

(2019) 11 UK CK 0152

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 3180 Of 2019

M/s Vishesh Enterprises

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 20-11-2019

Acts Referred:

Citation : (2019) 11 UK CK 0152

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Vipul Sharma, Anurag Bisaria, D.S. Patni, Ajay Singh Bisht, Bhupendra Singh Bisht

Judgement

Sudhanshu Dhulia, J

1. The petitioner before this Court was given a contract in the lake city of Nainital (which is a Seat of the High Court of Uttarakhand) for collecting parking fee at Flats Parking (DSA Parking) for the year 2019-20.

2. Normally this contract is given each year for a period of twelve months. This contract, however, was given to the petitioner from 01.06.2019 to 31.03.2020 for a period of about nine months. At the time, when this contract was running, an order has been passed by the District Magistrate under the purported exercise of powers under sub-section (1A) of Section 34 of the Uttarakhand Municipalities Act, 1916 (from hereinafter referred to as the "Act"). Sub-section (1A) of Section 34 of the Act reads as under:-

"34. Power of the State Government or the Prescribed Authority or the District Magistrate to prohibit execution or further execution of resolution or order of Municipality. - (1) The Prescribed Authority may, by order in writing, prohibit the 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 or a Joint Committee or any officer or servant of a Municipality or of a Joint Committee (if in its opinion) such resolution or order is of a nature to cause or

tend to cause obstruction, annoyance or injury to the public or to any class or body of persons lawfully employed and may prohibit the doing or continuance by any person of any act in pursuance for or under cover of such resolution or order.

(1A) The District Magistrate may, within the limits of his district, by order in writing, prohibit the 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 or a Joint Committee or any officer or servant of a Municipality or of a Joint Committee if in his opinion such 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.

(1B)

(2)

(3) Omitted by U.P.Act No.12 of 1994

(4)"

3. The orders passed by the District Magistrate under the above provisions of law have been perused by the Court. The said order of the District Magistrate refers to a complaint which he had received from Mr. Arun Kumar Shah, who is retired Assistant Director, Intelligence Bureau, Government of India. This complaint was made on 13.08.2019 against the present petitioner stating that he is not abiding with the terms and conditions of the contract executed between him and the Nagar Palika Parishad, Nainital, inasmuch as he is not giving computerized receipts to the vehicle owners/drivers which enter Mall Road from Tallital. There is also no mention of date and time when the vehicle has entered and as a result of which, the petitioner is causing loss of lakhs of rupees to the Nagar Palika. On the basis of this complaint, the District Magistrate constitutes a committee to inquire into the allegations. The Committee comprises of the Additional District Magistrate (Finance & Revenue), Nainital, the Treasurer, Nainital and the Chief Agriculture Officer. The Committee, according to the District Magistrate, has confirmed that anomalies are going on at the hands of the petitioner, and consequently the District Magistrate has passed the order dated 07.10.2019, directing the Nagar Palika to cancel the contract of the petitioner.

4. When this writ petition was filed, this Court vide order dated 15.10.2019 had rejected the interim relief application of the petitioner, against which the petitioner preferred a special appeal before this Division Bench of this Court. The learned counsel for the petitioner contended that dismissal of his interlocutory application would require the petitioner to await a final hearing of the writ petition for his grievances, and that would, undoubtedly, result in civil consequences as it was deprived of operating the toll tax barrier during this period. It was also noticed that during the pendency of the writ petition, the Nagar Palika, Nainital itself had passed an order on 14.10.2019 terminating the

contract of the petitioner. The relevant portion of the order passed by the Division Bench of this Court on 21.10.2019 reads as under:-

"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."

5. In view of these developments and the order of the Division Bench, the present matter has come up again before this Court.

6. Counter affidavits have been filed on behalf of State as well as on behalf of Nagar Palika, Nainital. Learned counsel for the petitioner does not want to file rejoinder affidavit in the matter. On the basis of the pleadings the matter is heard finally.

7. The case of the petitioner before this Court is that first and foremost the order passed by the District Magistrate is totally without jurisdiction as there was firstly no occasion for him to pass an order under sub-section (1A) to Section 34 of the Act, inasmuch as there was no resolution or order of the Nagar Palika which could only be the cause for an interference by the District Magistrate in exercising his powers under sub-section (1A) to Section 34 of the Act. He was not dealing with the resolution of the Nagar Palika which he could have stayed. The District Magistrate has got powers under Section 34 (1A) of the Act, to prohibit the execution or further execution of a resolution or order of the Nagar Palika. Since there was admittedly no resolution or order of the Nagar Palika before the District Magistrate he was actually not even called upon under any law to exercise powers as he did.

