
(2006) 02 AHC CK 0155

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6114 of 2006

Deonandan Yadav and another

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 14-02-2006

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 96, 97

Citation : (2006) 02 AHC CK 0155

Hon'ble Judges : B.S.Chauhan, J and Dilip Gupta, J

Final Decision : Dismissed

Judgement

Dr. B.S. Chauhan, J.

1. This writ petition has been filed for quashing the impugned order dated 18.1.2006 (Annexure 6) passed by the respondent No. 3 and further to restrain the respondents from interfering with their contract and to permit them to complete the work as per the contract.

2. The facts and circumstances giving rise to this case are that Nagar Palika, Bhadohi made an advertisement on 16.11.2005 in Rashtriya Sahara inviting tenders under Simantararsat Revolving Funds Scheme for five different works. Petitioners filed their tenders and it was accepted by the then Chairman of the Nagar Palika and an agreement was executed between the parties. The said contract was cancelled vide impugned order dated 18 1.2006. Hence this petition.

3. Sri R.K. Ojha, learned Counsel for the petitioner has submitted that the contract was awarded to the petitioners strictly in accordance with law and the then Chairman of the Nagar Palika had accepted the tender. Work orders were issued and on the complaint of the respondent No. 4, the authorities have passed the impugned order for mala fide reasons. Thus the order impugned is liable to be quashed.

4. On the other hand, it has been submitted by Sri S.B. Singh appearing for the respondent No. 4 and Shri C.K. Rai learned Standing Counsel appearing for

respondent Nos. 1 and 2 that the contract was awarded to the petitioner by the then Chairman in contravention of the statutory provisions. Tender inviting notice was published in the Rashtriya Sahara which is published from Lucknow but the same is not widely circulated in Bhadohi. The contract was awarded for extraneous considerations without getting approval of the Municipal Board and it has rightly been cancelled for the reason that it has no sanctity in law.

5. We have considered the rival submissions made by learned Counsel for the parties and have perused the original record produced by Shri C.K. Rai as he was directed by us vide order dated 31.1.2006.

6. The relevant rules providing for contract by the U.P. Municipalities Act, 1916 reads as under :

"96 Sanctioning of contracts. (1) The sanction of the Municipality by resolution is required in the case of every contract

(a) for which budget provision does not exist; or

(b) involving a value or amount, exceeding fifty thousand rupees in the case of a contract by the Municipal Council and Fifteen thousand rupees in the case of a contract by the Nagar Panchayat:

Provided that during the period intervening two meetings of the Municipal Council, the President may sanction contracts involving a value or amount not exceeding One lakh rupees.

(2) Any contract, other than a contract of either description specified in subsection (1), may be sanctioned by resolution of the Municipality, or by a Committee of the Municipality (not being an advisory Committee) empowered in this behalf by regulation, or by any one or more than one officer or servant of the Municipality so empowered :

97. Execution of contracts. (1) Every contract made by or on behalf of a Municipality whereof the value or the amount exceeding Rs. 250 shall be written :

Provided that unless a contract has been duly executed in writing, no work including collection of materials in connection with the said contract shall be commenced or undertaken.

(2) Every such contract shall be signed

(a) by the President or a Vice-President and by the Executive Officer or a Secretary; or

(b) by any person or persons empowered under subsections (2) or (3) of the previous section to sanction the contract in further and in like manner empowered in this behalf by the Municipality.

(3) If a contract to which the foregoing provisions of this section apply is executed otherwise than in conformity therewith it shall not be binding on the

Municipality.

97A. Special provision regarding certain projects. Notwithstanding anything contained in this Act, every contract or estimate in respect of an urban development project sponsored by the Central Government or receiving aid from the World Bank or any other foreign organization, be made or sanctioned in accordance with the scheme approved by the State Government."

7. Admittedly, the case of the petitioners does not fall under provisions of Section 97A for the reason that the contract in question was not under the development project sponsored by the Central Government or being executed from aid received from the World Bank or any other Foreign Organization.

