

## **Mahamaya Swa Sahayata Samuh Vs State Of Chhattisgarh Through The Secretary, Health And Family Welfare Department And Ors**

**Court:** Chhattisgarh High Court

**Date of Decision:** Sept. 9, 2019

**Acts Referred:** Constitution Of India, 1950 " Article 226

**Hon'ble Judges:** P.R. Ramachandra Menon, CJ; Parth Prateem Sahu, J

**Bench:** Division Bench

**Advocate:** Sharmila Singhai, Anshuman, Sidharth Dubey, Atanu Ghosh

**Final Decision:** Dismissed

### **Judgement**

Parth Prateem Sahu, J

1. The petitioner has challenged the action of respondent No. 3 calling in question the award of tender for supply of food and snacks to in- patients at

State Mental Health hospital, Sendri, Bilaspur (in short the 'Hospital') for a period of one year.

2. Brief facts of the case in nutshell are that, on 10-01-2019, respondent No. 3 issued notification inviting tender for supply of breakfast, lunch WPC

771 of 2019 and dinner (in short 'supply of food') to in-patients of the Hospital. Last date for submission of the bids from interested participants was

13-02-2019 till 11:00 AM and the same date i.e. 13-02-2019 was tender opening date at 12:00 PM. Petitioner, respondent No. 4 and other self help

group submitted their tender forms in which total six bidders were qualified and their financial bids were opened. After opening of the price bids, three

tenderers were qualified having rates quoted of all the three tenderers to be the same. Tender was awarded to respondent No. 4 and on the basis of

the award of the tender, respondent No. 4 is supplying food to the in-patients of the Hospital at present.

3. The terms and conditions of the tender document mention that the award of tender for supply of food in the Hospital will be given only to the

Women Self Help Groups and in clause-12 of the terms and conditions of the tender notification it has been provided that priority will be given to the

tenderer who had worked with mental hospital and minimum one year working experience in 100 bedded hospital to be mandatory.

4. The said clause-12 of the terms and conditions of the tender was challenged by one Smt. Urmila Jaiswal, president of Astha Mahila Swa Sahayata

Samuh before the Commissioner, Bilaspur Division on 30-01-2019 for deleting part of clause-12 of the terms and conditions of the tender document

dated 10-01-2019, providing preferential treatment to tenderer worked with mental hospital. The Commissioner after considering the complaint made

by Smt. Urmila Jaiswal to be reasonable, directed the respondent No. 3 to take appropriate action in WPC 771 of 2019 this regard vide its letter dated

08-02-2019. Respondent No. 3, thereafter, issued a corrigendum notification dated 01-02-2019 and clause-12 of the terms and conditions of the tender

document has been amended as 'minimum one year experience in 100 bedded government hospital to be mandatory' and deleted the condition of

preference to the tenderer worked in mental hospital.

5. Petitioner objected the documents submitted by respondent No. 4 stating therein that the registration of respondent No. 4 Women Self Help Groups

was of year 2017 but they have submitted working experience at district hospital, Durg since 2015 and therefore requested for cancellation of the

tender of respondent No. 4. The competent authority considered the objection and after satisfying that there was no error or defect, awarded contract

to respondent No. 4. Award of the tender to respondent No. 4 was challenged by the petitioner in this writ petition with following reliefs:-

10.1 That, this Hon'ble Court may kindly be pleased to issue a writ in the nature of mandamus directing the respondent No. 3 to consider the objection

raised by the petitioner and thereafter, allot the tender work to the eligible candidate.

10.2 That, this Hon'ble Court may kindly be pleased to issue a writ in the nature of mandamus directing the respondent No. 3 to cancel the allotment

of the work to the respondent No. 4 and it may kindly be directed to allot the work to the petitioner.

10.3 Cost of the petition be allowed.

10.4 Any other relief may also be granted to the petitioner which this Hon'ble Court feels fit according to facts and circumstances of the case.

