
(2010) 12 UK CK 0165

In the Uttarakhand High Court

Case No : Criminal Writ Petition No. 833 of 2010

Yogender Prashad

APPELLANT

Vs

State of Uttarakhand and Another

RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 406, 407, 409, 420
Prevention of Corruption Act, 1988 — Section 13(2), 13(c)(d), 13(c)(d)

Citation : (2010) 2 NCC 33

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Sidharth Luthra, assisted by Mr. Aditya Singh and Mr. Arshdeep Singh, in WPCRL Nos. 833, 834, 847 of 2010, Mr. Charanjeet Singh Bakhshi, with Mr. Raj Kumar Chugh and Mr. Hari Mohan Bhatia, in WPCRL Nos. 854 of 2010, for the Appellant; Rakesh Thapliyal, A.A.G. with Mr. Amit Bhatt, A.G.A., Mr. Vinay Kumar, Standing Counsel and Mr. Lalit Sharma, Brief Holder, for the Respondent

Judgement

Hon'ble Tarun Agarwala, J.—Heard Sri Sidharth Luthra, Senior Advocate assisted by Sri Aditya Singh and Sri Arshdeep Singh, Advocates for the petitioner in WPCRL Nos. 833/2010, 834/2010 and 847/2010, Sri Charanjeet Singh Bakhshi, Advocate with Sri Raj Kumar Chugh and Sri Hari Mohan Bhatia, Advocates for the petitioner in WPCRL No. 854/2010 and Sri Rakesh Thapliyal, Addl. Advocate General with Sri Amit Bhatt, Addl. G.A., Sri Vinay Kumar, Standing Counsel and Sri Lalit Sharma, Brief Holder, for the State. This matter was heard at length on 3rd December, 2010, and was posted today for further hearing. Today, after hearing the Additional Advocate General at some length, a request was made for adjournment so that a counter affidavit could be filed on behalf of respondent no. 1 i.e. State of Uttarakhand through Secretary, Home, since serious allegations were made against the functioning of the State Government vis-a-vis Hon'ble the Chief Minister of the State. These petitions were filed in September, 2010, against the issuance of the First Information Report, and time was granted to respondent nos. 1 and 2 to file counter affidavit. The State in its own wisdom

chose only to file a counter on behalf of respondent no. 2 and did not choose to file the counter affidavit on behalf of respondent no. 1. The matter was heard on 3rd December, 2010, and today on 6 December, 2010, with the intention to decide the matter finally, and after hearing at some length, a request for adjournment has now been made. Permission is granted. Six weeks" time is allowed to respondent no. 1 to file a detailed parawise counter affidavit in all the writ petitions, which are connected herewith.

2. Writ Petition No. 833 of 2010 has been filed by Sri Yogender Prashad for the quashing of the First Information Report No. 13/2010 dated 6th September, 2010. A perusal of the First-Information Report indicates that the said petitioner has allegedly misused his authority as Chairman of the Uttarakhand Jal Vidyut Nigam Limited (hereinafter referred to as the "UJVNL") and as Special Advisor (Energy) to the Chief Minister to bring undue benefit to a company known as M/s. Kayviate International Company and caused undue harm and loss to the State Government to the tune of Rs. 2.5 crores between the period 2005-2008. The allegation in the First Information Report is, that the petitioner gave pre-tender specification consultancy work to the said Company in six projects, which could have been done by the officials of the Nigam itself. It is alleged that the petitioner in his capacity as Chairman and Special Advisor (Energy) hatched a conspiracy with this Company by misusing his authority in giving the project. It is stated in this First Information Report that in Kaliganga First and Second Projects, the contract was awarded to M/s Kayviate International Company to re-examine the detailed project report awarding a sum of Rs. 12 lacs. The First Information Report indicates that this work could have been done by the officials of the Nigam itself instead of allocating it to an outside company. With regard to Maneri Bhali Second Project, the contract was given for Rs. 1.52 crores for electrical and civil work, and to monitor the commissioning of the project. The allegation is, that the monitoring of the commissioning of the project is always done by the officials of the Nigam and such contract was awarded by Sri Yogender Prashad by misusing his authority. In Vyasi Hydro Electric Project, the commission was given to this company for Rs. 12.5 lacs. In Pathari and Mohamadpur Projects, the contract was given for Rs. 12.81 lacs for review of the detailed project report etc., in which the allegation is that the same could have been done by the officials of the Nigam. Similarly, in Lakhwad and Vyasi Projects, the contract was given for Rs. 26.30 lacs to the company to review the old project, in which the allegation again is that the same could have been done by the officials of the Nigam. Similarly, in Asiganga First and Second Projects, the project was given for Rs. 37.06 lacs to monitor the project and give technical advice, in which the allegation is that the same could have been done by the officials of the Nigam.

