

HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

DIVISION BENCH

PRESENT

SHEEL NAGU & ANAND PATHAK, JJ.

W.P.No. 1930/2020 (PIL)

Omnarayan Sharma

Vs.

State of M.P. & Ors.

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Shri U.K.Bohre, learned counsel for the petitioner.

Shri Ankur Modi, learned Additional Advocate General for respondents/State.

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Whether approved for reporting : Yes

Law laid down:-

(i) Legal Services Authorities Act, 1987 and NALSA (Effective Implementation of Poverty Alleviation Schemes) Scheme, 2015 gives wide scope to the State Authority & District Authority to file appropriate legal proceedings to ensure that the complainant / beneficiary receives the benefit under the NALSA (Effective Implementation of Poverty Alleviation Schemes) Scheme, 2015. Appropriate legal proceedings include private complaint, complaint before Lokayukt and to file petition under Article 226 of the Constitution of India as Public Interest Litigation;

(ii) As per the Scheme of 2015, poverty is a multi

dimensional experience and it includes issues like health, sanitation,, access to water, education, subsidies and basic services, social exclusion, discrimination etc;

(iii) District Legal Services Authority (DALSA) must undertake training to sensitize the volunteers / activist about the great responsibility bestowed upon them and to act as healers of society.

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ORDER

(Passed on this 6th Day of July, 2021)

Anand Pathak, J

The present petition under Article 226 of the Constitution of India has been preferred by the petitioner as Pro Bono Publico projecting himself to be a public spirited citizen and has raised the grievance regarding illegality and irregularity committed by the respondents, especially respondents No. 6 to 13 who according to petitioner have not undertaken any enquiry over the complaint of petitioner regarding corruption / illegality committed in construction of toilets under Swachh Bharat Mission.

2. Counsel for the petitioner has sought following reliefs:-

“1 प्रतियाचिकाकर्ता क्र० 1 लगायत 13 को आदेश / निर्देश दिया जाये कि जिला भिण्ड के अन्तर्गत 6 जनपर पंचायत, अटेर, मेहगांव, भिण्ड, गोह, रोन एवं लहार के अन्तर्गत शौचालय निर्माण में हुये भ्रष्टाचार की जांच किसी निष्पक्ष एजेन्सी / अधिकारी से करायी जायें तथा उक्त भ्रष्टाचार में संलिप्त अधिकारियों / कर्मचारियों के विरुद्ध कानूनी कार्यवाही की जायें ।

2. *प्रतियाचिकाकर्ता क्र० 1 लगायत 13 को आदेश / निर्देश दिया जाये कि उक्त शौचालय निर्माण में हुये भ्रष्टाचार से शासन को जो हानि हुवी है उसकी वसूली दोषी अधिकारी / कर्मचारियों से की जायें ।*
3. *अन्य न्यायोचित सहायता जो प्रकरण की परिस्थितियों के अनुरूप उचित हो वह माननीय न्यायालय द्वारा याचिकाकर्ता के हित में जारी की जाये ।*
4. *याचिकाकर्ता को मुकदमें का हर्जा खर्चा भी प्रतियाचिकाकर्तागण से दिलाया जाये और याचिकाकर्ता की जनहित याचिका स्वीकार की जाये तो माननीय न्यायालय की अतिकृपा होगी ।”*

3. Precisely stated facts of the case are that on 31/12/2019, one Ramu Chaudhary, resident of village Etahar, District Bhind registered a complaint on Chief Minister Helpline Portal that Sarpanch, Secretary and other officers of the Gram Panchayat Ater, District Bhind have embezzled public fund in the name of construction of toilets but neither toilets have been constructed nor any amount for construction has been received by 93 beneficiaries. Despite making complaint by the petitioner on behalf of the beneficiaries to Collector, District Bhind no affirmative steps have been taken.

