

Navid Qureshi vs State Of Uttarakhand And Others on 12 September, 2022

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

THE CHIEF JUSTICE SHRI VIPIN SANGHI
AND
JUSTICE SHRI RAMESH CHANDRA KHULBE
12th SEPTEMBER, 2022

Special Appeal No.303 of 2022

Navid Qureshi Appellant
Vs.

State of Uttarakhand and Others Respondents

Presence: -

Mr. Dushyant Mainali, learned for the appellant.

Mr. Anil Bisht, learned Additional Chief Standing Counsel for the State.

Mr. B.S. Negi, learned counsel for respondent nos.3&4.

JUDGMENT:

(Per Shri Vipin Sanghi, Chief Justice) The appellant has preferred the present special appeal to assail the order dated 20.07.2022 passed in WPMS No.2073 of 2016 by the learned Single Judge. By the impugned judgment, the writ-petition preferred by the appellant has been dismissed by the learned Single Judge.

2. The relief sought in the petition (impugned judgment) were as follows:-

"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 illusionary 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."

3. The case of the appellant is that the appellant was running a mutton shop since the year 2006 in a rented accommodation in Village Hina Gao, after obtaining license from the Zila Panchayat. He ran the said shop till the year 2015 at the rented premises. Whereafter, he shifted the shop in his own shop to carry out his business of butchering and selling mutton. On 27.02.2016, the Zila Panchayat, Uttarakashi issued a notice to the appellant to shift his mutton shop within seven days to another place as his shop is situated at a distance of 105 metres upon the bank of river Ganga on the ground that the same was 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.

4. The appellant earlier preferred WPMS No.651 of 2016, which was disposed of in limine with liberty to the appellant to file representation before the authorities, which the authorities were directed to dispose of. On 09.05.2016, the appellant served a copy of the order to respondent nos.2 and 3 and prayed for issuance of license for the next financial year i.e. 2016-

17. Respondent no.2, the District Magistrate/Zila Panchayat, 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.

5. The appellant again approached this Court by preferring WPMS No.1383 of 2016. During the pendency of the writ-petition, the appellant again made a representation before the District Magistrate/Zila Panchayat, Uttarakashi to grant no objection certificate, which was again rejected. The appellant had then preferred the writ-petition in which the impugned judgment has been passed.

6. The submission advanced by the appellant before the learned Single Judge, which is also repeated before us is that the District Magistrate/ Zila Panchayat, Uttarkashi has no jurisdiction to interfere in the matter as, according to the appellant, after passing of the Food Safety and Standards Act, 2006, the jurisdiction of the Zila Panchayat was ceased, and it was only the designated authority under the FSS Act, 2006, who had the authority to grant / reject license in favour of the appellant for running the shop for selling and butchering hens. The learned Single Judge rejected the said submission by observing as follows:-

"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."

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."

7. Having heard learned counsel, we find no merit in the aforesaid submission of the appellant. The appellant has sought to place reliance on the judgment of the Allahabad High Court in Deen Mohammad Vs. State of U.P. 2018(131) ALR 312.

8. In fact, perusal of the said judgment shows that the Court noticed the legislative intendment of the FSS Act, 2006 which was to include every possible food and food products used for manufacturing, processing, distribution, import and sale so as to ensure secured, safe and quality food. The reason for the appellant not being issued a no objection certificate is not concerned with the aforesaid aspects. Those are the aspects which the designated authority under the FSS Act, 2006 is concerned with. The submission that - it is only the designated authority under the FSS Act, 2006 which can issue or refuse permission to set up a meat shop, completely ignores the fact that there are other authorities who are concerned with other aspects and who have exercised their jurisdiction in the matter of not granting permission to the petitioner to set up a meat shop on the location that he desires to set it up.

9. There are aspects related to environment, as well as the religious sentiments of the majority community. There are aspects related to maintenance of law and order, peace and tranquility in the area, all of which the District Administration/ Municipal authorities have to look into.

10. These aspects, the designated authority under the FSS Act is not concerned with, and it is the District Administration/ Municipal authorities which are empowered to look into, and on that basis, grant or refuse permission for the purpose of carrying out any trade or activity, including the trade or activity in butchering and meat selling. We, therefore, do not find any reason to interfere with the impugned judgment.

11. Mr. Mainali submits that the appellant may, at least, be permitted to move his shop beyond 500 metres from the bank of river Ganga. In case, the appellant makes any such application, the same shall be considered by the authorities on its own merit.

12. With the aforesaid direction, the present special appeal is disposed of.

VIPIN SANGHI, C.J.

_____ RAMESH CHANDRA KHULBE, J.

Dated: 12th September, 2022 SS/RB