
(2019) 09 MAN CK 0029

In the Manipur High Court

Case No : Public Interest Litigation No. 29 Of 2018

Ngamdar And Others

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 24-09-2019

Acts Referred:

Citation : (2019) 09 MAN CK 0029

Hon'ble Judges : Ramalingam Sudhakar, CJ;M.V. Muralidaran, J

Bench : Division Bench

Advocate : M.Hemchandra, Momota Oinam, S.Suresh, R.K.Deepak

Final Decision : Disposed Of

Judgement

R.S., CJ

[1] Heard Mr. M.Hemchandra, learned senior counsel for the petitioners. Also heard Ms. Momota Devi, learned Addl. Advocate General for the State respondents No.1, 2 and 4 and Mr. R.K.Deepak, learned counsel for the for the respondent No.3. Also heard Mr. S.Suresh, learned CGC appearing for the Union respondent No.5.

[2] The prayers in this PIL are as follows:-

"iii) To issue a writ in the nature of Mandamus/ Certiorari or any other appropriate writ/ directions/ orders, directing the respondent to implement the Border Area Development Programme (BADP) strictly as per BADP guidelines in all the border block(s) of Manipur State, more particularly, under Chandel District (Manipur) in view of the facts and circumstances of the present petition.

iv) To issue a writ in the nature of Mandamus/ Certiorari or any other appropriate writ/ directions/ orders, directing the respondent cause an enquiry by an independent agency like CBI or any other independent agency or by a commission duly constituted for the purpose, in view of the facts and circumstances of the present petition.

v) To issue a writ in the nature of Mandamus/ Certiorari or any other appropriate writ/ directions/ orders, directing the respondent to recover the amounts already sanctioned/utilized for the purpose under BADP from the stakeholders for their act of misappropriation public money and financial embezzlement, in view of the facts and circumstances of the present petition."

[3] The petitioners claim to be social workers hailing from villages covered under Border Area Development Programme (BADP), based on a border management policy issued by the Government of India. The petitioners have referred to Border Area Development Programme (BADP) in several paragraphs of the petition but the actual programme has not been enclosed. On the contrary, the respondent No.4, in their reply affidavit dated 7.3.2019 have filed the Border Area Development Programme (BADP), Modified Guidelines, June, 2015 , Annexure-A/1, pages No. 18 to 39. The object of Border Area Development Programme (BADP) is to meet the special developmental needs and well being of the people living in remote and inaccessible areas situated near the international border and to saturate the border areas with the essential infrastructure through convergence of Central/State/BADP/Local schemes in a participatory approach. Border Area Development Programme (BADP) is 100% centrally funded programme. It covers villages which are located within the 0-10 Km of the International Border and further extent thereafter. It appears (approx) 381 blocks relatable to 106 border districts of 17 states, namely, Arunachal Pradesh, Assam, Bihar, Gujarat, Himachal Pradesh, Jammu & Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Punjab, Rajasthan, Sikkim, Tripura, Uttar Pradesh, Uttarakhand and West Bengal are covered under the scheme. The villages that would require central funding under the Border Area Development Programme (BADP) will be identified by the Border Guarding Forces (BGF) and will be known as strategic villages. It is stated that only after saturation of 0-10 km villages of the international borders, the State Government should take the next set of village within 0-20 Kms and thereafter, it may proceeded further.

[4] In order to monitor the Border Area Development Programme (BADP), Clause 3 deals with the allocation of funds to the states. Clause 4 is the guiding principles. Clause 5 deals with Selection of schemes which includes infrastructure, health, agriculture, social sector, education, sports activities, special /specific area schemes, maintenance, schemes to be suggested by BGFs and miscellaneous. The Border Area Development Programme (BADP) envisages District Level Committee (DLC) headed by the District Magistrate/Deputy Commissioner and will include Deputy Forest Officer, District Planning Officer, Superintendent of Police of concerned district and Commandant or Deputy Commandant of the Border Guarding Force present in the area and this DLC will be responsible for planning and implementation for the Border Area Development Programme (BADP) in the border block covered under the BADP guidelines. Para 5.5. of the Scheme. As to how the Scheme should be implemented in relation to the other central /State Government schemes, has been indicated in para No.5.8 of the scheme. The role of the State Government is indicated in para No.5.10

