

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (PIL) No. 191 of 2019

Sonia Beniwal

...Petitioner

Vs.

State of Uttarakhand and others

...Respondents

Mr. Abhijay Negi, learned counsel for the petitioner.

Mr. Anil Kumar Bisht, learned Standing Counsel for the State of Uttarakhand-respondents 1 to 4.

Mr. Neeraj Garg, learned counsel for the fifth respondent.

Mr. Vikas Pande, learned Standing Counsel for the University Grants Commission-seventh respondent.

Dated : 18th June, 2020

Coram: Hon'ble Ramesh Ranganathan, C.J.
Hon'ble Ramesh Chandra Khulbe, J.

Ramesh Ranganathan, C.J. (Oral)

Heard Mr. Abhijay Negi, learned counsel for the petitioner, Mr. Anil Kumar Bisht, learned Standing Counsel for the State of Uttarakhand-respondents 1 to 4, Mr. Neeraj Garg, learned counsel for the fifth respondent and Mr. Vikas Pande, learned Standing Counsel for the University Grants Commission-seventh respondent

2. The petitioner has invoked the jurisdiction of this Court seeking a writ of mandamus directing the State of Uttarakhand to proceed further with the investigation on the F.I.R. dated 28.03.2017; a mandamus directing the State of Uttarakhand to recover the excess amount, as pointed out in the Audit conducted by the Auditors of the Comptroller and Auditor General as well as the State of Uttarakhand, from the personal account of the sixth respondent, who was then the acting Principal of the College, as also the fifth respondent, who was the Secretary of the M.K.P. Society; and a mandamus directing the Director General of Police to constitute a Special Investigation Team to investigate into the gambit of corrupt practices currently underway in the respondent-College, as outlined in the Audit Reports; and to

probe the reasons why no action was taken in the F.I.R. lodged in the year 2017.

3. We had, by our order dated 02.01.2020, granted time to the learned Standing Counsel, appearing on behalf of the State Government, to ascertain whether or not a Final Report, after further investigation was caused under Section 173(8) Cr.P.C, had been filed before the Magistrate till date. Subsequently, by our order dated 20.03.2020, while taking the counter affidavit filed on behalf of respondents 1 and 4 on record, we noted the request of Mr. C.S. Rawat, learned Additional Chief Standing Counsel, for the matter to be taken up on 25.03.2020 to enable him to ascertain what action the Government intends to take pursuant to its admission, in the counter-affidavit, that respondents 5 and 6 had indulged in grave and serious irregularities, including mis-appropriation of public funds.

4. A counter-affidavit has now been filed on behalf of the fifth respondent raising objections both to the maintainability of the Writ Petition, as also on merits. Before examining the rival contentions, urged by learned counsel on either side, it is useful to extract, to the extent relevant, the contents of the counter-affidavit filed on behalf of the first respondent.

5. In the said counter-affidavit dated 17.03.2020, the Deputy Secretary, Higher Education, Government of Uttarakhand stated that, by Government Order dated 28.09.2017, a Departmental Audit Sub Committee (Directorate Level), and a Departmental Audit Committee (Government Level), was constituted, as per Section 9(5)(b) of the Uttarakhand Audit Act, 2012, consisting of the Audit Members mentioned therein; the sub-committee had, thereafter, made several recommendations; after deliberations, it was decided that instruments worth Rs. 45 lakhs, purchased from the UGC Grant, should be installed and their entry made in the stock register; the District Magistrate, Dehradun/Controller of the College was authorized for this purpose; it was decided that, with regards the audit

objections, an Investigating Officer, not below the rank of Joint Director, should be appointed; the Inquiry Officer was directed to fix responsibility on the accused, and those responsible for recovery of the amounts; by letter dated 09.08.2018, the Principal, Government Degree College, Raipur, Dehradun was appointed as the Inquiry Officer to investigate into the irregularities relating to the UGC grant of Rs. 45 lakhs which was given to the College; the District Magistrate/Authorized Controller had nominated the Deputy District Magistrate, Sadar, and the Chief Education Officer, to take action as per the decision taken in the meeting held on 09.04.2018; an inquiry report was submitted, by letter dated 07.09.2018, to the In-charge Secretary, Higher Education; and the main findings of the Inquiry, as detailed in the report, reads as under :

