

01.05.2023

Item No.2

Ct. No.1

PG/KS

W.P.A.(P) 163 of 2023

Askar Ali
Vs.
The State of West Bengal & Ors.

Md. Nauroz Rahber
Mr. Muhammad Jawwad
.....for the Petitioner

Mr. Samrat Sen, Ld. A.A.A.G.
Mr. Nilotpal Chatterjee
Mr. Amrita Lal Chatterjee
.....for the State

1. By this public interest litigation, the petitioner seeks for appropriate direction against the respondent nos.4 to 6 for siphoning off the public funds, which have been allotted at the Mahatma Gandhi National Rural Employment Guarantee Act, 2005.
2. Earlier the petitioner had approached this Court by filing a public interest litigation in W.P.A.(P) 486 of 2022, which was disposed of by the Division Bench by an order dated 31st October, 2022 by directing the District Magistrate, Uttar Dinajpur to look into the grievances expressed in the representation given by the petitioner dated 12th September, 2022 and conduct an enquiry, if required and take appropriate action after giving an opportunity of hearing to the petitioner and all

the concerned respondents. A time frame was also fixed to complete such exercise. It appears that the District Magistrate, Uttar Dinajpur had commenced an enquiry and he has passed an order on 30th January, 2023 listing out work done under three schemes and has directed recovery of a sum of Rs.4,17,741/- from the Pradhan of Jagadishpur Gram Panchayat and also a sum of Rs.11,460/- from the writ petitioner for three schemes, which have been listed out in the said order.

3. However, the order dated 30th January, 2023 passed by the District Magistrate, Uttar Dinajpur cannot be stated to be in compliance with the directions issued by this Court in its order dated 31st October, 2022 as the direction was specifically issued to the District Magistrate and from the order it could be seen that it is signed as 'For District Magistrate'. Therefore, it is not clear as to which authority had enquired into the matter. That apart, in the representation given by the petitioner not only the three schemes have been listed out, but several other schemes have been listed out when a direction has been issued by this Court to the District Magistrate to look into the grievances with regard to the allegation of siphoning of public money. It

goes without saying that the District Magistrate should conduct a comprehensive enquiry and not restrict the same to only such of those schemes, which have been pointed out in the representation.

4. The District Magistrate being the guardian of public finances, which are to be distributed under his orders, is required to make a comprehensive enquiry and to ascertain as to whether any irregularity or illegality has occurred in the process of utilization of the funds under the various schemes.
5. It is rather surprising to note that the Pradhan of Jagadishpur Gram Panchayat himself has committed a defalcation and a sum of Rs.4,17,741/- was directed to be recovered. If the Pradhan is guilty of misappropriation of public money, it is not only the money should be recovered but action should be taken against the said Pradhan in accordance with the relevant statute. So far as the recovery directed to be made from the writ petitioner is concerned, it is for the writ petitioner to challenge the same in appropriate proceeding. Therefore, technically speaking, the writ petitioner could not have maintained a second public interest litigation on the same cause of action. Be that as it may,

since we are concerned about how the public funds have to be utilized, we direct the District Magistrate, Uttar Dinajpur to conduct a comprehensive enquiry of all the schemes, which have been so far implemented or in the process of being implemented and after issuing notices to all the concerned persons, who were directed to implement those schemes, an order be passed taking note of all the factors, which are required to be taken as also as to how the schemes have to be implemented in terms of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005.

6. In order to ensure that the enquiry is conducted in a full-fledged and appropriate manner, we direct the second respondent viz. the Secretary, Panchayat and Rural Development, Government of West Bengal to monitor the enquiry and the District Magistrate shall send periodic reports to the second respondent as to how the matter is proceeding.
7. In the light of the above, the writ petition is disposed of with the above direction leaving it open to the writ petitioner to question the correctness of the demand made from him in the manner known to law.

8. That apart, in terms of the order dated 30th January, 2023, direction has been issued to impose penalty under Section 25 of the said Act. The appropriate authority is directed to initiate action in accordance with law in terms of the said provision. The above direction be complied within a period of two months from the date of receipt of server copy of this order.
9. There shall be no order as to costs.
10. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T. S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)