
(2010) 12 UK CK 0092
In the Uttarakhand High Court
Case No : Writ Petition No. 2024 of 2010

Suresh Chandra and Others	Vs	APPELLANT
State of Uttarakhand and Others		RESPONDENT

Date of Decision : 29-12-2010

Acts Referred:

Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Section 230

Citation : (2010) 12 UK CK 0092

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.S. Verma, J.

(Stay Application No. 10974 of 2010)

1. Heard learned Counsel for the parties and perused the record.
2. By means of this writ petition, the Petitioners have sought the following relief:
 - (i) Issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 3-11-2010 and 4-11-2010 passed by the Respondent No. 3-District Magistrate, Haridwar.
 - (ii) Issue a writ, order or direction in the nature of mandamus commanding Zila Panchayat Haridwar to complete the process initiated vide publication dated 3-11-2010 within the shortest possible time in any case before the notification of election to local bodies is issued.
 - (iii) Any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.
 - (iv) Award the cost of petition to the Petitioner.
3. It appears that a meeting of Niyojan Samiti of Zila Panchayat Haridwar was

convened on 28-8-2010 in which resolution No. 1 was passed by a unanimous decision and it was resolved that short term tender notice would be floated for the work in question and seven days time shall be given from the date of issuance of such tender and the opening of tender. A copy of the minutes of meeting dated 28-8-2010 of Niyojan Samiti has been annexed as Annexure-4 to the writ petition. According to the Petitioner, in the general body meeting of Zila Panchayat dated 28-8-2010, the resolution passed by the Niyojan Samiti was recommended vide resolution No. 3. It also appears that a short term tender notice was published in two daily newspapers on 29-10-2010 and in response to it, Petitioners as well as other persons obtained tender document on 3-11-2010.

4. According to the Petitioners some frivolous and false complaints were made by certain persons to the District Magistrate, Haridwar, who in turn passed the impugned order dated 3-11-2010 thereby kept the tender process in abeyance with immediate effect and by order dated 4-11-2010, the District Magistrate Haridwar directed the Upper Mukhya Adhikari, Zila Panchayat Haridwar to invite tender again with wide publicity in the newspapers mentioned in the order, which are impugned in this writ petition.

5. The grievance of the Petitioners is that the impugned orders have been passed by Respondent No. 3 without competence.

6. It has been vehemently argued on behalf of the Petitioners that before passing the impugned orders, the tender notice was invited by Respondent No. 2 for carrying out works under Zila Panchayat Haridwar and the impugned orders have been passed after publication of tender notice and purchase of tender by the Petitioners. It is argued that Zila Panchayat is an independent body and an autonomous body as per 73rd Amendment of the Constitution of India, therefore, the State Government has no control in carrying out the works of Zila Panchayat. Learned Senior Advocate appearing for the Petitioners further contended that in Uttar Pradesh Kshettra Samitis and Zila Parishads Works Rules, 1984 (for short the Rules), there is no provision empowering the State Government to cancel the work order. Learned Counsel for the Petitioners submitted that the impugned orders are not tenable in view of Rule 19 of the Rules.

7. From a bare perusal of the record it reveals that the impugned orders have been passed by the District Magistrate Haridwar in administrative capacity and the impugned orders have not been passed by the Collector/District Magistrate pursuant to the directions of the State Government as per Section 230 of Zila Panchayat Adhiniyam, therefore, the impugned orders are liable to be set aside on this ground alone, since Zila Panchayat Haridwar is an independent body and a self government.

8. Rule 19 of the Rules deals with the provision of inviting tenders, which provides that no contract for the execution of a work estimated to cost more than Rs. 5,000/- shall be given until sealed tenders for the contract, accompanied by earnest money to the amount fixed by proper authority, have

been invited by public notice and such notice is required to be published in one or more local newspapers as the Mukhya Adhikari or Khand Vikas Adhikari, as the case may be, thinks fit and by pasting copies thereof at conspicuous places at the office of the Parishad or Kshettra Samiti, the Collector's Office, the court of the District Judge or the court of every Additional District Judge, and Munsif, if the office of District Judge is not situate, the headquarter of every tehsil, local offices of the Public Works Department (Building and Road), Irrigation Department and Local Self Government Engineering Department.

9. In the instant petition, no counter affidavit has been filed on behalf of the State of Uttarakhand and the District Magistrate i.e. Respondent Nos. 1 and 3 despite sufficient opportunity afforded to them. The counter affidavit has been filed on behalf of the Respondent No. 2-Zila Panchayt, wherein the following averments have been made in para 12:

12. That in reply to the contents of paragraph No. 17 of the writ petition it is submitted here that the answering Respondent is a Local self governance and is autonomous in respect of the functioning and discharging of day to function is concerned. The answering Respondent is entitled to work without any direction of the Government and the District Magistrate has no power to interfere in functioning of the answering Respondent. Particularly in view of the fact that tenders were invited in accordance with the procedure and after the requisite publicity. The work can be discharged by registered contractors and none of the registered contractor has filed any complaint that he could not receive the information.

10. Thus, from a plain reading of paragraph 12 of the counter affidavit filed by the Respondent No. 2, the case set up by the Petitioners that the District Magistrate has no power to interfere in the tender process finds support.

It appears from the facts and circumstances of the present case that it is not a case within the ambit of Section 230 of Zila Panchayat Adhiniyam and the powers have been exercised by the State Government under the said provision. The writ petition deserves to be allowed.

11. Accordingly, the writ petition is allowed. The impugned orders are set aside. The Respondent No. 2-Zila Panchayat Haridwar is directed to complete the tender process in accordance with law within a period of one week from the date of production of a certified copy of this order.

12. A certified copy of this order be issued to the learned Counsel for the parties by 30-12-2010 on payment of usual charges.