

(2023) 03 CAL CK 0066
In the Calcutta High Court
Case No : Criminal Revision No. 1821 Of 2019

Suvendu Saha

APPELLANT

Vs

State Of West Bengal

RESPONDENT

Date of Decision : 21-03-2023

Acts Referred:

West Bengal (MGNREGA) Grievance and Redressal Rule, 2009 — Rule 4(3)
Indian Penal Code, 1860 — Section 120B, 406, 409, 420

Citation : (2023) 03 CAL CK 0066

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : Pratip Kumar Chatterjee, Madhusudan Sur, Manoranjan Mahata

Final Decision : Dismissed

Judgement

Shampa Dutt (Paul), J

1. The present revision has been preferred praying for quashing the proceeding along with the Charge Sheet being Charge Sheet no. 172/15 dated 01.05.15 under Sections 406/409/420/120B of the Indian Penal Code arising out of Khargram Police Station Case No. 292/14 dated 25.06.14 under Sections 406/409/420/120B (G.R. 1326/14) and the proceeding thereon pending before the Ld. Additional Chief Judicial Magistrate, Kandi, Murshidabad.

2. The petitioner's case is that the petitioner was selected to the post of "Gram Rojgar Sevak" on purely temporary and contractual basis for Parulia Gram Panchayet, under Khargram Panchayet Samity, Village & P.O. – Parulia, District – Murshidabad vide Memo No. 316(9)/En dated 09.03.2010 issued by the Block Development Officer & Programme Officer, Khargram Development Block, Nagar, Murshidabad.

3. That as per the aforesaid letter, the Prodhan, Parulia Gram Panchayet, Village & P.O. – Parulia, Dist – Murshidabad, appointed the petitioner on contractual basis for a period of one year. Since then the aforesaid contract was renewed

year to year and last on 27.03.2019 the said contract was renewed upto 26.03.2020.

4. The Block Development Officer and Programme Officer (MGNREGA), Khargram Development Block, Nagar, Murshidabad, by his letter being Memo No. 44/MGNREGA/En dated 24.06.2014 requested the Officer in-charge, Khargram Police Station to take necessary legal action as per Rule 4(3) of West Bengal (MGNREGA) Grievance and Redressal Rule, 2009 against the petitioner herein and five others for being involved with the illegal activities of misappropriation of Government Fund of MGNREGA Scheme namely, Re-excavation of Kaladhara Pond at Village – Punia” AAP No.RTW/114/2012-2013. The Block Development Officer in the said letter also enclosed the order dated 19.06.2014 of Additional District Magistrate (D) and Additional District Programme Coordinator, MGNREGA, Murshidabad, copy of complaint submitted by one Member namely, Md. Rafik Sk. of Parulia Gram Panchayet and copy of the enquiry report submitted by Assistant Programme Officer Technical Assistant of Khargram Development Block.

5. On the basis of the aforesaid complaint Khargram Police Station registered a case being Khargram Police Station Case No. 292/14 dated 25.06.2014 under Sections 406/409/420/120B of the Indian Penal Code (G.R. 1326/14).

6. After completion of investigation, charge sheet no. 172/15 dated 01.05.2015 under Sections 406/409/420/120B of the Indian Penal Code was submitted against the accused persons including the petitioner.

7. That there is an order of the Joint Secretary to the Govt. of West Bengal, Panchayet & Rural Development Department vide No. 7736-RD/NREGA/18S-07/06 dated 04.11.2008, where the work/duty of the Gram Rozgar Sevak in respect of measurement of NREGS has clearly been stated, as follows:-

“With reference to the memo no. 1363/NREGA dated 23.09.2008 from your District Nodal Officer, NREGA on the subject above, this is to inform you that normally SAE/Nirman/Sahayak/Diploma holder Engineers engaged on daily wage as allowed under No. 4796(20)/RD/NREGA/18S-01/07 dated 23rd June, 2008 are meant to take measurement of works done under NREGA. However, Gram Rozgar Sevak may be allowed to take final measurement of NREGA works independently in exceptional and unavoidable circumstances subject to the following conditions:-

(1) Measurement of only simple earthwork and afforestation work, which do not require technical expertise, may be taken by the GRS in measurement sheet.

(2) The GRS will take measurement of such works only in cases where SAE/Nirmal Sahayak/Diploma holder Engineers engaged on daily wage are too overburdened to take measurement of the works but immediate measurement of works done is required to make payment of wages within the stipulated period of seven days as provided under the NREG Act.

(3) The GRS should be suitably trained up about the NREGA norms and the basis for taking such measurement.

(4) The SAE/Nirmal Sahayak should undertake sample checking from time to time to ensure correctness of such measurements taken by the GRS."

