

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.5559 of 2019

Praxis Institute for Participatory Practices,
represented by its Chief Executive,
Mr.Tom Thomas,
808, Poonamallee High Road,
Kilpauk, Chennai - 600 010.

.. Petitioner

Vs.

- 1.State of Tamil Nadu
Secretary to the Government,
Rural Development and
Panchayath Raj Department,
Fort St. George, Chennai - 600 009.
- 2.The Commissioner of Rural Development and
Panchayathi Raj, Panagal Maligai,
West Saidapet, Chennai - 600 015.
- 3.Union of India,
Representation by its Secretary,
Ministry of Rural Development,
Department of Rural Development,
Krishi Bhavan, Dr.Rajendra Prasad Road,
New Delhi - 110 001.
- 4.Comptroller of Auditor General of India,
Deen Dayal Upadhyay Marg,
New Delhi - 110 001.
- 5.Principal Accountant General,
No.361, Anna Salai,
Teynampet, Chennai 600 018.
- 6.Social Audit Society of Tamil Nadu,
Represented by its Director,
Panagal Maaligai, West Saidapet,
Chennai - 600 015.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Mandamus, directing the first and sixth respondents to appoint an independent Director of Social Audit in the Sixth Respondent Society and eliminate all personnel, including 2 Joint Directors and one Assistant Directors of the Department of Rural Development within a time-limit to be stipulated by this Court.

For Petitioner : Mrs.Y.Kavitha
for M/s.Giridhar and Sai.

For R1, R2 and R6:Mr.Akhil Akbarali,
Government Advocate

For R3 : Mr.K.Gunasekar,
Senior Panel Counsel for
Central Government.

ORDER

(Order of this Court was made by S.MANIKUMAR, J.)

Instant writ petition has been filed for a Mandamus, directing the first and sixth respondents to appoint an independent Director of Social Audit in the sixth respondent/Society and to eliminate all personnel, including 2 Joint Directors and one Assistant Directors of the Department of Rural Development within a time limit to be stipulated by this Court.

2. On 01.03.2019, we passed the following order:-

"Petitioner has sought for a Mandamus directing the respondents 1 and 6 to appoint an independent Director of Social Audit, in the sixth respondent Society and eliminate all personnel, including 2 Joint Directors and one Assistant Director of the Department of Rural Development within a time-limit to be stipulated by this Court.

2. Materials on record discloses that earlier one Mr.Annamalai Premkumar, Additional Director in the Department of Rural Development and Panchayat Raj (DRDPR) was appointed as Director of Social Audit, Social Audit Society of Tamil Nadu (SASTA), Chennai. Writ Petition No.30320 of 2017 was filed requiring him to show cause his authority to hold the post of Director of Social Audit Society of Tamil Nadu. The grounds raised in the said writ petition are as follows:

"(A) The appointment of the 7th respondent as Director of Social Audit of the 6th respondent is arbitrary and unreasonable. It is violative of Article 14 of the Constitution and also of the

provisions of the Act and Rules.

(B) The 7th Respondent is a full time Additional Director under the implementing department (ie.) DRD & PR drawing remuneration from the State Government. Section 17 of the Act provides for a mandatory Social Audit under all programs under the scheme within each Gram Panchayat. The MGNREGA Audit of Scheme Rules, 2011 makes it mandatory for the State Government to perform social audit and submit summary of findings to the CAG. Rule 5 emphasises that the Social Audit process shall be independent of the implementing agency, which is restrained from interfering from the Social Audit work. As such it is clear that posting of the 7th Respondent as a Director of Social Audit is illegal and contrary to the provision of the Act and Rules. As such the 7th Respondent is not qualified or competent to hold this said post.

(C) The appointment of the 7th Respondent as Director of Social Audit is against all established norms and is against the extant rules, particularly when audit of huge public funds to the tune of about an average of Rs.5200 Crores per year are involved. Moreover, the Central Government has prohibited payment of salary to Government officials from the Scheme Fund, but presently four senior-level officers of the State Government, including the 7th Respondent are being paid from the funds, which is impermissible.

(D) The MGNREGS is well-conceived scheme targeted at improving the life and livelihood of rural poor and confers rights and entitlements in their favour, providing for an effective Social Audit through a body independent of the implementation agency. The appointment of the 7th Respondent to such a body clearly frustrates the very object of the provision for social audit and endangers the integrity and objectives of the Scheme, apart from infringing upon the statutory and constitutional rights of the rural poor."

