

Supreme Court of India
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Centre For Environment & Food ... vs Union Of India & Ors. on 12 May, 2011
Author: S Kumar
Bench: S.H. Kapadia, K.S. Panicker Radhakrishnan, Swatanter Kumar
IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 645 of 2007

Centre for Environment & Food Security ...Petitioner Versus

Union of India & Ors. ...Respondents ORDER

Swatanter Kumar, J.

This Public Interest Litigation has been filed by the petitioner before this Court for issuance of appropriate directions to the respondents to ensure proper implementation of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (for short the `Act') and the schemes framed thereunder. The Act was enacted to ensure enhancement of livelihood security of households in the rural areas of the country by providing at least hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work and for matters connected therewith and incidental thereto. The authorities appointed under the Act are responsible to ensure proper utilisation of the funds released by Union of India for 2

implementation of the schemes framed under the provisions of the Act. The Central Government issued guidelines, viz., NREGA Operational Guidelines in 2008 for proper implementation. Petitioner has prayed before us that proper investigation is required to be conducted into cases of non-compliance with the provisions of the Act, schemes framed thereunder and the guidelines issued by the Central Government to prevent diversion of funds specifically allocated for implementation of the schemes framed under the Act. The petition has been pending before this Court for considerable time and certain orders/directions have been issued by the Court from time to time. The Central Government as well as various State Governments had filed certain compliance affidavits with respect to the orders/directions issued by this Court. However, it was felt by this Court that all was not well with the functioning of the various State Governments as well as the Centre for achieving the objectives of the Act. Observing discrepancies in the implementation of the provisions of the Act, this Court, on 16th December, 2010, passed a detailed order. In the said order, it was noticed that it was in the interest of justice and in larger public interest that this Court should issue appropriate directions to ensure proper and equitable functioning of the Act and the schemes framed thereunder. After noticing in some 3

detail various acts and omissions resulting into disobedience of the statutory mandate and patent lacuna in implementation of the schemes, like disbursement of money to the unemployed, proper registration and utilisation of the funds by the concerned authorities working under the provisions of the Act, special reference was made to the failure on the part of the State of Orissa in implementing the scheme and various provisions of the Act. The concerned authorities under the State Governments and even in the Central Government have failed to discharge their statutory duties under the provisions of the Act on one hand and on the other they have also violated the orders/directions of this Court. This compelled the Court to pass the following directions on 16th December, 2010: "Thus, we are compelled to issue the following directions for strict compliance by the concerned authorities:

1. The compliance report shall be filed in the form of affidavit which shall be sworn by the Additional Secretary, in-charge for compliance of the provisions of the Act in the Ministry of Rural Development, Government of India, New Delhi and the Chief Secretary, State of Orissa within three weeks from today.

2. The instances and figures referred to in the survey report submitted by the petitioner shall be specifically dealt with in that affidavit.

3. The affidavit should be filed positively within the stipulated time directed in this order and further we call upon both the Union of 4

India and the State Government to show cause

as to why there should not be a direction to the CBI to investigate this matter in accordance with law.

We also issue the direction that affidavits to be filed by the respective authorities shall, inter alia, but specifically answer the following points:

(a) What is the extent of funds released by the Union of India to the State of Orissa for implementation of the schemes under the provisions of the Act

for each of the year between 2006 to 2010?

(b) To what extent and for what projects, the released funds have been utilized? Whether state of Orissa has given to the Central Government the requisite certificate of utilization?

(c) Findings to be recorded whether any amount earmarked for any of the schemes under NREGA has been diverted to any other

Head of Account including revenue account by State of Orissa.

(d) How many applicants, of how many households, have been actually employed and have been paid allowances under the provisions of the Act?

(e) The figures in terms of the above directions shall be provided for the period from 2006 to 2010.

(f) Whether any social audit of the projects under the Gram Sabha has been conducted in terms of Section 17(2)? If yes, its detailed findings for the above mentioned period.

(g) Whether all the authorities/officers/officials, from the higher levels in the Central Government or State Governments to the grass-root levels at 5

District, intermediary and Panchayats, to ensure effective implementation of the schemes under

the Act have been appointed? If no, reasons therefor.

(h) Whether the Union of India or the State Government, in consultation with the

Comptroller and Auditor General of India or otherwise, have conducted any general audit

of accounts of the schemes at any level in terms of Section 24 of the Act? If the answer is in the affirmative, then details thereof, particularly, the objections, if any, raised by the Auditors; if the answer is in the negative, then reasons therefor.

(i) Whether the Central Government has issued any directions concerning utilization of funds under NREGA while disbursing the amounts to State of Orissa? Whether these have been complied with by State of Orissa?

(j) Whether the Central Government has received any complaints about working of the schemes, utilization of funds, providing of employment and payment of allowances

under the provisions of the Act? If so, what action has been taken in terms of Section 27(2) of the Act? It should be stated with complete statistics and data.

(k) Whether the Union of India or the State of Orissa have, till date, found even a single official/functionary guilty of contravention in terms of Section 25 of the Act and whether any complaint has been filed in any Court of

competent jurisdiction? If so, the result thereof.

