

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 5997 of 2006**

- Raigarh Ambikapur Health Association (In short RAHA), a registered Association Patthalgaon, Distt. Jashpur (CG) Through its Secretary Sister Elizabeth, Nallur, D/o Shri Ouseph Devasia, aged 58 years, R/o Patthalgaon, Distt, Jashpur (CG)

---- Petitioner**Versus**

1. State Of C.G., Through – Secretary, Department of Women and Child Development, D.K.S. Bhawan, Raipur.
2. District Programme Officer, Department of Women and Child Development Distt. Sarguja (CG)
3. The Collector, Distt. Sarguja (CG)

---- Respondents**And****WP No. 6157 Of 2006**

1. Makbul Alam, son of Miyan Ajami, aged about 34 years,
2. Ajay Mehta, son of Kalipa Prasad, aged about 37 years,
3. Smt. Kathrina Bada, widow of Late Y.M. Keketta, aged about 47 years,
4. Premlata Sinha, daughter of Santosh Sinha, aged about 36 years,
5. Shanti Ekka, daughter of P. Tappo, aged about 33 years,
6. Kusum Kanti Lakda, daughter of Shri Bahal, aged about 32 years,
7. Smt. Sherofina Kerketta, daughter of Thomas Kerketta,
8. Shanti Tirki, daughter of Sunder Tirki, aged about 32 years,
9. Dasrath Prasad, son of Jhuthan Ram, aged about 36 years,
10. Smt. Reeta Das, wife of Dasrath Prasad, aged about 29 years,
11. Ramdas, son of Arjun Das, aged about 35 years,

12. Jaideep Son of Chitranjan, aged about 30 years,
13. Mohan Ram Minj, son of Jairam Minj, aged about 39 years,
14. Shiv Lal Minj, son of Ramchandra Ram, aged about 33 years
15. William Ekka, aged about 28 years, son of Habi Ekka,

All are working under the Women and Child Development Project,
Lundra, District Surguja (Chhattisgarh)

---- **Petitioners**

Vs

1. The State Of Chhattisgarh through -the Secretary, Department of Woman and Child Development Department, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh)
2. The District Programme Officer, Department of Woman and Child Development, District Surguja (Chhattisgarh)
3. The Collector, District Surguja, Ambikapur (CG)

---- **Respondents**

For Petitioners : Shri T.K. Tiwari, Advocate.

For Respondents : Shri Shashank Thakur, Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

Passed on : 10/08/2015

1. WP No.5997/2006 has been preferred by the Raigarh Ambikapur Health Association, a society registered under the Chhattisgarh Societies Registrikaran Adhiniyam, 1973 seeking quashment of the order dated 10.10.2006 (Annexure-P/7), whereby the State Government has taken over the Integrated Child Development Scheme Project (henceforth

‘ICDS Project’) Lundra, District Surguja, the management of which was earlier handed over to the petitioner on 9.5.1995.

2. WP No.6157/2006 has been preferred by the employees of the above stated registered society seeking similar relief of quashment of the order dated 10.10.2006 with further prayer for issuance of direction to the respondents to allow the petitioners to work even after it is taken over by the State Government.
3. Since both the writ petitions involve similar questions based on common facts and grounds, they are being disposed of by this common order.
4. Facts of the case, briefly stated, are that in the year 1993-94 the Government of India, Ministry of Human Resource Development in the Department of Woman and Child Development decided to entrust the ICDS Project to Non Government Organizations (NGOs). On 18th August, 1994, a communication was issued delineating the terms and conditions to be adhered while entrusting of the said project to the NGOs. The State of Chhattisgarh decided to hand over the ICDS Project of Block Lundra, District Surguja to the petitioner association and in furtherance thereof an agreement (Annexure-P/4) was executed between the District Collector and the Society. The petitioner society was thus continuously working on the project till the impugned order was passed on 10.10.2006 by which the State Government has cancelled the

agreement/allotment and has decided to run the said project itself.

