

(2013) 10 GAU CK 0014

In the Gauhati High Court

Case No : Writ Petition (C) No. 2536 of 2008

All Assam Community Information Centre Employees
Association (AACICEA)

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 03-10-2013

Acts Referred:

Citation : (2013) 5 GLT 169

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : D.K. Mishra, Mr. S. Rahman and Ms. S. Jahan, for the Appellant; D.K. Saikia, AAG and Mr. B. Gogoi, for the Respondent

Judgement

B.K. Sharma, J.—The petitioner is an association of contractual employees of Assam Community Information Centre (CIC). The writ petition was filed agitating the grievance of the employees of the CIC numbering 270, who are said to be the members of the petitioner's Association. A Memorandum of Understanding (MOU) was executed between the Government of India, Ministry of Information Technology and the Government of Assam in February, 2002 for successful implementation of the CIC project as a part of the Prime Minister's Agenda for socio-economic development of the North East Region, management, administration and control of CICs commissioned under the project in the State of Assam and transfer the management and control of the CICs to the Government of Assam after expiry of a period of 5 years or from such earlier date as circumstances might warrant.

2. The CIC project was intended to achieve "freedom from distance" and reduction of digital divide by providing internet access and connectivity to the community at block headquarters. In order to implement the objectives of the CIC projects, the State Government through the Director of Industries & Commerce issued an advertisement inviting applications from intending candidates for engagement as CIC operators on contract basis for the

Community Information Centers in 219 Rural Development Blocks of Assam. The qualification laid down in the advertisement and the age limit prescribed was as follows:

The qualification and experience of the CIC operators will be as follows:

Bachelor Degree in Physics/Maths/Statistics/Operators Research with PGDCA/ PGDCS from recognised institutes/University of A level of DOEACC with minimum 50% marks in aggregate or equivalent grade in the Bachelor Degree and post graduate diploma OR

B.Sc in Computer Science with minimum 50% marks in aggregate or equivalent from a government recognised institution/University OR

Diploma in Electrical or Electronics or Computer Science with minimum 50% marks in aggregate or equivalent from a government recognised institution/ University with two years experience for operational support. OR

Bachelor Degree in Science/Arts/Commerce from recognised institution/ University with minimum 50% marks in aggregate with minimum One year diploma in computer application with minimum 50% marks in aggregate from a recognised Institution/Organisation/University.

Age: The age of the candidates as on 1.1.02 should be between 21-30 years only.

3. It was made clear in the advertisement that it is not a government job and the District Level Co-ordination Committee will engage candidates on contract basis only. The Government of India/Assam will not absorb the operators on Government job at the end of their contract period.

4. In response to the said advertisement, the members of the petitioner association along with others offered their candidatures and eventually got selected. They were imparted with CIC training for CIC operator. Thereafter, they were appointed as CIC operator as per the terms and conditions enumerated in the appointment letters. One of the conditions of appointment was that the service would be for three months on contractual basis likely to be extended subsequently on completion of a period of 9 months. As regards remuneration, it was indicated that the appointees would be paid Rs. 5,500/- per month (consolidated) during contractual period on receipt of fund from the Government of India. Agreements were also executed with the appointees with the following agreed terms and conditions.

a) The CIC Operator appointed herein is on contract basis initially for a period of three months likely to be extended subsequently on satisfactory completion by the first party for a further period of nine months.

b) The CIC Operator shall be paid Rs. 5500/- per month (consolidated) for each completed month during the contract period on receipt of funds from M.I.T.G.O.I. The C.I.C. Operator shall be entitled for other perks including T.A. and D.A.

c) The CIC Operator shall work under the active guidance, instruction and supervision of the block level committee constituted for the CIC. For technical matters related to the operation and services of the CIC he shall report to designated NIC officers. Apart from NIC he shall also be responsible to the Block Level Committee, District Level Committee and Government of Assam for all matters relating to the function of the CIC.

d) The duty of the CIC Operator shall be single shift basis either from 8 A.M. to 4 P.M. for all days including Sundays or holidays or as may be prescribed by the Chairman DLC(District Level Committee)

e) The CIC Operator shall operate the centre on day to day basis and maintain necessary records, take necessary action for upkeep of the centre, its equipments and for adherence to the norms prescribed for the maintenance of security.