8. The provisions of Section 96 clearly provides that every contract is to be sanctioned by the Municipal Board by its resolution. Proviso thereto provides for an exception that President may sanction contract involving an amount not exceeding Rs. One lakhs during the period intervening two meetings of the Municipal Council. In the instant case it is evident that the five contracts sanctioned by the President was for a sum of Rs. 8,38,000/, 4,50,000/, 5,50,000/, 5,50,000/ and 12,62,000/ as is evident from Annexure 1. None of the contract was within the permissible limitation of the President. Even if the contract was awarded during the intervening period of two meetings of the Municipal Council, there are no pleadings to the effect that the contract was awarded in the intervening period of two meetings of the Municipal Council, but for sake of the argument, if it is assumed that the contract would have been award by the President, he was not competent to awarded the contract for more than Rs. One lakh.

9. The original record produced by Shri C.K. Rai clearly establishes the case that the contract in question has been awarded without any competence under the law and if the factual malice is not established, definitely it is a case of legal malice. We are not in a position to say anything against the then President of the Municipal Board for the reason that he is not a party before us.

10. It is settled law that when the action of the State or its instrumentalities is not as per the rules or regulations and supported by a statute, the Court must exercise its jurisdiction to declare such as act to be illegal and invalid.

11. In *Sirsi Municipality v. Cecelia Kom Francis Tellis*, AIR 1973 SC 855, the Supreme Court observed that "the ratio is that the rules or the regulations are binding on the authorities".

12. Similarly, a Constitution Bench of the Hon"ble Supreme Court in *Sukhdev Singh and others v. Bhagatram Sardar Singh Raghuvanshi and another*, AIR 1975 SC 1331, has observed as under :

"The statutory authorities cannot deviate from the conditions of service. Any deviation will be enforced by legal sanction of declaration by Courts to invalidate actions in violation of rules and regulations. The existence of rules and

regulations under statute is to ensure regular conduct with distinctive attitude to that conduct as a standard. The statutory regulations in the cases under consideration give the employees a statutory status and impose restrictions on the employer and the employee with no option to vary the conditions.....In cases of statutory bodies there is no personal element whatsoever because of the impersonal character of statutory bodies.....the element of public employment or service and the support of statute require observance of rules and regulations. Failure to observe requirements by statutory bodies is enforced by Courts by declaring (action) in violation of rules and regulations to be void. This Court has repeatedly observed that whenever a man's rights are affected by decision taken under statutory powers, the Court would presume the existence of a duty to observe the rules of natural justice and compliance with rules and regulations imposed by statute. " (Emphasis added).

13. Similar view has been taken by the Supreme Court in *Ambica Quarry Works etc. v. State of Gujarat and others*, AIR 1987 SC 1073 and *Commissioner of Police, Bombay v. Gordhandas Bhanji*, AIR 1952 SC 16. In both the cases, the Apex Court relied upon the judgment of the House of Lords in *Jullius v. Lord Bishop of Oxford*, (1880) 5 AC 214, wherein it was observed as under :

"There may be something in the nature of thing empowered to be done, something in the object for which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so."

14. In *Commissioner of Police (supra)*, the Apex Court observed as under :

"Public authorities cannot play fast and loose with the powers vested in them, and persons to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from doing, and exactly what authority is making the order.....An enabling power of this kind conferred for public reasons and for the public benefit is, in our opinion, coupled with a duty to exercise it when the circumstances so demand. It is a duty which cannot" be shirked or shelved nor it be evaded, performance of it can be compelled."

15. In *Dr. Meera Massey v. Dr. S.R. Mehrotra and others*, AIR 1998 SC 1153, the Apex Court observed as under :

"If the laws and principles are eroded by such institutions, it not only pollutes its functioning deteriorating its standard but also exhibits..... wrong channel adopted..... If there is any erosion or descending by those who control the activities all expectations and hopes are destroyed. If the Institutions perform dedicated and sincere service with the highest morality it would not only uplift many but bring back even a limping society to its normalcy."

16. The Supreme Court has taken the same view in *Ram Chand and others v.*

Union of India and others, (1994) 1 SCC 44, and held that "the exercise of power should not be made against the spirit of the provisions of the statute, otherwise it would tend towards arbitrariness".

17. In *Puntshottam v. Chairman, Maharashtra State Electricity Board and another*, (1999) 6 SCC 49, the Hon"ble Supreme Court has held that appointment should be made strictly in accordance with the statutory provisions and a candidate who is entitled for appointment, should not be denied the same on any pretext whatsoever as usurpation of the post by somebody else in any circumstances is not possible.