- “(i) That purchased items/ instruments were as per the approved items of UGC. No D.P.R was available in the college.
- (ii) College administration has not adopted the process of tender for purchasing. Purchasing was completed through quotations.
- (iii) No ledger was prepared and no cash book was maintained. Nor any stock register was maintained.
- (iv) Purchasing process was completed within a short period of nine days in between 23-03-2013 to 31-03-2013, while demand draft was credited in the bank on 24-09-2012.
- (v) For purchases of Rs. 44.90 lakh, no permission had been taken from College Purchase Committee. As per clause 13.37 of the HN BGU, Srinagar Garhwal first statute 1978 (Amended March 1983), such expenditure, which is not already included in the college budget, will not be incurred without specification of the Finance Committee. So University rules had been violated.
- (vi) As per the quotation and purchasing rules it has been noticed that some firms were paid against the rules. The details of such firms is given below:-

क्र० सं०	फर्म	सामग्री	बिल न० एवं धनराशि	भुगतान की गई धनराशि	कोटेशन के अनुसार भुगतान की शर्तें	निर्धारित समय से पूर्व भुगतान की गयी धनराशि
1.	Silori Fire Equipments Co. Dehradun	Fire Extinguisher	Bill No.-135 dated 28-03-2013 Amount 197100/-	197100/-	25 प्रतिशत सामग्री की सपुर्दगी के समय तथा शेष Installation के समय	147750/- (75 प्रतिशत अधिक भुगतान की गई धनराशि)
2.	Halycon Power Controller	Audio visual Equipments	Bill No.-007 dated 30-03-13 Amount 426712/-	390000/-	50 प्रतिशत सामग्री की सपुर्दगी के समय तथा शेष Installation के समय	176644/- (50 प्रतिशत अधिक भुगतान की गई धनराशि)
3.	Halcyon Power Controller	Classroom teaching aids	Bill No.-006 dated 30-03-13 Amount 269450/-	245000/-	25 प्रतिशत सामग्री की सपुर्दगी के समय तथा शेष Installation के समय	110275/- (50 प्रतिशत अधिक भुगतान की गई धनराशि)
4.	Audio Systems	Audio visual Equipments /Public speaking system	Bill No.- 10218 dated 30-03-13 Amount 849700/-	800000/-	50 प्रतिशत सामग्री की सपुर्दगी के समय तथा शेष Installation के समय	375150/- (50 प्रतिशत अधिक भुगतान की गई धनराशि)
					कुल योग	809819=00

(vii) As per the order, purchase equipments were not supplied, even though payment was made, which was relevant.

(viii) At the time of Physical verification on 26-06-2018 following items/equipments were found less:-

क्र० सं०	फर्म का नाम	बिल संख्या / तिथि	वस्तु उपकरण	क्र० संख्या	भुगतान की गई धनराशि
1.	Strategic Marketing	SM/2012-13/PI/1249, dated 30-03-13	HP-color MFPA4	01	85599/-
			HP All in one Desktop	01	28790/-
			HP Laptop Envy X211G004TU	01	72990/-
			HP Mini Laptop	01	21890/-
			UPS 1 KVA	01	5400/-
			HP Laptop Computer Model: G6	01	46999/-
			Norton Antivirus	01	17250/-
2.	Halcyon Power Controller	006 dated 30-03-13	Amplifier for wall speaker	01	19750/-
			Wireless collar microphone	01	13000/-
			Wooden podium	01	27000/-
			Network Switch:8 port	01	1300/-

