

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on 04.03.2020****Judgment Delivered on 20.03.2020****Writ Appeal No. 6 of 2020***{Arising out of order dated 10.12.2019 passed by the learned Single Judge in Writ Petition (C) No. 4375 of 2019}*

- Mahalaxmi Swa-Sahayata Samuh Samuh Durgapur, Through its Secretary-Smt. Manisha Paikra, aged about 28 years, Wife of Shri Lakhansai Paikra, Resident of Village Kanchan Nagar, Tahsil Shankargarh, District Balrampur Ramanujganj, Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh Through the Secretary, Women and Child Development Department, Mahanadi Bhawan, Mantralaya, Nawa Raipur, Chhattisgarh.
2. The Collector, District Balrampur, Ramanujganj, Chhattisgarh.
3. The District Programme Officer, Women and Child Development Department, District Balrampur Ramanujganj, Chhattisgarh.
4. Madhu Mahila Svyam Sahayata Samuh Bharatpur, Block Shankargarh, District Balrampur Ramanujganj, Chhattisgarh.

---- Respondents**Writ Appeal No. 82 of 2020***{Arising out of order dated 02.01.2020 passed by the learned Single Judge in Writ Petition (C) No. 4733 of 2019}*

- Anup Mahila Swa Sahayata Samuh, Kachhiya Sector Chalgali, Block-Wadrafnagar, Tahsil- Wadrafnagar, District- Balrampur-Ramanujganj, Through Presently President Fulmati Devi W/o Bandhu, Aged About 55 Years, R/o Village Kachhiya, Tahsil- Wadrafnagar, District- Balrampur-Ramanujganj, Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh Through The Secretary, Women and Child Development Department, Mahanadi Bhawan, Mantralaya, Nawa Raipur, Chhattisgarh.

2. The Commissioner Woman and Child Development Department, Raipur, District- Raipur, Chhattisgarh.
3. The Commissioner Surguja Division, Ambikapur, District- Surguja, Chhattisgarh.
4. The Collector (Woman and Child Development Branch) Balrampur, District Balrampur-Ramanujganj, Chhattisgarh.
5. The District Programme Officer, Women and Child Development Department, Composite District Office, 1st Floor, District-Balrampur-Ramanujganj, Chhattisgarh.
6. Chief Executive Officer District Panchayat, Balrampur, District-Balrampur-Ramanujganj, Chhattisgarh.
7. The Project Officer Integrated Child Development Project, Wadraf Nagar, District-Balrampur-Ramanujganj, Chhattisgarh.
8. Durga Mahila Swayam Sahayta Samuh Devaipara, Through Its President Smt. Rajkumari W/o Ramnarayan, Aged About 50 Years, R/o Village-Devaipara, Block and Tahsil- Wadraf Nagar, District- Balrampur-Ramanujganj, Chhattisgarh.

---- Respondents

Writ Appeal No. 83 of 2020

{Arising out of order dated 06.01.2020 passed by the learned Single Judge in Writ Petition (C) No. 4767 of 2019}

- Durga Mahila Swayam Sahayta Samuh Samuh Pasupatipur, Gram Panchayat, Pasupatipur, Janpad Panchayat, Wadraf Nagar, District Balrampur Ramanujganj Chhattisgarh, Through Its Presently President Arti Gupta W/o Sunil Gupta, Aged About 30 Years, R/o Village Pasupatipur, Tahsil Wadraf Nagar, District Balrampur Ramanujganj (C.G.)

---- Appellant

Versus

1. State of Chhattisgarh Through The Secretary, Women and Child Development Department, Mahanadi Bhawan, Mantralaya, Nawa Raipur (C.G.)
2. The Commissioner, Woman and Child Development Department, Raipur, District Raipur (C.G.)
3. The Commissioner, Surguja Division, Ambikapur, District Surguja, Chhattisgarh
4. The Collector (Woman and Child Development Branch), Balrampur, District Balrampur Ramanujganj, Chhattisgarh.
5. The District Programme Officer, Women and Child Development Department, Composite District Office, 1st Floor, District Balrampur Ramanujganj, Chhattisgarh