which reads as under:-

"5.8. The District Level Committee shall look into the convergence and dovetailing with on-going development programmes and schemes of different Ministries/Departments of Central /State Government and funds coming through various channels e.g. PMGSY, MNREGA, SSA, Water Supply Schemes, Health Schemes, Social Development Schemes, Rural Development Schemes, Health Schemes, Social Development Schemes, Rural Development Schemes, Panchayati Raj Schemes, skill development, and other schemes for the well being of the people.

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5.10 As indicated in para 5.4 the State Governments should prepare a shelf of projects/schemes well in advance for inclusion in the Annual Action Plan of the Border Area Development Programme (BADP) so that they can obtain all requisite clearances and may avail of the funds in the beginning of the year. The District Level Committee shall discuss the schemes with all the concerned including BGFS and ensure critical gaps in the infrastructure are addressed and the convergence/dovetailing with other Central/State Schemes is done and then forward the Annual Plan of BADP to the State Government latest by February every year for consideration of the State Level Screening Committee (SLSC). While formulating schemes/projects, DLCS shall ensure that priority has been given to the strategically located villages as provided by the BGFS. The Annual Plan of BADP duly approved by the State Level Screening Committee (SLSC) headed by the Chief Secretary of the State should be submitted to the Department of Border Management, Ministry of Home Affairs latest by the month of March/April. In case, the Annual Action Plan is submitted by the month of April, the State Governments will not be able to implement the same in that particular year and will not get allocated funds under BADP for that year."

[5] Para No.6 deals with the empowered Committee and it reads as below:-

"6. Empowered Committee:

6.1 The policy matters such as the guidelines of BADP, the geographical areas within which the BADP is implemented; allocation of funds, modalities of execution of schemes etc. will be laid down by an Empowered Committee of BADP constituted under the Chairmanship of the Secretary, Department of Border Management, Ministry of Home Affairs. The composition of the Empowered Committee of the BADP is as under:

Composition:

- | | |
|--|----------|
| 1. Secretary (BM), Department of Border Management- | Chairman |
| 2. Secretary, Department of Expenditure- | Member |
| 3. Representative of NITI Aayog (Not below the rank of Joint Secretary)- | |
| Member | |

4. Additional/Special Secretary & F.A. (Home), MHA- Member

5-21 Chief Secretaries of the 17 BADP States or their nominees (not below the rank of JS to GOI in their respective States). Member

22. Joint Secretary (K), MHA- Member

23. Joint Secretary (NE), MHA- Member

24. Joint Secretary, Ministry of Doner- Member

25. Joint Secretary, Ministry of Rural Development- Member

26. Joint Secretary, Ministry of Sports & Youth Affairs- Member

27. Joint Secretary, Ministry of Health & Family Welfare- Member

28. Joint Secretary, Ministry of Human Resource Development- Member

29-32 A representative each of BSF, ITBP, SSB & Assam Rifles (not below the rank of IG). Special Invitees

33. Joint Secretary (BM), MHA- Member Secretary

[6] Para No.7 deals with the State Level Screening Committee and it reads as below:-

" 7. State Level Screening Committee:

7.1 There shall be a State Level Screening Committee (SLSC) on Border Area Development Programme (BADP) under the Chairmanship of the Chief Secretary of the State, as indicated below:

Composition:

1. Chief Secretary Chairman

2. Secretary, Planning Department of the State- Member

3. Secretary, Department of Home of the State- Member

4. Secretary, Finance Department of the State- Member

5. Secretary, Rural Development of the State- Member

6. Secretaries concerned of the line Departments of the State Member

Implementing various Central/State Scheme in the border Blocks/Districts.

