

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1376 of 2012

IN

Civil Writ Jurisdiction Case No. 4268 of 2012

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1. Kamlesh Kumar S/O Late Chokat Sah R/O Villge And Post- Chutahi, P.S.-
Chanpatia, District- West Champaran

.... Appellant/s

Versus

1. The State Of Bihar
2. The Principal Secretary Rural Development Department, Bihar, Patna
3. The District Magistrate-Cum-District Programme Coordinator West Champaran
At Bettiah
4. The Deputy Development Commissioner, West Champaran, Bettiah
5. The Programme Officer, 18 Panchayat Samities, West Champaran At Bettiah
6. Yashwant Narayan Yadav S/O Late Ram Nagina Prasad R/O Village- Parsauni,
P.S.- Piprasi, District- West Champaran

.... Respondent/s

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Appearance :

For the Appellant/s : M/S S.B.K. Manglam, Ravi Ranjan, MsAnita Kumari &
Ranjana Kumari Bharti

For the Respondent/s : M/S Kundan Bahadur Singh(S.C. 12) & Madanjeet
Kumar

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 06-08-2015

This intra-Court appeal arises out of C.W.J.C. No. 4268
of 2012, which was dismissed by the learned Single Judge, by his
order dated 21-6-2012 along with other analogous cases.

2. The writ-petitioner-appellant had moved,
challenging the instructions of the State Government, contained in
letter no. 88099 dated 16-1-2012 of the Rural Development
Department, wherein various directions were issued for

implementation of the MANREGA Scheme. The same is reiterated in this appeal.

3. The State was directed by us to file comprehensive counter-affidavit, noticing some of the facets of the controversy involved, in our order dated 3-4-2015. A counter-affidavit has been filed, and we have heard both the parties at length and with their consent this appeal is being disposed of at this stage itself.

4. Apparently, the challenge to the aforesaid letter/Circular is principally on two grounds. Firstly, the control and implementation of the MANREGA Scheme has been given to the District Programme Co-ordinator(for short D.P.C.), who, in this State, is the District Collector, which is contrary to the Scheme and spirit of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005(hereinafter referred to as the Act), and secondly directing that even hundred percent of the work in any district under the Act can be given to Gram Panchayats.

5. The submission being that the prime object of this Act was citizen living in the Gram Panchayat, the basic unit of Local Self Government, and for ensuring at least hundred days of employment in a year to them. Therefore, this legislation is primarily to give employment to the rural masses, though one member in a family for a minimum hundred days. The provisions of the Act so enacted would



show that what work has to be done and what work has to be taken, is to be decided at the grass root level of the Gram Panchayat, Panchayat Samities and the Zila Parishads, which are all Local Self Government in the rural sector. The job of D.P.C., as per the statute, is only to assist these local bodies/authorities.

6.The submission is that initially the system started as per the Act, but then as time passed, the whole Scheme was being turned upside down. The Scheme, as envisaged by the Act, was to provide at least 50 percent of the fund to the Gram Panchayat, because that was the grass root level of local authority where the rural people live. The balance was to be shared between the Panchayat Samities and the Zila Parishads. The reason needs no explanation, because the Gram Panchayats carry out the works within their Panchayats, but if the work is in between two Panchayats i.e., another Panchayat, that can only be done by Panchayat Samiti, and if the work is as between two Panchayat Samities, then it would be Zila Parishad, which is the apex body who would be involved. Thus, the whole thing has to be co-ordinated by the apex body i.e., Zila Parishad, and the Act contemplates the District Programme Co-ordinator(D.P.C.) to assist Zila Parishads and the Programme Officer to assist the Panchayat Samities, but what the Circular did is to give the entire responsibility on the District Programme Co-ordinator with the discretion also to



even select the implementing agency. It is further submitted that the concept of implementing agency has to be read, as per the statute and in the context of its use, it would only mean that the very people who are to work under wages would implement the project. There is a difference between supervision and implementation. What the Circular then does provide, that upto hundred percent of finance can go to Gram Panchayats, meaning, otherwise, that there is nothing left for the Panchayat Samities or Zila Parishads.

