

(2025) 05 OHC CK 1236

In the Orissa High Court

Case No : Writ Petition (C) No. 19269 Of 2019

Trinath Shakti Group (SHG), Bhadrak

APPELLANT

Vs

State Of Odisha Vs

RESPONDENT

Date of Decision : 06-05-2025

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2025) 05 OHC CK 1236

Hon'ble Judges : V. Narasingh, J

Bench : Single Bench

Advocate : S.K. Mishra, S.P. Das, S. Mishra

Final Decision : Disposed Of

Judgement

V. Narasingh, J

1. Heard learned counsel for the Petitioner and learned counsel for the Opposite Parties.

2. The present Writ Petition has been filed assailing the letter dated 20.09.2019 issued by the Collector, Bhadrak under Annexure-5 as well as the enquiry report dated 10.09.2019 of the District Level Team headed by the Tahasildar, Chandabali under Annexure-4 by not allowing the Petitioner (SHG) to continue service of preparation and supply of THR (Chhatua) under SNP Feeding Programme.

3. It is the case of the Petitioner that he was entrusted with the work as supplier as SHG to undertake the supply of THR Chhatua for Chandabali Block.

The Petitioner had unblemished record since the date of such entrustment from 2011 and since the programme in question was an early one, in terms of the prevailing guidelines, it is agreed at the Bar that the same was renewed every year.

4. It is submitted by the learned counsel that lastly in the year 2018 there was

an agreement which was entered into between the Government of Odisha to provide THR under SNP through WSHG for pregnant and lactating women and the period of agreement was from 28.09.2018 to 27.06.2019. The said agreement is on record at Annexure-2.

5. It is the submission of the learned Senior Counsel, Mr. Mishra that in view of the unblemished record of the Petitioner, it was looking forward to renewal. Learned Senior Counsel also refers to the policy of the Government which inter alia indicate that "the Collectors are to take the final decision on renewal of contract after a period of one year without waiting for formal communication from the Government in the matter".

6. It is submitted that when the matter stood thus and the Petitioner was legitimately looking forward to renewal suddenly he received the communication at Annexure-5 by which the Collector had directed the CDPO, Tihidi of Chandabali-I & II and Dhamnagar ICDS Project for selection of new WSHGs in place of rescinding WSHGs under SNP within a period of extension of two months and assailing the same, the Petitioner is before this Court and the present lis is concerned with Chandabali-II, Trinath Shakti WSHG, Orasahi.

7. It is submitted by the learned Senior Counsel, Mr. Mishra for the Petitioner that on a bare perusal of the impugned order at Annexure-5, it is seen that the same has been passed on the decision of the District Appraisal Committee and the findings of the District Appraisal Committee are at Annexure-4.

8. Referring to the performance Appraisal Report at Annexure-4, which is the basis of issuance of impugned order at Annexure-5, it is submitted that under the heading infrastructure facilities it is mentioned in paragraph-11 clause-vi that Roosting Machine installed and purchased by WSHG (Yes/No) – No (Manually) and so far as maintenance of records under paragraph-12 is concerned, it is stated that the general ledger has not been updated and in this context both the alleged violations on account of infrastructure facilities as well as records maintained by the SHGs at Paragraphs-11 & 12 are extracted hereunder:-

"11. Infrastructure Facilities:-

xxx xxx xxx

vi. Roosting Machine installed and purchased by WSHG (Yes/No) – NO (Mannually).

xxx xxx xxx

12. Records Maintenance By SHG:-

i) Cash Book and Bank A/C updated (yes/No): - Yes

ii) Purchase Register updated (yes/No): -Yes

iii) General Ledger updated (yes/No): - No

iv) Stock register of movable and immovable properties and dead stock: NO

v) Stock Register of raw material updated (yes/No): - Yes

vi) Stock Register of Chhatua prepared updated (yes/No): - Yes

vii) Register of Chhatua Distribution updated (yes/No): - Yes

viii) Monthly meeting proceeding register updated(Yes/No): Yes”

9. It is submitted by the learned Senior Counsel for the Petitioner that even accepting that there was deficiency on the said counts, there is nothing on record to indicate that how that affected the supply which necessitated issuance of the impugned letter at Annexure-5 to engage new SHGs in place of the Petitioner, since the Petitioner has been continuing since 2011 and admittedly there has been no complaint from any quarter.

10. It is the submission of the learned Senior Counsel for the Petitioner that by order dated

11. 10.2019 this Court had directed learned counsel for the State to take instruction and by order dated 19.11.2019 directed that no coercive action shall be taken against the Petitioner till December, 2019 and while passing such order, this Court took note of the submission of the learned State counsel that the license of the Petitioner-SHG for supply of Chhatua has been extended till December 2019.

