

Krupajala Self Help Group vs State Of Odisha & Others on 24 June, 2024

IN THE HIGH COURT OF ORISSA, CUTTACK

W.P.(C) No.20670 of 2023

Krupajala Self Help Group Petitioner

-Versus-

State of Odisha & others Opposite Parties

For Petitioner : Mr.S.K. Mishra, Senior Advocate
and Mr. J.Pradhan, Advocate

For Opp. Parties : Mr. T.K. Biswal, A.G.A.
(for O. P. Nos. 1 to 6)
Mr. B.P. Das, Advocate
(for O.P. No. 7)
Mr. S. Dash, Advocate
(for O.P. No.8)

CORAM: JUSTICE SANJAY KUMAR MISHRA

Date of Hearing: 21.05.2024 Date Judgment: 24.06.2024

S.K. MISHRA, J.

1. The Writ Petition has been preferred by the Petitioner for quashing of the letters dated 26.05.2023 and dated 19.06.2023 under Annexure-11 series and Agreements dated 30.05.2023 under Annexure-12 series selecting the Opposite Party Nos.7 & 8 for preparation and supply of Take Home Ration (THR) for Balasore Municipality ICDS Project for the Financial Year 2023-24 alleging the same to be in violation of the provisions of Operational/Revised Guidelines, 2018 issued by Women and Child Development Department and Mission Shakti, Government of Odisha i.e. Opposite Party No.1, so also the direction issued by this Court vide order dated 09.03.2023 passed in W.P.(C) No. 36226 of 2022.

2. The brief facts, which led to filing of the case, are that the Petitioner-Organization is an experienced Self-Help Group (SHG), which has been working under the ICDS since the year 2011, engaged in preparation and distribution of (THR) Chhatua with year wise contract as per Clause 12 (i) of the contract conditions of the Revised Guidelines and quality parameters provided under

Clause (11) of Revised Guidelines for implementation of THR.

3. As per the Reports submitted by the State Food Testing Laboratory dated 06.12.2021, 22.12.2021, 28.12.2021 & 18.02.2022, the Chhatua prepared by the Petitioner-SHG also found to be satisfactory with regard to the eligibility criteria, hygienic condition as well as maintaining the book keeping unit. Despite same, the District Social Welfare Officer (DSWO) i.e. Opposite Party no.4, disengaged the Petitioner's SHG vide letter no. 1345/SW dated 01.06.2022 and issued engagement letter in favour of another SHG namely, Maa Banabibi. Being aggrieved, the Petitioner preferred W.P. (C) No. 15076 of 2022 before this Court, which was disposed of as withdrawn and liberty was given to the Petitioner to approach the appropriate forum. Thereafter, the Petitioner moved before the District Magistrate, Balasore, in Misc. Case No.43/2022, which was dismissed on 02.09.2022. Being aggrieved by the same, the Petitioner preferred W.P. (C) No. 26948 of 2022 before this Court and the same was disposed of with a direction to the Petitioner to approach the appropriate authorities for re-consideration of its intention to work.

4. While the matter stood thus, a fresh notification for selection of SHG under Supplementary Nutrition Programme (SNP) was issued by the Collector-Cum-District Magistrate, Balasore, (Opposite Party No.2) on 02.09.2022, in which 10 SHGs participated in the process. Out of the same, only 3 SHGs namely, the Petitioner- S.H.G, Jai Maa Durga SHG (Opposite Party No. 7) and Maa Durga SHG (Opposite Party no.8) have been short listed. When the result of the said notification was not published, on 25.11.2022, the Petitioner applied under RTI Act requesting to provide the information regarding the decision of the District Level Committee. Vide letter No.3186 dated 12.12.2022, the Petitioner was supplied with the information regarding the result of the said notification dated 02.09.2022, from which the Petitioner came to know about letter No.3050 dated 24.11.2022 of the DSWO, Balasore, informing the CDPO, Balasore, about the selection of Opposite Party Nos.7 and 8 SHGs for preparation and supply of THR under SNP Balasore Municipality Project till 31.03.2023. Being aggrieved, the Petitioner moved before the Collector-Cum-District Magistrate, Balasore, for re-consideration of the application for selection of SHG on 17.12.2022. Since no action was taken by the Authority, W.P. (C) No. 36226 of 2022 was preferred by the Petitioner. Vide order dated 10.02.2023, this Court directed the State to be restrained from procuring THR from Opposite Party Nos. 7 & 8 for the period till ending on 31.03.2023. Thereafter, the Writ Petition was disposed of vide order dated 09.03.2023 with a direction that for the ensuing period, the Petitioner and the Opposite Party Nos.7 & 8 are to be selected as suppliers and to be dealt in a transparent and fair manner. Pursuant to the disposal of the said Writ Petition, the Opposite Party No.7 & 8 were permitted to take up the THR for Balasore Municipality ICDS Project till 31.03.2023, for which a Contempt Petition was also filed by the Petitioner vide CONTC No. 1964 of 2023, which is pending for disposal.

