Palatana Gram Panchayat and Others Vs State of Tripura and Others

WP (C) No. 145, 146 and 147 of 2012

Court: Gauhati High Court (Agartala Bench)

Date of Decision: March 15, 2013

Citation: (2013) 2 GLD 868 : (2013) 3 GLT 560

Hon'ble Judges: Subhasis Talapatra, J

Bench: Single Bench

Advocate: A.K. Bhowmik, Mr. R. Datta, Mr. A. Banik and Mr. M. Choudhury, for the Appellant; G.S. Bhattacharji, for the Respondent

Final Decision: Allowed

Judgement

Subhasis Talapatra, J.
Heard Mr. A.K. Bhowmik, learned senior counsel assisted by Mr. R. Datta, learned counsel appearing for the

petitioner, Gram Panchayats and Mr. G. S. Bhattacharji, learned State counsel for the respondents. All the writ petitions are set up in the

resembling facts and attended by identical questions of law and, as such, those are tied up together for disposal by a common judgment.

2. It appears from the writ petitions that the Gram Panchayats, the petitioners, were kept in the dark while preparing the list of beneficiaries under

the Indira Awaas Yojana (the IAY in short), a Central Government Scheme for construction of houses at the rate of Rs. 48,500/- for the

beneficiaries. It has been contended by the writ petitioners that in terms of the Sub-rule 10, 14, 15, 16 and 17 of the Tripura Panchayats

(Administration) Rules, 1994 the Gram Sansad are the authorities to finalize the list of such beneficiaries for the said scheme. But the respondent

No. 3, the Block Development Officer, Kakrabon R.D. Block by the work order No. F.10 (5-C)/BDO/KBN/IAY/2011-2012/5275 dated

16.03.2012 has released fund for construction of IAY (Model-VI) houses during the year 2011-12 in favour of three beneficiaries each for

Palatana Gram Panchayat and Jamjuri Gram Panchayat and for six beneficiaries for Purba Palatana Gram Panchayat. The said work orders are

impugned in these writ petitions on the ground that the selection of the beneficiaries has been carried in defiance of the provisions as engrafted in

the Tripura Panchayats (Administration) Rules, 1994 as well as the guidelines issued for implementation of the IAY by the Government of India,

Ministry of Rural Development.

3. The sub-rule 10 of Rule 17 of Tripura Panchayats (Administration) Rules, 1994 provides as follows:

The Gram Panchayat shall place before the Gram Sansad in the meeting the matter relating to selection of beneficiaries of any scheme and selection

of sites for works of public utility under any scheme or project pertaining to the Gram Sansad Area. The Gram Panchayat shall submit before the

Gram Sansad a full report in respect of development programmes relating to the concerned Gram Sansad area undertaken in the preceding year

and development programmes proposed to be undertaken during the current year. Any matter referred to the Gram Panchayat by the State

Government for decision of the people of the Gram Panchayat shall be placed before the meeting of Gram Sansad for consultation and decision.

4. Mr. A.K. Bhowmik, learned senior counsel appearing for the petitioners contended that the entire procedure as laid down in the statute has

been flouted just for suppressing the opposition by abusing the power so conferred, as those Panchayats are governed by the opposition party.

5. The State respondents by filing a counter affidavit while refuting the allegations as made in the writ petitions stated at para-10:

the said memo dated 16th March, 2012 work order was issued followed by Memorandum dated 19th March, 2012, 3 beneficiaries were selected

under the Palatana Gram Panchayat for IAY houses from the reserved quota of the D.M. & Collector, following the procedure. Nothing

irregularities occurred therein by selecting the beneficiaries as aforesaid. As stated above, the D.M. Collector has the discretionary power to select

10% of the beneficiaries for covering any left out BPL family belonging to the families of weaker section, surrendered extremists and for various

other reasons.

6. Mr. G.S. Bhattacharji, learned State counsel submitted that the equal stand has been taken in all the writ petitions by the respondents. To

nourish further his submission, Mr. Bhattacharji referred to the memorandum dated 04.05.2005 as annexed to the counter affidavit wherein it is

found that the State Government has made a separate arrangement beyond the scope and ambit of the scheme in the following manner:

Considering the suggestions made in the monthly review meeting held on 2nd April, 2005, it has been decided by the Government in R.D

Department that 10% of total fund allocation of a district under IAY and PMGY-GA shall be kept reserved at the discretion of the District

Magistrate to provide housing to the beneficiaries of Special Area Based Programme (SABP) for weaker sections, Returnees to normal life and

displaced persons for various reasons.

7. When this Court confronted Mr. Bhattacharji, learned State counsel to show from the scheme, whether such provision can be made by the

State Government, he could not make satisfactory reply, rather he had shown the following provision appearing in the guidelines as updated up to

31st March, 2009 by the Government of India, Ministry of Rural Development in respect of IAY where it is found that:

2.1 Identification of beneficiaries:

The District Panchayat/Zilla Panchayat/District Rural Development Agencies (DRDAs) 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 beneficiaries, restricting to this number, will be selected from the Permanent IAY

Waitlists prepared on the basis of BPL lists in order of seniority in the list. The Gram Panchayats may draw out the shelterless families from the

BPL List strictly in the order of ranking in the list. A separate list of SC/ST families in the order of their ranks may be derived from the larger IAY

list so that the process of allotment of 60% of houses under the scheme is facilitated. Thus, at any given time, there would be two IAY Waitlists for

reference, one for SC/ST families and the other for non-SC/ST families. Once the lists are prepared, they need to be approved by the Gram

Sabha to be attended by a Government servant who would be a nominee of the Collector. Selection by the Gram Sabha is final. No approval by a

higher body is required. Zilla Parishads/DRDAs and Block Development Offices should, however, be sent a list of selected beneficiaries for their

information. The Permanent IAY Waitlists so prepared will be displayed at a prominent place either in the Gram Panchayat office or any other

suitable place in the village. The lists will also be put on the website by the concerned DRDAs".

8. This Court finds no incongruity of this provision as laid in the guidelines with the sub-rule 10 of Rule 17 of the Tripura Panchayats

(Administration) Rules, 1994. The memorandum dated 04.05.2005 as appended to the counter affidavit is clearly in contravention to the Central

Government Scheme called Indira Awaas Yojana. No person in the constitutional democracy has right to taking on any authority from the so

called memorandum dated 04.05.2005 for earmarking certain percentage of beneficiaries in the grab of discretionary power unless the Scheme

itself is modified to that extent.

9. In view of this, the work order as issued by the Block Development Officer, the respondent No. 4 is absolutely in defiance to the provision of

said sub-rule 10 of Rule 17 of the Tripura Panchayats (Administration) Rules, 1994 as well as of the guidelines as issued by the Ministry of Rural

Development for IAY.

10. This Court, therefore, is persuaded to strike down the said work order impugned in these writ petitions. Accordingly, the respondents are

directed to commence the process of fresh selection in terms of the provision as laid down in the Tripura Panchayats (Administration) Rules, 1994

as well as of the guidelines as issued by the Government of India, Ministry of Rural Development for IAY and to select the beneficiaries through

the Gram Sansad and thereafter to implement the programme with expedition.

The respondents shall commence the process of selection through the Gram Sansad within 30(thirty) days from today without fail.

With these observations and direction, these writ petitions are allowed. There shall be no order as to costs.