

THE HIGH COURT OF MEGHALAYA

AT SHILLONG.

WP(C) No. 25/2012

1. Shri Surajul Islam Kazi,
S/o (L) Nur Mohammad Kazi,
R/o Phershakhandi Village,
P.S. Phulbari, West Garo Hills District,
Meghalaya.
2. Shri Ahmad Ali,
S.o Momuruddin S.K,
R/o Persakandi village,
West Garo Hills, Meghalaya.
3. Shri Rafiul Islam,
S/o Shri A.Q.Mondal,
R/o Persakandi village,
West Garo Hills, Meghalaya.
4. Shri Jala Hussian,
S/o Shri Siddik Ali,
R/o Persakandi village,
West Garo Hills, Meghalaya.
5. Shri Shobulal SK,
S/o Shri Abdul Bafen SK,
R/o Persakandi village,
West Garo Hills, Meghalaya.
6. Smti Anjuaktra Begum,
W/o Amzed Hussain,
R/o Farshakandi Village,
West Garo Hills.

.....Petitioners.

Versus

1. The State of Meghalaya Represented
By the Commissioner and Secretary,
Community and Rural Development,
Shillong.
2. The Deputy Commissioner/ District
Programme Co-Ordinator of Mahatma
Gandhi National Rural Employment
Guarantee (M.G.N.R.E.G) Scheme,
West Garo Hills District, Meghalaya.

3. The Block Development Officer/
Programme Officer, Selsella Block,
West Garo Hills District Collector,
Meghalaya.
4. Shri Saiful Islam,
S/o Shri Shukur Ali,
West Garo Hills District.
5. Shri Bahadur Rahman,
S/o Shri Zuhmul Haque,
West Garo Hills District.
6. Smti Anjuwara Begum,
W/o Shri Sadibur Rahman,
West Garo Hills District, Meghalaya.
7. Pershakandi Village Employment Council,
Pershakandi Village,
West Garo Hills District.
8. Smti Moksena Begum,
D/o Md. Abdul Gobber Shah,
R/o Pershakandi village,
West Garo Hills District.

.....Respondents.

**BEFORE
THE HON'BLE MR. JUSTICE T. NANDAKUMAR SINGH**

For the petitioner	:	HL Shangreiso, Advocate.
For the respondents	:	ND Chullai, Sr. Advocate AS Siddique, Advocate
Date of hearing	:	30-1-2014
Date of Judgment	:	30-1-2014

JUDGMENT AND ORDER (ORAL)

Heard Mr. HL Shangreiso, learned counsel appearing for the petitioners, Mr. ND Chullai, learned Sr. Govt. Advocate assisted by Mr. AH Hazarika, learned counsel appearing for the respondents No. 1 to 3 and also Mr. AS Siddique, learned counsel appearing for the respondents No. 4, 5 and 6.

2. At the very outset, for the compelling reasons, this court is making an observation that the respondents No. 4, 5 and 6 are abusing the judicial process for the reasons mentioned in the coming paras.

3. Some complaints had been filed against the respondents No. 4, 5 and 6 for the irregularities in implementation of the projects under the MGNREGS. For such irregularity, there was a judicial enquiry against the respondents No. 4, 5 and 6. The judicial enquiry ended in favour of respondents No. 4, 5 and 6 with the finding that there was no irregularity in implementing the project by respondents No. 4, 5 and 6. A copy of the enquiry report is available at Annexure – A to the present writ petition.

4. Basing on the said enquiry report which is in favour of the respondents No. 4, 5 and 6, the Deputy Commissioner & District Programme Co-Ordinator, MGNREGS, West Garo Hills, Tura passed an order dated 4-9-2011 that an FIR should be lodged against the complainants for the reason that because of the false complaint, there was interference in the smooth implementation of the MGNREGS. In spite of the said order of the Deputy Commissioner & District Programme Co-Ordinator, MGNREGS, West Garo Hills, Tura, dated 4-9-2011, the Block Development Officer & Programme Officer, MGNREGS issued an order dated 16-1-2012 for holding an election for the post of Secretary, President and Women member of the Village Employment Council (for short VEC). The respondents No. 4, 5 and 6 being aggrieved by the said order of the Block Development Officer & Programme Officer, MGNREGS, dated 16-1-2012 file a writ petition No. WP(C) (SH) 1/2012 along with the misc. application before this court for assailing the said order of the Block Development Officer & Programme Officer, MGNREGS, Selsella C & RD Block, dated 16-1-2012.

