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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 165/2019 & C.M.No.1160/2019 (*directions*)

BRIG SKS RANA , VSM (RETD) Appellant
Through: Dr.Harshvir Pratap Sharma, Adv.
with Mr.A.K.Srivastava, Mr.Ajay Sharma, Advs.

Versus

UNION OF INDIA & ORS Respondents
Through: Ms.Maninder Acharya, ASG with
Mr.Rakesh Kumar, CGSC.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER
11.03.2019

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C.M.No.1161/2019 (*exemptions*)

Allowed, subject to all just exceptions.

C.M.No.1162/2019 (*delay in filing - 8 days*)

For the reasons stated in the application, delay in filing is condoned and the application is disposed of.

LPA No.165/2019

1. Seeking exception to an order dated 21st January, 2019 passed in W.P.(C) No.546/2019, this appeal has been filed under Clause 10 of the Letters Patent. The petitioner had filed the writ petition aggrieved by a direction issued by the respondents to replace the earlier card issued to the

petitioner and other beneficiaries under the Ex-Servicemen Contributory Health Scheme ('ECHS') at a higher cost. The said writ petition having been rejected by the learned writ Court, this appeal has been filed.

2. Primarily, challenge is made to the same on the ground that the Comptroller and Auditor General of India ('CAG') in his report submitted with regard to implementation of the ECHS had pointed out various irregularities in agreement entered into with regard to issuance of the Smart Card and that contrary to the observations made by the CAG modified scheme is being implemented that also without taking approval of the competent authority. The writ petition was dismissed by the learned writ Court after considering the fact that the new Smart Card is qualitatively different from the earlier one. The storage capacity is increased from 16 kb to 64 kb and as various details pertaining to the card holder and his family members are available in the modified Smart Card, the writ Court refused to interfere into the matter.

3. The learned counsel for the petitioner had vehemently argued that once there is a recommendation by the CAG, the CAG being a constitutional functionary, its recommendation commands respect and cannot be brushed aside but it should be examined by the respective Ministries and could not be rejected outrightly in an arbitrary manner. In support thereof, he has relied upon a judgment of the Supreme Court in the case of *Arun Kumar Agrawal vs. Union of India & Ors.*, (2013) 7 SCC 1 and the observations made by the Supreme Court in para-68 thereof.

“68. We may, however, point out that since the report is from a constitutional functionary, it commands respect and cannot be brushed aside as such, but it is equally important to examine the

comments what respective ministries have to offer on the CAG's report. The ministry can always point out, if there is any mistake in the CAG's report or the CAG has inappropriately appreciated the various issues. For instance, we cannot as such accept the CAG report in the instance case."

4. On the contrary, learned counsel for the respondent invites our attention to the reasons which weighed with the authorities for introduction of the 64 kb card which reads as under:-

"2. The reasons for the introduction of new 64 kb cards are given as under:-

(a) Old contract for making of Smart Card expired on 31 May 2015 and there was a need to issue Cards to post May 2015 retirees.

(b) The 16 Kb Cards had outlived its specified material life of ten years.

(c) It was not feasible to make full use of technology (RFID, Aadhar based authentication, queue management with old 16/32 Kb Cards).

(d) There were objections by CAG on use of single Card for multiple beneficiaries i.e. (16 Kb Cards).

(e) Veterans were facing problems, when their dependents were located in a separate geographical area and there was only one Smart Card (16 Kb Card) held with the main beneficiary.

(f) ECHS was also on boarded on DBT Mission vide DBT Mission letter No I-11011/145/2015-DTT (Petitioner-II0 Vol-II dated 28 Oct 2016, thus capturing of Aadhar, bank details and mobile data was mandatory requirement.

(g) Need for Aadhar based authentication is felt essential to curb any malpractice/misuse."

5. It is, therefore, argued that as it is only a matter pertaining to demand of certain information, its storage in the Smart Card, no interference should be made. He argues that under the changed circumstances, for reasons as are indicated hereinabove, the order passed by the learned writ Court does not call for any interference.

6. Primarily, the case of the petitioner is based on the inaction on the part of the respondents in not taking cognizance of the CAG report and not implementing it and rejecting it in toto. It is tried to be argued that the report is binding and the Government, in contravention or by ignoring the report, cannot change the scheme. Even though the CAG is a constitutional authority and certain credence and weightage have to be given but the report has to be placed before the Parliament which has to examine it, debate has to be held and thereafter only the report can be given effect to. It seems that in this case the report itself was never tabled in the Parliament.

7. Be that as it may, merely because some recommendation are made by the CAG, we see no reason to interfere into the matter, particularly when the irregularities in the Smart Card noticed by the CAG are primarily with regard to issuance of tender and various other questions pertaining to agreement entered into for issuance of the Smart Card and certain fees charged from the beneficiaries. We are of the considered view that merely because the recommendation of the CAG have not been taken note of, it is not appropriate in the facts and circumstances of the present case to interfere into the matter, particularly, when the reasons given by the respondents, as detailed hereinabove, have already been taken note of by the learned writ Court in para-4 and 5 in the impugned order are as under:-

“4. The contention that the Court had proscribed the respondents from demanding the costs for issuance of the ECHS card is, plainly, erroneous. The contention that the demand for cost of the Smart Card violates the principles of payment of one time charge is unmerited. The respondents have not called upon the petitioner to make further contribution towards the scheme but merely to bear the cost of issuance of the Smart Card. The petitioner is undoubtedly put to certain inconvenience and he is now required to get a fresh card issued. However, it is seen that there is a qualitative difference in the card now required to be issued. Whereas, the earlier card had a storage capacity of 16 Kb, the card now required to be issued has a data storage capacity of 64 Kb. Thus, the storage capacity of the Smart Card now being issued is much higher.

5. This Court does not consider it apposite to enter into the controversy whether a Smart Card of enhanced storage capacity is necessary. This is a question that is required to be decided by the concerned authorities. In the present case, the concerned authorities have taken a decision to issue a card with an enhanced capacity and have, therefore called upon all ECHS beneficiaries to replace their cards and apply for issuance of fresh cards. This Court finds no infirmity with the said decision that would warrant interference under Article 226 of the Constitution of India.”

8. That apart, the observations made by the CAG has been dealt with by the learned writ Court in para-6 of the impugned order in the following manner:-

“6. Insofar as the observations made by the CAG are concerned, this court has no reason to believe that the same would not be considered by the appropriate authority. At this stage, this court is not required to examine the observations made by the CAG as the same are required to be considered by the Public Accounts Committee.”

9. We, therefore, see no reason to make any indulgence into the matter by taking any different view. Accordingly, finding no merits, the petition is dismissed.

CHIEF JUSTICE

ANUP JAIRAM BHAMBHANI, J

MARCH 11, 2019
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