
(2015) 08 OHC CK 0059

In the Orissa High Court

Case No : Writ Petition (C) No. 5410 of 2011

Snehalata Tripathy and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 07-08-2015

Acts Referred:

Citation : (2015) 2 OLR 483

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Advocate : K.K. Swain, for the Appellant; A.K. Pandey, S.C., Advocates for the Respondent

Judgement

Dr. B.R. Sarangi, J—Heard Mr. K.K. Swain, learned counsel for the petitioners and Mr. A.K. Pandey, learned Standing Counsel for School and Mass Education Department.

2. The petitioners claiming to be appointed as Education Volunteers under the NGOs, have filed this petition seeking to quash the order dated 23.07.2010 passed by the Government of Orissa Department of School & Mass Education Department in Annexure-12 and further seeking for a direction to opposite parties to engage them as Gana Shikshyaka in terms of the Government Resolution dated 16.02.2008.

3. Mr. K.K. Swain, learned counsel for the petitioners states that the petitioners were engaged as Education Volunteers by the NGOs under the EGS and AIE Scheme and they have been disengaged from services w.e.f. 31.03.2008 due to closure of the said Schemes. The petitioners are seeking for a direction to the opposite parties to engage them as Gana Shikshyakas in terms of the Resolution dated 16.02.2008. The petitioners had approached this Court earlier by filing W.P. (C) No. 3470 of 2010, which was disposed of with a direction to opposite party No. 1 to consider and dispose of the clarification sought by the Collector-cum-Chairman, Sarva Sikshya Aviyan, Kendrapara as at Annexure-9 within a

period of one month of filing of certified copy of the said order along with copy of the writ petition, the State Government pursuant to aforesaid order dated 04.03.2010 passed in W.P.(C) No. 3470 of 2010, rejected the claim of the petitioners by virtue of order passed on 23.07.2010 on the ground that their initial engagements as Education Volunteers were not approved by the Collector.

4. Mr. A.K. Pandey, learned Standing Counsel for School and Mass Education Department referring to the counter affidavit filed by opposite party No. 3 states that as regards engagement of Education Volunteers is concerned, the selection is made by the Village Education Committee of the concerned Centre and after necessary approval of the District EGS Committee engagement orders are issued to such Education Volunteers and thereafter they entered into an agreement with the concerned VEC. In case of Education Volunteers engaged through the NGOs, necessary approval of such engagement of Education Volunteers is required to be taken from the District EGS committee, which has been clarified by the Govt. vide Letter No. 8461 dated 28.04.2008. In earlier W.P.(C) No. 3470 of 2010, disposed of vide order dated 04.03.2010, this Court directed the opposite party No. 1, i.e. Government in School & Mass Education Department to consider and dispose of the clarification sought by the Collector-cum-Chairman, SSA, Kendrapara as at Annexure-9 within a period of one month of filing of certified copy of the order along with a copy of the writ petition and pursuant to the said order, the Government in School & Mass Education Department considered the recommendation of the Collector and rejected the same on the ground that the initial engagements of 71 Education Volunteers under the NGOs were not approved by the Collector, Kendrapara, so they are not entitled to be engaged as Gana Shikshyakas as per the Government clarification vide letter dated 28.04.2008. Since it is the requirement that of the engagement of Education Volunteers through the NGOs in different EGS Centres is to be approved by Collector & District EGS committee and the same has not been approved by the Collector and District EGS Centre, the petitioners are not entitled to be engaged as Gana Shikshyaka.

5. In course of hearing the question arose that the petitioners even though have not been appointed by following due procedure of law as envisaged under the Scheme by getting approval from the Collector and District EGS Centre, but the NGOs claim that they have appointed the petitioners as Education Volunteers under the EGS and AIE Schemes evolved by the Government. In effect, these petitioners have never been appointed as Education Volunteers by following due procedure of law. Prima facie this Court is of the view that the NGOs having remained in hand in glove with the petitioners as well as some of the Government officials wanted to squandering away the Government money in the name of the implementation of the Scheme through it.

6. In absence of materials available on record, no prima facie inference can be drawn by this Court that the NGOs have appointed the petitioners by following due procedure of law as envisaged under the Scheme. If the engagement of the

petitioners by the NGOs is per se illegal and as such, it is not in compliance to the provisions of the Scheme itself, in that case, the relief sought in the writ petition cannot be granted to the petitioners and whatever material are available on record, no prima facie conclusion can be drawn that the petitioners have been appointed by the NGOs by following due procedure of law as envisaged under the Scheme. Therefore, this Court is of the considered view that it makes out a prima facie case so that investigation can be made to an independent agency namely either by Central Bureau of Investigation (CBI) or any other similar agency so as to find out the correctness or truthfulness of the things which has been pleaded in the writ petition.

7. In *Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another*, AIR 2002 SC 2225 : (2002) CriLJ 2942 : (2002) 1 JT 286 Supp : (2002) 4 SCALE 455 : (2002) 5 SCC 521 : (2002) 2 SCT 1090 : (2002) AIRSCW 2333 : (2002) 4 Supreme 91, the apex Court held that an order directing an enquiry by CBI should be passed only when the High Court after considering the materials on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency.

8. In Constitution Bench Judgment of the Apex Court in *State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others*, AIR 2010 SC 1476 : (2010) 2 JT 352 : (2010) 2 SCALE 467 : (2010) 3 SCC 571 : (2010) 3 SCR 979 : (2010) 2 UJ 1047 have concurred the view expressed in *Minor Irrigation & Rural Engineering Services* (supra).

9. Keeping in view the law laid down by the apex Court mentioned supra, this Court is of the considered view that the materials available on record do not disclose a prima facie case for engagement of the petitioners as Gana Shikshyakas as their initial engagement as Education Volunteers is contrary to the scheme available on record, therefore, in the fitness of the things, directs the Crime Branch of the State to cause an inquiry with regard to the factum whether the petitioners have been engaged as Education Volunteers by following due procedure of law as envisaged under the Scheme by the NGOs by getting due approval of the District Magistrate and whether any NGOs have remained hand in glove with the State Officials, want to "squandering away the Government money of the State by giving such illegal appointments and as such, the payment shall be made from the State exchequer. Inquiry Report should be furnished before this Court within a period of three months from the date of communication of the order.

10. Let a copy of this order be handed over to the Secretary, Government of Odisha in Home Department and Director General of Police to expedite inquiry. The Collector, Kendrapara is directed to co-operate with such investigation in all respect in the interest of justice, equity and fair-play.