IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P.(C) No. 436 of 2020

1. ***Shri Sapam Ranadev Singh,*** aged about 50 years old, S/O (L) S. Bira Singh, a resident of Keishamthong Top Leirak Machin, P.O. & P.S. Imphal, C.D. Block-Haorangsal, Imphal West District, Manipur-795001.
2. Smt. Mairembam Rojita, aged about 47 years old, W/O Kh. Gyanendra, a resident of Thangmeiband Polem Leikai, P.O. & P.S. Imphal, Block-Patsoi, Imphal West District, Manipur-795001.
3. Shri K. Hemchandra Sharma, aged about 45 years old, S/O (L) K. Lalhari Sharma, a resident of Uripok Tourangbam Leikai, P.O. & P.S. Imphal, C.D. Block-Haorangsal, Imphal West District, Manipur-795001.
4. Samjetsabam Prabina Devi, aged about 46 years old, D/O S. Kunjo Singh, a resident of Kwakeithel Heinoukhongnembi Leikai, P.O. Imphal & P.S. Singjamei, C.D. Block – Patsoi, Imphal West District, Manipur-795001.
5. Md. Basiruddin, aged about 45 years old, S/O Md. Jaheruddin, a resident of Hangul Makha Leikai, P.O. Mayang Imphal & P.S. Hiyanglam, Block – Langmeidong, Kakching District, Manipur-795..
6. Shri Moirangthem Birkeshor Singh, aged about 48 years old, S/O (L) M. Bihari Singh, a resident of Nachou Panthong, P.O. & P.S. Bishnupur, Block-Bishnupur, Bishnupur District, Manipur-795126.
7. Shri Thoudam Bishwanath Singh, aged about 46 years old, S/O (L) Th. Yaima Singh, a resident of Toubul Mayai Leikai, P.O. & P.S. Bishnupur, C.D. Block-Nambol, Bishnupur District, Manipur-795126.

… Petitioners

-Versus-

1. The State of Manipur through the Additional Chief Secretary (RD & PR), Government of Manipur, Secretariat Block, P.O. & P.S. Imphal, Manipur – 795001.

2. The Director (RD & PR), Manipur Secretariat Block, P.O. & P.S. Imphal, Manipur-795001.
3. The Joint Secretary (RD & PR), Government of Manipur, Secretariat Block, P.O. & P.S. Imphal, Manipur-795001.
4. The Union of India, represented by the Secretary, Ministry of Rural Development, Department of Rural Development, Government of India, Krishi Bhavan Dr. Rajendra Prasad Road, New Delhi-110001.
5. The Manipur State Panchayati Raj Govt. Employees Association, a registered Society registered under the Manipur Societies Registration Act, 1989 bearing Regd. No. 2781 of 2019 having its office at the Directorate of RD & PR, Government of Manipur represented by its Secretary namely Th.Noren Singh, aged about 43 years old, S/o (L) Th. Angouba Singh, a resident of Wangkhei Ningthem Pukhri Mapal, P.O.Imphal, P.S. Porompat, Imphal East District, Manipur – 795001 (Newly impleaded respondent as per order dated 06.08.2020).

…. Respondents

B E F O R E

HON'BLE MR. JUSTICE KH. NOBIN SINGH

For the petitioners	::	Shri H.S. Paonam, Sr. Advocate
For the respondents	::	Shri N. Jotendro, Sr. Advocate; Shri Niranjan Sanasam, GA; Shri S. Suresh, ASG
Date of Hearing	::	**18-11-2020**
Date of Judgment & Order	::	**24-11-2020**

JUDGMENT & ORDER

[1] Heard Shri H.S. Paonam, learned Senior Advocate appearing for the petitioners; Shri N. Jotendro, learned Senior Advocate for the private respondent, respondent No.5; Shri S. Niranjan, learned GA for the State respondents and Mr. S. Suresh, learned ASG for the respondent No. 4, Union of India.

[2] By the instant writ petition, the petitioners have prayed for issuing a writ of certiorari or any other appropriate writ to quash and set aside the portion of the order dated 24-07-2020 issued by the Joint Secretary (RD & PR), Government of Manipur which has allowed the Panchayat Secretaries to implement the MGNREG Scheme.

