

(2008) 09 CAL CK 0068

In the Calcutta High Court

Case No : Writ Petition No. 23632 (W) of 2007, CAN No. 9481 of 2007, CAN No. 9482 of 2007

Sudipta Dutta and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 23-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 1 ILR (Cal) 542

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Anindya Mitra, S. Bose, Biswaroop Bhattacharya, Arjun Roy Mukherjee, P. Deb, for the Appellant; Ashok Sarkar, Nilima Das, for the Respondent

Judgement

Debasish Kar Gupta, J.

The Judgment of the Court was as follows:

1. The subject-matter of challenge in this writ application is the memorandum No. HF/O/MS/552/W-45/07 dated September 25, 2007 issued by the respondent No. 5 for revision of rates of cooked diets for supplying the same to the indoor patients of different Government Hospitals in the State of West Bengal.
2. An application being CAN No. 9482 of 2007 is filed by four existing suppliers of cooked diets in various Government Hospitals for impleading them as party respondents to this writ application. Another application being CAN No. 9481 of 2007 is also filed by the above four applicants for vacating the interim orders dated October 23, 2000 passed in this writ application. That application can only be taken up if their application for addition of party is allowed.
3. Before entering into the merits of this case the application for addition of party is taken up.

4. According to the applicants, all of them are the existing suppliers of cooked diet in different Government Hospitals situated at Kolkata and KMDA areas. According to them the rates of different categories of cooked diet to be supplied to different Government Hospitals are enhanced by the impugned memorandum No. HF/O/MS/552/W-45/07 dated September 25, 2007(hereinafter referred to as the said memorandum).

5. Appearing on behalf of the above applicants, Mr. Kalyan Kumar Bandopadhyay submits that in view of the enhanced rate of cooked diet, the suppliers will be in a position to maintain the quality of foods. Drawing the attention of this court towards Clause 7(b) of the said memorandum(annexure P6 at page 81 to this writ application), Mr. Bandopadhyay submits that any bid which is lower than 15% of the minimum rate fixed will not be accepted. Therefore, according to the applicants, the possibility of supplying sub-standard diets has been prevented by incorporating the above provision in the said memorandum. According to them, by the memorandum the rates of cooked diet has been increased. On the other hand the interest of the indoor patients has been protected by preventing the suppliers from supplying sub-standard of diets to them at an abnormally lower rate. According to Mr. Bandopadhyay, in the event the writ application succeeds and the impugned said memorandum is set aside, without giving an opportunity of hearing to the applicants the applicants affected adversely. Mr. Bandopadhyay also submits that the respondent authority has been getting supply of cooked diet from the existing contractors including the applicants at the pre-revised rate. Consequent thereupon the applicants have been suffering from financial losses.

6. Appearing on behalf of the petitioner Mr. Aninda Mitra Learned Senior Advocate raises objection for addition of parties in this writ application. Mr. Mitra submits that the subject-matter of challenge in this writ application is the said memorandum dated September 25, 2007. The applicants being existing suppliers of cooked diet are not required to be made party respondents in this writ application to adjudicate the above issue. The relieves are claimed against the respondent authority. Therefore, if any relief is granted to the writ petitioners either by setting aside the impugned memorandum or by directing the respondent authority to enhance the rate of cooked diet, there is no scope of affecting the applicants adversely by those orders. According to Mr. Mitra the applicants are more interested to get the interim order vacated. Since the writ application is taken up for final disposal the applicants are not added as parties/respondents to this proceeding on that ground.

7. Mr. Ashok Sarkar Learned State Advocate submits that he has no objection, if the applicants are added as parties to this proceeding.

8. Having heard the Learned Counsels appearing for the respective parties and after taking into consideration the materials on record I find that all the applicants are existing suppliers of cooked diet in different Hospitals in the state of West Bengal. According to them, they are satisfied with the revision in the price of cooked diet to be supplied in the Hospitals in question. In the event the

writ application succeeds and the said memorandum is set aside ultimately on the ground that the rates proposed in the said memorandum are unreasonable, then the same will not affect the applicants adversely.

9. More so, in the event of revision in the rate of cooked diet for supply in the Hospitals in question at a higher rate will not help the petitioners only and the applicants will also be in a position to supply cooked diet in the hospitals at a more comfortable rate.

10. In the aforesaid circumstances the applicants are more interested to get the interim order vacated because they have been supplying the cooked diets in different Hospitals at a pre-revised rate. They are doing so as per their own decision. No order is passed in this writ application compelling them to supply the cooked diets in different Hospitals at a pre-revised rate. By virtue of interim order the respondent authority has only been restrained from giving effect to the impugned memorandum dated September 25, 2007. It is for the respondent authority to decide as to how they would maintain the supply of cooked diet during the pendency of this writ application.