6. Chief Executive Officer, District Panchayat, Balrampur, District Balrampur Ramanujganj, Chhattisgarh
7. The Project Officer, Integrated Child Development Project, Wadrafnagar, District Balrampur Ramanujganj, Chhattisgarh
8. Roshni Mahila Swayam Sahayta Samuh, Pasupatipur, Through Its President Smt. Malwanti Yadav W/o Chandra Shekhar Yadav, Aged About 50 Years, R/o Village, Pasupatipur, Block and Tahsil Wadrafnagar District Balrampur Ramanujganj, Chhattisgarh

---- Respondents

Writ Appeal No. 141 of 2020

{Arising out of order dated 13.01.2020 passed by the learned Single Judge in Writ Petition (C) No. 112 of 2020}

- Mahamaya Bachat Swa Sahayta Samuh (wrongly mentioned as Mahamaya Bachhat Swa- Sahayta Samuh), Village Gudru (Khas), Sector Kamalpur, Block Wadrafnagar, District Balrampur-Ramanujganj (C.G.), Through Its Presently President Smt. Leelavati Wife of Ramchandar, Aged About 45 Years, R/o Village Gudru (Khas), Block Wadrafnagar, District Balrampur-Ramanujganj (C.G.)

---- Appellant

Versus

1. State of Chhattisgarh Through The Secretary, Women and Child Development Department, Mahanadi Bhawan, Mantralaya, Nawa Raipur, Chhattisgarh.
2. The Commissioner Woman and Child Development Department, Raipur, District Raipur, Chhattisgarh.
3. The Commissioner Surguja Division, Ambikapur, District Surguja, Chhattisgarh.
4. The Collector (Woman and Child Development Branch), Balrampur, District Balrampur – Ramanujganj, Chhattisgarh.
5. The District Programme Officer, Women and Child Development Department, Composite District Office, 1st Floor, District Balrampur-Ramanujganj, Chhattisgarh.
6. Chief Executive Officer, District Panchayat, Balrampur, District Balrampur-Ramanujganj, Chhattisgarh.
7. The Project Officer, Integrated Child Development Project, Wadrafnagar, District Balrampur-Ramanujganj, Chhattisgarh.
8. Maa Durga Mahila Swa-Sahayata Samuh, Kamalpur, Through Its President, Mankunwar wife of Ramavtar Teli, Aged About 35 Years, Resident of Village Kamalpur, Block Wadrafnagar, District Balrampur-Ramanujganj (C.G.) Chhattisgarh

---- Respondents

Writ Appeal No. 142 of 2020

*{Arising out of order dated 13.01.2020 passed by the learned Single Judge in Writ
Petition (C) No. 107 of 2020}*

- Krishna Mahila Swa Sahayta Samuh, Village Balangi, Sector-Janakpur, Block-Wadrafnagar, District-Balrampur-Ramanujganj (C.G.), Through Its Presently President Smt. Meera Devi Wife of Ambika Prasad, Aged About 50 Years, Resident of Village-Balangi, Block-Wadrafnagar, District-Balrampur-Ramanujganj (C.G.)

---- Appellant

Versus

1. State of Chhattisgarh Through The Secretary, Women and Child Development Department, Mahanadi Bhawan, Mantralaya, Nawa Raipur, Chhattisgarh
2. The Commissioner Woman and Child Development Department, Raipur, District- Raipur, Chhattisgarh
3. The Commissioner Surguja Division, Ambikapur, District- Surguja, Chhattisgarh
4. The Collector (Woman and Child Development Branch) Balrampur, District-Balrampur-Ramanujganj, Chhattisgarh
5. The District Programme Officer, Women and Child Development Department, Composite District Office, 1st Floor, District-Balrampur-Ramanujganj, Chhattisgarh
6. Chief Executive Officer, District Panchayat, Balrampur, District-Balrampur-Ramanujganj, Chhattisgarh
7. The Project Officer, Integrated Child Development Project, Wadrafnagar, District-Balrampur-Ramanujganj, Chhattisgarh
8. Indira Mahila Swa-Sahayata Samuh Karamdiha (K), Through Its Secretary, Tara Devi Wife of Baikarkunbi, Aged About 35 Years, Resident of Village Karamdiha (K), Block-Wadrafnagar, District-Balrampur-Ramanujganj, Chhattisgarh

