

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

W.P.A No. 1402 of 2020

**Bhabani Sinha
Vs.
State of West Bengal & Ors.**

WITH

W.P.A No. 1405 of 2020

**Joydeb Manik & Ors
Vs.
State of West Bengal & Ors.**

WITH

**W.P.A No. 6159 of 2020
With
CAN 1 of 2020 (Old No: CAN 4454 of 2020)**

**Manisa Bera
Vs.
State of West Bengal & Ors.**

For the petitioners

: Mr. Chittapriya Ghosh,
: Mr. Goutam Acharya

For the respondent No.12

: Mr. Nandalal Singhania

Hearing on: 01/12/2023

Judgment on Court: 01/12/2023

Rai Chattopadhyay, J.

1. These writ petitions contain prayer of the three individual writ petitioners, who are similarly circumstanced and whose prayers are more or less similar, in all the three writ petitions. Hence, the three writ petitions are taken up together for adjudication and disposal by dint of this single judgment.
2. The petitioners as well as the respondent Union of India are represented. However, the respondent State has neither used any affidavit-in-opposition in this case, inspite of the directions of the Court in this regard, nor the same is represented today, when the matter is taken up on the second call. Considering this aspect, the matter is taken up for adjudication and disposal, in absence of the State respondent.
3. Let the factual background of the case be discussed in a nutshell:

With effect from October 2, 1975, the Government of India has introduced '*Integrated Child Development Scheme*' project and the project was directed to fulfil the object of delivery of services like supplementary nutrition, health checkup, referral services to preschool children, pregnant and lactating women. The successful implementation of the scheme was contemplated through the effective association of the State Government machinery as nodal office, which was to act in terms of the guidelines issued by the Central government, from time to time in this regard. Initially at the time of promulgation of the scheme, the project was sponsored by the Central government only. However, subsequently this mode of funding the project was diversified between the Central government and

the respective State governments as well, in accordance with the prescribed proportion.

4. It would be beneficial to extract certain portions of the regulations, for the purpose of the present cases, which are as follows :

“2. IMPLEMENTING AGENCIES

VOLUNTARY ORGANISATIONS, LOCAL BODIES, ETC.

2.1 As far as possible, the anganwadis should be run by voluntary organisations, local bodies, panchayats, Indian Council for Child Welfare etc. which can be given grant-in-aid according to the approved pattern given in the Scheme. The Central Social Welfare Board and the State Social Welfare Advisory Boards should, therefore, be involved in the organisation of new voluntary organisation, wherever necessary, and promotion and development of the existing voluntary organisations so that they can be entrusted with the running of anganwadis. The existing balwadis or other pre-school institutions may also be utilised to run the anganwadis.

[MSW No.1-5/75-CD dated 21.10.75, No. 1-12/82-CD dated 28.8.82 & No. 3-5/75-CD dated 28.4.76]

3. FUNCTIONARIES

All the personnel under the ICDS scheme for which expenditure is to be borne from the ICDS budget, should be borne on the respective cadres of the State Government and, therefore, these posts should be sanctioned in the appropriate pay scales of the State Government. For this, necessary adjustment in the cost of estimates are permitted.

[MSW No. 6-11/75-CD dated 1.8.1975]

3.1.10 The State Govts, if they so desire, may convert the posts of Assistant and Statistical Assistant into two, ministerial posts of other designations like UDC/Accounts Clerk, Storekeeper, Accountant etc.”

[MSW No.11-32/78-CD dt. 31.5.79]

5. Thus according to the scheme of the project, the nodal agency that is the State Government would run the scheme by itself as well as by utilising services of the Non-Government Organisations, to facilitate greater community involvement as well as participation in the program. Here it is necessary, that letter of the Government of West Bengal dated April 11, 1997, be looked at. By dint of the same the authorities have entrusted implementation of the rural projects under the said scheme, to four Non-Government Organisations including one namely “Tarun Sangha” at Midnapore District. “Tarun Sangha” was entrusted for running the project at block “Egra- II”. It would also be beneficial to quote certain portions of the said letter dated April 11, 1997, which are as follows:

“(ii) In respect of selection and recruitment of different categories of personnel from Child Development Project Officer to Anganwadi Workers and Helpers, specially with reference to academic criteria and SC/ST/OBC reservation etc., 10% of the posts of Anganwadi Workers and Helpers and 2 posts of Supervisors in each Project will be selected by the Government in Social Welfare Department. 100 point roster for all categories from CIPO to Voluntary Workers will be strictly observed. Roster of different categories i.e. CIPO, ACIPO, Supervisors and Staff and Voluntary Workers will be issued by the Deptt. after acceptance of the agreement. Details of pay Scales, age, qualification, terms and conditions of different categories of posts are shown in the enclosed statement-II.

