
(2022) 09 OHC CK 0142

In the Orissa High Court

Case No : Writ Appeal Nos.401, 402, 403 of 2017 Writ Petition (C) Nos. 22880
Of 2019, 25971, 26354 Of 2021

Gagan Bihari Patra

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 19-09-2022

Acts Referred:

Constitution of India, 1950 — Article 226

Mahatma Gandhi National Rural Employment Guarantee Act, 2005 — Section 18

Citation : (2022) 09 OHC CK 0142

Hon'ble Judges : Dr. S. Muralidhar, CJ;Chittaranjan Dash, J

Bench : Division Bench

Advocate : Sukanta Kumar Dalai, Aparesh Bhoi, Manoja Kumar Khuntia,

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, CJ.

1. The common question that arises in the three writ appeals which challenge a common order of the learned Single Judge dismissing the corresponding writ petitions of the Appellants is whether a Collector of a District is empowered to transfer a Gram Rozgar Sevak (GRS) engaged as such under Section 18 of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (MGNREG Act) read with the MGNREGA's Operational Guidelines, 2013? The same question arises for consideration in the three connected writ petitions.

2. It must be mentioned at the outset that the impugned transfer order issued by the Collector, Kalahandi as far as writ appeals filed by Gagan Bihari Patra (in W.A. No.401 of 2017) and Amir Harijan (in W.A. No.402 of 2017), is dated 14th September, 2017. While by the said order, Gagan Bihari Patra was transferred from Champadeipur Gram Panchayat (GP) in the Lanjigarh Block to Talnagi GP in Th. Rampur Block, Amir Harijan was transferred from Talnagi GP to Champadeipur GP. The reason given in the impugned office order is that they were being transferred on "administrative ground."

3. The learned Single Judge has while dismissing the writ petitions relied on an earlier judgment dated 11th October, 2017 in W.P.(C) No.19627 of 2017 (and batch of cases) in Jitendra Kumar Pati v. State of Orissa, which had been dismissed with the following observations:

"21. In view of the elaborate discussion made hereinabove and considering the scope and jurisdiction of the High Court sitting under Article 226 of the Constitution of India in making interference in the matter of transfer, this Court is of the considered view that the petitioners have failed to make out a case for showing interference in the impugned orders rather, it is the prerogative of the competent authority to post one or the other employee to take maximum work from them which cannot be looked into by the High Court unless any arbitrariness or malice is being shown, but the petitioners have failed to show any arbitrariness or malice in these writ petitions and as such, this Court declines from interfering with the impugned orders.

22. In the result, the writ petitions are dismissed."

4. Holding that the said decision in Jitendra Kumar Pati (supra) squarely covered the case on hand, the learned Single Judge has by the impugned order dismissed the writ petitions of the present Appellants.

5. It must be noted that while issuing notice in W.A. No.401 of 2017 on 21st November 2017, this Court stayed the operation of the aforementioned order dated 14th September, 2017 and that stay order has continued since. In other words, the present Appellants have continued as such as GRS in the place of their original posting in particular GP and in effect therefore for over 5 years now, the transfer order has not been operational as far as the two Appellants in question are concerned.

6. Among the grounds raised in the writ appeals was that the learned Single Judge failed to appreciate that between the GP and the GRS, a master and servant relationship exists and was governed by the provisions of Orissa Gram Panchayat Act, 1964 (OGP Act), and the Collector had therefore no authority to issue such orders of transfer. Secondly, it was submitted that the impugned orders of transfer are violative of principles of natural justice since no opportunity of hearing was afforded to any of the Appellants before the transfer orders were passed. It was submitted that the authority of the GP cannot be taken away by the Collector who has exceeded his power and authority in passing the impugned orders of transfer.

7. In the counter affidavit filed in W.A. No.401 of 2017, it has been explained in detail by the Additional Secretary, Panchayati Raj & Drinking Water Department, Government of Odisha that the engagement of the GRS was only pursuant to Section 18 of the MGNREG Act and not under the OGP Act. Under Section 18 of the MGNREG Act, the State Government is mandated to make available to the District Programme Coordinator, who happens to be the Collector and the Programme Officer i.e. the Block Development Officer (BDO), necessary staff and

technical support as may be necessary for the effective implementation of the MGNREG Scheme.