---- Respondents

Writ Appeal No. 199 of 2020

*{Arising out of order dated 13.01.2020 passed by the learned Single Judge in Writ
Petition (C) No. 110 of 2020}*

- Shiwani Mahila Swa Sahayta Samuh, Village Balangi, Sector Balangi, Block Wadrafnagar, District-Balrampur-Ramanujganj (C.G.), Through Its Presently President Smt. Chitra Devi Wife of Premchand Kesri, Aged About 31 Years, R/o Village Balangi, Block Wadraf Nagar, District Balrampur-Ramanujganj, Chhattisgarh.

----Appellant

Versus

1. State of Chhattisgarh Through The Secretary, Woman and Child Development Department, Mahanadi Bhawan, Mantralaya, Nawa Raipur, Atal Nagar, Raipur, District Raipur, Chhattisgarh.
2. The Commissioner Woman and Child Development Department, Raipur, District Raipur, Chhattisgarh.
3. The Commissioner Surguja Division, Ambikapur, District Surguja, Chhattisgarh.
4. The Collector (Woman and Child Development Branch), Balrampur Ramanujganj, District-Balrampur-Ramanujganj, Chhattisgarh.
5. The District Programme Officer, Woman and Child Development Department Composite District Office, Building, 1st Floor, District-Balrampur-Ramanujganj, Chhattisgarh.
6. Chief Executive Officer, District Panchayat Balrampur, District Balrampur Ramanujganj, Chhattisgarh.
7. The Project Officer, Integrated Child Development Project, Raghunath Nagar, District Balrampur Ramanujganj, Chhattisgarh.
8. Mahila Bachhat Swa Sahayta Samuh Tuguva Through Its President, Shanti Devi, Wife of Dayal, Aged About 42 Years, R/o Village Tuguva, Block Wadrafnagar, District-Balrampur-Ramanujganj, Chhattisgarh.

---- Respondents

For Appellants	:	Shri Rahul Mishra, Shri Rohti Sharma and Shri Pankaj Singh, Advocates.
For Respondent/State	:	Shri Vikram Sharma and Shri Siddharth Dubey, Deputy Government Advocate.
For respective private Respondent:		Shri Satish Gupta and Shri Avinash Singh, Advocates.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Justice Parth Prateem Sahu, Judge

CAV Judgment

Per P. R. Ramachandra Menon, Chief Justice

1. Alleged premature termination of the work contract awarded to the Appellants/Petitioners to supply 'ready-to-eat food' to the various Aganbadi centers located in Durgapur sector in a District in the State of Chhattisgarh is the subject matter of the dispute.

2. Grievance is against the verdict passed by the learned Single Judge, whereby interference was declined and the writ petitions were dismissed, referring to availability of 'alternative remedy' as provided under the relevant clauses of the guidelines (before the District Collector).
3. Heard Shri Rahul Mishra, Shri Rohit Sharma and Shri Pankaj Singh, the learned counsel appearing for the Appellants, Shri Vikram Sharma and Shri Siddharth Dubey, the learned Deputy Government Advocate for the State as well as Shri Satish Gupta and Shri Avinash Singh, the learned counsel appearing for the private Respondents.
4. The basic facts as to the nature of grievance and the grounds raised are almost common in all the cases. The Appellants are Societies registered under the Societies Registration Act, 1960. Tenders were invited from 'Svyam Sahayak Societies' for supply of 'ready-to-eat food' and on coming out successful in different sectors work orders were awarded to them and they were effecting the supplies in terms of the agreement executed between the Appellants/Petitioners and the Respondent authorities. As per the terms of the tender, the tenure was to be of 5 years.
5. According to the Appellants, before expiry of the tenure of 5 years from the date of agreement, a fresh tender notification came to be issued inviting bids covering a larger area in the same District which includes the sectors covered by the Appellants/Petitioners as well. Though the Appellants/Petitioners moved the Respondent authorities by filing a representation to exclude their sectors from the purview of that tender, till expiry of the tenure of 5 years, there was no response. At the same time, based on similar representations preferred by some other similarly situated and aggrieved parties, the matter was considered and they were excluded from the purview of the new tender so as to enable them to complete the tenure of 5 years.