5. It is further case of the Petitioner that on 03.04.2023 an advertisement was published by the Child Development Project Officer (CDPO), Balasore Municipality (Opposite Party No.5), for preparation and supply of THR under SNP fixing the stipulation for filing of application by 18.04.2023 till 11 A.M. The Petitioner-SHG submitted its application on 17.04.2023 on a bonafide impression that the order of this Court dated 09.03.2023 passed in W.P. (C) No. 36226 of 2022 will be implemented. The Opposite Party No.5 fixed the date to 28.04.2023 and 29.04.2023 for squad

visit for selection of the THR Unit for the year 2023-24. The squad visited the premises of the Petitioner on 28.04.2023. Since the copy of the squad visit Report was not supplied to the Petitioner, the Secretary of the Petitioner- S.H.G, namely, Kavita Saho applied under the RTI Act on 03.05.2023 for providing a copy of the same. On perusal of the said Report, the Petitioner noticed that it has been awarded 2.5 marks out of 5 under the heading 'Infrastructure' in Column No.12, though till the last squad visit the Petitioner-SHG was being awarded full mark. Also, in Column No.13 regarding sanitation and hygiene, the Petitioner-S.H.G was not awarded any mark. Being aggrieved, the Petitioner-S.H.G gave a representation to the Collector on 03.05.2023 bringing to his notice the partial and unfair manner in which the Petitioner-SHG has been dealt with.

6. While the matter stood thus, the Petitioner-S.H.G found that on 25.05.2023 the District Level Committee has finalised the selection process by selecting the Opposite Party Nos.7 & 8 thereby, rejecting the application of the present Petitioner for preparation and supply of Chhatua (THR). Since the Petitioner was not supplied with any information regarding the proceedings of the meeting dated 25.05.2023 and 26.05.2023, he applied under RTI Act to provide the same. Thereafter, the Petitioner was supplied with the information vide letter dated 19.06.2023 regarding appointment of Opposite Party Nos.7 & 8 by the District Level Committee vide Letter No.1395/sw dated 26.05.2023, as at Annexure-11 series so also copy of the agreement executed by the State-Opposite Party Nos. 2 to 5 with the Opposite Party Nos.7 & 8 on 30.05.2023, as at Annexure-12 series. After receiving the relevant documents, the present Writ Petition has been preferred by the Petitioner.

7. Opposing to the prayer made in the Writ Petition, the State-Opposite Party Nos. 2 to 5 have filed a Counter Affidavit denying the stand of the Petitioner in the Writ Petition stating therein that the notification for selection of SHGs for preparation and distribution of THR was published soon after the expiry of terms of the Petitioner-SHG in respect of Balasore Municipality area.

8. It is the stand of the State-Opposite Party Nos. 2 to 5 that there is no such provision in the Revised Guidelines, 2018 to allow any special preference to the SHG so selected during the previous year. It is also the stand of the State-Opposite Parties that the machineries, which find place in the relevant agreement executed in between the concerned parties for the said period, are to be installed basing on the quantity and quality required, besides hygienic position, for which the claims of the Petitioner regarding installation of sophisticated machineries and maintenance of hygiene conditions for its selection for the year 2023-24, do not have any force.

9. Further, it is the stand of the state-Opposite Parties that satisfying the eligibility criteria, hygienic condition, maintenance of books of accounts by the Petitioner-SHG as well as the Report of State Testing Laboratory are relating to the activities of the Petitioner- SHG for the years 2020-21 & 2021-22. Thus, it cannot be guaranteed that the Petitioner-SHG would maintain the same track record in future also.

10. It is further stand of the State that after due consideration of the activities of the Petitioner-SHG and Maa Bana Bibi SHG, the competent Authority, in consonance with the provisions of Revised Guidelines, 2018, where there is no such provision for affording opportunity of hearing to a contesting SHG, disengaged the Petitioner SHG and engaged Maa Bana Bibi SHG. Further, the

Collector and District Magistrate, Balasore i.e. Opposite Party No.2, has also complied with the directions of this Court passed in W.P.(C) No. 15076 of 2022 as well as W.P.(C) No.26948 of 2022, as a result of which, the procedure for selection of SHG for that purpose for the year 2023-24 has been taken up giving opportunity to the Petitioner to participate in the said process. Further, the squad has no reason to be partial towards the Petitioner. Rather, they have awarded 2.5 marks out of 5 to the Petitioner-SHG after examining the condition of the building and regarding the sanitation and hygiene, the squad has commented as 'not satisfactory' and awarded no mark.

11. A Counter Affidavit has also been filed by the private Opposite Party No.7 taking a stand therein that the Petitioner-SHG was engaged in distribution of THR under Balasore Municipality ICDS Project since 19.08.2022 and was disengaged from the THR assignment by the DSWO, Balasore, vide letter No.1340 dated 01.06.2022 on the ground of irregularities of the Petitioner-SHG on sanitation and hygiene condition so also non-production of record and register to the District Level Visitors and Supervising Officers etc. and the said disengagement order was also challenged in W.P.(C) No.17739 of 2022, which is still sub-judice.

