Ekta Shakti Foundation vs Govt. Of Nct Of Delhi on 17 July, 2006

Equivalent citations: AIR 2006 SUPREME COURT 2609, 2006 (10) SCC 337, 2006 AIR SCW 3601, 2006 (7) SCALE 179, (2006) 45 ALLINDCAS 668 (SC), 2006 (45) ALLINDCAS 668, (2007) 1 ALL WC 91, 2006 (8) SRJ 393, (2006) 6 SUPREME 372, (2006) 7 SCALE 179, (2006) 4 MAD LW 864, (2006) 64 ALL LR 907, (2006) 3 KER LT 601, (2006) 131 DLT 287

Author: Arijit Pasayat

Bench: Arijit Pasayat, C.K. Thakker

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           CASE NO.:
Writ Petition (civil)  232 of 2006

PETITIONER:
Ekta Shakti Foundation

RESPONDENT:
Govt. of NCT of Delhi

DATE OF JUDGMENT: 17/07/2006

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
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J U D G M E N T With W.P.(C) No. 233/2006 and W.P. (C) No. 234/2006 ARIJIT PASAYAT, J.

These three writ petitions, filed under Article 32 of the Constitution of India, 1950 (in short the 'Constitution'), question legality of certain terms in inviting offers for implementation of the scheme called the "Detailed Scheme for Capacity Building of Self Help Groups to Prepare and Supply Supplementary Nutrition under the Integrated Child Development Service (in short the 'ICDS') Programme."

By order dated 7.10.2004 in Writ Petition (C) No. 196 of 2001 (People's Union for Liberties v. Union of India and Others) this Court observed as under :-

> "We have gone through the fifth (August, 2004) report of the Commissioners x x x.

Further, the problem of using contractors for procurement has also been mentioned in the report suggesting that it should be done by agencies and officers at the government level."

The following directions were issued:

> "The contractors shall not be used for supply of nutrition in Anganwadis and preferably ICDS funds shall be spent by making use of village communities, self-help groups and Mahila Mandals for buying of grains and preparation of meals."

ICDS is perhaps the largest of all the food and supplementation programmes in the world which was initiated in the year 1975 with various objectives as per the document prepared by the Planning Commission. It was also noted by this Court that there was a problem in using contractors for procurement and in the report of the Commissioners it was suggested that it should be done by agencies and officers at the Government level. In that context, it was noted by this Court as follows:

> "The Report also mentions that some of AWCS are operating from private houses including those of grain dealers which it is suggested is not a healthy way of working as it is likely to increase the chances of pilferage of the grain etc. We are happy to note that as stated in the affidavit of State of Uttar Pradesh, it has made efforts to shift AWCS to primary schools. It is a good example for other States to follow. The Report also mentions about the attempt to centralize the procurements in some of the States which has many fallouts. It has been explained in one of the affidavit that the procurements is at district level and not at the State level. Further, the problem of using contractors for procurement has also been mentioned in the Report suggesting that it should be done by agencies and officers at the Government level. These are only by way of illustrations as to facts and figures given in Section 1 of the Report relating to Integrated Child Development Services."

In accordance with this Court's order the Delhi Government framed a detailed scheme. The objective as appears from the scheme is involvement of Self Help Groups (in short the 'SHGs'). The Scheme envisaged that within 27 months SHGs would be framed and would completely take over the running of the Anganwadis from the NGOs. Keeping in view the observations made by this Court about the elimination of the contractors it was stipulated that registered non-profit organizations with at least 3 years experience were eligible to apply. Accordingly an advertisement titled "ICDS Expression of Interest" was placed in newspapers.

Writ petitioners question the rational of the stipulation regarding three years experience of working as a non profit organization or public trust registered under the Indian Societies Registration Act, 1860 (in short the 'Societies Act'/'Public Trust Act'). According to them, this condition does not in any way further the objectives and on the other hand keeps out genuine organizations. It is pointed out that though the writ petitioners were registered less than three years back, their functionaries have varied experience for long period. Prayer is made for a declaration that the three years period stipulated is irrational, contrary to the objects of the scheme and should be declared to be invalid. The eligibility criteria according to them should be on the basis of actual experience of the persons who are in charge of the legal entities and not the time period of three years as a registered entity. It is submitted that the three writ petitioners have taken various projects and have wide experience and to keep them out would be giving premium to inexperience.

Per contra, learned counsel for the Government of NCT of Delhi, submitted that the Government set up a committee of experts consisting not only of senior Government officials but also other experts such as a representatives from the Nutrition Department of Lady Irwin College, a representative of Care India, one of most reputed NGOs. and a representative of the Commissioner who was appointed by this Court in the PUCL case. The Committee scrutinize the applications (117 in number) and short listed 60 entities and out of them 9 have been selected and out of them in the case of one enquiry is being conducted to verify the credentials. Committee was of the view that the three writ petitioners have not been registered for a period of three years and, therefore, were ineligible. Writ petitioners have raised a grievance that even though they have not registered for 3 years, the experience of such individuals connected with the organization should be treated as experience of the organization. The Committee examined this plea and noted as follows:

> "It was pointed to the Committee that some NPOs were questioning their ineligibility on the grounds that they had more than three years experience even if they were registered as society/trust for less than three years. The Committee confirming the criteria that no NPO which had been registered as a society for less than three years could be considered under the scheme since the experience which the said organization could have had as an unregistered organization could not be counted for the purpose of this scheme and that any relaxation of this account could lead to back-door entry of contractors who may have got themselves registered as NGO recently only to gain entry into such schemes without have social objectives of women empowerment as the actual perspective for their work."

