(2016) 02 RAJ CK 0127

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 13949, 63, 64, 65, 71, 72, 75, 76, 148, 155, 156, 159, 185, 186, 201, 202, 219, 222, 223, 224, 225, 227, 229, 231, 233, 234, 243, 245, 246, 247, 248, 249, 250, 251, 252, 290, 293, 303, 304, 305, 306, 307, 308, 309, 310, 317,

Har Govind Singh and Others — APPELLANT

Vs

State of Rajasthan and Others — RESPONDENT

Date of Decision : 08-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Panchayati Raj Act, 1994 — Section 111

Citation : (2016) 1 DNJ 432

Hon'ble Judges : Sangeet Lodha, J.

Bench : Single Bench

Advocate : Hemant Jain, Kuldeep Mathur, Mukesh Rajpurohit, T.R.S. Sodha, Pankaj Sharma, Sushil Solanki, R.S. Saluja, Ravish Sharma, Hari Singh on behalf of Manish Pitaliya and Ramniwas Choudhary, for the Appellant; Manish Patel, Additional Government Counsel, for th

Final Decision : Allowed

Judgement

1. These writ petitions have been filed by the petitioners, holding the posts of Sarpanch, Gram Sewak Ex-officio Secretary or the Technical Officer, in various Gram Panchayats, aggrieved by the action of the respondents in directing recovery of the loss caused to the Gram Panchayat concerned, on account of purchases of Solar Street Lights, without undertaking the tender process in accordance with law, from a person other than the firm holding valid rate contract with Director General, Supplies & Disposal (D.G.S.&D), Government of India and at the rate higher than the rates prescribed.

2. The relevant facts are that the Panchayati Raj Institutions of the State are receiving funds/financial aids for the purpose of providing infrastructure facilities and for other development works under different heads from various sources. The Government of Rajasthan with a view to extend financial strength to the

Panchayati Raj Institutions, allocated Untied Funds to them in the budget for the financial year 2011-2012 and issued the guidelines regarding work to be undertaken by the Panchayati Raj Institutions, which includes the installation of Solar Street Lights in government buildings and main places, such as chauraha, bus stand etc.

3. The various Gram Panchayats purchased the Solar Street Lights for installation at the various places out of the funds allocated by the State Government under the Untied Fund Scheme, after inviting the tenders open or limited or without inviting tenders. The matter with regard to purchases of the Solar Street Lights by various Panchayati Raj Institutions was inquired into by the Department of Panchayati Raj, Government of Rajasthan, wherein it was found that the Chairpersons of the Gram Panchayats, Gram Sewak-cum-Secretary and the Technical Officers have committed illegalities in purchasing the Solar Street Lights with or without tender from the firms other than the firms having Rate Contract with D.G.S.&D of Government of India and on the rates higher than the rate approved under the Rate Contract with such firms and accordingly, the Chief Executive Officer of various Zila Parishads issued the directions, in some cases for recovery of the value of the Solar Street Lights purchased and in other cases, the difference of amount actually paid and the amount payable, as per the Rate Contract with D.G.S.&D, from the Sarpanch, Gram Sewak-cum-Secretary and Technical Officer of Gram Panchayats concerned. Pursuant to the directions issued as aforesaid, the Vikas Adhikari of the various Panchayat Samiti have issued demand notices, directing the concerned Sarpanch, Gram Sewak-cum-Secretary and Technical Officer of Gram Panchayat, as the case may be, to deposit the amount quantified. Hence, these petitions.

4. Learned counsels appearing for the petitioners contended that the impugned demands have been created against the petitioners with the presumption that the Solar Street Lights have been purchased by them, on the rate higher than the rates approved under Rate Contract with D.G.S.&D. Learned counsels would submit that the notification of D.G.S.&D rate, which has been relied upon for creating the demand against the petitioners, was issued in the year 2013, which was valid for the period 18.3.13 to 31.3.14 whereas, the purchases of Solar Street Lights in question, are of the period prior to the date of commencement of said notification, prescribing the rates of various items approved under the Rate Contract with D.G.S.&D. Learned counsels submitted that the demand has been created against the petitioners solely on the basis of the inquiry conducted in their back and before creating the demand, they were not extended an opportunity of hearing. Learned counsels would submit that in many cases, the price paid for the Solar Street Lights includes the installation charges whereas, the rate prescribed under the Rate Contract with D.G.S.&D. does not include installation charges. Drawing the attention of this court to Section 111 of the Rajasthan Panchayati Raj Act, 1994 (for short "the Act"), learned counsels submitted that before directing the recovery of amount against Sarpanch of Gram Panchayat, the respondents were under an obligation to conduct the

inquiry as per the procedure laid down and thus, the demand created against the petitioners without following the procedure laid down under Section 111 of the Act, is ex facie illegal. Learned counsel submitted that even otherwise, before creating the liability against the petitioners, the respondents were under an obligation to extend an opportunity of hearing to the petitioners and thus, the impugned demands created in gross violation of principles of natural justice, deserve to be quashed for this reason alone.