6. Learned counsel for the petitioner submits that objection raised by the petitioner before respondent No. 2, Collector, Bilaspur and Commissioner,

Bilaspur, has not been taken into consideration, only with intent to favour respondent No. 4, part of the clause-12 of the terms and conditions of the

tender document has been arbitrarily deleted, experience certificate which was submitted by respondent No. 4 is a forged document because the

registration of respondent No. 4 self help group is of the year 2017 itself but experience certificate has been produced of the year 2015 of Hospital,

Durg. The action of respondent authority changing the terms and conditions of the tender document after floating the tender and calling the response is

arbitrary. Learned counsel for the petitioner submits that respondent No. 4 has not submitted its registration certificate as 'Mahila Swa Sahayta

Samuh', therefore, there was no material available before the respondent No. 3 authority to come to conclusion that respondent No. 4 is a 'Mahila Swa

Sahayta Samuh' which was a primary condition for being eligible for participation.

7. Per contra, learned deputy government advocate submits that deletion of clause-12 of the terms and conditions of the tender document was correct

because there is only one State Mental Hospital in the state of Chhattisgarh and the petitioner was working with the State Mental Health Hospital

prior to floating of the tender. He further submits that the experience certificate issued by Chief Medical and Health Officer, Durg was verified by the

competent authority and which was found to WPC 771 of 2019 be genuine. He also submits that he has called for the original records of the tender

proceedings and in tender documents, the required and essential documents have been filed. He also submits that the experience certificate issued by

Civil Surgeon cum Hospital Superintendent, Durg C.G. has been filed showing experience of working in 500 bedded hospital during the year 2015-16

to 2018-19. He further submits that with respect to the query made for verifying the experience certificate, respondent No. 3 had issued letter

Annexure R-2 and the same was replied by the Civil Surgeon cum Chief Hospital Superintendent, Durg vide its letter dated 18-02-2019, stating that

the said experience certificate was issued by his office. He submits that respondent No. 4 found to be more experienced, therefore, the contract has

been awarded to respondent No. 4 and there is no illegality and arbitrariness in the action of respondent No. 3. Learned counsel further submits that

there was no mandatory requirement for submission of registration certificate.

8. Respondent No. 4 also submitted reply to the writ petition and pleaded that respondent No. 4 has been found to be suitable on the basis of the

experience. He submitted that all the necessary documents were enclosed along with tender document, submission of registration was not mandatory.

He also filed a letter dated 25-02-2019, addressed them by respondent No. 3 wherein they were directed to work and supply food to the in-patients of

the Hospital as per the tender document dated 10-01-2019 from 27-02-2019 and since then respondent No. 4 is working and supplying food to the in-

patients in the Hospital. He submits that respondent No. 4 is a registered Self Help Group. He also argued that even otherwise self help group do not

WPC 771 of 2019 necessarily require for registration and relied upon the Judgment passed by Hon'ble Supreme Court in the matter of Vaishnorani

Mahila Bachat Gat v. State of Maharashtra passed in Civil Appeal No. 2336 of 2019 on 26-02-2019 and other Judgment of Hon'ble Supreme Court in

Air India v. Cochin International Airport Ltd. reported in (2000) 2 SCC 617.

9. We have heard learned counsel for the parties and perused the records.

10. From the pleadings and arguments made by counsel for the petitioner, it is apparent that the instant petition has been filed mainly on the two

grounds that respondent No. 3 has arbitrarily deleted part of clause-12 of the terms and conditions of the tender document and further that the

experience certificate submitted by respondent No. 4 from the year 2015-16 is forged and fabricated because respondent No. 4 was registered only in

the year 2017 and there cannot be an experience certificate issued in favour of Women Self Help Group which was not in existence. So far as,

deletion of part of clause-12 of the terms and conditions of the tender document is concerned, said experience sought by respondent No. 3 itself was

arbitrary in nature as in the state of Chhattisgarh there is only one State Mental Health Hospital. The State Mental Health Hospital at Sendri, Bilaspur

is the only hospital and there is no like hospital in the State of Chhattisgarh. By putting the said criteria in clause-12, respondent authorities have

curtailed the equal opportunity amongst the interested Women Self Help Groups and that clause will be benefiting only to the one self help group i.e.

