

THE HIGH COURT OF MEGHALAYA

WP(C) No.173/2013

Shri. Lokman Hussain,
S/o Nurul Hoque,
R/o Burirjhar P.O. Hollaidanga P.S. Tikrikilla,
West Garo Hills District, Meghalaya. :: Petitioner

-Vs-

1. Government of Meghalaya represented by the Chief Secretary of Meghalaya.
2. The Deputy Commissioner & District Programme Coordinator, West Garo Hills, Meghalaya.
3. The Block Development Officer (B.D.O.) & Programme Officer (MGNREGS), Selsella C&RD Block, Selsella, West Garo Hills, Meghalaya.
4. Shri. Manikchand Sk,
S/o Mehrab Ali,
R/o Burirjhar P.O. Hollaidanga P.S. Tikrikilla,
West Garo Hills, Meghalaya. :: Respondents

BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

For the Petitioner : Mr. A Khan, Adv
For the Respondents : Mr. KP Bhattacharjee, GA for respdt.1-3
None appears for the respdt.No.4
Date of hearing : **29.04.2014**
Date of Judgment & Order : **29.04.2014**

JUDGMENT AND ORDER (ORAL)

In this writ petition, the petitioner is assailing the order dated 17.05.2013 passed by the Block Development Officer (BDO) & Programme Officer MGNREGS, Selsella C&RD Block, West Garo Hills, Meghalaya (Annexure-A3 to the writ petition) for approving the election held on

03.04.2013 for appointment of the present President, Secretary and Women member of the Village Employment Council (for short 'VEC').

2. Heard Mr. A Khan, learned counsel for the petitioner and Mr. KP Bhattacharjee, learned GA appearing for the respondents No.1-3. None appears for the respondent No.4 inspite of proper service of notice of the present writ petition to him.

3. The National Rural Employment Guarantee Act, 2005 (NREGA) was enacted with an object to enhance livelihood, security of households in rural areas of the country by providing at least 100 days of guaranteed wages, employment in every financial year to every household whose adult members volunteer to do unskilled manual work and for matters connected therewith. The Act provides that the State Govt. shall guarantee employment in rural areas by notification making a scheme for providing not less than 100 days of guaranteed employment in a financial year. The Governor of Meghalaya in exercise of the powers conferred by Sub-Section (1) of Section 4 of the National Rural Employment Guarantee Act, 2005 (NREGA) was pleased to make the Scheme called "Meghalaya Rural Employment Guarantee Scheme (MREGS), 2006". Under the said Scheme, the principal authority is the State Govt. for the purpose of planning, monitoring and implementation of MREG Scheme, which includes Governing Body of DRDA. At the village level, the authority is the VEC. The VEC is the village unit and all the male and female heads of the household shall be the members of the VEC of the village. The members of the VEC shall hold a public meeting at a conspicuous venue in the village to elect the Governing Body or Governing Members of the VEC of the village in a democratic process.

4. It is stated that Burirjhar village convened a Gram Sabha meeting on 23.09.2012 for electing the members of the VEC. In that meeting, the household heads of the Burirjhar village also participated and unanimously elected the present petitioner as President, Shri.Ahmed Hussain, as Secretary and Smti.Zesmina Khatun, as Women member of the VEC. The said election dated 23.09.2012 for electing the petitioner and others as President, Secretary and Women Member of the VEC of Burirjhar village respectively was also approved by the Block Development Officer (BDO) & Programme Officer MGNREGS, Selsella C&RD Block, West Garo Hills, Meghalaya (respondent No.3) vide order dated 29.10.2012. It is also stated in the writ petition that the scenario in the village i.e. Burirjhar village had been changed because of the Assembly Election, 2013 and as a result, it is alleged that there was arbitrary political interference in the management of the village, distribution of the scheme and also for dissolution of the VEC, in which the petitioner is the President. It is also further alleged that the villagers had an apprehension that the VEC for which the petitioner is the President would be dissolved. Accordingly, they filed a representation dated 10.05.2013 signed by 158 household heads requesting the respondent No.3 not to dissolve the VEC under the President-ship of the petitioner, as the job card holders of the village did not have or do not have any complaint or grievances against the petitioner.

