
(2010) 02 GAU CK 0031
In the Gauhati High Court
Case No : WPC No. 860 of 2009

Sri Stephen Lakra and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 23-02-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 2 GLD 301 : (2010) 6 GLR 601

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : A.K. Goswami, S. Bora, D.P. Mandal and S. Das, for the Appellant;
V.L. Sinha, GA, Sk. N. Mohammad and S. Khound, SC, BTC, for the Respondent

Final Decision : Allowed

Judgement

I.A. Ansari, J.—Heard Mr. A.K. Goswami, learned senior counsel, for the petitioners, and Ms. V.L. Sinha, learned Government Advocate, appearing on behalf of the respondent Nos. 1, 2 and 3. Also heard Mr. S. Khound, learned Counsel, for the respondent No. 4, and Mr. Sk. N. Mohammad, learned Counsel for the respondent Nos. 5 to 8.

2. The review and variation in the schemes/projects, prepared in the District Development Plans for Minority Concentration Districts, in respect of the District of Kokrajhar, lies at the root of this writ petition made under Article 226 of the Constitution of India.

3. The Government of India, Ministry of Minority Affairs, has formulated a programme, which is named and styled as Multi-Sectoral District Development Plans (in short, "MSDP") for Minority Concentration Districts. Requisite guidelines for, inter alia, identification of the districts, which require, and can derive, benefits from the said programme, and implementation of the programme have been issued by the Central Government. The guidelines perceive constitution of District Level Committees for preparation of various schemes/projects. for the

districts concerned and there is a State Level Committee, which is the authority to revise and/or modify the schemes/projects, which may be submitted to the State Level Committee by a District Level Committee.

3-A. In respect of the district of Kokrajhar, the District Level Committee selected some schemes/projects under the Multi-Sectoral District Development Plan and forwarded the same to the State Government by their letter, dated 29.10.2008. The schemes/projects, so forwarded, were considered and adopted by the Multisecotral District Development Plan of the district of Kokrajhar in its meeting held in this regard. The records do not reveal that any dissatisfaction had been expressed, in the said meeting, by any of the members of the District Level Committee to the resolutions, which the District Level Committee so adopted. A letter was, then, received, on 12.10.2008, by the Office of the Deputy Commissioner, Kokrajhar, from the Joint Secretary, Government of Assam, Department of Welfare and Minority Developments, indicating to the effect that some members had expressed dissatisfaction over the selection of schemes/projects. Following the letter aforementioned, a meeting of the District Level Committee was, eventually, held on 13.1.2009. The minutes of the meeting were signed on 13.1.2009. The meeting revised the earlier schemes/projects and the revised schemes/projects were submitted to the State Government for necessary action.

4. Challenging the review of the schemes/projects, which had been adopted by the District Level Committee, in its meeting, on 29.10.2008, and the variation in the schemes/projects, which the subsequent meeting of the District Level Committee held on 13.1.2009, has suggested, this writ petition has been filed by 4 (four) persons, who come from the area, which falls within the area to which the said programme, namely, MSDP relates to.

5. In brief, the grievance of the petitioners is that the schemes/projects, which had been submitted by the District Level Committee, on 29.10.2008, ought to have been maintained and the changes, therein, were in violation of the guidelines, issued, in this regard, by the Central Government and it was on the intervention of the Minister, Agriculture, Government of Assam, who had chaired the meeting of the District Level Committee, that the schemes/projects came to be revised. Thus, the revision of the schemes/projects were entirely on political considerations and the revision was in utter disregard of the guidelines, which govern the MSDP. The petitioners, therefore, have sought for cancellation of the schemes/projects, which have been submitted by the District Level Committee by its minutes, dated 13.1.2009, and also for directions to be issued to the respondents/authorities concerned for implementation of the schemes/projects, which had been adopted at the District Level Committee's meeting on 29.10.2008.

6. Residing the submissions, made on behalf of the petitioners, the State respondents as well as the private respondents have filed their affidavit contending, inter alia, that the revision of the schemes/projects was legal and

necessitated by consideration of such factors, which had not been taken into account by the District Level Committee, while preparing its" schemes and plans inasmuch as the schemes/projects, adopted by the District Level Committee, in its meeting, held on 29.10.2008, were confined to only such activities, which cover subject-matters of PWD (Roads) Department and do not include those subject-matters of the other departments of the Government, which undertake activities for the welfare of the people. The revision of the schemes/projects, therefore, according to the respondents, is wholly valid and it was not illegal, on the part of the Minister, Agriculture, Government of Assam, to take part in the process of re-drawing and/or revising the schemes/projects inasmuch as the Minister also comes from the district of Kokrajhar.

