
(2018) 05 UK CK 0003

In the Uttarakhand High Court

Case No : Writ Petition (PIL) No. 12 of 2016

ANAND SINGH ASWAL AND ANOTHER	APPELLANT
Vs	
STATE OF UTTARAKHAND AND OTHERS	RESPONDENT

Date of Decision : 01-05-2018

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 48

Citation : (2018) 05 UK CK 0003

Hon'ble Judges : K.M. JOSEPH, C.J, SHARAD KUMAR SHARMA, J

Bench : Division Bench

Advocate : A.S. Rawat, Anil Anthwal, Rajiv Singh Bisht, Vikas Pande

Final Decision : Disposed Off

Judgement

K.M. JOSEPH, C.J.Â Â Â Â

1. Petitioner No. 1, in this case, which is styled as Public Interest Litigation, is allegedly a local resident of Nagar Palika Parishad, Barkot, District

Uttarkashi and petitioner No. 2 claims to be duly elected Member of the same Nagar Palika Parishad.Â

2. In this Writ Petition (PIL), specific allegations are against respondent Nos. 6 and 7.Â Respondent No. 6 is an Executive Officer of the Nagar

Palika Parishad, Barkot, District Uttarkashi and respondent No. 7 is the Chairman of the Nagar Palika Parishad, Barokot, District Uttarkashi.Â

3. The allegations in the writ petition appear to be, in brief, as follows:-

Firstly, the respondent No. 6, Executive Officer has not attended any meetings, though 15 were convened since the year 2013-14 till 19.09.2015.

Â Â In all the meetings, there contained various financial agendas of public importance and number of financial development works were sanctioned,

but due to absence of the Executive Officer, the same could not have been sanctioned / approved.Â Â Secondly, it is alleged that respondent Nos. 6

and 7 used to publish the tenders mostly in scarcely circulated newspapers, whereas, as per settled principle of law, the government tenders are

required to be published in some local newspapers having wide circulation. Thirdly, it is alleged that respondent Nos. 6 and 7 sanctioned several

contracts which were not even in consideration in the agenda of the Board meeting.Â Fourthly, it is alleged that there were various irregularities

committed by respondent Nos. 6 and 7 in Rajiv Awas Yozna.Â Â It is alleged that in the list of eligible persons sanctioned by respondent Nos. 6 and

7, 80% are ineligible or either they were havingÂ their own houses, hotels etc. and are not below the poverty line.Â Â Some of the names are even

of the Ward Members of Nagar Palika Parishad, Barkot, District Uttarkashi and are even Government employees.Â

4. There is also allegation of construction of fabricated shops on Yamunotri National Highway which are alleged to be not only illegal but against the

National Highway Act.Â Â It is further alleged as follows :-

â??19. That on a complaint made by the petitioners, the District Magistrate, Uttarkashi vide letter dated 03.10.2015, directed the SDM, Barkot

enquire the matter and submit a report within one week but till date neither any enquiry has been conducted nor any report has been submitted by the

SDM, Barkot.Â Copy of the letter dated 03.10.2015 is being filed as ANNEXURE No.15 to this petition.Â

20. That the Joint Secretary, Govt. of Uttarakhand also vide letter dated 07.10.2015 directed the Deputy Director, Urban Development to enquire the

matter of complaints against respondent No. 7 and to submit a report expeditiously but till date neither any enquiry has been conducted nor any report

has been submitted by the Deputy Director, Urban Development.Â Copy of the letter dated 07.10.2015 is being filed as ANNEXURE No.16 to this

petition.â??

