
(2009) 08 GAU CK 0029

In the Gauhati High Court

Case No : Writ Petition (C) No's. 748 and 1922 of 2009

Idris Ali and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 31-08-2009

Acts Referred:

Assam panchayat Act, 1994 — Section 2(1), 2(2), 4, 4(6)
Constitution of India, 1950 — Article 226

Citation : (2010) 1 GLR 110 : (2009) 5 GLT 123

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : A.M. Bazarborah, B. Ahmed, N. Haque, S.K. Deori, K. Uddin, M. Saronia, S.U. Ahmed and W. Tengem, for the Appellant; B.L. Sinha, A.R. Bhuyan and P. Das, for the Respondent

Judgement

I.A. Ansari, J.—Indira Awaas Yojana (in short, "IAY") is a developmental scheme of the Ministry of Rural Development, Government of India, which aims at providing houses, through Panchayat system, to the poor in the rural areas. Under the IAY, Project Director, District Rural Development Agency (in short, "DRDA"), Kamrup, Assam, fixed a target of 33 number of houses, for the year 2008-09, in respect of Muktapur Gaon Panchayat, which falls under Bihdia Jajikona Development Block. On 11.8.2008, Secretary of Muktapur Gaon Panchayat convened a "Gram Sabha" for selection of beneficiaries of the said scheme for the year 2008-09. In the said meeting of Gram Sabha", held on 11.10.2008, as many as 150 beneficiaries were selected for providing IAY houses under Muktapur Gaon Panchayat. Acting upon the resolution, so adopted, a letter, dated 17.11.2008, was issued by Secretary, Muktapur Gaon Panchayat, forwarding to the Block Development Officer, Bihdia Jajikona Development Block, Kamrup, a list of 33 beneficiaries, whose names appear from Sl. No. 1 to 33, of the said 150 selected beneficiaries, requesting release of funds. The Block Development Officer (in short, "BDO") of the said Development Block did not, however, act on the said list of beneficiaries. The Block Development Officer,

instead of acting upon the list, which had been forwarded to him by the letter, dated 17.11.2008, aforementioned, decided to act upon another list containing 33 names. The list, sought to be so acted upon by the Block Development Officer, was contended to have been waiting list, which was claimed to have been made in terms of the resolution of a meeting of "Gram Sabha" held on 21.9.2006, in the office of Muktapur Gaon Panchayat. As the list, which had been forwarded by the Secretary, Muktapur Gaon Panchayat, by his letter, dated 17.11.2008, aforementioned, was not being acted upon by the Block Development Officer as mentioned hereinbefore, some of the beneficiaries of the select list, which had been adopted in the meeting of the "Gram Sabha" on 11.10.2008, filed a writ petition, under Article 226, seeking to get set aside the list, which had been prepared on 21.9.2006 and which list the Block Development Officer had sought to act upon. The petitioners, in the said writ petition, also sought for passing appropriate directions to the State respondents to release fund so that the said petitioners could receive the benefits, meant for them, in terms of the resolution, adopted, on 11.10.2008, by the. "Gram Sabha". This writ petition gave rise to WP(C) No. 748/2009.

2. While issuing notice of motion on 27.11.2009, an interim direction was passed, in WP(C) No. 748/2009, to the effect that the State respondents shall not to issue cheques in favour of the private respondents, whose names appear in the said waiting list, dated 21.9.2006, which stood impugned in the said writ petition, and which list the Block Development Officer had sought to act upon.

3. Thereafter, some of the beneficiaries of the said waiting list, which the Block Development Officer had sought to act upon, too, filed a writ petition, under Article 226 of the Constitution of India. The latter writ petition, which the beneficiaries of the said waiting list had filed, gave rise to WP(C) No. 1922/2009. These petitioners sought for, inter alia, issuance of directions to the State respondents, particularly, Branch Manager, Assam Gramin Bikash Bank, to allow these petitioners to withdraw the amounts in terms of their selection as reflected by the said waiting list.

4. For the sake of brevity and clear understanding of the respective cases of the parties concerned, the writ petitioners of WP(C) No. 748/2009 are hereinafter referred to as "the first group of petitioners" and the writ petitioners of WP(C) No. 1922/2009 are hereinafter referred to as "the second group of petitioners".

5. What clearly emerges from the above discussion is that while "the first group of petitioners (i.e., petitioners in WP(C) No. 748/2009) plead that the list, which had been prepared by "Gram Sabha" on 11.10.2008, be acted upon, the second group of petitioners (i.e., petitioners in WP(C) No. 1922/2009) submit that their list, dated 21.9.2006, which the Block Development Officer had sought to act upon, is a valid list and the same shall be allowed to be acted upon, particularly, when the said list was prepared way back in the year 2006 and, acting upon the said select list, benefit of the said scheme has already been extended to some of the selected persons.

6. The moot question, therefore, which falls for determination, in these two writ petitions, is: Which one of the said two lists, one prepared on 11.10.2008 and the other one, prepared on 21.9.2006, is the valid list and shall be directed by this Court to be acted upon?