7. Repelling the contentions of the respondents, the petitioners have submitted that the guidelines do not envisage any role for any person, other than the members of the District Level Committee, in the preparation of the schemes/projects, and, that apart, the schemes/projects were reviewed on political considerations. The role of the Minister, in this regard, was, according to the petitioners, unconstitutional, de hors the guidelines and the original schemes/projects, meant for welfare of the people, ought not to have been revised for distributing various agriculture implements to individuals instead of ensuring that the schemes/projects remain aimed at benefiting the people at large and not some selected individuals.

8. Coupled with the above, it is pointed out, on behalf of the petitioners, that the earlier schemes/projects had concentrated on providing benefits to groups of people; whereas, the schemes and plans, which have, now, been prepared, substantially advance individual interest and, particularly, the interest of the Minister concerned inasmuch as, pointed out the petitioners, the schemes/projects, now, revised, are as follows:

9. While considering the rival contentions, raised on behalf of the parties, what needs to be noted is that MSDP is a plan, as already indicated above, to ensure that the benefits of the schemes and programmes of the Government reach relatively disadvantaged segments of the society. The guidelines, as the concerned Ministry has issued, for implementation of the programme, envisage formation of District Level Committees. The guidelines do not prohibit the District Level Committees from obtaining the views of others, who may not be members of the District Level Committee, but who come from the same area or whose views may help the District Level Committees in selecting schemes/projects to advance the cause of the disadvantaged segments of the society with the help of the welfare schemes/projects of the Government. The responsibility of the District Level Committee, however, remains, as correctly contended, on behalf of the petitioners, to prepare schemes/projects for the development of the area for which the District Level Committee is constituted.

10. Though it has been contended, on behalf of the petitioners, that such schemes or projects, which advance individual benefits, are not covered by the

MSDP, a microscopic examination of the guidelines aforementioned indicate that the schemes/projects, which give benefit to individuals in the society, are not completely outside the purview of the programme. Moreover, there is no express bar for the District or the State Level Committee to take up such schemes/projects, which give benefits to individuals. Para-1.7 (iii) of the guidelines, which is relevant in this regards, reads as follows:

The provision for basic amenities such as pucca housing, safe drinking water supply, water closet toilets and electricity for each household may be made.

11. Thus, Clause 1.7 (iii) clearly shows that such schemes/projects, which provide pucca housing to individuals, is not outside the purview of the programme, namely, MSDP. The petitioners are, however, correct to the extent that the emphasis of the programme is not targeting individual beneficiaries, but on developing infrastructure and also developing social and economic conditions of the disadvantaged groups of people in general. This is clearly discernible from what Clause 4.5 of the guidelines contains inasmuch as para 4.5 reads as under:

There would be no change in guidelines of any existing scheme under implementation in such districts for which this programme would provide additional funds. As far as possible, the focus of the programme would be for providing appropriate social and economic infrastructure rather than targeting individual beneficiaries. In case schemes for individual benefits are taken up under the programme, there shall be no divergence from existing norms for selection of beneficiaries from the list of BPL families in the district, so that benefits from the additional funds flow to all BPL families and not selectively.

12. What emerges from the above discussion is that the schemes and projects, which the District or the State Level Committee select, shall be for development of infrastructure and for improvement of the social and economic condition of the disadvantaged groups of people, in the society, at large rather than targeting individual beneficiaries. Considered in this light, it becomes clear that the distribution of tractors, power-tillers, LLP, etc., to individuals, cannot be given priority under the MSDP, though such distribution is not entirely illegal or outside the purview of the MSDP. In short, even the distribution of such implements/machinery shall be, preferably, on the basis of such a schemes, which are cooperative in nature.

13. From what have been pointed out above, it can be gathered that it is for the members of the District Level Committee to, primarily, formulate schemes/projects. In the process of preparing such projects, they shall take into account the opinion of the Government and other persons, whose views may be relevant for the purpose of preparing and formulating such projects. Participation, therefore, of a Minister, in the meetings of the District Level Committee, cannot per se be said to be illegal unless there are materials available to show that the Minister(s) concerned unduly influenced the decision for personal gain, in individual interest, and so on. What is necessary to note, as has already been

pointed out above, is that the schemes and projects/which are required to be prepared by the District Level Committees, have to concentrate on providing benefits to groups of people rather than targeting individual beneficiaries.

14. In the backdrop of what have been indicated above, what attracts the attention is that in the case at hand, subsequent to the forwarding of the schemes/projects by the District Level Committee, by its letter, dated 29.10.2008, aforementioned, a letter, as already mentioned above, was received by Office of the Deputy Commissioner, Kokrajhar, from the Joint Secretary to the Government of Assam, Minorities Welfare and Development Department, Assam, informing the latter that some dissatisfaction had been expressed on the selection of schemes/projects by the District Level Committee, as reflected by their letter, dated 29.10.2008. The letter, so issued by the Joint Secretary, reflects as if the schemes/projects, which were sought to be reviewed and revised, had been prepared and forwarded by the Deputy Commissioner, Kokrajhar, and not by the members of the District Level Committee; whereas, the members of the District Level Committee were participants of the meeting held on 29.1.2008 and the minutes of the meeting do not reveal any disagreement.

