

D/L. 24.
January 30, 2024.
MNS.

WPA No. 28078 of 2023

Sandip Halder
Vs.
The State of West Bengal and others

Mr. Swarup Paul,
Mr. Surya Maity,
Mr. Guru Saday Dutta,
Mr. Anish Roy

... for the petitioner.

Sk. Md. Galib,
Mr. Safik Dewan

...for the State.

1. Affidavit-of-service filed in Court today be kept on record.
2. The petitioner in the present case has re-agitated an old issue which has been irking the Court since long.
3. The State, unfortunately, has been dealing with the said issue in an absolutely sluggish and slovenly manner.
4. The petitioner has been supplying cooked diet to a particular hospital since 2011. The said work order initially was issued in terms of a tender and has been renewed from time to time.
5. In the meantime, on August 2, 2011 and thereafter in the year 2014 and lastly on July 27, 2017, there have been several revisions of

rates of supply of cooked diets. In each case, the same was issued by the Joint Secretary to the Government of West Bengal, with the approval of the Governor of West Bengal.

6. However, unfortunately, none of the said revised rates have been given effect to. Taking advantage of the superior bargaining position of the State as opposed to the bidders/contractors, the State has been refusing to give effect to their own revisions of rates. Thus, the said revisions have been relegated to mere eyewash.
7. It is unfortunate that although this Court had directed on February 5, 2021 in connection with a different writ petition, being WPA No. 9969 of 2020, that the State shall make current payments for the petitioner therein from the said date onwards in terms of the Notification dated November 10, 2014 (the second revision mentioned above) including 10% increase over the exiting rate of cooked diet and maximum of 7.5% revised total cost of raw materials as maximum administrative costs, till March 31, 2021 or until further orders, the same principle has not been followed in any other case.
8. Learned counsel for the State takes a defence that in the meantime, subsequent to the filing

of the present writ petition, on December 21, 2023, an order was issued by the Additional Secretary to the Government of West Bengal renewing the contract of the present petitioner up to February 29, 2024 “with existing terms and conditions”.

9. Learned counsel for the State harps on the expression “with existing terms and conditions” to argue that the said terms and conditions pertain to the original tender and the previous contracts awarded to the petitioner and also includes within its purview the previous rates. It is argued that, having agreed to the previous terms and conditions being continued, the petitioner cannot resile from such position and prefer the present challenge to the existing rates being applicable, at least for the present contract.
10. Learned counsel further submits on behalf of the State that there are several other litigations pending, at least two other writ petitions, where the same issue of revision of rates being implemented is sub judice.
11. Placing reliance on one such case, being WPA No. 29144 of 2022, learned counsel for the State hands up a bunch of documents, including an order dated December 26, 2022 passed by a co-ordinate Bench and argues

that there was a restraint order passed on the respondent authorities by a co-ordinate Bench in the said matter, which has been extended from time to time.

12. A perusal of the said order indicates that the learned Single Judge had observed that the matter would appear before the regular Bench. The same was in the context of the learned Senior Advocate appearing for the State having frankly submitted that he needed time to take instructions in the matter since the writ petition had been served upon him only an hour ago in the said case. Thus, the adjournment was initially granted on the prayer of the State and has been perpetuated, including the interim order passed therein, thereafter.

13. The interim order was merely that the petitioner would be at liberty to participate in the tender process in the said case without prejudice to its rights and contentions. In view of the nature of the grievance of the petitioner in the said case, the authorities were restrained from finalizing the bid for a particular period. However, nothing in the said order precludes the State from giving effect to its own revised rates of cooked diets.

14. Learned counsel for the petitioner in the present case is absolutely justified in arguing that if the contractors are compelled to continue supplying cooked diets to the patients in the government hospitals at the prevalent rates of 2011, the quality of the food is bound to skyrocket downwards and in fact, the patients will be at the receiving end of such compromise in respect of the quality / quantity of foods supplied.

15. It is unimaginable that the State has, on paper, revised the rates for cooked diets at least twice in the meantime, in 2014 and 2017, but is yet to give effect to those revised rates.

16. Even the revision of the rates, as evident from the last revision dated July 27, 2017, was only after being triggered by the orders of this Court dated August 21, 2009 in WP 11766(W) of 2009 and March 30, 2017 in WP 9208(W) of 2017, upon which a Broad Based Committee was constituted each time to review and determine the rationalized rate of cooked diet, taking into account the present market value of dietary articles for supply to the indoor patients of different Government facilities. It is extremely unfortunate that despite the Broad Based Committee having

reviewed and determined the rationalized rates, which were supposed to be given effect to since published by the Memo dated July 27, 2017, no such revision of cooked diet was been actually given effect to. More unfortunate is the insistence of the State on the rider in the Clause extending the present contract of the petitioner dated December 21, 2023 (significantly, the same was entered into during pendency of the present writ petition) where it has been mentioned that the extension is granted on the existing terms and conditions.

17. Even otherwise, if rationally construed, the existing “terms and conditions” pertain to the quality of food, number of beds etc. and the other essential terms and conditions and cannot take into its broad base the rates which are perpetuating from the year 2011 in respect of the present hospital.

18. Thus, the respondents’ inaction in not giving effect to the revised rates issued vide Memo dated July 27, 2017 lastly by the Health and Family Welfare Department of the Government of West Bengal itself is not only discriminatory in respect of the present hospital but also arbitrary and in palpable violation of all principles of natural justice,

since the said inaction has a wider repercussion of compromising the fate of the indoor patients in all Government hospitals of West Bengal, since the vast majority of contractors are being compelled to supply cooked diet at 2011 rates in the year 2024.

19. In such view of the matter, no affidavits are required to be directed, both considering the exigency of the matter and since all relevant matters have already been annexed to the present writ petition.

20. Accordingly, WPA No. 28078 of 2023 is allowed on contest, thereby directing the respondent authorities to immediately give effect to the last revision of rates of cooked diet vide Memo dated July 27, 2017 (Annexure P-3 at page 22 of the writ petition) from the next month onwards in respect of the hospital-in-question in the present matter.

21. It is expected that the same revised rates, since applicable all over West Bengal, shall also to be extended with regard to all government hospitals for the purpose of paying the contractors for supply of cooked food diet.

22. Since the last such revision took into consideration the price index of as long as seven years back, the State shall also make

endeavour to form a further Broad Based Committee to review and determine rationalized rates of cooked diet, taking into account the present market value of dietary articles for supply to indoor patients of government facilities.

23. Such Broad Based Committee shall be formed by the State within one month from date. The said Committee, upon being constituted, shall take into consideration the existing rates and give a detailed report to the State within one month thereafter.

24. The State shall, immediately thereafter, implement the said report of the Broad Based Committee for the purpose of payment for supply of cooked food diet in respect of government facilities in the State of West Bengal.

25. The parties shall act on the server copy of this order and start disbursing the current payments of the petitioner in respect of the existing contract at the rates as lastly revised in the year 2017, to be precise on July 27, 2017, and thereafter, subject to extension of the petitioner's contract, continue to give effect to the revised rates from time to time whenever such revision takes place.

26. There will be no order as to costs.

27. Urgent photostat certified copies of this order,
if applied for, be made available to the parties
upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)