7. Representative of Government of India, Ministry of Home Affairs (Department of Border Management)- Member

8. Representative of NITI Aayog Member

9. Representative of Government of India,

Ministry of DoNER

Member

(in case of North-Eastern States)-

10. District Magistrates of the Border Districts of the State Member

11. Nodal officer of the Border Guarding Force(s) deployed Member

Along the international border of the State-

12. Secretary, Nodal Department of BADP in the State- Member Secretary"

[7] Para No.8 deals with the flexibility in execution of programme. Para No.9 deals with the funds flow. Para No.10 deals with monitoring and review and para No.10.1, 10.2, 10.3, 10.4, 10.5 , 10.6, 10.7 and 10.8 read as below:-

"10. Monitoring and review:-

10.1 The State Government shall develop an institutional system for inspection of the BADP schemes/projects and submit reports to the Department of Border Management, Ministry of Home Affairs. Each border block should be assigned to a high-ranking State Government Nodal Officer who should regularly visit the block and take responsibility for BADP schemes. A quarterly report should be sent to the Ministry of Home Affairs on the MIS application, indicating the number of inspections conducted and highlighting the important achievements/lacunae pointed out in the reports of the inspecting officers. Third party inspections also need be commissioned by the States for an independent feedback on the quality of work and other relevant issues. An appropriate 'Social Audit System' should also be put in place by the State Government.

10.2. There will be a Third Party Inspection and Quality Control Mechanism under the Department of Border Management, Ministry of Home Affairs, which shall appoint independent Monitors (Individual/Agency) for random inspections of the BADP schemes. This independent Monitors shall be designated as National Quality Monitors (NQMS), who shall be given free access to all administrative, technical and financial records. The NQMS shall submit their reports to the Department of Border Management as well as the State Governments on a quarterly basis. The NQMS shall also suggest improvements in the execution of schemes, if required.

10.3 The District Level Committee shall take responsibility of monitoring of implementation of Works under BADP as well as quality of works and submit a report on quarterly basis to State Government for onward transmission to Ministry of Home Affairs along with the photos of the works/schemes.

10.4 State Governments shall have the monitoring of the BADP schemes by the existing District Level Monitoring/vigilance Committee where local Members of Parliament and MLAS are represented.

10.5 Quarterly progress reports should be submitted scheme-wise to the Department of Border Management latest by 15th day of closure of the quarter through MIS application (as in the proforma at Annexure-VI). The year-wise consolidated utilization certificates should be sent in the prescribed proforma (GFR-19A) of the General Financial Rules within one month of the closure of the financial year as given at Annexure-VII. A display board may be kept at project sites indicating that the work is being done/has been completed under the BADP of Government of India.

10.6 State Government shall issue Utilization Certificates (UCs) and Completion Certificates in respect any scheme/project suggested by the BGFS after consulting the concerned BGF.

10.7 The State Governments shall develop an inventory of assets created under the BADP in border villages/hamlets, for analytical purposes etc.. Such details may be communicated to the Department of Border Management, Ministry of Home Affairs with a write-up on important schemes/projects (with photographs) implemented by the States through MIS application.

10.8 The District Magistrate/Deputy Commissioner and Chief Secretaries of the State shall be responsible for uploading of photographs on the website of all the complete projects just after their completion. "

[8] Para No.12 deals with utilisation of Interest earned on deposits. It reads as under:-

"12. Utilization of Interest Earned on Deposits:- Interest accrued on deposits on BADP funds at any level shall be treated as additional resources under the BADP and would be utilized on the works/projects drawn by the District Level Committee for the areas covered under the guidelines of the BADP in priority villages."

Para No.13 deals with Comptroller and Auditor General.

"13. C & AG audit:- The State Government shall have the regular audit of works taken up under BADP carried out by the C & AG and furnish the observations of C & AG on expenditure under the head BADP after completion of C & AG Audit to Ministry of Home Affairs."

[9] In addition to that, Annexure-1 deals with the list of Schemes/Projects permissible under the Border Area Development Programme (BADP). Annexure-II deals with list of the works which are not permissible under the Border Area Development Programme (BADP). Annexure-III deals with list of permissible and non-permissible items of works to be undertaken under BADP by the Border Guarding Forces. On 30.4.2018, modified guidelines for Border Area Development Programme (BADP) has been issued, part of Annexure-1. On 12.8.2015, the State Planning Department issued a notification as per the modified guidelines of the Border Area Development Programme (BADP) at Annexure-A/2.