7. As both these writ petitions are inextricably inter-linked and decision, in any of these two writ petitions, would have a bearing on the out-come of the other writ petition, both these writ petitions, on the request made by the Learned Counsel for the parties, have been heard together for the purpose of final disposal.

8. I have heard Mr. A.M. Buzarbaruah, learned Counsel, for the first group of petitioners, and Mr. M. Sarania, learned Counsel, for the second group of petitioners, have also heard Ms. V.L. Sinha, learned Government Advocate, appearing on behalf of the State respondents, Mr. A.R. Bhuyan and Mr. P. Das, Learned Counsel for the remaining respondents.

9. Before coming to the question as to which one of the two lists, in question, is the valid one, it needs to be noted that IAY is a centrally sponsored scheme to help, by extending financial assistance, construction/upgradation of dwelling houses for the members of Scheduled Caste/Scheduled Tribe/Physically Handicaped and other persons, who fall below poverty line. Guidelines have been issued by the Central Government with regard to implementation of the said scheme.. As regards the persons, who would be entitled to make selection by identifying those persons, who would be eligible to receive the benefits of the said scheme, the guidelines read as under:

The District Panchayat/Zilla Panchayat/District Rural Development Agencies (DRDA) on the basis of allocations made and targets fixed shall decide the number of houses to be constructed/upgraded Panchayat wise under IAY, during a particular financial year. The same shall be intimated to the Gram Panchayat concerned. Thereafter, the "Gram Sabha" will select the beneficiaries from the list of eligible BPL households. Restricting this number to the target allotted as per the programme Guidelines. Selection by the "Gram Sabha" is final. No approval by a higher body is required. Zilla Parishads/DRDAs and Block Development Officers should, however, be sent a list of selected beneficiaries for their information.

10. A bare reading of what have been reproduced above clearly shows that the authority to prepare the select list is the "Gram Sabha" and the list of beneficiaries, which a "Gram Sabha" so prepares, would be final and would not require approval by any higher authority.

11. As defined by Section 2(1) of the Assam Panchayat Act, 1994, "Gaon Sabha" means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of "Gaon Panchyat"; whereas a Gaon Panchyat, as defined in Section 2(2), means a Gaon Panchayat established under the said Act. Section 4(ii) of the said Act read with Section 2(1) shows that "Gaon Sabha" shall consist of persons registered in electoral rolls relating to a village or a group

of villages comprised within the area of the Gaon Panchayat. u/s 4(6), the quorum for a meeting of the Gaon Sabha shall be one-tenth of the total members or one hundred number of voters of the villase/villases, whichever is less.

12. From what have been pointed out above, it becomes clear that a "Gaon Sabha", which stands on the same footing as the Gram Sabha, consists of persons registered in the electoral roll, relating to a village or group of village, comprised within an area of the Gram Panchayat, and the quorum for meeting of the "Gaon Sabha" is one-tenth of the total members of the Gaon Sabha or 100 number of voters of the village or villages comprised within the territorial limits of a Gaon Panchayat, whichever is less.

13. The fact that the first group of petitioners were selected by a "Gaon Sabha"; in the meeting held on 11.10.2008, is not in dispute. What is, however, in dispute is the validity of the list, which the Block Development Officer seeks to act upon, for, it is contended, on behalf of the first group of petitioners, that the list, in respect of the second group of petitioners, had not been prepared in any meeting of Gaon Sabha.

14. For the purpose of determining the question as to whether the list, which was prepared on 21.9.2006, is a valid list or not, it needs to be noted that the Project Director, DRDA, Kamrup, has contended, in his affidavit, that the list, which he seeks to act upon, is in terms of the minutes of the meeting of the Gram Sabha held on 21.9.2006. The translated copy of the minutes has been placed as Annexure-E to the affidavit, which the Block Development Officer has filed. The Affidavit reads as under:

Signature of the persons present in the Gram Sabha held on 21.9.2006 in the office of the Muktapur Gaon Panchayat for approving the LAY Permanent Wait List.

1.

2. Sd/- Sri Suren Bania (Vice-President, Muktapur GP)

3. Sd/- Sri Dhiren Deka (Member, Muktapur Ward)

4. Sd/-Syed Afiuruja Ahmed (Member, Soul mari Ward)

5. Sd/-Sri Mirali Das, (Member, Belkona Ward)

6. Sd/- Smt. Sabita Deka, (Member, Tulamati Ward)

7. Sd/-Smt. Prabha Devi

8. Sd/- Md. Ajijur Rahman, (Member, Bargaon Ward)

9. Sd/- Md. Forman Ali, (Member, Saledol Ward)

10. ...

11. ...

12. ...

Agenda/Programme

1. ...

2. ...

3. Discussion regarding IAY Wait List and acceptance of the list

4. ...

5. ...

6. ...

7. ...

Resolution No. 1

Today's meeting unanimously accepted the approved Permanent IAY Wait List from the Higher Authority and resolved that there should be rectification of some names of the list.

