

In the High Court at Calcutta
Constitutional Writ Jurisdiction

Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No.1641 of 2023

United Order And Supply Co-Operative Society Limited
Vs.
The State of West Bengal and others

For the petitioner : Mr. Satrajit Sinha Roy

For the State : Mr. Amal Kumar Sen,
Ms. Ashima Das (Sil)

Hearing concluded on : 06.06.2023

Judgment on : 12.06.2023

Sabyasachi Bhattacharyya, J:-

- 1.** The petitioner is a registered co-operative society which is an existing diet contractor in different hospitals in West Bengal. The Secretary of the petitioner-Society is a lady and it is primarily run by women.
- 2.** The present challenge has been preferred against a Memorandum issued by the Government of West Bengal, Department of Health and HF/O/MS/271/W-14/10 dated June 16, 2010. By virtue of the said Notification, the State Government restricted the duties of diet supply in hospitals in the rural sector in West Bengal, having beds up to 50 in number, to federations or clusters of Self Help Groups (SHG) working in the area.

- 3.** The first limb of challenge is that, by such restriction, the State Government has curtailed drastically the wider participation of members of the general community. It is submitted that although the purported object behind the decision is the empowerment of women, participation from other women apart from the members of the SHGs has been entirely precluded.
- 4.** It is submitted that the process by which the appointments would now be made to rural hospitals would be through selection by the Chief Medical Officer of Health (CMOH) on specific recommendation of the Project Director, DRDC (District Rural Development Cell), both of whom are Government functionaries and under direct control of the State Government. Hence, by way of introduction of the selection process, open tender has been entirely obliterated and the wishful fancy of the State Government would be subserved in all such appointments.
- 5.** It is argued that the preclusion of the open tender is the bane of public projects and employment schemes.
- 6.** It is argued that although the provision has apparently been restricted to rural hospitals having beds up to 50, such rider takes under its sweep the vast majority of the rural hospitals in West Bengal, except some super-specialty hospitals and other large hospitals.
- 7.** It is argued that there are 269 rural hospitals in the different districts of West Bengal and the selection of the supplier of cooked diet shall now be restricted to the local self-help group(s), which will choke competition even among similarly situated other groups or persons.

- 8.** Moreover, it is argued that the impugned Memo goes beyond its charter insofar as the first paragraph of the same clearly stipulates that the same was in compliance with observations of this Court in an order dated August 21, 2009 in WP No.11766(W) of 2009, as per which a Broad Based Committee was constituted merely to review and determine rationalized rate of cooked diet, taking into account the present market value of dietary articles, for supply to different Government health facilities. However, going much beyond the same, the Government has introduced the decision to restrict the supply of cooked diet in most rural hospitals to Self-Help Groups controlled by the Government itself.
- 9.** Learned counsel for the State controverts the petitioner's submissions and places reliance on the judgments reported at *(2000) 4 SCC 221 [Gayatri Devi Pansari Vs. State of Orissa and others]* and *(1997) 9 SCC 495 [Krishnan Kakkanth Vs. Government of Kerala and others]* for furthering the proposition that some amount of reasonable classification is permitted in Government actions.
- 10.** It is argued that the declared purpose of the impugned Clause is the empowerment of women through promotion of the SHG movement, which cannot be faulted in any manner and is well within the constitutional scheme of India.
- 11.** Apart from empowering women, it will serve the purpose of supporting local SHGs.

12. Moreover, the same would be restricted only to rural hospitals having up to 50 beds and would not curtail competition in respect of other larger medical facilities even in rural areas.
13. Thirdly, it is argued that the impugned Memo is a policy decision of the State which cannot be otherwise faulted. Hence, it is contended that the Court ought not, under normal circumstances, interfere with such policy decision of the State.
14. Lastly, learned counsel for the State contends that the present writ petition has been filed only in the year 2023, whereas the impugned Memo is dated June 16, 2010. Such an inordinate delay of 13 years remains unexplained in the writ petition and, as such, ought to be deprecated by dismissing the writ petition.
15. Before deciding the issues raised, it would be beneficial to set out the impugned Clause, that is, Clause 3 of the Memorandum dated June 16, 2010. The same reads as follows:

“3. In order to fulfill the commitment of the State Government to the empowerment of women through promotion of SHG movement, the Governor has further been pleased to order that in all hospitals in the rural sector having beds up to 50 (fifty), the duties of diet supply shall be entrusted to a federation or cluster of Self Help Groups working in the area and promoted by the District Rural Development Cell (DRDC) of the Zill Parishad. Selection of such cluster shall be made by the Chief Medical Officer of Health on specific recommendation of the Project Director, DRDC subject to the following conditions

a) Such assignment may be made to a federation in respect of all the health facilities in the block where they are working;

b) Such assignment may be made to a cluster working in a Gram Panchayat area in respect of all the health facilities within that Gram Panchayat and/or within its close vicinity. Such cluster should preferably be

of “A” category. In exceptional circumstances, clusters of “B” category almost eligible for upgradation towards “A” category may also be considered for such engagement;

c) *The federation or the cluster so engaged shall do the job directly and not through any agency. An undertaking to that effect should be obtained from the federation or cluster before entrusting the job to them. In case it is found subsequently that the cluster or the federation so engaged is not doing the work directly, their engagement shall stand cancelled with immediate effect without any payment of compensation to such defaulting federation or cluster.*

No tender process is required for engagement of such federation or cluster and the Project Director shall recommend only one federation or cluster for specific rural hospital and/or health centres in complete satisfaction of the above conditions. They shall be paid at the maximum admissible rate.”

