
(1996) 10 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 11948 of 1996

Janta Kalyan Samiti, Rewari

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-10-1996

Acts Referred:

Citation : (1997) 3 LLR 21 : (1997) 2 RCR(Civil) 23

Hon'ble Judges : R.S.Mongia, J and V.S.Aggarwal, J

Advocate : Mr. Amol Rattan, Asstt. AG, Haryana., Mr. J.S. Rathee, Sr. Central Govt. Standing Counsel, Mr. I.S. Balhara, Advocate., Advocates for appearing Parties

Judgement

V.S. Aggarwal, J.—Integrated Child Development Scheme (for short "ICDS") is a project being run by the Govt. of India, Ministry of Human Resources and Development. Petitioner is a registered society. The Government of India, Ministry of Human Resources and Development had decided to involve certain nongovernmental organisations in the work of ICDS. A letter was issued on 30.5.1991 to different States in this regard for involving voluntary organisations in the ICDS in its implementation and monitoring of the said programme. The State governments/Union Territories were asked to select suitable organisations and entrust specific project areas to them. The voluntary organisations could suggest for improvement of the service. The Government of India further decided to allot atleast 10 per cent of the total programme of the ICDS and in this regard a letter was issued to the Secretaries of all State Governments and Union Territories dated 23.11.1993 which reads :

"I am directed to invite your attention to this department D.O. Letter No. 1432/92 CD1 dated 8.7.1993 wherein it has been mentioned that a decision has been taken during the current year to allocate 10% of the ICDS Projects sanctioned during 1992-93 to registered voluntary organisations with a view to involve these organisations in the implementation of the ICDS Scheme.

The formats/application Forms suggested for the purpose are annexed for your

information and necessary action."

In compliance of the directions issued by the Government of India, the Government of Haryana issued a letter to the petitionersociety on 12.9.1994. The petitionersociety was asked to come and discuss the matter regarding implementation of the ICDS programme through nongovernmental organisations. Thereafter the project was allotted to the petitionersociety after due discussion. The relevant extract of the said programme so allotted to the petitioner was :

"I am directed to refer your application/Letter No. JKS/B R/ICDS/Project/9394 dated 9th Oct., 1993 and JKS/BR/ICDS/9495 dated 15th November, 1994 and to convey the sanction for implementation of I.C.D.S. Project of Block Matlauda Distt. Panipat through your organisation. The grantinaid will be given to you after receipt of your application for providing grant in detail. The sanction is conveyed subject to the following terms and conditions :

xx xx xx xx

xx xx xx

You may make the recruitment of rest of the Staff i.e. Statistical Assistant, Assistant (AccountcumAssistant), Clerk, Peon, Chowkidar, Anganwadi Workers and Anganwadi helpers at your own level. The qualifications/scales of these posts will be the same as laid down in the department of women and child development, Haryana.

xx xx xx xx

xx xx xx

7. Your organisation will have the same responsibility for getting its worker trained as applicable to the existing projects run by the State Govt.

8. Regarding the child Development Project Officer and Supervisors training will be given at NIPPCCD and Middle Level Training Centre, Panchkula respectively. Regarding the Anganwadi workers and helpers they will be deputed for training to some Anganwadi Workers" Training Centres after their recruitment by your organisation/Department."

It had also been provided that officers of the Central Government and State Government will inspect, visit and guide the programme and that petitioner society will have to follow the instructions regarding the policy decision issued by the department for implementation of the programme. The work of the project was taken up. The petitioner did the selection of the staff, training of the staff in the months of November and December, 1994 and took up the said programme. Huge amount was spent for selection of the staff, furniture and training etc. For the first time the grant was released by the Government of Haryana on 14.3.1995 for Rs. 4,65,688/ i.e. for recurring expenditure of Rs. 3,63,688/ and nonrecurring expenditure of Rs. 1,02,000/. The petitioner society had been pressing the respondents to release the grant because it had incurred huge

expenditure. It is also contended that respondents were requested to supply the ration "ready to eat" for the beneficiaries. The ration that was supplied was not fit for human consumption and this fact was noted even by the Deputy Commissioner, Panipat. While the grant was not released, the workers of the petitioner agitated. The petitioner wrote large number of letters complaining of the above said fact. It even filed a writ petition in this Court and on 17.4.1996 a Division Bench of this Court had directed :

"After hearing the learned counsel for the petitioner, the Secretary, Department of Women and Child Development, Ministry of Human Resources Development, Govt. of India, Shastri Bhawan, New Delhi, Respondent No. 1 is directed to treat this writ petition as representation on behalf of the petitioner qua its grievances mentioned in the writ petition and decide the same by passing a speaking order within two months from the receipt of the copy of this order. Copy of the order be supplied Dasti to the petitioner. Writ petition stands disposed of accordingly."

