

(2015) 02 RAJ CK 0062

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) Nos. 1727 and 2039/2014

Principal Secretary, U.D.H. and Others

APPELLANT

Vs

Pushplata Sharma and Others

RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Citation : (2015) 02 RAJ CK 0062

Hon'ble Judges : Sunil Ambwani, Acting C.J.;Prakash Gupta, J.

Bench : Division Bench

Advocate : R.B.Mathur and Archit Bohra, for the Appellant; Sandeep Saxena and Vinod Goyal, Advocates for the Respondent

Judgement

1. The Special Appeal No. 1727/2014 arises out of the judgment and order passed by learned Single Judge dated 27.08.2014, by which he has disposed of the writ petition with directions that the writ petitioners have been working and their term has been extended upto 31.03.2015, and thus, they are entitled to be continued in service under two components of the Scheme namely, Rajasthan Urban infrastructure Finance and Development Corporation Ltd. (for short, "RUIFDCO") and Urban Infrastructure Development Scheme for Small and Medium Town (for short, "UIDSSMT") of the Jawaharlal Nehru National Urban Renewal Mission (for short, "JNNURM"), with notional benefits, for the intervening period.

2. After hearing Shri R.B. Mathur, learned counsel appearing for the appellants-the Principal Secretary, UDH and LSGG-cum-CEO RUIFDO (SLNA) and others, we passed the following interim order on 12.01.2015:

"The respondent Nos. 1, 2, 3, 4, 6, 7, 9, 10 and 13 are represented. The notices sent to remaining respondents have not returned back, either served or unserved.

Let reply be filed by the served respondents within three weeks. Rejoinder-reply will be filed within a week thereafter.

List again on 10.02.2015.

It is submitted by learned counsel appearing for the appellants that the period of contract of the engagement of the respondents came to an end on 31.03.2014. The projects, under which they were working as poverty alleviation experts, funded by the Central Government, had come to an end on the close of funding on 31.03.2014. In the Rajiv Avas Yojana run by the State Government, the technical cell is only required to supervise the lay out and construction of the houses of the poor. The Basic Services to Urban Poor (BSUP) and Integrated Housing and Slum Development Programmes (IHSDP), the components of Jawaharlal Nehru National Urban Renewal Mission (JNNURM), have since been closed, and thus learned Single Judge committed a gross error of law in directing the appellants to allow the respondents to continue till 31.03.2015.

Prima facie, we are satisfied that learned Single Judge could not have extended the term of the contract of the respondents, specially after the BSUP and IHSDP components of JNNURM, in which they were engaged under contract only upto 31.03.2014, had come to an end.

Until further orders, the effect and operation of the directions given in the judgment dated 27.08.2014 shall remain stayed."

3. The Special Appeal No. 2039/2014, filed by Shri Tarun Meena and 11 others, arises out of the judgment and order dated 28.11.2014, by which learned Single Judge has taken a different view, and has dismissed the writ petition, claiming similar reliefs, on the ground that the petitioners in the writ petition, were appointed on different positions of specialists/experts purely on contract basis as per the agreements in question, and therefore, the terms and conditions contained in the said agreements were binding on both the parties. The agreement, the duration of which was only one year, could be extended by a mutual agreement only, with a month's notice prior to termination. The period of contract, in case of some of the petitioners, had expired in 2012, and in case of some others, was to expire on 30.09.2014. In case of those petitioners, whose term had expired in 2012, it was extended from time to time, and lastly upto 30.09.2014, vide orders dated 30.08.2013. In all the cases, the respondents had decided to extend the period of agreement only upto 30.09.2014, after which they had no right to continue. By an ex parte interim order, they were allowed to continue.

4. Learned Single Judge held that in none of the cases, there was termination of the agreement. The initial period of contract was extended, and that, in case of the petitioners, the term has expired. The petitioners were engaged as Consultant and Specialist purely on contract basis. The State Government has decided to implement the scheme only through the engineers and staff working in the Local Bodies and Urban Improvement Trusts. After the decision taken by the State Government not to extend the term of the agreement, the petitioners had no right to continue.

5. Shri Ashok Gaur, learned Senior Counsel assisted by Shri Sandeep Pathak, for the appellants in Special Appeal No. 2039/2014, submits that the Scheme is still continuing, and that the Central Government had sanctioned the funds to be released to the Government of Rajasthan vide letter dated 05.09.2014, sent by the RAY (Rajiv Awas Yojana), and JNNURMURM Division of the Ministry of Housing and Urban Poverty Alleviation, Government of India, to the Principal Secretary LSG and Executive Director, RUIFDCO, Rajasthan, mentioning that the Registrar has already released the funds to the Government of Rajasthan towards engagement of State Level Technical Cell (for short, "SLTC") under the Rajiv Awas Yojana. The Rajasthan Government was also informed that the technical Cells shall continue at present till further orders. \\As far as continuity of particular experts in the Cell is concerned, State Government may decide on the basis of their performance and contribution.