6. In the said circumstance, the Appellants/Petitioners moved this Court by filing the writ petitions contending that the action pursued by the Respondents was quite arbitrary, discriminatory and illegal in all respects, challenging the new tender proceedings and awarding of the work to the private Respondent. A direction was also sought for to permit the writ Petitioners to continue till the end of the tenure of 5 years.
7. When the matters came up for consideration before the learned Single Judge, it was noted that supply of 'ready-to-eat food' was under a particular scheme which had provided clear guidelines. As per the relevant provisions in the guidelines of the scheme, if at all anybody is aggrieved of any order passed by the District Programme Officer, it is quite open for them to move the District Collector by way of the appeal. In view of the availability of redressal mechanism/alternative remedy, interference was declined and the appeals came to be dismissed; which made the writ Petitioners to feel aggrieved who are before this Court, by way of the present appeals.
8. The learned counsel for the Appellants pointed out that the course pursued by the Respondent concerned in floating a new tender during the subsistence of the contract entered into with the Appellants and in awarding the work to the private Respondents in respect of the segments covered by the Appellants after excluding such other similarly situated 'Societies' from the purview of the tender based on the representations for non-completion of tenure, at the same time refusing to extend similar benefits to the Appellants; is nothing, but arbitrary and discriminatory which is liable to be interdicted by this Court. Existence of 'alternative remedy' is stated as no bar under such circumstance, as made clear by the Apex Court on many an occasion.
9. It is also the specific case of the Appellants that though the work order was issued earlier on 17.12.2014 (except in Writ Appeal No. 6 of 2020) agreements

were executed only much later and as such, the tenure of 5 years has to be calculated from the date of agreement and never before. Since the said tenure is still to be completed, the abrupt stoppage of the supply by causing to issue fresh tender and allocation of work to another 'Society' (private Respondent) has caused much loss and hardship to the Petitioners/Appellants and hence the challenge.

10. The learned counsel for the Respondent/State submits that there is absolutely no merit or bonafides in the writ petitions. It is pointed out that the 'ready-to-eat food' is being supplied under a specific scheme and the mechanism is such that the successful bidders have to ensure continuous supply without fail, as there cannot be interruption even for a day. With this intent 'ready-to-eat food' has to be prepared almost one month in advance to ensure proper and prompt supply as above. On expiry of the tenure of 5 years from the date of the first supply, it has to be continued from the next date by the successful bidder identified in the tender proceedings notified and finalized in the meanwhile and till the new successful bidder takes over, it is for the existing supplier to continue to effect the supply. In many cases the existing suppliers continued to be the successful bidders and hence there was no gap and it was going on as a smooth chain. In the instant cases, even though formal agreements came to be executed on a later date, by virtue of the fact that the work orders had been issued to the Appellants much earlier, they were effecting the supplies without break. As it stands so, the period of 5 years is over and hence there is absolutely no merit in the writ petitions. The learned counsel for the State asserts that the tenure of 5 years is not with effect from the date of agreement, but from the date of actual supply.
11. Even though, there is absolutely nothing wrong on the part of the learned Single Judge in relegating the writ Petitioners to pursue the 'Appellant remedy', if

aggrieved; in view of the nature of the scheme envisaging continuous supply of 'ready-to-eat food' (ensuring that there is no interference on any count), this Court considers it fit to deal with the matter on 'case to case' basis.