4. It is the grievance of the petitioner that in other blocks of District Bhind also corruption and illegality have been conducted in construction of toilets under Swachh Bharat Mission. Petitioner placed the list of beneficiaries (94 in number) vide Annexure P/3, who did not receive the benefits of toilets nor any amount. Petitioner also referred the screen shot of app. (Pandit Deendayal Shram Seva App) to demonstrate that allegedly amount has been

received by the beneficiaries but in fact bogus papers have been prepared and amount has been siphoned off.

5. Learned counsel for the respondents/State opposed the prayer and placed certain documents on record. It is the submission of learned counsel for the State that immediately after issuance of notice in this writ petition (on 27/8/2020), CEO, Zila Panchayat, Bhind vide order dated 14/1/2021 (Annexure R/1) constituted a committee to look into the complaint made by petitioner. He also referred the show cause notice issued by same authority to then Panchayat Secretary, Gram Rojgar Sahayak and other Secretaries, who worked at the relevant point of time including the then Supervisor. Therefore, as per respondents, enquiry is under process. Learned Government counsel assured this Court that due enquiry would be conducted and if any illegality or irregularity is found then same shall be taken care of earnestly and consequent action shall be taken as per enquiry report.

6. Rejoinder has been filed by petitioner in which he referred statements of certain residents of Gram Panchayat Etahar, who specifically referred the fact regarding non-receipt of any amount for construction of toilets. They also denied the construction of toilets at the instance of Gram Panchayat.

7. Heard learned counsel for the parties at length and perused the record.

8. This is a case by way of Pro Bone Publico; whereby, petitioner as public interest litigant raised the question of alleged

illegality and corruption brewing in the Gram Panchayat Etahar, Tahsil Ater, District Bhind regarding implementation of Swachh Bharat Mission Scheme, which is a flagship scheme of Government of India to solve problems of sanitation and waste management in India by ensuring hygiene across the country. Primary object of this scheme is to eliminate open defecation and improve solid waste management. In the challenging period of COVID-19 Pandemic cleanliness and public hygiene assumed much significance. Therefore, it is the solemn duty of the District and Local Administration as well as local self government to look into the effective implementation of this scheme.

9. National Legal Services Authority (NALSA) under the provisions of Legal Services Authorities Act, 1987 has framed certain schemes encompassing wide range of subjects and the compendium of the said schemes reflects one such scheme namely **NALSA (Effective Implementation of Poverty Alleviation Schemes) Scheme, 2015**. This scheme is built on the foundation that poverty is a multi dimensional experience and is not limited to the issues of income. Multi dimensional poverty includes issues like health (including mental health), access to water, education, sanitation, subsidies and basic services, social exclusion, discrimination etc.

10. Further, in identifying the specific scheme for implementation at the State and District Level, Legal Services Authorities as per NALSA are expected to be cognizant of the fact

that various vulnerable and marginalized groups experience poverty in myriad and unique ways.

11. To address this exigency faced by people the Scheme of 2015 as referred above has been conceptualized. In the scheme, following topics have been discussed:-

Clause 4.-Objectives of the Scheme:-,

Clause 5.-Identification of Poverty Alleviation Schemes:-,

Clause 6.-Organization of Awareness Programmes:-,

Clause 7.- Legal Services Officers and Para-legal Volunteers:-,

1) Every District Authority and Taluka Legal Services Authority shall designate at least three panel lawyers as Legal Services Officers for the purpose of this Scheme.

2) District Authorities shall constitute teams of PLVs under a Legal Services Officer to implement this Scheme and the Legal Services Officer will supervise and mentor the PLVs in his team to help the beneficiaries access the various schemes of the Govt.

3) District Authorities shall conduct specialised training programs for panel of lawyers, members working in legal services clinics, members of panchayats, law students and other para-legal volunteers to assist in the implementation of the Scheme, to sensitise them regarding the needs of persons belonging to socially and economically weaker sections and the benefits that they can avail through Poverty Alleviation Schemes.