f) He shall maintain a Logbook of all activities in the centre and run the generator as and when required. The daily account of the centre shall be maintained by the CIC operator. He shall maintain cleanliness and keep the CIC in a tidy manner.

g) He shall maintain a cordial relationship with the member of the public visiting the CIC for availing its facility and guide/assist them in an appropriate manner.

h) The contract can be terminated with a notice of two months from either sides. In default, the payment of CIC operator dues for previous two months shall be forfeited.

i) The first party does not undertake to provide alternative opportunities to any of the CIC Operator nor pay any compensation in case of closure of the centres due to any reason nor undertake to provide any relief/compensation for any injury that might occur during work.

j) The CIC Operator shall take all necessary action to popularize the use of the centre and to increase its revenue to make it self-sustainable. This shall be one major yardstick in determining the efficiency and suitability of the CIC Operator for considering his continuance in the centre as CIC Operator.

k) The operator shall also comply with and carry out any other instruction or direction issued either by the BLC (Block Level Committee)/DLC (District Level Committee) or NIC or the State Govt., relating to the functioning of the CIC in addition to or in modification of existing instructions and refusal to comply with or carry out such instruction or directions will be treated as breach of contract.

5. As stated in the writ petition filed on 17.6.2008, the CICs of Assam had been functioning on the date of filing the writ petition providing the following services to the Rural Communities in the State:

a. Well access Internet services such as E-mail

- b. ICT Infrastructure at the Block level.
- c. Assistance to the Administrative works of various departments.
- Acting as "information Cell" in BDO Office.
- e. Access to socio-economic database
- f. IT awareness among local people.
- g. E-learning & E-education.
- h. E-medicine & E-consultation.
- i. Weather Information.
- j. Citizen Centric Services.
- k. Employment generation and notification etc.
- l. Edutainment.

6. According to the petitioner, apart from above services, the CICs also rendered services pertaining to IT education and training; E-mail and internet access; hosting web-site; citizen centric application (G2C services); IT support to administration/assistance in election work etc. and the CICs have become an indispensable project for the rural mass of the State of Assam and accordingly, if the CICs were put to an end larger section of the society living in Assam would be denied and deprived from the benefit of information technology fast growing in the country.

7. As stated in the writ petition, altogether 438 persons had been recruited in different CICs throughout the State of Assam, which according to the petitioner was for 5 years. It has further been stated in the writ petition that on expiry of the said period, the Government of India had extended the continuation of the CIC scheme till March, 2009. The whole basis of the writ petition is to emphasize the need for continuation of the CICs and the eventual continuation of the services of the members of the petitioner's association and regularization of their such services.

8. By Annexure-L letter dated 5.5.2007, the respondent No. 1 i.e. the Government of Assam in the Information Technology Department informed the respondent No. 2 i.e. the Director of Industries and Commerce about the continuation of the financial support by the Government of India to the CICs till such time the CICs are integrated under another scheme called Common Service Centre (CSC) scheme or upto March, 2009, whichever was earlier. Prior to that the Government of India in the Department of IT launched the National e-Governance Plan (NeGP) throughout the country and one of the components of NeGP is the CSC scheme. It was also informed that the Government of Assam in the IT Department had taken initiative to step up 4375 numbers of CSCs across the State. The letter also conveyed the decision to integrate all the 219 CICs of

Assam with the CSC scheme. In this regard AMTRON was nominated as the State Designated Agency (SDA) and that AMTRON through an open national competitive bidding had selected two private parties as Service Center Agency (SCA) for execution of the scheme in Assam.

9. It is this development, which has offended the petitioner, as according to them with the integration of CIC and the CSC, the Prime Minister's Agenda for socio-economic development of the NE Region intending to achieve "freedom from distance" would get a setback. It is the plea of the petitioner that since the CIC project is a non-community venture with the objective of the welfare, the said CSC scheme in the hands of private parties would become commercial and the aims and objectives of CIC Project would be defeated. As stated in the writ petition, the petitioner association approached the Chief Minister and the Minister of Information Technology by submitting memorandums dated 29.2.2008 and 7.3.2008 respectively. The petitioner also submitted another memorandum dated 25.6.2008 to the Prime Minister of India.

