

FMA 1166 of 2017
with
IA NO. CAN 1 of 2017 (Old No CAN 2315 of 2017)
(Nalhati Thana Biri Shramik Union & Ors.
Vs. Union of India & Ors.)

Mr. Prosenjit Mukherjee
Mr. Jahangir Hossain
Mr. Arghya Kamal Das
Ms. Poulami Dutta

... For the appellants

Mr. N. L. Singhanian
Ms. Sanchari Chakraborty

.... For the respondent
nos. 1 & 2

The present appeal has been preferred challenging an order dated 31st January, 2017 passed in a writ petition being WP No.1149 (W) of 2017.

Nalhati Thana Beedi Shramik Union (in short, the said Union) along with its functionaries and members preferred the writ petition challenging *inter alia* a memo dated 17th October, 2016 signed on 14th November, 2016 by the Deputy Welfare Commissioner (HQ) and stating *inter alia* that the Government of India, Ministry of Labour and Employment introduced Revised Integrated Housing Scheme-2007 (in short, RIHS-2007) for *beedi* and *cine* workers to fulfil the growing housing needs of the workers in the said sectors. The members of the said Union immediately submitted their applications through proper channel for availing benefits of RIHS-2007. All the said

applications were physically verified and recommended by the competent authority. Thereafter, by a memo dated 24th August, 2010, the administrative approval was granted for construction of houses in different districts of West Bengal. In the Birbhum district approval was granted for 143 houses and demand drafts were issued in favour of some of the *beedi* workers. The said Union submitted several representations thereafter for disbursement of the benefits under RIHS-2007 in favour of the remaining members. In the midst thereof, by a memo dated 28th January, 2015, administrative approval was granted for construction of 217 houses in the district of Birbhum. As the prayer of the remaining *beedi* workers under the said Union were not being processed a further representation was submitted on 22nd June, 2016. Thereafter, a new Revised Integrated Housing Scheme being RIHS-2016 was introduced enhancing house building subsidy and an advertisement was published calling for applications under RIHS-2016. In the said advertisement the last date of submission of such application was stipulated to be 17th October, 2016 and a rider was incorporated to the effect that the *beedi* workers who have already obtained the benefits under RIHS-2007 would not be eligible to apply for the benefits of RIHS-2016. There was no indication in the said advertisement that RIHS-

2007 has been cancelled. However, by issuing a memo dated 17th October, 2016/14th November, 2016, the Deputy Welfare Commissioner (H.Q) observed that '*as per the guidelines of RIHS-2016, no application under the RIHS-2007 will be accepted/entertained and applications already submitted earlier and pending for sanction will be treated as cancelled*'. Thereafter even on 30th January, 2017, a notice was issued from which it would be evident that 184 *beedi* workers were requested to link and connect their Aadhar card number with bank account number for availing the benefits of RIHS-2007 towards release of first instalment for construction of houses.

The writ petition was dismissed by an order dated 31st January, 2017 observing *inter alia*, that '*in such circumstances the applications under the old scheme cannot be directed to be considered under the new scheme as the parameters of consideration have shifted substantially*'.

In the present appeal an order dated 11th April, 2019 was passed by a Co-ordinate Bench of this Court directing the parties to exchange their affidavits in the said application for decision on the issue '*as to whether an application which was made under the old scheme but was never rejected should be treated as an application under the new scheme or even under the old*

scheme taking the same to be surviving for that limited purpose’.

Mr. Mukherjee, learned advocate appearing for the writ petitioners/appellants submits that though there was an observation in the memo dated 17th October, 2016/14th November, 2016 that no application under RIHS-2007 will be accepted/entertained and that the applications already submitted earlier and pending for sanction will be treated as cancelled, the self-same respondents had granted the benefits to *beedi* workers under RIHS-2007 in the district of Murshidabad *vide* memo dated 30th January, 2017. The authorities have thus acted in an arbitrary manner in refusing to extend the benefits of the RIHS-2007 to the members of the said Union.

According to Mr. Mukherjee, in the memo dated 17th October, 2016/14th November, 2016, no reason whatsoever had been specified as to why the remaining applications under the RIHS-2007 shall not be accepted and as to how the applications already submitted earlier and pending for sanction can be treated as cancelled though there was no clause to that effect under the RIHS-2016. Such arguments as advanced on behalf of the appellants were not considered by the learned Single Judge and without even calling for affidavits the writ petition was dismissed.

In aid of his arguments, Mr. Mukherjee has also placed reliance upon an unreported judgment dated 7th June, 2018 delivered in the case of *Purba Medinipur Zila Beedi Sramik Union & Anr. -vs- State of West Bengal & Ors.*, wherein the Court *inter alia* observed that ‘*we fail to ascertain the reason for which those workers would be compelled to submit their applications under the same Scheme of 2016 while our attention has not been drawn towards a single document from the record to show that cancellation of the applications pending under the said Scheme of 2007 on introduction of the said revised Scheme of 2016*’.