15. The question, therefore, is as to what had led to the making of the representation expressing dissatisfaction over the selection of the schemes/projects. According to the State respondents, as revealed from their affidavit, subsequent to the receipt of the letter of the said Joint Secretary, a letter was prepared, on 7.1.2009, by the Office of the Deputy Commissioner, Kokrajhar, to be sent to the Joint Secretary, in order to obtain from the latter the representation on the basis of which the letter had been issued by the said Joint Secretary. No representation was, however, received by the Deputy Commissioner, Kokrajhar, from the said Joint Secretary. In fact, to a pointed query, made, in this regard, by this Court, the learned Government Advocate submits that the representation is not in the record. This Court, therefore, does not know as to whether the representation, which is claimed to have been received by the said Joint Secretary, had, as a matter of fact, been ever received by the said Joint Secretary or not.

16. Be that as it may, what cannot be ignored is that suddenly, on 12.1.2009, a note was prepared, which reveals the fact that the In-charge, Deputy Commissioner, Kokrajhar, sent letters, on 12.1.2009, to the members of the District Level Committee of Kokrajhar and the Head of Departments of the district concerned informing them that a meeting for review of the schemes/projects, which had been prepared under the MSDP, would be held on 13.1.2009 and, on that very day, i.e. on 12.1.2009 itself, a letter was also issued to the Minister, Agriculture, WET & BC, inviting her to attend meeting on 13.1.2009. Why meeting had to be convened on 13.1.2009 or why the letters were issued to the members of the District Level Committee informing them of the meeting to be held on 13.1.2009 and/or why a letter was sent to the Minister, Agriculture,

remains a mystery.

17. Be that as it may, it is in the meeting, so held on 13.1.2009, that the earlier schemes/projects were revised and changed. The reason has remained unexplained by the respondents as to what had prompted the in-charge, Deputy Commissioner, Kokrajhar, to change his mind and not to insist that the representation, received by the said Joint Secretary, be furnished to the Deputy Commissioner, Kokrajhar, before the meeting of the District Level Committee is convened to review the selected schemes/projects, so as to know as to what the objection against the already selected schemes/projects was.

18. Situated thus, there is no escape from the conclusion that it was, at the instance of the Minister, Agriculture, that the schemes and projects, which had been adopted by the District Level Committee on 29.10.2009, were interfered with and revised.

19. This Court has already made it clear that it does not see complete bar for persons, occupying chairs of the Ministers, to express their views in the matters of formulation of schemes/projects, under the MSDP, but schemes and projects cannot be adopted solely at the behest of a Minister and according to the wishes of a Minister even if the Minister comes from the area, which falls within the territorial area of activities of the District Level Committee concerned. However, the schemes and projects, in the light of the MSDP, have to cover as many minority areas as possible and cannot, therefore, remain confined to a particular area or a particular department.

20. In the case at hand, therefore, the mere fact, that the schemes/projects, relating to the Agriculture Department, Government of Assam, have been included within the schemes/projects of MSDP, in district of Kokrajhar, by the District Level Committee, would not make selection of the schemes/projects, in the meeting, held on 13.1.2009, wholly illegal or untenable in law.

21. One must, however, bear in mind that Para 19 of the guidelines insists on observing transparency in the implementation of the programmes inasmuch as para 19 of the guidelines clearly states that in order to ensure that the information about developmental schemes being implemented reaches the ultimate beneficiaries, i.e., the targeted beneficiaries, there is a need to ensure greater transparency and publicity of the information. No wonder, therefore, that para 19 makes it clear that it is necessary to give publicity in local media and also through website in respect of all sanctioned schemes/projects. In the case at hand, however, as already discussed above, it is the transparency, which is lacking.

22. Because of the what has been discussed and pointed out above, this Court is of the view that the scheme and projects, which the District Level Committee have revised in its meeting, on 13.1.2009, need to be looked into, and re-examined, by the District Level Committee in the light of the guidelines aforementioned and the discussions held above.

23. Considering, therefore, the matter in its entirety and in the interest of justice, this writ petition is disposed of with a direction to respondent No. 1 herein to ensure that the schemes/projects, which have been forwarded to the State Level Committee by the District Level Committee, in terms of the meeting held on 13.1.2009, be re-examined, without any bias or prejudice, by the State Level Committee, in the light of the guidelines aforementioned and the observations of this Court made hereinabove. While making such re-examination, as has been directed, the State Level Committee shall also take into account the earlier schemes/projects, which were forwarded to the State Government, in terms of the meeting of the District Level Committee held on 29.10.2008. Since the schemes/projects/conceived under the MSDP, are time-bound projects, the State respondents, particularly, the respondent No. 1, shall ensure that the State Level Committee re-examines the matter anew and do the needful in accordance with law at the earliest.

24. With the above observations and directions, this writ petition stands disposed of.

25. No order as to costs.