[3.1] Facts as narrated in the writ petition, in short, are that the petitioners along with 145 others who were initially engaged as Gram Rozgar Sahayak/ Gram Rozgar Sewak (GRS) on contract basis since 2009, were regularized and absorbed in the Department of Rural Development & Panchayati Raj, Government of Manipur for which the State Government issued orders dated 31-02-2016 for creation of posts; absorption and regularization of their services.

[3.2] Section 18 of the Mahatma Gandhi Rural Employment Guarantee Act, 2005 (hereinafter referred to as "**the MGNREG Act, 2005**" provides that the State Government shall make available to the District Programme Coordinator and the Programme Officers necessary staff and technical support as may be necessary for the effective implementation of the scheme. The professional support for MGNREG scheme needs to be deployed across the Gram Panchayat, Block, District, State and Central level. Section 25 provides that whoever contravenes the provisions of the MGNREG Act, 2005 shall on conviction be liable to a fine which may be extended to Rs.1000/- (Rupees one thousand). The provisions of the MGNREG Act, 2005 are mandatory for effective implementation of the scheme.

[3.3] The Master Circular 2020-21 published by the Ministry of Rural Development, Government of India at Chapter 20 provides as under:

> *"As per Section 18 of the Mahatma Gandhi NREGA, 2005, "the State Government shall make available to the District programme Coordinator and the Programme Officers necessary staff and technical support as may be necessary for the effective implementation of the scheme. The professional support for Mahatma Gandhi NREGA needs to be deployed across Gram Panchayat, Block, District, State and Central level."*

[3.4] From the perusal of the above provisions, it is very clear that the post of Gram Rozgar Sahayak (GRS)/ Gram Panchayat Sewak is quite distinct from a Panchayat Secretary and the Mahatma Gandhi NREG scheme can be effectively implemented through the GRS at the Gram Panchayat level.

[3.5] To the shock and surprise of the present petitioners, the State Government issued an order dated 24-07-2020 allowing the Panchayat Secretaries appointed under Section 45 of the Manipur Panchayati Raj Act, 1994 (hereinafter referred to as "**the Panchayati Raj Act, 1994**") r/w Rule 37 of the Manipur Gram Panchayat and Zilla Parishad (General) Rules, 1995 (hereinafter referred to as "**the Rules, 1995**") to implement the MGNREG scheme against the provisions as contemplated under the MGNREG Act, 2005 r/w Annual Master Circular 2020-21 published under the said Act. Being aggrieved by the order dated 24-07-2020, the instant writ petition has been filed by the petitioners on the inter-alia grounds that Section 45 of the Panchayati Raj Act, 1994 and Rule 37 of the Rules, 1995

provide for appointment, duties and functions of the Panchayat Secretary and did not include anything in any manner for effective implementation of the MGNREG scheme, 2005; that the District Programme Coordinator, MGNREG scheme, Imphal West District issued an order dated 30-03-2009 clarifying that the said provisions of the Panchayati Raj Act, 1994 and the Rules, 1995 shall not be followed in the implementation of the MGNREG scheme; that the professional support staffs i.e. GRS, Technical Assistants and Section Officers etc. appointed under the MGNREG Act, 2005 cannot be substituted by any other authority appointed by the State Government under the Panchayati Raj Act, 1994 and Rule 37 of the Rules, 1995; that the order dated 24-07-2020 is against the provisions of the MGNREG Act, 2005 and that the said order dated 24-07-2020 has been issued in complete arbitrary exercise of the power and non-application of mind and therefore, is liable to be quashed and set aside by this Court.