			Cable and Connector	01 lot	22000/-
			Wireless mouse	01	4000/-
			Installation, testing & Commissioning	01 Job	15000/-
3.	Halycon Power Contoller	007 dated 30-03-13	PA wireless amplifier (Ahuja)	01	11000/-
			Cable and Connectors, Make: Falcon	01	5500/-
			Installation testing & Commissioning	01 Job	10000/-
4.	Audio Systems	Bill No.- 10217 Dated 30.03.2013	Sennheiser microphone model-XSW52 Head Worn	01	25800/-
			Bose Processor Model- Control SP-24	01	84500/-
			Wooden Podium Make Custom	01	26750/-
			Infiniter wireless mouse	01	4000/-
			Cable, connectors, ceiling mouse kit	01 Job	24000/-
			Installation, testing and commissioning	01 Job	20000/-
5.	Ashmi Enviro Services	18, Dated- 28-03-13	Dosing Pump	01	17621/-
			Raw Water Tank (1000 Lit)	02	8810/-
			Electronic Sensor	01	6167/-
			RO Water stand	01	6167/-
			Installation		10000/-
6.	Uttarakhand Traders	2207, Dated-30-3-13	Kent Grand Plus (RO+UV+UF+TDS Controller) with 8 lit. Storage.	01	17000/-
7.	Wave Solution	Bill not available	Payroll and Fee Management software	01	50000/-
8.	Silori Fire Equipment Co. Dehradun	135/ 28-03/2013	Supply of 5kg ABC Fire Extinguisher	17	54000/-
			Supply of Co2 4.5kg Fire Extinguisher	01	6850/-
				कुल योग	768633=00

6. The counter-affidavit, thereafter, states that the inquiry team had indicated that the prescribed procedure was violated in purchase of items/equipment from the UGC grant; at the relevant time, the sixth respondent was the Principal and the fifth respondent was the Secretary, who were equally responsible; a letter was addressed to the Registrar, Firms, Societies and Chits, Uttarakhand by the Additional Chief Secretary, Higher Education regarding irregularities in purchase of items/instruments from UGC funds; and,

as per the findings in the Inquiry Report, respondents 5 and 6 were equally responsible for violation of the Rules and norms.

7. When we asked Mr. Neeraj Garg, learned counsel appearing for the fifth respondent, as to why the Director, Higher Education should not be directed to take action against those responsible, after giving those, who had allegedly committed such irregularities, an opportunity of being heard, learned counsel would raise the following objections : (i) the petitioner has a personal animosity against the fifth respondent, and the Writ Petition has been filed at the behest of the persons named in the counter-affidavit of the fifth respondent; (ii) the Writ Petition as filed is not in public interest; (iii) since criminal investigation has already been completed, and a Final Report has been filed, Rule 3(4) of the High Court of Uttarakhand P.I.L. Rules, 2010 disables the Writ Petition being entertained in public interest; (iv) under the Uttarakhand Audit Act, 2012, it is only a Society, which has been notified by the State Government, against which investigation can be caused, and the subject Society has not been notified as such; (v) the allegations in the Writ Petition have been rebutted in detail in the counter-affidavit filed by the fifth respondent; (vi) the allegations of irregularities in procurement etc. are baseless; (vii) the fifth respondent was not given any opportunity by the Audit Committee before recording any finding against him; (viii) when the Audit was conducted it was the Authorized Controller, who was in charge of the College, and not the fifth respondent; (ix) the responsibility to purchase equipment is that of the Principal of the College and the fifth respondent, who is the Secretary of the Society, has no role to play in this regard; and (x) the Writ Petition has been filed only to besmirch the reputation of the fifth respondent in the eyes of the general public.

8. The afore-extracted findings of the Inquiry Report are not from the affidavit filed in support of the Writ Petition, but from the counter-affidavit filed on behalf of the State Government. The subject

College, of which the sixth respondent is the in-charge Principal and the fifth respondent is the Secretary, is a State Government aided institution and receives funds both from the State Government and the University Grants Commission. The serious allegations, made in the counter-affidavit filed on behalf of the State Government, would necessitate an inquiry being caused and action taken in the larger public interest of ensuring that public funds are not mis-utilized. As the cause is in the public interest, it matters little who has brought these facts to the notice of the Court. Allegations regarding personal animosity between the petitioner and the fifth respondent, or that the Writ Petition was filed at the behest of others inimically disposed towards the fifth respondent, need not detain us, as this Court can examine these allegations, non-suiting the petitioner and entertaining the Writ Petition *suo-motu*.

9. Rule 3(4) of the High Court of Uttarakhand P.I.L. Rules, 2010 (for short the “2010 Rules”), reads as under :

- “(4) No “PIL-Petition” or “PIL-Letter” shall be entertained on any of the following subjects:
- (a) Matters which are purely in the private domain, such as landlord-tenant relationship, master-servant relationship, relationship between individuals or any juristic person, or any matter of the like nature; or
 - (b) Matters pertaining to service, employment, matrimonial issues or matters of the like nature; or
 - (c) Matters strictly falling in the arena of criminal or civil jurisdiction, and which constitute disputes amongst individuals, or any matter of the like nature; or
 - (d) Matters which relate to one person, as opposed to a group or class of persons.”