10. Emphasizing the need for continuation of the earlier CIC scheme, the petitioner has stated thus in paragraphs 20 and 21 of the writ petition-

20. That the petitioner begs to state that the CICs are an indomitable part of the functions of the State Govt., and many services of the CICs, as well as the CIC Operators are directly requisitioned by the Govt, of Assam. Since the said services are rendered free of cost; the Govt. is extracting valuable services and providing the said essence to the general public without any returns. Further the Govt. as well as the rural poor would not be able to benefit the said services without paying to the CSC as the same would be operated by private parties with the sole aim of profit making. The benefit derived from the services of the CICs can be gauged by the fact that even now advertisement were issued and appointment of CIC Operators are being made in order to tide over the crisis faced by the Govt. due to vacancies.

21. That the petitioner begs to state that as per the MOU the State Govt. should have taken over the CIC Project as the CICs became an integrated part of the Govt. Machinery. Apart from the job specified in the CIC Project, the CIC Operators were engaged by the State Govt. in various other services. Their services have been requisitioned for the election purpose, for conducting training and examination under the DOEACC Society, preparing BPL Census report as well as updating the National Register for Citizenship (NRC) etc. to name of few. Under the above circumstances it is incumbent upon the Govt. of Assam to take over the CICs and integrate the same with the Department of Information & Technology, Govt. of Assam and regularize the services of the CIC Operators who devoted more than 6 years of dedicated service in the CICs for the interest of the public at large of the State and the rural populace in particular.

11. According to the petitioner, the Government of Arunachal Pradesh as well as the Government of Tripura did not merge the CIC with the CSC and the CICs

were continued with regularization of the services of the CIC operators as State Government employees irrespective of discontinuance of financial support by the Government of India beyond March, 2007. It is the plea of the petitioner that the Government of Assam should have followed the pattern of Arunachal Pradesh and Tripura Governments with the continuation of the CIC projects with eventual regularization of the services of the CIC operators. According to the petitioner, CIC and CSC being two different schemes cannot be integrated to one, more particularly, when the CIC scheme is a Government initiative unlike the CSC scheme, which is a private endeavor. It is the case of the petitioner that the integration of the CIC with the CSC is arbitrary, unreasonable and capricious and the nature of duties would be different and also the training required and the desirable qualification of the CIC operators. According to the petitioner, the integration of CIC and CSC would create a void which cannot be substantiated by the CSCs.

12. In the aforesaid background, the prayer made in the writ petition is as follows:

In the premises aforesaid it is most respectfully prayed that Your Lordships may be pleased to admit this case, call for the records of the case and issue a Rule calling upon the respondents to show cause as to why a writ in the nature of Mandamus should not be issued directing the Respondent Authorities not to integrate the Community Information Centres (CIC) with the Common Service Centres (CSC) and direct to recall the decision dated 2.5.2008 of integrating the CIC with CSC (Annexure-J) and forebear from executing the same and issue a writ in the nature of Mandamus directing the respondents to regularize/absorb the service of the CIC Operators under the State Govt. and on cause or causes being shown and after hearing the parties, Your Lordships would be pleased to make the Rule absolute and/or pass such other further Order or Orders as Your Lordship may deem fit and proper in the facts and circumstances of the case.

-AND-

Pending disposal of the Rule, Your Lordships would be pleased to allow the members of the petitioner Association to continue in their services as CIC Operator and/or pass such services as CIC further Order or Orders as Your Lordship may deem fit and proper in the facts and circumstances of the case.

