

THE HIGH COURT OF MEGHALAYA

WP(C) No.273/2013

Shri. Shohidur Rahman Ahmed,
S/o (L) Sobur Uddin Sheikh,
aged about 35 years,
R/o Bhangarpar Village,
West Garo Hills District, Meghalaya.

::: Petitioner

-Vs-

1. The Govt. of Meghalaya represented by the Chief Secretary of Meghalaya.
2. The Deputy Commissioner & District Programme Coordinator, West Garo Hills District, Meghalaya.
3. Block Development Officer (B.D.O.) & Programme Officer, (MGNREGS) Selsella C&RD Block, Selsella, West Garo Hills District, Meghalaya.
4. Shri. Monser Ali,
R/o Bhangarpar Village,
West Garo Hills District, Meghalaya
5. Shri. Johirul Islam Sarkar,
S/o (L) Abdul Kayam Sheikh,
R/o Pathorkata, PS Tikrikilla,
West Garo Hills District, Meghalaya.

BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

For the Petitioner	:	Mr. N Khan, Adv.
For the Respondents	:	Mr. S Sen Gupta, GA. Mr. AH Hazarika, Adv
Date of hearing	:	22.05.2014
Date of Judgment & Order	:	27.05.2014

JUDGMENT AND ORDER

By this writ petition, the petitioner is praying for quashing the order of the BDO & Programme Officer, (MGNREGS), Selsella C&RD Block, Selsella, West Garo Hills District, Meghalaya dated 30.08.2013 for approving the selection of President, Secretary (respondent No.4) and Woman member

of the Village Employment Council (VEC) of Bhangarpar village and also for quashing the Resolution dated 24.08.2013 passed in a meeting of the male and female heads of the households of Bhangarpar village held on 24.08.2013 for selecting the President, Secretary and Woman member of the VEC of Bhangarpar village without following the basic procedure for election.

2. Heard Mr. N Khan, learned counsel for the petitioner, Mr. S Sen Gupta, learned GA appearing for the respondents No.1-3 and Mr. AH Hazarika, learned counsel for the private respondent No.4. None appears for the respondent No.5.

3. The Parliament in the Fifty Sixth year of the Republic of India, enacted the Act called “The National Rural Employment Guarantee Act, 2005 (for short “the said Act of 2005”)” to provide for the enhancement of livelihood security of the households in rural areas of the country by providing at least one hundred days of guaranteed wage employment in every financial year to every households whose adult members volunteer to do unskilled manual work and for matters connected therewith or incidental thereto. Under Section 4 of the said Act of 2005 for the purposes of giving effect to the provisions of Section 3 (Guarantee of rural employment to poor households) every State Govt. shall, within 6(six) months from the date of commencement of this Act, by Notification, make a Scheme, for providing not less than one hundred days of guaranteed employment in a financial year to every household in the rural areas covered under the Scheme and whose adult members, by application, volunteer to do unskilled manual work subject to the conditions laid down by or under this Act and in the Scheme. The Governor of Meghalaya, in exercise of the powers conferred by Sub-Section (1) of Section 4 of the said Act of 2005, was pleased to make “Meghalaya Employment Guarantee Scheme (MREGS)”.

4. Under the MREGS, the Community & Rural Development Department shall be the implementing Department for the Scheme. Para 7 of the MREGS, clearly provides that who are the local councils/authorities under the MREGS. The Village Employment Council (VEC) shall be constituted at the village level by every village. The members of the VEC shall consist of every male and female heads of each household. The VEC shall be invested with the responsibility of Gram Sabha in so far as NREGS Scheme is concerned, after approval by the DPC or his representative i.e. Programme Officer/BDO. Para 7 of the MREGS further provides that there shall be three elected members from each VEC including the traditional headmen and female member to represent VEC at AEC (Area Employment Council). It would be more profitable to quote Para 7 of the MREGS, which reads as follows:-

“7. Local Council/Authorities:

The Guidelines for the National Rural Employment Guarantee Act state that “where Part Nine of the Constitution does not apply, Local Councils/Authorities as mandated by the State concerned will be invested with corresponding responsibilities”.

