
(2010) 11 GAU CK 0050
In the Gauhati High Court

Sonitpur Dhatri Sewa Samity

APPELLANT

Vs

Director of Health Services, Assam

RESPONDENT

Date of Decision : 22-11-2010

Acts Referred:

Citation : (2010) 11 GAU CK 0050

Hon'ble Judges : I.A.Ansari, J

Bench : Single Bench

Advocate : S.Barua, R.C.Saikia, P.N.Choudhury, M.Kalita, M.K.Hussain, M.J.Barua, Karabi Saikia, Kakali Saikia, F.K.R.Ahmed, B.Prasad, B.N.Pathak, Advocates appearing for Parties

Judgement

1. The two petitioners are nongovernmental organizations (in short, "NGO") registered under the Societies Registration Act. While the petitioner No. 1, namely, Golaghat Nirman Mohila Gut, stands registered, by the Golaghat District Administration, as an NGO, petitioner No. 2, namely, Sonitpur Dhatri Sewa Samity, stands registered, as an NGO, by the Sonitpur District Administration. While the aims and objectives of the petitioner No.1 are, broadly speaking, to work, in the interior villages (which are located far away from the Sadar places) in the field of education, to promote healthcare, agriculture, sports, veterinary, horticulture, social welfare, the main object of the petitioner No. 2 is to take care of the disabled persons, destitute women, children and homeless persons and provide medical facilities and treatment to them.

2. The Mission Director, National Rural Health Mission & Secretary to the Government of Assam, Health & Family Welfare Department, (who stand impleaded as respondent Nos.1 and 5 respectively) issued Expression of Interest (in short, "EOI"), dated 11.02.2010, mentioning therein that the Government of Assam has provided Mobile Medical Units (in short, "MMU"), in all the 27 districts of Assam, for conducting health camps in remote and distant areas and that proposals are invited from the interested civil societies, having research experience, management, logistics, etc., for proper management of the MMUs

and also for planning health camps in all the 27 districts of Assam. In the EOI, it was also mentioned that organizations, having experience, in management, logistics and also in organizing health camps in outreach areas, would be preferred.

3. Pursuant to the EOI, so issued, the petitioners herein and as many as 31 other NGOs expressed their interest to manage the MMUs and also plan and organise health camps, in various districts of Assam, as had been advertised by the said EOI. By a letter, issued, on 17.03.2010, by the Secretary to the Government of Assam, Health & Family Welfare Department & Mission Director, National Rural Health Mission, the two petitioners and 31 others, who had responded to the EOI, were informed that they had been shortlisted for "preliminary presentation" for the purpose of outsourcing the services of the MMUs. The petitioners and others were accordingly invited to make their respective preliminary presentations, before the Screening Committee, as per the schedule given therein. The letter, dated 17.03.2010, aforementioned further stated that the powerpoint presentation to be made before the Screening Committee should reflect all the information sought in the EOI including particulars of the agency concerned, experience in similar works, manpower, location of office, assets, annual turnover, action plan/methodology along with detailed budget per month, per district, for providing Mobile Medical Services in the outreach and difficult areas and an assessment of the cost effectiveness of the services. The letter, dated 17.03.2010, made it clear that those, who would be found suitable in the "preliminary presentation", would be called for "final presentation" on a later date.

4. Thus, the letter, dated 17.03.2010, in no uncertain words, informed the petitioners and all those NGOs, who had responded to the EOI, that there is a Screening Committee, the Screening Committee would evaluate the preliminary presentations to be made by the NGOs, who had so applied, and only those NGOs would be called for "final presentation", who would be found suitable in the "preliminary presentation".

5. Out of the 33 NGOs, who had been invited for preliminary presentation, as many as 27 NGOs, including the present two writ petitioners, appeared to make their "preliminary presentations". Upon preliminary presentation(s), so made by the NGOs including the present petitioners before the Screening Committee, on 30.03.2010, as many as 10 (ten) NGOs, including respondent Nos.10, 12 and 17, were invited to make final presentation on 04.06.2010.

