

Raj Kumar and ors. Vs. State of Uttarakhand and anr.

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Court : Uttaranchal

Decided On : Feb-09-2010

Judge : Sudhanshu Dhulia, J.

Appellant : Raj Kumar and ors.

Respondent : State of Uttarakhand and anr.

Disposition : Petition dismissed

Judgement :

Sudhanshu Dhulia, J.

1. Heard Mr. V.K. Kohli, Senior Advocate, assisted by Mr. D. Barthwal, Advocate for the petitioners, Mr. K.P. Upadhyay, Addl. Chief Standing Counsel for the State of Uttarakhand/respondent No. 1 and Mr. Arvind Vashisth, Advocate for the interveners.

2. Since controversy involved in all these writ petitions is common, these the writ petitions are being decided by a common order.

3. This bunch of writ petitions have been filed by the petitioners challenging the order of the State Government dated 19.2.2008 and the consequent invitation of the tenders, by the Zila Panchayat, Haridwar vide publication notice dated 23.2.2008 in 'Dainik Amar Ujala' newspaper.

4. The case of the petitioners before this Court is that Zila Panchayat, Haridwar had published one notice in daily newspaper called 'Dainik Badri Vishal' dated 3.1.2008 inviting tenders for execution of different civil works, which were mentioned therein. The petitioners being registered contractors of respondent No. 2 i.e. Zila Panchayat Haridwar submitted their respective tenders for various works, which were mentioned in the notice. These tenders were opened and the tenders submitted by the petitioners were found to be the lowest. Thereafter, a comparative table was prepared. The petitioners have further stated that since they had quoted the lowest price in the tenders, they were waiting for a formal communication and execution of a contract, which never materialised, instead the State Government had cancelled all the tenders vide its order dated 19.2.2008 and it further directed the Zila Panchayat to issue fresh notices. In response to the order dated 19.2.2008 of the State Government i.e. respondent No. 1, respondent No. 2 i.e. Zila Panchayat issued fresh notice, though this time in 'Dainik Amar Ujala' newspaper on 23.2.2008. The petitioners are aggrieved firstly by order dated 19.2.2008 by which the tenders were cancelled and secondly the notice dated 23.2.2008 by which fresh tenders have been invited. The order dated 19.2.2008 passed by respondent No. 1 has been annexed as Annexure - 1 to the writ petition, which has been perused by this Court. By the amendment of the Constitution, particularly under Article 243D & Article 243G, the Zila Panchayat is an institution of Self Government and therefore, the State Government has no power to pass the order dated 19.2.2008. There are other grounds of challenge as well. The petitioners also submit that there is no violation of Rule 19 of U.P. Kshetra Samiti and Zila Parishads Works Rules, 1984 (from hereinafter referred to as the 'Rules, 1984') as that the publication has to be made in one or more newspapers and since the minimum requirement for publication is in one newspaper, the same has been done. Rule 19 of the Rules, 1984 reads as follows:

said order, the Joint Secretary of the State Government has stated that the tenders invited earlier were found to be in violation of the Uttar Pradesh Kshetra Samitis & Zila Works Rules, 1984 inasmuch as the said notice had to be published at conspicuous places of headquarters and in every teshil, local offices of the Irrigation Department and Local Self Government Engineering Department and at conspicuous places, and since it had not been published properly, he cancelled

the tenders and directed the Zila Panchayat to publish fresh tender- notice in two daily newspapers, which are widely circulated in the State. Consequent to this order, fresh tenders have been invited. The petitioners have challenged the order of the State Government stating that the State Government has no jurisdiction to cancel the contract as after the 73rd

19. No contract for the execution of a work estimated to cost more than Rs. 5,000 shall be given until sealed tenders for the contract, accompanied by earnest money to the amount fixed by proper authority, have been invited by public notice, which should be published by insertion in one or more local newspapers as the Mukhya Adhikari or Khand Vikas Adhikari, as the case may be, thinks fit and by pasting copies thereof at conspicuous places at the office of the Parishad or Kshetra Samiti, the Collector's Office, the court of the District Judge, or the court of every Additional District Judge, and Munsif whether the court of district is not situate, the headquarter of every tehsil, local offices of the Public Works Department (B and R). Irrigation Department and Local Self-Government Engineering Department.