2. In pursuance of the said direction Joint secretary, Government of India had heard the parties and their respective assertions. On 11.7.1996 the Joint Secretary after discussing various assertions concluded that following facts were emerging and thereupon his findings recorded were :

"1. The Society was allotted an ICDS Project in accordance with Government of India directions but without going into the capability of the organisation to run the project.

2. Training was imparted to Supervisor, CDPO and Anganwadi Workers but as on date 50% of these trained workers have left the organisation.

3. The recruitment of CDPO was not strictly in accordance with the rules and is the daughter of the society secretary.

4. Though delayed, two instalments for the ICDS had been released by the State Government.

5. Relations of ICDS Officers were appointed/were sought to be appointed to the Project.

6. Records show that the Society had not allowed audit inspection as directed by State Government to take place.

7. On perusal of the packets of supplementary nutrition it is clear that neither the date of manufacturer not the date of expiry of food is mentioned on the packet. Hence contention of the State Government that date of manufacture is mentioned is not correct.

From the foregoing discussion and all the arguments placed by both the State Government and the society one can safely endorse the decision of the State Government to cancel the allotment of the Project to the NGO. The State Government had been hasty in allotment of the Project without examining the capacity and ability of the society before allotting the Project, which may be taken

care of in the future.

So far as the training funds are concerned, the society must provide the details as desired by the Government to release the funds. The Funds may be released by the State Govt. as soon as details are available. The Deputy Director, ICDS should be warned for not having selected CDPO according to rules. Also for trying to influence recruitment. The State Govt. must make it mandatory that all manufacturing plants of "Ready to Eat", stamp the date of manufacture and the date of expiry on each bag in future.

The Society must allow the audit inspection to be carried out as directed by Government.

The State Governments are competent to sanction any project to NGOs. However, because the NGO had demanded redressal from the Department of Women and Child Development, Government of India, the matter has been looked into the Society should be cautioned that before going to court government should have been informed especially when their representation was being considered. There is no need to interfere in the decision taken by the State Government, however, the State Government must ensure that the action as above is taken."

3. By virtue of the present petition, the petitioner seeks a direction to the respondents to allow it to run its programme smoothly without interference and to supply ration which is fit for consumption of the children. A direction is prayed for to release of all the dues, grants and further to quash the order of Joint Secretary dated 11.7.1996 followed by the subsequent order of 14.7.1996 and that of 2.9.1996. By virtue of the order passed on 2.9.1996 (Annexure P32), the ICDS Matlauda was withdrawn from the petitioner.

4. In the reply filed by different contesting respondents, the assertions have been denied in terms that there was any interference in the working of the petitioner or that ration supplied was not fit for consumption. It is denied that the order passed by the Joint Secretary dated 11.7.1996 or the subsequent order of 2.9.1996 are illegal or tainted with mala fides.

5. On behalf of the respondents it was pointed out that basically it is an administrative decision to withdraw the project that was allotted to the petitioner and the Court should not interfere. In this regard it may be observed that the distinction between the administrative powers and quasi judicial powers indeed have been diluted considerably in the recent years. In the case A.K. Kraipak v. Union of India, AIR 1970 SC 150 it was noted that nature of the power conferred has to be looked into to determine whether it is administrative or quasijudicial power. In paragraph 13 it was observed :

"The dividing line between an administrative power and a quasi judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasijudicial power one has to look to the nature of

the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequence ensuing from the exercise of that power and the manner in which that power is expected to be exercised. In a welfare State like ours it is inevitable that the organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasijudicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasijudicial power."

