

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

WRIT PETITION (M/S) NO. 2797 OF 2021

24TH JULY, 2023

BETWEEN:

Mohd. Furkan & another Petitioners.

And

State of Uttarakhand & others Respondents.

Counsel for the Petitioners : Mr. Jitendra Chaudhary, learned counsel.

Counsel for the State : Mr. J.C. Pande, learned Standing Counsel.

Counsel for the Respondent Nos.4 & 5 : Mr. Rajendra Dobhal, learned Senior Counsel assisted by Mr. A.M. Saklani, learned counsel.

The Court made the following:

JUDGMENT:(per Hon'ble The Chief Justice Sri Vipin Sanghi)

We have heard learned counsels for the parties, and proceed to dispose of this writ petition.

2. The petitioners have preferred the present writ petition to assail the Bye-Laws known as "*Registration and Control of the Contractors Bye-Laws 2020-21*" (for short "*Bye-Laws*"), dated 06.03.2021, framed by respondent no.4- Nagar Palika Parishad, Jaspur, District Udham Singh Nagar, in exercise of powers under Section 298 (2) of the Uttarakhand Municipalities Act, 1916 (for short '*the Act*'), as well as the consequential Resolution No.175, dated 23.09.2021, and the subsequent advertisement dated 08.12.2021 founded upon

the impugned Bye-Laws. Other consequential reliefs have also been sought by the petitioners.

3. The challenge to the Bye-Laws is premised on the breach of Section 298 of the aforesaid Act. The said Section, insofar as it is relevant, reads as follows:-

"298. Power of [Municipality] to make bye-laws.- (1) A Municipality **by a special resolution** may, and where required by the State Government shall, make, bye-laws applicable to the whole or any part of the [municipal area], consistent with this Act and with any rule, for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the [municipal area] and for the furtherance of municipal administration under this Act". (emphasis supplied)

4. Section 88 of the Act defines 'Quorum' in relation to special resolution. It is provided that it shall be necessary for the transaction of business which is required to be transacted by special resolution, that not less than one-half of such members shall be present.

5. The case of the petitioners is that the Chairperson of the Nagar Palika Parishad, Jaspur issued an agenda for holding a meeting on 19.10.2020. The agenda item reads as follows:-

"1. गृहकर वर्ष से में कर लिपिक की आख्या एवं प्राख आपत्तियों की निस्तारण हेतु अधिकारी नामित करने के सम्बन्ध में
2. अन्य विषय अध्यक्ष महोदय की अनुमति से"

Thus, for the said meeting, there was no specific agenda item *qua* framing of the impugned Bye-Laws.

6. Learned counsel submits that the proposal to frame Bye-Laws, or to consider any draft Bye-Laws was not placed in the agenda, and the members of the Nagar Palika Parishad had not prior notice of the same. The further submission of the petitioners is that, when the meeting was held on 19.10.2020, out of the blue, the resolution with regard to the framing of the impugned Bye-Laws was passed, as below:-

"प्रतिलिपि बोर्ड प्रस्ताव संख्या-125 अन्य (12) 19.10.2020

प्रस्ताव सं०-125 अन्य (12) निर्माण कार्यों के संपादन हेतु ठेकदारी पंजीकरण एवं नियंत्रण उपविधि बनाये जाने पर विचार ।	सर्वउपस्थित सदस्यों की निर्माण लिपिक की रिपोर्ट में अवगत कराया गया है, कि निर्माण कार्यों के संपादन करने हेतु ठेकेदारी पंजीकरण एवं नियंत्रण उपविधियां बनाया जाना अनिवार्य है जिसके लिये उपविधियां प्रस्तुत की गई है। जिन्हें पढ़कर सुनाया। एवं समझाया गया। सर्वउपस्थित सदस्यों द्वारा विचार विमर्श उपरान्त सर्वसम्मति से निर्णय लिया गया है कि निर्माण कार्यों के संपादन हेतु ठेकेदारी पंजीकरण एवं नियंत्रण उपविधियों को स्वीकार करते हुए समाचार पत्र में प्रकाशन कराया जाये तथा प्राप्त आपत्तिया आगामी बोर्ड की बैठक में प्रस्तुत की जाये जिससे उनका निस्तारण किया जा सके। प्रस्ताव सर्वसम्मति से पारित किया जाता है।
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7. It is, therefore, argued that the members- who were present, purportedly considered and discussed the draft Bye-Laws; accepted the draft Bye-Laws, and; resolved that the same be published in the newspapers to invite objections. It is further argued that for the purpose of passing a special resolution to frame Bye-Laws, the same should have been placed in the agenda, to put all the members of the Nagar Palika Parishad to prior notice. However, that was not done, thereby denying the opportunity to all the members to come prepared with their inputs/ stand on the proposed Bye-Laws.