Since Part IX of the Constitution does not apply to Meghalaya Local Councils/Authorities as detailed under shall be invested with corresponding responsibilities for the MREGS as under:-

A. Village Employment Council (VEC)

1. At the village level the Village Employment Council shall be constituted by every village.

2. The members of the VEC will consist of every male and female heads of each household.

3. The VECs shall be invested with the responsibility of Gram Sabha in so far as NREGS Scheme is concerned, after approval by the DPC or his representative i.e. Programme Officer/BDO.

4. There shall be three elected members from each VEC including the traditional headmen and female member to represent VEC at AEC.

5. The meeting of the VEC will be chaired by a village headman/Traditional Village Head and a Secretary for the VEC may be elected by the members of the VEC from amongst the members. These three officer bearers of VEC to represent the AEC shall be elected in a general body meeting of VEC.

B. Area Employment Councils (AECs)

1. The Area Employment Councils (AECs) shall be constituted at the Cluster level comprising of villages within a 2.5 Km radius.

2. This council will consist of 3(three) elected representatives from each VEC.

3. The 3(three) elected members will consist of one female, one male and the village traditional Headman/Nokma of the village.

4. The total members of the AEC will not exceed 20(twenty) numbers.

5. The Cluster level AECs should be identified in consultation and concurrence with the VECs and BECs.

6. 30% of the members of the AEC must be women, and in case of any shortfall, the BEC may nominate additional women members to ensure that 30% of the AEC comprises women.

7. The term of the AEC members will be one year.

If there are any complaints about any of the AEC members, a special meeting of the VEC (or VECs sitting jointly as the case may be) shall be convened by the BDO or his/her representative to effect any changes in the VEC as may be agreed to by the Village Employment Council(s).

C. Block Employment Council (BEC)

- The existing Block Selection Committee shall be notified as Block Employment Councils (BECs) for every block. And shall be invested with the responsibilities of the Block Panchayat.

D. District Employment Council (DEC)

- At the District level, the Governing Body of the DRDA shall be notified as the District Employment Council and invested with the responsibilities of the District/Zila Panchayat.

All references in the guidelines to the Gram Panchayat (GP) shall imply the AEC. All references to the Gram Sabha in the guidelines shall imply the VEC."

5. Para 8 of the MREGS provides that all persons belonging to a household and registered shall be entitled to employment under the Scheme for as many days as each applicant may request, subject to a maximum of one hundred days per household in a given financial year. The Area Employment Council (AEC) shall be responsible for receiving applications for registration and for issuance of Job Cards. There shall be a Community Coordinator to assist the Gram Sevak and the VEC in maintaining the records and also to assist the Technical Assistants being provided at the Block level. There shall be a Programme Officer (PO) at each Block level. The Programme Officer will be a full-time dedicated officer and may be taken on deputation. The Deputy Commissioner or a district level officer of appropriate rank shall be the District Program Coordinator (DPC) for the implementation of the Scheme in the District level. The distinctive feature of the MREGS is that the AEC shall accept the applications for work filed by the villagers having job cards. The applications shall be valid if the wage employment sought by a household is at least for 14 (fourteen) days and the aggregate employment provided to the household is not more than 100 days. List of all such applications shall be maintained in the 'Applications for Work Register'. Para 12 of the MREGS provides that if an applicant is not provided employment within 15(fifteen) days of receipt of the application seeking work or from the date on which the employment has been sought, in case of advance application, whichever is later, he/she can apply to the Gram Sevak for unemployment allowance. Para 12(i) of the MREGS reads as follows:-

“12. Unemployment Allowance

(i) If an applicant is not provided employment within 15 days of receipt of the application seeking work or from the date on which the employment has been sought, in case of advance application, whichever is later, he/she can apply to the Gram Sevak for unemployment allowance. The Gram Sevak shall forward such applications to the PO who shall, after due

enquiry, sanction the unemployment allowance or reject the application as the case may be.”

6. In a writ petition filed by the petitioner of the present writ petition i.e. WP(C)No.(SH)129/2013 and another WP(C)No.(SH)130/2013, this Court passed a common judgment and order dated 28.05.2013 that “taking into consideration of the innocuous prayers sought for in the writ petitions, these writ petitions are disposed of by directing the respondents that the procedure prescribed should be followed in case a new constitution of the VEC is required. Till the constitution of the new VEC, the petitioners shall allow to continue in their respective posts. It is made clear that by this Order, there is no embargo to the respondents in constituting the new VEC.”