11. By order dated 09.03.2022, taking into account the submission of the learned counsel for the Petitioner that he has no instruction in the matter, this Court disposed of the writ petition as not pressed and consequentially the interim order stood vacated. Thereafter, on 12.04.2022 in I.A. No.4436 of 2022, the writ petition was restored to file and specific direction was issued that the interim order passed earlier shall continue till the next date.

Hence, it is not disputed at the Bar that the interim order directing that no coercive action to be taken against the Petitioner is still in vogue and in fact a motion has been made by the by the State counsel by filing an application on 28.09.2021 I.A. No.14235 of 2021 for vacation of the interim order.

12. It is the submission of the learned Senior Counsel of the petitioner that the impugned order at Annexure-5 was evidently passed on the basis of the finding at Annexure-4 and admittedly since no opportunity whatsoever was provided notwithstanding the stipulations in the said effect as provided in the guidelines, which is in vogue.

13. The revised guidelines for implementation of Take Home Ration 2018 (Supplementary Nutrition Programme of ICDS and Scheme for Adolescent Girls) is at Annexure-6 and it is agreed at the Bar that the same governs the field.

14. Referring to the contract conditions under the clause 12 of the guidelines more particularly clause-iii thereof, the submission is made that though there is

no dispute that the authorities are vested with powers to take action in case any SHG(s) is found to have deviated from the guidelines but the same ought to be after following "Proper procedure ensuring natural justice should be followed before taking any action". Clause 12(iii) of the said guidelines is extracted hereunder:-

"12. Contract Conditions:-

i. xxxxxxxxxxxxxxxxxxxxxx

iii. In case any SHG (s) is found to have deviated from the guidelines and made Chhatua/ Ladoo that has less protein and calorie than prescribed or has-sold the Chhatua/ Ladoo in the market by misutilizing government money, strictest possible action should be taken against the SHG(s). This would entail termination of the contract, stoppage of micro credit support by the department to the SHG(s). A fine can also be enforced on the 'SHG(s). Proper procedure ensuring natural justice should be followed before taking any action."

15. Hence, it is the submission of the learned Senior Counsel for the Petitioner that since the impugned order entails civil consequences the same ought to have been passed after giving an opportunity to the Petitioner to show cause more so taking into account that it has been continued to supply for more than a decade without any rancour and referring to the counter affidavit more particularly Annexure-A/5 which has already been adverted to hereinabove that the Collectors have been vested with powers for taking decision relating to renewal even without waiting for formal communication from the Government in the matter.

It is his submission that such provision has been consciously provided for taking into account the necessity of providing the nutritious assistance as envisaged under the scheme and this has been done to ensure that there is no break because of administrative red tape.

Hence, it is submitted that the impugned order at Anneuxre-5 is liable to set-aside, the same being not in tune with the guidelines and being in patent violations of principle of natural justice.

16. Such submission is opposed by the learned counsel for the State, Mr. Das as well as learned counsel Mr. Mishra appearing for the Intervener who was allowed to appear in the proceeding in terms of the earlier order dtd. 18.09.2024 passed by this Court.

17. Learned counsel for the State referring to the counter affidavit submits that admittedly contract period had expired and it cannot be said that the Petitioner has any vested right to continue.

18. So far as violation of principle of natural justice, as a matter of principle and as stated in the revised guidelines adverted to hereinabove, it is submitted by the learned counsel for the State that question of violation of natural justice in

the case at hand per se does not arise because admittedly the period of contract has expired and such submission is also reiterated by the learned counsel for the Intervener.

19. Additionally as a legal submission, it is stated by the learned counsel for the State as well as learned counsel for the Intervener that the agreement at Annexure-2 has been executed in terms of the guidelines and referring to the guideline more particularly clause 12 thereof. It is stated Clause 12(i) of the said Guidelines envisages signing of contract and draft contract at Annexure-VII. For convenience of reference the said "contract conditions" are extracted hereunder:-

"xxx xxx xxx

12. Contract Conditions:-

i. A contract should be signed between the CDPO and the SHG(s) laying down the terms and conditions of preparation and supply. Normally, the contract should be for a period of one year only. Draft Contract at Annexure-VII.

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.

iii. In case any SHG (s) is found to have deviated from the guidelines and made Chhatua/ Ladoo that has less protein and calorie than prescribed or has-sold the Chhatua/ Ladoo in the market by misutilizing government money, strictest possible action should be taken against the SHG(s). This would entail termination of the contract, stoppage of micro credit support by the department to the SHG(s). A fine can also be enforced on the 'SHG(s). Proper procedure ensuring natural justice should be followed before taking any action.

xxx xxx xxx"

20. It is apt to note that the learned Senior Counsel for the Petitioner made his submission regarding violations of natural justice inter alia referring to Clause 12(iii) thereof.