12. It is further stand of the Opposite Party No.7 that it was selected for distribution of THR Units in Ward No.1 to 16 w.e.f. 24.11.2022 to 31.03.2023. Accordingly, it was assigned for the same by execution of an Agreement between the Opposite Party No.7 SHG and the CDPO, Municipality, Balasore on 25.11.2022. Further, the reason for non-selection of the Petitioner-SHG has been reflected in proceeding dated 23.11.2022 of the District Level Committee Meeting. The Opposite Party No.7 was also intimated by the CDPO, Municipality, Balasore vide letter dated 24.11.2022 regarding submission of agreement paper, security deposit and members details.

13. A stand has also been taken by the Opposite Party No.7 that as per the Operational Guidelines (Revised Guidelines, 2018), the manufacturing units of SHGs should be located within the assigned ICDS Project area / GP area. Hence, the Petitioner cannot claim for renewal of its contract as a matter of right and equity. Further, the District Authority has also disbursed the bill amount in favour of Opposite Party No.7 SHG Unit for the period January, 2023 to February, 2023. It is also the stand of Opposite Party No.7 that due to wrong submission and misrepresentation of facts before this Court, an adverse order was passed in WP.(C) No. 36226 of 2022, vide order dated 12.01.2023. On the basis of the said order, the CDPO, Municipality, Balasore, vide letter dated 20.02.2023 restrained the Opposite Party No.7 from procuring THR till further order of this Court and due to non-procurement of THR by the Opposite Party No.7 SHG, the distribution system has become jeopardized resulting in deprivation of children from getting the food.

14. It is also the stand of Opposite Party No.7 that in reference to Advertisement No.373 dated 03.04.2023, the Opposite Party Nos.7 & 8 were found eligible and got selected by the DSWO, Balasore, for preparation and distribution of THR Units under Balasore Municipality ICDS Project for the period 2023-24, vide letter dated 26.05.2023.

15. Further, a Counter Affidavit has also been filed by the private Opposite Party No.8 opposing to the averments so also prayer made by the Petitioner in the Writ Petition, reiterating the stand taken by the Opposite Party No.7.

16. In response to the Counter filed by the State Opposite Party Nos.2 to 5, the Petitioner has also filed a Rejoinder stating therein that the term "expiry" has not been defined in the Revised Guidelines for implementation of THR, 2018. As per Point-12 of the said Guidelines, a contract was signed between the CDPO and concerned SHG regarding the terms and conditions of preparation and supply of THR Units. Normally, the contract should be in force for one year. But before the end of one year, a review is to be made over the performance of the concerned SHG by the Collector and if the performance is found to be satisfactory, the contract is to be renewed. In case any deviation is found from the Guidelines or the THR is found to be substandard, the contract is to be rescinded.

17. It has also been stated in the Rejoinder that as per Clause 7 of the Revised Guidelines, a single SHG is to be selected for supply of the THR under ICDS Project and if that is not feasible, maximum two SHGs may be selected by the Collector. However, in the present case, the Opposite Party Nos. 2 to 5, without following due procedure, have arbitrarily published the new notification for selection of SHG for supply of THR under ICDS Project Municipality, Balasore, failing to consider the fact that the present Petitioner-SHG has single handedly supplied THR under ICDS Project since 2011.

18. Further, it has been stated in the Rejoinder that as per the norms and notification as well as a mandatory column in check list format, it is obligatory for the concerned SHG to have its own machinery for roasting, grinding, drying of the THR. However, the Opposite Party Nos.7 & 8 have not owned machineries as per the requirement of the Revised Guidelines. Thus, the Opposite Party Nos.7 & 8 should be disqualified.

19. Mr. Mishra, learned Senior Counsel for the Petitioner submitted that the Opposite Party Nos.7 & 8 have disqualifications and there are material suppression of facts and the authorities also willfully supported such acts of the Opposite Party Nos.7 & 8.

20. It is pertinent to mention here that the coordinate Bench, vide order dated 17.08.2023, directed the State-Opposite Parties to transmit the concerned record for production before the Court. On being so directed, the learned State Counsel produced the same on 01.09.2023. On being so produced, an order was passed by the coordinate Bench to allow the learned Counsel for the Petitioner to inspect the said record and to take notes and make his submission on the adjourned date.

21. After inspection of the concerned record by the learned Counsel for the Petitioner, an Additional Affidavit has been filed on the plea that the records produced by the State Opposite Party Nos.2 to 5 do not bear all the documents obtained by the Petitioners under the RTI Act. Voluminous documents have been appended to the Additional Affidavit stating therein that the Opposite Party Nos.7 & 8 have disqualifications and there are material suppression of facts and the authorities willfully supported such acts of the Opposite Party Nos.7 &

8.