[4.1] An affidavit on behalf of the respondent Nos.1 to 3 has been filed denying the averments made in the writ petition. It has further been stated therein that the Gram Panchayat is an institution established under Article 243 of the Constitution of India as local self Government, of which the Pradhan is the President while the Panchayat Secretary is the official head and all the administrative and financial control are vested on them. They are the sole authorities to implement/ execute/ monitor/ control/ supervise overall financial and account matters including MGNREG scheme at Gram Panchayat and they cannot be by-passed or superseded by any authority to execute any work under the Gram Panchayat Level. The GRS,

Technical Assistant etc. have been recruited mainly on contract basis and regularised recently to assist the Gram Panchayat ie, the Pradhan and the Panchayat Secretary for executing MGNREG scheme works and therefore, the Panchayat Secretaries have the sole authority to implement MGNREG scheme at the Panchayat offices as per law, as is evident from the provisions of Section 16 of the MGNREG Act, 2005. The roles and functions of the assisting staff namely GRS/ TS/ SO etc. are limited as prescribed under the MGNREG Operational Guidelines and have no authority with regard to administrative control, financial control, executing works and overall governance of the Gram Panchayat office. The Gram Panchayat is an implementing authority/ agency for all schemes both centrally Sponsored schemes including MGNREG scheme and the State Sponsored schemes and therefore, the Panchayat Secretaries being the official head, do not contravene any provisions of the MGNREGS Act, 2005. It is nowhere stated in the Master Circular 2020-2021 that GRS has the sole authority to implement MGNREG works by passing the authority of the Gram Panchayat while the roles and responsibilities of the Panchayat Secretaries are highlighted under the roles and responsibilities of the Key Functionaries, MGNREG Act, 2005 published by the Ministry of Rural Development in the month of June, 2014. In terms of para 2.1.4 of the Operational Guidelines, 2013, the Gram Panchayat is the pivotal body for planning and implementation, for which the Programme Officer is required to allot at least 50% of the works in terms of the costs. As per para 10.2.1 of the Operational Guidelines, the Panchayat Secretary, PO

and DPC will be the custodian of all records at Gram Panchayat, Block and District Level. In fact, Chapter-18 of the Operational Guidelines is relevant which reveals that there is a need to harmonise the MGNREG Act, 2005 and the Panchayati Raj Act, 1994. The impugned order was issued in strict compliance with the provisions of the Panchayati Raj Act, 1994 as well as the concurrence of the Finance Department, Government of Manipur. There is no specific grievance of the GRS as against the impugned order and moreover, since the provisions of law not being challenged, the impugned order need not be interfered by this Court.

[4.2] An affidavit also has been filed on behalf of the respondent No.5 and since the stand taken by it is similar to that of the State Government, the details thereof are not referred to herein for the sake of brevity. In addition thereto, it has been stated that the Panchayati Raj Act, 1994 cannot be superseded by the MGNREG Act, 2005 and both are to be harmonised. There is no illegality while issuing the impugned order entrusting the Panchayat Secretary to implement all the works under MGNREG scheme. The issuance of the impugned order became necessary because there are many complaints regarding irregular activities relating to transaction of bank accounts of job card holders, opening of fake accounts, non-verification and non-updation of job cards and bank account details by the GRS/ Mates, as is evident from the direction issued to the District Programme Co-ordinator by the Deputy Secretary (RD & PR), Government of Manipur.

[5.1] The short issue that arises for consideration by this Court is as to whether the State Government is competent to issue the impugned order under the provisions of the Panchayati Raj Act, 1994 and the Rules, 1995 made thereunder in respect of a matter relating to the implementation of the MGNREG scheme as contemplated under the provisions of the MGNREG Act, 2005. In order to decide the issue involved herein, this Court deems it appropriate to examine the provisions of the MGNREG Act, 2005, the Panchayati Raj Act, 1994 and the Rules, 1995 made thereunder.