10. What Rule 3(4)(c) of the 2010 Rules prohibits is for a Writ Petition to be entertained, in the PIL jurisdiction of the High Court, where it relates to individual disputes in the arena of criminal jurisdiction. The present case relates to mis-utilization of public funds

by those incharge of a Government aided institution, and does not relate to individual disputes in the arena of criminal jurisdiction. Further the jurisdiction which the High Court exercises, under Article 226 of the Constitution of India, is a part of the basic structure of the Constitution (**L. Chandra Kumar v. Union of India : AIR 1997 SC 1225**). As the power of judicial review is part of the basic structure, this power cannot be curtailed or negated even by an amendment to the Constitution, much less by legislation - plenary or subordinate.

11. The High Court of Uttarakhand P.I.L. Rules, 2010 have been made to guide the High Court in entertaining Writ Petitions in its Public Interest Litigation jurisdiction. That does not curtail or negate its jurisdiction to entertain cases where it is satisfied that larger public interest would be adversely affected if it fails to intervene. As the afore-extracted allegations are serious, and cannot be brushed aside, we are satisfied that an inquiry should be caused into these allegations, and action taken pursuant thereto in accordance with law.

12. In the present case, the allegations relate to misappropriation and mis-utilization of public funds. As this Court can even treat letters addressed to it, or newspaper reports, as Writ Petitions filed in public interest, we see no reason not to cause an inquiry into these serious allegations merely because a criminal investigation has been caused in the matter, and a Final Report is said to have been filed by the Investigating Officer.

13. Even if the Uttarakhand Audit Act, 2012 does not apply to the Society of which the fifth respondent is the Secretary, misutilization of public funds would, undoubtedly, require an inquiry to be caused, and action taken pursuant thereto in accordance with law. Accepting the submission of Mr. Neeraj Garg, learned counsel for the fifth respondent, that, in the absence of a specific provision either in the Uttarakhand Audit Act, 2012 or elsewhere, no inquiry can be caused, would enable persons, in charge of establishments which

receive public funds, to misappropriate such funds and yet claim immunity from inquiry, and action being taken pursuant thereto.

14. We may not be understood as having expressed any opinion, on whether or not the findings in the Inquiry Report are true, as it does appear that both the earlier Audit Report and the findings of the Inquiry Committee were recorded behind the back of the fifth and the sixth respondents, and without giving them an opportunity of being heard.

15. Since respondents 5 and 6 are entitled to put forth their case, and to contend that the findings in the Inquiry Report are not true, it is but appropriate that, before any action is directed to be taken against them, they be given an opportunity of being heard, and to rebut the findings recorded both in the Audit Report and in the Inquiry Report. In summary proceedings, under Article 226 of the Constitution, this Court would not take upon itself the task of examining the truth or otherwise of the allegations regarding mis-utilization or mis-appropriation of public funds, as these are all matters for the Government to enquire into, and take action thereafter in accordance with law. We see no reason, therefore, to examine the rival contentions on merits.

16. We were initially inclined to direct the Director, Higher Education to take action in accordance with law, within a specified time frame, after affording an opportunity of being heard to both respondents 5 and 6. Since Mr. Neeraj Garg, learned counsel for the fifth respondent, states that the Director, Higher Education is not the competent authority, we direct the first respondent-Principal Secretary, Higher Education to give both respondents 5 and 6 an opportunity to rebut the findings of the Inquiry Report, and place such material as they deem fit in support of their claim that these allegations are false; and then pass a reasoned order dealing with the contentions urged on behalf of respondents 5 and 6.

17. In case the first respondent is satisfied, thereafter, that action is required to be taken, he shall then take necessary action in accordance with law. The entire exercise culminating in a reasoned order being passed, and action being initiated thereafter, shall be completed with utmost expedition and, in any event, within four months from the date of production of a certified copy of this order.

18. The Writ Petition is, accordingly, disposed of. No costs.

(Ramesh Chandra Khulbe, J.)

18.06.2020

Rahul

(Ramesh Ranganathan, C.J.)

18.06.2020