

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (PIL) No.36 of 2017

Order reserved on: 7-3-2017

Order delivered on: 6-4-2017

Tapas Agrawal, aged about 40 years, S/o Shri Santosh Kumar Agrawal, Petty Contractor, R/o Bharti Nagar, Bilaspur, Distt. Bilaspur (C.G.)

---- Petitioner

Versus

1. The State of Chhattisgarh, Through the Secretary, Department of School Education, New Mantralaya, Mahanadi Bhawan, New Raipur (C.G.)
2. The State of Chhattisgarh, Through the Secretary, Department of Tribal Welfare, New Mantralaya, Mahanadi Bhawan, New Raipur (C.G.)
3. The Chhattisgarh State Industrial Development Corporation Limited, through its Managing Director, First Floor, Udyog Bhawan, Ring Road No.1, Telibandha, Raipur (C.G.)

---- Respondents

For Petitioner: Mr. P.K.C. Tiwary, Senior Advocate assisted by Mr. Kripesh G. Kela, Advocate.

For State/Respondents No.1 and 2: -

Mr. J.K. Gilda, Advocate General.

For Respondent No.3: Mr. Arvind Shrivastava, Advocate.

Hon'ble Shri Justice Pritinker Diwaker and
Hon'ble Shri Justice Sanjay K. Agrawal

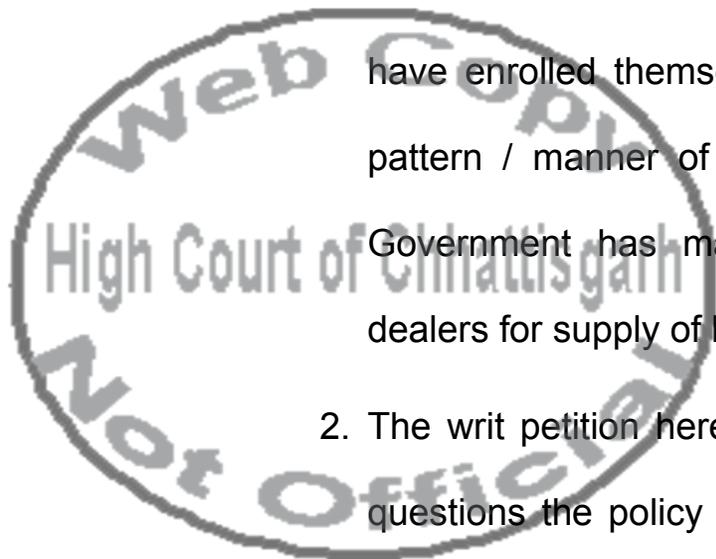
C.A.V. Order

Sanjay K. Agrawal, J

1. "Saraswati Bicycle Supply Scheme" is a scheme floated by the State of Chhattisgarh to check enrollment, attendance, dropout and continuation of education of girl students in State owned

schools in the State till 12th standard after full-fledged research conducted through the State Council for Educational Research and Training (SCERT), Raipur in the age group of 14-18 years at secondary and senior secondary school levels. The said Scheme is in force and bicycles are being distributed in each year to secure the cent percent enrollment of girls (BPL, SC and ST) who have passed Class-VIII and to ensure their retention up to Class-XII. Under the said Scheme, bicycles are to be distributed free of cost to all SC/ST/BPL girl students who have enrolled themselves in Class-IX. In the year 2015, the pattern / manner of distribution was changed and the State Government has made a scheme for appointment of five dealers for supply of bicycles.

2. The writ petition herein by way of this public interest litigation questions the policy of the State Government for appointment of dealers for supply of bicycles through the Chhattisgarh State Industrial Development Corporation Limited stating inter alia that the present mode of distribution of bicycles to the girl students seems to be unfair, unreasonable and is likely to cause inconvenience to the beneficiaries and loss to the public exchequer. The petitioner in this writ petition has suggested that the Scheme does not provide for responsibility of any person for repairs and change of parts of the said bicycles to the girl students. The Scheme reveals that respondent No.3 obtains guarantee / warranty of one year from the suppliers, but



no such warranty arrangement has been made to make available the individual guarantee / warranty to individual beneficiary to avail the benefits of those guarantee / warranty. A prayer has been made that a new scheme be evaluated for opening of accounts and transfer of funds in the accounts of the beneficiaries through the concerned schools by restraining the State from proceeding further pursuant to Annexure P-1 i.e. the tender floated by the Chhattisgarh State Industrial Development Corporation Limited inviting tenders for supply of bicycles and the writ petition be allowed.