[5.2] The MGNREG Act, 2005 was enacted by the Parliament with a view to provide for the enhancement of livelihood security of the households in rural areas in the country by providing at least one hundred days of guaranteed wage employment in every year. Section 3 provides the guarantee of employment to poor rural households, for which the State Government shall make a scheme for providing not less than 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. The schemes as envisaged under the MGNREG Act, 2005 are funded by the Central Government. The expression "**implementing agency**" is defined in Section 2(g) which includes any Department of the Central Government or a State Government, a Zilla Parishad, Panchayat at intermediate level, Gram Panchayat or any other local authority authorised by the Central Government or the State Government to undertake the implementation of any work taken up under a scheme. Section 13 provides that the

Panchayats at District, intermediate and Village levels shall be the principal authorities for planning and implementation of the schemes made under the Act. The functions of the Panchayat at the district level are enumerated in sub-section (2) and the District Programme Co-ordinator designated under sub-section (3) shall assist it in the discharge of its functions. Section 15 provides for appointment of a Programme Officer at every Panchayat at intermediate level who shall assist it in the discharge of its functions. There is no provision under the Act for appointment of a separate Programme Officer of a Panchayat at the village level but Section 15 (7) provides that the State Government may direct that all or any of the functions of a Programme Officer shall be discharged by the Gram Panchayat or a local authority. The responsibilities of the Gram Panchayat are provided in Section 16 but from the conjoint reading of Section 15 and 16, it appears that the Programme Officer appointed at a Panchayat at the intermediate level shall prepare a plan under his jurisdiction by consolidating the project proposals prepared by the Gram Panchayat and it is he who shall allot at least fifty percent, of the works in terms of its costs under a scheme to be implemented through the Gram Panchayats. In other words, the Programme Officer appointed at the intermediate level shall act as the Programme Officer for the Gram Panchayat as well. Section 18 provides that the State Government shall make available to the District Programme Co-ordinator and the Programme Officers necessary staff and technical support as may be necessary for the effective implementation of the scheme. An Operational Guidelines, 2013 was

issued by the Ministry of Rural Development and para 4.1 mentions the requirement of dedicated personnel namely Gram Rozgar Sahayak or Employment Guarantee Assistant and Mates or work site supervisors whose functions and responsibilities are mentioned in para 4.1.1, to assist the Gram Panchayats. It has been specifically provided therein that they should be engaged exclusively for MGNREG scheme and shall not be assigned any other work and the functions of the GRS and the Panchayat Secretary should be distinctly outlined. At least one GRS shall be deployed in every Gram Panchayat except in the circumstances mentioned therein. As per para 10.2, the Panchayat Secretary will be the custodian of all records at Gram Panchayat. Para 18 provides that the staff provided to the Panchayat under the MGNREG scheme would work under the superintendence and control of the Panchayat concerned, including disciplinary powers. Under Section 19, the State Government shall determine appropriate grievance redressal mechanism at the block level and the district level for dealing with any complaint by any person in respect of the implementation of the scheme and lay down the procedure for disposal of such complaints.

[5.3] The Panchayati Raj Act, 1994 is an Act enacted by the Parliament with a view to provide for the constitution and organisation of Panchayats as units of local self Government in the rural areas of Manipur. It is an enactment to establish a two-tier Panchayati Raj system in the State of Manipur with elected bodies at the Gram and District levels in keeping with the constitutional provisions. The expression "**Gram Panchayat**" is defined

in Section 2(i) as the one constituted under the Act. It is constituted for every Gram Sabha under the provisions of Section 13. It shall consist of the Pradhan and such number of directly elected members as may be notified from time to time by the State Government and shall continue for a term of five years from the date appointed for its meeting. Every Gram Panchayat shall, as soon as may be, elect one of its members to be Up-Pradhan. Section 35 provides for the functions to be performed by the Gram Panchayat. Section 37 provides that a Gram Panchayat shall have the powers to do all acts necessary for or incidental to the carrying out, of the functions entrusted, assigned or delegated to it. In terms of Section 45, there shall be a Secretary for every Gram Panchayat who shall be appointed in such manner as may be prescribed and shall draw his salary and allowances from the Gram Panchayat fund and he shall be in charge of the office of the Gram Panchayat and shall perform all the duties and exercise all the powers imposed or conferred upon him by or under the Act or any rules or bye-laws made thereunder. The Rules, 1995 was made by the Government of Manipur in exercise of power conferred by Section 105 of the Panchayati Raj Act, 1994 and Rule 37 enumerates the duties to be performed by the Panchayat Secretary.