5. On the other hand, the Additional Government Counsel appearing for the respondents relying upon the provisions of Rule 184 of the Rajasthan Panchayati Raj Rules, 1996 (for short "the Rules"), submitted that the purchases in question could not have been made by the petitioners except by way of inviting open tender in sealed cover. Learned counsel submitted that the purchases have been made by the petitioners without following the tender process as prescribed under Rule 184 of the Rules and thus, the factum of purchases being made in violation of the procedure laid down under the Rules, is not even in dispute. Learned counsel would submit that the cost of the Solar Street Lights (LED) and Solar Street Lights (CFL) under the Rate Contract with the D.G.S&D is Rs. 15,075/- and Rs. 21,800/- respectively, whereas, the purchases have been made by the petitioners on much higher rates. Learned counsel submitted that vide circular dated 21.9.12, the Department of Rural Development & Panchayati Raj, Government of Rajasthan, has laid down policy regarding the publication of the tender notice in respect of the purchases upto the value specified, which has also not been followed by the petitioners and thus, the action of the respondents in directing recovery of the amount, does not suffer from any illegality so as to warrant interference by this court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India. On being specifically asked by the court regarding the opportunity of hearing being extended to the petitioners, learned Additional Government Counsel fairly submitted that before creating the demand as aforesaid, no opportunity of hearing was extended to the petitioners. However, learned counsel submitted that where the irregularities committed by the petitioners are writ large and there is no factual dispute regarding the purchases being made in defiance of the procedure laid down, it will be a futile exercise to extend an opportunity of hearing to the petitioners and therefore, there is absolutely no reason as to why this court should interfere in the matter for alleged violation of principles of natural justice. In support of the contention, learned counsel has relied upon a decision of the Hon''ble Supreme Court in the matter of "Chief General Manager, Calcutta Telephone, District, Bharat Sanchar Nigam Limited & Ors. v. Surendra Nath Pandey & Ors.", , (2011)15 SCC 81.

6. It is next contended by the learned counsel for the respondents that as a matter of the fact the purchases have been made by the petitioners in defiance of the norms laid down under the Panchayati Raj Schemes, introduced under the grant of 13th Finance Commission, inasmuch as the purchases have been made without availability of the fund/grant from the Central Government.

7. I have considered the rival submissions and perused the material on record.

8. Indisputably, transparency in public procurement minimizes corruption risk, improves competition which leads to procurement of quality product at a fair price and thus, the procedure laid down under the Rules for public procurement, with the objective of ensuring transparency, fair and equitable treatment of tenderers and economy, must be strictly adhered to.

9. It goes without saying that under Rule 184 to 190 of the Rules, the procurement procedure for purchase of the goods of different value has been prescribed so as to achieve the goal of fairness and transparency. A bare perusal of Rule 184 makes it abundantly clear that the purchases by the Panchayati Raj Institution may be done on single quotation basis or on the rate contract approved by the Central or the State Government or Zila Parishad where the value of the goods to be purchased does not exceed Rs. 3,000/- and if amount of purchase is more than Rs. 3,000/- but up to Rs. 50,000/-, it may be made on limited tender basis by inviting competitive rates from not less than three suppliers dealing in such material but in respect of the procurement, where the value of the purchases exceeds Rs. 50,000/-, the Gram Panchayat is required to invite open tenders in sealed cover. That apart, the procedure laid down for opening and acceptance or rejection of the bids has to be followed mandatorily.

10. It is a matter of record that the value of the purchases made in the instant cases exceeds Rs. 3,000/- and in many cases, even Rs. 50,000/- and thus, the action of the State in taking the disciplinary proceedings and effecting recovery of the wrongful loss caused to the Panchayati Raj Institutions, if any, on account of the purchases made by the petitioners, without following the procedure laid down under the Rules for public procurement, cannot be faulted with.