18. A Constitution Bench of the Hon"ble Supreme Court in *Ajit Singh (II) v. State of Punjab and others*, (1999) 7 SCC 209, held that any action being violative of Article 14 of the Constitution is arbitrary and if it is found to be de hors the statutory rules, the same cannot be enforced.

19. In *Indra Sawhney II v. Union of India and others*, AIR 2000 SC 498, the Hon"ble Supreme Court reiterated the law laid down by it time and again that Articles 14 and 16 (1) of the Constitution of India provide for rule of equality which is the basic feature of the Constitution and, therefore, there can be no deviation from the principles enshrined therein while making the appointments. Rule of equality is an antithesis of any kind of arbitrariness or private gain, whim or caprice of any individual. Even if the State has the discretionary power to issue executive instructions, such discretion is coupled with the duty to act in a manner which will promote the object for which the power is conferred and also "satisfy the mandatory requirements of the Statute". (Vide *A.P. Aggarwal v. Government (of N.C.T) of Delhi and others*, AIR 2000 SC 205). In *Kumari Shrilekha Vidyarthi etc. etc. v. State of U.P. and others*, AIR 1991 SC 537, the Apex Court held that every State act, in order to survive, must not be susceptible to vice of arbitrariness which is a crux of Article 14 of the Constitution and basis to the rule of law.

20. In *Dr. M.A. Haque and others v. Union of India and others*, (1993) 2 SCC 213, the Supreme Court observed as under :

"..... We cannot lose sight of the fact that the recruitment rules made under Article 309 of the Constitution have to be followed strictly and not in breach. If a disregard of the rules and by passing of the Public Service Commissions are permitted, it will open a backdoor for illegal recruitment without limit. In fact this Court has, of late, been witnessing a constant violation of the recruitment rules and a scant respect for the constitutional provisions requiring recruitment to the services through the Public Service Commissions. It appears that since this Court has in some cases permitted regularisation of the irregularly recruited employees, some Governments and authorities have been increasingly resorted to irregular recruitments. The result had been that the recruitment rules and the Public Service Commissions have been kept in cold storage and candidate dictated by various considerations are being recruited as matter of course."

21. Deprecating the practice of making appointment de hors the Rules by the State or its instrumentalities in *Dr. Arundhati A. Pargaonkar v. State of Maharashtra*, AIR 1995 SC 962, the Court rejected the claim of the petitioner therein for regularisation on the ground of long continuous service observing as under :

"Nor the claim of the appellant, that she having worked as Lecturer without break for 9 years" on the date of advertisement was issued, she should be deemed to have been regularized appears to be well founded. Eligibility and continuous working for howsoever long period should not be permitted to overreach the law. Requirement of rule of selection.....cannot be substituted by humane considerations. Law must take its course."

22. The Hon'ble Supreme Court in *State of U.P. and others v. U.P. State Law Officers Association and others*, AIR 1994 SC 1654, observed as under :

"This being so those who come to be appointed by such arbitrary procedure can hardly complain if the termination of their appointment is equally arbitrary. Those who come by the back door have to go by the same door.....The fact that they are made by public bodies cannot vest them with additional sanctity. Every appointment made to a public office, howsoever made, is not necessarily vested with public sanctity. There is, therefore, no public interest involved in saving all appointments irrespective of their mode. From the inception some engagements and contracts may be the product of the operation of the spoiled system. There need be no legal anxiety to save them."

23. Therefore, it is evident from the aforesaid judgment of the Hon'ble Apex Court that whenever any action of the authority is in violation of the provisions of the statute or the action is constitutionally illegal, it cannot claim any sanctity in law, and there is no obligation on the part of the Court to sanctify such an illegal act. Wherever the statutory provision is ignored, the Court cannot become a silent spectator to such an illegal act, and it becomes the solemn duty of the Court to deal with the persons violating the law with heavy hands. [Vide *R.N. Nanjundappa v. T. Thimmaiah and another*, AIR 1972 SC 1767; *B.N. Nagarjan and others v. State of Karnataka and others*, AIR 1979 SC 1676; *Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi and others*, AIR 1992 SC 789; *State of Orissa and others v. Sukanti Mohapatra and others*, AIR 1993 SC 1650; *Jawahar Lal Nehru Krishi Vishwa Vidyalaya, Jabalpur, M.P. v. Bal Kishan Soni and others*, (1997) 5 SCC 86; *State of Himachal Pradesh v. Nodha Ram and others*, AIR 1997 SC 1445; *Ashwani Kumar and others v. State of Bihar and others*, AIR 1997 SC 1628; *State of M.P. and another v. Dharman Bir*, (1998) 6 SCC 165; *Municipal Corporation, Bilaspur and another v. Veer Singh Rajput and others*, (1998) 9 SCC 258; *Nazira Begum Lashkar and others v. State of Assam and others*, AIR 2001 SC 102; *Mrs. Dr. Chanchal Goyal v. State of Rajasthan*, AIR 2003 SC 1713; *M.D., U.P. Land Development Corporation and another v. Amar Singh and others*, AIR 2003 SC 2357, *State of Haryana & Anr v. Tilak Raj and others*, AIR 203 SC 2658; *Haryana Tourism*

