

(2019) 06 UK CK 0118
In the Uttarakhand High Court
Case No : Writ Petition (PIL) No. 22 Of 2019

Jasveer Singh

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 26-06-2019

Acts Referred:

Uttarakhand Panchayati Raj Act, 2016 — Section 138(1)(c), 193

Citation : (2019) 06 UK CK 0118

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : R.C. Tamta, P.C. Petshali, Amit Bhatt

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. R.C. Tamta with Mr. P.C. Petshali, learned Advocates for the petitioner; and Mr. Amit Bhatt, learned Deputy Advocate General for the State of Uttarakhand.

2. We had, in our order dated 19.03.2019, expressed concern that, despite the findings of three members Committee in its report dated 30.01.2019 that the fifth respondent (i.e. the Gram Pradhan) had illegally transferred public funds of Rs. 1,30,000/- into the account of her father-in-law for use in the construction of a house, the State Government had merely placed the Block Development Officer under suspension, and nothing more. We had also taken note of the submission of Sri Paresh Tripathi, learned Chief Standing Counsel, that a sum in excess of Rs. 1,30,000/- had been recovered from various persons, but that he was not in position to state, with certainty, whether the sum of Rs. 1,30,000/-, credited to the account of the father-in-law of the fifth respondent, had been recovered.

3. We had, thereafter, asked the learned Chief Standing Counsel, whether any action was taken against the Gram Pradhan pursuant to the report of the three member committee dated 30.01.2019. Learned Chief Standing Counsel expressed ignorance stating that the instructions sent to him did not contain any

such details.

4. Serious allegation of misuse and misappropriation of public funds, made in the writ petition, appear to be supported by the findings recorded by the three-member Committee in its report dated 30.01.2019. We had directed the first respondent to submit an action taken report in this regard to this Court within one week. While no report, as directed by us, has been filed by the first respondent, the District Magistrate, Udham Singh Nagar (2nd respondent) has filed his counter affidavit on 05.05.2019 enclosing thereto a copy of the order passed by him on 25.04.2019.

5. The said order dated 25.04.2019 records that the 5th respondent was guilty of having credited a sum of Rs. 1,30,000/- to her father-in-law's account. However the fifth respondent is held to have misappropriated only a sum of Rs. 1,10,876/-, and not Rs. 1,30,000/-. Surcharge proceedings, under Section 193 of Uttarakhand Panchayati Raj Act, 2016, has been directed to be initiated, not for a sum of Rs. 1,30,000/- or for Rs. 1,10,876/, but only for 1/3 thereof i.e. for Rs. 36,958.66, leaving the balance of Rs. 73,917.34 unrecovered. The said order does not indicate how this amount of Rs. 1,10,876/- has been arrived at, when the earlier paragraph of the very same order records that the fifth respondent was guilty of misappropriation and misuse of public funds of Rs. 1,30,000/-.

6. Prima facie, the misplaced benevolence shown to the fifth respondent, who has been held guilty of misappropriation of public funds of Rs. 1,30,000/-, is wholly unjustified. It is disconcerting that, instead of seeking to recover Rs. 1,30,000/- from her, the 2nd respondent, for reasons best known to him, should reduce this amount to Rs. 1,10,876/-, and confine surcharge proceedings to 1/3rd thereof i.e. Rs. 36,958.66, thereby permitting her to retain the balance misappropriated amount of Rs. 73,917.34. Prima facie, the 2nd respondent-District Magistrate has made a mockery of this grave and serious issue of misappropriation of public funds by a public representative (Gram Pradhan) by letting her off with a mere warning.

7. Prima facie, the order of the District Magistrate dated 25.04.2019 gives rise to the suspicion that the order has been passed for extraneous reasons to favour the fifth respondent despite holding her responsible for misappropriation of public funds. Permitting her to retain the ill-gotten money, i.e. a sum of Rs. 73,995.34, and in initiating surcharge proceedings only for the balance amount of Rs. 36,958.66 under Section 193 of the Uttarakhand Panchayati Raj Act, 2016, is, to put it mildly, gross dereliction in the discharge of public duties by the 2nd respondent. While Section 193 of the Uttarakhand Panchayati Raj Act, 2016 relates to surcharge proceedings for recovery of loss or wastage of public money, as a consequence of neglect or misconduct of the Pradhan, the present case is of misappropriation, and not of mere neglect, since a three member Committee has held that the fifth respondent has credited her father-in-law's account with a sum of Rs. 1,30,000/-, though he was not entitled for the said amount.

8. It must be ascertained why the provisions of Section 138 (1)(c) of the 2016 Act have not been invoked in this case. If public officials, such as the 2nd respondent-District Magistrate, Udham Singh Nagar, permit public representatives to retain ill-gotten wealth, and let them go scot-free with a mere rap on the knuckles (i.e. warning), it will sound the death knell of the rule of law, besides emboldening others to resort to similar acts in the belief that such acts of theirs would also go unpunished. Notwithstanding the undue indulgence shown by the 2nd respondent to the fifth respondent, we cannot turn a blind eye to such serious allegations of misappropriation of public funds, as also to the indifference exhibited by the 2nd respondent in the discharge of his responsibilities as a District Magistrate.

9. We are also deeply concerned with the failure of the first respondent in not complying with our order dated 19.03.2019, whereby he was directed to submit his action taken report to this Court by 26.03.2019. His failure to submit an action taken report even till date is, prima facie, in violation of the order dated 19.03.2019. The prima facie observations, as noted hereinabove notwithstanding, final orders in the writ petition can only be passed after notice is served upon the fifth respondent. We direct the District Judge, Udham Singh Nagar to cause service of notice of this writ petition, through a personal messenger, on the fifth respondent forthwith, and to have proof of service thereof filed in Registry within one week from today.

10. The first respondent shall show cause, by the next date of hearing, as to why action should not be initiated against him, under the Contempt of Courts Act, for his failure to comply with the order passed by us on 19.03.2019 directing him to submit an action taken report to this Court. The District Magistrate, Udham Singh Nagar shall also show cause, by the next date of hearing, as to why the Government should not be directed to initiate disciplinary proceedings against him for his, prima facie, gross dereliction in the discharge of his duties.

11. Post this case on 03.07.2019 as a "fresh admission" matter.

12. Mr. Amit Bhatt, learned Deputy Advocate General, is present in Court and undertakes to inform respondent nos. 1 & 2 of their obligations under this order.

13. Let a certified copy of this order be issued to the learned counsel for the parties, on payment of the prescribed charges, by tomorrow.