21. It is submitted by the learned counsel for the State, Mr. Das referring to the contract conditions that on a bare reading of the same it shows that enough power has been vested in the Collector to assess the performance and thereafter take a decision either to renew or resend and decision in the case at hand having been taken in terms of the contract which admittedly governs the Petitioner and he ought not to make any grievance.

21A. It is his further submission referring to the contract at Annexure-VII attached to the said Guideline (at page-54 of the brief) providing for effective alternative remedy in paragraph-7 thereof under the heading is "Termination of Contract" and the same is extracted hereunder for convenience of reference:-

"xxx xxx xxx

TERMINATION OF CONTRACT

2. Before completion of 1 year, a review of the SWHGS performance shall be made by the Collector after which a decision can be taken to either renew or rescind the contract.

3. In case the SHG fails to comply with any of the terms and conditions of this MOU, it shall be lawful on the part of the appropriate authority to forfeit either in part or in full, the aforesaid security deposit without prejudice to any right or remedy available to him/her under the law.

4. Either party here shall have the liberty to terminate the agreement at any time during the contract period by giving at least one month notice in writing to the other.

5. On termination of the MOU either by expiry of time or by notice as aforesaid, the agencies/WHGs shall deliver to the concern authority, the entire balance foodstuff and prepared THR etc.

6. Any claim of government remaining unpaid by the SHG under operation of this MOU shall be recoverable as a public demand under the public demand recovery Act 1962.

7. If any question or dispute shall at any time arise between the parties here shall be referred to the Collector of the District and appeal shall lie before the Director, Social Welfare or any other authority, as may be prescribed, whose decision shall be final, conclusive and binding on both the parties.

xxx xxx xxx"

21B. Referring to the same, it is submitted by Mr. Das that since the Petitioner has not availed such remedy and has rushed to this Court, the writ petition is not entertainable. Such submission is also supported by the learned counsel for the Intervener.

21C. Learned counsel for the State also draws the attention of this Court to such terms having been incorporated in the agreement which is at page-18 (Annexure-2) more particularly paragraph-6 thereof. The same is extracted hereunder:-

"If any question or dispute shall at any time arise between the parties here shall be referred to the Collector of the District and appeal shall lie before the Director, Social Welfare or any other authority, as may be prescribed, whose decision shall be final, conclusive and binding on both the parties."

22. Per contra, learned Senior Counsel for the Petitioner submits that it is trite that availability of alternative remedy ought not to deter this Court from exercising its plenary powers and it is also his further submission that in the case at hand since patent violation of principle of natural justice and as that has been held to be one of the exception for invoking the writ jurisdiction notwithstanding

alternative remedy the submission that, this Court should not entertain this application as advanced by the learned counsel for the State is untenable.

23. It is his further submission that since the matter is pending in this Court since 2019, at this stage, the submission of the learned counsel for the State that the writ petition is not maintainable on the ground of availability of alternative remedy ought not be entertained.

24. There is no cavil about the proposition of law as advanced by the learned Senior Counsel for the Petitioner. One of the leading decisions in this regard is the judgment of the Apex Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and ors., reported in (1998) 8 SCC 1. So this Court is required to answer as to whether because of pendency of the writ petition in the face of effective remedy as envisaged in the guidelines which admittedly governed the parties and on the basis of which the contract has been entered into can be given the go by.

25. No precedent has been placed on record to indicate that because the writ petition was entertained that disentitles this Court from examining the issue of maintainability and in that respect the legal submission as advanced by the learned counsel for the State in the considered view of this Court cannot be negated.

26. The issue has to be examined since admittedly by virtue of Annexure-4, the impugned order at Annexure-5 was passed and in the interregnum almost 6 years have elapsed and it is submitted with vehemence by the learned Senior Counsel Mr. Mishra that during all these years when the matter was pending in this Court the Petitioner was continuing with the supply and in terms of the guidelines there was no complaint of deficiency.

27. But at the same time, this Court cannot be oblivious of the fact that both the guidelines as well as the contract which was entered into between the parties has an effective alternative mechanism. Hence, balancing equity inter se between the parties, this Court directs that the Petitioner shall prefer an appeal to the Director, ICDS and SW, Odisha-Opposite Party No.2 within a period of six weeks hence along with this judgment. The said Opposite Party No.2 shall take a decision thereon within a further period of six weeks after giving opportunity of hearing to both the Petitioner as well as other stake holders and till the Opposite Party No.2 takes a decision, keeping in view the welfare of the end users status quo as on date regarding supply relating to take home ration Chhatua in Chandabali-II ICDS shall continue.

28. The writ petition is accordingly disposed of.

29. In view of disposal of writ petition, pending I.As., if any stand disposed of.

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