Clause 8.- Legal Assistance for Access to Poverty

Alleviation Schemes,

Legal assistance must be provided to all the Scheme Beneficiaries seeking access to Poverty Alleviation Schemes. Legal Services to be provided by Legal Services Officers or volunteers under this Scheme includes, inter alia:

- 1) Informing the Scheme Beneficiaries about each of the Poverty Alleviation Scheme to which they are entitled, and the benefits thereunder*
- 2) Assisting the Scheme Beneficiary in procuring the documents required for availing the benefits under any of the Poverty Alleviation Scheme*
- 3) Informing the Scheme Beneficiary of the name and address of the designated authority or the officer to be approached for registration under any of the Poverty Alleviation Schemes*
- 4) Offering to send para-legal volunteers including from the legal services clinics with Scheme Beneficiaries to the office of the designated authority or the officer to be approached under any of the Poverty Alleviation Schemes*
- 5) Informing the Scheme Beneficiary of her option to register a complaint with the Legal Services Officer or para-legal volunteer, about any designated authority or officer under any of the Poverty Alleviation Schemes who refuses to cooperate with the Scheme Beneficiary in providing her access to the benefits that she is entitled to under the Poverty Alleviation Scheme.*
- 6) Maintaining a record of all the complaints received under sub-clause(5).*
- 7) Providing Scheme Beneficiaries with the contact number, if available, of the Legal Services Officer, and availability of the Legal Services*

Officer on call during working hours for such Scheme Beneficiaries to whom contact number is provided

Clause 9.-Action by Legal Services Officers on complaints;

1) *On receiving complaints under sub-clause (5) of clause 8, each Legal Services Officer shall herself personally accompany the Complainant Beneficiary to the office of the designated authority or officer, and assist the Complainant Beneficiary in availing the benefit that she is entitled to under the Poverty Alleviation Scheme.*

2) *In case the designated authority or officer fails to register the Complainant Beneficiary in the Poverty Alleviation Scheme, the Legal Services Officer shall submit a complaint to the District Authority. The letter of complaint shall describe the conduct of the designated authority or officer who refused to register the Complainant Beneficiary under the Poverty Alleviation Scheme, and circumstances of such refusal and whether refusal was despite submission of all necessary documents.*

Clause 10.- Action by District Authority and State Authority on complaints:-

1) *On receiving a complaint regarding the designated authority or officer, the District Authority shall seek a report from the concerned officer regarding the reason for denying the benefits under the Poverty Alleviation Scheme to the complainant Beneficiary. In the event that sufficient reason is not provided by the concerned officer for refusal to register the Complainant Beneficiary in the Poverty Alleviation Scheme or to provide benefits under the Poverty Alleviation*

Scheme, the District Authority shall immediately communicate to the superior officer in the department the details of the refusal to provide access to the Poverty Alleviation Scheme.

2) If the superior officer, in the opinion of the District Authority, also withholds the benefits under the Poverty Alleviation Scheme without sufficient cause, the District Authority shall then communicate the same to the State Authority.

*3) On receiving such communication from the District Authority, the State Authority may choose to further pursue the matter with the concerned department **or file appropriate legal proceedings** to ensure that the Complainant Beneficiary receives the benefit under the Poverty Alleviation Scheme.*

4) The District Authority, through para-legal volunteers or legal services clinics, shall provide regular updates to the Complainant Beneficiary about the status of the complaint.

Clause 11.-Evaluation of the Scheme:-

1) Every Legal Services Officer shall follow-up with each Scheme Beneficiary who sought legal assistance under this Scheme and record:

a. if such person was able to register under the Poverty Alleviation Scheme sought to be registered under and whether such benefits were being received

b. any grievances experienced by the Scheme Beneficiaries in getting registered and availing benefits under the various Poverty Alleviation Schemes.

2) The District Authority shall compile the observations made under sub-clause (1) for all the

Legal Services Officers working under the Scheme in the district and shall send a copy of such observations in a compiled document to the State Authority every six months.

3) The State Authority shall consolidate the compiled documents received from all the District Authorities under sub-clause (2) and hold a meeting every 6 months to review the functioning and effectiveness of this Scheme. The minutes of such meeting shall be recorded and published as a public document.