3. On 18.01.2019, when the said W.P.No.30320 of 2017 came up for hearing before a learned Single Judge, submission has been made on behalf of the Secretary to the Government, Department of Rural Development and Panchayat Raj Department, Chennai and the Commissioner of Rural Development and Panchayat Raj, Directorate of Rural Development & Panchayat Raj, Saidapet, Chennai, respondents 1 and 2 therein that 7th respondent therein namely Mr.S.Annamalai Premkumar, has been transferred. The learned Special Government Pleader has also produced G.O.(Va)No.19, Rural Development and Panchayat Raj (E1) Department,

dated 10.01.2019, to that effect. Placing on record the said submission, vide order dated 18.01.2019, the said Writ Petition No.30320 of 2018 has been closed.

4. Selection and appointment of Director, Social Audit is as follows:

"Selection and appointment of Director, SAU:

(a) The qualification of the Director, SAU are to be clearly laid out and be of such a nature that it helps in enhancing the independence. The Director, SAU should have sufficient experience in the field of audit and government account. He/she should also have proven administrative ability to handle human resources with varying skill levels who can be deployed in different areas under his/her jurisdiction.

(b) A selection committee consisting of Chief Secretary / nominee; Pr.AG/AG in charge of Local Bodies Audit; Principal Secretary, DoRD; Eminent CSO representative as nominated by MoRD; and a representative of the Ministry of Rural Development, GoI not below the rank of Director/Deputy Secretary shall select the person who shall be appointed by the respective State Government on the basis of this.

(c) The minimum tenure of the Director, SAU shall be defined as three years not exceeding the age of 65 years.

(d) Any decision to terminate the services of the Director, SAU prematurely shall be taken by the Government of the State only on the advice of the Governing Body."

5. Materials on record discloses that the vacant post of Director of Social Audit, is now manned by a Joint Director as in-charge. In as much as Mahatma Gandhi National Rural Employment Guarantee Audit of Schemes Rules, 2011 (MGNREGAS Rules) envisages that the office of Director, Social Audit should be held by independent full time director, once again, instant writ petition No.5559 of 2019, has been filed for a Mandamus, directing the respondents 1 and 6, to appoint an independent Director of Social Audit in the sixth respondent Society and eliminate all personnel, including 2 Joint Directors and one Assistant Director of the Department of Rural Development within a time-limit to be stipulated by this Court.

6. From the materials on record, it can be deduced that ever since the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (MGNREG Act) and MGNREGAS Rules, 2011 came into force, Government have not filled up the post of Director, Social Audit, in accordance with the procedure stated supra.

7. Director, Social Audit has to be selected by a Committee consisting of (1) Chief Secretary / nominee;

(2) Pr.AG/AG in charge of Local Bodies Audit; (3) Principal Secretary, DoRD; (4) Eminent CSO representative as nominated by MoRD; and (5) Representative of the Ministry of Rural Development, GoI not below the rank of Director/Deputy Secretary has to be constituted.

8. From the above it is further deduced that two representatives have to be nominated by Government of India. Principal AG/AG in charge of Local Bodies Audit is also a member. In so far as State Government is concerned, Selection Committee would consist of Chief Secretary / nominee and Principal Secretary, DoRD.

9. Having regard to the admitted fact that the said Selection Committee has not been constituted and there being another round of litigation, we direct the Secretary to the Government, Ministry of Rural Development, Government of India, New Delhi, to nominate a person not below the rank of Director/Deputy Secretary within a period of two weeks from today and accordingly inform the Chief Secretary, Government of Tamil Nadu and also the Secretary to the Government, Rural Development and Panchayathi Raj Department, Government of Tamil Nadu. On receipt of the nomination from the Secretary to the Government, Ministry of Rural Development, Government of India, New Delhi, the Chief Secretary, Government of Tamil Nadu shall constitute a Committee of five persons and fill up the post of Director of Social Audit, Social Audit Society of Tamil Nadu, in accordance with the statutory provisions within a period of two weeks thereafter. Mr.K.Gunasekar, learned Central Government Standing Counsel shall forthwith communicate the directions issued to the Secretary to the Government, Ministry of Rural Development, Government of India, New Delhi, for implementation of this order.

10. Post this matter on 18.03.2019."

3. Pursuant to the above orders, Government of India, Ministry of Rural Development, Department of Rural Development, New Delhi, by letter dated 15.03.2019, addressed to the Secretary, Department of Rural Development (MGNREGA), Government of Tamil Nadu, has informed that one Shri.A.K.Sumbly, Deputy Secretary, (MoRD) has been nominated to attend the selection committee meeting for appointment of Director (SAU). Government of India have further stated that in case of nomination of CSO is concerned, the State Government may nominate Eminent CSO representative with social audit background as a member of the selection committee.