6. As the present two petitioners were not invited to make the final presentation, as indicated above, they have impugned the selection of the said 10 NGOs by filing the present writ petition under Article 226 of the Constitution of India, their case being, in brief, that the petitioners have the requisite experience, they have done excellent works in the field of health and family welfare, their experience has been lauded and acknowledged by the State Government and other reputed organizations and that the omission to select them for the "final presentation" is

arbitrary and mala fide. The petitioners also contend that out of the selected 10 applicants, respondent No. 10, namely, Centre for North East Studies and Policy Research, Guwahati, respondent No. 12, namely, Citizens Foundation, Sidli, Chirang, and respondent No. 17, namely, Purbanchal Vikash Paridhi, Golaghat, have misused the government funds sanctioned to them, their functioning have been seriously criticized in newspapers and that their selection is mala fide, arbitrary and bad in law.

7. The State respondents have filed their affidavit in opposition, their case being, in brief, thus: MMUs were launched in the State in the year 2007 and they are currently being operated in all the 27 districts of the State of Assam, the management of the MMUs being directly controlled by the respective district administration. That till March 2010, as many as 426 health camps have been organized and 6,71,911 patients have been treated at these camps. The Joint Directors of Health Services, in their respective districts, are overburdened with their existing works and responsibilities, they are the ones, who are presently required to manage the MMUs, the objective of providing MMUs is to make health services available to the people of those areas, where there is no access to proper facilities for healthcare and family welfare. Thus, the State respondents have been lacking in manpower and decided to outsource their activities, such as, holding of health camps, etc., and, therefore, they have been looking for experienced NGOs, which can ably manage and organize health camps in the remote areas and it is with this aim in view that the EOI, in question, was published.

8. As far as the letter, dated 17.03.2010, is concerned, the State respondents contend that the petitioners were shortlisted for preliminary presentation so as to determine if the petitioners could be considered for the final presentation, the two petitioners accordingly made their preliminary presentations and the same were considered by an Expert Committee and that the Expert Committee, after taking into account all the relevant parameters and factors, prepared a select list, in order of merit, for final presentations, wherein the petitioners do not figure.

9. The State respondents further contend that though the petitioners have made accusations of respondent No. 3, namely, Joint Director of Health Services, Golaghat, Assam, have indulged in various irregularities, the same are false, that the boat clinics, allotted to respondent No. 10, have been providing satisfactory services in the riverine areas and that pursuant to the EOI aforementioned, no allotment of MMUs has been made so far to any of the NGOs.

10. I have heard Mr. R. C. Saikia, learned counsel for the petitioners, and Mr. D. Saikia, learned counsel, appearing on behalf of the State respondents, namely, respondent No. 1 to 5. I have also heard the learned counsel for respondent No. 10.

11. At the time of admission hearing, the relevant records have been produced

by the State respondents at the instance of the writ petitioners and the same have been produced.

12. While considering the present writ petition, it needs to be noted that though, broadly speaking, both the petitioners have not been called for final presentation and are, therefore, aggrieved, there could not have been a joint writ petition, because their cases would be considered by this Court independent of each other. There being no common joinder of causes, and their being a competition between the two petitioners themselves, their joint writ petition is, strictly speaking, not maintainable, particularly, when their selection has been declined not on the same, but on different grounds.

13. Be that as it may, the pleadings in the writ petition and the counter affidavit, coupled with the materials on record, reveal as indicated and discussed hereinafter.

14. An expert committee was constituted by the Government with four members, namely, 1) A Haque, Executive Director, NRHM, 2) Er. N. Sarma, SHTO and Joint Director of Health Services (T), 3) Dr. P. N. Bora, SPM, NRHM, and 4) Dr. J. Das, SF, NRHM. The expert committee is claimed to have evaluated the NGOs, including the present petitioners, who had expressed their interest in response to the EOI. The evaluation was done on the basis of three parameters, namely, i) experience in health sector, ii) clarity on functionality of MMUs, and iii) clarity in technical procedure.

15. After evaluation, all the NGOs, who had participated, were ranked meritwise. Out of the 33 NGOs, as many as 6 NGOs were absent and did not participate in the preliminary presentation, which was held, on 30.11.2010. While the petitioner No. 1 is ranked at Sl. No. 21, petitioner No. 2 figures at Sl. No. 11. Respondent Nos. 10, 12 and 17 appear at Serial No. 3, 5 and 10. The respondent authorities had already indicated in the call letter, dated 17.03.2010, issued to the petitioners, that only those, who would be found suitable on evaluation, would be the ones, who would be called for final presentation. Knowing fully well that they might be eliminated in the competition, the petitioners, with their eyes open, voluntarily participated in the selection process. Having participated in the selection process, the petitioners cannot turn back and claim that the EOI did not specifically state that there would be preliminary presentation and/or that there would a Screening Committee. Obviously, when there were more than one applicant, who had responded to the EOI, a selection was required to be made. This apart, and as already indicated hereinbefore, the petitioners had already known that they were entering into a competition and there were chances of any one of these participants not being selected for final presentation. In the backdrop of these facts, when the respondents have decided to call 10 of the NGOs, who have been ranked first to the 10th in the select list prepared by the Expert Committee, the exclusion of the other NGOs, including the present petitioners, from the list of the NGOs called for final presentation, cannot, in the absence of any material showing motivated selection, be interfered with.

