Writ Petition No.15222/2016

22.09.2016

Shri P.S.Tomar, learned counsel for the petitioner.

Shri V.Johri, Panel Lawyer for respondent - State.

Petition is directed against the communication dated 9.8.2016 which is in following terms:

''कार्यालय जिला पंचायत, सागर (म0प्र0)
महात्मा गांधी राष्ट्रीय ग्रामीण रोजगार गारंटी स्कीम–म.प्र.

क्रमांक/4210/MG NREGS-MP/2016 सागर, दिनांक 9/8/2016
प्रति,

मुख्य कार्यपालन अधिकारी
जनपद पंचायत रहली
जिला सागर

विषयः– ग्राम पंचायत हरदुआ में मनरेगा योजनांतर्गत कार्यों की जॉच के संबंध में।

संदर्भ :– जॉच दल का प्रतिवेदन एवं आपका पत्र क्रं. 962 दिनांक 02.08.2016

विषयान्तर्गत संदर्भित पत्र एवं प्रतिवेदन द्वारा ग्राम पंचायत हरदुआ में मनरेगा योजनान्तर्गत मृत व्यक्तियों, पेंशनधारियों, ग्राम से बाहर गये व्यक्तियों, आईटीआई अध्ययनरत एवं अन्य जॉबकार्डधारियों जिनके नाम से गलत राशि आहरण की गई है के लिए संबंधित रोजगार सहायक, सचिव, पूर्व एवं वर्तमान सरपंच एवं उपयंत्री से आपके द्वारा प्रस्तावित राशि 136480/– रुपये एवं ऐसे समस्त शौचालय निर्माण की राशि जो कि निर्माण किये गये बिना आहरित की गई थी की वसूली प्रकरण तैयार कर वसूली की कार्यवाही सुनिश्चित करें, साथ ही संबंधित रोजगार सहायक, सचिव, सरपंच के विरुद्ध जांच प्रतिवेदन एवं आपके पत्र के आधार पर संबंधित पुलिस थाने में एफआईआर दर्ज कराते हुए पूर्व सरपंच के विरुद्ध धारा 92 एवं वर्तमान सरपंच के विरुद्ध धारा 40 एवं 92 की कार्यवाही अनुविभागीय अधिकारी (राजस्व) रहली के समक्ष प्रस्तुत करना सुनिश्चित करें एवं कृत कार्यवाही से इस कार्यालय को अवगत करावें।

मुख्य कार्यपालन अधिकारी
जिला पंचायत सागर''

As apparent it is from the communication that direction is to set in motion the machinery under law to lodge an FIR and to proceed under Section 40 and 92 of the Madhya Pradesh Panchayat Rajya Avam Gram Swaraj Adhiniyam, 1993.

Contention of the petitioner is that no opportunity of hearing has been granted to the petitioner before passing of said order is of no avail.

Reason being that no opportunity is required to be given to the person against whom an FIR is to be lodged. In this context, reference can be had of the decision in **Union of India V. W.N.Chadha : AIR 1993 SC 1082** wherein their Lordships were pleased to observe

> "88. The principle of law that could be deduced from the above decisions is that it is no doubt true that the fact that a decision, whether a prima facie case has or has not been made out, is not by itself determinative of the exclusion of hearing, but the consideration that the decision was purely an administrative one and a full-fledged enquiry follows is a relevant and indeed a significant factor in deciding whether at that stage there ought to be hearing which the statute did not expressly grant.
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> 89. Applying the above principle, it may be held that when the investigating officer is not deciding any matter except collecting the materials for ascertaining whether a prima facie case is made out or not and a full enquiry in case of filing a report under S. 173(2) follows in a trial before the Court or Tribunal pursuant to the filing of the report, it cannot be said that at that stage rule of audi alteram. partem superimposes an obligation to issue a prior notice and hear the accused which the statute does not expressly recognise. The question is not whether audi alteram partem is implicit, but where the occasion for its attraction exists at all.
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> 90. Under the scheme of Chap. XII of the Code of Criminal Procedure, there are various provisions under which no prior notice or opportunity of being heard is

> conferred as a matter of course to an accused person while the proceeding is in the stage of an investigation by a police officer.
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> 94. Under S. 235(2), in a trial before a Court of Sessions and under S. 248(2) of the trial of warrant cases, the accused as a matter of right, is to be given an opportunity of being heard. Unlike the above provisions which we have referred to above by way of illustration, the provisions relating to the investigation under Chapter XII do not confer any right of prior notice and hearing to the accused and on the other hand they are silent in this respect."

In respect of direction for initiation of proceedings under Section 40 and 92 of Adhiniyam 1993, since opportunity of hearing is implicit in these two statutory provisions which are yet to be initiated against the petitioner, the impugned communication cannot be interfered with as there is no statutory provision commended at that even before directing initiation of proceedings under Section 40 and 92 of the Adhiniyam 1993, an opportunity of hearing is contemplated.

In view whereof, since the petition is devoid of substance, it stands dismissed in limine.

(Sanjay Yadav)
Judge

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