22. So far as Opposite Party No.7, at column No.10 of the check list format of the District Level Squad on new SHG for selection of THR Unit for the Financial year 2022-2023, the Opposite Party

No.7 was awarded with full mark. Column No.10 of the check list mandates for machineries (ownership documents and photograph of the machine to be enclosed for each machine). On lease basis, the agreement and other documents thereof to be enclosed. But the Opposite Party No.7 submitted false documents regarding the ownership of machineries. Though the Opposite Party No.7, in its application, has submitted that it possesses roasting and grinding machine, there is a mismatch in the purchase bill submitted by the said Opposite Party with the photograph of the machine, which was clicked by the squad at the time of inspection. Though for roasting and blowing machines for processing Chhatua, as per the commercial requirement, at least 5HP motor is required, but the purchase bill submitted by the Opposite Party No.7 shows that the machine, which they are possessing, is of the power of 1HP motor. The agreement produced by the Opposite Party No.7 does not indicate as to the amount of money spent for purchase of the said machine. The weighing machine bill submitted by the Opposite Party No.7 is a handmade bill and no such transaction has been reflected in lieu of such purchase in the bank account. The details of the bank account of Opposite Party No.7 supplied under the RTI Act indicates that the said account was opened on 12.12.2022, whereas the Opposite Party No.7 got selected for the distribution of Chhatua vide decision dated 23.11.2022, wherefrom it is well evident that as on the date of selection of the Opposite Party No.7 for distribution of THR i.e. 23.11.2022, the Opposite Party No.7 was not a qualified candidate and the information provided by it at the time of filing of the application for selection is false.

23. Further, the State authorities have awarded full mark to the Opposite Party No.7 for the updated bank statement and cash book, which is at Column No.14 of the check list of the current year. As per the norms of formation of a SHG, the bank account of the concerned SHG must be opened maximum within a period of six months of its formation. Therefore, the very formation of the Opposite Party No.7- SHG is not in accordance with the guidelines since, as per its own information, the SHG was formed on 06.12.2017, whereas the bank account of the Opposite Party No.7-SHG was opened on 12.12.2022 i.e. after 5 years of formation and after its selection for the year 2022-2023.

24. Similarly, so far as Opposite Party No.8 namely, Maa Durga SHG is concerned, it has been stated in the Additional Affidavit that it does not possess cash book, resolution register and bank account updates. It also does not possess experience and has no savings. Furthermore, the Opposite Party No.8 is not having machinery for THR Unit.

25. It has also been stated in the Additional Affidavit that the Petitioner-SHG has applied under the RTI Act for providing information regarding purchase voucher bill of the roaster machine, grinding machine and bank statement from October, 2022 to April, 2023 of the Opposite Party No.8. The P.I.O., vide letter dated 05.08.2023 supplied information to the Petitioner, wherefrom it is well revealed that the Opposite Party No.8 has provided the bills, which are of dated 09.10.2022, 14.10.2022 and 12.10.2022, but as per the information supplied, its bank account was opened on 23.12.2022. Therefore, it can be concluded that the bills supplied by the Opposite Party No.8 regarding purchase of machineries are antedated as all transactions are to be made through bank account.

26. Furthermore, on 08.09.2023 the Petitioner has been supplied with the information regarding the lease agreement of the Opposite Party No.8 for the grinding machine, wherein it is mentioned that the Opposite Party No.8 has entered into a lease agreement with one Kumudini Jena on 30.09.2022 for leasing out the grinding machine for a period of 5 years i.e. 30.09.2022 to 29.09.2027. However, for the current year as well as previous year i.e. 2022-2023, in the check list column, the Opposite Party No.8 has got full mark for having own machineries.

27. It has further been stated in the Additional Affidavit that as per the Revised Guidelines for implementation of THR 2018 at Clause No.7, the norms for selection of SHG for preparation and distribution of THR have been detailed. As per the said Clause, the Manufacturing Unit of the SHG should be located within the assigned ICDS area / GP area. The ownership of the machineries should be in the name of the concerned SHG. However, the unit of the Opposite Party No.7 is located outside the ICDS area. It has also been stated in the Additional Affidavit that the stand of the CDPO, Balasore in the Counter Affidavit that the present Opposite Party Nos.7 & 8 have been selected observing all formalities is not correct.

28. In response to the Additional Affidavit, the State Opposite Parties as well as private Opposite Parties have filed their respective Objections stating therein that the Opposite Party No.7 has submitted the documents with regard to ownership of sealing machine and roasting machine. It has also been submitted that the Invoices with respect to purchase of the said machines, so far as grinding machine is concerned, a bare perusal of the agreement dated 26.09.2022 well reveals that the grinding machine has been leased out in favour of the Opposite Party No.7 for a consideration amount of Rs.20,000/- and such grinding machine is of 15HP Crompton Motor which is used in the roasting machine, which has also been leased out in favour of the Opposite Party No.7.

