
(2020) 02 UK CK 0010
In the Uttarakhand High Court
Case No : Writ Petition (PIL) No. 55 Of 2013

L.K. Pant & Another

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 12-02-2020

Acts Referred:

Uttarakhand Procurement Rules, 2008 — Rule 13(1)

Citation : (2020) 02 UK CK 0010

Hon'ble Judges : Ramesh Ranganathan, CJ; R.C. Khulbe, J

Bench : Division Bench

Advocate : M.C. Pande

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. The letter, addressed by Mr. L.K. Pant and Mr. Sanjay Agarwal, has been treated as a Writ Petition (Public Interest Litigation). Along with their

letter, the applicants had enclosed copies of various representations which they had submitted to various authorities, pursuant to which an Enquiry

Committee was constituted which, after conducting an inquiry, had submitted its report.

2. The said enquiry report discloses that a tender notification was issued in Amar Ujala newspaper on 20.10.2007 fixing the closure date as

02.11.2007. However, on the ground that no tender forms were received before the closure date, the period for submission of bids was extended till

07.02.2009 without publishing any such information in any newspaper or in the website. The work, for construction of the Hari Prasad Tamta

Dhramshala, the Triloki Nath Pant Dharamshala, the Truck Stand-cum-Town Hall and the NTD Children Park, at an estimated cost of Rs.4.8 crores,

is said to have been awarded to Kiri Associates, New Delhi, though the lowest bid was that of National Project Construction Ltd. Dehradun. Even

without the approval of the Nagar Palika, a cheque for Rs.49,30,800/- is said to have been released in favour of Kiri Associates, New Delhi as

mobilization advance.

3. The applicants also alleged that, though Rule 13(1) of the Uttarakhand Procurement Rules, 2008 requires tenders above Rs.25 Lakhs to be

published in two widely circulated newspapers, such directions were not complied with; the Government Order dated 27.04.2007 was ignored; and

though for tenders, of an estimated cost of more than Rs.2.00 crores, a two-bid tender process system is prescribed, such a procedure was also not

followed.

4. On the letter being entertained as a Writ Petition (PIL), a Division Bench of this Court, in its order dated 16.5.2014, expressed its apprehension that

the State may be trying to shield some persons, as action was taken against two persons who had no connection with the misdeeds and were not even

posted at Almora during the said period. The Division Bench considered it appropriate to hand over the matter to the CBCID, which was asked to

enquire into the matter, and submit its report within six months. The writ petition was directed to be posted after six months for the purpose of settling

the mechanism for settlement of contracts in such a manner that there is no recurrence of the misdeeds relating to the grant of contracts.

5. In the counter affidavit filed pursuant to order dated 7.08.2019, the CBCID stated that, since the matter is still under consideration by the High

Court and no directions have been issued to the State Government, no further action was taken by the State Government pursuant to the inquiry

caused by the CBCID.

6. A Division Bench of this Court had, in its order dated 30.9.2019, noted that the report of the CBCID disclosed the distinct possibility of several

offences having been committed. The Principal Secretary, Urban Development was directed to file an action taken report, by the next date of hearing,

detailing the action which the State Government had taken pursuant to the report of the CBCID which disclosed the distinct possibility of several

offences having been committed.

7. When the matter was listed on 27.11.2019, a Division Bench of this Court

noted the submission of Mr. M.C. Pande, learned Additional Advocate General, that no action was taken pursuant to the report of the CBCID, as this Court had directed the CBCID only to enquire into the matter and to submit a report, and no further directions had been issued by it. Holding that there was no justification in this submission, or for the failure of the State Government in not taking action pursuant to the CBCID's report despite its findings that irregularities had been committed, the Division Bench opined that the next logical step would have been for them to file a complaint, to be registered as the First Information Report before the concerned Station Officer, for the criminal law machinery to be set in motion. The Division Bench observed that, though a report appears to have been submitted by the CBCID in the year 2015 more than four years ago, it must be ensured that, at least now, action is taken against those officials involved in such fraudulent acts. The CBCID was directed to lodge a complaint to be registered as a first information report forthwith, and to cause investigation in the matter culminating in a charge-sheet/final report being filed, before the competent Magistrate, with utmost expedition.

8. On being informed that certain officials were placed under suspension, but their suspension was later revoked, the Division Bench noted that no disciplinary action has been taken against the errant officials, though it was evident from the report of the CBCID that serious irregularities were committed in awarding the work, besides granting an advance of nearly Rs.50.00 lakhs, contrary to the relevant Rules; and, since the allegations relating to the award of works were grave and serious, disciplinary action should have been taken against the errant officials by the authorities concerned.

9. On the observations of the earlier Division Bench in its order dated 16.5.2014, of the need to prescribe a mechanism, this Court had, by its order dated 27.11.2019, called upon the State Government to inform this Court whether the Uttarakhand Procurement Rules, 2008 would apply to Municipalities also.

