
(1996) 03 SIK CK 0001
In the Sikkim High Court
Case No : Writ Petition No. 31 of 1995

Narayan Prasad Nirola

APPELLANT

Vs

State of Sikkim and Others

RESPONDENT

Date of Decision : 12-03-1996

Acts Referred:

Citation : AIR 1996 Sikk 13

Hon'ble Judges : Krishna Murari Agarwal, C.J

Bench : Single Bench

Advocate : S.P. Wangdi, for the Appellant; A.K. Shri Vastava, General and J.B. Pradhan, A.G.A., for the Respondent

Judgement

K.M. Agarwal, C.J.—By this petition under Article 226 of the Constitution, the petitioner makes a prayer for quashing the work contract given to the 3rd respondent by the Department of Animal Husbandry and Veterinary Services for fencing the entire land acquired at Samdong busty, East Sikkim for setting up a farm in that area with a further prayer to direct allotment of work to him in accordance with the Home Department's Circular dated 24-9-1991 (Annexure P-I), read with another Circular dated 14-2-1995. (Annexure P-3).

2. Briefly stated, the department of Animal Husbandry and Veterinary Services chalked out a scheme for fencing the entire land acquired at Samdong busty, East Sikkim for setting up a farm at an estimated cost of Rs. 2.27 lakhs, which was also sanctioned. Since the work fell within the revenue block and the value of the work was below Rs. 5.00 lakhs, the petitioner claimed that the work contract ought to have been given to a nominee of the Panchayat in terms of the Circular dated 24-9-1991 (Annexure P-I), which was modified by enhancing the value of work from Rs. 5.00 lakhs to Rs. 10.00 lakhs by another Circular dated 14-2-1995 (Annexure P-3). It was further claimed by the petitioner that he was the nominee of the Panchayat as well as of the local M.L.A., whereas the 3rd respondent was not such a nominee and, therefore, the work could not be allotted to him, but could be given only to the petitioner. Accordingly, aggrieved

by the award of contract to the 3rd respondent, the petitioner has filed this petition for the said reliefs.

3. The 1st, 2nd and the 4th respondents have filed a joint counter-affidavit, denying the claim of the petitioner and justifying the grant in favour of the 3rd respondent on various grounds, which shall be considered hereafter.

4. After hearing the learned Counsel for the contesting parties and perusing the documents on record, what I find is that by Circular dated 24-9-1991, the State Government prescribed certain procedure for execution of its works through Panchayat nominees and/or enlisted contractors. Clause 1 of the Circular, relevant for the purposes of this petition, read as follows:

In supersession of all previous circulars and orders on the subject, the State Government hereby prescribes the following procedure for execution of works through Pan-chayat/MLA nominees and registered/enlisted contractors:

1. (a) All works not exceeding Rs. 5.00 lakhs (civil works) shall be executed through the nominees of the Panchayat/MLAs. Such nominee should be an experienced local person of Panchayat area who may or may not be an enlisted contractor.

(b) Such nominations should be made jointly by the concerned Panchayats and area MLA. In the event of any differences or non-consultation amongst the Panchayats and area MLAs, the decision of the Hon"ble Chief Minister shall be final.

(c) All Departments will intimate such schemes of value of civil work not exceeding Rs. 5.00 lakhs to the concerned Panchayats and area MLAs who will then jointly recommend nominees for its execution.

(d) The area MLA will be responsible for the timely and quality execution of all such works costing up to Rs. 5.00 lakhs (civil works) entrusted to nominees of Panchayats/MLA"s.

The Circular was modified by another Circular dated 14-2-1995 and thereby the value of civil work to be given to Panchayat and/or M.L.A."s nominee was enhanced from Rs. 5.00 lakhs to Rs. 10.00 lakhs. As the value of the disputed contract was less than Rs. 5.00 lakhs, ordinarily the petitioner being the nominee of the Panchayat and the M.L.A. was entitled to get the work in preference to the 3rd respondent in pursuance of the two Circulars of the Government hereinbefore referred. But both these Circulars were quashed by this Court in W. P. No. 15 of 1995, Tek Nath Sapkota v. State of Sikkim and another, decided on 17-8-1995, on the ground that they were violative of Article 14 of the Constitution. The petitioner cannot, therefore, lay a claim for the contract on the basis of the said Circulars.