8. The allegation in the written complaint is of corruption, nepotism regarding MGNREGA Scheme and embezzlement of MGNREGA Fund under Parulia Gram Panchayet where the scheme namely, Re-excavation of Tank (Kaladhara Pukur) at Village – Punia under Parulia Gram Panchayet was done. The said scheme was prepared by Sujay Kundu, Skilled Technical Person (STP), Parulia Gram Panchayet on 06.06.2012. It was checked by a Technical Assistant, MGNREGA of Murshidabad Zilla Parishad (MZP) on 17.08.2012. It was duly vetted by the District Engineer, MZP on 03.09.2012. Panu Bayen, Ex. Prodhan of Parulia GP gave the statement that Shyamal Mondal, Ex Upa Prodhan & Md., Samiul Islam informed him about the 1st Phase work of the said scheme. As per the Measurement Sheet he issued the cheque no. 266435 to pay Rs. 2,92,332 (Rupees two lakhs ninety two thousand three hundred and thirty two) for wage payment. He stated that the cheque was submitted with SBI Nagar Branch by Shyamal Mondal, Ex Upa Prodhan along with Md. Samiul Islam. Md. Samiul Islam gave a statement that the Muster Roll of the said scheme were prepared before his term. As per approval of Pirunath Mondal, EA of Parulia GP & Sujay Kundu, STP of Parulia GP he issued the self cheque for the payment of labourers of the rest of the three phases. He has denied his signature on the receipt copy of Keshiadanga Post Office. All papers, documents, Statements of the labourers, Villagers show that originally, the scheme of Re-excavation of Kaladhara Pukur was not implemented. The Muster Roll was not prepared at the work site. No display board/ photos of the said three phases were found. The rate of payment was not mentioned in the Measurement Sheet. Though the cash that was to be paid to the labourers of 4 phases was withdrawn from SBI, Nagar Branch but it was not deposited with Keshiadanga Post Office. All though receipt copy regarding the payment of 4 phases was found, not a single labourer was paid. This is total violation of MGNREGA Act and embezzlement of Government Money and deprivation & exploitation of poor labourers.

9. Mr. Pratip Kumar Chatterjee, Learned counsel for the petitioner has submitted that it is evident from the FIR as well as the Charge Sheet submitted by the investigating officer that the proceeding has been maliciously instituted against the petitioner with some ill motive. That the petitioner is in no way liable and/or in any way related with the alleged offence as stated in the FIR. The guidelines given in the case of the State of Haryana Versus Bhajan Lal, 1992 SUPP (1) SCC 335 satisfy the instant case. As such the impugned proceeding is liable set aside and/or quashed.

10. Mr. Madhusudan Sur, Learned Counsel for the state has placed the case diary and submitted that there has been misappropriation of government fund and all the persons named in the charge sheet are prima facie involved. And there is sufficient materials in the case diary against the petitioner to proceed towards trial. The revision is thus liable to be dismissed.

11. The Role and Responsibilities of Gram Rozgar Sahayak also designated as Employment Guarantee Assistant under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (MGNREGA SCHEME) is as follows:-

- a. Assisting Gram Panchayat in executing MGNREGA works at Gram Panchayat level.
- b. Overseeing the process of registration, distribution of job cards, provision of dated receipts against job applications, allocation of work to applicants etc.
- c. Facilitating Gram Sabha meetings and social audits.
- d. Recording attendance of labour every day either himself/herself or through the mate in the prescribed Muster Rolls at the work site.
- e. Ensuring that Group mark outs are given at worksite for every groups of labourers, so that the workers know the output required to be given to earn wage rate every day.
- f. Ensuring that all Mates attend worksites on time and take roll calls/attendance in prescribed muster roll at worksite only.
- g. Ensuring worksite facilities and updating job cards of the workers regularly.
- h. Maintaining all MGNREGS – related registers at the Gram Panchayat level.
- i. Assist the Panchayat Secretary or any other official responsible for maintenance of MGNREGA accounts; and
- j. Ensuring that the documents are conveniently available for public scrutiny.
- k. Supporting Gram Panchayat in the organization of Rozgar Diwas and act as convener of the Rozgar Diwas.
- l. Facilitating the planning process at the village level for convergence as a part of village resource group.
- m. Filling the details of eligible household after verification in the MIS (NREGA Soft).
- n. Making available index map and relevant records to State Quality Monitor in advance of their visit.
- o. Distributing pay slips amongst workers along with mates.

12. There is also a specific government order for Regularization of Temporary/ Contractual Employees and to provide security of tenure, appropriate emoluments and certain terminal benefits to them.

13. The specific findings in the enquiry report against the petitioner is as follows:-

“The petitioner Suvendu Saha, GRS of Parulia GP gave the statement that as per the order of Panu Bayen, Ex. Proddhan, Shyamal Mondal, Ex Upa-Proddhan and Md

Samiul Islam, Prodhan of Parulia G.P, he gave the Muster Roll to VLE for MIS. He allegedly complained that the above mentioned three persons compelled him to complete the Muster Roll illegally.”

14. Like every job, the job of Gram Rozgar Sevak also requires being sincere, honest, hard working and a person of integrity. The work involves supervision, authority, maintaining documents, assist in keeping accounts etc. The findings in the enquiry report in respect of the petitioner is regarding the completion of the Muster Roll illegally, which Involves financial payments under the government scheme and there has been prima facie financial irregularity.

15. Thus all these materials on record and the case diary make out a prima facie case of cognizable offence against the petitioner, sufficient to proceed towards trial and this is not a fit case to exercise the inherent powers of this court.

16. CRR 1821 of 2019 is dismissed.

17. There will be no order as to costs.

18. All connected Application stand disposed of.

19. Interim order if any stands vacated.

20. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

21. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.