11. In that view of the matter I do not find that absence of the applicants the issue involved in this writ application cannot be adjudicated effectively.

12. In this regard relevant portions of Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, are quoted below:-

(7) To answer the question raised it would be convenient at the outset to ascertain who are necessary or proper parties in a proceeding. The law on the subject is well settled: it is enough if we state the principle. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

13. Therefore, the application for addition of party being CAN No. 9482 of 2007 stands dismissed. Since the applicants are not added as party respondents to this proceeding, the application being CAN No. 9481 of 2007 for vacating the interim order is also dismissed.

14. Now, the writ application is taken up for adjudication on merit.

15. Prior to the year 2001 the respondent authority used to follow a system of engaging contractors for supply of raw-materials for cooking diet for the indoor patients of different Hospitals run by the Government in the State of West Bengal. By memorandum No. HF/O/MS/549/5S-1/2001 dated November 26, 2001, the respondent authority decided to engage contractors for supply of cooked diet to the indoor patients in different Hospitals in the state of West Bengal run by the Government. Respondent authority also decided to float tenders for awarding contract to different contractors for the aforesaid purpose for supply of cooked diet with effect from April 1, 2001. By a further memorandum No. HF/O/MS/237/5S-1/2001 dated May 20, 2002 the Government

fixed the rate of cooked diet at Rs. 28.50 per patient per day.

16. A tender notice dated June 16, 2005 was issued by the respondent authority inviting tenders from the intending suppliers to supply cooked food to the indoor patients in different hospitals in the State of West Bengal. An application under Article 226 of the constitution of India being W.P. No. 13434(W) of 2005 was filed challenging the above tender notice. By an interim order dated July 13, 2005, the Court restraining the authority from proceeding in any manner whatsoever with the above tender notice.

17. By a memorandum No. HF/O/MS/55/HAD/9D-16/2003 dated February, 2007, the respondent authority directed that the suggested diet schedule of cooked food as prescribed in memorandum No. HF/O/MS/237/55-1/2001 dated May 20, 2002 would continue to remain in force during the financial year 2007- 08 and the diet rates should also remain same for the year 2007-08. Some of the suppliers of cooked diets to the indoor patients of different hospitals in the State of West Bengal initiated proceeding by way of filing three applications under Article 226 of the Constitution of India being W.P. No. 5971(W) of 2007, W.P. No. 5976(W) of 2007 and W.P. No. 6076(W) of 2007 respectively, challenging the decision of the respondent authority to keep the diet rates unchanged for the year 2007-08. By an interim order dated March 29, 2007, the court directed that the authorities of the Government Hospitals at Haldia/Contai/Egra/Digha and M.R. Bangur Hospital in Kolkata would be at liberty to proceed with the respective diet tender notices and to accept offers from the intending tenders as also to take a final decision in respect of awarding of contract in favour of the selected tenderer but such final decision should not be given effect to till April 30, 2007 or until further orders, whichever would be earlier, without obtaining leave from the court. The court also directed the authority of the SSKM Hospital to keep the decision of awarding contract in favour of the selected tenderers in abeyance till April 30, 2007 or until further orders whichever would be earlier.

18. During the pendency of the aforesaid writ applications the respondent authority by an order issued under memo No. HF/O/MS/160/W-45/07 dated April 16, 2007 constituted a committee to review the rate and schedule with regard to the cooked diet to be supplied to the indoor patients in different Government Hospitals of the State of West Bengal. The above committee consisted of the following members:-

- i) The Director of Medical Education, West Bengal Chairperson.
- ii) The Director of Health Services Members.
- iii) One representative of the Director of Agricultural Marketing Member.
- iv) Dr. S.K. Chowhury, Economist, Technical Assistance Support Team..... Member.
- v) Joint Secretary, M.S. Branch of H&F.W. Department... Convenor.

19. By an order passed under the impugned memo No. HF/O/MS/552/W- 45/07 dated September 25, 2007 the respondent authority accepted the proposal of the above committee for revision of the rates for cooked diet to be supplied to the indoor patients of different Government Hospitals in the State of West Bengal as follows:-

Category

Kolkata & K.M.D.A. Area

Other than Kolkata &

K.M.D.A Area

"B" Full diet/Salt free

"C" Boiled/Soft rice

Rs. 37.40

Rs. 35.30

"D" Diabetic

Rs. 28.50

Rs. 28.50

"E"-Vegetarian

"U"

Rs. 31.10

Rs. 28.80

"FF"-Full Fluid

Rs. 28.50

Rs. 28.50

20. By the aforesaid impugned memo dated September 25, 2007 the Government came to a decision that the rates can be quoted above the estimated costs. By the impugned memo the Government decided to divide the rates of cooked food into two types, one for Kolkata and KMDA area and another for other than Kolkata and KMDA area.