[6.1] The above two Acts are enacted by the Parliament but the objects sought to be achieved by them are quite different. In other words, they are enacted for different purposes and they operate in their respective fields. In fact, there is no contradiction between the provisions of these two enactments for which harmonious construction is required. The only thing

that is indispensable, is to understand the provisions of both the enactments clearly and minutely. As has been mentioned hereinabove, the purpose for which the Panchayati Raj Act, 1994 was enacted, is to establish local self-Governments in the rural areas of Manipur. It was enacted a decade ago before the MGNREG Act, 2005 came to be enacted and at the time of its enactment, the Government of India appeared to have no idea about the necessity of the enactment of the MGNREG Act, 2005. In other words, the Panchayati Raj Act, 1994 has nothing to do with the implementation of the schemes as provided under the MGNREG Act, 2005. The Gram Panchayat is an institution, established under the Panchayati Raj Act, 1994, consisting of the Pradhan and other elected members and a local body for which the Panchayat Secretary is the official head and in-charge of the administration. The power and functions of the Panchayat Secretary are enumerated in the Panchayati Raj Act, 1994 and the rules made thereunder. It is normal rules of business that whenever any letter or document or file or any other document relating to Gram Panchayat is received by it through the Pradhan from any authority or person, it will be marked to the Panchayat Secretary who will process it and put up before the Pradhan for appropriate decision or approval or advice or for any resolution to be taken by the Gram Panchayat. Similar is the case with any letter or document or file or any other document relating to Gram Panchayat being received by the Panchayat Secretary who will process it and put up before the Pradhan for appropriate direction or approval or advice or for any resolution to be taken by the Gram

Panchayat. The Panchayat Secretary being the custodian, shall maintain all the records of the Gram Panchayat. In other words, all the administrative works of the Gram Panchayat are to be carried out by the Panchayat Secretary. Since the validity and correctness of the provisions of Section 45 and Rule 37 appears to have not been questioned by the petitioners, the issue relating to the exercise of power and functions by the Panchayat Secretary under the provisions of the Panchayati Raj Act, 1994 is not the subject matter in issue herein. In short, the Panchayat Secretary is the head of the administration of the Gram Panchayat.

[6.2] The relationship between the two enactments arose when Section 13 of the MGNREG Act, 2005 provided that the Panchayats at District, intermediate and Village levels should be the principal authorities for planning and implementation of the schemes made under the Act. Section 13 of the MGNREG Act, 2005 reads as under:

> *"**Section 13- Principal authorities for planning and implementation of Schemes.***
>
> *(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."

[6.3] From the perusal of the provisions of the MGNREG Act, 2005, it is seen that none of its provisions has interfered with or affected the power and functions of the Gram Panchayat as entrusted upon it under the Panchayati Raj Act, 1994 and it shall continue exercising its powers and functions as provided therein. The only thing is that the Gram Panchayat has been assigned the additional power and functions under the MGNREG Act, 2005 for the implementation of the schemes envisaged under it. The responsibilities of the Gram Panchayat are prescribed in Section 16 and it is the responsibility of the Gram Panchayat to identify the projects in its area to be taken up under the scheme as per recommendation of the Gram Sabha and the Ward Sabha; to execute and supervise such works. After considering the recommendations of the Gram Sabha, It shall prepare a development plan and maintain a shelf of possible works to be taken under the scheme as and when demand for work arises. It shall forward its proposals for the development projects with order of priority to the Programme Officer for scrutiny and preliminary approval prior to the

commencement of the year in which it is proposed to be executed by it. It shall allocate employment opportunities amongst the applicants and ask them to report for work. Section 16 reads as under:

