

**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. 126 OF 2022**

**27<sup>TH</sup> JUNE, 2023**

**BETWEEN:**

Hari Mohan Singh .....Petitioner.

And

State of Uttarakhand & others ....Respondents.

Counsel for the Petitioner : Mr. K.P. Upadhayay, learned Senior Counsel assisted by Mr. Vikas Bahuguna, learned counsel.

Counsel for the Respondents : Mr. Pradeep Joshi, learned Additional Chief Standing Counsel.

**The Court made the following:**

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

**Urgency Application (IA No.09 of 2023)**

The petitioner has preferred the present urgency application. We allow the same and we take up the writ petition on board for hearing.

**Writ Petition (PIL) No.126 of 2022**

2. The petitioner has preferred the present writ petition to seek the following reliefs:-

*"(I) To issue writ, order and direction in the nature of certiorari quashing the order dated 21.07.2022 passed by respondent no.3 (**Annexure no.2 to this writ petition**).*

*(II) To issue writ, order and direction in the nature of mandamus to release payments in pursuance of the announcements made by Hon'ble Chief Minister and further in pursuance of the government order dated 23.12.2021 and 04.01.2022 (**Annexure no.4 to this writ petition**).*

(III) To issue writ, order and direction in the nature of mandamus to direct the respondents to forthwith release payment in pursuance of the announcement made by Hon'ble Chief Minister for which administrative and financial sanctions have been granted by the competent authority.

(IV) To issue writ, order and direction in the nature of mandamus to direct the respondents to grant financial as well as administrative sanction for the remaining announcement, for which administrative and financial sanctions were not given.

(V) Issue any other suitable writ, order or direction which this Hon'ble Court may deem fit, just and proper in the circumstances of the case as also in the interest of justice".

3. Upon issuance of notices, counter-affidavits have been filed by respondent nos.3 and 4. Respondent no.3, in his counter-affidavit, has stated as follows:-

"12. That the contents of paragraph no.12 of the said petition are only admitted to the extent that 05 announcement/ declarations were made. The details of the administrative and financial approval of the aforesaid 05 announcement/ declarations are as under:-

<i>Announcement/ Declarations Number</i>	<i>Administrative Approval (In Lakhs)</i>	<i>Financial Approval (In Lakhs)</i>
<i>1755/2021</i>	<i>447.24</i>	<i>100.00</i>
<i>1756/2021</i>	<i>473.74</i>	<i>100.00</i>
<i>1758/2021</i>	<i>96.76</i>	<i>96.76</i>
<i>1760/2021</i>	<i>476.00</i>	<i>100.00</i>
<i>1761/2021</i>	<i>417.87</i>	<i>100.00</i>

14. That in reply to the contents of paragraph no.14 of the said petition it is stated that after the administrative and financial approval of the aforesaid announcement/ declarations on 31.03.2022, the aforesaid amounts were allotted and released in favour of District Magistrate, Uttarkashi, but the said amounts could not be withdrawn on the said date, therefore the aforesaid sum were automatically remitted back to the State Government. The aforesaid information was provided to the State Government vide letter dated 05.04.2022 issued by the District Magistrate,

*Uttarkashi. Copy of letter dated 05.04.2022 is being marked and filed as Annexure No.C-1 to this affidavit.*

*15. That the contents of paragraph no.15 to 17 of the said petition are not related to the answering respondents, hence do not call for any reply from the deponent. However, it is imperative to state that on perusal of the agreement, it is clear that the said agreements have been executed in the financial year 2022-23, i.e. when the concerned authorities were well aware of the fact that the funds have been remitted back to the State Government and it is clear that the Nagar Panchayat, Purola has clearly erred in tendering works when no budget provisions were available for the same.*

*16. That in reply to the contents of paragraph no. 18 to 20 of the said petition it is stated that letter dated 31.05.2022 was received from Smt. Sushma Chauhan, Ward Member of Ward No.2, Nagar Panchayat, Purola addressed to the Hon'ble Chief Minister, wherein it was stated that the developments which are ought to be done under the aforesaid announcement/declaration have already been completed by utilizing other Central and State Funds and the funds which are now proposed to be released under the aforesaid announcement/declarations are likely to be misappropriated. In the said letter it was also stated that for initiating the said development work no agency is being hired through tendering process rather for completion of the said work services of a Junior Engineer are being hired on contractual basis. The roads coming under the PWD are also being completed by Junior Engineers whose services are being hired through contractual or outsourcing mode. Thus request was made by the said ward member to cancel the said announcement/declarations and save the public money. Taking cognizance of the above apprehensions raised in the said complaints as a precautionary measure, vide order dated 21.07.2022, after taking due approval of the Hon'ble Chief Minister the announcement/declarations were cancelled. When the aforesaid fact came to the knowledge of the public at large, letter dated 29.07.2022 was received from the petitioner wherein a request was made to revive the aforesaid announcement/declarations. In furtherance of the aforesaid request, letter dated 09.09.2022 and 27.09.2022 were issued by the State Government directing the District Magistrate, Uttarkashi to conduct an inspection w.r.t the location, physical condition and*