8. Secondly, even assuming for the sake of argument, there was any such resolution or order, the situation as contemplated even by the complainant and the findings of the Inquiry Committee did not require an interference under sub-section (1A) to Section 34 of the Act inasmuch as it was not a case where any danger to human life, health or safety was being caused or there was a situation for eruption of any riot or affray.

9. Learned counsel for the State Government, Mr. Anurag Bisaria fairly submits that ultimately it was the complaint of Mr. Arun Kumar Shah which was before the District Magistrate, and since a Committee had already been constituted to look into the anomalies in the Nagar Palika, the Committee was also directed to inquire the anomaly of the toll tax barrier. Since the findings were against the petitioner, who was given the contract, such an order became necessary.

10. In the Counter affidavit there is no whisper as to what was the resolution or order of the Nagar Palika, Nainital which required the interference of the District Magistrate as the District Magistrate's powers under sub-section (1A) to Section

34 of the Act are confined to operate in very limited area where there is a resolution or order of the Nagar Palika or there is a situation of riot or affray.

11. Such is not the case here. In fact this is not a case as suggested by the State Government in its counter affidavit or even by the Nagar Palika in its counter affidavit.

12. Even assuming for the sake of argument that there were anomalies being committed at the hands of the contractor and he was causing a loss to the exchequer, this act on the part of the petitioner is not of such nature which may cause affray, riot and danger to public in Nainital. Definitely if there would have been an independent finding of the Nagar Palika regarding and the anomalies committed by the contractor in its operation of the parking, or of overcharging the customers or not giving them the proper receipts, this could definitely be a cause for cancelling his contract, and the contract even stipulates that this can be done without giving any opportunity of hearing. Whether it could be done without giving an opportunity of hearing is a different matter but definitely Nagar Palika has got powers to cancel the contract. However, the Nagar Palika has not cancelled the contract by order dated 14.10.2019 at its own motion, but purely on the dictation and direction of the District Magistrate. Therefore it is an order where the Nagar Palika has acted purely under the dictation of the District Magistrate, and there has been no independent application of its mind on the subject in question. There has been no independent application of mind at the hands of the Nagar Palika and therefore the order cancelling the contract is totally arbitrary.

13. The petitioner has relied upon a decision of the Division Bench of the Allahabad High Court passed in the case of Nagarpalika Parishad, Chandpur, District Bijnor through its President Vs. State of U.P. & others reported in 2010 SCC online all 1959 where almost on similar facts the District Magistrate (in that case ADM) had directed the Executive Engineer, Nagar Palika to stop the payment of contract for the construction work which was challenged before the High Court. The relevant portion of the judgment passed by the Allahabad High Court reads as under:-

"From a bare reading of said Section 34, it is clear that the District Magistrate has power to interfere with only such resolutions or orders of the Nagar Palika Parishad if the same are likely to cause or tend to cause 'obstruction, annoyance or injury to the public....' or 'danger to human life, health or safety or a riot or affray'. Awarding a contract in favour of a person cannot be matter, which may cause obstruction, annoyance or injury to the public or danger to human life, health or safety etc. Even directions to make payment with regard to contract given by the Nagar Palika Parishad or execution of resolutions passed by the Nagar Palika Parishad, which include cleaning of drains and repairing of roads etc. also would not fall in the category of cases enumerated under Section 34 of the Act under which the District Magistrate can invoke the powers under Section 34 of the Act."

14. Consequently, the writ petition is allowed. The orders dated 07.10.2019 and 14.10.2019 are hereby quashed.

15. This Court has also been informed that the Nagar Palika shall repair the boom barrier and install the same and make it operational within two weeks from today. In case the boom barrier has broken down during the contract period of the petitioner, the Nagar Palika shall be at liberty to recover the amount from the petitioner.

16. Meanwhile, the possession of the parking shall be handed over to the petitioner. The amount which the Nagar Palika, Nainital has already collected shall be adjusted in the amount which was liable to be given by the petitioner to the Nagar Palika, for which an account shall be given to the petitioner, within two weeks from today. It is, however, made clear that in case there is further violation at the hands of the petitioner in operating the contract, the Nagar Palika would be at liberty to take appropriate action in accordance with law.

17. Let a certified copy of this order be supplied within twenty-four hours on payment of usual charges.