6. It is submitted that so long the Scheme is continuing, and the funds are released, the services of the appellants as poverty alleviation experts were required to be extended. The denial to extend the term of the appellants, is arbitrary, and unreasonable and has no object to be achieved. The appellants, as experts, had worked under the Scheme for several years. There is no complaint against them, nor their work was ever found to be unsatisfactorily. They are not entitled to claim for regularization under the Scheme, but their services should not be dispensed with nor they may be replaced by new hands.

7. It has been pointed out that the appellants have been asked to hand over the charge to similarly situate employees, who is still working. Their contract and term has been extend upto 30.09.2014, and is now proposed to be extended upto 31.03.2015. The appellants have relied on the judgment of the Supreme Court in Md. Abdul Kadir and Another Vs. Director General of Police, Assam and Others, , in which the Supreme Court held that where the issue involving public interest has not engaged the attention of those concerned with policy, or where the failure to take prompt decision on a pending issue is likely to be detrimental to public interest, courts will be failing in their duty if they do not draw attention of the authorities concerned to the issue involved in appropriate cases. While courts cannot be and should not be makers of policy, they can certainly be catalysts, when there is a need for a policy or a change in policy. If the temporary or ad hoc engagement or appointment is in connection with a particular project or a specific scheme, and the scheme had been in operation for some decades or that the employee concerned has continued on ad hoc basis for one or two decades would not entitle the employee to seek permanency or regularisation. On completion of project or discontinuance of the scheme, those who were engaged with reference to or in connection with such project or scheme cannot claim any right to continue in service, nor seek regularisation. They can, however, point out and request the court to judicially review the policy matters involving the public interest.

8. Shri R.B. Mathur, learned counsel appearing for the Principal Secretary, UDH

and LSGG-cum-CEO RUIFDO (SLNA) and Principal Secretary, UDH and LSGG-cum-CEO RUIFDO (SLNA) and it that the State Government conscious policy decision to allow the scheme to be run by the others, points out that the State Government has taken a official employed in the Local Bodies and Urban Improvement Trusts. The Scheme will now be monitored by RUIFDCO. He has referred to the decision taken on a note-sheet on 20.10.2014, which is also signed in approval by the Principal also Secretary, Urban Development and Housing Department and Additional Chief Secretary, UDH and LSGG-cum-CEO RUIFDO (SLNA), Government of Rajasthan, in which the Rajiv Awas Yojana has been made instrumental implement through Urban Improvement Trusts.

9. In the present case, the contract of all the private respondents in Special Appeal No. 1727/2014 and all the appellants in Special Appeal No. 2039/2014 has come to an end, with its last extension upto 30.09.2014. They have been asked to hand over the charge to one of their colleague on each project by a temporary measure as the Panchayat elections were in progress. The interim arrangement was to continue upto 30.01.2015 and now only upto 31.03.2015. Shri R.B. Mathur states that none of these specialists is going to be replaced by another specialist. The Government has not considered to make any fresh appointments on contract, and thus they have no right to continue. The term engagement of all the respondents in Special Appeal No. 1727/2014 and the appellants in the Special Appeal No. 2039/2014 have come to an end, after which it has not been extended nor any fresh hand has been engaged to do the work.

10. We do not find any arbitrariness or illegality in the policy decision taken by the State Government to run the Rajiv Awas Yojana under the JNNRUM through the engineers and staff of the Local Bodies. It was for the State Government to consider as to whether they would require the services of the experts appointed on contract, or will continue to monitor the Scheme through the engineers and staff of the Local Bodies. The policy decision has been taken, there is no scope of interference with the decision in exercise of power of judicial review.

11. We are not pleased to observe that two Single Benches delivered contradictory judgments on the same issue. If the earlier judgment of learned Single Judge dated 27.08.2014 was placed before learned Single Judge deciding the same issued on 28.11.2014, the contradictory opinion could have been avoided. We are informed that the judgment dated 27.08.2014 was placed before learned Single Judge hearing the Writ Petition No. 9843/2014. There is, however, no mention of the judgment cited by either of the parties in the judgment dated 28.11.2014.

12. Be that as it may, since we are hearing both the appeals together, we have considered the matter and hold that the judgment dated 28.11.2014 takes a correct view of the matter, and must be upheld. The Special Appeal No. 1727/2014 is allowed and the judgment of learned Single Judge is set aside. The Special Appeal No. 2039/2014 is dismissed.

13. A copy of this order will be placed in both the files.