

08.03.2021.
Item no. 7.
Court No.13
ap

**W.P.A. No. 4917 of 2021
(Through Video Conference)**

**Allmamun Hoque
Versus
The State of West Bengal & Ors.**

Mr. Rabilal Maitra, Id. Sr. Adv.,
Mr. Pranab Haldar,
Mr. Swarvanu Saha,
Mr. Sumon Pathak.

...For the petitioner.

Mr. Jahar Lal De,
Mr. Debasish Chattopadhyay.

..For the State.

Affidavit-of-service filed in Court today by the
Counsel for the petitioner be taken on record.

Instructions along with documents filed by the
Counsel for the State in Court today be also taken on
record.

The writ petitioner was functioning as Village
Level Entrepreneur at Bairagachi-I Gram Panchayat
under Uttar Alinagar in Malda. The Village Level
Entrepreneurs are part and parcel of the
implementation of Mahatma Gandhi National Rural
Employment Guarantee Scheme (in short
“MGNREGS”).

Pursuant to a complaint received from villagers
by the Block Development Officer, Gazole Development
Block, an inspection was conducted and based on MIS
and Field Reports. It is found that the Physical
Completion Certificates and Estimates of the Nirmal
Sahayak did not match with the Field Level

Implementation reports in respect of 50 MGNREGS accounts. Misappropriation of funds was also found. Collusion with the concerned Gram Panchayat Officials was also found.

A show cause notice came to be issued to a Computer Assistant called Krishna Chandra Roy to explain entries as regards excess expenditure were made that had caused misappropriation of funds.

The said Krishan Chandra Roy in turn lodged a complaint with the Gazole Police Station sometime in February 2020. Upon enquiries being conducted, the petitioner by a letter in writing in the Bengali vernacular, admitted that he had the access to the User I.D. and Password of the said Krishna Chandra Roy and had made several of the incorrect said entries. He also apologized for the same and stated that such conduct would not be repeated.

It was found that in excess of Rs. 34 lacs was misappropriated from the Gram Panchayat under the aforesaid MGNREGS. Records showing refunds by one Rubi Construction, Enjamul Hoque, A.H. Enterprise and one Nitai Borai of different sums of money to the Gram Panchayat have also been produced. In fact, A.H. Enterprise has admitted to wrongful receipt of about 12.71 lacs. The other three made refunds of Rs. 1 lac, R. 1 lac and Rs. 33,000/- each.

A formal complaint has been lodged by the Block Development Officer with the Gazole Police Station

also in this regard which is pending investigation. Further enquiries by the BDO revealed that Rubi Construction is headed by Md. Tazmul Hossain and he has misappropriated about 18.45 lacs. Enjamul Hoque about Rs. 8.13 lacs. The said Tazmul Hossain and Enjamul Hoque are relatives of the petitioner.

Pursuant to a show cause and reply submitted, a hearing was held on September 22, 2020 where the petitioner has put his signatures along with four others.

Mr. Moitra, learned Senior Advocate appearing on behalf of the petitioner would submit that although hearing may have been held but no documents have been supplied to his client. It is further argued that after initial orders, further orders have been passed. As to which order was passed pursuant to the hearing, is unknown to his client.

The sheet-anchor of Mr. Moitra's argument is that the petitioner may be a contractual employee but is covered under Circular of the Government of the year 2010 extended in the year September 2011 and subsequently from time to time and lastly in the year 2018. The said Circulars permit him to continue the work until the age of 60 years and his monthly remuneration is fixed from time to time by the State of West Bengal.

Specific reference is also made to a letter dated October 12, 2018 issued by the Panchayat and Rural

Development Department to the Government of West Bengal referring to EPF contribution for contractual employees under the MGNREGS. He, therefore, submits that the engagement of the petitioner is permanent in nature and that due principle of natural justice ought to have been complied with before terminating his service.

