
(2011) 12 UK CK 0012

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1310 of 2009

CYBORG I.T. Services Pvt. Ltd.

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 26-12-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2012 Utt 80

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Bhupendra Singh, for the Appellant; K.C. Tiwari, for State, for the Respondent

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J.—Heard Mr. Bhupendra Singh, Advocate for the petitioner and Mr. K.C. Tiwari, Brief Holder for the State of Uttarakhand. The petitioner claims to be "First Information Technology" (Software Development) Company in the State of Uttarakhand. It also claims to have developed software known as "Nipun" which has to be used for administrative and ministerial purposes in schools and in such other educational institutions. Apart from the State of Uttarakhand, the petitioner's company also claims to be working in Uttar Pradesh, Jharkhand and in Bihar. This petition has been filed in the name of CYBORG IT Services Pvt. Ltd. through its Chief Executive Officer, namely, Mr. Jitendra Kumar Haneria. The company has its office at Dehradun. The petitioner also claims to have launched the said software (Nipun) and he further states that this software had a great demand from the Principals of Government and Government aided schools. In the year 2008-09, the company started receiving huge demand from the Principals of various Government schools in the State of Uttarakhand for the software "Nipun". It is necessary to note here that all these demands were from Government schools in one district i.e. District Pauri Garhwal (in the State of Uttarakhand). The demands were for installation of the software

called "Nipun". No effort has been made to explain as to what is the utility of this software in Government schools situated in remote village and hill areas of district Pauri Garhwal. There is nothing on record to show that this software "Nipun" has been approved by Government or by any expert body of Central or State Government or that there is any certification to the effect of its utility in schools. The petitioner though states that there is a procurement regulations presently applicable in the State of Uttarakhand known as "Uttarakhand Adhiprapti Niyamawali", 2008 (Uttarakhand Procurement Regulations, 2008) (from hereinafter referred to as "Procurement Regulations"). The petitioner relied upon regulation 8 of the Procurement Regulations, according to which any commodity which has its value of Rs. 15,000/- or less can be procured from the competent authority without calling for quotation/tender at market rates. All that has to be done is that authority must satisfy himself that such a commodity is required and it has a special quality and is being procured at proper rates.

2. Be that as it may, the case of the petitioner is that under the aforesaid provision, 323 schools, from Pauri Garhwal, Uttarakhand made a request to the petitioner for getting this software "Nipun". In view of the requisition, which the petitioner has annexed as Annexure No. 2, he supplied all of them this software called "Nipun". Since the payment to this software was not being given, the petitioner made certain efforts. However, subsequently the Director, School Education, Dehradun vide his letter dated 6.8.2009 directed the District Education Officer, Pauri Garhwal, to immediately stop the payment to the said company, which is annexed as Annexure No. 11 to the writ petition. It is this letter/order, which the petitioner has sought to quash by seeking relief from this Court. The impugned letter/order dated 6.8.2009 which is of the Director, School Education is addressed to the District Education Officer (from hereinafter referred to as DEO), Pauri Garhwal stating that a software from CYBORG I.T. Company known as "Nipun school management" has been directed to be purchased for each school in the district, and that for each school this software costs around Rs. 23,000/- and it is presently being procured (or has been procured) by 300 such schools in the district. The total expenses thus which have to be incurred by the State for purchase of this software (for one district alone) is going to be Rs. 66,00,000/- (Sixty Six Lakh). Before purchase of such a commodity (or service), the permission as given under the Procurement Regulations has not been obtained. It also states that apart from being in violation of financial rules and regulations such procurement is illegal, as the sanction from higher authorities has not been taken before procuring a commodity/ service of such a high amount. Therefore, he directed the District Education Officer to cancel all his procurement with immediate effect and firm should not be given the payment, as the procurement is unauthorized and irregular.

[This translation of the said letter has been made by this Court and it only states the intention of the said letter and may not be absolutely accurate].

3. Since after the said letter the amount was not received by the petitioner, he

has filed the present writ petition, inter alia, quashing of the letter/order dated 6.8.2009 and made further prayer, which reads as under:

Issue a writ, order or direction in the nature of mandamus directing the respondents not to interfere in the installation and training of the "NIPUN" School Management Software and also not to interfere in making payment for payments by schools to the petitioner on the account of supply of "NIPUN" School Management Software and Training package.