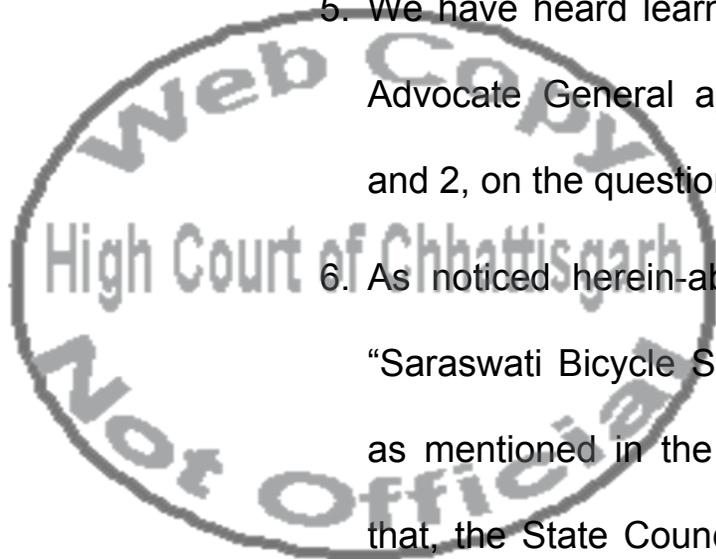
3. Mr. P.K.C. Tiwary, learned Senior Advocate appearing for the PIL petitioner, would submit that the policy in vogue for supplying bicycles by appointing dealers is clearly unreasonable and thereby on supply of bicycles it is distributed to the girl students is unfair, as there is no provision for repair of bicycles / change of parts during the warranty period, as such it is infringement of the rights of the beneficiaries for use of bicycles in its right perspective, therefore, the respondents / State be directed to change the present policy of calling tenders and thereby purchasing bicycles and thereafter, distributing the same to the girl students, rather it would be more better if amount is deposited in the accounts of beneficiaries and they should be allowed to purchase bicycles by their own and as such, the impugned notice inviting tender Annexure P-1 inviting tender for purchase of bicycles by process of tender be

quashed.

4. Mr. J.K. Gilda, learned Advocate General, defending the State action would submit that the Government after due consideration evolved a policy for distribution of bicycles to girl students which is just, fair and reasonable and the petitioner cannot be allowed to substitute its own view over the decision of the State Government and as such, the writ petition deserves to be dismissed.

5. We have heard learned counsel for the petitioner and learned Advocate General appearing for the State/respondents No.1 and 2, on the question of admission.

6. As noticed herein-above, the State Government has floated "Saraswati Bicycle Supply Scheme" with a particular objective as mentioned in the opening paragraph of this order and for that, the State Council for Educational Research and Training (SCERT) has been given the task to get the Evaluation Study of the said Scheme and it has been done through Midstream Marketing and Research Pvt. Ltd. (MMR), New Delhi. A report has been submitted by the said MMR to the SCERT and based on the report of the said SCERT submitted by the MMR, the Government has taken a decision to distribute bicycles free of cost to girl students in order to arrest the dropout, the girl students, to have continuation of education till 12th standard, to secure maximum attendance and enrollment in Class-IX till



Class-XII. In order to implement the Scheme, the Government has started initiating tender and calling tenders through the Chhattisgarh State Industrial Development Corporation Limited and by that procedure, bicycles are being purchased and thereafter, they are distributed to the eligible girl students.

7. The petitioner questions the said Scheme / policy and has suggested that distribution of bicycles is not just and proper way of doing it, but submits that transferring the amount in the accounts of eligible girls students would be rather more fair policy that the State Government must evolve and adopt for distributing bicycles to girl students in the State of Chhattisgarh.

8. It is well settled law that wisdom and advisability of policies are not ordinarily amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different policies and consider whether a wiser or better one can be evolved. (See **BALCO Employees' Union (Regd.) v. Union of India and others**¹.)