5. It is further stated that on 03.04.2013 there was a purported public meeting constituted illegally and also in defiance of the rules and regulations of MNGREGS for electing the members of the VEC of Burirjhar village. The meeting held on 03.04.2013 for electing the new members of the VEC of Burirjhar village had been approved by the respondent No.3 vide order dated 17.05.2013 (impugned order) and the respondent No.4 is the Secretary of the newly constituted VEC. It is also stated that on 18.05.2013,

as many as 158 job card holders also filed a representation dated 18.05.2013 to the respondent No.3 stating inter-alia that the job card holders reposed confidence of the VEC of which the petitioner is the President and prayed for reconsideration of the approval of the VEC in which the respondent No.4 is the Secretary. It is also stated that the no action had been taken by the authorities on that representation dated 18.05.2013 filed by the 158 job card holders. It is also the further case of the petitioner that there was no enquiry for the alleged complaints made by some of the interested persons against the petitioner inasmuch as, the petitioner was never called for his show cause statement or was never allowed to participate in any enquiry against him. As such, the petitioner had been condemned unheard and also the said election dated i.e. 03.04.2013 was held in defiance of the rules and regulations.

6. The respondents had filed affidavit-in-opposition. In Para 5 of the affidavit-in-opposition, it is clearly stated that the answering deponent did not receive any complaint against the petitioner during the early part of his President-ship. However, complaints against the Secretary of the erstwhile VEC Shri. Ahmed Hussain were received by the Office of the respondent No.3 from a section of the job card holders alleging misappropriation of the allotted funds. So on perusal of the affidavit-in-opposition filed by the respondents, it appears that there is no complaint against the petitioner as President of VEC for the misappropriation of the allotted funds. In Para 7 of the affidavit-in-opposition, it is also stated that the respondent No.3 had conducted a discreet inquiry into the allegations against the petitioner and the Secretary of the VEC and had found sustainable merit in those allegations. In nowhere of the affidavit-in-opposition, it is stated that the petitioner was given any opportunity to show cause or opportunity of hearing in the so called inquiry for the allegations against him. Therefore, it is

apparent on the face of the affidavit-in-opposition filed by the respondents that no opportunity was afforded to the petitioner to submit his explanation in the inquiry. Therefore, there was violation of principles of natural justice.

7. Mr. KP Bhattacharjee, learned GA appearing for the State respondents stated that in the said Scheme, there is no procedure prescribed for conducting an inquiry for the alleged misappropriation of funds and also for removal of the members of the VEC. It is fairly settled law, that if there be any complaint against a particular person, opportunity should be afforded to that person for the alleged complaint and also that one cannot be condemned unheard. It appears from the case of the respondents that there was complaint alleging misappropriation of the allotted funds and also the proceedings of the election held on 03.04.2013 for electing the new members of the VEC shows that there had been alleged misappropriation of the allotted funds by the petitioner. The said allegation against the present petitioner should not be accepted without giving any opportunity of being heard to the present petitioner.

8. In the above factual backdrop, the election held on 03.04.2013 for electing the members of the VEC for Burirjhar village on the allegation that the allotted funds had been misappropriated by the petitioner is called for interference only for violation of natural justice and accordingly, the said proceedings of the election dated 03.04.2013 and the approval order dated 17.05.2013 are hereby quashed and set aside. As the village Burirjhar needs VEC for implementation of the Scheme, there should be fresh election for electing the members of the VEC of Burirjhar village within a period of one month.

9. Mr. KP Bhattacharjee, learned GA appearing for the State respondents also contended that there are provisions under the said Scheme i.e. paras 25 & 26 for monitoring the nature of the work carried out by the VEC and also for implementation of the scheme. Accordingly, the concerned BDO is directed to monitor the scheme as provided in the Scheme of 2006. In the interregnum, till election for new members is completed and finalized, the concerned BDO and his Office may carry out or look into the works for the Burirjhar village under the MREG Scheme. The petitioner is to approach the respondents for conducting a new election with a certified copy of this judgment and order. It is also made clear that one month's time for completion and finalization of the election mentioned above, is from the date of receipt of a certified copy of this judgment and order.

10. With the above observations and directions, this writ petition is allowed.

JUDGE

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