4. The State Government in its counter affidavit filed on behalf of respondent Nos. 2 and 3 states that the impugned letter/order of Director, School Education is in violation of Procurement Regulations. But interestingly another fact has come out in the supplementary counter affidavit filed by respondent Nos. 2 and 3 i.e. Director. Vidhyalaya Shiksha, Uttarakhand, Dehradun and District Education Officer, Pauri Garhwal, respectively, which states that Shri Narayan Lal, who was the then Additional District Education Officer (Secondary). Pauri Garhwal is the father of the petitioner (petitioner here would be the Chief Executive Officer of company Sri Jitendra Kumar Haneria) and to cause gain to his son he has given orders to his subordinates, who were the principals of the Schools, to procure the software which was being manufactured by the company in which his son was the Chief Executive Officer!

5. The State in its supplementary counter-affidavit filed on behalf of respondent Nos. 2 and 3 has annexed another letter dated 4.7.2009, as Annexure SCA 1, of Additional District Education Officer (Secondary), who happened to be father of the Chief Executive Officer (presently the petitioner before this Court) in which direction has been given to all the principals and headmasters of all the Higher Secondary Intermediate College of Pauri Garhwal, State of Uttarakhand about the particular software. In fact the heading of this letter is the participation in two days training in "Nipun school management" software. The letter states that this software costing Rs. 14,900/-. The training and management will further cost Rs. 6,000/- and Rs. 2,000/- respectively. He has also given the schedule of such a training. The exact averments made in the supplementary affidavit by the deponent Sri Surendra Singh Negi who at the relevant time in 2009 (on the time of deposition) was the District Education Officer, Pauri Garhwal states as under:--

7. That in reply to the contents of para 12 of the rejoinder affidavit it is further submitted that or made clear that the father of the petitioner Sri Narayan Lal who was posted then Additional District Education Officer (Secondary) wrote a letter for vocational interest of his son to all the Principals/ Headmasters of official/non-official institutions on 4.7.2009 which shows the mode or hint of purchasing Nipun Software. The copy of the letter dated 4/7/2009 is being filed herewith and marked as Annexure No. S.C.A.-1 to this affidavit.

6. In other words, all the 323 Principals in Pauri Garhwal have purchased this software "Nipun" on instructions and advise of their Additional District Education Officer, Pauri Garhwal when that Additional District Education Officer was doing

nothing less than promoting the business interest of his son, while holding a Public Office. Prima facie, atleast this appears to be the case, subject to further enquiry and investigation.

7. The case of the State, in other words, is very clear that without calling for a tender or quotation from other software companies, the Additional District Education Officer had directed his subordinates of a particular district, who were the principals of the school in Pauri Garhwal, State of Uttarakhand, to procure the said software. This is clear from averments made by the State as well as by the annexures annexed in the counter-affidavit by the State Government in this regard.

8. Moreover, in any case there was a clear violation of the Procurement Regulations, as the amount in present case would be Rs. 23,000/- in total. It cannot be more than Rs. 15,000/- in a school in a district. The expenses which have to be borne are Rs. 66,00,000/- for one district. If this is multiplied to the number of the schools in the State of Uttarakhand the figure will cross many crores. Therefore, the Procurement Regulations had to be followed in the present case.

9. Assuming for the sake of argument that the commodity is less than Rs. 15,000/- and therefore according to Rule 8 of the Procurement Regulations, the concerned principal was not liable to ask for quotation. Therefore, in any case it was a contract in the present case between the principals of the schools and software company i.e. petitioner before this Court, the Company is at liberty avail any other remedy available to it under the law for getting his money back from such Principals of school, who have placed the order before it. No such remedy, however, can be available to the petitioner under Article 226 of the Constitution of India as the remedy available under Article 226 of the Constitution of India is not only public law remedy it is also an equitable remedy. This Court is of the considered view that under the facts and circumstances of the case such relief as sought by the petitioner cannot be granted.

10. Mr. Kailash Chandra Tiwari, Brief Holder for the State has made a statement before this Court that a public officer has misused his power and has tried to give financial gain to his kith and kin and to cause financial loss to the State Exchequer. He has also stated that an inquiry was also constituted in this regard. Learned counsel for the petitioner, on the other hand, states that no inquiry has been constituted.

11. Considering the facts and circumstances of the case, in the interest of justice an inquiry must also be constituted to find out as to under what circumstances Additional District Education Officer had directed his subordinate to purchase this particular software from this particular company.

12. The writ petitions fails and is hereby dismissed.

13. Interim order dated 22.9.2009 stands vacated.

14. No order as to costs. Registry is directed to send a certified copy of this order to the Secretary, School Education, Uttarakhand, Dehradun.