(iii) There shall be an exclusive Recruitment Committee in respect of each of these ICDS Projects. That Committee will be composed of not more than 4 persons, two persons from the respective NGO with 2 of them being Govt. nominees from Social Welfare Directorate. Director of Social Welfare, West Bengal and another officer of the Directorate will be the Govt. nominees. Director of Social Welfare will be the Chairman of the Recruitment Committee. He will set up question papers of all categories of officer, Staff, Supervisors and Voluntary Worker. He will also examine the answer scripts. That Committee will

send the panel of candidates to the Secretary to the Govt. of West Bengal, Social Welfare Deptt. each time for approval of the Minister-In-Charge, Social Welfare Deptt. The terms & Condition of each category of personnel will be clearly mentioned in the panel.

(v) The Non-Govt. Organisations will have the same responsibility for getting their workers trained and submission of progress report, as applicable to the existing projects run by the social Welfare Deptt. of this Government. The Central & State Government officers and their representatives will continue to visit, inspect and guide the projects/anganwadis run by the Organisations.

(vi) The amount released by the Department of Women & Child Development, Ministry of Human Resource Development, Government of India to this State Government for the implementation of the ICDS Scheme will turn be released to the Voluntary Organisations in instalments by this State Government.

(x) The ultimate authority of any disciplinary action against any category of employees thus recruited by the N.G.O.s will however, lie with the State Government.”

6. “Tarun Sangha” published advertisement and recruited the present petitioners in various posts, in the said project, with effect from June 22, 1998 in terms of the prescribed regulations and for the block “Egra-II”. Petitioner in WPA 1402 of 2020 was appointed as supervisor (S.C). Petitioner in WPA 1405 of 2020 was appointed as cashier-cum-LDA. Petitioner in WPA 6159 of 2020 was appointed as supervisor (General).
7. Writ petitioner’s grievance is that in spite of being duly appointed in terms of the specified rules and regulations and through an well-established process and in spite of having discharged continuous, satisfactory and unblemished service for years together, they are being discriminated by not allowing

equal service benefits with their equally placed counterparts, working in other area of the State, who have been appointed and discharging their duties through the Department of the State government itself. The writ petitioners are specifically aggrieved with the order of the Secretary to the government of West Bengal, WCD&SW Department dated July 10, 2019. They have challenged the same in this writ petition and have prayed for the relief of setting aside the said order. The writ petitioners have also sought for a direction of the Court to mandate the concerned State authorities to extend all service benefits with the retiral benefits including GPF, leave encashment, gratuity and pension, at the time of their superannuation.

- 8.** Mr. Ghosh has represented the writ petitioners. By referring to the guidelines for functioning of the ICDS project run by the non-government organisations, as was issued by the State, Mr. Ghosh has submitted that the Social Welfare Department of the State has been stipulated to have the overall control and supervision of the ICDS projects, run by the non-government organisations. He says that it is only according to the prescribed guidelines that the non-government organisation like the one under which the petitioners are engaged in working for the project, would work. That the State's Department of Social Welfare would allot fund to a non-government organisation, for running the said project, in accordance with the scheme as framed. The said non-government organisation would also, in turn, be liable to report to the State as regards the progress regarding implementation of the schemes and also account for disbursement of funds or any other expenditure. So far as control of the officers and staff engaged in the projects, by the non-government organisation are concerned, it is indicated that

as per State's guidelines, the West Bengal service rules as well as CCA rules have been made applicable. He says further that for any disciplinary action, it is only the State authorities who exercises control, in so far as, without the sanction of the State authorities, the Department of Social Welfare in particular, neither any proceeding can be initiated nor any punishment can be awarded to an employee working under the said project. Accordingly, it is submitted that the entire supervision and control of the project work as well as of the officers and staff engaged in the said project work, run by a non-government organisation including sponsorship of the entire work, is done by the Social Welfare Department of the State, to pursue with the schemes. However, according to him, in spite of discharging job of a nature similar to that being done under the said project by the officers and staff employed by the government department and working directly under the Department, the petitioners are being deprived of the service benefits which the said other persons employed under the government department and working directly under the act are entitled to get and actually are enjoying. According to Mr. Ghosh, this is an exercise of gross discrepancy as against his client's, which are violating the valuable statutory and constitutional rights of the present writ petitioners.