13. In the counter affidavit filed by the respondent No. 1 denying the aforesaid pleas of the petitioner, it has been stated that the association does not represent all the CIC members numbering 438 and that it only represents 270 members. It has also been stated that the petitioner association does not represent CIC operators of the districts of Dhemaji, Karbi Anglong, Sivasagar and Sonitpur. Referring to the terms of appointment and the agreement executed in respect of the empanelment as CIC operators, it has been stated in the affidavit that the petitioner cannot claim continuation of the CIC scheme and regularization of the services of its members. As regards the CSC scheme, it has been stated that for

better socio economic development of the State and for proliferation of information technology in the rural areas, the Government started the CSC scheme which is on a Public Private Partnership (PPP) pattern with entrepreneurship as a core model. According to the respondents, the CSC scheme is a superset of the CIC scheme in all respect including technology, outreach, service delivery model and basket of services for the citizens and is much broader than the CIC scheme and will cover every sixth village of the State. It has further been stated that it is the same agency of the Government of India i.e. Department of Information Technology, which had earlier started the CIC scheme for North Eastern India only has now come out with the All India scheme i.e. CSC under the NeGP, which according to the respondents is a much advanced and comprehensive scheme in comparison to the earlier CIC scheme.

14. Referring to the Annexure-K letter dated 12.3.2012 annexed to the writ petition, it has been stated in the affidavit that the extension given to the CIC scheme by the Government of India till March, 2009 is conditional i.e. such financial assistance to the CIC scheme would be till such time the CIC are integrated with the CSC scheme or upto March, 2009 whichever is earlier. As disclosed in the said letter, the assistance will be available to the State Governments subject to the following conditions:

(i) A letter from the State Govt. is received by the Govt. of India clearly stating that State Govt. is agreeable to integrating the CIC's under the CSC schemes. The Govt. of India should receive the said commitment letter by March, 2007.

(ii) The REP fro the Scheme indicating the integration of the CICs into the CSC Scheme should be issued by the State Government by July 2007.

(iii) The interim financial assistance for the CIC Scheme will be available provided the States agree and adhere to a schedule.

Further, the said letter also indicates that States which decide not to integrate CICs into CSCs will not be eligible for any financial assistance from the Government of India beyond 31st March 2007.

All expenses with regard to CICs in such cases would have to be borne by the concerned State Government, from its own resources from 1st April 2007.

15. The affidavit has further stated that in respect of the conditions stipulated in the said letter dated 12.3.2007, the Government of Assam replied in affirmative and agreed to integrate CICs with CSC. It has further been stated that the integration is also in better public interest, as the new scheme will provide much better and smooth service to the citizens through a common single window interface i.e. CSC. According to the respondents, retaining the CIC would mean multiplicity of citizen centric delivery system windows in the public service domain scattered all over the State.

16. In the affidavit-in-reply filed by the petitioner while reiterating the stand in the writ petition, the advantages and disadvantages of the CIC and CSC scheme

have been highlighted. In the counter affidavit filed by the respondent No. 2, it has been stated that the services of the members of the petitioner association being contractual, they cannot claim regularization of their services. In the additional affidavit filed by the petitioner association on 11.2.2009, it has been brought on record the documents to show appointment under CIC scheme by the Government of Arunachal Pradesh as well as Government of Tripura. In the additional affidavit again filed by the petitioner on 2.4.2009, it has been brought on record the engagement of the petitioner association in the works pertaining to the general election of Lok Sabha, 2009 and also their engagements in connection with selection of different categories of contractual services in implementation of NREGA scheme etc. By bringing on record those documents, it has been emphasized by the petitioner that the services of its members are indispensable. In the affidavit filed by the respondent No. 1 on 31.1.2013, the guidelines relating to CSC scheme has been brought on record so as to emphasize that the CSC scheme is a better scheme and that the petitioner cannot be called in question merger of CSC with that of CIC.

17. I have heard Mr. D.K. Mishra, learned Sr. Counsel assisted by Mr. S. Rahman and Ms. S. Jahan, learned counsel for the petitioner. I have also heard Mr. D.K. Saikia, learned Additional Advocate General, Assam along with Mr. B. Gogoi, learned counsel representing the respondents.

