

(2023) 01 OHC CK 0101
In the Orissa High Court
Case No : Writ Petition (C) No.11 Of 2019

Maa Saraswati SHG

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 19-01-2023

Acts Referred:

Food Safety and Standards Act, 2006 — Section 31

Citation : (2023) 01 OHC CK 0101

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : M. K. Mohanty, M. R. Pradhan, T. Pradhan, M. Mohanty, G. N. Parida, Y.S.P. Babu, J. Pal, C. Mohapatra

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

1. Petitioner says it is a Self Help Group (SHG). There was requirement for supply of Chhatua and with reference to letter dated 17th July, 2018, issued by the Collector and oral order for wholesome inquiry into all units of Pattamundai ICDS, there was inspection and joint report dated 31st August, 2018 made by the Child Development Project Officer (CDPO) and the Sub-Collector. Mr. Mohanty, learned advocate appearing on behalf of petitioner demonstrated from the report that his client was found to be a producing unit having infrastructure facilities available, as well as facilitates to address emergency and hygienic atmosphere. On such findings the CDPO and the Sub-Collector recommended his client. On the same inspection and by the same report it was found that private opposite party no.6, the SHG engaged, was found to not have a producing unit nor facilities available to address emergency nor hygienic atmosphere though infrastructure facilities were available. In the circumstances, view taken by the CDPO and the Sub-Collector in the report was 'not recommended'. He submitted, the report was obtained by his client upon making query under Right to Information Act, 2005.

2. A few days thereafter on 17th September, 2018, the Collector along with District Social Welfare Officer (DSWO), the CDPO and Sub-Collector were said to have again inspected available units for procuring Chhatua. Paragraphs 2 and 3 from the report respectively with reference to his client and opposite party no.6 are extracted and reproduced below.

"2. MAA SARASWATI SHG:- THE SHG is situated in Balabhadrapur Village. Infrastructure and hygienic condition was good. All 12 members were present and the member list has been displayed in the board. Collector asked the members regarding their income generating activities. The grinding machine has been installed. The members told that they are preparing turmeric power, green gram, besan etc. One educated girl is also coordinating this group. The SHG has availed loan from bank for preparing the above mentioned items.

3. MADANESWAR SHG:- THE SHG is situated in Madanpur Village of Madanpur GP. The formation date is 10/05/2004. The infrastructure facility is good and the SHG has installed all machineries such as grinding, roasting etc. for preparation of Chhatua but it is situated in the middle of the village. The collector interacted with the SHG. They told they are preparing turmeric Power, Chilly Power, Baddi, pampada and also displayed some items. From discussion it is ascertained that the SHG has availed 4 lakh loan for installing these machineries. They are 13 members out of 8 members belong to BPL families. "

He submitted, thereupon opposite party no.6 was engaged by impugned order dated 5th October, 2018. Agreement dated 9th October, 2018 engaging opposite party no.6 clearly stipulated, as an essential requirement that the SHG shall, before signing of contract, provide security deposit equivalent to 5% of total value of production of Take Home Ration (THR), Chhatua in a year. This essential condition was waived. Furthermore, his client clearly stated in paragraph 7 in the writ petition, private opposite party did not have food licence. He drew attention to paragraph 11 in the counter, deponent of which was the CDPO to submit, there is no denial. He relied on section 31 in Food Safety and Standards Act, 2006, which says, inter alia, no person will commence or carry on any food business except under a licence. He submitted, there be interference in setting aside impugned engagement order dated 5th October, 2018 and consequently said agreement executed pursuant thereto.

3. Mr. Babu, learned advocate, Additional Government Advocate appears on behalf of State. He had submitted, subsequent enquiry was conducted by the Collector along with the DSWO, CDPO and Sub-Collector. On their joint enquiry it was found that private opposite party no.6 was most suitable and hence, selected for supplying THR. It was appreciation of situation on the ground, by persons in administration having authority. The decision is not open to judicial review.

4. He submitted further, guidelines regarding engagement for purpose of supplying THR does not require the administration to insist on food licence. On

query from Court he handed up revised guidelines for implementation of THR - 2018. Guideline no.18 regarding registration of SHGs under Food Safety and Standards Act, 2006 is reproduced below.

"18. Registration of SHGs under FSSAI Act.

SHGs/SHG Federation engaged in production of THR come under the preview of the FSSAI Act. It is mandatory to ensure that the SHGs/SHG Federation are registered or licensed, as applicable, under the FSSAI Act or applicable Rules/Regulations. The SHGs engaged are to display the certificate in the premises of the THR unit."

5. Mr. Pal, learned advocate appeared on behalf of opposite party no.6. He had submitted, on earlier occasion co-ordinate Bench did not allow him to submit since, his client had not been noticed on direction made. He wanted to file counter to disclose his client's representation to the Collector saying that the inspection report of 31st August, 2018 was made at instance of petitioner. We had granted him adjournment to produce the representation. Today Mr. C. Mohapatra, learned advocate appears and submits, all efforts to contact his client (opposite party no.6), were to no avail. As such, instructions were not had. In the circumstances, he is not in a position to pray for further adjournment.

6. There does not appear to be any discrepancy regarding inspection of parameters exhibited by petitioner as in first report dated 31st August, 2018 and subsequent report dated 17th September, 2018. The parameters exhibited by petitioner appear to have been consistently observed in both reports. However, so far as opposite party no.6 is concerned, while it was found to not be a producing unit, nor having facilities available to address emergency nor having hygienic atmosphere as on 31st August, 2018, there was no reference to those to imply remarkable improvement in the 16 intervening days, for it to have been found to be better situated to supply and engaged to do so by impugned engagement order dated 5th October, 2018.

7. There is no dispute regarding waiver of agreement clause requiring engaged unit to put in security before execution of the agreement. The administration thought fit to waive the requirement. Furthermore, State in paragraph 11 of its counter did not say there was no requirement of food licence. Pleadings made by the paragraph is extracted and reproduced below.

"11. That in reply to the averments made in para-7 of the writ application, it is humbly submitted that, the O.P. No.6 after execution of agreement have applied for Food license before the competent authority which is under process. On the other hand the THR chhatua sample produced by the O.P. No.6 are being sent to State Food Testing Laboratory from the month of production of THR regularly. The testing report also received at CDPO level and no adverse remarks has been noticed. There is no violation of terms of contract by the Opp. Party No.6 till date."

8. For reasons aforesaid, impugned engagement order dated 5th October, 2018 is set aside and quashed. Consequently, agreement executed pursuant to the engagement order is rendered void. Petitioner may approach the authority concerned for engagement.

9. The writ petition is allowed and disposed of.

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