(l) The contents and the background of the complaints received and referred in

'Annexure-R1' to the affidavit filed by the Union of India should be stated precisely. 6

Why the enquiry reports as referred to in 'Annexure-R1' to the Affidavit of the Union of India of July 2008, no final reports have been prepared and submitted before this Court till date. Further, it shall also be stated as to why the findings of the interim reports referred in the said affidavit have not been placed before this Court. A complete summary thereof shall be annexed to the Affidavit."

In furtherance to the above directions, the Union of India and the State of Orissa have filed their affidavits in those terms. From the affidavits filed, it was clear that there was temporary diversion of funds, no proper audit has been conducted in terms of Section 24 of the Act and utilization of funds was improper. Not satisfied with the replies of the Central Government as well as the State of Orissa, this Court on 14th March, 2011 noticed that there are particularly two aspects to be taken care of at this stage; one is concerned with the corruption in the implementation of NREGA Scheme and the other is concerned with the implementation of the Operational Guidelines issued by the Central Government under Section 27 of the Act. In the case of State of Orissa, it was brought to the notice of the Court that huge amount has been misappropriated and, consequently, the beneficiaries of the NREGA Scheme are deprived of their dues. Learned Additional Solicitor General, appearing for the Union of India, informed this Court that the Central Government 7

is considering the possibility of handing over the matter to Central Bureau of Investigation (for short the 'CBI') for investigation in cases of misappropriation and prayed for time for seeking instructions from the concerned Government in this behalf. This Court further directed the Government of Orissa to implement the Guidelines issued by the Central Government with regard to muster rolls, maintenance of job cards/applications and transfers to the accounts of the beneficiaries. It must be noticed at this stage that the Comptroller and Auditor General of India (for short the 'CAG') had prepared certain reports in regard to implementation of the schemes framed under the Act. Similar report was prepared by the National Institute for Rural Development (NIRD) after conducting social audits in certain villages of Orissa on request of the Government of Orissa. Both these reports have pointed out the irregularities in implementation of the provisions of the Act and the schemes framed thereunder. These reports have even been accepted by the State Government and it had directed all the Collectors and District Programme Controllers (DPCs) to take necessary follow-up action. They had been instructed to submit exhaustive compliance/action-taken report in relation to the observations made by the CAG and NIRD in their respective reports and to conduct complete verification of all the allegations 8

contained therein.

In the affidavit filed on behalf of the State of Orissa, it was admitted that certain financial and other irregularities in implementation of the schemes have been noticed. Not only this, it was also stated in the affidavits that certain departmental actions were also initiated against the erring officers/officials. This Court in its order dated 16th December, 2010, had specifically noticed that the interim compliance reports filed by the Fact-Finding Committee constituted by the State Government have not been taken to their logical ends and no action has been taken as per law. All these facts compelled this Court to ask the Central Government to hand-over the investigation into all these incidences of irregularities and discrepancies where, ex-facie, criminal offences are alleged to have been committed.

Learned Additional Solicitor General had placed on record a copy of the letter dated 4th April, 2011 written by the Director, Mahatma Gandhi NREGA to the Director CBI requiring the latter to investigate the matter. Paragraphs 2 and 3 of the said letter read as under:

"2. A copy of the aforesaid Writ Petition is enclosed, in which the petitioner has mainly emphasized on the alleged irregularities in the implementation of MGNREGS in the State of 9

Orissa. Annexure `A' to the Writ petition is the report of the petitioner titled "Rural Job Scam Survey Report on Implementation of NREGA in Orissa". In the wake of directive from the Hon'ble Supreme Court, it has been decided to refer the Orissa case to the Central Bureau of Investigation. A copy of the counter affidavit along with extracts of relevant Annexures filed by the State of Orissa before the Hon'ble Supreme Court is enclosed.

3. you are requested to kindly have the matter investigated and cause to initiate criminal proceedings against the delinquent officials under the relevant laws. This may please be accorded priority. This is issued with the approval of the Hon'ble Minister (Rural Development)."

After issuance of this letter, the Panchayti Raj Department of Government of Orissa, issued a Notification dated 23rd April, 2011 in regard to the orders of this Court. The Government of Orissa, referring to the report of a survey conducted by the petitioner herein on performance of NREGA in 100 villages of six districts in Orissa during the year 2006-2007, accorded its consent to CBI to probe into alleged large-scale irregularities and misappropriations of funds under the NREGA scheme in the State of Orissa in exercise of its powers conferred under Section 6 of the Delhi Special Police Establishment Act, 1946. Vide letter of the same date, i.e. 23rd April, 2011, the Special Director, CBI, wrote to Department of Personnel and Training of Government of India stating that the matter proposed to be 10

entrusted to them involves field investigation in a large number of villages in remote parts of the State of Orissa and that the CBI is severely handicapped in respect of manpower and logistic resources. It was requested that their requirement for man- power and logistic resources may be brought to the notice of this Court for seeking appropriate direction in that regard. During the course of hearing, Mr. Prashant Bhushan, learned counsel appearing for the petitioner made some averments that this investigation should be conducted all over the State and reliance should not only be placed upon the reports of CAG and NIRD but the investigating agency should also take into consideration the survey report prepared by the petitioner (Annexure `A' to the writ petition) to make it a comprehensive and fruitful investigation. However, Mr. Venu Gopal, learned senior counsel appearing for the State of Orissa, contended that the CBI should not be called upon to conduct a fishing enquiry for the entire State in relation to implementation of the provisions of the Act and schemes framed thereunder as it would seriously hamper progress of the same and even demoralize the persons working under the scheme. It was suggested by him that such investigation should be confined to six districts of State of Orissa mentioned in the survey-report of the petitioner (Annexure `A' to the writ petition) and should be 11

limited for the purposes of examining whether there has been commission of any criminal offence by the officers/officials functioning under the provisions of the Act.