18. While Mr. Mishra, learned Sr. Counsel for the petitioner in his elaborate and persuasive argument also referring to the written argument as well submitted that having regard to the importance of the CIC scheme and the working experience of the members of the petitioner association and their sound academic qualification, their services are required to be regularized in continuation of the CIC scheme and even upon merger of the same with that of CSC scheme. He also referred to the following decisions:

Dalmia Cement (Bharat) Ltd. and Another Vs. Union of India (UOI) and Others,
Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others,
Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others,
Union of India (UOI) and Others Vs. Miss Pritilata Nanda,

19. Countering the above argument, Mr. Saikia, learned Additional Advocate General, Assam representing the respondents submitted that the petitioner cannot dictate terms in respect of adoption of policy decision by the State Government. He submitted that the appointment being only contractual with limited duration of such appointment the petitioner cannot claim regularization of such services, that too, dictating terms of merger of the CIC scheme with that of CSC. He has also placed reliance on certain decisions, which are-

Md. Abdul Kadir and Another Vs. Director General of Police, Assam and Others,
Surendra Prasad Tewari Vs. Uttar Pradesh Rajya Krishi Utpadan Mandi Parishad

and Others,

Bajaj Hindustan Ltd. Vs. Sir Shadi Lal Enterprises Ltd. and Another,

Computer Associated Industries of Mizoram Vs. The Secretary to The Govt. of Mizoram and Others,

Smti. Rumi Gogoi (Hazarika) Vs. State of Assam and Others,

20. I have given my anxious consideration to the submissions made by the learned counsel for the parties and have also gone through the entire materials on record including the written argument submitted by the learned counsel for the petitioner. My findings and conclusions are as follows.

21. Under the CIC scheme, the appointments of CIC operators were all contractual limiting the same for a period of three months extendable for a period of 9 months. In the advertisement itself, the position of such appointments was made clear. There is no element of permanency attached to the engagement of CIC operators.

22. By Annexure-J letter dated 2.5.2008 of the Government of Assam in the IT department addressed to all the Deputy Commissioners of the State launching of NeGP throughout the country by the Government of India was conveyed. One of the components of NeGP was CSC scheme in Assam for which initiative was taken to step up 4375 Nos. of CSC across the State. The decision to integrate all the 219 CICs of Assam in the CSC scheme was also conveyed. The IT department of Government of Assam nominated AMTRON as the State Designated Agency (SDA) for the project. The said letter also conveyed the nomination of National Level Service Agency by the Government of India. The terms and conditions of integration of CIC with CSC were also indicated in the enclosed sheet sent along with the letter. By Annexure-K letter dated 2.3.2007 issued by the Government of India in the Department of Information Technology and addressed to all the NE States, it was conveyed that the Government of India support for the CIC scheme in the NE States would come to an end on 31.3.2007. It was further conveyed that the integration of CSC scheme might take time and that the Government of India would extend financial assistance to the CIC scheme till such time, they are integrated or upto March, 2009, whichever is earlier.

23. As per the said letter, the matter relating to integration/not integration of CICs into CSCs was left to the decision of the States. However, it was conveyed that the State deciding not to integrate CICs with CSC would not be eligible for any financial assistance from the Government of India beyond 31.3.2007. It was stipulated in the letter that all expenses regarding the CICs in such cases would have to be borne by the concerned State Government from its own resources from 1st April, 2007.

24. The State Government of Assam decided to integrate CICs with that of CSCs as a policy decision on a Public Private Partnership (PPP) pattern with

entrepreneurship as a core model. The State Government conceived of the idea of implementation of CSC scheme in all respect including technology, outreach, service delivery model and basket of services for the citizens and is much broader than the CIC scheme covering larger areas.

25. Referring to the aforesaid letter dated 12.6.2007, the State of Assam replied in the affirmative and agreed for integration of CICs with CSCs. The CSC scheme is also for the socio economic development of the rural area of the country and by its very nature supercedes the CIC scheme. As stated in the counter affidavit filed on 28.7.2008, the CIC scheme was already at the verge of closure under NeGP. If the State Government decided to integrate the CIC scheme with the CSC, it cannot be said to be irrational, arbitrary and illegal. As stated in the said counter affidavit, for the purpose of retaining the services of the CIC operators, the State Government cannot abandon the CSC scheme at the cost of the State exchequer. The affidavit has further disclosed that the CSC scheme would be able to bring self reliance to more than 4000 educated youth across the State by way of providing citizen centric services. As indicated in the affidavit, the CIC service delivery has considerably declined since July-December, 2006.