9. By referring to a judgment of the Hon'ble Supreme Court reported in *(2009) 3 Supreme Court Cases 68 (State of West Bengal & Ors vs. Kaberi Khastagir & Ors)*, Mr Ghosh, has submitted that the similar point as involved in these writ petitions, has been dealt with and decided by the Supreme Court in the said judgment. He points out that the Supreme Court has disagreed to accept the employees of ICDS project as the project employees and as

not an employee of the State government. Mr Ghosh has further referred to a recent judgment of the Hon'ble Division Bench of Madhya Pradesh High Court dated November 19, 2020, [W.A. No. 945/2020 (Women & Child Development vs. Smt. Vandana Mahta & other writ petitions)], in which the division bench has followed the decision of the Supreme Court of 2009, as referred to above and has finally come to the conclusion that the state does not have any other option except to take an appropriate decision for absorbing the petitioners in the government service. Mr. Ghosh has also pointed out that the said judgment of the Madhya Pradesh High Court, when was challenged before the Supreme Court, the special leave petition was turned down.

10. Mr. Singhania, has represented the respondent Union of India.

He has pointed out that responsibility of implementation of the scheme as above, is being shared by the Union of India, with the State Government, so far as providing funds for its smooth functioning in the State, is concerned. He also says the regarding other aspect of running the project and implementing the scheme as above, the Union of India shall have no involvement whatsoever, as prescribed.

11. The factual questions are undisputed in this case. The Supreme Court, in the case of **Kaberi Khastagir**, as mentioned above, has already decided that the employees in an ICDS Project would be borne in the appropriate cadre of the State Government. Relevant portion from the said judgment may be quoted bellow:

“31. Having considered the submissions made on behalf of the respective parties, we find ourselves unable to agree with the reasoning either of the learned Single Judge or the Division Bench of the High Court in holding that the writ petitioners were project employees in respect of the ICDS Project and not

employees of the State Government and that their services were coterminous with the Project. Para 35 of the Scheme clearly provides that though the same was a Centrally sponsored scheme, its implementation was left to the respective State Governments with 100% financial assistance from the Central Government for inputs other than supplementary nutrition which was identified as the responsibility of the State Government. In fact, Para 47 of the Scheme, which has been extracted hereinabove, in no uncertain terms makes it very clear that even though funds for the Scheme would be provided by the Central Government, the staff would be borne on the appropriate cadres of the States which would sanction the posts in the appropriate corresponding State pay scale. In the face of such provision it is difficult to accept that the writ petitioners were project workers and not employees of the State Government.

32. *From the various annexures set out in the special leave petition and referred to by Mr Venugopal it will be apparent that persons appointed as Child Development Project Officers of the Integrated Child Development Scheme Project were employees of the State Government as contemplated under Para 47 of the Scheme.”*

The law holds good on the present date too.

12. In these matters there are two aspects for consideration. Firstly, as to how far the State government exercises supervision and control over the writ petitioners. The scheme itself provided for engagement of employees in the project, the government department as well as the non-government organisations. The object was to expand the benefit of the scheme to intertwine with the even most deprived and marginal, in the society. This has prompted implementation of the provision of even involving local authorities, groups in the societies and also non-government organisations, which may in accordance with the local requirements and micro level possibilities, reverberate the beneficial provisions of the said scheme, through the societal nucleus. However the staff pattern has been designed in the

scheme itself and in any project, either run by the Department of the State or any non-government organisation, the said staff pattern has been intended to be followed. So far as procurement of fund for running the project work under the scheme is concerned, a non-government organisation is entirely funded and sponsored by the providers like the State as well as the Central Government. It is also that according to the guidelines, the non-government organisation is required to furnish reports for the State Department of its works done and also regarding utilisation of the fund. The non-government organisation is also not independently acting in case of controlling its employees in the project and would be subject to the sanction and approval of the State Government for initiating disciplinary proceedings as well as imposing any punishment. The relevant portion of the guideline issued by the State in this regard may be extracted herein below, for better understanding:

“1. ADMINISTRATIVE CONTROL

The N.G.O. – run ICDS Projects will be under the control and supervision of the Social Welfare Department.”

“2. AUDIT

Accounts of the NGO Projects should be audited by the Comptroller & Auditor-General of India.”

“3. ALLOTMENT OF FUND

All allotments will be made by the Director of Social Welfare to the President/Secretary/General Secretary/ Hony: General Secretary of the N.G.O. (hereinafter called the representative of the N.G.O). Diversion of fund from one head/sub-head to another head/sub-head is not permissible. The N.G.O. should submit to the Director of Social Welfare through the District Programme Officer of the concerned district quarterly item-wise expenditure statement with a copy to the concerned District Magistrate. Before sending any proposal to the Director of Social Welfare for further allotment of fund a consolidated expenditure statement upto that period must be submitted.”