Learned Additional Solicitor General, appearing for the Union of India, argued that the CBI should be permitted to conduct a free and fair investigation all over the State and it should examine and take into consideration all the three documents, i.e. the survey report prepared by the petitioner (Annexure `A' to the writ petition), report of the CAG dated 31st March, 2009 and the report submitted by the NIRD. Wide powers of investigation are vested in the CBI under the provisions of the Delhi Special Police Establishment Act, 1946. Another provision which has a significant bearing on the matters before us is Section 27(2) of the Act. This provision specifically states that the Central Government may, on receipt of any complaint regarding the issue of improper utilization of funds granted under this Act in respect of any scheme, if prima facie satisfied that there is a case, cause an investigation into the complaint by any agency designated by it. Thus, the Central Government has full power to refer the matter to CBI for investigation in regard to the complaints received by it. The State Government has enquired into complaints received and even engaged NIRD to conduct social-audits and submit its 12

report to the State Government. The Central Government is even vested with the power, in such cases, to stop release of the funds to the scheme and institute appropriate remedial measures for its proper implementation. Thus, it will be useful for the concerned authorities in the Central Government to ponder over the entire matter and propose such directions or measures which the State Government should take in order to prevent recurrence of the events that have taken place in number of States and particularly in the State of Orissa. Having heard the learned counsel appearing for the parties at some length and keeping in view the background of this case, particularly the factual matrix referred by us above, we consider it appropriate to issue the following directions :

1. The CBI will conduct free and fair investigation in regard to the implementation of provisions of the Act and the schemes framed thereunder without any impediment; This investigation shall be restricted to 100 villages in six

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districts of Orissa as spelt out in the Notification issued by the State of Orissa dated 23rd April, 2011;

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The investigating agency shall refer to and take into

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consideration all the three documents, i.e. the survey report prepared by the petitioner (Annexure `A' to the writ petition), 13

report of the CAG dated 31st March, 2009 and the report submitted by NIRD to the State of Orissa.

5. The CBI shall conduct a complete and comprehensive investigation in the matter. Whereupon, it shall file its report in regard to commission of criminal offences in implementation of the schemes or otherwise before the court of competent jurisdiction for appropriate action. The CBI shall also place a copy thereof on the record of this Court.

6. Other irregularities or illegalities, apart from the commission of criminal offences, which come to the notice of the CBI during the course of this investigation, shall be submitted to the Chief Secretary, State of Orissa in the form of separate report for appropriate action in accordance with law.

7. The investigation should be concluded as expeditiously as possible. However, we would expect the CBI to file its first

8. report within a period of six months from the date of pronouncement of this order.

9. The State Government of Orissa, all the State Departments and concerned authorities of the Central and State 14

Governments are hereby directed to fully cooperate with the CBI so as to facilitate the expeditious completion of the investigation. The Ministry of Rural Development, Government of India is also directed to provide technical assistance to CBI during the course of investigation in regard to all the matters falling within the scope of that investigation. Union of India shall also furnish the guidelines, directions and measures which are required to be taken by the State of Orissa.

Besides issuing the above directions, we hereby also direct

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that notice to be issued to the States of Uttar Pradesh and Madhya Pradesh to respond to the reports filed by the petitioner along with its rejoinder affidavit dated 21st February, 2011 in regard to implementation of provisions/schemes under the Act in those States.

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12. Keeping in view the fact that there has been persistent default on the part of a number of States in fully implementing the provisions of the Act, we hereby direct all the State Governments to file affidavits stating whether they have accepted and are duly implementing the Operational Guidelines issued by the Government of India, within six 15

weeks from today. In the event, these Guidelines have not been accepted or are not being implemented, the affidavit shall specifically state reasons for such non-acceptance and/or non-implementation of the afore-stated directions/guidelines.

13. We also direct the Central Government to consider the entire matter objectively within the framework of the provisions of the statute and place on record of this Court, before the next date of hearing, the directions or measures which it proposes to issue to all the States to prevent recurrence of what has happened in the State of Orissa. With the above orders, we direct that all concerned shall strictly adhere to and comply with the directions contained in this order. We make it clear that in the event of default this Court would be compelled to take appropriate action against the defaulting officers/officials/authorities.

Stand over for eight weeks.

.....CJI [S.H. Kapadia]

16

.....J. [K.S. Panicker Radhakrishnan]

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.....J. [Swatanter Kumar]

New Delhi

May 12, 2011