29. It has also been stated in the Objection filed by the State that the Opposite Party No.7 has a running bank account in its name in Bank of Baroda, which was opened on 21.02.2018 and was also in operation during the time, when the process of selection was going on. It has also been stated in the Objection that the allegation as to not retaining proper cash book, resolution register and possessing of the bank account is incorrect. The said Opposite Party opened an account in Canara Bank on 12.09.2017. The allegation of the Petitioner as to how the Opposite Party No.8 has purchased the roasting machine and grinding machine do not merit any consideration. Further, so far as location of the Unit of the Opposite Party No.7, it has been stated in the said Objection that it is at Machhua Sahi which comes under the jurisdiction of Balasore Municipality, which is also the part of the ICDS Area.

30. Since most of the facts detailed in the Additional Affidavit have been disputed by the State-Opposite Parties, Mr. Mishra, learned Senior Counsel for the Petitioner, relying on the judgment of the apex Court reported in (2004) 3 SCC 553 (ABL International Ltd. & anr. Vs. Export Credit Guarantee Corporation of India Ltd. & ors), submitted that where disputed questions of facts pertaining to the interpretation / meaning of documents or part(s) thereof are involved, the Court can very well go into the same and decide the objections, if facts permit so. Moreover, merely because one of the parties wants to dispute the meaning of a document or a part thereof, would not make it a disputed fact.

31. Mr. Mishra, further, relying on the judgment of the apex Court reported in (2020) 19 SCC 241 (Popatrao Vyankatrao Patil Vs. The State of Maharashtra & ors.), submitted that when the Petition involves disputed questions of fact and law, the High Court will be slow in entertaining the Petition under Article 226 of the Constitution of India. However, it is the rule of self-restraint and not a hard and fast rule. Hence, in view of the pleadings and documents available on record, this Court is of the view that the Writ Petition is maintainable and the Petitioner-SHG being remediless, has rightly approached this Court in form of the present Writ Petition.

32. In response to the submission made by Mr. Mishra, learned Senior Counsel for the Petitioner, Mr. Das, learned Counsel for Opposite Party No.7 submitted that the Opposite Party Nos.7 & 8 were found eligible for preparation and distribution of THR under Balasore Municipality ICDS Project for the year 2023-24 after thorough scrutiny of their applications and were selected vide letter dated 26.05.2023. The Opposite Party No.7 was assigned with the job of preparation and distribution of THR in respect of Ward Nos.1 to 16 under Balasore Municipality, whereas the Opposite Party No.8 for Ward Nos.17 to 31, by execution of Agreements on 30.05.2023 to the said effect.

Apart from the said submissions, the learned Counsel for Opposite Party No.7, relying on the judgment of Delhi High Court in Harpati and Ors Vs. State of NCT of Delhi and Ors passed in W.P. (C) No.5155 of 2021, judgments of the Apex Court in Om Prakash Shukla Vs. Akhilesh Kumar Shukla & Others, reported in 1986 SCC (SUPP) 285, Madan Lal & Others Vs. The State of Jammu & Kashmir and Others, reported in 1995 SCC (3) 486, G. Sarana Vs. University of Lucknow & Others, reported in 1976 (3) SCC 585, Madras Inst. Of Dev. Studies & Anr. Vs. K. Sivasubramaniyan & Ors, reported in 2016 (1) SCC 454, D. Sarojakumari Vs. R. Helen Thilakom, reported in 2017 (9) SCC 478 submitted that the Writ Petition is not maintainable as the Petitioner-S.H.G. participated in the selection process, it is no more open to the Petitioner challenge the said selection process.

33. So far as arguments advanced by the learned Counsel for the Opposite Party No.7, relying on the judgment of the apex Court in (2019) 20 SCC 17 (Dr. (Major) Meeta Sahai Vs. State of Bihar & ors.), Mr. Mishra, learned Senior Counsel for the Petitioner submitted that even if the Petitioner took part in the selection process, since subsequently it came to its knowledge regarding the irregularities committed by State Authorities in selecting and appointing the Opposite Party Nos.7 & 8 to carry out production and distribution of THR under SNP Balasore Municipality Project, the Petitioner has rightly approached this Court in form of the present Writ Petition.

34. In view of the aforesaid submissions made by learned Counsel for the parties, so far as maintainability of the Writ Petition, paragraphs 16, 19, 27 & 51 of the judgment in Popatrao Vyankatrao Patil (supra) being relevant, are extracted below:-

"16. A perusal of this judgment though shows that a writ petition involving serious disputed questions of facts which requires consideration of evidence which is not on record, will not normally be entertained by a court in the exercise of its jurisdiction under Article 226 of the Constitution of India. This decision again, in our opinion, does not lay down an absolute rule that in all cases involving disputed questions of fact the parties should be relegated to a civil suit. In this view of ours, we are

supported by a judgment of this Court in the case of *Gunwant Kaur v. Municipal Committee, Bhatinda* [(1969) 3 SCC 769] where dealing with such a situation of disputed questions of fact in a writ petition this Court held: (SCC p. 774, paras 14-16) "14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit-in-reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the Petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.