the petitioner and therefore looking to the overall facts and circumstances WPC 771 of 2019 of the case, respondent No. 3 has issued corrigendum on

01-02-2019 and instead of preference to tenderer worked in mental hospital and 1 year experience with 100 bedded hospital, it has been amended as 1

year experience of 100 bedded hospital, which, in the opinion of this Court is not arbitrary action or had mala fide deleted the clause of experience of

mental hospital. Respondent No. 3 authorities have not deleted the entire clause of experience but only deleted the part of the clause of working

experience with mental hospital, but other part which was mandatory i.e. minimum one year working experience in 100 bedded hospital has been put

to clause of experience in tender notification. The condition of experience of having supplied food in mental hospital does not appear to have any

nexus with the object to be achieved. Food to be supplied to in-patients of mental hospital does not require any expertise or speciality, therefore, the

preferential treatment to the tenderer work in mental hospital has rightly been deleted by way of corrigendum. That particular clause was also

restricting the field of healthy competition.

11. So far as, other argument raised by learned counsel for the petitioner is with respect to the forged experience certificate, respondent No. 3 has

taken cognizance of the objection/complaint made by petitioner and respondent No. 3 vide its letter- Annexure-R/2 had sought a clarification from

experience certificate issuing authority i.e. Civil Surgeon cum Chief Hospital Superintendent, Durg. The said authority had mentioned that the

experience certificate which is enclosed along with the letter was issued by them. Further, from perusal of the tender documents, it nowhere mentions

that the tenderers are required to submit registration certificate of Mahila Swa Sahayata Samuh, but in WPC 771 of 2019 the proceedings before this

Court, respondent No. 4 has filed the document of the registration of Mahila Swa Sahayata Samuh (Women Self Help Group) which shows that their

self help group was registered in the year 2014. Genuineness of the registration certificate filed by respondent No. 4 of the year 2014 was not disputed

by the counsel for the petitioner; along with tender document, respondent No. 4 has filed experience certificate in the name of 'Ankit Mahila Swa

Sahayata Samuh' and that certificate was verified and found to be genuine.

12.As per the direction of this Court, original record of tender proceedings were produced. On perusal of the records, it also shows that respondent

No. 4 has placed the balance sheet and profit and loss, prior to the year 2017, in the name of respondent No. 4, before the authority. This document

also shows that respondent No. 4 was working as 'Mahila Swa Sahayata Samuh'. There was sufficient material before respondent No. 3 to show that

respondent No. 4 is a 'Mahila Swa Sahayata Samuh'.

13.From the aforementioned action of respondent No. 3, it is clear that complaint/objection raised by the petitioner has been taken into consideration,

verified genuineness of the document i.e. experience certificate which was objected by the petitioner and after getting fully satisfied that the

experience certificate submitted by respondent No. 4 is genuine and correct then only respondent No. 4 had been declared to be a successful bidder

and identified as qualified being more experienced tenderer.

14.The Hon'ble Supreme Court in the matter of Air India (supra), by going one step further, has held as under:-

7. ...Even when some defect is found in the decision making process the Court must exercise its discretionary power under Article 226 with great

caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal points. The Court should always keep

the larger public interest in mind in order to decide whether its intervention is called for or not.

Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene.

15.In the aforementioned judgment, the Hon'ble Supreme Court, in categorical terms, has held that interference should not be made except in

furtherance of public interest. In the case at hand, learned counsel appearing for petitioner could not be able to make out any case to point out any

irregularity affecting public interest in any manner.

16.From the above facts and figures, we do not find any arbitrariness in the decision making process of respondent No. 3. No other grounds have

been raised by the petitioner. We do not find any good ground to call for any interference, the petition being sans merit which is liable to be and is

hereby dismissed.