[10] The case of the petitioners is that there are instances of mis-use of funds by manipulating records and granting works in favour of ineligible persons thereby denying the benefits that should go to the people of Border Area villages. Benefits have not reached in full measure to the deserving. Further, the guidelines issued by Border Area Development Programme (BADP) has not followed in pith and substances. It is therefore pleaded that a proper enquiry or investigation should be directed to ensure that the centrally sponsored Border Area Development Programme (BADP) scheme is strictly implemented and the breach of the guidelines for the personal benefits of one or other individual should be inquired into and appropriate stringent action taken. If there is a mis-use of funds, recovery should be initiated. On this line, the writ petition is pleaded.

[11] Notice was issued on 24.7.2018 and admitted.

[12] Pursuant to that, respondent No.4, Director (Planning), Government of Manipur has filed his reply affidavit explaining that whatever procedure that has to be followed as per the Border Area Development Programme (BADP) has been followed. He denied the allegations made in the writ petition at para No.19 in the affidavit dated 7.3.2019 as quoted below :-

"19. It is submitted that the allegations of the Petitioners are based on inaccurate and biased information. It is denied that Planning department or Joint Director (Planning) had any role in selection of agencies and execution of the training programme, which was conducted by the Deputy Commissioners in 2015-16 in the districts. It is denied that there is misappropriation of funds/ financial embezzlement while implementing the BADP as alleged in the PIL No. 29 of 2018, to the best knowledge of the Government and information furnished by the Deputy Commissioner.

In the premises stated above, Your Lordships may be graciously pleased not to grant any kind of interim order and dismiss the case as devoid of merit to meet ends of justice."

[13] The respondent No.3, the Deputy Commissioner, Chandel District has filed an affidavit on 20.9.2019. In para No.6 of the said affidavit, a specific denial is made against allegation of misappropriation as follows:-

"6. That, with reference to Paragraph No.3 of the writ petition, the deponent begs to deny that there is misappropriation of funds/financial embezzlement while implementing the Border Area Development Programme (BADP), particularly in various blocks of Chandel. In fact, the disbursement of funds by the District Administration to the beneficiaries is very transparent and as per BADP, Modified Guidelines (June 2015) (in short, the Modified BADP Guidelines, 2015) issued by the Department of Border Management , Ministry of Home Affairs, Government of India. Payments to the beneficiaries are made by transfer through Electronic Clearing Service (ECS)/ Real Time Gross Settlement (RTGS) to the Executing Agency Accounts. The deponent on his part is making a conscious

effort to implement the programme and meet the special development needs and well being of the people living in remote and inaccessible areas situated near the international border.

A copy of each of the sanctioned amounts and expenditure of conducting various training programmes under the BADP for the year 2015-2016 is annexed and marked herewith as Annexure-C/1(Colly)."

[14] In the above factual background, it is clear that there is an allegation of misappropriation, mis-use or embezzlement of funds in implementing the Border Area Development Programme (BADP). This is strongly denied by the respondents No.3 and Act 49 of 2016.

[15] In the absence of any specific complain to the competent authority, it will not be proper for this Court to go into a roving enquiry, merely based on allegations, which is strongly denied by the respondents No.3 and 4.

However considering the importance of the Border Area Development Programme (BADP), we allow the petitioner to make a detailed and proper complaint to the State Government who is the implementing agency and to the Union Government, the funding agency to look into the details of the complaint and take appropriate actions if there is a case made out in respect of the allegations made. In order to ensure transparency in the implementation of the scheme, we direct the State Government and the Deputy Commissioners of the border districts who are part of the District Level Committee to upload the names, age, sex, addresses of each one of the beneficiaries under various schemes separately village wise. This will ensure that if there is any false or wrong claim people will be able to inform the sincere officials to rectify the error as and when pointed out. It will rule out favouritism, nepotism and bogus claims.

[16] Observing as above, we disposed of the PIL.