

(2003) 04 AHC CK 0266

Allahabad High Court

Case No: C.M.W.P. No. 1911 of 2003

Ravindra Pratap Shahi

APPELLANT

Vs

Secretary, Hon"ble Chief Minister
and Others

RESPONDENT

Date of Decision: April 30, 2003

Acts Referred:

- Constitution of India, 1950 - Article 14, 226

Citation: (2003) 5 AWC 3914

Hon'ble Judges: R.S. Tripathi, J; M. Katju, J

Bench: Division Bench

Advocate: T.P. Singh and Anupam Kumar, for the Appellant;

Judgement

M. Katju, J.

Heard learned Counsel for the parties.

2. In this case on 11.2.2003 Standing Counsel was granted three weeks time to file counter - affidavit. Thereafter on 6.3.2003, again three weeks were allowed to Standing Counsel to file counter- affidavit. Ultimately on 1.4.2003, the Court granted three weeks and no more time to file counter - affidavit. When the case was listed on 23.4.2003 still counter - affidavit was not filed. Hence we heard the learned Counsel for the Petitioner and learned Standing Counsel and reserved the judgment.

3. Since no counter - affidavit has been filed despite several opportunities given to the Standing Counsel, we are left with no option but to treat the allegations in the writ petition to be correct.

4. In paragraph 2 of the writ petition it is alleged that by letter dated 25.10.2002 of the Special Secretary, Planning, Government of India, financial approval was given in the year 2002-2003 from Purvanchal Vikas Nigam Nidhi for the proposed project to be executed for district Sant Kabir Nagar and to be carried out from P.W.D. Marg via

Khaira Nibia to Govind Raj to Jajha Ghahora. Five kilometer road was to be painted by mud, huge pipe and R.R.C. Pulia of two meter was to be undertaken and for this purpose the job was to be carried out by Rural Engineering Services, Sant Kabir Nagar as per order of the Government. For this purpose a total sum of Rs. 63.05 lacs was approved for the whole project and out of this financial approval was given by the Government for Rs. 31.525 lacs. This amount of Rs. 31.525 lacs was to be kept in P.L.A. account of District Rural Development Authority (D.R.D.A.) out of which Rs. 23.65 lacs was given to the Rural Engineering Services, Sant Kabir Nagar as part payment vide letter dated 25.10.2002 Annexure - 1 to the writ petition. It is stated that this amount was to be utilised only for the said project which has to be completed by 31.3.2003 positively.

5. Tenders were invited by the Assistant Engineer, Rural Engineering Services for the above mentioned work. True copy of the notices in this connection are Annexure - 2 to the writ petition. In paragraph 5 of the writ petition it is alleged that the quotations of the Petitioner was lowest and accordingly he was given the contract on different dates to start the work of the project vide Annexure - 3 to the writ petition. It is alleged in paragraph 7 that after obtaining the order the Petitioner started the work of the said project and he was required to complete the last instalment of work by 9.12.2002. However, by letter dated 7.12.2002 the Assistant Engineer, Rural Engineering Services, Sant Kabir Nagar issued a letter directing the Petitioner to stop the project work immediately. It is alleged in paragraph 8 of the writ petition that the Petitioner was supposed to complete the work by 9.12.2002 and this letter was issued on 7.12.2002 by which time almost the whole of the work of the project was completed. Hence directing stoppage of the work of the project was wholly arbitrary and illegal. It is alleged that this was done because the Petitioner had not succumbed the illegal and unjustified demand of the Respondents. True copy of the letter dated 7.12.2002 is Annexure - 5 to the writ petition. The Petitioner has referred to the letter of Pariyojana Nideshak to the Executive Engineer dated 5.12.2002, copy of which is Annexure - 4 to the writ petition. This letter refers to the letter of District Magistrate, Sant Kabir Nagar dated 4.12.2002 by which he directed the work to be stopped. Various enquiries were made in this letter, e.g. when the tender was invited, when any action was taken regarding tenders, how much work has been done and how much payment has been made, and what is the balance etc.

6. The Petitioner has referred to the letter of the District Magistrate dated 11.12.2002, Annexure - 6 to the writ petition. The Petitioner has alleged that he is suffering great loss as he invested a huge amount and has completed almost the total work.

7. Since no counter - affidavit has been filed in this case we have to treat the allegations in the petition to be correct.

8. It appears that the Petitioner was given the work of the project and when he completed almost the whole of it, he has been asked to stop the work.

9. In our opinion, it is open to the Respondent to stop the work but then they have to pay compensation for the time, money and service the Petitioner rendered. The Government is expected to act fairly towards the citizens and it is not proper for it to make excuses.

10. A supplementary - affidavit has been filed before us. In paragraph 3 it is alleged that the Assistant Engineer, Sant Kabir Nagar wrote a letter dated 5.12.2002 to the Project Director D.R.D.A. Sant Kabir Nagar giving details regarding the project e.g. amount sanctioned and the amount released, date of submission, opening of tender, etc. True copy of the letter is Annexure-1 to the supplementary-affidavit. By letter dated 29.1.2003, the Special Secretary, U.P. Government directed the Chief Development Officer, Sant Kabir Nagar that the amount of Rs. 31.525 lacs be submitted to the Government Exchequer immediately vide Annexure-2 to the supplementary-affidavit. It is alleged that the letter dated 29.1.2003, has been issued only to deprive the Petitioner of his rightful claim to the money. The Petitioner has also referred to the letter dated 30.1.2003 of the Executive Engineer, Rural Development Service to the District Magistrate, Sant Kabir Nagar stating that the total work of the Project has almost been completed and stoppage of work which was almost at the verge of completion and the stoppage of payment to the Petitioner will create hardship to the public at large. True copy of this letter dated 30.1.2003 is Annexure-3 to the supplementary - affidavit.

11. On the facts of the case, we are of the opinion that the Government has not acted fairly in this case as it has not taken into consideration the work done by the Petitioner. We, therefore, dispose of this petition with the direction to the Chief Secretary, U. P., to either himself or through some senior officer nominated by him consider the amount of compensation to be paid to the Petitioner for the time, money, and service rendered by him and pay the same to him with 12% interest preferably within two months of production of a certified copy of this order after giving opportunity of hearing to the Petitioner.