*finances involved against the work done in furtherance of the aforesaid announcement/declarations and thereafter submit a detailed report. In compliance of the aforesaid directions District Magistrate, Uttarkashi constituted a committee for conducting an inquiry and thereafter submitted his report dated 12.10.2022 apprising therein that in furtherance of the announcement/declarations bearing no. 1755/2021, 03 works have been completed 100% and 01 work has been completed to the extent of 60%, in furtherance of the announcement/declarations bearing no. 1756/2021, 02 works have been completed 100% and in furtherance of the announcement/declarations bearing no. 1761/2021, only 01 work has been done that too for name sake. Copy of letter dated 31.05.2022 sent by Smt. Sushma Chauhan, Ward Member, copy of order dated 21.07.2022, copy of letter dated 09.09.2022 and 27.09.2022 issued by the State Government and copy of report dated 12.10.2022 submitted by District Magistrate, Uttarkashi are being marked and filed as Annexure No.C-2, C-3, C-4 and C-5 respectively to this affidavit.*

*18. That in reply to the contents of paragraph no.22 of the said petition it is stated that after the aforesaid announcement/declarations funds were duly released in favor of the District Magistrate, Uttarkashi but as stated above the same were remitted back, hence the said budget never reached the implementing agency i.e Nagar Panchayat, Purola. Later when a complaint was received vide letter dated 31.05.2022, decision was taken to cancel the same vide order dated 21.07.2022.*

*22. That in reply to the contents of paragraph no.28 of the said petition it is stated that since after the thorough perusal of the report dated 12.10.2022, it has been brought on record that some development work has been done in furtherance of the aforesaid announcement/ declarations therefore on the basis of the said report, decision have been taken vide office order dated 12.12.2022 to revive 02 announcement/ declarations to the extent of the work done in furtherance of the announcement/ declarations strictly as per the figures appearing in the measurement book (MB). The details of the revived announcement/ declarations are as under:-*

Sr.	Announcement/	Subject announcement/	Name of the
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<i>No.</i>	<i>Declaration No.</i>	<i>declarations</i>	<i>Department</i>
<i>1</i>	<i>1755/2021</i>	<i>For development work of internal roads in Ward No.1, 2 &amp; 3 falling under the jurisdiction of Nagar Panchayat, Purola, Legislative Assembly, Purola, funds to the extent of 97.98 lakhs</i>	<i>Urban Development</i>
<i>2</i>	<i>1756/2021</i>	<i>For development work of internal roads in ward no.5 &amp; 6 falling under the jurisdiction of Nagar Panchayat, Purola, Legislative Assembly, Purola, funds to the extent of 56.68 lakhs</i>	<i>Urban Development</i>

*Copy of office order dated 12.12.2022 is being marked and filed as Annexure No.C-6 to this affidavit".*

4. The submission of learned Senior Counsel for the petitioner is that the State Government gave an assurance to the Nagar Panchayat, Purola that the Nagar Panchayat may proceed to get executed the aforesaid works, and funds would be released in the financial year 2022-23. However, there is not a shred of paper on record in support of this submission. Learned counsel has only referred to the earlier sanction granted in the financial year 2021-22 in respect of the five announcements made by the Chief Minister for execution of development works, which have been extracted in Paragraph No.12 of the counter-affidavit referred to above.

5. Pertinently, in respect of the said development works, which were announced, the funds were also released in favour of the Nagar Panchayat on 31.03.2022. However, since the funds were not utilized in the said financial year, they lapsed. Without obtaining funds from the State, we fail to understand as to how the Nagar Panchayat proceeded to award the works and made financial commitments.

6. The respondent have also placed on record the compliant made by one Smt. Sushma Chauhan, which was made on 31.05.2022, making serious allegations against the Panchayat of charging 10% commission for award of contracts, and also alleging that the Nagar Panchayat intends to siphon of the funds in the name of public works.

7. Pertinently, several of the works in respect of which the announcements were made by the Hon'ble Chief Minister have been executed, as disclosed in the counter-affidavit.

8. The petitioner has failed to disclose as to what is the petitioner's vested right in his individual capacity, or as the Chairman of the Nagar Panchayat, for seeking a mandamus to the State to release the funds in relation to the works for which announcements were made by the Chief Minister earlier, and the funds were released in the financial year 2021-22.

9. We are, therefore, not inclined to issue any direction, as sought in this writ petition. The petition is meritless, and the same is, accordingly, dismissed.

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

**(VIPIN SANGHI, C.J.)**

**(RAKESH THAPLIYAL, J.)**

Dated: 27<sup>th</sup> June, 2023

NISHANT