It has been indicated in the counter affidavit filed that the writ petitioners have not come with clean hands. They are catering contractors having their own commercial interest and are now trying to take up the project in the garb of NGO. Many erstwhile contractors who have now been barred by this Court's order from entering ICG programme have registered themselves as NGO entities to overreach the order of this Court. The writ petitioners, it is to be noted, had approached the Delhi High Court. The writ petitions were dismissed as withdrawn in view of submissions made that this Court shall be approached.

The eligibility criteria which form the subject matter of challenge read as follows:

> "Must be a non-profit organization or public trust registered under the Indian Societies Registration Act, 1860/ Public Trust Act.
>
> At least 3 years experience of working in a relevant field such as Child Development, Nutrition, Formation of SHGs, Supplementary Nutrition, Home Counseling, Nutrition Counseling, Pre-School Activities and women empowerment related works."

At this juncture we may take note of a submission by learned counsel for the writ petitioners. It was submitted that the writ petitioners were registered before this Court's order and therefore, it cannot be said that they had registered only to overreach this Court's order. It is pointed out by learned

counsel for the respondent that the PUCL case was being heard for a long time, and various details were being called for. The intention of this Court to keep contractors out of the picture was clearly evident. Ekta Shakti Foundation (Writ Petition No. 232 of 2006) was registered on 21.11.2003, Surya Society (Writ Petition No. 233 of 2006) was registered on 5.12.2003 and Jay Gee Society (Writ Petition No. 234 of 2006) was registered on 25.3.2004.

While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See Ashif Hamid v. State of J. & K. (AIR 1989 SC 1899), Shri Sitaram Sugar Co. v. Union of India (AIR 1990 SC 1277). The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere.

The correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation.

The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government. The Court should constantly remind itself of what the Supreme Court of the United States said in Metropolis Theatre Company v. City of Chicago (1912) 57 L Ed 730. "The problems of Government are practical ones and may justify, if they do not require, rough accommodations, illogical it may be, and unscientific. But even such criticism should not be hastily expressed. What is the best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. [See: State of Orissa and others v. Gopinath Dash and Others (2005) 13 SCC 495].

It was submitted that in some other cases, a departure has been made. No definite material has been placed in that regard. In any event, Article 14 has no application or justification to legitimize an illegal and illegitimate action. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to deny the similar benefit. The rational relationship and legal back up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some person derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead nor court can countenance that benefit had from infraction of law and must be allowed to be retained. Can one illegality be

compounded by permitting similar illegal or illegitimate or ultra vires acts? Answer is obviously no. In Coromandel Fertilizers Ltd. v. Union of India and Ors., [(1984) Supp SCC 457], it was held in paragraph 13, that wrong decision in favour of any party does not entitle any other party to claim the benefit on the basis of the wrong decision. In that case, one of the items was excluded from the schedule, by wrong decision, from its purview. It was contended that authorities could not deny benefit to the appellant, since he stood on the same footing with excluded company. Article 14, therefore, was pressed into service. This Court had held that even if the grievance of the appellant was well founded, it did not entitle the appellant to claim the benefit of the notification. A wrong decision in favour of any particular party does not entitle another party to claim the benefit on the basis of the wrong decision. Therefore, the claim for exemption on the anvil of Article 14 was rejected. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order could not be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality to cause another unwarranted order. The extraordinary and discretionary power of the High Court under Article 226 cannot be exercised for such a purpose. [See :

> Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain and Others [(1997) 1 SCC 35].
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> The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals other cannot claim the same illegality or irregularity on ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits. In this regard this Court in Gursharan Singh & Ors. v. NDMC & Ors. [1996 (2) SCC 459] held that citizens have assumed wrong notions regarding the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article14 of the Constitution by way of writ petition filed in the High Court. The Court observed:
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> "Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination."

In Jaipur Development Authority's case (supra) this Court considered the scope of Article 14 of the Constitution and reiterated its earlier position regarding the concept of equality holding:

> "Suffice it to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities. Thus considered, we hold that the High Court was clearly in error in directing the appellants to allot the land to the respondents."

In State of Haryana & Ors. v. Ram Kumar Mann [1997 (3) SCC 321] this Court observed:

> "The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them, i.e., benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing mis-appropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similarly Circumstanced person claim equality under Section 14 for Reinstatement? The answer is obviously "No".

In a converse case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right". [See : State of Bihar and others v. Kameshwar Prasad Singh and Another [(2000) 9 SCC 94].

So far as the allotment to non-eligible societies is concerned even if it is accepted, though specifically denied by the Authority, to be true that does not confer any right on the appellants. Two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters, there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the appellant cannot strengthen its case. It has to establish strength of its case on some other basis and not by claiming negative equality. (See Union of India v. International Trading Co. [(2003) 5 SCC 437].

It is not the case of the petitioners that with any oblique motive the eligibility criteria has been stipulated. On the contrary after analyzing the issues, a Committee appointed by the respondent had

suggested the norms and the schemes was accordingly prepared. We do not find any irrationality much less something which is totally out of context to justify interference.

Clause 4 of the Scheme (Broad Description of Proposed arrangement) indicates that in order to implement this Court's order there was desirability to discourage contractors and involve SSG through non-profit organisations. As the scheme itself provides, the intention is to make the SSGs. fully equipped within a certain period after these NGOs. go out of the picture and State Government steps in.

In the aforesaid background we do not find anything illicit in the impugned criteria to warrant interference.

The writ petitions fail and are, therefore, dismissed. No costs.