3. In this petition, the contention of the petitioner with regard to Kaliganga First and Second Projects is that the award was given to M/s. Kayviate International Company by way of a limited tender as per the recommendation of the Technical Committee in December, 2005, whereas the petitioner joined as the Special

Advisor (Energy) to the Chief Minister only in January, 2006, and consequently, the awarding of such contract could not be influenced by the petitioner in any manner. Similarly, with regard to Maneri Bhali Second Project, the contention of the petitioner is, that this tender was given to M/s. Kayviate International Company prior to the petitioner's joining as Chairman of the Nigam, and consequently, he could not have advised the Board of Directors as an Advisor to the Chief Minister since he was not a member of the Board of Directors. With regard to other projects, the contention of the petitioner is that, the project was awarded to the company as per the policy guidelines of the Nigam by way of limited tender and the entire procedure was followed, the bids were evaluated by the Committee, and that the technical and financial bids were opened in presence of all, and consequently, the petitioner had no role in evaluating the bids for unlawful gains.

4. Writ Petition No. 834 of 2010 has again been filed by the petitioner Sri Yogender Prashad for the quashing of the First Information Report No. 14/2010 dated 14th September, 2010. The allegation in this First Information Report is, that undue benefit of Rs. 25.06 crores has been given to Shring Construction Co. Ltd. towards labour rates, EPF contributions in contravention to the agreement between the Contractor and the Irrigation Department. It is alleged in the First Information Report that the petitioner conveniently sought opinion from the Additional Solicitor General of India instead of taking an opinion from the Advocate General of the State of Uttarakhand, and pursuant to the said opinion, the payments were released without verifying the bills. The contention of the petitioner in this petition is, that Maneri Bhali Project was executed in the year 1984 between the erstwhile State of Uttar Pradesh and the Contractor and that the work stopped in the year 1989. Upon the creation of the State of Uttarakhand in the year 2000, the project was revived and a supplementary agreement was executed in the year 2002 between the Department of Irrigation and the Contractor. In spite of this supplementary agreement, the project could not be completed in three and a half years, and consequently, the State Government requested Sri Yogender Prashad to oversee the project and conclude the project within six months. Based on that, the petitioner undertook the work and even though the contract was between the Irrigation Department and the Contractor, the role of the Nigam was only to finance the work of the Irrigation Department. It was contended that the bills were verified and passed by the Irrigation Department and only thereafter payments were released to the Contractor. It is contended that the petitioner had no role to play in the passing of the bills.

5. Writ Petition No. 847 of 2010 has again been filed by Sri Yogender Prashad for the quashing of the First Information Report No. 15/2010 dated 23rd September, 2010. The allegation in the First Information Report is that, without following the procedure Sri Yogender Prashad influenced other offices and awarded the work to M/s. Hydel Construction Co. for the construction of the outer security walls in Joshiyara Barrage for a sum of Rs. 11.00 crores without inviting a fresh tender.

This construction of the Barrage is in relation to Maneri Bhali Project, which had started in the year 1984 and stopped in the year 1989, and pursuant to the supplementary agreement in the year 2002, the work could not be completed and the petitioner was directed to supervise and get the work completed. It is stated that pursuant to a decision of the State Government, the work was allotted to Hydel Constructions Pvt. Ltd. as an extra item under Clause 1.2.10 of the agreement. The work was given by the Engineer Incharge and not by the petitioner, and pursuant to the decision of the Secretary to the Government dated 4.10.2007, the construction of the protection walls was started, but was stopped on account of the protest by the local villagers, and subsequently, by the intervention of the State Government the work was again started and completed in the year 2009. Pursuant to the completion of the work done by the Contractor, the Executive Director (Civil), UJVNL, has submitted a report that no financial loss has been caused to the Government by the work performed by the Hydel Construction Co. The contention of the petitioner is that, extra work was allotted as an extra item pursuant to the agreement and it was not necessary to call for a separate tender. If the procedure for inviting separate tender was followed, it would have caused further undue delay in the completion of the project.

6. Writ Petition No. 854 of 2010 has been filed by M/s. Hydel Constructions Pvt. Ltd. for the quashing of the First Information Report No. 15/2010 dated 23rd September, 2010. The only allegation against the petitioner is that, they have executed the work without calling for a fresh tender, and that 93% of the payment was made to the Sub-Contractor, which was de hors the rules.

