authority to run the shop at a particular place but he shifted his shop, after getting the license from the Designated Authority under the FSS Act, 2006, to another place, which came within 500 metre from the bank of river Ganga, therefore, no objection certificate was not granted to him and order passed by District Magistrate, Uttarkashi does not have any infirmity or perversity and requires no interference.

5. Learned counsel for the State further submits that as per Section 106 (1) of the Uttarakhand Panchayati Raj Act, 2016, the Zila Panchayats have powers to make by-laws. Section 106 of the Uttarakhand Panchayati Raj Act, 2016 is quoted as under:

"106 Powers of Zila Panchayat to make bye-laws (1) A Zila Panchayat may, and where required by the State Government shall, make bye-laws for its own purposes and for the purposes of {Kshettra Panchayats}, applicable to the whole or any part of the rural area of the district, consistent with this Act and with any rule, in respect of matters required by this Act to be governed by bye-laws and for the purposes of promoting or maintaining the health, safety and convenience of the inhabitants of the rural area of the district and for the furtherance of the administration of this Act in the Khand and the district."

6. Article 243 (Part IX) of the Constitution of India provides for formation of Gram Sabha and Gram Panchayat. Article 243 G provides for the powers, authority and responsibilities of Panchayats. For better appreciation of the matter, it is quoted below:

"243G. Powers, authority and responsibilities of Panchayats - Subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to -

(a). the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule."

7. Thus, it is apparent from the aforesaid Article that the Constitution recognises the Zila Panchayats, as sovereign authorities, having powers to plan for economic development and social justice, as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule. Article 243 G also provides that the Legislature of a State, may by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self government. Entry 4 in the Eleventh Schedule of the Constitution of India provides for animal husbandry, dairying and poultry. Entry 22 provides for markets and fairs. Thus,

it is clear that as far as markets and fairs and animal husbandry, dairying and poultry are concerned, the Zila Panchayat, as an institution of self government, may function to regulate animal husbandry etc. as mentioned above.

8. Therefore, the contention of learned counsel for the petitioner that after passing of the FSS Act, 2006, the powers of Zila Panchayat ceased to operate with respect to food items does not appears to be correct. Since, the Zila Panchayats have been granted powers to act as institutions of self government, the provisions made by Zila Panchayat has to be harmoniously constructed with the provisions of the FSS Act, 2006.

9. In view of the above, this Court is of the opinion that no objection certificate is mandatory to be obtained from the Zila Panchayat or the District Magistrate for running a mutton shop in the present matter. At the same time, keeping in view the special status of State of Uttarakhand and the river Ganga that emerges from District Uttarkashi and the sanctity attached with the river Ganga by majority of population of Uttarakhand, the decision taken by the Zila Panchayat by making by-laws to the effect that no shop for butchering the animals and selling the meat within 500 metres from the bank of river Ganga appears in line with the scheme of Constitution of India, as envisaged in Part IX. Hence, this Court is of the view that respondent no. 2, District Magistrate, Uttarkashi has not committed any error in not issuing no objection certificate to the petitioner to run a mutton shop within 500 metres from the bank of river Ganga.

10. Accordingly, the writ petition fails and is hereby dismissed. It is observed that any person, who runs a meat shop for selling and butchering the animals in District Uttarkashi, shall obtain no objection certificate from the concerned authority, in the light of by-laws made by the Zila Panchayat and also obtain license from the designated authority.

(Sanjaya Kumar Mishra, J) SKS