5. Shri Tiwari, learned counsel for the petitioner would argue that local MLA had lodged a complaint against the petitioner on which an enquiry was conducted wherein nothing adverse was found against the petitioner. On the contrary, the work of the petitioner society was appreciated by the Department and in the year 2000, local Officer of the Department recommended that the petitioner should be handed over one more project. Thus, the submission is to the effect that despite the petitioner's work being absolutely excellent and satisfactory, the impugned order has been passed against the petitioner which is arbitrary and illegal. Shri Tiwari would strenuously urge that the impugned order has been passed in violation of principles of natural justice inasmuch as the petitioner has not been afforded any opportunity of hearing. He would refer to the decisions rendered by the Supreme Court in **M.P. State Agro Industries Development Corpn. Ltd. and another Vs. Jahan Khan¹**, **Durga Enterprises (P) Ltd., and another Vs. Principal Secretary, Govt. of U.P. and others²**, **Rajasthan State Road Transport Corporation Vs. President, Rajasthan Roadways Union and another³** and **Harbanslal Sahnia and another Vs. Indian Oil Corpn. Ltd. and others⁴**.

6. Per contra, Shri Shashank Thakur, learned Govt. Advocate would

1(2007) 10 SCC 88

2(2004) 13 SCC 665

3(2012) 11 SCC 561

4(2003) 2 SCC 107

submit that handing over of the management of the ICDS Project of Lundra to the petitioner was only an arrangement without creating any right in favour of the petitioner, therefore, the petitioner is not entitled for any relief. He would submit that it is the Government's policy decision to run the project by itself through its own officers and employees for which the Government has all the authority and power. He would further submit that the enquiry report in which nothing adverse was found against the petitioner is not concerned with the present impugned order and further that in the absence of any allegation of malafide exercise of power against any individual, the impugned order does not call for any interference. He would also submit that the matter pertains to breach of contract without involving any legal or constitutional right of the petitioners, therefore, the petitioners have alternative remedy of approaching the civil Court and these writ petitions under Article 226 of the Constitution of India are not maintainable.

7. Although the respondents have raised defence of existence of alternative remedy, however, since these writ petitions have remained pending for the last about 9 years, this Court would proceed to deal with the matter on merits.
8. Undeniably the ICDS Project is a Government of India project and thus, to begin with, it is the duty of the Central Government to implement the same through concerned department of the State Government. It is also

not in dispute that barring few project areas, almost all other projects in different Development Blocks in the State are run by the concerned department of the State Government. Even in the Central Government's letter dated 18th August, 1994, it is provided that the Central Government shall grant financial assistance to the NGOs, who are entrusted with the task of implementing the ICDS Project and the State Government shall also be responsible for providing supplementary nutrition to the ICDS beneficiaries and shall also ensure the provision for fund required for supplementary food for the projects allocated to the NGOs. Primarily it is the State's duty to implement the scheme of the Central Government and handing over of project to NGOs was only an exception. By issuance of letter by the Central Government, no right is created in favour of any NGO to implement or run the project. It is not akin to licence or allotment for running the fair price shop under the statutory enactment. It appears, the NGOs have been involved on experimental basis without there being any statutory backing.

9. Agreement (Annexure-P/4) between the petitioner and the Collector clearly stipulates that the second party i.e. the petitioners shall implement the project on the principle of 'No profit no loss'. The agreement was executed on year to year basis. The sample agreement (Annexure-P/4) is only for the year 1994-95. There is no material available on record to demonstrate as to on what terms the subsequent agreements were executed or it was a simple extension for each

succeeding year. It further stipulates that all the assets created by the petitioners would become property of the Government.

10. Clause-14 of the agreement declares in unambiguous language that in the event of project being closed or agreement being cancelled the persons engaged by the petitioner society would not become employees of the State Government and the State shall have no liability towards them and that in the event of any dispute, decision of the Principal Secretary of the Woman and Child Development Department of the State Government shall be final.