“10. CONTROL OF OFFICERS & STAFFS

The West Bengal Service Rules Part-I & Part-II and the CCA Rules may be adopted by the NGO and made applicable to the Staff of the NGO run ICDS Project.”

“11. DISCIPLINARY ACTION

Any gross indiscipline or misappropriation of fund etc. by any Officer or Staff must be intimated by the NGO concerned to the Govt. The disciplinary proceeding will be intimated by the NGO after obtaining green signal to this effect from the Deptt. of Social Welfare. No punishment shall be awarded by the NGO unless and until the disciplinary action is approved by the Govt. after due examination of the findings.”

13. On the discussion as above the obvious conclusion would be that the entire supervision and control in respect of the ICDS project being run by any non-governmental organisation, is based off upon the State. The State is to sanction the posts of officers and other employees, to work in the project through the non-government organisations. The scheme provides that the State is to borne the employees engaged in the ICDS project onto their cadre of employees. So far as the employees of ICDS project engaged by the government are concerned, they are borne in the cadre of employees of the government and are eligible for all the benefits applicable for government employee. The Supreme Court has upheld this law in the said judgment of **“Kaberi Khastagir” (supra).**

14. Here comes the question of the nature of work discharged by the persons in the project, if different in case of those employed in a project run by a non-government organisation than those employed in a project run by a Department of the State.

Predominantly and inescapably, it is not. The nature of work to run the ICDS project has to be in accordance with the scheme framed and to augment the public benefit and the specific purposes for which the scheme has been framed. Therefore, the persons who are equally and similarly placed, cannot be discriminated with regard to the benefits allowable to them, for the works done for which are same and similar in nature. For differentiating amongst the equals, an intelligible differentia has to predominantly lead to a decision like that. More so, in view of the fact that the permanent nature of the project cannot be doubted on any consideration whatsoever. The term “intelligible differentia” means difference capable of being understood. The law is required to treat all individuals similarly placed in a similar manner. The doctrine of reasonable classification is imbibed within Article 14 of the Constitution of India and it does not imply that the law must have a universal application toward all individuals. Rather, it must be applied to similar persons in a similar manner. Intelligible differentia means that equals must be treated equally without being discriminated on any ground whatsoever. Article 14 of the Constitution guarantees everyone equality before the law without any kind of unreasonable discrimination.

15. In a Larger Bench decision, in the case of ***Saurabh Chaudri and Others versus Union of India*** and Others, reported in **(2003) 11 SCC 146**, the Hon’ble Supreme Court, as per majority, has been pleased to hold that Article 14 of the Constitution forbids class legislation but does not forbid reasonable classification which, according to the Supreme Court, means (1) must be based on reasonable and intelligible differentia and (2) such differentia must be on rational basis.

16. Upon discussing as above, the finding of the authority in the impugned order dated July 10, 2019, appears to be based on misplaced and erroneous considerations. In the same, it has been taken note of, that the petitioners were engaged by the non-government organisation and not by the State Government and also that the West Bengal Service Rules do not confer any right to the writ petitioners to be considered as the State Government employees. It has been found that there would not be available to the writ petitioners, any automatic right of all benefits at par with the employees of State run ICDS Projects. Unfortunately the said decision of the respondent authority, is devoid of any justifiable reasons. Merely, petitioner's appointment by a non-Government organisation would not be reason simplicitor, for treating them differently, so far as their service benefits are concerned. Reason for the same would be that the scheme itself has not differentiated between the two kinds of entrants, in terms of their placement in the cadre of the respondent. Also that both of them are discharging similar duties and responsibilities, in furtherance of the scheme, as discussed. By this way the uniform manner of implementation of the scheme in the State has been jeopardised. The grounds shown of discrimination amongst the equals cannot be considered to be fair, logical or reasonable. The impugned order has denied equal opportunity to the petitioners and discriminated them not on any reasonable ground. The classification must be founded on intelligible differentia, distinguishing petitioners from the employees of Government run Projects, which has not been done and which can actually not be done. The impugned order is not sustainable in the eye of law.

- 17.** On the discussion as above the writ petitions should succeed.
- 18.** The impugned order dated June 10, 2019, passed by the Secretary to the government of West Bengal, WCD&SW Department, is set aside. The respondent State is directed to take immediate appropriate steps for allowing all the benefits to the petitioners, at par with the employees of the government run ICDS Projects.
- 19.** The writ petitions no. WPA 1402 of 2020, WPA 1405 of 2020 and WPA 6159 of 2020 with CAN 1 of 2020 (Old No: CAN 4454 of 2020) are disposed of.
- 20.** Urgent photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance of requisite formalities.

(Rai Chattopadhyay, J.)