- 16.** The plinth of the challenge of the petitioner is that, by virtue of restrictions introduced, free competition has been curtailed in respect of rural hospitals, insofar as supply of cooked diet is concerned.
- 17.** In such context, it must be kept in mind that the cooked diet to be supplied by virtue of the impugned Clause is confined to hospitals in the rural sector having beds only up to 50 and, as such, it cannot be said that such work would involve expertise of such level which cannot be achieved by SHGs run by women.
- 18.** In any event, Clause 3 of the Memorandum provides that the said provision is for the empowerment of women through promotion of the SHG movement which, *per se*, cannot be faulted, since the same is to achieve a benevolent public purpose which is in consonance with the Constitutional scheme.

- 19.** Since large hospitals in rural areas and hospitals in other areas, including towns and cities, have been excluded from the coverage of the impugned Clause, it cannot be said that the object to be achieved is self-defeating due to lack of expertise or sufficient resources.
- 20.** Another prime challenge is that the process of giving such appointments would be “selection” by the CMOH, on specific recommendation of the Project Director, DRDC.
- 21.** Under the law, the CMOH is a sufficiently qualified person and the DRDC (District Rural Development Cell) of the Zilla Parishad, is an important functionary in dispensing with social justice under the Panchayati Raj governing the rural development projects in India. Although there will be involvement of such functionaries as per the impugned Clause of the Memo, it cannot be said that the power conferred on such authorities would be *per se* unbridled and whimsical.
- 22.** It cannot be denied that the CMOH is a sufficiently qualified medical officer to decide on the eligibility of a particular SHG for appointment as supplier of cooked diet to hospitals. A sufficient safeguard to the functions of the CMOH has also been implanted in the policy by subjecting the decision of the CMOH to the specific recommendation of the Project Director, DRDC, which functions for the specific purpose of rural development in the State.
- 23.** It cannot be said that the object sought to be achieved by the impugned Memo, that is, empowerment of women through promotion

of SHGs in rural areas, is *ex facie* arbitrary or vitiated in any manner whatsoever.

- 24.** Apart from the said contracts being restricted to small rural hospitals having only up to 50 beds, another safeguard in the Clause is that the duties of diet supply shall be entrusted not to individuals but to federations of clusters of SHGs.
- 25.** A further check is that such groups will have to supply cooked diet only in the specific area where they otherwise operate or are situated, to avoid nepotism and favouritism in making such appointments.
- 26.** Sub-clause (b) of Clause 3 clearly stipulates that such assignment may be made to a cluster working in a Gram Panchayat area in respect all the health facilities within that Gram Panchayat and/or within its close vicinity and should preferably be of “A” category; under exceptional circumstances, “B” category clusters would also be eligible for upgradation to be considered for such engagement.
- 27.** Importantly, sub-clause (c) of Clause 3 clearly provides that the federation or the cluster so engaged shall do the job “directly and not through any agency”, for which an undertaking to that effect should be obtained from the federation or cluster before entrusting the job to it.
- 28.** As a further safety net, the said sub-clause goes on to provide that in case it is found, subsequently, that the cluster or the federation so engaged is not doing the work directly, their engagement shall stand cancelled with immediate effect without any payment of compensation to such defaulting federation or cluster.

- 29.** In bold letters, at the end of the impugned Clause it is provided that no tender process is required for engagement of such federation or cluster and the Project Director shall recommend only one federation or cluster for specific rural hospital and/or health centres in complete satisfaction of the above conditions. Mere existence of such clause, in the absence of any other vitiating circumstance, cannot render the entire scheme bad in law. Apart from the factors as indicated above, which comprised of sufficient safeguards to prevent false play and favouritism, it has also been ensured that the federation or cluster engaged shall be paid at the maximum admissible rate.
- 30.** The very next clause, that is, Clause 4 also qualifies that the present rate shall remain valid for the financial year-in-question and engagement should be made for that period only, thereby leaving scope of appointing other SHGs, if the ones engaged are found lacking.
- 31.** The Memo further stipulates that in case it is found that such cluster is not available in areas of certain such hospitals or hospitals, tender process may be started in respect of those hospitals in complete satisfaction of this Department order No. HF/O/MS/271/W-14/10 dated June 16, 2010. Thus, a residuary provision has also been incorporated in the impugned Memo to mandate issuance of tenders in case such SHGs are not available for that particular area.
- 32.** Empowerment of local women in rural areas by providing employment opportunities for them cannot be faulted from any perspective whatsoever. Certain supervision of the State cannot be said to be a

vitiating factor in that regard, since otherwise the entire allotment would be unregulated, which might also afford scope for corruption, nepotism and opportunism.

- 33.** Apart from the merits of the challenge, the State is justified in arguing that the present challenge has been preferred after an inordinate delay of 13 years.
- 34.** Even if the petitioner seeks to participate in the tender at the present juncture, such fact, by itself, cannot furnish a cause of action to the petitioner for challenging a Memorandum of June 16, 2010 in 2023. If a premium is given to such belated challenges, anybody and everybody seeking to take benefit of such challenge would be coming up with applications under Article 226 of the Constitution of India after prolonged periods of delay as per their whims and fancies to suit their limited individual purposes, which would tantamount to a gross abuse of the provisions of judicial review.
- 35.** On all the above counts, there is no scope of any interference in the present writ petition.
- 36.** Accordingly, WPA No.1641 of 2023 is dismissed on contest without, however, any order as to costs.
- 37.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)