8. Reference is also made to paras 4.1 and 4.1.1. of the MGNREG Act and Operational Guidelines 2013, which read as under:

"4.1 GRAM PANCHAYAT

At the GP level, the following dedicated personnel are required:

- i) Gram Rozgar Sahayak or Employment Guarantee Assistant
- ii) Mates or work site supervisors

The cost towards recruitment of GRS is the first charge on the administrative expenses under MGNREGA. Functions and responsibilities of the personnel required at the GP level are explained below:

4.1.1 Gram Rozgar Sahayak or Employment Guarantee Assistant

- i) Gram Rozgar Sahayak (GRS) will assist the Gram Panchayat (GP) in executing MGNREGA works at GP level.
- ii) GRS should be engaged exclusively for MGNREGA and shall not be assigned any other work.
- iii) The function of GRS and the Gram Panchayat Secretary should be distinctly outlined.

Box No. 4.2

Deployment of Gram Rozgar Sahayak

The State may ensure that at least one GRS is deployed in every GP except in GPs where demand for work under MGNREGA is almost non-existent. More than one GRS may be deployed in GPs that have high labour potential and GPs with scattered habitations and tribal areas.

- iv) The responsibilities of the GRS are as follows:
 - a. Overseeing the process of registration, distribution of job cards, provision of dated receipts against job applications, allocation of work to applicants etc.;
 - b. Facilitating Gram Sabha meetings and social audits;
 - c. Recording attendance of labour every day either himself/herself or through the mate in the prescribed Muster Rolls at the worksite;
 - d. Ensuring that Group mark outs are given at work site for every groups of labourers, so that the workers know the output required to be given to earn wage rate every day;
 - e. Ensuring that all Mates attend worksites on time and take roll calls/attendance in prescribed muster roll at worksite only.

f. Ensuring worksite facilities [as defined in para 7.11 of Chapter 7 of the Guidelines] and updating job cards of the workers regularly.

g. Maintaining all MGNREGS-related registers at the Gram Panchayat level, assist the Panchayat Secretary or any other official responsible for maintenance of MGNREGA accounts; and ensuring that these documents are conveniently available for public scrutiny.

v) The GRS should be adequately trained in work-site management and measurement of works.

vi) The remuneration/compensation to be paid to GRS can be based on fixed pay or on performance basis. Appropriate performance incentive-disincentive system needs to be worked out accordingly."

9. As regards the power of transfer of the GRS, reference is made to para 2.4.2 (viii. and ix) of the Operational Guidelines, which reads as under:

"2.4.2 State Government

Responsibilities of the State Government include:

xxx xxx xxx

viii) Ensure that full time dedicated personnel, wherever required, are in place for implementing MGNREGA, specially the Employment Guarantee Assistant (Gram Rozgar Sahayak), the PO and the staff at state, district and Cluster level;

ix) Delegate financial and administrative powers to the DPC and the Programme Officer, as is deemed necessary for the effective implementation of the Scheme."

10. In terms of the above guidelines, clear instructions have been issued regarding selection and engagement of GRSs on 6th April, 2018. Separately, on 2nd June 2018, the Government of Odisha has authorised inter alia the Collector-cum-CEO, Zilla Parishad to transfer the GRSs within the district in view of administrative exigencies.

11. In view of the above statutory framework and set up Operational Guidelines and instructions, the Court is satisfied that the Collector was authorised to issue orders of transfer of GRSs and it was not in violation of any of the provisions of the OGP Act. There is a basic misconception in construing the engagement of the GRSs as being covered by the OGP Act whereas it is covered under Section 18 of the MGNREG Act read with the Operational Guidelines issued thereunder.

12. For the administrative reasons, therefore, the Collector was empowered to transfer within the District a GRS from one GP to another GP. There is thus no illegality attached to the impugned transfer orders.

13. Although in the counter affidavit filed by the BDO, reference is made to show-cause notices having been issued to the Appellant in W.A. No.401 of 2017 about his not performing his duties properly, the Court is satisfied that the transfer was

only on account of administrative exigencies. This is notwithstanding the fact that sufficient opportunity appears to have been afforded to the said Appellant to defend himself against the said allegations.

14. None of these Appellants have been able to show that the impugned transfer orders suffer from any malice in law or are manifestly arbitrary so as to warrant interference by the Court.

15. Consequently, the Court is not satisfied that any error has been committed by the learned Single Judge in dismissing the writ petitions of the present Appellants.

16. The appeals are accordingly dismissed. The interim order passed earlier stands vacated.

17. In view of dismissal of the writ appeals, the writ petitions are also dismissed.

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