21. It submitted on behalf of the petitioners that the Government policy in floating the tender for supplying cooked food to two different Government Hospitals in the state of West Bengal is not under challenge. The subject-matter of challenge is not the policy of fixation of rate by the Government for supplying the above cooked food. According to the petitioners the previous rate was Rs. 28.50 for any area in the State of West Bengal. In terms of clause 7(b) any bid that

offers to supply cooked diet at a rate lower than 15% of the fixed rate should be rejected. So, the intending tenders are in a position to quote the rate up to 15% lower than the fixed rate. In that event the intending suppliers will be in a position to quote their rates for B, C and D category at Rs. 31.79 for Kolkata and KMDA area and Rs. 30.01 for other than Kolkata and KMDA area. So, there is an increase of a meager amount in the rate for supplying the cooked diet to the patients of those Hospitals. It is further submitted on behalf of the petitioner that in case of supply of "EU and FF" category of diet the intending suppliers will be in a position to quote the rate at Rs. 26.44 for Kolkata and KMDA area and Rs. 24.48 for other than Kolkata and KMDA areas respectively. Therefore, in the garb of revising the rates of supply of cooked diet for the indoor patients in different hospitals of the State Government those rates have been decreased virtually. Drawing the attention of this court towards the order dated March 29, 2007 passed in connecting with earlier three writ petitions being W.P.5971(W) of 2007, W.P.9576(W) 2007 and W.P. 6076(W) of 2007, it is submitted on behalf of the petitioners that rate fixed for supplying of cooked diet in the year 2002 asking the contractors to provide three square mills for adult patients @ Rs. 28.50 was unrealistic and impracticable for anyone in catering business to provide quality food at such abnormally low rate. Thereafter, the respondent authority took a decision to review the above rate but the outcome of the review runs counters to the object sought to be achieved. It is also submitted on behalf of the petitioners that in recommending the rates for supply of cooked diet the Government took into consideration the prices of different uncooked materials for the period four months only. The variation of prices of uncooked food for at least one year was not taken into consideration. It is further submitted that the rates of vegetable etc. for four districts only were taken into consideration in fixing the rate of cooked diet. The rates of vegetable etc, in other districts were not taken into consideration. It is also submitted on behalf of the petitioners that though it has been mentioned in the affidavits (paragraph 4(b) at page 4 to the affidavit-in-opposition affirmed on behalf of the respondent No. 1) that the rates of both categories of areas were obtained from the Agricultural Marketing Department, Government of West Bengal, no such document is produced before the court in support thereof.

22. On the other hand it is submitted on behalf of the state respondents that supply of cooked food to the indoor patients of the Government Hospitals is a part of the policy of the Government by the impugned memo dated September 25, 2007 the rates have been fixed obtaining opinion from the experts. The rates quoted for Kolkata and KMDA areas and other than Kolkata and KMDA area are the outcome of the opinion of those experts. Drawing the attention of this court towards the condition mentioned in Clause 7(b) of the impugned memo dated September 25, 2007, it is submitted on behalf of the State respondent that in order to ensure quality diet to the indoor patients of the Government Hospitals quoting of lower rate has been restricted to maximum 15% less of the scheduled price. With regard to the fixing different rates for Kolkata and KMDA area and

other than Kolkata and KMDA area it is submitted on behalf of the respondents that the prices of same food articles differ depending upon their availability in the local market as also depending upon the variation of transportation charges. Therefore, it is submitted on behalf of the State respondents that in the interest of the patients of the Government hospitals the rates of cooked food have been revised which are quite justified.

23. I have heard the Learned Counsels appearing for the respective parties and I have considered the facts and circumstances of the case. Pursuant to the direction of this court the records relating to fixating of prices under the impugned memo dated September 25, 2007 have been produced before this court. In order to, examine the decision making process of determining the prices I have given my anxious consideration to all the aforesaid aspects of the matter.

24. It is settled principles of law that there hardly any scope for the court to interfere into any government policy but it is equally true that it is always open for the court to examine the decision making process of fixing the price on the basis of the government policy, i.e. an administrative function of the government. The same can be the subject-matter of scrutiny of a court so far the decision making process is concerned.