Accepted Sd/- Sd/- Amrit deka Suren Bania Secretary Mukatapur GP 25.9.2006

15. On a minute scrutiny of the contents of Annexure-E, as reproduced above, what becomes transparent is that the meeting, which selected the second group of petitioners, was held on 21.9.2006. This meeting was held in the office of Muktapur Gaon Panchayat and it was not a meeting of Gaon Sabha (Gram Sabha), but of Muktapur Gaon Panchayat. Thus, the select list, which the Block Development Officer seeks to act upon, was prepared not in any meeting of "Gram Sabha"; rather, the meeting was attended by only the Vice-President of the said Gaon Panchayat and seven other members of the said Gaon Panchayat. Clearly, therefore, the list, dated 21.9.2006, was prepared by a body, which was not authorized and competent to make any list under the said scheme.

16. Mr. M. Sarania, learned Counsel, appearing on behalf of the second group of writ petitioners, has, at the time of hearing of these writ petitions, produced, before this Court, a copy of a letter, dated 27.5.2009, issued by Deputy Commissioner, Kamrup, as an Executive Director, DRDA, to show that "Gram Panchayat" and "Gram Sabha" are one and the same body.

17. From a cautious reading of the contents of the letter, dated 27.5.2009, what becomes abundantly clear is that the Executive Director, DRDA, Kamrup, has directed the Block Development Officer, Bihdiya Developmental Block, to convene "Gram Sabha" in all the Gaon Panchayats by 6.10.2009 and finalise the list of such persons, who are yet to get IAY houses from the permanent IAY list and submit the same to the Project Director, Kamrup, by 15.6.2009. There is nothing in the letter, dated 27.5.2009, showing that the Gaon Panchayat has to be treated as "Gram Sabha". Far from this, the letter, dated 27.5.2009, clearly

reflects that the select list has to be prepared by convening a meeting of "Gram Sabha". The letter, dated 27.5.2009, therefore, does not confer, and cannot be said to have conferred, any authority on Gaon Panchayat to prepare the list of persons, who are to be extended the benefit of the said Scheme. The authority to make selection of the beneficiaries was given to the "Gram Sabha" and has remained vested in the "Gram Sabha".

18. Situated thus, one has no option, but to hold, and this Court does hold, that the list, which the Block Development Officer had sought to act upon and the same list, which even the second group of petitioners have sought enforcement of, was clearly a list, prepared by an authority, which was wholly incompetent and could not have, therefore, prepared any such list. As against this categorical finding, the list, which has been prepared by the Gaon Sabha, on 11.10.2008, is a valid list and needs to be, therefore, enforced.

19. Yet another submission made by Mr. Sarania, Learned Counsel for the second group of petitioners, is that the list, which the DRDA seeks to act upon, is a waiting list and many persons, out of the said waiting list, have already received benefits and, hence, it would be, according to Mr. Sarania, unfair and unjust to refuse to extend the benefit of the said waiting list to the second group of petitioners.

20. While dealing with the above submission, it needs to be pointed out that a court cannot give direction in the name of removing discrimination if such direction would amount to enforcing any authority to repeat or perpetuate an illegal act, Before giving any direction to any authority to act in a manner in which it had acted in the past, the court must be satisfied that the act, which had been done in the past by the authority concerned, was an act done in accordance with law. If the act done in the past was contrary to law, the authority cannot be directed to repeat its illegal act on the ground that not repeating such an act would amount to discriminating a person, who was similarly situated as a person, who had received the benefit of an illegal act of the authority concerned.

21. In the case at hand too, when it is the clear finding of this Court that the list of beneficiaries ought to have been prepared by the Gram Sabha and the list, which has been prepared on 21.9.2006, was a list, which had been prepared by a body, which had no such authority to prepare the list, this Court cannot permit the State respondents, nor can it direct the State respondents, to make the benefit of the scheme available to the remaining persons of the said waiting list inasmuch as any such direction would be a direction to the respondents to act contrary to law.

22. The mere fact that an authority has passed a particular order in the case of another person, similarly situated, cannot be a ground for issuing a writ in favour of the petitioner on the plea of discrimination if the order, in favour of other the person, is found to be contrary to law or not warranted in the facts and circumstances of his case. Noticing that the High Courts, in exercise of their writ

jurisdiction, have been passing orders in the name of removing discrimination and thereby asking the authorities concerned to repeat illegality, the Apex Court has expressed its anxiety on such approach and has laid down the position of law in Chandigarh Administration and another Vs. Jagjit Singh and another, in the following words:

8. We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat the illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law-indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law - but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such plea would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. Is it not more appropriate and convenience to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course-barring exceptional situations - would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular

order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises).(emphasis is added)

23. Because of what have been discussed and pointed out above, while the writ petition, namely, WP(C) No. 1922/2009, is dismissed, the writ petition, namely, WP(C) No. 748/2009, is hereby allowed and the State respondents, particularly, the DRDA, is Hereby directed to act upon the list, which has been forwarded to Block Development Officer by the Secretary, Muktapur Gaon Panchayat, by letter, dated 17.11.2008, aforementioned.

24. With the above observations and directions, these writ petitions shall stand disposed of.

25. No order as to costs.