5. This court passed an order dated 27-1-2012 in the misc. application, i.e. MC (SH) No. 1/2012 (reference WP(C) (SH) No.1/2012) for staying the operation of the said order dated 16-1-2012 for holding the election.

6. In spite of the said orders of this court dated 27-1-2012 for staying the election for the post of Secretary, President and Women member of the concerned VEC, the respondents No. 4, 5 and 6 had filed the nominations for the election which was held on 31-1-2012. It is contended by the learned counsel for the petitioners that the respondents No.4, 5 and 6 who already obtained the said stay order of this court dated 27-1-2012 in the writ petition filed by them, they had participated in the election which was held on 31-1-2012. It is also an admitted case of the petitioners that they also had participated in the election. Mr. HL. Shangreiso, learned counsel appearing for the petitioners contended that they were not aware of the interim order dated 27-1-2012 passed by this court. In the pleadings of the writ petition, nothing had been mentioned about any prejudice and disadvantage caused to them in participating the said election because of the said interim order of this court dated 27-1-2012. Further, it appears that the election was held on 31-1-2012. This court is of the considered view that the respondents No. 4, 5 and 6 who had already obtained the said order on 27-1-2012 for staying the election had participated in the election in spite of knowing quite well that there is an order of this court dated 27-1-2012. After they had been elected in the said election held on 31-2-2012, it appears that they had approached the court for withdrawal of the WP(C) (SH) No. 1 of 2012. Therefore, it is very clear that the demeanor of the respondents No. 4, 5 and 6 is not acceptable and they are abusing the court proceeding.

7. Now the question left to be decided in this case, is that whether the petitioner is entitled to get relief sought for in the present writ petition for setting aside the result of the election held on 31-1-2012.

8. As stated above, no material had been made out by the petitioners for interfering with the result of the said election, but what they had said in the writ petition was that they were not aware of the interim order of this court passed on 21-1-2012. Proper remedy for holding the election inspite of the interim order dated 21-1-2012 passed in MC (SH) No. 1/2012 (reference WP(C) (SH) No. 1/2012 is contempt of Courts proceeding.

9. In this peculiar case, the court put a pointed question about the term of office of the Secretary, President and Women member of the VEC to the learned counsels appearing for the parties. Mr ND Chullai, learned Sr. counsel appearing for the respondents very frankly answered that there is no provision prescribing the terms of office of the Secretary, President and Women member of the VEC in the scheme called Meghalaya Rural Guarantee Scheme 2006. However, Mr. ND Chullai, learned Sr. counsel appearing for the respondents submitted that the term of the Area Employment Counsel is one year as per para No. 7 of the said scheme 2006 which reads as follows:

“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 to the VEC for VECs sitting jointly as the case may be/shall be convened by BDO or his/her representative to effect any changes the VEC as may be agreed to by the village Employment Council(s)”.

9. It is also very clear from the said schemes 2006 that the members of the Area Employment Council are to be selected from the members of the VEC. Mr. ND Chullai, learned Sr. counsel appearing for the respondents submits at the Bar that the term of the VEC is normally one year. In the peculiar facts and circumstances of the case, this court is compelled to make an observation that the term of respondents No. 4, 5 and 6 as the Secretary, President and Women member of the Phershakandi VEC would be one year from the date of declaration of the election i.e. 31-2-2012. It appears that the term of the respondents No. 4, 5 and 6 as Secretary, President and Woman member of VEC had expired. The authority concerned are directed to hold the election, in accordance to the rules and procedures, for the Secretary, President and Women member of the VEC Phershakandi village, and the election should be completed within 45 days from the date of receipt of this order. Mr. ND Chullai, learned Sr. counsel appearing for the respondents is requested to inform all the authorities that the term of the VEC would be one year as it is clear from the said scheme i.e. the Meghalaya Rural Employment Guarantee Scheme, 2006. Registry is directed to furnish a copy of this order to the learned counsels appearing for the parties.
10. With the above observations and directions, this writ petition stands disposed of.

JUDGE

S.Rynjah