16. Moreover, on the date fixed, i.e., 04.06.2010, the 10 selected NGOs appeared, they made their respective final presentations and they were also interviewed, but the result has not been declared in compliance with the interim order, dated 04.06.2010, passed in the present writ petition.

17. It is contended by Mr. R. C. Saikia, learned counsel for the petitioners, that newspaper reports, criticizing the functioning of the respondent Nos. 10, 12 and 17, exist and, hence, their selection was bad in law. Suffice it to point out, in this regard, that not letting the respondent Nos. 10, 12 and 13, to participate in the selection process, on the ground that there were newspaper reports against them, would amount to blacklisting the said respondents and such blacklisting could not have been done, and has rightly not been done, without giving any opportunity of, at least, showing cause to the respondents concerned. Not permitting the respondent Nos. 10, 12 and 17 to participate in the selection process would have amounted to making them ineligible to participate at all. It would have been possible, had they been blacklisted; but they had not been blacklisted and they ought to have been blacklisted is not the demand of the petitioners. This apart, it is asserted by the State respondents, that the functioning of the respondent Nos. 10, 12 and 17 has been found to be satisfactory and well appreciated.

18. It, thus, becomes a disputed question of fact as to whether the functioning of the private respondents has or has not been satisfactory. The mere fact, therefore, that some newspapers have reported that the activities of the respondent Nos. 10, 12, and 17 have not been proper and that there have been irregularities in their functioning, cannot be made a ground for this Court to interfere, at this stage, with the process of selection. If the private respondents are, eventually, selected, it would remain open to the petitioners to put the same to challenge, if the facts and circumstances and the law, relevant thereto, so warrant. Merely, therefore, on the ground that the respondent Nos. 10, 12 and 17 had been selected for final presentation despite the fact that there are newspaper reports against them, no interference, at this stage, is called for, when these private respondents have not been finally selected. Above all, when the criticism, against respondent Nos. 10, 12 and 17, and allegations of financial and other irregularities against them, have been disputed by the respondents, the same become disputed questions of fact, such disputed question of fact would require holding of roving inquiry and taking of evidence, which would not be possible in a writ proceeding, such as, the present one.

19. It is also worth noticing that judicial review of an administrative action, in a case of present nature, is directed not against the decision, but the decision making process. The petitioners cannot, therefore, invoke this Court's extraordinary jurisdiction, under Article 226, unless they can show that a factor, which was relevant, has not been taken into account and/or a factor, which was irrelevant, has been taken into account. Selection of the better between two persons is, basically, a decision. What is required to be examined is the decision

making process. There is nothing, in the writ petition, to show that the decision making process is under challenge; rather, the decision itself is under challenge. The fact, that there would be a preliminary presentation and that the same would be followed by a final presentation, were already made clear in the letter, dated 17.03.2010. The evaluation of the expert committee could not be assailed before this Court inasmuch the correctness of evaluation is for an expert to do and not for this Court to determine in absence of any material factor brought on record against the report of the expert committee. One has to bear in mind that the present one is not a suit. In a civil suit, it would be open to a person to not only challenge the decision making process, but also the decision itself and, if he can adduce evidence, which may be required, in support of his case, he may be entitled to appropriate relief; but, in a writ proceeding, it is only the decision making process, which is open to examination. In the case in hand, the petitioners have not been able to show anything, which would warrant interference with the decision making process.

20. In the result and for the reasons discussed above, this writ petition fails and the same is dismissed.

21. The interim directions, passed in this writ petition, on 04.06.2010, shall accordingly stand vacated.

22. With the above observations and directions, this writ petition stands disposed of.

23. No order as to costs.

24. Let the relevant records be returned to the learned Standing Counsel, Health Department.