A learned Single Judge of this Court on 7th March, 2008 had passed an interim order in all these writ petitions and the operation of the order dated 19-2-2008 passed by the State Government as well as the subsequent publication dated 23-2-2008 (Annexure Nos. 1 and 2 to the writ petitions) was stayed.

5. This interim order which has been passed in this Writ Petition No. 392 of 2008 (ms) have, in fact, been operative in all the connected writ petitions and the same has been extended from time to time.

6. Zila Panchayat i.e. respondent No. 2 has filed a counter affidavit, where it has shed no light on any of the issues raised in the petitions. The State, however, has also filed its counter affidavit, where in paragraph 4, the State has alleged anomalies in publication of the tender notice. It has been stated that the Zila Panchayat while inviting tenders has not followed Rule 19 of the Rules, 1984. Moreover, although the Rule permits the publication in one or more newspaper, by publication it means that the publication has to be made in a newspaper having wide circulation in the area.

7. The Court has been informed by the State Counsel that the newspaper namely 'Dainik Badri Vishal' is not a widely circulated newspaper in the area and therefore, publication should have been done in some other newspaper, which had wide circulation in the area, such as 'Amar Ujala' and 'Dainik Jagran'. However, the first thing which is relevant for the present purpose is as to whether the Government had power to pass order dated 19.2.2008 in the present matter or not? The main ground of the petitioners here is that vide the 73rd Amendment of the Constitution of India and the provision incorporated as Part IX to the Constitution of India, Panchayats have effective bodies of local self government, and therefore, the interference as presently been made by the State Government in the functioning of a Panchayat is not proper.

8. Article 243G of the Constitution of India reads as follows:

243G. Powers, authority and responsibilities of Panchayat.--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.

9. A bare perusal of the aforesaid constitutional provision shows that wide powers can be exercised by the Panchayats relating to (a) preparation of plans for 'economic development and social justice'. These are indeed wide powers which virtually encompasses almost all of the State activities. Article 243G(b) further gives power and authority to the Panchayats regarding 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.

Eleventh Schedule of the Constitution of India reads as follows:

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.

19. Adult and non-formal education.

20. Libraries.

21. Cultural activities.

22. Markets and fairs.

23. Health and sanitation, including hospitals, primary health centres and dispensaries.

24. Family welfare.

25. Women and child development.

26. Social welfare, including welfare of the handicapped and mentally retarded.

27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.

28. Public distribution system.

29. Maintenance of community assets.]

10. But all these powers can be exercised by the Panchayats only when these powers are given to the Panchayats by the Legislature of a State by law. Most of these powers as envisaged under Article 243G read with Eleventh Schedule of the Constitution have not yet been given to the Panchayats and though certain amendments were brought, inter alia, in U.P. Kshetra Panchayats and Zila Panchayats] Adhiniyam, 1961 (from hereinafter referred to as the Adhiniyam, 1961) after the 73rd amendment i.e. after, 1992, these amendments do not actually give these powers to the Panchayats, and therefore till such powers are given to the Panchayats by the State Legislature, the assertion that the Panchayats are bodies of self-government and have a constitutional status and therefore have absolutely no control by the State Government, would in fact not be the correct position. In fact, the powers presently lie with the State Government to exercise control over the Zila Panchayat, under Section 230 of the U.P. [Kshettra

Panchayat and Zila Panchayats] Adhiniyam, 1961, which is presently in force in the State of Uttarakhand. Section 230 of the Adhiniyam, 1961 reads as follows:

230. Powers of State Government in case of default of Zila Panchayat.--(1) If at any time, upon representation made or otherwise, it appears to the State Government that a Zila Panchayat, or joint committee, or other Committee of the Zila Panchayat has made default in performing a duty imposed on it by or under this or any other enactment, the State Government may, by order in writing, fix a period for the performance of that duty.

(2) If that duty is not performed with the period so fixed, the State Government, may appoint the District Magistrate, or any other person to perform it and may direct that the expense, if any, of performing the duty shall be paid, within such time as may be fixed by the District Magistrate or any other person authorised by the State Government in this behalf, by the Zila Panchayat.

(3) If the expenses is not so paid, the District Magistrate or any, other person authorised by the State Government in this behalf with the previous sanction of the State Government, may, make an order directing the person having the custody of the Zila Nidhi to pay the expenses from such fund.