4. For brevity, letter dated 15.03.2019, is reproduced:-
"F.No.J-11060/10/2019-RE-III (366202)

Government of India
Ministry of Rural Development
Department of Rural Development

Krishi Bhawan, New Delhi-110001

Dated: 15th March, 2019

To

The Secretary
Department of Rural Development (MGNREGA)
Govt. of Tamil Nadu
Chennai

Subject: Writ Petition WP 5559 of 2019 filed by Praxis Institute of Participatory Practices Vs.State Govt of Tamil Nadu & Others, pending in High Court of Madras reg. Social audit - appointment of Independent Director for Social Audit Unit of Tamil Nadu

Madam/Sir,

I am directed to refer to WP 5559 of 2019 on the above mentioned subject and to say process to appoint an Independent Director of SAU may be initiated on priority and request you to intimate the latest status in this court case.

2. Further, on the direction of Hon'ble High Court the representative of the Ministry, Shri A.K. Sumbly, Dy. Secy. (MoRD) has been nominated to attend the selection committee meeting on appointment of Director (SAU). In case of nomination of CSO is concerned, the State Government may nominate Eminent CSO representative with social audit background as a member of the selection committee. The Ministry in the Labour Budget meeting also highlighted the issue. The Minutes of Meeting is enclosed for reference.

3. You are requested to take necessary action in this matter to defend the case. Since this Ministry has been arrayed only as proforma party in the matter, the Hon'ble Court may be requested to delete the name of the Ministry from the list of respondents. The Status of the case may be intimated to this Ministry from time to time. It is also mentioned that formal communication has not been received. You are requested to send an official conservant with the case to meet the CGC to apprise him.

Yours faithfully,
(Moti Ram)
Assistant Commissioner (MGNREGA)
Tel no.-23388192

Enclosed as above Copy to:

1. Chief Secretary, Government of Tamil Nadu, Chennai, Tamil Nadu
2. Shri K.Gunasekar, Central Govt Counsel, 72, Addl Law Chambers, High Court, Buildings, Chennai, Tamil Nadu- 600104, Tel. No. 25346235"

5. Mr.Akhil Akbarali, learned Government Advocate, submitted that nomination of other persons for selection to the post of Director of Social Audit, to the office of Social Audit Society of Tamil Nadu/sixth respondent herein, as per paragraph No.9 of the order dated 01.03.2018, would be made, within the period, as ordered.

6. Procedure contemplated for selecting a Director of Social Audit, is by open recruitment and requires publication to be made, applications have to be scrutinised and suitable candidates have to be selected. Process involved as per National Institute of Rural Development and Panchayat Raj, Hyderabad, is extracted hereunder:-

"The 2016 Auditing Standards say that a selection committee consisting of Chief Secretary/nominee, PAG in-charge of Local Bodies Audit, Principal Secretary of Department of Rural Development, eminent CSO representative and MoRD representative should select a Director who will enhance the independence of the Social Audit Unit. Further, the 2014 MoRD norms on recruitment (7) mandate that an advertisement for these positions must be placed on the State NREGA website for at least 21 days before selection date. However, many states have not followed this process. Instead, they have deputed a serving officer or appointed a retired government official as the Director without following the due process.

The 2016 Auditing Standards (4) also say that the tenure of Director should be three years but this has not been followed in many States, including Karnataka, Bihar, Manipur, Uttar Pradesh and Tamil Nadu. Frequent changes lead to instability and affect the independence and effectiveness of the SAU."

7. After the advertisement, names should be forwarded to the committee, who shall then select the candidate to the post of Director, learned Government Advocate submits that it will take another three weeks to do the said process, after the constitution of the committee.

8. Taking note of the time limit as stated by the learned Government Advocate, eight weeks time from today is granted to the Government, to select an independent Director of Social Audit, to the Social Audit Society of Tamil Nadu, Chennai/sixth respondent herein.

9. Accordingly, writ petition is disposed of. No Costs. Post the matter on 08.04.2019, for reporting compliance.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

1. Secretary to the Government,
State of Tamil Nadu
Rural Development and
Panchayath Raj Department,
Fort St. George, Chennai - 600 009.
 2. The Commissioner of Rural Development and
Panchayathi Raj, Panagal Maligai,
West Saidapet, Chennai - 600 015.
 3. Secretary,
Union of India,
Ministry of Rural Development,
Department of Rural Development,
Krishi Bhavan, Dr. Rajendra Prasad Road,
New Delhi - 110 001.
 4. Comptroller of Auditor General of India,
Deen Dayal Upadhyay Marg,
New Delhi - 110 001.
 5. Principal Accountant General,
No. 361, Anna Salai,
Teynampet, Chennai 600 018.
 6. Social Audit Society of Tamil Nadu,
Represented by its Director,
Panagal Maaligai, West Saidapet,
Chennai - 600 015.
- +1 CC to Mr. K. Gunasekar, Advocate sr 26036.

W.P.No.5559 of 2019

RK(CO)
SP(24/04/2019)