Drawing our attention to the averments made in the affidavit-in-opposition and the supplementary affidavit filed on behalf of the respondent nos.1 and 2, Mr. Singhanian, learned advocate appearing for the said respondents submits that the RIHS-2007 was cancelled and the new scheme being RIHS-2016 was introduced for *beedi* workers allowing all the *beedi* workers, who had not been paid the first instalment under RIHS-2007, to file fresh application under RIHS-2016 along with bank account details, but the members of the said Union did not avail such opportunity and did not submit any fresh application and the RIHS-2007 was cancelled.

Mr. Singhanian further contends that in the month of September, 2018, a decision was taken

towards convergence of RIHS with Pradhan Mantri Awas Yojana (in short, PMAY) and the old schemes had been discontinued. In support of such contention reliance has been placed upon memoranda dated 25th September, 2018 and 19th December, 2018.

Mr. Singhanian submits that no application filed under RIHS-2007 are pending and that by a Repealing and Amending Act, 2019, the Beedi Workers Welfare Fund Act, 1976 had already been repealed and it was declared that new sanction of first instalment under RIHS shall not be issued any further.

In spite of service none has appeared on behalf of the State respondents. However, on their behalf a supplementary affidavit has been affirmed annexing copies of the memoranda dated 28th August, 2018, 25th September, 2018 and a notification dated 8th August, 2019.

In reply, Mr. Mukherjee categorically denies and disputes the contention that RIHS-2007 has been cancelled. He draws our attention to clause 13 of the provisions of the RIHS-2016 which states that '*all backlogs of RIHS-2007 shall be cleared under the same budget head as that of RIHS-16*'. Thus, the observation made in the memo dated 17th October, 2016/14th November, 2016 towards non-entertainment of the applications under RIHS-2007 and cancellation of pending applications is not sustainable in law.

The memo dated 17th October, 2016/14th November, 2016 does not disclose any reason whatsoever as to why the applications submitted under the RIHS-2007 and pending for sanction would be treated as cancelled. Such observation does not also find support from the provisions of RIHS-2016 wherein it has been categorically stated that all backlogs of RIHS-2007 shall be cleared under the same budget head as that of RIHS-2016. From the memoranda dated 25th September, 2018 and 19th December, 2018, it appears that a decision has been taken by the competent authority regarding convergence of RIHS with PMAY. In the 19th December, 2018 it has been categorically observed that *'large number of applications in respect of beedi workers are pending in the hands of various WCs and that those applications may be redirected to the local mission directors of Prime Minister Awas Yojana (Urban & rural separately) for consideration under PMAY – housing for all 2022'*. From a composite reading of the said memoranda it appears that the pending applications under the earlier RIHS shall stand converged in PMAY scheme and the same would be considered. Thus, in our opinion, the memo dated 17th October, 2016/14th November, 2016 and the notification dated 8th August, 2019 cannot stand in the way towards consideration of the pending applications under RIHS-2007.

It appears from the memo dated 28th October, 2018 annexed to the supplementary affidavit filed by the respondent nos.1 and 2 that the competent authority had prepared a transition plan for convergence of RIHS with PMAY and had accordingly issued directions upon the Welfare Commissioners to examine all the applications received by them and to sent the applications which are eligible for housing assistance under PMAY so that necessary follow up steps can be taken.

It is a well-settled principle of interpretation that a beneficent scheme should be liberally construed. The reason behind such rule of interpretation is that the authorities should not whittle down the object and purpose of the scheme. The purpose and object of such schemes is to mitigate the hardships faced by the downtrodden due to lack of residential facilities. The beneficent scheme would be thrown out of gear in the event a restrictive meaning is applied and benefits are not extended to the *beedi* workers who have already applied under the 2007 scheme. The State must conduct itself with high probity and candour and ensure that the beneficiaries under the RIHS scheme do not succumb to any discretionary practice.

In the said conspectus, we are of the opinion that members of the said Union, who approached the competent authority under the RIHS-2007 have a right

to be considered under the PMAY scheme moreso when, the said members have filed their applications long back.

Accordingly, the order impugned in the present appeal is set aside and the Welfare & Cess Commissioner having its office at MSO Building, 5th Floor, Nizam Palace, 234/4, A.J.C. Bose Road, Kolkata – 700 020 is directed to consider and decide the pending applications of the members of the said Union including the representation dated 22nd June, 2016 submitted on behalf of the said Union towards disbursement of the benefits, upon granting an opportunity of hearing to the President or the Secretary of the said Union and to communicate the decision to the appellant nos. 2 and 3.

The Welfare & Cess Commissioner would be at liberty to call for relevant records from the State authorities and the bank account details and other necessary particulars from the applicants.

The representative of the said Union would also be at liberty to file additional documents in support of the claim at the time of hearing.

Upon considering the appellants' claim, the Welfare & Cess Commissioner shall take all follow up steps to enable the eligible members of the said Union to avail the benefits.

The above exercise shall be completed by the Welfare & Cess Commissioner within a period of twelve weeks from the date of communication of this order along with a copy of the representation dated 22nd June, 2016.

With the aforesaid observations and directions the present appeal and the connected application are disposed of.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)