26. The decisions, on which Mr. D.K. Mishra, learned Sr. Counsel for the petitioners has placed reliance are primarily on the emphasis on arbitrariness in State action or inaction, constitutional mandates in State action and also on the arbitrary power of termination of services. These decisions have been relied upon by the learned Sr. Counsel for the petitioner so as to emphasize that the members of the petitioner association having been appointed under the CIC scheme and there being requirement to continue with the said scheme, the State is under obligation to provide job security to them as per the constitutional guarantees of equality which abhors discrimination, prohibits and penalizes forced labour.

27. In Md. Abdul Kadir (supra), the Apex Court dealing with the question of entitlement to regularization of service, when found that the persons were employed for a particular project or scheme which was temporary in nature, though continued from time to time held that they cannot claim continuation or regularization in another project or scheme.

28. In Surinder prasad Tiwari (supra), the Apex Court held that there is no question of regularization/absorption of daily wager, adhoc employee, probationer, temporary or contractual employee. In that case, the writ petition filed by contractual employee seeking direction for regularization of service was dismissed and the Apex Court upheld the said judgment. It was held that public employment is repository of the State power.

29. In Bajaj Hindustan Ltd. (supra), it has been held by the Apex Court that in the matter of policy decision, the Court can interfere only when there is clear violation of statute or constitutional provision or the decision is arbitrary. Judicial review is excluded in the matter of policy decision. In such matter, there is

always need for judicial restraint, more particularly when the policy decision pertains to technical, commercial or expert knowledge.

30. In Rumi Gogoi (Hazarika) (supra), this Court dealing with the principle pertaining to legitimate expectation held that Siksha Mitras engaged under a scheme being aware at the time of engagement that they cannot claim absorption/regularization as teachers, cannot invoke the theory of legitimate expectation. In Computer Associated Industries of Mizoram (supra), this Court held that policy decision of the State not to be interfered with lightly and that the doctrine of legitimate expectation is only an aspect of Article 14 and does not give rise to an enforceable right.

31. In the instant case, the members of the petitioner association were appointed as CIC operators under a scheme whose validity has long expired. The said scheme has merged with the CSC scheme launched in the State of Assam. During the course of hearing of the writ petition, learned Additional Advocate General, Assam submitted that if the members of the petitioner association are interested to be part of the said scheme, it will be open for them to apply for appropriate engagement under the scheme and if engaged, depending upon their performance they would be adequately remunerated.

32. The whole crux of the matter is the perception of the petitioner that the State is under an obligation to continue with the CIC scheme and the same cannot be dispensed with at the cost of another scheme namely CSC scheme. The petitioner has referred to the cases of Arunachal Pradesh and Tripura Government. Merely because some other Governments of North East have chosen to retain the earlier scheme, the petitioner cannot claim that the Government of Assam should also retain the said scheme. As noticed above, the Union Government left it open for the States to decide as to whether they would continue with the earlier scheme or would integrate the CIC scheme into CSC scheme. Annexure-K letter dated 2.3.2007 issued by the Government of India in the IT Department to all the North Eastern States clearly stipulated that in case of any decision not to integrate CICs with CSCs, they will not be eligible for any financial assistance from the Government of India beyond 31.3.2007. It was subsequently provided that financial assistance would come to an end upon integration of the schemes or March, 2009, whichever was earlier.

33. In the above situation, if the State Government decided to go for the CSC scheme it cannot be said that such a decision is arbitrary, unreasonable and in violation of the constitutional provisions. If the State Government in its wisdom thought it prudent to go for the new scheme with the merger of the earlier scheme which according to it would provided self reliance to more than 4000 educated youth across the country by way of providing citizen centric service, no fault can be attributed to it. As disclosed in the counter affidavit, CSC scheme is a superset of the CIC scheme in all respects including technology, outreach, service delivery model and basket of services for the citizens and is much broader than the CIC scheme.

34. Above being the position, I see no reason to interfere with the policy decision of the State Government. At the same time, the State Government shall consider the case of the members of the petitioner association for utilization of their services under CSC scheme keeping in mind their long experience as CIC operator and for the purpose of utilization of men power under the CIC scheme. It is expected that the State Government would bear in mind the services rendered by the members of the petitioner association as CIC operators for their effective utilization under the new scheme i.e. CSC. With the above observations, the writ petition stands disposed of. There shall be no order as to costs.