15. From the averments made in the petition filed by the appellants it is clear that in proof of a large number of allegations the appellants relied upon documentary evidence and the only matter in respect of which conflict of facts may possibly arise related to the due publication of the notification under Section 4 by the Collector.

16. In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertained the petition and called for an affidavit-in-reply from the respondents, and should have proceeded to try the petition instead of relegating the appellants to a separate suit."

19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of *Gunwant Kaur* [(1969) 3 SCC 769] this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.

27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

51. From the terms of the contract, we have noticed in clause 6, as amended by the addendum, consideration by way of barter of goods is not the sole mode of payment of consideration. The said clause contemplates alternate modes of payment of consideration, one of them being by barter of goods and the other by cash payment in US \$. The terms of the insurance contract which were agreed between the parties were after the terms of the contract between the exporter and the importer were executed which included the addendum, therefore, without hesitation we must proceed on the basis that the first respondent issued the insurance policy knowing very well that there was more than one mode of payment of consideration and it had insured failure of all the modes of payment of consideration. From the correspondence as well as from the terms of the policy, it is noticed that existence of only two conditions has been made as a condition precedent for making the first respondent Corporation liable to pay for the insured risk, that is: (i) there should be a default on the part of the Kazak Corporation to pay for the goods received; and (ii) there should be a failure on the part of the Kazakhstan Government to fulfil their guarantee. This is clear from the terms of the insurance contract read with the letter of the first respondent dated 8-9-1993 wherein at clause 3-A, it is stated: "Our liability will arise only after default has been established on the guarantee of the Ministry." From the above, it is clear that both the grounds as put forth by the learned counsel for the respondent before us as well as in the two letters of repudiation issued by the first respondent are unsustainable. In our opinion, the first respondent insured the export risk of the appellants in regard to the non-payment of the consideration for the tea exported, whether it arose from the non-fulfilment of the barter clause or from the non-fulfilment of the cash payment clause. The argument advanced on behalf of the respondent that the appellants refused to accept the barter by goods offered by the Kazak Corporation which amounted to a default under the contract on the part of the appellants has no legs to stand in view of the clear language of the amended clause 6 of the agreement which as noted above, states that the obligation of the buyer, namely, the Kazak Corporation to pay for the goods received by it in US \$ arises when payment by barter fails for "any reason whatever". The use of the words "any reason whatever" in the said amended clause includes the reasons of refusal by the appellants to accept the goods offered in barter. On the face of the said language of the amended clause, there could be no room for two opinions at all in regard to the liability of the first respondent to pay for the loss suffered by the appellants even in cases where payment by barter fails at the instance of the appellant. The learned counsel for the respondent contended that for a correct interpretation of this amended clause and the other clauses of the

contracts i.e. the contract of export and the contract of insurance, between the parties there is need for oral evidence being led without which a proper interpretation of this clause is not possible, therefore, it is a fit case in which the appellants should be directed to approach the civil court to establish their claim. We find no force in this argument. We have come to the conclusion that the amended clause 6 of the agreement between the exporter and the importer on the face of it does not give room for a second or another construction than the one already accepted by us. We have also noted that reliance placed on sub-clause (d) of the proviso to the insurance contract by the Appellate Bench is also misplaced which is clear from the language of the said clause itself. Therefore, in our opinion, it does not require any external aid, much less any oral evidence to interpret the above clause. Merely because the first respondent wants to dispute this fact, in our opinion, it does not become a disputed fact. If such objection as to disputed questions or interpretations is raised in a writ petition, in our opinion, the courts can very well go into the same and decide that objection if facts permit the same as in this case. We have already noted the decisions of this Court which in clear terms have laid down that mere existence of disputed questions of fact ipso facto does not prevent a writ court from determining the disputed questions of fact. (See *Gunwant Kaur [(1969) 3 SCC 769]* .)"

(Emphasis supplied) In *Meeta Sahai* case (supra), vide Paragraph 17, the apex Court held as follows:-

"17. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process."

(Emphasis Supplied)

35. In view of the allegations made in the Writ Petition, it would be apt to extract below paragraphs 3 & 4 of order dated 24.02.2023 and paragraph 4 of order dated 09.03.2023 passed by the coordinate Bench in W.P.(C) No.36226 of 2022, which was disposed of vide order dated 09.03.2023.