Corporation Ltd. v. Fakir Chand and others, AIR 2003 SC 4465; Sultan Sadik v. Sanjay Raj Subba and others, AIR 2004 SC 1377 and A. Umarani v. Registrar, Cooperative Societies and others, 2004 AIR SCW 4462].

24. In Ramniklal N. Bhutto and another v. State of Maharashtra and others, AIR 1997 SC 1136, The Hon"ble Apex Court observed as under :

"The power under Article 226 is discretionary. It will be exercised only in furtherance of justice and not merely on the making out of a legal point.....the interest of justice and public interest coalesce. They are very often one and the same.... The Courts have to weight the public interest visavis the private interest while exercising the power under Article 226.....indeed any of their discretionary powers."

25. In view of the above, we are of the considered opinion that every statutory requires strict adherence, for the reason that the statute creates rights in favour of the citizens, and if any order is passed de hors the same, it cannot be held to be a valid order and cannot be enforced. As the statutory provision creates legal rights and obligations for individuals, the statutory authorities are under a legal obligation to give strict adherence to the same and cannot pass an order in contravention thereof, treating the same to be merely decoration pieces in his office.

26. The Hon"ble Supreme Court, in Poona City Municipal Corporation v. Dhattatraya Nagesh Deodher, AIR 1965 SC 555, while interpreting the provision under the Bombay Provincial Municipal Corporation Act, 1949, observed that if the order is passed de hors the statutory provision of the Act, the order so passed or action taken in pursuance thereof cannot be termed to have been done under the Act.

27. The Hon"ble Supreme Court in Municipal Corporation, Indore v. Sri Niyamatulla, AIR 1971 SC 97, interpreted Section 135 (2) of the Indore Municipal Act, 1909, which is similar to Section 233 (1) (a) of the Act in the following terms :

"The Provisions contained in Section 135 of the Indore Municipal Act will be applicable to things done under the Act. It is manifest that in the present case the order of dismissal passed by Shri Ghatpande was beyond his jurisdiction and is, therefore, not an act done under the Act."

28. The aforesaid judgments were reconsidered and approved by the Hon"ble Supreme Court in J.N. Ganatra v. Morvi Municipality, Morvi AIR 1996 SC 1520 and Borosil Glass Works Ltd. Employees Union v. D.D. Bambode and others, JT 2000 (Suppl. 3) SC 278.

29. More so, if an order is bad in its inception, it does not get sanctified at a later stage [Vide Upen Chandra Gogoi v. State of Assam and others, (1998) 3 SCC 381; Satchidananda Mishra v. State of Orissa and others, 2004 AIR SCW 5229 and Regional Manager, SBI v. Rakesh Kumar Tewari, (2006) 1 SCC 530],

30. In *C. Albert Morris v. K. Chandrasekaran and others*, (2006) 1 SCC 228, the Hon"ble Apex Court held that a right in law exists only and only when it has a lawful origin.

31. In view of the above, we are of the considered opinion that the contracts had been awarded to the petitioners in contravention of the statutory provisions of the Act, 1916 and cannot be enforced through Court much less the Writ Court as the relief by the Writ Court is discretionary.

32. Petition is devoid of any merit and is accordingly dismissed.

33. However, in the facts and circumstances of the case, if the petitioners are so advised, they may file a suit for damages against the then Chairman of the Nagar Palika only, without involving the respondent Municipality, as he had awarded the contracts to them only arbitrarily but illegally also.