25. It is an admitted position that for the first time the Government decided to divide the rates of cooked diet into two types, one for Kolkata and KMDA area and another for other than the Kolkata and KMDA area. Be that as it may, it is the case of the state respondents that the rates for the aforesaid two areas have been fixed on the basis of the review committee taking into consideration the rates of different categories of food based on wholesale market prices provided by the Directorate of Agricultural Marketing, Government of West Bengal and on the basis of the rates collected through market enquiries. But no materials is produced before this court on behalf of the State respondents to show that the wholesale market prices provided by the Directorate of Agricultural Marketing, Government of West Bengal is taken into consideration by the review committee for the purpose of recommending the rates of cooked diet under reference. However, it appears from the relevant records produced before the court that the rates of different diet materials collected from the districts of Kolkata, Jalpaiguri, Burdwan and Paschim Midnapore have been taken into consideration by the review committee for the purpose of making recommendations. It is also an admitted position that rates of different materials in the aforesaid four districts for the period from January 1, 2006 to May 31, 2007 were taken into consideration. It is also not in dispute that the purpose behind the revision of rates of cooked diet for supply to the indoor patients of different Hospitals in the State was to ensure supply of quality food to those patients keeping in mind the current price of the same.

26. In doing so the Government allowed the intending suppliers to quote minimum prices of cooked diet to be supplied to the indoor patients in different

Hospitals in the State as follows:

Category

Kolkata and KMDA

Other than Kolkata and

KMDA Area

BC

Revised rate Rs. 37.40

Revised rate Rs. 35.30

Less 15% = Rs. 31.79

Less 15% = Rs. 30.01

D

Revised rate Rs. 28.50

Revised rate Rs. 28.50

Less 15% = Rs. 24.22

Less 15% = Rs. 24.22

U

Revised rate Rs. 31.10

Revised rate Rs. 28.80

Less 15% = Rs. 26.44

Less 15% = Rs. 24.48

FF

Revised rate Rs. 28.50

Less 15% = Rs. 24.22

27. Therefore, the intending suppliers are allowed to quote their rates which are even lesser than the previous rates of 2002 in respect of D, U and FF categories of diet. While in cases of BC the intending suppliers are allowed to quote minimum rates at a little higher rate than that of previous rate of 2002.

28. From the records relating to the recommendation of the review committee it is revealed that the rates of different diet articles have been taken into consideration for only four districts. No reason is assigned for ignoring the rates of diet articles in other districts.

29. When a patient is admitted in a Hospital for treatment of any disease, quality

of diet is as essential for his recovery as drugs and medicines are. Therefore, maintenance of quality of food is one of the important criteria for the purpose of taking care of health of an indoor patient of any Hospital. This court cannot ignore the fact of rise of prices of every commodity and particularly current market prices of food staff required to be supplied by the intending suppliers to different Hospitals of the State Government. Therefore, taking into consideration the revised price fixed by the impugned memo dated September 25, 2007 as also the minimum rates thereof taking into consideration the conditions of clause 7(b) of the above memo this court has no hesitation to hold that, the decision making process followed by the respondent authority cannot be sustained in law. The intending suppliers will be compelled to enter into an unhealthy competition compromising with the quality and quantity of the diet to be supplied to the indoor patients of different Hospitals of the State Government in response to impugned memo dated September 25, 2007 at abnormally low rate.

30. Decision making process of the respondent authorities in fixing different rates for supply of diet to the indoor patients of different hospitals of the State in terms of memo dated September 25, 2007 cannot be sustained in law in view of the fact that it is revealed from the records produced before the court that the report of the Directorate of Agricultural Marketing, Government of West Bengal was not taken into consideration in fixing those rates.

31. In view of the aforesaid discussion I have no hesitation to say that the impugned memo No. HF/O/MS/552/W-45/07 dated September 25, 2007 is liable to be set aside keeping in mind the interest of the public at large and in particular keeping in mind the question of quality of diet to be supplied to the indoor patients of the Government Hospitals in the State. The impugned memo No. HF/O/MS/552/W-45/07 dated September 25, 2007 is therefore, quashed and set aside. However, this will not prevent the state respondents to issue tender notice afresh inviting the intending suppliers to supply cooked diet to the indoor patients of different Hospitals of the State Government after determining the prices of different categories of such cooked diet keeping in mind the quality and quantity of such diet in the greater interest of the indoor patients as also to avoid unhealthy competition among the intending suppliers.

32. The writ application is thus disposed of.

33. There will be, however, no order as to costs.

34. Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.