> *"**Section 16 - Responsibilities of the Gram Panchayats.—***
>
> *(1) The Gram Panchayat shall be responsible for identification of the projects in the Gram Panchayat area to be taken up 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.*
>
> *(3) Every Gram Panchayat shall, after considering the recommendations of the Gram Sabha and the Ward Sabhas, prepare a development plan and maintain a shelf of possible works to be taken up under the Scheme as and when demand for work arises*
>
> *(4) The Gram Panchayat shall forward its proposals for the development projects including the order of priority between different works to the Programme Officer for scrutiny and preliminary approval prior to the commencement of the year in which it is proposed to be executed.*
>
> *(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.*
>
> *(6) The Programme Officer shall supply each Gram Panchayat with—*
>
> *(a) the muster rolls for the works sanctioned to be executed by it; and*
>
> *(b) a list of employment opportunities available elsewhere to the residents of the Gram Panchayat.*
>
> *(7) The Gram Panchayat shall allocate employment opportunities among the applicants and ask them to report for work.*

(8) The works taken up by a Gram Panchayat under a Scheme shall meet the required technical standards and measurements."

Para 2.1.4 of the Operational Guidelines elaborates the responsibilities of the Gram Panchayat as under:

"2.1.4 Gram Panchayat (GP)-

The GP is the pivotal body for planning and implementation. Where Part IX of the Constitution does not apply, local councils/authorities as mandated by the State concerned will be invested with corresponding responsibilities. Programme Officer (PO) is required to allot at least 50 per cent of the works in terms of cost to the GPs for implementation. The GP is responsible for the following activities:

i) Receiving applications for registration
ii) Verifying registration applications
iii) Registering households
iv) Issuing Job Cards(JCs)
v) Receiving applications for work
vi) Issuing dated receipts for these applications for work
vii) Allotting work within fifteen days of submitting the application or from the date when work is sought in the case of an advance application, whichever is later, irrespective of the implementing agency
viii) Conducting periodical surveys to assess demand for work
ix) Identification and planning of works, developing shelf of projects including determination of the order of their priority. This list is forwarded to Programme Officer for scrutiny and preliminary approval
x) Executing works that shall meet the required technical standards and measurements
xi) Maintaining records as specified in Chapter 10

xii) Maintaining accounts and providing utilization certificates in formats prescribed by Central/ State Govt.

xiii) Prepare annually a report containing the facts and figures and achievements relating to the implementation of the Scheme within its jurisdiction and, copy of the same to be made available to the public on demand and on payment of such fee as may be specified in the Scheme

xiv) Awareness generation and social mobilization

xv) Convening the GS for planning and social audit

xvi) Make available all relevant documents including the Muster Rolls, bills, vouchers, measurement books, copies of sanction orders and other connected books of account and papers to the GS for the purpose of conducting the social audit

xvii) Monitoring implementation at the village level

xviii) Pro-actively disclosing, as given in Para 13.7, following information:

*a. At worksites as per **Annexure-1***

- *Details of works both completed and on-going (including wages paid and material component).*

*b. At GP Offices and other prominent public places as per **Annexure-2***

- *Names of persons (with JC numbers) who have worked, days worked and wages paid to them in the format.*
- *Quantity and price of materials purchased for each project along with name of agency which supplied the material.*

xix) Providing all information specified in Audit of Schemes Rules to the Social Audit Unit."

The Gram Panchayat is the pivotal body for planning and implementation and in other words, it is the Gram Panchayat which has to

do identification and planning of works within its area and executing them in accordance with the requirements of technical standards and measurements. However, it is nowhere provided under the MGNREG Act, 2005 that in order to implement the scheme, the Gram Panchayat ought to have a separate administration and therefore, it ought to discharge its responsibilities through its normal administrative mechanism with the assistance being provided by the GRS.

[6.4] The present controversy appears to have arisen between the Panchayat Secretaries and the GRSs in the discharge of their duties, because of which the impugned order dated 24-07-2020 was issued by the Joint Secretary (RD & PR), Government of Manipur. It may be noted that the Panchayat Secretaries are appointed under the provisions of the Panchayati Raj Act, 1994 while the GRSs are appointed under the provisions of the MGNREG Act, 2005 and the Operational Guidelines, 2013 framed thereunder. Their duties and responsibilities have been prescribed in their respective enactments and the rules/ guidelines made thereunder. The Panchayat Secretary is the head of the administration of the Gram Panchayat while the GRS is a personnel appointed by the State Government to assist the Gram Panchayat in the implementation of the schemes as contemplated under the MGNREG Act, 2005. In other words, the Panchayat Secretary is an integral part of the Gram Panchayat while the GRS is deployed at the Gram Panchayat to assist it. The GRS is not an employee of the Gram Panchayat nor can it run the administration of the Gram Panchayat but keeping in mind the service to be rendered by it, it

