

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

WRIT PETITION (PIL) NO. 159 OF 2023

29TH SEPTEMBER, 2023

Ram Babu

.....Petitioner.

Versus

State of Uttarakhand & others

....Respondents.

Counsel for the Petitioner	:	Mr. S.K. Mandal, learned counsel.
Counsel for the Respondent Nos.1 to 3 :		Mr. B.S. Parihar, learned Standing Counsel.
Counsel for the Respondent Nos.4 & 6 :		Mr. Vipul Sharma, learned counsel.

The Court made the following:

JUDGMENT:(per Hon'ble The Chief Justice Sri Vipin Sanghi)

Issue notice. Learned counsels appear and accept notice on behalf of respondent nos.1 to 4 and 6.

2. In the light of the order we propose to pass, we do not consider it necessary to issue notice to respondent no.5.

3. The petitioner has preferred the present petition, in public interest, making allegations that despite being divested of his charge as Municipal Commissioner of Municipal Corporation, Rudrapur, with immediate effect on 11.08.2023, respondent no.5 participated in the meeting of the Corporation held on 16.08.2023, allegedly, with a view to award 64 works to his chosen contractors.

4. Mr. Sharma, who appears on advance notice, has produced before us the resolution passed by the Municipal Corporation on 16.08.2023. The same is taken on record. He states that respondent no.5 was present in the meeting, in his capacity as the Municipal Commissioner, under Section 101 of the Uttarakhand Municipal Corporation Act, 1959, since he had not left his charge on 16.08.2023, when the meeting was held. He left the charge on the same date after the meeting. He further submits that the minutes of the meeting dated 16.08.2023 would show that no contract has been awarded. Mere approval was granted for undertaking of several developmental works by the Municipal Corporation. He submits that, in fact, no tender has been floated or awarded in pursuance of the said resolution. This statement of Mr. Sharma is taken on record, and the respondent-Municipal Corporation shall remain bound by the same.

5. The order divesting respondent no.5 from his capacity as the Municipal Commissioner dated 08.08.2023 states that the same shall be operative with immediate effect. The said order has been issued by the State in respect of the 46 officers, including respondent no.5. The name of respondent no.5 is mentioned at Sl. No.41 of the said governmental order. It appears to us that since the government order itself stated that the same was effective with immediate effect, mere delay in handing over the charge

did not authorize respondent no.5 to continue to function as the Municipal Commissioner beyond 08.08.2023, and his participation in the meeting held on 16.08.2023 in his capacity as the Municipal Commissioner was improper.

6. In the light of the aforesaid, we dispose of this petition with liberty to the Municipal Corporation, Rudrapur to hold another meeting for the purpose of ratification of the resolution passed in the meeting held on 16.08.2023. Only if the said resolution is ratified, and to the extent it is rectified, the resolution shall be given effect to.

7. The writ petition stands disposed of in the aforesaid terms.

8. Pending application, if any, also stands disposed of.

(VIPIN SANGHI, C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 29th September, 2023

NISHANT