12. In **Writ Appeal No. 6 of 2020**, the learned counsel for the Appellant points out that the Appellant entered into the field for the first time only from 15.12.2015, as per the work orders issued on that date and an agreement was executed later, on 04.01.2016. This being the position, the Appellant is having the tenure of 5 years till 03.01.2020 from the date of agreement or atleast till 14.12.2020 (if it is to be counted from the date of granting the work order). The learned counsel further points out that, by virtue of Clause 11.3 of the 'guidelines/scheme', the successful bidders having a tenure of 5 years could continue for full tenure; notwithstanding the issuance of fresh tender proceedings for identifying the successful bidders for the next tenure.
13. It is also pointed out that the only reason stated in the reply filed by the Respondent for floating a new tender during the currency of the Appellant's tenure and awarding the work to a new person arrayed in the party array is only the alleged 'exigency', which is not demonstrated at all. Though, a representation was filed by the Appellant referring to the tenure and seeking to exclude them from the purview of the new tender, particularly, when similarly aggrieved persons have been excluded, no action has been taken which requires interference.
14. Shri Siddharth Dubey, the learned counsel representing the Respondent/State fairly concedes that the existing suppliers having a tenure of 5 years can continue for the full tenure in view of the Clause 11.3 of the 'guidelines/scheme' and that there is no complaint against the Appellant in any manner. The learned counsel also concedes that the supply was started in the case of the Appellant only from the date of order *i.e.* 15.12.2015; however, adding that there is an

'alternative remedy' for the Petitioner/Appellant, as observed forth by the learned Single Judge.

15. In view of the fact that the right of the Appellant in Writ Appeal No. 6 of 2020 to have the full tenure of 5 years in terms of Clause 11.3 of the 'guidelines/scheme' is conceded and further since the first supply was admittedly made only from the date of order on 15.12.2015, no further fact finding exercise is necessary to hold that the Appellant is entitled to get the relief. In the said circumstance, this Court holds that the Appellant is entitled to continue to effect the supply till completion of the tenure of 5 years from 15.12.2015.
16. In **Writ Appeal No. 82 of 2020**, the contention of the Appellant is that the Appellant was continuing to effect the supplies of 'ready-to-eat food' for the sector 'Chalgali' from 2011 onwards. The current work order was issued vide Annexure P/2 only on 17.12.2014 and an agreement was executed only 12.10.2015. It is contended that the Appellant is entitled to continue till 11.10.2020 *i.e.* 5 years from date of agreement. But, pursuant to the new tender floated, covering the sector of the Appellant as well, the work was awarded to the 8th Respondent as per Annexure A/7 dated 20.11.2019, which is sought to be interdicted.
17. Shri Vikram Sharma, the learned counsel appearing for the Respondent/State submits that there is total misrepresentation on the part of the Appellant/writ Petitioner. The grievance as well as the prayer sought for is with reference to the sector 'Chalgali', whereas the Appellant was never identified as the successful bidder for the said segment; but, was declared as the successful bidder for the sector 'Odari', as clearly revealed from the Annexure A/2 agreement produced by the Appellant themselves. The Appellant was effecting supply for 'Odari', based on the tender awarded earlier, which has already

expired. No pleadings or prayers have been made in respect of the segment 'Odari', but with reference to the segment 'Chalgali'; in respect of which a different bidder was effecting the supply. Because of the termination of the said contract, some temporary arrangement had to be made immediately, which hence was assigned to the Appellant and it was being done. No agreement was executed in respect of the sector 'Chalgali' and as such, there is no question of any cancellation or passing any order without hearing the Appellant. The sector 'Chalgali' and the sector 'Odari' were also included in the fresh tender proceedings, the tenure having completed. The Petitioner/Appellant, participated in the new bid only in respect of 'Chalgali', where they could secure only 65 marks, whereas by virtue of the higher merit another Society came to be identified as the successful bidder who has been awarded the work as borne by Annexure R/3 produced alongwith the reply. Among the 8 groups participated in the bid for 'Chalgali', the Petitioner/Appellant was placed far below and hence they cannot have any grievance in this regard; more so, when the Appellant has not chosen to implead one of the two successful bidders in the party array. The learned counsel further points out that, in respect of the segment 'Odari', 8 groups participated. The Appellant was never a contestant for the sector 'Odari'. There is no challenge as to the selection process. The attempt of the Appellant is only to mix up the facts in respect of 'Odari' (to which he was earlier identified) and 'Chalgali' (in respect of which only temporary arrangement was made because of the termination of the contract of the earlier supplier).