7. The State, on the other hand, submits that in view of the guidelines issued under the Act(which are obviously not statutory), the State has liberty to select the implementing agency. The stand further is that the District Collector, being the District Programme Co-ordinator, he would ensure implementing the Scheme,in other words, that the whole project being Government sponsored, it is the Government officials who control the same.

8. Having considered the matter, in our view, the impugned Circular is, prima facie, contrary to the entire Act, object of the Act and the legislative intent behind the Act. In this connection, we may refer to certain provisions of the Act, which are as follows:-

2.(g) “implementing agency” includes
any department of the Central
Government or a State Government, a
Zila Parishad, Panchayat at

intermediate level, Gram Panchayat or any local authority or Government undertaking or non-governmental organization authorized by the Central Government or the State Government to undertake the implementation of any work taken up under a Scheme;

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(o) “ rural area” means any area in a State except those areas covered by any urban local body or a Cantonment Board established or constituted under any law for the time being in force;

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3.(1) Save as otherwise provided, the State Government shall, in such rural area in the State as may be notified by the Central Government, provide to every household whose adult members volunteer to do unskilled manual work not less than one hundred days of such work in a financial year in accordance with the Scheme made under this Act.

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7.(1) If an applicant for employment

under the Scheme is not provided such employment within fifteen days of receipt of his application seeking employment or from the date on which the employment has been sought in the case of an advance application, whichever is later, he shall be entitled to a daily unemployment allowance in accordance with this section.”

CHAPTER IV: IMPLEMENTING
AND MONITORING
AUTHORITIES.

12.(1) For the purposes of regular monitoring and reviewing the implementation of this Act at the State level, every State Government shall constitute a State Council to be known as the.....(name of the State) State Employment Guarantee Council with a Chairperson and such number of official members as may be determined by the State Government and not more than fifteen non-official members nominated by the State Government from Panchayati Raj institutions, organizations of workers and disadvantaged groups.

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13.(1) The Panchayats at district, intermediate and village levels shall be the principal authorities for planning and implementation of the Schemes made under this Act.

(2) The functions of the Panchayats at the district level shall be—

- (a) to finalise and approve blockwise shelf of projects to be taken up under a programme under the scheme;
- (b) to supervise and monitor the projects taken up at the Block level and district level; and
- (c) to carry out such other functions as may be assigned to it by the State Council, from time to time.

(3) The functions of the Panchayat at intermediate level shall be-

- (a) to approve the Block level Plan for forwarding it to the district Panchayat at the district level for final approval;
- (b) to supervise and monitor the projects taken up at the Gram Panchayat and Block level; and
- (c) to carry out such other functions as may be assigned to it by the State Council, from time to time.

(4) The District Programme Coordinator shall assist the Panchayat

at the district level in discharging its functions under this Act and any scheme made thereunder.

14. (1) The Chief Executive Officer of the District Panchayat or the Collector of the district or any other district level officer of appropriate rank as the State Government may decide shall be designated as the District Programme Coordinator for the implementation of the Scheme in the district.

(2) The District Programme Coordinator shall be responsible for the implementation of the Scheme in the district in accordance with the provisions of this Act and the rules made thereunder.

(3) The functions of the District Programme Coordinator shall be-

- (a) to assist the district Panchayat in discharging its functions under this Act and any scheme made thereunder;
- (b) to consolidate the plans prepared by the Blocks and project proposals received from other implementing agencies for inclusion in the shelf of projects to be approved by the Panchayat at district level;

(c) to accord necessary sanction and administrative clearance, wherever necessary;

(d) to coordinate with the Programme Officers functioning within his jurisdiction and the implementing agencies to ensure that the applicants are provided employment as per their entitlements under this Act;

(e) to review, monitor and supervise the performance of the Programme Officers;

(f) to conduct periodic inspection of the works in progress; and

(g) to redress the grievances of the applicants.

(4) The State Government shall delegate such administrative and financial powers to the District Programme Coordinator as may be required to enable him to carry out his functions under this Act.

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15. (1) At every Panchayat at intermediate level, the State Government shall appoint a person who is not below the rank of Block Development Officer with such qualifications and experience as may

be determined by the State Government as Programme officer at the Panchayat at intermediate level.

(2) The Programme Officer shall assist the Panchayat at intermediate level in discharging its functions under this Act and any Scheme made thereunder.