7. The issue to be decided in the present writ petition is as to whether the selection of the President, Secretary and Woman member of new VEC in the meeting of the job card holders/villagers/Gram Sevak held on 24.08.2013 is the correct procedure contemplated in the MREGS or not?. Para 7 of the MREGS, which had been quoted above, had clearly provided that “there shall be elected members from each VEC including the traditional headmen and female member to represent VEC at AEC. The meeting of the VEC will be chaired by a village headman/Traditional Village Head and a Secretary for the VEC may be elected by the members of the VEC from amongst the members. These three officer bearers of VEC to represent the AEC shall be elected in a general body meeting of VEC”. The procedures for conducting such elections are not provided in the MREGS. It is fairly settled law that the procedures for election in a democratic manner is not provided in the Act or Scheme for a particular election generally procedures prescribed for election in the Representation of People Act, 1951 (for short ‘the said Act of 1951’) enacted by the Parliament and the conduct of Election Rules 1961

are to be followed. The said Act of 1951, which was passed by the Parliament under Article 327 of the Constitution of India, makes detailed provisions in regard to all matters and all stages connected with elections to the various legislatures in this country. It is now well settled that the word "election" has been used in Part XV of the Constitution in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the legislature. The use of the expression "conduct of elections" in article 324 of the Constitution of India specifically points to the wide meaning.

8. Under Section 31 of the said Act of 1951, there should be a public Notification of the intended election inviting nominations of candidates for such election and specifying the place at which the nomination papers are to be delivered. Section 21 of the said Act of 1951 provides for appointment of Returning Officers. The general duty of the Returning Officers under Section 24 of the said Act of 1951 is to do all such acts and things as may be necessary for effectually conducting the election in the manner provided by Act i.e. the said Act of 1951 and rules or orders made there-under. Under Section 36 of the said Act of 1951, a date shall be fixed for scrutiny of the nomination of the candidates. Under Section 38 of the said Act of 1951 clearly provides that the Returning Officer shall prepare and publish the list of contesting candidates. The elections will be held on the date notified in the notice for elections. Therefore, in the present case, even election of the President, Secretary and Woman member of VEC shall, at least, have some trappings of the election such as, notice for election mentioning the date of election and also the list of the contesting candidates and the election should be conducted by the Returning Officers, and the Returning Officer in the present case, may be a person/officer/representative of the Programme Officer/BDO. There should be transparency in conducting the election of the

President, Secretary and Woman member of the VEC of Bhangarpar village. The villagers in a Gram Sevak meeting cannot select the President, Secretary and Woman member without following the basic procedure for an election.

9. In the present case, inspite of clear directions of this Court in the said common judgment and order dated 28.05.2013 passed in WP(C)No.(SH)129/2013 and WP(C)No.(SH)130/2013, to follow the procedures for new constitution of VEC as provided under the MREGS, the Gram Sevak of Bhangarpar village, in its meeting held on 24.08.2013, selected the President, Secretary and Woman member of Bhangarpar VEC in clear violation of the directions of this Court in the said common judgment and order dated 28.05.2013 and the procedures for constitution of VEC and by the impugned order dated 30.08.2013, the BDO and Programmed Officer, MGNREGS, Selsella, C&RD Block, Selsella approved the meeting. This Court is not taking up contempt proceeding only for the simple reason that the concerned BDO and concerned Gram Sevak of Bhangarpar village might have not willfully and deliberately violated the directions of this Court in the said common judgment and order dated 28.05.2013 as they had misunderstood the procedures for election, even for a simple election.

10. It is cautioned that the concerned authority i.e. BDO and others, inspite of making them clear, what is election and the simple procedures for election, have selected the President, Secretary and Woman member of new VEC of Bhangarpar village in defiance to the directions of this Court in the said common judgment and order dated 28.05.2013, they have to face the consequences before the law.

11. For the foregoing reasons, the impugned resolution dated 24.08.2013 and impugned order dated 30.08.2013 are hereby quashed.

There shall be election of the President, Secretary and Woman member of Bhangarpar village in compliance with the directions of this Court in the said Judgment and Order dated 28.05.2013 as soon as possible and till the constitution of new VEC, in the interest of job card holders and the villagers of Bhangarpar village, the B.D.O. & Programme Officer, MGNREGS, Selsella, C&RD Block, Selsella and his representative shall carry out the functions/works of VEC Bhangarpar village.

12. With the above observations and directions, this writ petition is allowed to the extent indicated above.

JUDGE

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