11. It is under this provision that the powers have been exercised by the State Government and the order dated 19.2.2008 has been passed cancelling all the tenders and directing the Zila Panchayat to invite fresh tenders. In the counter affidavit filed by the State, it has been stated that the tenders had not been invited in accordance with law. After perusing the relevant provisions of law i.e. Section 230 of the U.P. [Kshettra Panchayats and Zila Panchayats] Adhiniyam, 1961 and Rule 19 of the U.P. Kshettra Samitis and Zila Parishads Works Rules, 1984, there is no infirmity or lack of jurisdiction as the Government has these powers under the Statute. Therefore to this extent the arguments of the petitioner does not hold good. Moreover, the publication though has been done in one newspaper which is 'Dainik Badri Vishal', it has not been done in a newspaper having wide circulation in the area. Apart from this although Rule 19 of the Rules, 1984 permits publication of tender-notice in 'one or more newspapers', and therefore if publication has been made in only one newspaper, sufficient compliance is said to

be made, as in the case of the petitioners, yet, even if publication has been made in only one newspaper that newspaper must have a wide circulation in that area. This is because the purpose of publication is that it should be published widely, in other words it should be widely circulated and reach maximum people, and should not be a mere formality. As it appears that the earlier publication was done in 'Dainik Badri Vishal' newspaper, which does not have a wide circulation compared to other newspapers which are also in circulation in Haridwar. Therefore subsequent notification/publication by order of the Government was done in another newspaper namely 'Amar Ujala'. According to the government, therefore, the circulation in only one newspaper as done by the Zila Panchayat was not correct, as it is evident from its order dated 19.2.2009. Therefore this Court is of the view that there was no lack of jurisdiction or authority on the part of the State Government while passing the order under Section 230 of the Adhiniyam. Also that the publication as made by respondent No. 2, earlier was not in the letter and spirit of the Rule 19 of the Rules. The impugned order also points out to other anomalies where the notice was not pasted, such as at Tehsil head quarter and office of irrigation department, etc. The law on this subject stands well settled since the seminal decision given by the Apex Court in the case of *Ramana Dayaram Shetty v. The International Airport Authority of India and Ors.* : AIR 1979 SC 1628 wherein, inter alia, it has been held that the State or its instrumentality in its dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, cannot act arbitrarily and enter into relationship with any person it likes at its sweet will, but its action must be in conformity with some principle which meets the test of reason and relevance. However, in the present case the action of the Zila Panchayat Haridwar particularly the manner in which it has earlier called the tender does not meet these standards! Since the procedure has not been followed in its letter and spirit and there is a lack of transparency in the manner tenders were invited earlier by the Zila Panchayat, Haridwar, the order (impugned order dated 19.2.2008) by which the State interfered in the matter is fully justified.

12. However, in view of the interim order of this Court dated 7th March, 2008, the petitioners have now stated before this Court that they were directed to complete the work by the Zila Panchayat and by now they have also completed their work and therefore, the writ petitions, in fact, have become infructuous and their earnest

money which is lying with the Zila Panchayat, Haridwar must be returned to them. The counsel of the Zila Panchayat admits that the work has been completed by the petitioners. This Court is not examining the propriety or the legal implications of these developments, which have taken place, during the pendency of the present writ petitions. It is only the validity of the order dated 19.2.2008 of the State Government and the subsequent publication in the newspaper, which is an issue here. This Court is clearly of the view that the State Government is well within its power to cancel the tenders under Section 230 of the Adhiniyam, 1961, if it is of the opinion that the Zila Panchayat has committed a default in performing a duty imposed upon it under the law. The duty imposed upon the Zila Panchayat was to make a proper publication of the tender notices, which has not been done, therefore, the Government has exercised its power under Section 230 of the Adhiniyam, 1961. There is no anomaly in the order dated 19.2.2008, or the subsequent publication dated 23.2.2008.

13. It is for this reason and for the reason that the manner in which the tenders were earlier called by the Zila Panchayat, Haridwar have been held to be illegal by this Court, the prayer of the petitioners for release of the earnest money, which is lying with the Zila Panchayat, Haridwar cannot be granted.

14. All the writ petitions are accordingly dismissed. No order as to costs.