

April 12, 2023
Sl. No.16
Court No.19
s.biswas

WPA 7699 of 2023

Nanda Kishor Sardar

vs.

The State of West Bengal and others

Mr. Sounak Bhattacharya,
Mr. Chhandak Dutta, Advocates

... for the petitioner

Mr. Anubrata Santra, Advocates

... for the State

Mr. Anjan Bhattacharya, Advocate

...Intrvenor

Affidavit of service filed by the petitioner is taken on record.

Despite service, none appears on behalf of the private respondents apart from the State respondents.

Mr. Anjan Bhattacharya, learned advocate seeks to intervene in the matter on behalf of one Asmot Ali Molla and some other villagers. The order impugned to the writ petition was passed on the basis of a direction of a Division Bench of this court in a public interest litigation. Thus, Mr. Bhattachya is allowed to intervene in the matter.

The petitioner is aggrieved by the communication of the Block Development Officer, Canning-I Development Block & Programme Officer, Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS), dated December 7, 2022, by which a sum of ₹40,17,531/- (Rupees forty lakh seventeen thousand five hundred and thirty one

only) was sought to be recovered from the Pradhan, Gopalpur Gram Panchayat on the allegation of embezzlement of the funds received under MGNREGS.

The Court finds that such recovery was directed by the District Magistrate and District Programme Co-ordinator, MGNREGS, South 24 Parganas.

The order was passed by the District Magistrate on November 29, 2022 on basis of a direction passed by a Division Bench of this Court in a public interest litigation.

The Court finds the order to be cryptic, unreasoned and without clarification as to how the recommended amount of recovery had been arrived at. Further, the involvement of the petitioner in the misappropriation and defalcation against each of the items has not been clearly explained. The Block Development Officer has filed a report explaining involvement of the petitioner. The same is taken on record. In the opinion of the Court, subsequent reports cannot improve the order which was passed by the authority and which is impugned before the Court.

It also appears that the order had been passed on the basis of a report filed by the Block Development Officer, Canning-I Development Block

and Programme Officer, MGNREGS, dated December 7, 2022, upon a thorough enquiry.

The said report was not supplied to the petitioner.

The rules of natural justice demand that if a report is used against a person, such report should be supplied to such person for necessary response, before the authority can place reliance on the same and pass necessary orders.

Thus, on the ground of violation of principles of natural justice and on the further ground that the order impugned passed by the District Magistrate dated November 29, 2022 is a non-speaking order, the court directs that the order dated November 29, 2022 shall be treated as preliminary finding.

The matter is remanded to the District Magistrate, South 24 Parganas for further consideration.

The petitioner shall be supplied with the report prepared by the Block Development Officer, Canning-I Development Block dated December 7, 2022. The petitioner shall respond to the report dated December 7, 2022 as also to the findings in the order dated November 29, 2022 passed by the District Magistrate, by filing a written statement.

Upon completion of the aforementioned formalities, a further hearing shall be held in

presence of all interested parties. The petitioner and the villagers/intervenors, shall be represented by learned advocates, at the hearing. The parties will be entitled to adduce oral and documentary evidence in the proceedings. The parties shall also be entitled to produce witnesses and request the authority to allow examination of other witnesses or members of the gram panchayat.

List of such persons shall be supplied to the District Magistrate, South 24 Parganas by the respective parties.

Upon assessment of the entire issue, a reasoned order shall be passed. This Court has not gone into the merits of the allegation made by the petitioner, but leaves it to the District Magistrate, South 24 Parganas to decide the entire issue independently. The involvement and/or complicity of the petitioner shall be indicated in the order upon consideration of the written versions/contentions of the parties.

The entire exercise shall be completed within a period of three months from the date of communication of this order.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of server copy of this order.

(Shampa Sarkar, J.)