has been brought under the superintendence, control and disciplinary jurisdiction of the Gram Panchayat as is evident from para 18 of the Operational Guidelines, 2013. One thing which is common to both the Panchayat Secretary and the GRS, so far as the implementation of the schemes under the MGNREGS is concerned, is that both will have to render their services to the Gram Panchayat. In fact, there is no room for conflict at all, if both of them follow the rules strictly and in particular, the instructions of the Gram Panchayat. There is no specific provision under the MGNREG Act, 2005 which provides the manner in which the power and functions are to be performed by the Panchayat Secretary with the result that no role to be played by it, is contemplated therein. Only para 10.2.1 of the Operational Guidelines, 2013 provides that the Panchayat Secretary will be the custodian of all records at Gram Panchayat. But it is quite obvious that the Panchayat Secretary will have to render to the Gram Panchayat, in its implementation of the schemes under the MGNREG scheme, the same service being rendered by it to the Gram Panchayat in the discharge of its normal functions for the reason that the Panchayat Secretary is in charge of its administration. In other words, the Panchayat Secretary being an integral part, will have to render its service to the Gram Panchayat in respect of all functions to be performed by the Gram Panchayat under any law including the functions prescribed under the MGNREG Act, 2005.

[7] The Panchayat Secretary has no specific function to be performed by it under the provisions of the MGNREG Act, 2005 except exercising its

power and functions under the Panchayat Raj Act, 1994 which indirectly includes the service to be rendered by it in respect of the implementation of the scheme by the Gram Panchayat under the MGNREG Act, 2005. In other words, the Panchayat Secretary in its capacity as the Secretary to the Gram Panchayat, will have to render a limited service to the Gram Panchayat in the implementation of the MGNREG scheme. Such an indirect role of the Panchayat Secretary cannot be ignored at all nor can it be bye-passed, as long as the Gram Panchayat continues to be the authority, at the village level, to execute the projects under the scheme. The GRS cannot substitute the services of the Panchayat Secretary in administrative matters relating to the implementation of the MGNREG scheme by the Gram Panchayat. The fact that the GRS will have to assist the Gram Panchayat means nothing but the assistance to be provided indirectly to the Panchayat Secretary by the GRS in the administrative works towards the implementation of the scheme. The GRS cannot directly and independently deal with the Gram Panchayat without the file being allowed to be processed by the Panchayat Secretary which is the administrative head of the Gram Panchayat, as is evident from para 4.1.1 of the Operational Guidelines, 2013 except those responsibilities which are to be discharged by him independently. The impugned order appears to have been issued by the State Government under that circumstances directing that all development works under various schemes including MGNREG Scheme, be implemented through the Panchayat Secretary. But since the impugned order was issued in exercise of power conferred by the

provisions of the Panchayat Raj, Act, 1994, the submission of the learned counsel appearing for the petitioners appears to be technically correct. The State Government is not competent to issue such order relating to the duties to be performed by the Panchayat Secretary in respect of the implementation of a scheme under the MGNREG Act, 2005 because nothing is mentioned therein about the duties and functions to be performed by the Panchayat Secretary except stating in the Operational Guidelines, 2013 that the Panchayat Secretary will be the custodian of all records at Gram Panchayat. The State Government may have a right or it may be its domain to issue any order or direction in respect of the Gram Panchayat which is one of the authorities involved in the implementation of the scheme under the MGNREG Act, 2005. The GRS being an employee of the State Government and being deployed at the Gram Panchayat, the State Government may issue instructions as to the manner in which he would discharge his responsibilities as mentioned in para 4.1.1. In fact, all that the State Government needs to do, is to provide a mechanism for having a co-ordination between the Panchayat Secretary and the GRS through the District Programme Co-ordinator while rendering their services to the Gram Panchayat for which the Gram Panchayat may also need to make rules of business or to issue appropriate instructions so that both the Panchayat Secretary and the GRS can discharge their duties systematically in matters relating to the implementation of the MGNREG scheme. In order to avoid such controversy, it is the Gram Panchayat which has to keep its house in place and issue standing instructions as to