7. Sri Rakesh Thapliyal, Additional Advocate General submitted that the petitioner was given unlimited powers to ensure that the project was completed within a stipulated period, and his appointment as Special Advisor (Energy) to the Chief Minister and Chairman of the Nigam was extended from time to time. The State Government reposed trust on the petitioner, which, he misused blatantly and hatched a conspiracy and caused undue benefits to the Contractors, namely, M/s Kayviate International Company, Shring Construction Co. Ltd. and M/s. Hydel Constructions Pvt. Ltd. The learned Additional Advocate General submitted that Sri Yogender Prashad not only misused his authority but subverted all norms and policies of the State Government in illegally granting the contracts to the contractors without following the rules and procedure for issuing a tender and in some cases, without issuing a tender, further granted a contract. The learned Addl. Advocate General further submitted that insofar as F.I.R. No. 14/2010 is concerned, an opinion was sought from the Additional Solicitor General of India, and based on that opinion, the payments were released causing undue benefit to the contractors without getting the bills verified. The learned Addl. Advocate General submitted that in the minutes of the meeting dated 28th June, 2007, it was resolved that only the affidavit of the contractor would be taken for the purpose of releasing the payments and made a departure from the accepted norms of the procedure for making payments in order to cause undue favour and gain to the contractor.

8. Having heard the learned counsel for the parties and having perused the F.I.R., the counter affidavits and other material brought on record, the Court finds that the petitioner retired as Chairman of National Hydro Power Corporation in the year 2005 after remaining Chairman for almost 8 years. The petitioner was an expert in the Energy Sector, and since the project was started in the composite State of Uttar Pradesh and upon the creation of the State of Uttarakhand in the year 2000, the project showed no signs of nearing completion, the State Government requested the petitioner to take up the challenge and ensure completion of the project in a phased and time bound manner. It is stated that the petitioner took up the challenge and joined as Special Advisor (Energy) to the Chief Minister in January, 2006 on an honorarium basis, and subsequently, on 30th March, 2007, he was requested to oversee the Maneri Bhali Project. Specific powers were given to the petitioner Sri Yogender Prashad by an order dated 07.05.2007, and on 24.05.2007, he was appointed as Chairman and Part-time Director of UJVNL. It is alleged that in January, 2006, the petitioner Sri Yogender Prashad highlighted the corrupt practices being adopted by one Sri B.C.K. Mishra with another businessman, which was not liked by the State Government, and subsequently, it led to the removal of the petitioner by an order dated 20.05.2010. The petitioner Sri Yogender Prashad in his petition has levelled serious allegations against the State Government vis-a-vis against the Chief Minister contending that the Chief Minister had become inimical to the petitioner since the petitioner did not oblige the Chief Minister with regard to the sanctioning of the Small Scale Hydro Electric Projects initiated by the State Government. It is alleged that the Chief Minister single-handedly allocated 56 Small Scale Hydro Electric Projects in the private sector without getting a detailed project report prepared. The issuance of these contracts in the private sector led to the filing of a Public Interest Litigation No. 52/2010. Since the prescribed procedure was not followed and the Chief Minister became embarrassed by the hue and cry that was raised in the media, it is alleged that the Chief Minister requested the petitioner to put his signatures in the recommendation of the project on behalf of the Nigam. The petitioner contends that since he refused, his services were terminated and has led to filing of the First Information Report.

9. The allegations against the Chief Minister and the functioning of the State Government are charges which are serious in nature and these charges have remained unrebutted. The Additional Advocate General has rightly prayed for and has been granted time to file a counter affidavit.

10. Without expressing anything more on the merits of the case, an irresistible conclusion comes into play, namely, that the petitioner Sri Yogender Prashad was a trusted person and appointed as Special Advisor to the Chief Minister. A person of trust is appointed as a Special Advisor to the Chief Minister. Subsequently, the petitioner was appointed as Chairman and Part-time Director of the Nigam by the State Government and the State Government gave him unlimited powers to ensure that the project is completed. At some stage, the petitioner parted ways

with the State Government, and an irresistible feeling, one finds while perusing the papers which have been placed before the Court, is that some kind of an animosity or acrimony has developed which has led to the filing of the First Information Reports primarily to harass the petitioner and also to denigrate his reputation. The Court also gets a feeling that the State Government is going on a witch-hunt. Consequently, without commenting anything further on the merits of the case and upon a perusal of the First Information Report, which indicates violation of the procedure, if any, and of the contracts, and misuse of the authority of the petitioner Sri Yogender Prashad, the Court finds that the chain of links with regard to conspiracy alleged in all the First Information Reports is incomplete. Consequently, it is hereby directed that all the petitioners will not be arrested during the pendency of the investigation pursuant to the F.I.R. No. 13/2010 dated 6.9.2010, u/s 13(c) (d) and 13(2) Prevention of Corruption Act and Section 120B/409 I.P.C., F.I.R. No. 14/2010 dated 14.9.2010, u/s 120B/409/407/406/420/471 I.P.C. and Sections 13(c)(d) and 13(2) Prevention of Corruption Act, F.I.R. No. 15/2010 dated 23.9./2010, under Sections 120B/409/406 I.P.C. and Section 13(c)(d) and 13(2) Prevention of Corruption Act, lodged at S.P. Vigilance, Dehradun Sector, Uttarakhand. It is, however, made clear that the petitioners will cooperate in the investigation. List this matter before the appropriate court on 21st February, 2011, along with WPCRL Nos. 834/2010, 847/2010 and 854/2010.