

Modern Supply Service and Another and Krill Congeal Crystal Co. and Another Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: Dec. 18, 2008

Hon'ble Judges: Dipankar Datta, J

Bench: Single Bench

Advocate: Biswaroop Bhattacharya and Billwadal Bhattacharyya, in W.P. No. 15125 W of 2008 and Sudarshan Halder, in W.P. No. 21406 W of 2008, for the Appellant; Chameli Majumder and Mrinal Kumar Sardar and Sagar Bandyopadhyay, S.K. Ghosh and Sanjoy Kr. Ghosh for respondents 6 to 9 and Saptangshu Basu, Arjun Ray Mukherjee and Proshit Deb for respondents 10 to 13, for the Respondent

Judgement

Dipankar Datta, J.

Common questions of law and fact are involved in these petitions and hence the same were heard together. They shall be governed by this common judgment. Undisputed facts are these:

i. Prior to 26.11.2001, the system of supplying diet to the indoor patients of hospitals under the control of the Government was that raw materials

for diet were supplied by selected contractors after competitive bidding and food was cooked in the hospitals' kitchens by the cooks/GDAs, being

the employees of the Government. Receipt of raw materials, cooking of meals and distribution of the same to the patients was supervised by a

steward or some other designated employee. This system was discontinued by Memo dated 26.11.2001 issued by the Secretary, Health and

Family Welfare Department. It was directed thereby that in the changed circumstances, the agency selected through tendering process shall be

responsible for providing completely finished diet as per prescribed standards of quality and quantity to hospital authorities for distribution amongst

the indoor patients. Since the system for cooking of diet for indoor patients in different Government hospitals by the departmental staff stood

discontinued, it was further directed that the existing available facilities shall be allowed to be used by the agencies selected for supply of finished

diet.

ii. The system of providing cooked diet to the indoor patients of Government hospitals by agencies selected through tendering process has been

continuing with modifications.

iii. Way back in July, 2002, the Government had fixed the standard/maximum rates for adult patients (above 8 years of age) and for children (8

years of age and below) at Rs. 28.50p and Rs. 14.25p respectively. By a further order dated 20.2.2007 issued by the Joint Secretary to the

Government of West Bengal, Department of Health and Family Welfare, the decision of the Government that the same rates shall be applicable for

the year 2007-08 was conveyed.

iv. This decision had resulted in a spate of litigation being initiated before this Hon"ble Court by contractors engaged in the business of supply of

cooked diet for the indoor patients of various Government hospitals. They contended that the rates fixed by the Government were utterly

unreasonable, unfair and unrealistic and if cooked diet have to be supplied by the contractors at the standard/maximum rates as fixed, it would be

impossible for them to supply appropriate quality and quantity of diet for the patients and in the process, apart from the contractors suffering

business loss, the patients would suffer the most.

v. While considering those writ petitions at the interim stage, this Court had passed an order on 29.3.2007 wherein it was observed as follows:

This Court has considered the prayer for interim relief made on behalf of the petitioners. This Court cannot agree more with the views expressed

by the Hon"ble Justice Jayanta Kumar Biswas while admitting W.P. No. 13434 (W) of 2005 (wherein similar grievance was raised) and in

granting interim relief, reliance on which has been placed by the petitioners. This Court is of the further considered view that when a patient is

admitted in a hospital for treatment of any disease that is ailing him, quality diet is as essential for his recovery as drugs and medicines are. Unless a

patient is supplied with quality diet as prescribed by the attending physician, recovery may not be as quick as expected. On the contrary, diet that

is not upto the required level may lead to deterioration of a patient"s health. No one would wish to suffer further casualty after being admitted in a

hospital. Therefore, supply of quality diet for the patients is of paramount consideration which the Government must keep in mind. However,

asking the contractors to provide 3 square meals for adult patients as well as tea @ Rs. 28.50p or near about makes it absolutely unrealistic and

impracticable for anyone engaged in catering business to provide quality food at such abnormally low rate. This Court is competent to take judicial

notice of the current market price and has come to a conclusion, prima facie, that it would be impossible for any contractor to supply cooked diet