how the Panchayat Secretary and the GRS should co-ordinate in the discharge their duties in relation to the implementation of the scheme. After all they are public servants drawing their salaries from the public money and therefore, they need to co-operate each other in the interest of the general public. Since the schemes involved huge amount, there might be hidden agenda between them leading to the present controversy and on top of that, it is possible that the other officials involved in the implementation of the scheme might have their own hidden agenda adding complicacy in the matter. There are some cases in which the Pradhan of the Gram Panchayat has acted as an authoritarian completely ignoring or neglecting the responsibilities to be performed by others which need to be avoided by him at any costs. The schemes as envisaged under the MGNREG Act, 2005 are all welfare schemes which are to be implemented effectively and successfully to fulfil the objects sought to be achieved by it. All the stakeholders must keep their egos aside while rendering their services as the public servants. It may be noted by them that the Gram Panchayat is the only authority, at the village level, to execute the projects under the scheme. It is not the Panchayat Secretary nor is the GRS to execute the work and their duties are to render services to the Gram Panchayat so as to enable it to execute the projects in accordance with the provisions of the MGNREG Act, 2005. The Gram Panchayat shall not remain as a mute spectator; it cannot run away from its responsibilities and on the contrary, it being an institution, ought to see that the Panchayat Secretary and the GRS discharge their duties following its instructions

issued in tune with the provisions of the MGNERG Act, 2005. If any of them fails to follow its instructions, he or she shall be put to task and the disciplinary proceedings be initiated against him or her. At this juncture, one aspect which needs to be noted by all concerned, is the role to be played by the District Programme Co-ordinator. It is who has to supervise the performance of the Programme Officers who are dealing with the Gram Panchayats. If he fails to discharge his duties and functions as prescribed under the MGNREG Act, 2005 reasonably and effectively, the implementation of the schemes at the ground level by the Panchayats will be rendered unfruitful and meaningless because the implementation is under his control and responsibility. The GRS is deployed at the Gram Panchayat by the State Government through the District Programme Co-ordinator or for that matter, the Programme Officer who is responsible to see that the GRS is providing assistance properly to the Gram Panchayat and has not exceeded his limit while doing that. The controversy like the present one, can be resolved at the level of the District Programme Co-ordinator by allowing the parties to sit across the table and thrash out the issue. The District Programme Co-ordinator is expected to take up proactive action in this regard fairly and reasonably. In fact, the present unnecessary controversy appears to have arisen due to the failure on the part of the State Government to ensure that all the stakeholders discharge their duties strictly in accordance with the provisions of the MGNREG Act, 2005 and the operational guidelines issued thereunder. There is a need for the State Government to take appropriate action and ensure that such

controversy does not occur in future. The effective implementation of the schemes under the MGNREG Act, 2005 appears to be a far dream in the State, for which all the stakeholders are equally responsible and the main reason for the failure of the effective implementation of the scheme appears to be the lack of sincerity and co-ordination amongst the stakeholders.

[8] For the reasons stated hereinabove, the writ petition is allowed and consequently, the portion of the impugned order dated 24-07-2020 issued by the Joint Secretary (RD & PR), Government of Manipur and in particular, the para 1 (ii) in respect of the use of expression "**MGNREGS**", is quashed and set aside. It is made clear that the order dated 24-07-2020 in respect of the remaining portion shall remain in operation, if not modified or superseded by another order of the State Government. It is open to the Gram Panchayats to issue appropriate instructions, as permissible in law, so as to co-ordinate the rendering of services by the Panchayat Secretary and the GRS or any other necessary staff and technical support towards the implementation of the MGNREG Scheme.

There shall be no order as to costs.

JUDGE

FR/NFR

Yumkham Rother
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