8. It is further submitted that three elected and one nominated members were not present in the meeting held on 19.10.2020. They did not participate in the meeting when the Resolution dated 19.10.2020 was passed. They were not made aware, that the issue with regard to the framing of the impugned Bye-Laws would be taken up for consideration in the meeting, on 19.10.2020. If they had prior notice, they could have remained present, and placed their point of view regarding the same, in the meeting with regard to the draft Bye-Laws, and their participation may have influenced the mind of the house, to either not frame, or modify the draft Bye-Laws. It is argued that the democratic process for framing of Bye-Laws was hijacked by the Chairperson, by not issuing a specific agenda for consideration of the draft Bye-Laws.

9. The petitioners further submit that the publication of the draft Bye-Laws was required to be undertaken as per Section 301 of the Act which, *inter alia*, provides that "*the power of the municipality to make bye-laws under Section 298 shall be subject to the condition of the bye-laws being made after previous publication*". Reliance has been placed on Section 23 of the Uttar Pradesh General Clauses Act, 1904, which reads as follows:-

"23. Provisions applicable to making of rules or bye-laws after previous publication.- (1) *Where, by any [Uttar Pradesh] Act, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely;*

(a) the authority having power to make the rules or bye-laws shall, before making them publish a draft of the proposed rules or byelaws for the information of persons likely to be affected thereby;

(b) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as [the Government concerned] prescribes;

(c) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(d) the authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be

received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;

(e) the publication in the [Official Gazette] of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made.

(2) The date referred to in clause (c) of sub-section (1) shall not be a date earlier than the day of expiration of a period of one month from the date of publication of the draft of the proposed rules or byelaws under clause (a) of that sub-section.

(3) Notwithstanding the provisions of sub-sections (1) and (2), where the State Government is satisfied that circumstances exist which render it necessary for it to make rules or bye-laws with immediate effect or with effect from a date earlier than a period of one month, it may make any such rules or bye-laws without previous publication or, as the case may be, fix a date referred to in clause (c) of sub-section (1) earlier than the day of expiration of a period of one month from the publication of the draft of the proposed rules or bye-laws.]”

(emphasis supplied)

10. The submission of the petitioner is that the publication of the draft Bye-Laws was undertaken by the respondents in "Uttar Ujala" newspaper, published in Haldwani, on 16.01.2021, which has hardly any circulation in the town of Jaspur- in respect whereof the Bye-Laws were framed. Thus, there was insufficient publication of the draft Bye-Laws.

11. On this aspect, since it was not clear as to what is the extent of circulation of the said newspaper in Jaspur, we had directed the S.H.O., P.S. Jaspur, District Udham Singh Nagar to record statement of the local agents of "*Uttar Ujala*", in Jaspur, with regard to the number of copies purchased by the agent for circulation in Jaspur on, or about, 16.01.2021. The S.H.O. has furnished a report, as per which, there were two agents of "*Uttar Ujala*" newspaper in Jaspur and the circulation, at the relevant time, was to the tune of 300 copies by one agent, and 170 copies by the other agent, thereby adding upto 470 copies in the whole Nagar Palika Parishad.

12. The submission of Mr. Jitendra Chaudhary, learned counsel for the petitioners is that the said circulation could not be said to be wide circulation. The further submission of Mr. Chaudhary is that only seven objections were received. It is pointed out that, even before the passing of the resolution dated 18.02.2021- authorizing the Chairperson, and the Executive Officer, to examine the objections received, the objectors were called for hearing on 17.02.2021, i.e. a day prior to the passing of the Resolution. The hearing of the objections by the Chairperson and the Executive Officer was without authority, which could not have been cured by passing a resolution, after the hearing had taken place.

13. We had summoned the original record relating to the framed of the impugned Bye-Laws. The original record has been produced before us, which shows that all the objections were rejected/ dealt with by observing "वार्ता की गई/ सहमत हूँ।"

14. Surprisingly, thereafter, the Bye-Laws- as finalized, post consideration of the objections, were not placed before the Nagar Palika Parishad, and no resolution was passed by the Nagar Palika Parishad, finally adopting the Bye-Laws. It appears that the Bye-Laws were straightaway forwarded to the Government for publication, which took place on 27.03.2021 in the official gazette.

15. Thus, learned counsel for the petitioners submits that the said Bye-Laws cannot be said to have been properly framed, for the reasons already noticed hereinabove, and they are null and void, and of no effect.

16. On the other hand, Mr. Dobhal, who appears for the respondent- Nagar Palika Parishad, submits that the requirement of *Quorum* was fulfilled, inasmuch, as 17 out of 20 elected representatives, and 03 out of 04 nominated representatives, were present when the meeting was held on 19.10.2020. Even on 18.02.2021, 18 members were present.