of reasonable quality at the rates fixed by the Government. Compelling the contractors to supply diet of the required quantity fixing Rs. 28.50p as

the standard/maximum rate having regard to the spiraling rise of prices of every commodity and particularly on the face of the current market price

of food stuff required to be supplied, as certified by Government officers of the appropriate department, in the view of this Court, is to ask for the

impossible. One wonders whether the hospital authorities do have the machinery for quality control of diet supplied to the patients or whether such

control if in existence, is at all exercised. This Court being primarily concerned not with the prospect of business loss which the contractors might

suffer but being anxious with the quality of diet dished out to the indoor patients of Government hospitals is, therefore, of the considered view that

interdiction by this Court is necessary keeping in mind the interests of the public at large. The issue of price fixation cannot be allowed to rest and

appropriate interim directions are required to be passed for sub-serving justice.

This Court is conscious that by reason of the above stay order and in view of impending expiry of contracts (which are valid till 31st March, 2007)

there would be disruption in supply of cooked diet to the indoor patients of the above hospitals. In order to obviate such disruption, it is directed

that till 30th April, 2007 or until further orders whichever is earlier, the authorities of the aforesaid hospitals shall be entitled to make ad hoc

arrangements for maintaining supply of quality cooked diet for the patients of these hospitals in such manner they consider fit and proper.

It is also made clear that the intending tenderers shall be entitled to quote rates even higher than the standard/maximum rates fixed by the

Government, if they so choose, but such offers shall not be considered as a disqualification for participating in the tender process.

vi. Directions were passed for exchanging affidavits and the writ petitions were fixed for hearing on 13.4.2007.

vii. These writ petitions have not been disposed of but to avoid disruption of supply of cooked diet to the indoor patients of the Government run

hospitals, adhoc arrangements were made thereby enabling the existing contractors to supply cooked diet at the same rate quoted by them in

pursuance to the tender notice, since accepted by the Government.

viii. By an order dated 16.4.2007 issued by the Joint Secretary to the Government of West Bengal, Department of Health and Family Welfare,

M.S. Branch, the Government's decision to form a committee comprising of members mentioned therein for recommending revision of rates of

cooked diet to be supplied by agencies selected through open tenders to the indoor patients of Government hospitals throughout the State was

conveyed. The said committee upon deliberation recommended revision of rates of diet. Such recommendation was accepted by the Government

and, thereafter, revised rates for cooked diet to be supplied for indoor patients of different government run hospitals of the State were notified vide

Memo dated 25.9.2007 issued by the Department of Health and Family Welfare, M.S. Branch of the Government.

ix. The aforesaid Memo dated 25.9.2007 seeking to bring about revision of rates of cooked diet was again subjected to challenge in W.P. No.

23632 (W) of 2007 at the instance of suppliers of cooked diet to indoor patients of Government hospitals in the State. The writ petition has since

been disposed of on 23.9.08 by a learned Single Judge of this Court wherein it was held as follows:

In view of the aforesaid discussion I have no hesitation to say that the impugned memo No. HF/O/MS/552/W-45/07 dated September 25, 2007

is liable to be set aside keeping in mind the interest of the public at large and in particular keeping in mind the question of quality of diet to be

supplied to the indoor patients of the Government Hospitals in the State. The impugned memo No. HF/O/MS/552/W-45/07 dated September 25,

2007 is therefore, quashed and set aside. However, this will not prevent the state respondents to issue tender notice afresh inviting the intending

suppliers to supply cooked diet to the indoor patients of different Hospitals of the State Government after determining the prices of different

categories of such cooked diet keeping in mind the quality and quantity of such diet in the greater interest of the indoor patients as also to void

unhealthy competition among the intending suppliers. The writ application is thus disposed of.

x. While entertaining the above writ petition, the Court had by an interim order, stayed the operation of the Memo dated 25.9.2007. Since the

revised rates could not be made operative, the Government by way of adhoc arrangement directed, vide Memo dated 18.6.2008 that the tender

period of the existing contractors would stand extended for three months with effect from 1.7.2008 and that 19 % increase over the existing

accepted rate of cooked diet would be allowed subject to maximum of Rs. 28.50 and Rs. 14.25 per adult patients and patients below 8 years of

age respectively per day. This decision was taken by the Government since tender formalities could not yet be finalized. The Memo dated