4) If in the meeting under sub-clause (3) the State Authority finds a substantive or procedural defect in any of the Poverty Alleviation Schemes which makes seeking benefits under the scheme a problem for the Scheme Beneficiaries, such defect must be brought to the notice of the Central Government or the State Government as the case may be for improving the specific Poverty Alleviation Scheme and / or its effective implementation.”

12. Perusal of the whole scheme indicates that certain responsibilities have been bestowed upon the State and District Legal Services Authorities to train the legal and para-legal volunteers for providing legal assistance for giving access to beneficiaries to Poverty Alleviation Scheme and to act upon the complaints if the benefits have not been extended to him/her or if any authority refuses to cooperate with the scheme beneficiaries in providing access to the benefits.

13. As referred in the Scheme of 2015, poverty is a multi dimensional experience and it includes basic services including

sanitation etc. and when a duty has been cast upon Legal Services Authority as per the Legal Services Authority Act, 1987 and Scheme of 2015 then if any complaint is received by the Legal Services Officer from complainant / Scheme Beneficiary then such complaint like the present one can be taken care of by the District Authority as per Clause (9), (10) and (11) of the Scheme of 2015 by the District Authority and even by the State Authority.

14. It is being experienced by this Court that many complaints come regarding poor implementation, corruption and / or irregularities in Schemes like MGNREGA and Swachh Bharat Mission regarding construction of toilets or non-grant of amount to the beneficiaries for construction of toilets, etc. and by way of Public Interest Litigation, people seek Continuing Mandamus from this Court, whereas, provisions of Act of 1987 and Scheme of 2015 are apparently also available to address such problems.

15. Clause 10(3) of Scheme of 2015 gives option to choose between the Persuasion (with the concerned Department) or Petition (to file appropriate legal proceedings). Here, appropriate legal proceedings may include complaint before the Lokayukt, if it comes under the purview of said Authority or private complaint against the erring persons or to file a Petition on behalf of complainant under Article 226 of the Constitution of India as Public Interest Litigation. It can club cause of more than one beneficiaries also.

16. Recently, Ministry of Panchayati Raj, Government of India

has undertaken steps in respect of Online Audit and Social Audit of 20% Gram Panchayats' in every Janpad Panchayat and therefore, it appears that Government also intends to make these Institutions more accountable which are having direct bearing over day to day welfare of people at large. In pursuance thereof, a circular has also been issued by Panchayat Raj Directorate, Madhya Pradesh, Bhopal dated 17/2/2021 to all CEOs of Zila Panchayats / Janpad Panchayats to organize camps in this regard.

17. State Authority may contemplate about preparation of one Software and Mobile Application (Mobile App.) for keeping a tab over the complaints received and their outcome. This Software / Mobile App. may coordinate amongst the concern departments so that complaints received over the said application (App.) would be displayed all over. Concerned stakeholders and State Authority / District Authority would be in a better position to proceed as per the spirit of Act of 1987 and Scheme of 2015. State Authority even has power to make regulations as per Section 29-A of the Act 1987 to provide for all matters for which provision is necessary or expedient for the purposes of giving effect to the provisions of Act.

18. Here, in the case in hand, it appears that certain beneficiaries allegedly did not receive the benefits under Swachh Bharat Mission about construction of toilets. As per the allegations, neither toilets have been constructed by the concern authorities nor amount has been transferred in their accounts and it is the allegations that amount of 93 beneficiaries (or may be 94) has been siphoned off

by Sarpanch / Panchayat Secretary / Gram Rojgar Sahayak etc. Allegations are prima facie serious in nature.

19. This Court cannot go into the authenticity or otherwise of the allegations at this juncture especially when CEO, Zila Panchayat is seized of the matter vide show cause notices issued to erring officers / authorities in this regard. Therefore, at this juncture, any observation would pre-empt the controversy. However, Collector and CEO, Zila Panchayat, Bhind are directed to look into the allegations with utmost promptitude and role of concerned Sarpanch, Panchayat Secretary, Gram Rojgar Sahayak, Supervisor and any other person involved in the transaction / or having any responsibility under the Swachh Bharat Mission Scheme failed or acted mischievously be enquired into in accordance with law. If any conclusion has not been drawn in the enquiry up till now then enquiry be conducted expeditiously within two months from the date of passing of this order and outcome of the enquiry be intimated to the office of this Court and office shall place the matter under the caption "Direction" for perusal of this Court and even if conclusion is drawn then consequential follow up action be informed to office of this Court.

