
(2023) 02 OHC CK 0195

In the Orissa High Court

Case No : Writ Petition (C) No. 29150 Of 2022

Maa Budhima Self Help Group, Khurda

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 28-02-2023

Acts Referred:

Citation : (2023) 02 OHC CK 0195

Hon'ble Judges : Arindam Sinha, J;S. K. Mishra, J

Bench : Division Bench

Advocate : A. Das, P. K. Rout

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

1. Mr. Das, learned advocate appears on behalf of petitioner and submits, his client is a Self Help Group (SHG). His client is aggrieved by re-distribution of work made by opposite party no.3. If at all there is to be re-distribution between his client and private opposite party no.5 (another SHG), only the Collector (opposite party no.2) can do it.

2. Pursuant to direction for issuance of notice on opposite party no.5, there was good service but said opposite party went un-represented on 15th December, 2022 and continues to go un-represented.

3. Mr. Das draws attention to revised guidelines for implementation of Take Home Ration (TRH) 2018 published by Department of Women and Child Development and Mission Shakti, Government of Odisha. He submits, by sub-clause (ii) under clause 12 of contract conditions, it is only the Collector who can either renew or rescind the contract. The clause is reproduced below.

"ii. Before the end of one year a review of the SHG(s) performance should be made by the Collector after which a decision can be taken to either renew or rescind the contract."

He submits, reducing agreed quantum of procurement amounts to part rescission of the contract. This could not have been done by the Child Development Project Officer (CDPO).

4. Mr. Rout, learned advocate, Additional Government Advocate appears on behalf of State. He draws attention to second bullet point under clause 7 in the guidelines. The point is reproduced below.

“In order to ensure uniformity and quality it is better that single SHG supplies to the whole Block/Project. If that is not feasible, the Collector may assign maximum two SHGs to prepare Chhatua in a Block/Project. However, division of a Block/Project among more than one SHG should be avoided as far as practicable.”

He submits, the re-distribution was done to ensure uniformity. On query from Court it could not be shown that there is guideline for equal distribution of procurement order, in cases where two suppliers have been selected in respect of a Block/Project. Relied upon second bullet point under clause 7 in the guidelines says that it is better that a single supplier supplied to the whole Block/Project. Furthermore, nothing could be shown regarding the CDPO having power to vary an engagement agreement.

5. On further query from Court Mr. Das submits, the engagement agreement was entered into by and between the CDPO and his client. The CDPO did so on instructions of the Collector.

6. Petitioner will produce this order to the Collector. The office is directed to pass a reasoned order on petitioner’s grievance that there could not have been the redistribution by impugned letter dated 21st July, 2022. For the purpose, the Collector will notice petitioner and opposite party no.5 and give them a hearing. Unless the office is able to give reasons based on the guidelines that a partial rescission in the name of re-distribution of procurement orders can be made, there must be direction for restoring procurement status under engagement agreement of petitioner. The exercise is to be completed within three weeks of communication. This reference is being made because there ought to have been application of mind at the time of executing the engagement agreement. Subsequent re-distribution has given rise to the dispute.

7. In event decision is not made known to petitioner on expiry of three weeks of communication, impugned order will then be deemed to have been set aside and quashed and petitioner’s engagement agreement restored.

8. With above directions, the writ petition is disposed of..

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