5. On this basis, inter alia, the petitioners are before us seeking the following reliefs :-

â??(i) Take cognizance of the matter and a high level enquiry / investigation be carried out against the respondent No. 6 and 7 for the acts, omissions,

illegalities and misappropriations carried out by them as Executive Officer and

Chairman of Nagar Palika Parishad, Barkot, District Uttarkashi

respectively and take necessary action in the interest of the larger public who is being victimized at the expense of such officials.Â

(ii) Till such high level enquiry / investigation is carried out against the respondent No. 6 and 7 for the acts, omissions, illegalities and misappropriations carried out by them as Executive Officer and Chairman of Nagar Palika Parishad, Barkot, District Uttarkashi respectively, the financial powers of respondent No. 6 and 7 be suspended.Â

(iii) The works / development projects sanctioned / approved by respondent No. 6 and 7 as Executive Officer and Chairman of Nagar Palika Parishad, Barkot, District Uttarkashi be monitored by a receiver and / or by a committee comprising of District Magistrate, Retd. Judicial Officer and two eminent personalities of the locality.Â??

6. Pleadings have been exchanged.Â

7. The 7th respondent has not filed any counter affidavit.Â

8. We heard Shri A.S. Rawat, learned Senior Counsel assisted by Mr. Anil Anthwal, appearing on behalf of the petitioners; Mr. Vikas Pande, learned counsel appearing on behalf of respondent No. 6 and Mr. Rajiv Singh Bisht, learned Brief Holder for the State of Uttarakhand.Â

9. We have already noticed paragraph 19.Â It appears that pursuant to the same, S.D.M. Barkot conducted an enquiry. The same is produced as CA-2 alongwith counter affidavit of respondent Nos. 2 and 5.Â It would appear from the said report that the matter has not still been finalized at the level of Secretary, Urban Development to whom it has been referred.Â

10. As far as the enquiry which is ordered by the Joint Secretary to the Deputy Director, Urban Development, mentioned in para 20 of the writ petition through a communication, it is not clear as to whether any such inquiry has taken place and, if so, what are the contents of the inquiry as it is not placed before us.

11. Shri A.S. Rawat, learned Senior Counsel would, in fact, place emphasis on the irregularities associated with the grant of largesse under the said Rajiv Awas Yozna.Â

12. No doubt, Shri Vikas Pande, learned Counsel, appearing on behalf of respondent No. 6 has a case that petitioner No. 2 is an elected member and

he has signed the resolutions and father of petitioner No. 1 is a contractor, registered with Nagar Palika Parishad.

13. We are aware of the principle that Public Interest Litigation cannot be allowed to pollute the pure stream of justice. There is a tendency, in fact,

to pose as public spirited citizen and project issues which are seemingly in the domain of public interest litigation. But, at the same time, approach to

Court is ill motivated and many times, it is private interest litigation. But, at the same time, the motive of the person might be an element in the

consideration of the case. If the cause, which is projected is good, the Court does not become helpless and will still have the freedom to consider

the matter.

14. In this case, certain allegations have been raised. What is of crucial significance is that going by the allegations in paragraph Nos. 19 and 20,

enquiries were ordered by the Authorities. In fact, there is an inquiry report by the S.D.M. This inquiry report has not yet been finalized at the

level of the Secretary. According to Shri A.S. Rawat, learned Senior Counsel for the petitioners the inquiry report does not touch upon all the

allegations made, particularly, regarding the irregularities in the Rajiv Gandhi Awas Yozna.

15. In such circumstances, we would think that the interest of justice would be sub-served if we direct respondent No. 1 to consider the matter and

take a decision.

16. Accordingly, we dispose of the writ petition as follows:

1st respondent will consider the matter taking note of the report submitted by the S.D.M. He may also consider whether the report, which is

called for by the Joint Secretary and mentioned in paragraph 20 of the writ petition, has been provided and whether it is necessary to take a decision.

A decision will be taken by the 1st respondent within a period of six weeks from the date of production of a certified copy of the judgment.

We make it clear that this direction should not be considered as direction to the 1st respondent to take action as such under Section 48 of the U.P.

Municipalities Act, 1916. It is for the 1st respondent to decide upon the allegations, which have been raised and also as to the appropriate

action, if any needed, which is required to be taken on the basis of the findings.