11. The act of entrusting implementation of ICDS Project of Lundra block in Surguja district to the petitioner and the consequent agreement would clearly indicate that the same was a policy decision of the State Government for which it was enabled by the Central Government by its communication dated 18th August, 1994. However, the arrangement was not preceded by any selection procedure nor it was done pursuant to any statutory or legal requirement. The petitioners were only implementing the project. It was otherwise a State run project. The petitioners were not entitled to make any profit in the project as agreement itself envisages that the petitioners are engaged on the principle of 'No profit no loss'. In this view of the matter, there is no legal right in favour of the petitioners to continue to run the project nor any of its civil rights have been violated or adversely affected so as to attract Article 14 of the Constitution of India. In the absence of any

enforceable right in favour of the petitioners, it cannot be said that the State Government's decision to implement the scheme through its own resources rather than continue to entrust the same to the petitioners is based on policy decision.

12. It is settled law that the writ Courts do not interfere in the policy decision of the State Government.

13. In *Col. A.S. Sangwan v. Union of India*, {1980 Supp SCC 559 : AIR 1981 SC 1545}, the Supreme Court held as under (in the words of Justice V.R. Krishna Iyer):

“A policy once formulated is not good for ever; it is perfectly within the competence of the Union of India to change it, rechange it, adjust it and readjust it according to the compulsions of circumstances and the imperatives of national considerations. We cannot, as court, give directives as to how the Defence Ministry should function except to state that the obligation not to act arbitrarily and to treat employees equally is binding on the Union of India because it functions *under* the Constitution and not *over* it. In this view, we agree with the submission of the Union of India that there is no bar to its changing the policy formulated in 1964 if there are good and weighty reasons for doing so. We are far from suggesting that a new policy should be made merely because of the lapse of time, nor are we inclined to suggest the manner in which such a policy should be shaped. It is entirely within the reasonable discretion of the Union of India. It may stick to the earlier policy or give it up. But one imperative of the Constitution implicit in Article 14 is that if it does change its policy, it must do so fairly and should not give the impression that it is acting by any ulterior criteria or arbitrarily. This

object is achieved if the new policy, assuming Government wants to frame a new policy, is made in the same way in which the 1964 policy was made and not only made but made known. After all, what is done in secret is often suspected of being capricious or mala fide. So, whatever policy is made should be done fairly and made known to those concerned. So, we make it clear that while the Central Government is beyond the forbiddance of the court from making or changing its policy in regard to the Directorate of Military Farms or in the choice or promotion of Brigadiers, it has to act fairly as every administrative act must be done.”

14. It is also settled that ordinarily the writ Courts should not interfere in the day-to-day functioning of the Government.

15. In **B.K. Muniraju Vs. State of Karnataka and others**⁵ in para-22 it has been held thus:-

“22. It is settled law that a writ of certiorari can only be issued in exercise of extraordinary jurisdiction which is different from appellate jurisdiction. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals or authorities in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice. In regard to a finding of fact recorded by an inferior tribunal or authority, a writ of certiorari can be issued only if in recording such a finding, the tribunal/authority has acted on evidence which is legally inadmissible, or has refused to admit an admissible evidence, or if the finding is not supported

⁵ (2008) 4 SCC 451

by any evidence at all, because in such cases the error amounts to an error of law. It is needless to mention that a pure error of fact, however grave, cannot be corrected by a writ.”

16. For the foregoing, WP No.5997/2006 preferred by the Raigarh Ambikapur Health Association deserves to be and is hereby dismissed. Similarly, in view of clause-14 of the agreement between the State Government and Raigarh Ambikapur Health Association, the State Government has no liability towards employees of Raigarh Ambikapur Health Association, therefore, it will not be appropriate for this Court to issue any writ of mandamus compelling the State Government to absorb the petitioners of WP No.6157/2006 contrary to the terms of agreement. Consequently, WP No.6157/2006 is also dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)