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16. (1) The Gram Panchayat shall be responsible for identification of the projects in the Gram Panchayat area to be taken under a Scheme as per the recommendations of the Gram Sabha and the Ward Sabhas and for executing and supervising such works.

(2) A Gram Panchayat may take up any project under a Scheme within the area of the Gram Panchayat as may be sanctioned by the Programme Officer.

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(5) The Programme Officer shall allot at least fifty per cent of the works in terms of its cost under a Scheme to be implemented through the Gram Panchayats.

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17. (1) The 'Gram Sabha' shall monitor the execution of works within the Gram Panchayat.

9. From the above quoted provisions the first thing would be seen with reference to section 13(1) of the Act is that it is Panchayats at district (Zila Parishad), intermediate (Panchayat Samiti) and village levels (Gram Panchayat) which are the principal authorities for planning and implementation of the Schemes under the Act. If we read further, we would find that this section provides that it would be Zila Parishad and Panchayat Samiti which would finalise the works. Section 13(4) of the Act clearly brings out what is submitted by Mr. Manglam for the writ petitioner-appellant. It clearly stipulates that the District Programme Coordinator, in this State, the District Magistrate-cum-Collector of the District shall assist the Panchayats at the district level in discharging its functions. Similarly, if we come to section 14(3) of the Act, the matter is made clear. Therefore, the Act contemplates that it is the Local Self Government or local authorities, who are to decide what is to be done, and the District Magistrate-cum-Collector being the District Programme Coordinator is only to assist them and no more. But what has the Circular done; the Circular directs that it would be the D.P.C. who would select the entire implementing agency for a Scheme. In our view, this cannot be permitted. It is for the people for themselves at the grass root level to decide what is to be done and how it is to be done. In case of any assistance the D.P.C. would step in, and not the manner in which the Circular makes the D.P.C. the entire implementing authority, taking away the entire power and discretionary authority of Zila Parishad. To that extent the Circular cannot be endorsed and is clearly in conflict with the provisions of the Act and the Schemes contained therein.



10.. We then come to the contention that the Circular further states that the entire hundred percent of the work can be given to the Gram Panchayat. This may not be correct, but at the same time it cannot be wholly wrong, for section 16(5) of the Act clearly predicates that at least fifty per cent of the work would be in relation to the Gram Panchayat Scheme. As noted earlier, the Gram Panchayat being the grass root level for inter- Gram Panchayat and for inter - Panchayat Samiti and Zila Parishads, therefore, to say that hundred per cent can go to Gram Panchayat may not be wholly correct, but in certain contingencies that could happen. That has to be clarified. The ultimate decision as to where and what Scheme is to be carried out under the Act is to be the decision of the Zila Parishad, because it is the Zila Parishad which is the apex body of three tier Local Self Government. This duty and responsibility of the Zila Parishad cannot be taken away and entrusted to the D.P.C. That would be clearly contrary to the provisions of the Act. It is an Act for the people and has to be administered by the people where the people belong, and not that the people have to be administered by the bureaucracy. To that extent we clarify that the direction given for implementation of the provisions of the Act in the impugned Circular is not in consonance with the Act, and thus the directions aforesaid to the extent above can not be held valid, and to that extent they are set aside.

11. We may notice that the learned Single Judge observed that the decision to give the entire money to the Gram Panchayat may have been taken, because the Zila Parishad does not have the technical expertise to implement the Scheme. We are afraid to put the whole thing upside down. It is the Zila Parishad that has a regular cadre right from Junior Engineer to District Engineer whereas the Gram Panchayats do not have any such personnel available. Secondly, the

Circular, as pointed out by the State in their counter-affidavit makes it abundantly clear that they have given authority to the D.P.C. for recruitment or taking help from the retired Engineers and technicians to execute the work. That is the role of the Gram Panchayat. Therefore, the role of the Zila Parishads as the apex body of Local Self Government becomes very important, and that role cannot be snatched and given to the D.P.C.

12. In view of the aforesaid ,this appeal is allowed. The Circular to the extent, as indicated above, is set aside. The State Government will reconsider the matter, so that the MANREGA work is executed in true letter and spirit.

(Navaniti Prasad Singh, J)

BK.Roy/-
A.F.R.

(Nilu Agrawal, J)

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