
(2020) 02 UK CK 0044
In the Uttarakhand High Court
Case No : Writ Petition (PIL) No. 124 Of 2019

Nand Kishore Kandwal

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 24-02-2020

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 420

Citation : (2020) 02 UK CK 0044

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

Bench : Division Bench

Advocate : Dinesh Gahtori, Anil Bisht

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. Heard Sri Dinesh Gahtori, learned counsel for the petitioner, and Sri Anil Bisht, learned Standing Counsel for the State Government and, with their consent, the Writ Petition is finally disposed of.

2. This writ petition is filed in public interest seeking a writ of mandamus directing an independent inquiry to be caused for the corruption indulged in by the 7th and 8th respondents, and to direct the appropriate authority to take appropriate legal action against the culprits, otherwise the public at large would suffer irreparable loss and injury.

3. As the Senior Superintendent of Police, Dehradun is not arrayed as a party to this writ petition, and criminal proceedings have already been initiated on an FIR being registered for misappropriation of public funds, we consider it appropriate to suo motu implead the Senior Superintendent of Police, Dehradun as the 10th respondent in the writ petition.

4. In the writ petition, the petitioner makes several allegations regarding allotment of shops, constructed over Gram Sabha land beside National Highway 58, without resorting to the lottery system, as resolved by Gram Sabha, to be conducted in the presence of officials of the Panchayati Raj. It is his case that this system of lottery was approved by the Chief Development Officer, Dehradun in his order dated 30.08.2016; without resorting to such a procedure, the Gram Pradhan and her husband (respondent nos. 7 & 8) had illegally allotted these shops to persons of their choice; 80 such shops were constructed by the Gram Sabha; a road "widening exercise was undertaken; as a result of the road "widening exercise, the existing shops were demolished, and the erstwhile shop-keepers had also received compensation; it was, thereafter, that the Gram Sabha resolved to construct new shops over the remaining land; the Chief Development Officer had, by his letter dated 30.08.2016, accorded approval for construction of 25 shops over Gram Sabha land; among the conditions, for such construction, was that the shops shall be allotted to the residents of the village through a lottery system and, after allotment, the allottee should deposit Rs. 2 lacs in the account of the Gram Sabha; the Gram Sabha should construct shops from the amount deposited by the allottees; when construction of the shops was completed, the same was to be handed over to the residents of the village on rent for ten years and, thereafter, by extension of the rental agreement; the ownership of the shops was to remain with the Gram Sabha; while the rent for the ground-floor was fixed at Rs. 3,000/-, for shops in the back side the rent was fixed at Rs. 2,000/-; water and electricity connections were to be taken by the shop-keepers at their expense; the 7th respondent, without allotting shops through the lottery system, had received Rs. 2 lacs from 25 persons of her choice and had started construction of the shops; in the information, furnished under the Right to Information Act, the Public Information Officer had admitted that the expenses, for construction of the shops, were incurred from the budget allocated by the Government for developmental works; no tender was published or invited; for construction of six shops, Rs. 7,26,341/- was spent, and only three persons had deposited a total sum of Rs. 5,50,000/- in the account of the Gram Panchayat; this disclosed that respondent nos. 6 to 8 had misappropriated public funds; an inquiry was conducted by the Project Director; in his report dated 01.08.2017, the Project Director found the 7th respondent-Gram Pradhan guilty of

not seeking security amount from 24 persons, and in not adhering to the lottery system; the 7th respondent was also held guilty for not having invited

tenders for construction of shops; the 7th respondent had issued 25 letters to those whose shops were demolished and who had received compensation

from the Governor, and had never paid rent of the shops to the Gram Sabha; and he had, thereafter, made several representations, but to no avail.

5. In the counter affidavit filed by the District Magistrate, Dehradun, it is stated that a detailed inquiry was caused by the District Panchayat Raj

Officer, Dehradun in the matter; he submitted his report on 02.09.2019; and the Inquiry Officer found that irregularities had been committed by the

Gram Pradhan, and the then Village Panchayat Development Officer.

6. In his compliance affidavit dated 26.09.2019, the District Magistrate stated that FIR dated 23.09.2019 was registered against respondent nos. 7, 8

and two others under Sections 420 and 120-B IPC; he had, by his order dated 24.09.2019, cancelled allotment of three shops as the same were not

allotted as per the guidelines; with respect to one other shop, which Sri Ram Kishan Thapliyal had occupied illegally, necessary action for his eviction

had been taken; a sum of Rs. 12.5 lacs had been withdrawn by the husband of the Gram Pradhan (respondent no. 8), and the then Village Panchayat

Development Officer (Sri Prakash Chand) had also withdrawn Rs. 1,75,500/-; he had directed recovery of Rs. 12.5 lakhs from the 7th and 8th

respondents (Gram Pradhan and her husband respectively) and Sri Prakash Chand the then Village Panchayat Development Officer in equal

proportions of Rs. 4,16,667/- each; with respect to the sum of 1,75,500/-, withdrawn by the then Village Panchayat Development Officer, the said

amount had been directed to be recovered from respondent nos. 7 and 8 and Sri Prakash Chand, the then Village Panchayat Development Officer, at

Rs. 87,750/- each; and since Sri Prakash Chand- the then Village Panchayat Development Officer had retired, a letter was addressed to the

Government seeking sanction from the Governor.

7. Sri Anil Bisht, learned Standing Counsel for the State Government, would submit that, pursuant to a recovery citation being issued, respondent nos.

7 & 8 had represented that they had constructed certain shops; after inquiry, the Commissioner had directed re-inspection of the site and, thereafter,

to fix the quantum recoverable from them; the action taken report of the District

Magistrate dated 11.11.2019 discloses that the amount recoverable was revised to Rs. 6,89,356/-; this amount was to be recovered at Rs. 2,59,837 from the ex-Pradhan Smt. Shobha Rawat and Rs. 1,69,682/-from her husband; thus the total amount recoverable from both these persons was Rs. 4,29,519/-; this amount was paid by them by cheques on 09.11.2019; the remaining amount of Rs. 2,59,837/- is recoverable from Sri Prakash Chand (retired Village Panchayat Development Officer); the Governor has accorded sanction on 31st December, 2019; and a charge sheet has been issued to the retired Village Panchayat Development Officer on 12.02.2020 granting him time till 28.02.2020 to submit his reply thereto.

8. Criminal proceedings have already been initiated against all these three individuals. A sum of Rs. 4,29,519/- has already been recovered from respondent nos. 7 & 8, and the balance amount recoverable is Rs. 2,59,837/-. Suffice it, instead of keeping the writ petition pending on the file of this

Court, to dispose of the writ petition directing the District Panchayat Raj Officer to complete the inquiry, and to submit his report to the District

Magistrate on or before 31st March, 2020. The District Magistrate shall pass appropriate orders, on or before 30.04.2020, in accordance with law for

recovery of the amount due and payable by the retired Village Panchayat Development Officer. Since an FIR has already been registered, the 10th

respondent-Senior Superintendent of Police, Dehradun shall ensure that the investigation is completed at the earliest, and a charge sheet is filed within

three months from the date of production of a certified copy of this order. No costs.