11. A bare perusal of the impugned orders creating the demand against the petitioners, reveal that the allegations against them are that they have purchased the Solar Street Lights without taking recourse to tender process as provided under the Rules and the amount paid for such purchases is more than the rate approved under the rate contract with the D.G.S. & D and thus, the wrongful loss has been caused to the Gram Panchayat.

12. But then, it is not disputed before this court that before holding the petitioners liable for the wrongful loss caused to the Panchayati Raj Institution by making purchases without following the procedure laid down for public procurement, at the rate higher than the rate approved under the rate contract with the D.G.S. & D or the rate for the particular items approved by the State Government or Zila Parishad, no opportunity of hearing was extended to the petitioners.

13. It is fundamental principle of natural justice that before taking an action against any person having evil and civil consequence, the defence of such person must always be fairly heard. In the instant cases, it is the specific case of the petitioners that the purchases made includes the installation charges and the

amount paid for the purchases does not exceed the rates as approved under the rate contract with the D.G.S. & D. and therefore, before arriving at the conclusion regarding the petitioners liability, it was incumbent upon the respondents to extend an opportunity of hearing to the petitioners and to take their defence into consideration. Thus, the impugned action of the respondents is ex facie violative of elementary principle of natural justice.

14. Moreover, it is pertinent to note that Section 111 of the Act of 1994, which deals with liability of Members as well as Chairpersons and Deputy Chairpersons of Panchayati Raj Institutions, inter alia specifically provides that where any loss, waste or mis-application of any money or other property belonging to Panchayati Raj Institution is caused as a direct consequence of neglect or misconduct on the part of members including Chairpersons and Deputy Chairpersons of the Panchayati Raj Institution while in office, they shall be liable for the same. But, as per mandate of the said provision, before determining the extent and amount of liability of such office bearers for such loss, waste or mis-application of money or property, they are required to be served with a notice containing allegations against them and unless, they admit their liability and its amount, the competent authority or authorized officer is required to determine the liability or its extent, after recording evidence in support of allegations and after giving concerned office bearer an opportunity to cross-examine the witness. In this view of the matter, the action of the respondents in creating the demand against the petitioners, who are office bearers of various Gram Panchayats, straight away, on the basis of the inquiry conducted against their back, without adhering to the procedure laid down under Section 111 of the Act, is not sustainable in the eyes of law.

15. Coming to the contention raised on behalf of the respondents regarding the purchases being made by the petitioners without the availability of the grant from the Central Government, this court is of the opinion that the said contention is not required to be gone into by this Court inasmuch as, bare perusal of the impugned orders creating the demand, reveal that the recovery sought to be effected against the petitioners is not based on any such violation. It is settled law that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be permitted to be supplemented by fresh reasons in the shape of affidavit or otherwise. (vide Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors., , AIR 1978 SC, 851).

16. Lastly, coming to the contention of the respondents that the irregularities committed by the petitioners are writ large and there is no factual dispute regarding the purchases being made in defiance of the procedure laid down and therefore, no fruitful purpose will be served in extending an opportunity of hearing to the petitioners, suffice it to say that in the instant cases, where the monetary liability has been created against the petitioners for wrongful loss caused to the Gram Panchayat concerned, on account of purchases made,

ignoring the tender process as provided under the Rules, the wrongful loss has to be proved and quantified after taking into consideration the defence of the petitioners, if any and thus, the decision of the Hon''ble Supreme Court in the matter of Surendra Nath Pandey''s case (supra) relied upon, does not help the respondents in any manner.

17. For the aforementioned reasons, the demands created against the petitioners, on the basis of the inquiry conducted in their back, without giving them an opportunity of hearing, deserve to be quashed.

18. In the result, the writ petitions succeed, the same are hereby allowed. The impugned demands created against the petitioners by the respondents are quashed. The matter shall stand remanded to the competent authority to pass an appropriate order afresh, after giving an opportunity of hearing to the petitioners in accordance with law. The amount already deposited by the petitioners against the demands created, pursuant to the interim order passed by this Court or otherwise, shall be subject to final outcome of the inquiry to be conducted by the competent authority. If the petitioners are held liable for the loss, if any, caused to the Panchayati Raj Institution, the amount already deposited by them, shall be adjusted against the demand created, if any. Needless to say that if the petitioners are exonerated, the amount, if any, deposited by them or where the demand created against them is found to be less than the amount already deposited by them, the excess amount, shall be refunded to them. No order as to costs.