20. Before parting, this Court feels it appropriate to give direction to the District Legal Services Authority to update the contents of different schemes promulgated under the different provisions of Legal Services Authority Act, 1987 including the Scheme in hand i.e. NALSA (Effective Implementation of Poverty

Alleviation Schemes) Scheme, 2015 and ensure that in their respective jurisdiction (District) Poverty Alleviation Scheme especially Swachh Bharat Mission Scheme and Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (MGNREGA), etc. are being properly executed and intended beneficiaries get the benefits of the scheme and if any authority refuses to cooperate with the beneficiary in providing him / her access to the benefits that she is entitled to under any Poverty Alleviation Scheme, then the responsible authority under District Legal Services Authority (DALSA) shall proactively take care of the situation by proceeding as per Clause 9, 10 and 11 of the Scheme, 2015.

21. It is further expected from the Authority and its Office Bearers that they shall constantly organize awareness programmes as well as training programmes for Panel Lawyers / Legal Volunteers / Para-legal Volunteers as the case may be in a constructive and proactive manner. The training must sensitize the volunteers / activists to the notion that they have to act as Healers of the Society looking to the great responsibility bestowed upon them of Poverty Alleviation. **Poverty**, which is a Problem (Social Evil) can be addressed through **Law** (with its healing touch) as its solution to achieve the ultimate destination of **Development**.

22. In view of aforesaid discussion, this Court summarizes the following directions:-

- (i) If, any complaint is received regarding inaction, inappropriate execution, corruption or any matter

related thereto which comes under the purview of Legal Services Authority Act, 1987 and NALSA (Effective Implementation of Poverty Alleviation Schemes) Scheme, 2015 then District Legal Service Authority (DALSA) shall proactively take care of the situation by proceeding as per Clause 9,10 and 11 of the Scheme of 2015;;

(ii) State Authority / District Authority may file appropriate legal proceedings as per Clause 10 (3) of Scheme of 2015 by way of complaint before the Office of Lokayukt as per relevant provisions or may file Private Complaint against the erring persons or may file a petition if subject matter requires so by way of a Public Interest Litigation under Article 226 of the Constitution of India;

(iii) State Authority is requested to contemplate for framing of suitable regulations as per the provisions of Act of 1987, especially under Section 29-A for effective implementation of different schemes of Government of India / State Government fall under NALSA (Effective Implementation of Poverty Alleviation Schemes) Scheme, 2015. A further request is made to contemplate about preparation of a Software / Mobile Application (Mobile App.) for keeping a tab over the complaints received and their outcome; and

(iv) District Authority and its Office Bearers are expected to regularly organize awareness / training programmes for Panel Lawyers / Para-legal Volunteers in a constructive and proactive manner to sensitize them with the notion that they have to act as **Healers of the Society**, looking to the great responsibilities bestowed upon them. Secretary, SALSA shall coordinate and guide all such awareness / training programmes.

23. Consequently, petition is disposed of with a direction to the respondents especially Collector and CEO, Zila Panchayat Bhind to look into the matter and complete the enquiry, if not already completed within two months from the date of passing of this order and if any person is found guilty then consequential follow up action shall be ensured in accordance with law. If the enquiry is already concluded then Collector and CEO are directed to place the enquiry report before the office of this Court so that same can be placed before this Court for perusal.

24. Petition stands disposed of.

25. A copy of this order be sent to Principal Secretary, Panchayat Raj, Government of Madhya Pradesh, Bhopal as well as to Member Secretary, SALSA, Jabalpur for circulation to all District Legal Service Authorities (DALSA) for sensitization and implementation of the concept as referred above by this Court.

(Sheel Nagu)
Judge

(Anand Pathak)
Judge