

Sl.133-134
10.02.2026
Court No.19
BP

WPA 11154 of 2025

United Order and Supply Co-operative Society
Limited
-versus-
The State of West Bengal and others

With

WPA 682 of 2026

United Order and Supply Co-operative Society
Limited
-versus-
The State of West Bengal and others

Mr. Satrajit Sinha Roy
..for the petitioner

Mr. Sk. Md. Galib, Sr. Govt. Advocate
Ms. Priyamvada Singh
..for the State in
WPA 11154 of 2025

Mr. Lalit Mohan Mahata, Ld. AGP
Mr. Rudranil De
..for the State in
WPA 682 of 2026

The petitioner has approached this Court praying for issuance of a mandamus directing the respondent authorities to frame a scheme for participation of the Co-operative Societies in the Government contract to be issued by the respondent authorities.

The petitioner in WPA 682 of 2026 states that the ESI Hospital Authorities have published notice inviting tenders for supplying cooked diet foods, scavenging, washing, cleaning, supplying of different type of equipment, surgical equipment, furniture and fixtures etc.

in the hospitals run by the Department of Labour under the Government of West Bengal, without giving any preference to the co-operative societies.

In WPA 11154 of 2025 the petitioner states that the Department of Health and Family Welfare has not framed any scheme allowing participation of Cooperative Societies in the West Bengal by given them some preference for the purpose of sustainable development of the Cooperative Societies.

The learned advocate appearing for the petitioner draws the attention of the Court to the Notification dated 19th November, 2004 more particularly Note 2 and Note 3 thereof wherein it has been indicated that the State Government may, instead of going through tender or quotation purchase the products of the three production centres of the Refugee Relief and Rehabilitation Directorate, Government of West Bengal provided their rates are comparable to the rates of similar articles of the West Bengal State Handloom Weavers' Cooperative Society Limited and the West Bengal Handloom and Powerloom Development Corporation Limited and Note 3(a) states that if the Government Stationery Offices fail to supply stationery articles to the State Government Offices as per their indents, such articles may be purchased from the Co-operative Societies without obtaining quotations or inviting tenders.

The learned advocate for the petitioner further places reliance upon Rule 96 of the West Bengal Cooperative Societies Rules, 2011 and submits that the State Government has not framed any scheme for giving preference to Co-operative Societies as specifically mentioned under clause (i) to (vi) of Rule 96.

State is represented by Mr. Mahata, learned Additional Government Pleader and Mr. Galib, learned Senior Government Advocate.

An objection has been raised by the learned advocates for the State as to the maintainability of these writ petitions and in support of such contention reliance has been placed upon the decision of the Hon'ble Supreme Court in the case of **Census Commissioner and Others Vs. R. Krishnamurthy reported at (2015) 2 SCC 796** and an order dated 24th April, 2025 passed by the Hon'ble Division Bench in **WPA (P) 112 of 2025 in the case of Ashes Mukherjee & Ors. Vs. the State of West Bengal & Ors.**

Heard the learned advocates for the respective parties and perused the materials placed.

The petitioner has prayed for issuance of a writ of mandamus commanding the respondent authorities to frame guidelines/scheme for participation of the Cooperative Societies in the Government contract to be issued by the respondent authorities. Rule 96 of the West Bengal Cooperative Societies Rules, 2011 states that in

respect of any Cooperative Society or class of Cooperative Societies in the interest of promotion of cooperative movement in the State, the State Government may, by general or special order, grant preference or exemption in matters which has been specifically indicated under clauses (i) to (vi) of the said Rule. The expression “may” used in Rule 96 vests the State Government with a discretion in the matter of granting preference or exemption by general or special order.

The question that arises for consideration is when the statute vests discretion upon the Government whether a writ of mandamus could be issued directing the State Government to frame a scheme in a particular manner as sought for by the petitioner. Such issue is no longer *res integra*.

In **Census Commissioner** (supra) the Hon’ble Supreme Court reiterated the view of the Three Judge Bench of the Hon’ble Supreme Court in **Suresh Seth Vs. Indore Municipal Corporation reported at (2005) 13 SCC 287** wherein it has been held that the court cannot issue any direction to the legislature to make any particular kind of enactment. In the case of Supreme Court Employees Welfare Association Vs. Union of India reported at (1989) 4 SCC 187 it has been held that no court can direct a legislature to enact a particular law. Similarly when an executive authority exercises a legislative power by way of a subordinate legislation

pursuant to a delegated authority of the legislature such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated legislative authority. The Hon'ble Supreme Court reiterated that no mandamus can be issued to enforce an act which has been passed by the legislature.

In the case on hand the petitioner seeks a direction upon the respondent authorities to frame a scheme in the light of Rule 96 of the 2011 Rules. When a discretion has been vested upon the Government to grant preference and exemption by general or special order it is for the Government to take a decision in that regard and no mandamus can be issued to frame a scheme giving preference to the co-operative societies in the matter of participation of tenders.

The Hon'ble Division Bench in **Ashes Mukherjee** (supra) after noting the decision of the Hon'ble Supreme Court in the case of **Delhi Development Authority, N.D. & another Vs. Joint Action Committee, Allottee of SFs reported at AIR 2008 SC 1343** observed that the High Court cannot direct the respondent to take a policy decision as prayed for. This is exactly what the petitioner in the case on hand has sought for.

The learned advocate for the petitioner places reliance upon a decision of the Hon'ble Supreme Court in the case of **Yash Pal & Others. Vs. Union of India and others reported at (2017) 3 SCC 272** wherein the issue

involved was whether a mandamus could be issued directing the respondents to treat the petitioners as regular civilian employees in the Indian army and whether they should be extended all the benefit which are being given to the regularly employed a recruited portal. The said decision being distinguishable on facts cannot come to the aid of the petitioner.

In **Azad Richshaw-Pullers' Union (Regd.), Ch. Town Hall, Amritsar & Others. Vs. State of Punjab and Another.** reported at **1980 (Supp) SCC 601** the Hon'ble Supreme Court observed that a group insurance of rickshaws and the life of rickshaw pliers is feasible, the Municipal Commissioner will work out a scheme in this behalf in consultation with the unions in the field. In that case also a writ of mandamus was not issued directing the authorities to act in a particular manner.

The learned advocate for the petitioner further places reliance upon a decision of the Hon'ble Supreme Court in the case of **J.L. Koul & Ors. Vs. State of Jammu and Kashmir and others** reported at **(2010) 1 SCC 371**. In the said reported case an affidavit was filed by the respondent authorities stating that the Government formulated a package for return and rehabilitation of the Kashmiri migrant. The Hon'ble Supreme Court after taking note of the fact that the State authorities have framed a rehabilitation scheme and for implementation of the same

it has got the resources no further direction was passed and the appeal was disposed of with a pious hope that the State shall take all endeavours to rehabilitate the persons who have been victim of terrorism. The said decision is not an authority for the proposition that a mandamus can be issued to the State authorities to exercise its discretion in a particular manner.

For all the reasons as aforesaid, this Court is not inclined to grant any relief to the petitioner.

Accordingly, the writ petitions stand dismissed.

There shall be however no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)