

The High Court of Madhya Pradesh

W.P.1699/2021

[Bhanupratap Singh Vs. State of M.P. and others]

Gwalior dated 01.03.2021

Shri Ram Kishor Sharma, learned counsel for petitioner.

Shri R.P.Singh Kaurav, learned Government Advocate for the respondents/State.

Heard through video conferencing.

1. This PIL filed u/Art. 226 of the Constitution raises alleged public cause of irregularity and illegality committed while making payment of wages to the workers employed under Mahatma Gandhi National Rural Employment Scheme framed under Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (for brevity 2005 Act).

2. After having heard learned counsel for rival parties on admission and perused the material placed on record it is obvious that for raising grievance against non-implementation or faulty implementation of the said Scheme in-house remedy before Ombudsman appointed in every district and thereafter before the State Govt. is stipulated u/S. Sec. 32 of 2005 Act u/R. 7 & 8 of Mahatma Gandhi National Rural Employment Guarantee (Appointment, Powers and Duties of the Ombudsman) Madhya Pradesh Rules, 2013 (for brevity 2013 Rules).

2.1 For ready reference and convenience, Section 32 of 2005 Act and Rules 7 & 8 of 2013 Rules are reproduced below:-

“32 Power of State Government to make rules-

(1) The State Government may, by notification, and subject to the condition of previous publication, and consistent with this Act and the rules made by the Central Government, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -

- (a) the terms and conditions upon which eligibility for unemployment allowance may be determined under sub-section (2) of section 7 ;
- (b) the procedure for payment of unemployment allowance under sub-section (6) of section 7;
- (c) the terms and conditions subject to which the Chairperson and members of the State Council may be appointed, and the time, place and procedure of the meetings (including the quorum at such meetings) of their appointment to the State Council, under sub-section (2) of section 12;
- (d) the grievance redressal mechanism at the Block level and the District level and the procedure to be followed in such matter under section 19;
- (e) the manner in which and the conditions and limitations subject to which the State Fund shall be utilised under sub-section (2) of section 21;
- (f) the authority who may administer and the manner in which he may hold the State Fund under sub-section (3) of section 21;
- (g) the manner of maintaining books of account of employment of labourers and the expenditure under sub-section (2) of section 23;
- (h) the arrangements required for proper execution of Schemes under sub-section (3) of section 23;
- (i) the form and manner in which the accounts of the Scheme shall be maintained under sub-section (2) of section 24;
- (j) any other matter which is to be, or may be, prescribed or in respect of which provision is to be made by the State Government by rules.”

“Rule 7. Subjects of the grievances.- A grievance pertaining to any one or more of the following subjects alleging deficiency in the implementation of the Scheme may be filed with the Ombudsman:-

- (i) The Gram Sabha;
- (ii) Registration of households and issue of job cards;
- (iii) Custody of job cards;
- (iv) Demand for work;
- (v) Issue of dated acknowledgment against submission of application for work;
- (vi) Payment of wages;
- (vii) Payment of unemployment allowance;
- (viii) Discrimination on the basis of gender;
- (ix) Work-site facilities;
- (x) Measurement of work;
- (xi) Quality of work;
- (xii) Use of machines;
- (xiii) Engagement of contractors;
- (xiv) Operation of accounts in the bank or post offices;
- (xv) Registration and disposal of grievances;
- (xvi) Verification of muster rolls;
- (xvii) Inspection of documents;
- (xviii) Use of funds;
- (xix) Release of funds;

(xx) *Social audit;*

(xxi) *Maintenance of record.*

8. Procedure of filing of grievance and disposal. - (1) *Any person who has a grievance against the Scheme Authority or worker may, himself or through his authorised competent representative, make a grievance against the Scheme Authority or worker in writing or oral to the Ombudsman.*

(2) *A complaint may be filed as far as possible by a person or persons themselves or through such competent representative for whom Ombudsman permits.*

(3) *The grievance shall be duly signed by the complainant or his authorised competent representative, if any, and shall state clearly the name and address of the complainant, the name of the office and official of the Department against whom the grievance is made, the facts giving rise to the grievance supported by documents, if any, relied on by the complainant and the relief sought from the Ombudsman.*

(4) *A grievance made through electronic means shall also be accepted by the Ombudsman and a print out of such grievance shall be taken on the record of the Ombudsman*

(5) *A printout of the grievance made through electronic means shall be signed by the complainant at the earliest possible opportunity before the Ombudsman takes steps for disposal.*

(6) *The signed printout shall be deemed to be the grievance and it shall relate back to the date on which the grievance was made through electronic means.*

(7) *No grievance to the Ombudsman shall lie if the grievance is in respect of the same subject matter which was disposed by the Office of the Ombudsman in any previous proceedings whether or not received from the same complainant or along with any one or more complainants or any one or more of the parties concerned with the subject matter.*

(8) *No grievance shall be made to the Ombudsman on an issue which has been or is the subject matter of any proceeding in an appeal, revision, reference or writ before any Tribunal or Court.*

(9) *On receipt of the grievance, the Ombudsman may refer the grievance to the appropriate Scheme Authorities for disposal within 7 days. In the event of failure of the Scheme Authority to dispose the grievance within the said time limit, the matter may be taken up by the Ombudsman for disposal.*

(10) *The Ombudsman shall cause to serve a notice to Scheme worker or the Scheme Authority against whom complaint is made along with a copy of the grievance.*

(11) *When facts of the case are admitted by the Scheme Authority, the Ombudsman shall dispose the case in accordance with law.*

(12) *On receiving of complaint the Ombudsman shall adopt such procedure for disposal of complaint that appears to him to be fair and proper; but during this process the Ombudsman shall follow the principles of natural justice.*

2.2 In view of the statutory remedy available to the petitioner of preferring representation before Ombudsman of the district concerned and

thereafter before the State Govt. this court declines interference and extends liberty to petitioner to avail said remedy.

2.3 At this stage, learned counsel for petitioner informs that no Ombudsman has been appointed under the said Act/Rules in district Bhind which fact the learned Government Advocate is not aware of.

3. In view of above, this court further directs that in case there is no Ombudsman appointed and functional in Bhind district, then petitioner is free to make his representation before the State Govt.

4. It is needless to emphasis that if any such representation is made to Ombudsman/State Govt., as the case may be, same shall be decided by passing a speaking order as expeditiously as possible preferably within a period of **30 (Thirty) days** from the date of submission of representation.

5. With this direction, the petition stands disposed of.

(S.A.Dharmadhikari)
Judge

(Anand Pathak)
Judge