"Order dated 24.02.2023

3. Mr. Mishra submits, his client was supplying THR for last four years. For purpose of selection of supplier in the period, it will appear from proceeding of District Level Committee (DLC) meeting dated 23rd November, 2022 that three best suppliers were short listed for selection of two. He demonstrates from score-sheet of opposite party no.8, petitioner and opposite party no.7, disclosed at pages 26 to 31 that opposite party no.8 scored 82.5 marks with remark 'good', his client 88.5 marks with no

remark and opposite party no.7, 97.5 marks with remark 'excellent'. He points out from said minute dated 23rd November, 2022 that allegation against his client was commission of irregularities being that hygiene and ventilation of storage-cum-working building was found to be poor and drinking water facility, not available. He submits, the DLC found, particularly in case of opposite party no.8 that infrastructure was not available. Yet, opposite party no.8 was favoured over petitioner in being engaged.

4. The score-sheets are dated 5th, 4th and 2nd November, 2022 respectively of opposite party no.8, petitioner and opposite party no.7. Obviously, on consideration of the score-sheet the proceedings in minute dated 23rd November, 2022 were recorded. There is no explanation as to why no remark was made against petitioner in the score-sheet. On query from Court, Mr. Sharma, prays for adjournment to produce previous observations made by the committee, as informed to petitioner, regarding poor hygiene, ventilation and non-availability of drinking water. So far as disruption of procurement is concerned Mr. Mishra points out, there already has been notification to procure from elsewhere.

Order dated 09.03.2023

4. Contention of petitioner and others stand recorded in orders dated 10th and 24th February, 2023. Those contentions indicate dispute on questions of fact. Considering that and period of supply due to end on 31st March, 2023, this Court directs that for the ensuing period, all contenders to be selected as suppliers must be dealt with in a manner transparent and fair, to their notice."

36. Similarly, it would be apt to extract below the averments made in paragraph 3, 5 & 6 of the Writ Petition and paragraph 7, 9 & 10 of the Counter filed by the State, which are the reply/response to the said paragraphs of the Writ Petition.

"Writ Petition

3. That, the factual backdrop leading to filing of this writ application the Petitioner-organization is an experienced Self Help Group and has been working under the ICDS since the year of 2011 with year-wise contract as per the Clause 12(i) of the contract conditions of the revised guidelines and quality parameters provided under clause (11) of Revised Guidelines for implementation of Take Home Ration (THR), 2018 with a registered work strength of 11 members and as the project is long term project therefore the SHG has installed sophisticated/hygienic machines of cleaning, roasting, grinding, sealing/packaging instruments, besides fire safety measures for processing of CHHATUA.

Copy of the license under FSSAI Act, 2006 is annexed herewith a Annexure-1.

5. That, it is humbly submitted that after engagement in Balasore Municipality ICDS project, the Petitioner SHG prepared and distributed (THR) CHHATUA by following the Govt. Guidelines from time to time. The quality of the material was prepared by following the prescribed standard.

The materials and names prepared and distributed by the Petitioner SHG was collected by the staff of State Food Testing Laboratory under regulations indicated in "the Food Safety and Standards Act 2006" (FSSAI). The report submitted by the state food testing Laboratory in respect of the CHHATUA prepared by the petitioners SHG found to be satisfactory as revealed from the report dated 06.12.2021, 22.12.2021, 28.12.2021 and 18.02.2022.

6. That, apart from the satisfactory report received from the State Testing Laboratory, the petitioners Unit was a graded SHG as certified by the ICDS supervisor satisfying all the eligibility criteria, hygienic condition and maintaining the book-keeping of the unit."

"Counter filed by State-Opposite Parties

7. That, in reply to the assertions made at Paragraph No.3 of the Writ Petition, this deponent humbly begs to submit that the matter of selection of SHG is governed by the revised guidelines, 2018. In the revised guidelines there has been no provision to allow any special preference to the SHGs so selected during the previous years. Further, it is submitted that, basing on the quantity and quality required, machinery are to be installed which finds place in the relevant agreement executed in between the concerned parties for the period for which the agreement is made. Besides hygienic position as claimed by the Petitioner are the requirements of Agreement. So the claims of Petitioner as regards installation of hygienic conditions for its selection for the year, 2023-2024 do not have any force.

9. That, in reply to the assertions made at Paragraph No.5 of the Writ Petition, this deponent humbly begs to submit that the case of Petitioner SHG for selection for the year, 2023-24 is under consideration. But the favorable citation of facts of previous year, 2020-21 & 2021-22 of the Petitioner is support of its selection does not create any binding on the part of DLC for its selection for the year, 2023-24.

10. That, in reply to the assertions made at Paragraph No.6 of the Writ Petition, this deponent humbly begs to submit that satisfying eligibility criteria, hygienic condition, maintenance of Book Keeping of Petitioner SHG and grading of State Testing Laboratory relates to activities of Petitioner for the year, 2020-21, 2021-22. These track records of Petitioner SHG of the past years 2020- 21 and 2021-22 cannot be guaranteed that in the future year i.e. 2023-24, Petitioner SHG shall be able to keep same track records as it was."

