
(2010) 03 RAJ CK 0053

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4251 of 2010

Shri Krishan Gurjar

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 26-03-2010

Acts Referred:

Rajasthan Panchayati Raj Act, 1994 — Section 58, 7, 8E
Rajasthan Panchayati Raj Rules, 1996 — Rule 86

Citation : (2010) 2 WLN 630

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Instant petition has been filed assailing Notice Inviting Tender ("NIT") dt. 26/02/2010 (Ann.1) issued by Collector, Ajmer being Coordinator (Employment Guarantee Scheme) (EGS) for various Panchayat Samitis including of Pisagan.

2. Petitioner, as alleged, is Sarpanch of Gram Panchayat Nyara, Panchayat Samiti Pisagan (Ajmer). Collector, Ajmer as Programme Coordinator, EGS issued NIT dt. 26/02/2010 in respect of Panchayat Samitis of district Ajmer including Panchayat Samiti, Pisagan while authorizing its Vikas Adhikari to issue NIT for supply of construction material to the gram panchayat for carrying out development works; and last date stipulated was 27/03/2010, when sealed tenders offered would be opened. However, before process of NIT could be finalized, petitioner claiming himself as Sarpanch of Gram Panchayat, Nyara, has approached this Court with the grievance that NIT having been issued by Vikas Adhikari Panchayat Samiti, Pisagan is in violation of Sections 7 & 8E(i) & (m) of Rajasthan Panchayati Raj Act, 1994 ("Act, 1994").

3. Counsel submits that all development works in a Panchayat area have to be carried out by the Ward Sabha being basic Unit of a Panchayat u/s 7 of the Act, and Sub-clause (c) of Section 8E clearly provides that the panchayat has to get

certificate of Ward Sabha concerned that it has correctly utilized funds provided for plans, programmes & projects referred to in Clause (a) having been expanded in the area of Ward Sabha, formulating & approving development plans; as such complete accountability for development vests with Gram Sabha but that has been completely given go bye while issuing NIT by Vikash Adhikari Pisagan

4. Counsel further submits that the NIT is nothing but a direct intervention in the constitutional set up of local-self government and the NIT has to be issued by Gram Sabha under the Act, 1994 read with Rajasthan Panchayati Raj Rules, 1996.

5. Counsel further submits that respondent Collector ought to have issued NIT for the works to be undertaken under NREGA schemes but was incompetent to interrupt with democratic set up as provided under the Constitution on being elaborated by the Act, 1994 & its. Rules, 1996. Counsel further submits that the NIT impugned is liable to be set aside as the funds of Panchayati Raj Institution (Gram Sabha) is being diverted vide NIT impugned from different projects/ plans under NREGA scheme, which is otherwise to be carried out separately and severally under project schemes under the Act, 1994; and the works being carried out under NREGA schemes cannot be clubbed together with the so-called various schemes as given out under NIT impugned.

6. Counsel further submits that Panchayati Raj Act, 1994 is a complete Code, in itself and the Rules framed there-under provides complete procedure for execution of contracts & deeds and so also procedure laid down for NIT Under Rule 86 of Rules, 1996; what procedure being followed for NIT has also been laid, which has been completely given a go-bye by respondent authority while issuing NIT impugned.

7. Submission made by Counsel that there is violation of Sections 7, 8 & 58 of the Act, 1994 is of no substance for the reason that Vikas Adhikari, Pisagan (Ajmer) while acting upon NIT impugned in considered opinion of this Court has not usurped powers of the authority vested under the Act, 1994 or Rules framed there under. That apart, from a perusal of NIT impugned, it appears that the work to be entrusted of various schemes is under NREGA where the provisions of Act, 1994 has no application, and moreover, Award of contract and its execution are two distinct features and in fact under provisions of the Act, 1994 & Rules framed thereunder, supervision of Gram Sabha or Panchayat Samiti is needed for execution/supervision of work contract; however, before the stage of execution having arisen, the petitioner has approached this Court and the authority is supposed to act in accordance with law unless the contrary is proved. This Court finds no justification to entertain this petition.

8. Consequently, writ petition fails and is hereby dismissed.