

(2010) 01 AHC CK 0138

In the Allahabad High Court

Case No : Writ Petition No. 12031 (MB) of 2009

Sangam Lal Pandey

APPELLANT

Vs

U.P. Jal Nigam Ltd. and Others

RESPONDENT

Date of Decision : 12-01-2010

Acts Referred:

Citation : (2010) 01 AHC CK 0138

Hon'ble Judges : Pradeep Kant, J and Ritu Raj Awasthi, J

Final Decision : Dismissed

Judgement

Ritu Raj Awasthi, J.

This writ petition, in the nature of public interest litigation, has been filed by a practicing Advocate of this Court for the following reliefs:

" a) issue a writ of certiorari or any other appropriate writ, order or direction, quashing or setting aside the decisions taken in furtherance of the tender notice dated 01.08.2009, contained in Annexure No. 1 and all consequential orders passed thereto;

"b) issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents not to award any tender in furtherance of tender notice dated 1.8.2009;

"c) issue the process of award of largess on the basis of policy which is fair and transparent so as to provide equal opportunity to all tenderers eligible to participate in the tender;

"d) pass such other and further orders as this Hon"ble Court may deem fit and proper in the facts and circumstances of the present petition."

An objection has been raised by Sri Jai Deep Narain Mathur, learned Senior Advocate on behalf of U.P. Jal Nigam assisted by Sri I.P. Singh that the petition is not maintainable as (i) this petition has been filed by an Advocate who is not

supposed to file a petition in respect of tender process, (ii) tender process had been the subject matter of challenge by interested companies in Writ Petition No. 8295 (MB) of 2009 wherein also some of the pleas as have been raised in the instant writ petition, had been raised but did not find favour by the Court and the petition was dismissed vide order dated 15.10.2009 and therefore, the same grounds cannot be agitated in the present petition in the nature of public interest litigation, (iii) the petition appears to be a proxy petition as it does not disclose the very source that from where the petitioner has got knowledge about the developments which have taken place after publishing the tender notice and different companies applied in pursuance of the said notice and lastly it has been submitted that the public interest litigation, in the facts and circumstances, is not at all maintainable.

Sri Prashant Chandra, learned Senior Advocate appearing for the petitioner, however, submitted that the petitioner is a public spirited person and simply because he is a lawyer, it does not debar him from filing a petition in the nature of public interest litigation which if decided would control the unfairness in the matter of award of contract. Further submission is that ignoring the civic amenities, which should have been given top priority, the U.P. Jal Nigam is going to award the contract at a much higher rates which is not in public interest. His submission is that whenever the matter is brought to the Court, credentials of the persons who brings the cause, the genuineness of the cause and the gravity thereof has to be considered by the Court and if the Court is satisfied that it is a matter of public interest and the grievance raised is genuine, the matter should be considered and the petition cannot be dismissed on the ground that the petitioner has no locusstandi to come to the Court.

We have considered the aforesaid arguments.

It cannot be disputed that if the cause brought to the notice of the Court is genuine and involves public interest, the Court can entertain a petition irrespective of the fact, whether it is filed by the lawyer or by any other public spirited person. Locusstandi in such matters would hardly be a ground for dismissing the writ petition nor the credential of such person would be conclusive to decide the issue against the petitioner but while exercising this discretion, the High Court has always to keep in mind that the litigation is not a proxy petition, and whether it serves the public purpose or it is a camouflage for public interest litigation so as to serve the persons who had not come to the Court but are behind the curtain or who had earlier come to the Court but faced failure in getting their challenge accepted.

Apart from this in the matter of tender for supply of pipes how the tender process has been initiated, who are the parties to the tender process and what expertise is required for laying down the eligibility conditions for supply of such pipes and what should be the rates and all such matters lie within the domain of the person or body having special knowledge and unless a person who comes to the Court either brings on record the source from which he received the

knowledge or he himself is aware of the technicalities, it would be difficult to believe that the petition has been filed actually in public interest.

In the representation made by the petitioner on 11.11.2009 to the Chief Engineer, many points have been mentioned in paragraphs 3 and 4 of the representation which have been brought to the notice by the learned counsel for the respondent wherein a grievance has been raised that only four companies controlled by Mr. S.K. Kanoria Group have participated in the tender, quoting prices which are higher as much as by 68% than the previous year prices. As against this the prices, in the sizes in which condition of manufacturing by Mazza process is not stipulated, have gone down by 15% than the previous year and the difference in cost of production by Mazza process and Magnani process is not more than 20 to 25%, whereas the prices quoted by Mr. S.K. Kanoria Group is effectively higher by 80% and lastly it has been prayed that the tender notice be cancelled; submission of the respondent counsel is that these details, could not be in the personal knowledge of the petitioner as they require special knowledge, but the petitioner does not say anywhere, in the writ petition that he is well versed in these matters of manufacturing the pipes with different methods.

At this juncture it would be relevant to mention that certain companies had approached this Court earlier when U.P. Jal Nigam had awarded the contract to the companies, which are manufacturing pipes by Mazza process above 125 mm and by Magnani process, less than 125 mm of width, but this challenge failed.

Sri Jai Deep Narain Mathur, has produced the copy of the judgment dated 15.10.2009 passed in writ petition no. 8295 (MB) of 2009 in re: ACME Asbestos Pipes Ltd., Agra and others vs U.P. Jal Nigam Ltd., Lucknow and others, wherein the condition regarding Mazza or Magnani process were challenged. A plea of the contract being awarded to Cartel was also raised namely; the same company whose name is mentioned in the representation and the writ petition. The writ petition was dismissed by us on 15.10.2010.

Argument of the counsel for the respondents is that the aforesaid petition was dismissed on 15.10.2010 and soon thereafter, this representation was made on 11.11.2009 raising almost same pleas which reflect that the petition is not in the public interest and in fact, it has been filed for serving the cause of other persons and is thus apparently a proxy petition.

Be that as it may, the fact remains that U.P. Jal Nigam Ltd. while inviting tender for supply of pipe lines, is not doing any activity which does not relate to providing of civic amenities nor it can be said that Jal Nigam is not entitled to order for such supply. It is common knowledge that for providing infrastructure for supply of water, laying down the pipe line is a must, therefore, no exception can be taken, if said tender has been invited. In regard to the plea that the prices quoted by the tenderers, this Court would not act as an expert to find out as to on what rate the tender should be awarded. It is for the Jal Nigam to see that the tenders are awarded at the appropriate rates. If the Jal Nigam finds that

the rates are excessively high and not reasonable, it is for the Jal Nigam not to accept the tender or to take any appropriate decision but this Court would not interfere in such exercise.

The petition filed by the lawyer, who has not disclosed any source of his information regarding various points which have been raised in the writ petition, is neither maintainable nor entertainable nor it involves any question of public interest much less a genuine cause.

The petition is dismissed.