17. Mr. Dobhal further submits that since the Bye-Laws have been notified by the Government, by virtue of Section 301(A) of the Act, the same stand approved by the Government. He submits that there is no illegality in the Bye-Laws as framed.

18. We have heard and considered the submissions of learned counsels.

19. Section 298 of the Act- relevant portion whereof is extracted hereinabove, makes it clear that the Bye-Laws can be framed by a Nagar Palika Parishad only by a Special Resolution. The expression "Special Resolution" is not defined in the Act. However, the meaning of the said expression is well-known, since the necessary ingredients thereof have been set out in Section 189(2) of the Companies Act, 1956, and the *pari materia* provision- found in Section 114(2) of the Companies Act, 2013.

20. Section 114 (2) of the Companies Act, 2013 states that a resolution shall be a special resolution **when the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution; the notice required under the act has been duly given**, and; the votes cast in favour of the resolution, whether on a show of hands, or

electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.

21. Thus, it is essential that, when a special resolution is proposed to be passed, that the intention to propose the resolution, as a special resolution, has to be duly specified in the notice calling the meeting, or other intimation given to the members of the proposed resolution. This means that a special resolution cannot be passed without specific prior notice in respect of the subject matter, on which the special resolution is proposed to be tabled and passed. A matter requiring approval as a special resolution, cannot be taken up during the course of the meeting without prior notice, under the general and blanket item in the circulated agenda, which normally reads as "*any other matter with the permission of the Chairperson*". This is exactly what was done in the present case.

22. The State Legislature did not define the expression "*special resolution*" in the Act, presumably since the said expression is well-known and is defined in the Companies Act. The third requirement for passage of a special resolution with regard to the number/ percentage of votes by which a special resolution should be passed, has consciously been laid down

by the State Legislature in Section 88 of the Act, which provides that "*a special resolution can be passed by more than one-half of the members, who are present*". Only in respect of the matter, where the Legislature thought it necessary to deviate from the provision contained in the Companies Act, it specifically provided that the special resolution can be passed by not less than one-half of the members present in the meeting. Thus, we hold that the special resolution under the Act, could only have been passed by putting the members of the House to prior sufficient notice, of the intention to take up the matter in the meeting of the House- as a special resolution, and not otherwise.

23. Clearly, in the present case, the proposed Bye-Laws were not included in the agenda, preceding the meeting held on 19.10.2020. Thus, the members of the Nagar Palika Parishad did not have any prior notice, as was necessary, for considering the proposed Bye-Laws. This lacuna, itself, is sufficient to render the impugned Bye-Laws illegal. Mere presence of majority of the members of the Nagar Palika Parishad in the meeting cannot cure the aforesaid defect, since, admittedly, the meeting was not attended by all the members.

24. Admittedly, three elected and one nominated representatives were not present in the meeting of the Nagar Palika Parishad held on 19.10.2020, and they had no prior

notice of the fact that the proposed Bye-Laws would be tabled for consideration in the meeting of the Nagar Palika Parishad to be held on 19.10.2020 for passage as a special resolution. The meeting held on 19.10.2020, without prior notice to all the members, of the fact that the proposed Bye-Laws would be tabled and considered in the meeting as a special resolution, completely vitiates the meeting. In this regard, we may refer to the judgment in ***Young v. Ladies Imperial Club, Ltd., 1920 (2) K.B. 523*** and ***Normandy v. Ind Coope & Co., (1908) 1 Ch. 84.***

25. In ***Young vs. Ladies Imperial Club***, it has been held that "*the omission to summon the absent member of the committee invalidated the proceedings of that body, and that the notice did not state the object of the meeting with sufficient particularity. On both these grounds, the plaintiff was entitled to succeed*".

26. In ***Normandy vs. Ind Coope & Co.***, it has been held that "*the agreement of January 17, 1902, although within the powers of the company in general meeting, was ultra vires the directors without the sanction of such a meeting, as it purported to grant additional remuneration to a director, which, according to the articles, could only be effected by a resolution of the company in general meeting*".

27. Had all the members of the Nagar Palika Parishad been put to prior notice of the fact that the proposed Bye-Laws would be tabled for consideration in the meeting to be held on 19.10.2020 as a special resolution, they would have had the time to consider the matter, and apply their minds, and productive and useful discussion could have taken place on the proposed Bye-Laws, during the meeting in a democratic way. That was not done.

28. We agree with the submission of learned counsel for the petitioners, that democratic process prescribed under the Act- which requires discussion and deliberation on issues considered by the Nagar Palika Parishad, prior to decision making, has been completely compromised, and it is no answer to say that majority of the members were present in the meeting, when the resolution was passed on 19.10.2020.