18.6.2008 was modified by a further memo dated 25.7.2008. By such modification, the tenure of existing contractors was extended for a period

of three months from 1.7.2008. It was also conveyed thereby that ""the existing accepted rate may be 19 % above the rate quoted by the existing

agencies for the present"". Other terms and conditions of contract for supply of cooked diet were not altered.

xi. Further, by Memo dated 25.9.2008 the tenure of existing contractors has been extended for a further period of three months with effect from

1.10.2008. However, it has been made clear that such extension would abide by the result of the present writ petitions.

6. Grievance of the petitioners in these two petitions is that the Government has been extending the tenure of the existing contractors by periods of

three months and have also allowed an increase of 19 % over the rate initially quoted without calling for tenders and thereby has sought to bestow

undue favours on the existing contractors. According to the petitioners, tenders ought to be invited by the respondents even for the period during

which revision of rates is not finalized in terms of orders of this Court passed from time to time. They have accordingly urged the Court to direct

the respondents to invite tenders from amongst eligible contractors without extending the tenure of the existing contractors. The private respondents

in the writ petition being the existing contractors have, on the contrary, contended that the writ petitions have become infructuous by reason of

issuance of the Memo dated 25.7.2008 and 24.9.08; that the contracts entered into by and between them and the Government envisaged

extension of the period of contract for reasons beyond the control of the Government and that the petitioners have no locus standi to maintain the

writ petition inasmuch as no legal or fundamental right has been infringed. It is their contention that the State Government is best suited to judge its

course of action and the Court may not, by a mandamus, direct the Government to act in a particular manner.

7. Mrs. Majumder, learned Counsel representing the State, on instructions from the Joint Secretary to the Government of West Bengal,

Department of Health and Family Welfare, M.S. Branch who was present in Court, submitted that the Government had decided not to prefer any

intra court appeal against the judgment and order dated 25.9.2008 and would require at least six months time to revise the rates of diet in

compliance with such order.

8. Having heard learned Counsel appearing for the parties, this Court finds no justification in granting the prayers of the petitioners. The tender

formalities could not be finalized by the State owing to pending litigation. Revised rates fixed by the Government were subjected to challenge and

have since been set aside with a direction to revise the rate in the manner observed by the Court. The Government has decided to accept the

Court's judgment and proceed in the matter in compliance with the directions passed. The situation is such that the Government would not be in a

position to invite fresh tenders without revising the rates of diet. It is for the Government to decide as to how, till such time the rates are revised, it

shall maintain supply of cooked diet to the indoor patients, of its hospitals. The contracts executed by the Government and the existing contractors

contemplate extension of tenure in exigencies. If the Government has decided to extend the tenure to maintain supply of cooked diet, its action

cannot be faulted. True it is that the petitioners who were unsuccessful in the earlier tenders are not in a position to offer their rates but that by itself

would not be sufficient ground to direct the Government to invite tenders for supply of cooked diet in the interregnum till the revised rates are

determined and made applicable.

9. In view thereof, this Court finds no merit in the prayer of the petitioners. However, since it has been submitted on behalf of the State

respondents that six months time would be required for determining the revised rates, this Court would direct them to proceed expeditiously in this

respect keeping in mind the larger public interest and to determine the rates as early as possible but positively within six months from date so that

on and from the first day of June of the following year, the process of tender for selection of agency to supply cooked diet to the indoor patients of

the Government run hospitals may commence. Till such time tender process is finalized, it shall be open to the Government to obtain supply of

cooked diet through such adhoc arrangement it considers fit and proper.

10. The writ petitions stand disposed of with the above directions. There shall be no order as to costs.

11. Photostat copy of this judgment, duly countersigned by the Assistant Court Officer, shall be retained with the records of W.P. No. 21406 (W)

of 2008. Urgent photostat certified copy of this order, if applied for, be furnished to the applicant within 4 days from date of putting in requisites

therefore.