5. Now the question that survives is about the award of work to the 3rd respondent. Before I proceed to decide the question whether the work awarded

to the 3rd respondent is or is not liable to be quashed, it may be mentioned that the 3rd respondent has not commenced the work awarded to him. Curiously enough, he has not chosen to contest the petition, whereas the State Government and its department of Animal Husbandry appeared to be anxious to justify the impugned award of work contract to the 3rd respondent. Be that as it may, the learned Advocate General argued that granting or not granting contract for execution of its work to any particular person was within the discretion of the Government and once such discretion was exercised, it cannot be lightly interfered with in the absence of any material to prove want of good faith or mala fides on the part of the Minister or the authority awarding the contract. In support of his contentions, he read certain passages from De Smith's Judicial Review of Administrative Action and from the Administrative Law by H.W.R. Wade and F. Forsyth, besides citing J.R. Raghupathy and Others Vs. State of A.P. and Others, and Tata Cellular Vs. Union of India, .

6. There is no dispute about the principles stated in the authorities cited by the learned Advocate General and it does not, therefore, appear necessary to burden this judgment by reproducing the passages or extracts cited by him from the said authorities. But the arbitrariness in granting the work contract to the 3rd respondent is writ large by the following facts:

(1) The aforesaid circulars were quashed by this Court on 17-8-1995, whereas the work order in favour of the 3rd respondent was issued on 22-8-1995, but as averred in paragraph 9 of the counter-affidavit, "the Office of the Secretary, Animal Husbandry Department/Principal Director, Animal Husbandry and Veterinary Services Department/Office of the Deputy Director (East) All and VS Department, were not aware of the decision of this hon'ble Court in Writ Petition No. 15 of 1995 which was pronounced on 17-8-1995, till a circular to this effect was issued by the Home Department on 24-8-1995 by which time work order to Respondent No. 3 had already been issued i.e. on 22-8-1995, "If that be so, the concerned Minister ought to have awarded the contract in accordance with the aforesaid circulars, because as pointed out by De Smith in his Judicial Review of Administrative Action, "In the purported exercise of its discretion it (i.e., the authority) must not do what it has been forbidden to do, nor must it do what it has not been authorised to do."

(2) As pointed out by this Court in Writ Petition No. 15 of 1995 dated 17-8-1995 (supra);

...the Supreme Court observed in Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, that with the growth of the welfare state, new forms of property in the shape of the Government largess are developing such as jobs, contracts, licences, quotas, mineral rights etc., with the result that more and more of our wealth consists of these new forms of property. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. The law has, however, not been slow to recognise the

importance of this new kind of wealth and the need to protect individual interest in it and with that end in view, it has developed new forms of protection. "The discretion of the Government has been held to be not unlimited in that the Government cannot give largess in its arbitrary discretion or at its sweet will or on such terms as it chooses in its absolute discretion. There are two limitations imposed by law which structure and control the discretion of the Government in this behalf. The first is in regard to the terms on which largees may be granted and the other, in regard to the persons who may be recipients of such largees." So far as the first limitation is concerned, the State, unlike a private individual, cannot act as it pleases in the matter of giving largess. Though ordinarily a private individual would be guided by economic considerations of self gain in any action taken by him, it is always open to him under the law to act contrary to his self interest or to oblige another in entering into a contract or dealing with his property. But, the Government is not free to act as it likes in granting largess such as awarding a contract or selling or leasing out its property. Whatever be its activity, the Government is still the Government and is, subject to restraints inherent in its position in a democratic society. The constitutional power conferred on the Government cannot be exercised by its arbitrarily or capriciously or in an unprincipled manner; it has to be exercised for the public good. Every action taken by the Government must be in public interest; the Government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated. If the Government awards a contract or leases out or otherwise deals with its property or grants any other largess, it would be liable to be tested for its validity on the touchstone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid. "It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State.

In the present case, without giving any opportunity to others to compete with the 3rd respondent, the Government picked up the 3rd respondent and granted the work to him. In such a case, no question of exercising any discretion arises. If there were several contestants, or applicants, the Government could exercise its discretion in favour of any one individual for giving the work for valid reasons, though his offer was not the lowest. Here it was not so and, therefore, no discretion in favour of the 3rd respondent could be exercised. I am, therefore, of the view that the contract granted to the 3rd respondent deserves to be quashed.

7. In the result, this petition partly succeeds and it is hereby partly allowed. The work given to the 3rd respondent by the department of Animal Husbandry for fencing the land acquired at Samdong Busty, East Sikkim is quashed, Other reliefs claimed in the petition are refused. No order as to costs.