29. It is anybody's guess as to what would have been the outcome of the meeting, if all the members had been put to prior and sufficient notice of the proposed Bye-Laws, and thereafter, the meeting was held. The proposed Bye-Laws may not have been accepted, or accepted with material changes.

30. The next submission of learned counsel for the petitioners, with regard to the inadequate publication of the draft Bye-Laws under Section 301 of the Act, read with

Section 23 of the U.P. General Clauses Act, 1904, also has merit.

31. The Nagar Palika Parishad Jaspur exercises jurisdiction over the territorial limits of Jaspur. Yet, the publication of the draft Bye-Laws was undertaken in a newspaper published in Haldwani, i.e. 'Uttar Ujala', which had hardly any circulation in the town of Jaspur, as is evident from the report furnished by the SHO. On the relevant day, only about 470 copies were circulated in the whole town, thereby denying the public of Jaspur town, at large, the right to object, or have their say in respect of the proposed Bye-Laws.

32. The purpose of publication of the proposed Bye-Laws, and the invitation issued to the public to raise their objections, or give their inputs in regard thereto, is not an empty formality. The law requires the Nagar Palika Parishad to frame Bye-Laws with active participation of the people at large, and by having a broader consultation. This is also a facet of democratic governance of the Nagar Palika Parishad. By not publishing the draft Bye-Laws in newspapers widely circulated within the town of Jaspur, and by not inviting objections/ inputs from the people of Jaspur, the Nagar Palika Parishad denied the right to the people of Jaspur to raise their objections, or provide their inputs in respect of the proposed

Bye-Laws. This too, in our view, vitiates the process by which the Bye-Laws were framed.

33. As noticed hereinabove, only seven objections were received, and they were disposed of in a mechanical way by observing "वार्ता की गई/ सहमत हूँ।" Even the consideration of the said objections was done only by the Chairperson and the Executive Officer, and not by the entire House. On the day when the objections were considered, the Chairperson and the Executive Officer had no authority to sit, by themselves, and decide on the objections, since they undertook the said exercise on 17.02.2021, whereas the resolution was passed by the Nagar Palika Parishad, authorizing them to hear the objections, and take a decision thereon, on 18.02.2021. Therefore, the Chairperson and the Executive Officer of the Nagar Palika Parishad were incompetent to consider the objections, on the day when they did so.

34. As if, the aforesaid lacunas and illegalities were not sufficient to vitiate the impugned Bye-Laws, we find that the impugned Bye-Laws were never actually placed before the House of the Nagar Palika Parishad, for them to be passed after the process of publication of draft Bye-Laws; inviting of objections; hearing of objection, and; their disposal, had taken place.

35. It was necessary for the Nagar Palika Parishad to again hold the meeting for passing a special resolution to adopt the draft Bye-Laws with, or without, modification in the light of the objections invited and considered. Only, thereafter, it could be said that the Nagar Palika Parishad has resolved to frame the Bye-Laws.

36. It appears that the draft Bye-Laws, after perfunctory consideration of the seven objections, were straightaway forwarded to the Government for notification in the official gazette, and the Government gazetted the Bye-Laws sent by the Nagar Palika Parishad.

37. In our view, even the Government failed to satisfy itself before gazetting the Bye-Laws, whether the impugned Bye-Laws had been passed by the Nagar Palika Parishad by adopting the procedure prescribed therefor under the law.

38. The submission of Mr. Dobhal that since the Bye-Laws had been passed in the meeting of the Nagar Palika Parishad wherein majority of the members were present, and since they have been notified by the Government, the same had been validly framed, is completely meritless.

39. The prescription of the procedure with regard to the framing of Bye-Laws by a special resolution in the Act, is not an empty formality. The said procedure is required to be followed by the Nagar Palika Parishad, to keep it under check

and to ensure that it acts in a democratic manner, and does not act arbitrarily, and against the will of the majority.

40. For the aforesaid reasons, we hold that the impugned Bye-Laws known as "*Registration and Control of the Contractors Bye-Laws 2020-21*", dated 06.03.2021, framed by respondent no.4- Nagar Palika Parishad, Jaspur, District Udham Singh Nagar, are illegal, and we, accordingly, quash the same. Consequently, Resolution No.175, dated 23.09.2021, and the subsequent advertisement dated 08.12.2021, which are founded upon the impugned Bye-Laws, are also liable to be quashed. We do so accordingly.

41. The writ petition is allowed. However, without costs.

42. Pending application, if any, also stands disposed of.

(VIPIN SANGHI, C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 24th July, 2023

NISHANT