

HIGH COURT OF TRIPURA
AGARTALA
WP(C)No.227 of 2023

Shri Parimal Chandra Sen,
son of late Ruhini Kumar Sen,
resident of Badharght Chowmuhani,
P.O. Siddhi Ashram, P.S. A.D. Nagar,
District-West Tripura, PIN-799003

.....Petitioner(s)

Versus

1. The Union of India ,
represented by its Secretary,
Ministry of Rural Development,
Department of Rural Development,
Mahatma Gandhi NREGA Division,
Government of India, Krishi Bhavan,
New Delhi, PIN-110001

2. The State of Tripura,
represented by its Chief Secretary,
Government of Tripura, P.O. Secretariat,
P.S. New Capital Complex, District-West Tripura,
PIN-799010

3. The Principal Secretary,
Rural Development Department,
Government of Tripura, P.O. Secretariat,
P.S. New Capital Complex, District-West Tripura,
PIN-799010

4. The Deputy Secretary,
Rural Development Department,
State MGNREGA Cell, Government of Tripura,
P.O. Secretariat, P.S. New Capital Complex,
District-West Tripura, PIN-799010

5. Sri Tapan Baidya,
son of Unknown,
resident of Madhyapara, Belonia Town,
P.O. & P.S. Belonia, District-South Tripura,
PIN-799155

6. Smt. Madhumita Bhattacharya,

wife of Unknown,
resident of Litchubagan,
Opposite Army MES, P.O. Kunjaban,
P.S. New Capital Complex, District-West Tripura,
PIN-799006

7. Smt. Jamuna Debnath,
wife of Nityananda Debnath,
Village & P.O. Salema, Kamalpur,
Dhalai District, PIN-799278

8. Sri Brajendra Kishore Sinha,
son of Unknown, resident of Kamalpur,
P.O. Halahali, District-Dhalai, PIN-799283

.....Respondent(s)

For Petitioner(s)	:	Mr. A. Bhowmik, Adv.
For Respondent(s)	:	Mr. B. Majumder, DSGI. Mr. D. Bhattacharya, G.A. Mr. Soumyadeep Saha, Adv.

Date of Hearing and Judgment

& Order : 19.04.2023

Whether fit for reporting : YES

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & Order(Oral)

Heard Mr. A. Bhowmik, learned counsel appearing for the petitioner as well as Mr. B. Majumder, learned DSGI appearing for the Union of India-respondent and Mr. D. Bhattacharya, learned G.A. appearing for the State-respondents.

2. The petitioner approaches this Hon'ble Court by way of filing this present petition under Article 226 of the Constitution of India seeking Writ of Certiorari for setting aside the selection process for the post of Ombudsman under MGNREGA for four districts namely South Tripura,

Sepahijala, Khowai and Dhalai of the State of Tripura vide advertisement bearing dated 25.01.2022.

3. The petitioner has further seeks a Writ of Certiorari for setting aside the appointment of the private respondents in the post of Ombudsman under MGNREGA for the aforesaid four districts pursuant to advertisement dated 25.01.2022. The petitioner has further urged before this court for setting aside the reply dated 13.02.2023 whereby the complaint filed by the petitioner has been disposed of by the respondent No.4. The petitioner has raised his grievance regarding violation of the Revised Guidelines for appointment of Ombudsman issued by the respondent No.1 dated 21.01.2021 under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005.

4. The petitioner has further raised his grievances regarding violation of the right of the petitioner under Article 14 and 16 of the Constitution of India and prays for a direction to appoint the petitioner as Ombudsman under the MGNREGA. The Rural Development Department, State MGNREGA Cell, Government of Tripura issued an advertisement dated 20.02.2021 inviting application for the post of Ombudsman from eligible candidates. In the said advertisement six posts of Ombudsman was notified for six different districts of the State of Tripura. The petitioner applied for the post of Ombudsman pursuant to the advertisement dated 20.02.2021. In total twelve applications were received for the post and based on the eligibility criteria, five applications were found eligible and were invited for

interview before the Ombudsman selection committee on 15.09.2021 at 10.30 a.m. vide meeting notice dated 07.09.2021. The petitioner was one of the shortlisted candidates and was called for interview vide meeting notice dated 07.09.2021. It is highlighted that the post of Ombudsman is a statutory post under the said Mahatma Gandia NREG Act, 2005 and for appointment thereto, the Ministry of Rural Development, Government of Tripura has framed the Revised Guidelines dated 21.01.2021. As highlighted above, pursuant to the advertisement dated 20.02.2021, a panel of five eligible candidates was prepared the respondents No.2 to 4 and the said five eligible candidates were called for interview on 15.09.2021.

5. The petitioner has also highlighted that even after appointment of two eligible candidates as Ombudsman of Unakoti District and Ombudsman of Gomati District, four more vacancies remained in South Tripura District, Sepahijala District, Khowai District and Dhalai District. According to the petitioner, the respondents No.2 to 4 ignored the panel to the meeting notice dated 07.09.2021 again issued an advertisement on 25.01.2022 notifying four posts of Ombudsman for four districts namely South Tripura, Sepahijala, Khowai and Dhalai of the State of Tripura. The said advertisement dated 25.01.2022 issued during the validity period of the panel to the meeting notice dated 07.09.2021 is grossly illegal and violative of the Revised Guidelines dated 21.01.2021. The petitioner has further challenge the reply dated 13.02.2023 issued by the respondent No.4 whereby the complaint filed by the petitioner has been disposed of.