Subsequently, the Supreme Court in the case of *Ashok Kumar Yadav v. State of Haryana*, AIR 1987 SC 454 noted that all actions of the State have to be just. This is necessary for maintenance of rule of law in a welfare State. The following part of the passage from paragraph 16 elucidates :

"It is also important to note that this rule is not confined to cases where judicial power *stricto sensu* is exercised. It is appropriately extended to all cases where an independent mind has to be applied to arrive at a fair and just decision between the rival claims of parties. Justice is not the function of the courts alone; it is also the duty of all those who are expected to decide fairly between contending parties. The strict standards applied to authorities exercising judicial power are being increasingly applied to administrative bodies, for it is vital to the maintenance of the rule of law in a welfare State where the jurisdiction of administrative bodies is increasing at a rapid pace that the instrumentalities of the State should discharge their functions in a fair and just manner." (emphasis added)

No different was the view of the Supreme Court in the case of *Mahabir Auto Stores and others v. Indian Oil Corporation and others*, AIR 1990 SC 1031. In paragraph 13 the Court observed :

"The existence of the power of judicial review however depends upon the nature (of) and the right involved in the facts and circumstances of the particular case. It is well settled that there can be "malice in law". Existence of such "malice in law" is part of the critical apparatus of a particular action in administrative law. Indeed "malice in law" is part of the dimension of the rule of relevance and reason as well as the rule of fair play in action."

Lastly, reference with advantage may be made to the decision of the Supreme Court in the case of *Union of India v. Hindustan Development Corpn. and others*, AIR 1994 SC 988. The following passage from the decision in *Council of Civil*

Service Unions v. Minister for the Civil Service, 1984(3) All England Reports 935 was read with approval :

"Administrative action is subject to control by judicial review under three heads :

(1) illegality, where the decisionmaking authority has been guilty of an error of law, e.g. by purporting to exercise a power it does not possess; (2) irrationality, where the decisionmaking authority has acted so unreasonably that no reasonable authority would have made the decision; (3) procedural impropriety, where the decisionmaking authority has failed in its duty to act fairly." (emphasis supplied)

From the aforesaid it is clear that the Court ordinarily will not interfere in purely administrative decisions. If there is arbitrariness or the action is biased, unconscionable or based on whims and caprice or malice, the Court can well interfere to set the things right. It has to be remembered that ordinarily the person who alleges anyone of such arbitrariness etc. must establish the same.

6. Earlier the petitioner had approached this Court. It was directed by a Bench of this Court that petition be taken as representation and decided. The Joint Secretary, Government of India had looked into the same and come to a conclusion. The said decision has been taken after hearing the petition. The extract of the same has been reproduced above.

7. While there are allegations and counter allegations, the petitioner basically alleges mala fide and nonrelease of funds. It further complains that ration was supplied which was not fit for human consumption and that workers were instigated. At this stage, keeping in view the fact that it has already been noted by the concerned Joint Secretary that petitioner was allotted the Project without going into the capacity of the petitioner to run the project, most of the trained workers had left the petitioner and that recruitment for some of the staff was not in accordance with the rules. The daughter of the Secretary of the Society was employed. The Society even did not allow the audit inspection. These factors show that the working of the petitioner was not satisfactory. During the course of arguments, learned counsel for the petitioner could not bring to our notice anything to prompt us to conclude that findings were erroneous. When the petitioner was not even permitting the audit to be effected and certain relations of the Society's Secretary were employed, it is clear that while the petitioner alleges that it wants to lift the veil of the misdeeds of the respondents is not correct. In fact by making certain allegation, it is putting the wheels of its own acts and omissions. When the work of the Project has been withdrawn, keeping in view the said report of the Joint Secretary, there is nothing illegal or improper. The Joint Secretary was in no way interested and, thus, it will not be proper to impute motives and mala fide on his act and conduct.

8. Certain payments patently were due to the petitioner. To set the record right, it is directed that petitioner would submit as to how much grant was still to be released. On verification it should be paid to the petitioner.

9. Perusal of the record further shows that packets of supplementary nutrition did not have the date of manufacturing or expiry date of the food. There appears to be some basis also in the contention that ration which was not fit for consumption was being supplied. It is directed that the State Government will get the matter enquired into and fix the responsibility on the erring officials. In future if any such Project has to be given, the State would ensure that the concerned organisation has the capability and the capacity to run the same.

10. Subject to aforesaid, the petition is dismissed. No order as to costs.