Reliance is placed in this regard by Mr. Moitra on the decision of the Supreme Court in the case of ***Om Prakash Goel vs. Himachal Pradesh Tourism Development Corporation Limited, Shimla and another*** reported in ***(1991) 3 SCC 291*** particularly, paragraphs 4 and 5 thereof. Reliance is also placed to a decision of ***Hari Ram Maurya vs. Union of India and others*** reported in ***(2006) 9 SCC 167***.

Mr. Jaharlal De, learned counsel for the State has placed his instruction and has produced documents referred to above.

This Court has carefully considered the rival contentions of the parties.

What is undisputed is that the writ petitioner was a as Village Level Entrepreneur under MGNREGS and engaged on contract. The period of contract is for one year renewable from time to time. The renewal of contract is within the exclusive discretion of the District Programme Co-ordinator. The Scheme is implemented through the District Administration and involves, inter alia, Rural Development Works

undertaken by the State to facilitate employment generation. Public works are entrusted to contractors and material is procured for such public works. Computerized records are required to be maintained at the village and block levels for such purposes. Responsibility of VLEs is primarily that of Data Entry Operator. The said VLEs do not handle any document nor are they involved in actual money transactions.

However, the fact remains that every project for the purpose of implementation, involves payment of sums of money towards work done or ordered. The petitioner's responsibility rested in computer entries of physical documents evidencing work undertaken, work performed and payment entitled.

Any falsification or alteration or incorrect entry made by the petitioner or persons similarly situated would result in wrongful gain to third parties and wrongful loss to the State. The petitioner was admittedly involved in making false entries that resulted in misappropriation of funds. He did so dishonestly by impersonating the said Krishna Chandra Roy, unauthorisedly using the latter's User ID and Password.

The VLEs did not actually handle cash, but their actions can definitely facilitate an illegality or a fraud on public funds.

This Court is convinced particularly in the context of the petitioner's admission that he has

wrongly accessed the computerized account of the Gram Panchayat to make fictitious entries. He has admitted in writing the same on September 8, 2018. It further transpires that a show cause was duly issued to him and he has answered the same. There is compliance of Natural Justice here.

It is indeed true that petitioner has stated in reply to show cause that he was never responsible for physical handling any money. That by itself cannot absolve the petitioner of wrongfully using somebody else's User I.D. and Password to gain unlawful access and manipulate public records.

The complaints lodged with the Gazole Police Station must be expedited and the Officer-in-Charge, Gazole Police Station is directed to complete investigation into the complaint and submit a report to the jurisdictional Magistrate at the earliest.

In so far as the compliance of principles of natural justice are concerned, this Court is of the view that the entitlement of the petitioner under the aforesaid Circulars of the Government of 2010-2011 and 2018 cannot come to the petitioner's aid. The petitioner's entitlement thereunder has not been accepted as yet. The petitioner is only receiving remuneration under the appropriate Scheme. He is also paid additional incentives for extra work done.

Even assuming though not admitting that the petitioner's entitlement to the benefits of the

Government Circulars prescribed that he is entitled to the age of 60, the said Circular and application thereof by themselves will not confer protection under Article 311 of the Constitution of India on the petitioner.

The ***Hari Ram Maurya*** (supra) decision cited by Mr. Moitra refers to temporary employees. The said decision even otherwise cannot be treated against any binding precedent. The decision of ***Om Prakash Goel*** (supra) was dealing a case of termination of service of a temporary employee as well. The petitioner admittedly was a contractual employee and his terms of engagement are governed by the terms of contract.

The petitioner's engagement is governed by the terms of the MGNREGS. He cannot claim the benefit of both, the Scheme and the Circulars of the Government of West Bengal as aforesaid.

In any event, there has been some compliance of principles of natural justice, inasmuch as, the petitioner was issued show-cause, given a hearing and then the order of termination has been made.

In the facts and circumstances of the case, no interference is called for with the impugned order of termination.

The writ petition must fail and is hereby dismissed.

There will be no order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all formalities.

(*Rajasekhar Mantha, J.*)