9. Likewise, in the matter of **State of M.P. and others, etc. etc. v. Nandlal Jaiswal and others, etc. etc.**², the Supreme Court has held that in policy matters, the Court should hesitate to intervene unless the policy is patently arbitrary, irrational or

1 (2002) 2 SCC 333

2 AIR 1987 SC 251

mala fide and further held that the Court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. It observed as under: -

“33. ... The Court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The Court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide. It is against the background of these observations and keeping them in mind that we must now proceed to deal with the contention of the petitioners based on Article 14 of the Constitution.”

10. Likewise, in the matter of Villianur Iyarkkai Padukappu

Maiyam v. Union of India and others³ while reiterating the scope of judicial review / interference in the public interest litigation, the Supreme Court has held that PIL can be maintained only for violation of Article 21 of the Constitution of India or human rights or for benefit of the poor and underprivileged who are unable to come to the Court due to some disadvantage and further held that a person, who had neither participated in the process of selection of consultant/ developer nor one of those, has no locus standi and the Supreme Court has declined to interfere holding as under: -

“113. As far as second preliminary objection regarding locus standi of the appellant to challenge the award of the contract for the development of the Pondicherry Port to Respondent 11 is concerned, this Court finds that the contract assailed in the writ petitions is purely commercial in nature. Neither the parties, which had participated in the process of selection of the

³ (2009) 7 SCC 561

consultant/developer nor one of those, which had expressed desire to develop the Pondicherry Port but was not selected, has come forward to challenge the selection procedure adopted by the Government of Pondicherry or the selection of Respondent 11 as developer of the Pondicherry Port.”

11. In **BALCO Employees' Union** (supra), the Supreme Court has also held that judicial interference by way of PIL is available if there is injury to public because of dereliction of constitutional or statutory obligations on the part of the Government and observed as under: -



“97. Judicial interference by way of PIL is available if there is injury to public because of dereliction of constitutional or statutory obligations on the part of the Government. Here it is not so and in the sphere of economic policy or reform the court is not the appropriate forum. Every matter of public interest or curiosity cannot be the subject-matter of PIL. Courts are not intended to and nor should they conduct the administration of the country. Courts will interfere only if there is a clear violation of constitutional or statutory provisions or non-compliance by the State with its constitutional or statutory duties. None of these contingencies arise in this present case.

98. In the case of a policy decision on economic matters, the courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the court is satisfied that there is illegality in the decision itself.”

12. In the present case, the State Government has undertaken a considered policy decision to distribute bicycles to girl students under the “Saraswati Bicycle Supply Scheme” to check the dropout and continuation of girl students in Class-IX to Class-XII after full-fledged consideration through the SCERT. In order to implement the said Scheme, the CSIDC – respondent No.3

herein has appointed an agency to purchase bicycles and thereafter to distribute the same to deserving girl students. The process adopted by the State Government for purchase of bicycles for onward distribution to the eligible girl students by calling tenders from the eligible bidders, is just and fair. Which policy would be more fairer or more wiser or better policy, it is for the Government to consider and this Court cannot sit over the policy decision of the State Government holding that this policy is fair or unwise as laid down by the Supreme Court in BALCO Employees' Union (supra), Nandlal Jaiswal's case (supra) and Villianur Iyarkkai Padukappu Maiyam (supra) that too in the public interest litigation. The policy of the State Government is not shown to be irrational, arbitrary or contrary to law.

13. In this view of the matter, we do not find any merit in this public interest litigation, it is nothing but misuse of the process of the court and accordingly, we dismiss the writ petition subject to payment of cost of ₹ 25,000/- payable to the High Court Legal Services Committee.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (PIL) No.36 of 2017

Tapas Agrawal

Versus

The State of Chhattisgarh and others

HEAD NOTE

Policy decision of the State Government cannot be interfered with unless it is contrary to the statutory provisions / provisions of the Constitution of India.

राज्य सरकार के नीतिगत निर्णय में हस्तक्षेप नहीं किया जा सकता, जब तक कि वह भारतीय संविधान के प्रावधानों / वैधानिक प्रावधानों के विपरीत न हो।