6. Mr. A. Bhowmik, learned counsel appearing for the petitioner has submitted that pursuant to the advertisement dated 20.02.2021, a panel of five eligible candidates was prepared by the respondents No.2 to 4 and the said five eligible candidates were called for interview on 15.09.2021. The petitioner was one of the eligible candidates in the panel. Pursuant to the interview held on 15.09.2021, the respondents appointed Sri Krishnadas Sinha as Ombudsman of Unakoti District and Sri Sankar Chandra Sen as Ombudsman of Gomati District. The remaining four posts of Ombudsman in the remaining four districts were not filled up. As per clause 2.2.6 the approved district wise panel of eligible candidates is to remain valid for two years and in case of any vacancy, the person next in the approval panel is to be offered appointment as Ombudsman of calling for a fresh meeting without selection committee. Thus, according to the petitioner as per Clause 2.2.6, the panel so prepared to the meeting notice dated 07.09.2021 is to remain valid for a period of two years i.e. upto 06.09.2023. Out of the panel of the five eligible candidates, two were appointed as Ombudsman of Unakoti District and Gomati District and the remaining three eligible candidates remained in the panel. As per Clause 2.2.6 of the revised guidelines dated 21.01.2021, a right accrued to the petitioner to be appointed as Ombudsman in the next available vacancy.

7. Mr. Bhowmik, learned counsel has submitted that pursuant to the advertisement dated 25.01.2022, no selection committee as per Clause 2.1.1 of the Revised Guidelines dated 21.01.2021 was constituted comprising

of the Additional Chief Secretary of the State Government (Chairperson) representative of Union Ministry of Rural Development, eminent civil society person nominated by the Union Ministry of Rural Development and Principal Secretary of the State Nodal Department i.e. Rural Development (Government of Tripura) was constituted. In this regard, the post of Ombudsman is a statutory post under Mahatma Gandhi NREG Act, 2005 and for filling up the said post, the Ministry of Rural Development, Government of India has issued revised guidelines as per Section 30 of the Act and as such, according to him, the respondents No.2 to 4 cannot appoint any person as Ombudsman violating the mandatory clauses of the revised guidelines dated 21.01.2021.

8. As per revised Guidelines for appointment of Ombudsman dated 21.01.2021, the panel so prepared under Clause 2.2.1 is to be put into publication for a period of thirty days inviting comments and objections from the public. All comments and objections so received is to be settled within another thirty days from the date of expiry of the period of inviting comments. The name of the private respondents was put into publication inviting comments or objections from the public on 17.03.2022 but even before expiry of thirty days, the appointment letter was issued in favour of the private respondents on 25.03.2022. Thus, according to the petitioner, the name of the private respondents was not published for a period of thirty days inviting comments or objections from the General Public as required under Clause 2.2.1 of the Revised Guidelines dated 21.01.2021.

9. According to Mr. Bhowmik, learned counsel, as per Clause 2.2.6 of the guidelines, the approved district wise panel of eligible persons remains valid for period of two years and in case of any vacancy during this period, the person in the panel is to be offered appointment as Ombudsman without calling for afresh meeting of selection committee.

10. Mr. D. Bhattacharya, learned G.A. appearing for the State-respondents has submitted that the petitioner is not found suitable following the short listed candidates out of the total candidates five candidates were short listed. According to learned G.A., following the interview the petitioner is not found suitable and the authority has carried out the next exercise because the posts have to be filled up. He has submitted that so far the panel is concerned, this is not a panel, this is a short listed candidates list.

11. Having heard both sides this court is of the considered opinion that five persons were considered eligible out of twelve candidates and the petitioner is at Serial No.3 and after the interview, two persons were appointed. Clause 2.2.6 says that approved district wise panel of eligible persons shall be valid for two years, extendable not more than twice by one year each. In case there is any vacancy resignation, removal, death etc., the person next in the approved panel shall be offered the appointment as Ombudsman without calling for a fresh meeting of the Selection Committee. According to this court, out of the five candidates two were appointed and three were not appointed and out of the three one of them appointed in subsequent selection procedure. According to this court, Clause 2.2.1, 2.2.6 if

harmoniously considered there are two distinct features. For better reference both Clauses 2.2.1 and 2.2.6 is extracted hereunder :

"2.2.1 Application shall be invited through open advertisement. Application for the post shall be invited on proforma prescribed by the State Government (model format at annex-I). Based on the applications received, the Selection Committee shall prepare a district-wise panel of suitable persons for consideration for appointment as Ombudsman and rank them in order of preference. No written test or examination shall be conducted while an interview and an internal marking system should be evolved by the Selection Committee to rank persons in order of preference.

2.2.6 Approved district wise panel of eligible persons shall be valid for 2(two) years, extendable not more than twice by one year each. In case there is any vacancy due to resignation, removal, death etc., the person next in the approved panel shall be offered the appointment as Ombudsman without calling for a fresh meeting of the Selection Committee."

12. It can be seen that one Clause deals with appointment and term. The other is only proposal. Since the petitioner is short listed but not appointed, no right has been accrued upon the petitioner to say no further advertisement for selection can be done. Since the petitioner is not finally selected, he has no legitimate expectation and further his fundamental rights are not infringed to invoke Article 226 of the Constitution of India. He is not entitled for issuing a writ in his favour. Accordingly, the contentions made on behalf of the petitioner fails.

Having observed thus, this court does not find any merit in the present writ petition and hence, it is dismissed.

Pending application/s, if any also stands dismissed.

JUDGE