37. From the above pleadings and documents on record, it is amply clear that the Petitioner-S.H.G. was allowed to supply THR from 2011 to 2022 because of fulfillment of all the eligibility criteria. Further, the averments in paragraph 3 & 5 of the Writ Petition as to fulfillment of all the quality parameters provided under clause (11) of the Revised Guidelines so also hygienic condition have not been disputed/denied in the Counter Affidavit.

38. Based on the submissions made by the learned Counsel for the parties, as detailed above, and the relevant materials available on record, it is found that the Authority has selected the Opposite Party Nos.7 & 8, even if they do not possess adequate requirements, as published vide Advertisement No. 373/2023, as at Annexure-6 of the Writ Petition, for selection of SHGs for production and distributions of THR Units under SNP Balasore Municipality Project. The Petitioner-SHG was rejected on the ground of sanitation and hygiene without considering the fact that the Petitioner-SHG is otherwise qualified having the requirements published in the said advertisement and was / is performing the said job since 2011 till March, 2022 satisfactorily.

39. In the judgments of apex Court, relied on by the learned Counsel for the Opposite Party No.7, though it is observed that a candidate taking part in the selection process, knowing the terms and conditions, will not be permitted to challenge the same after he is found to be unfit for appointment, however, as per the judgment of the Apex Court in Dr. (Major) Meeta Sahai (supra), a candidate even after taking part in a selection process will not be debarred from challenging the selection process on the ground of misconstruction of statutory rules and discrimination. Therefore, this Court is of the view that the letters dated 26.05.2023 and 19.06.2023 under Annexure-11 series and agreement dated 30.05.2023 under Annexure-12 series selecting and engaging the Opposite Party Nos.7 & 8 for preparation and supply of THR for Balasore Municipality Project deserves interference.

40. So far as other judgments cited by the learned Counsel for the Opposite Party Nos.7, as detailed above, this Court is of the view that the said judgments are not applicable to the facts and circumstances of the present case, in view of the reasons detailed above.

41. As is revealed from Annexure-11 series, vide letter dated 26.05.2023 the District Social Welfare Officer, Balasore intimated the present Opposite Party Nos.7 & 8 about their selection by the District Level Committee for preparation and supply of THR for Balasore Municipality ICDS Project for the financial year 2023-24.

42. During hearing, the learned State Counsel so also learned Counsel for the Opposite Party Nos.7 & 8 submitted that the said selection was valid for the year 2023-24, which is over and the prayer made in the Writ Petition to set aside the said letter dated 26.05.2023 so also agreement dated 30.05.2023 entered by the CDPO, Balasore, with the Opposite Party Nos.7 & 8 have become infructuous, as vide the said Agreement it was clearly mentioned that the same shall commence for the financial year 2023-24 and as per the terms of the contract, the Opposite Party Nos.7 & 8 have already accomplished their contractual obligations. However, in view of such submission made by the learned State Counsel so also private Opposite Parties, it would be apt to reproduce below Clauses 1 to 5 of the said Agreement under the heading "Termination of Contract" for ready

reference:-

"Termination of Contract

1. Before completion of 1 year, a review of the WSHGs performance shall be made by the collector after which a decision can be taken to either renew or rescind the contract.
2. 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/under the law.
3. 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.
4. 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 food stuff and prepared THR etc.
5. Any claim of Govt. remaining unpaid by the SHG under operation of this MOU shall be recoverable as a public demand under the public demand cover Act. 1962."

43. As per Clause-1 of the Agreement, the same is valid for the financial year 2023-2024. From Clause 4 of the said Agreement, under the heading "Termination of Contract", it is amply clear that the said Agreement shall expire by efflux of time or by notice in terms of Clause- 3, as quoted above. In view of such submissions made by the learned Counsel for the Opposite Parties, this Court observes that, if fresh advertisement is made inviting application for preparation and supply of THR under SNP, Balasore, the Petitioner-SHG shall be given preference taking into consideration its past experience and carrying out the said job effectively and continuously since 2011 till March 2022 in terms of the Revised Guidelines for implementation of Take Home Ration (THR).

44. Since tenure of the Opposite Party Nos.7 & 8 have been completed and the Agreement period is over, the prayer to set aside their selection and appointment as THR to deal with preparation and supply of THR vide letter dated 26.05.2023 needs no further order. However, it is made clear that in terms of Clause 4(1) of the Agreement no decision shall be taken for renewal of contract in favour of the Opposite Party Nos.7 & 8, ignoring the case of the Petitioner-S.H.G.

45. In view of the above, this Court directs that for the ensuing period, all contenders to be selected as suppliers of THR, must be dealt in a fair and transparent manner and in view of the admitted facts on record, the case of the Petitioner-S.H.G. shall be considered by the Authority concerned in terms of the revised Guidelines, which is in vogue.

46. With the said observation, the Writ Petition stands disposed of.

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S.K. MISHRA, J.

Orissa High Court, Cuttack Dated the 24th June, 2024/Padma Designation: JUNIOR
STENOGRAPHER Location: High Court of Orissa, Cuttack.

Date: 25-Jun-2024 17:54:53