10. A compliance affidavit dated 01.01.2020 is now filed, wherein it is stated that the Principal Secretary, Urban Development Department had, by letter dated 20.11.2019, directed the Director of Urban Development Directorate to take disciplinary action against Sri Badri Prasad Arya and Sri

Narendra Kumar, the then Executive Officers, who have since retired; pursuant thereto, the Director, Urban Development Directorate had issued a

charge-sheet vide letter dated 23.12.2019 to Sri Badri Prasad Arya and Sri Narendra Kumar; the Principal Secretary had, by his letter dated

20.12.2019, directed the Executive Officer, Nagar Palika Parishad, Almora to take disciplinary action against the non-centralized service employee i.e.

Sri Prakash Chandra Tiwari and Sri Ramesh Chandra Pant, the then Executive Officer, who had since retired; by letter dated 30.12.2019, a charge-

sheet was issued by the second respondent to Sri Bharat Singh, Assistant Engineer, whose appointing authority is the State Government; and a show

cause notice dated 28.8.2019 was also issued by the Principal Secretary to Smt. Shobha Joshi, the then Chairman, Nagar Palika Parishad, Almora.

11. The affidavit further states that the Uttarakhand Procurement Rules 2008 are applicable to Municipalities also; and the State of Uttarakhand had

subsequently promulgated the Uttarakhand Procurement Rules 2017, which are applicable to Municipalities/ Urban Local Bodies also. The second

respondent further states that he had, by letter dated 20.12.2019, directed the Director General, Crime & Law, Uttarkhand to take time bound action

pursuant to the directions issued by this Court.

12. The Inspector, CBCID, in his affidavit dated 08.01.2020, has stated that FIR No.0059 was lodged in Police Station, Almora on 19.12.2019. A copy

of the FIR has also been filed along with the said affidavit.

13. It is indeed disconcerting that, in blatant violation of the Procurement Rules and in utter disregard of all canons of law, contracts should be

awarded to ineligible tenderers; and mobilization advance, for a sum of nearly 50 lakhs, should be paid to the ineligible tenderer without even obtaining

the sanction of the Nagar Palika.

14. While several letters addressed by the applicants appear to have fallen on deaf ears, necessitating their having to address a letter to this Court

seeking its intervention, even thereafter not much action appears to have been taken so far by the respondents till directions were issued by a Division

Bench of this Court on 27.11.2019. It is because such illegal acts go un-checked, that others are emboldened to indulge in similar acts. Prompt action

to curb such corrupt practices is of utmost importance, for any delay in taking action may well result in the guilty going unpunished and such blatant

violations going unchecked.

15. Since a first information report has now been lodged and charge-sheets have been issued, both by the Government and the Executive Officers of the Nagar Palika against the recalcitrant officers, and a show-cause notice has also been issued to the erstwhile Chairman of Nagar Palika, Almora, it is but appropriate that the criminal investigation pursuant to the FIR, and the disciplinary proceedings, initiated against the Officers and Chairman of Nagar Palika, be completed at the earliest. We, therefore, direct the second respondent to ensure that the disciplinary proceedings initiated against the officials, pursuant to the charge-sheets issued to them, are completed with utmost expedition, and an enquiry held, if need be on a day-to-day basis; and that appropriate orders of punishment are passed against the delinquent officers, in case they are found guilty of misconduct on completion of the disciplinary proceedings.

16. The entire exercise, as afore-directed, shall be completed at the earliest, and in any event within four months from the date of production of a copy of this order. The disciplinary proceedings initiated against the then Chairman of Nagar Palika, Almora shall also be completed within four months from the date of production of a copy of this order.

17. With regards the first information report lodged with the Almora police station, the concerned Investigating Officer shall complete the investigation at the earliest and file a charge-sheet before the competent court within four months from the date of production of a copy of this order.

18. Since a sum in excess of Rs.49.30 lakh is said to have been paid as mobilization advance in favour of the ineligible tenderer, the second respondent shall also initiate appropriate legal proceedings for recovery of the said amount from them within two months from today.

19. The Procurement Rules, 2008, which are also applicable to Municipalities, have been violated and the contract was awarded in flagrant violation of its conditions. While new rules have been made in 2017, what is of utmost importance is that all concerned authorities should strictly abide by the terms and conditions stipulated in the procurement rules in evaluating tenders, and in awarding works /contracts.

20. The second respondent shall issue circular instructions to all urban local bodies in the State to ensure strict compliance of the extant procurement

rules. He shall also ensure that strict action is taken against those officers, who act in violation of the Procurement Rules, in evaluating tenders and in awarding contracts.

21. The second respondent shall also examine the feasibility of establishing a machinery to monitor awarding of works/contracts by urban local bodies, and thereby ensure that as and when violations are detected, strict action is promptly taken against the recalcitrant officials, and others involved in such acts.

22. With the aforesaid observations and directions, the writ petition is disposed of. No costs.