
(2019) 10 UK CK 0079

In the Uttarakhand High Court

Case No : Special Appeal No. 945, 946, 947 Of 2019

M/s. M.P. Enterprises & Others

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 21-10-2019

Acts Referred:

Uttarakhand Municipalities Act, 1916 — Section 34(1A)

Citation : (2019) 10 UK CK 0079

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

Bench : Division Bench

Advocate : Vipul Sharma, Puja Banga, D.S. Patni, Ajay Singh Bisht

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. Vipul Sharma, learned counsel for the appellant, Ms. Puja Banga, learned Brief Holder for the State of Uttarakhand-respondent Nos.1 & 2 and Mr. D.S. Patni, learned Senior Counsel assisted by Mr. Ajay Singh Bisht, learned counsel for respondent No.3.

2. The appellant in Special Appeal No.945 of 2019 filed WPMS No.3173 of 2019 challenging the order passed by the District Magistrate, Nainital dated 17.10.2019 whereby the third respondent was directed to cancel the contract executed between the petitioner and the third respondent for Lake Bridge Toll Tax Barrier, Nainital. After recording the request, urged on behalf of the petitioner for grant of an interim order, the learned Single Judge opined that, considering the facts and circumstances of the case, no interference is called for by the Court as an interim measure; and, accordingly, rejected the interim relief application. Aggrieved thereby, the present appeals.

3. Mr. Vipul Sharma, learned counsel for the appellant-writ petitioner, would submit that no reason has been assigned by the learned Single Judge for dismissing the interim relief application filed by the appellants-writ petitioners;

the orders, impugned in the writ petition, were passed by the District Magistrate, Nainital on 07.10.2019 directing the third respondent to terminate the contract entered into with the appellant-writ petitioner; the second respondent-District Magistrate, Nainital is not even a party to the contract between the appellant-writ petition and the third respondent; the appellant-writ petitioner was neither put on notice prior to the impugned order dated 07.10.2019, nor was he given an opportunity of being heard; based on a report obtained behind the appellants-writ petitioners back, the impugned orders were passed; Section 34 (1A) of the Uttarakhand Municipalities Act, 1916, on which reliance is placed by the District Magistrate, Nainital in passing the impugned order, has no application; and the orders, impugned in the Writ Petitions, necessitate being set aside.

4. On the other hand both Mr. D.S. Patni, learned Senior Counsel appearing on behalf of third respondent and Ms. Puja Banga, learned Brief Holder for the State of Uttarakhand, would submit that the order passed by the District Magistrate is a detailed order assigning reasons as to why he had directed the Nagar Palika to terminate the contract with the appellant-writ petitioner; subsequent to the filing of the writ petition on 14.10.2019, the Nagar Palika had passed an order dated 14.10.2019 cancelling the contract; and this order, passed by the Nagar palika, is not under challenge herein.

5. Section 34(1-A) of the Uttarakhand Municipalities Act, 1916 confers power on the District Magistrate to prohibit execution or further execution of a resolution or order passed or made under this or any other enactment by a Municipality or a committee of a Municipality if, in his opinion, such a resolution or order is of a nature to cause or tend to cause danger to human life, health or safety, or a riot or affray, and may prohibit the doing or continuance by any person of any act, in pursuance of or under cover of such resolution or order. The power conferred on the District Magistrate under Section 34(1A) is not unlimited. Such a power is available to be exercised only in the following situations i.e. where the order is of the nature to cause or tend to cause (i) danger to human life, (ii) health, (iii) safety and (iv) riot or affray.

6. The impugned order refers to certain financial irregularities. The question whether such irregularities, if any, would fall within the ambit of Section 34(1A) would necessitate examination in the pending Writ Petitions. The appellants-writ petitioners allege that the order dated 07.10.2019 was passed by the District Magistrate without putting them on notice, and without giving them an opportunity of being heard. While Section 34(1A) does not explicitly require an opportunity of being heard to be given, it is well settled that principles of natural justice must be read into the unoccupied interstices of a statutory provision, or a Rule, unless there is a clear mandate to the contrary [Institute of Chartered Accountants of India vs. L.K. Ratna and others : AIR 1987 SC 71 and C.B. Gautam vs. Union of India and others : (1993) 1 SCC 78].

7. As long as the statute does not prohibit, either explicitly or by necessary implication, application of the Rules of Natural Justice, the requirement of

complying with the Rules of Natural Justice must be read into such statutory provisions. If, as is contended before us by Mr. Vipul Sharma, learned counsel for the appellants-writ petitioners, the said orders were passed without complying with the Rules of Natural Justice, then the impugned orders may necessitate being set aside on this ground.

8. The orders under appeal, dismissing the Interlocutory Application, would require the petitioners to await a final hearing of the writ petitions for their grievances to be addressed. That would, undoubtedly, result in civil consequences, since they would be deprived of operating the Toll Tax barrier in the interregnum. The fact, however, remains that, during the pendency of this Writ Petition, the Nagar Palika has passed an order dated 14.10.2019 terminating the contract of the petitioners. In the absence of any challenge thereto, the petitioners would not be entitled for grant of the interim relief sought for in these writ petitions.

9. Mr. Vipul Sharma, learned counsel for the appellant-writ petitioners, states that applications to amend the prayer in the writ petitions, to include a challenge to these proceedings, would be filed by 23.10.2019.

10. Both Mr. D.S. Patni, learned Senior Counsel for the third respondent and Ms. Pooja Banga, learned Brief Holder for the State of Uttarakhand, submit that they would file their counter affidavits in the Writ Petitions within two weeks thereafter.

11. Suffice it, in such circumstances, to set aside the orders under appeal, and restore the Interlocutory Applications to file. It is open to Mr. Vipul Sharma, learned counsel for the appellant-writ petitioner, to request the learned Single Judge to take up the Interlocutory Applications, and the amendment applications filed in the writ petitions, any day after 06.11.2019.

12. The Special Appeals are, accordingly, disposed of, No costs.