18. On being confronted with the factual position, the learned counsel for the Appellant sought for permission of this Court to withdraw the appeal. Even though, this is a fit case to be dismissed with cost, considering the submission made by the learned counsel expressing regrets with regard to the inadvertent mistake in mixing up the facts (with reference to the documents produced), we

find it appropriate to grant permission. Accordingly, the said appeal is liable to be dismissed as withdrawn.

19. Coming to **Writ Appeal No. 83 of 2020**, it is in respect of the sector 'Pasupatipur'. The work order was issued on 17.12.2014, though the agreement was executed only on 12.10.2015. The learned counsel for the Appellant points out that the Appellant is entitled to have a tenure of 5 years from the date of agreement, which is still to be over. It is also pointed out that, in the new tender floated before the expiry of the above term, the work has been awarded to the 8th Respondent. It is contended that 'undue advantage' has been extended by granting more marks to the 8th Respondent, while reducing the marks allocable to the Appellant under different heads. The learned counsel for the Respondent/State submits that since the work order granted on 17.12.2014, the Appellant was effecting the supply even much prior to the execution of the formal agreement on 12.10.2015. As revealed from the Annexure R/1 produced alongwith the reply in writ appeal, the first supply was effected on 25.01.2015 and as such, the tenure of 5 years is already over. It is also pointed out that the Appellant has not challenged the selection process or the allocation of marks awarded to the 8th Respondent and hence that there is absolutely no merit in the submissions made in the above context. After hearing, in view of the assertion that the first supply was effected on 25.01.2015, as borne by Annexure R/1, which is not controverted from the part of the Appellant, we hold that the tenure of 5 years is over and the Appellant can not have any further grievance. The appeal is liable to be dismissed.
20. In **Writ Appeal No. 141 of 2020**, the Appellant's grievance is in respect of sector 'Kamalpur'. The pleadings and materials brought on record reveal that the work order was issued on 17.12.2014, though the formal agreement came to be executed only on a subsequent date. The learned counsel for the

Respondent/State points out that the first supply was effected on 29.12.2014 to 31.12.2014 and the bills were submitted accordingly; which by itself is sufficient to hold that the tenure of 5 years has already expired. As such, there is no point in contending that the tenure of 5 years has to be counted from the date of agreement. We find considerable force in the submission, we hold that there is no merit and the appeal is liable to be dismissed.

21. **Writ Appeal No. 142 of 2020**, is in respect of the sector 'Janakpur'. Annexure P/2 selection order was issued on 17.12.2014. In fact the Appellant has been supplying the 'ready-to-eat food' even much earlier *i.e.* from 2011. In the instant case, the formal agreement came to be executed only on 24.09.2015, but by virtue of the fact that the Appellant was existing supplier it was being continued without break. The learned counsel for the Respondent/State points out that the date of first supply was in the year 2014 and the first bill was submitted in January 2015. The last supply was effected for the period from 25.12.2019 to 29.12.2019 and the bill was submitted on 05.01.2020. In view of the factual aspects brought on record and the submissions made across the Bar, we are of the view that there is no merit in the appeal and it is liable to be dismissed.
22. **Writ Appeal No. 199 of 2020**, pertains to the sector 'Balangi'. Nature of contentions raised is almost similar as in the other cases; which have already been held as having no merit. The work order was awarded on 17.12.2014 and in respect of the supply effected, the first bill was submitted on 30.12.2014. As such, the tenure of 5 years has expired much ago and there cannot be any significance to the date of formal agreement which came to be executed later. We are of the view that there is no merit in this appeal as well and it is also liable to be dismissed.
23. In view of the above discussion, we hold that Writ Appeal No. 6 of 2020 stands allowed and is declared that the Appellant is entitled to continue till the expiry of

5 years from 15.12.2015. The Writ Appeal No. 82 of 2020 stands dismissed as withdrawn. Writ Appeals No. 83 of 2020, 141 of 2020, 142 of 2020 and 199 of 2020 are devoid of any merits and they are dismissed accordingly. No cost.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge