

16. 11.12.2019

Heard.

Admit.

This matter is fixed for final hearing on 20.01.2020.

In the meantime, parties will be governed by the final decision of the Hon'ble Supreme Court in the case of **State of Odisha -v- Orissa Trust of Technical Education & others** in Civil Appeal No. 5532 of 2019/SLP(C) No. 15315 of 2019, wherein the Hon'ble Supreme Court has observed as under:

“Delay condoned.

Leave granted.

These appeals by the State of Odisha question the correctness of the interim orders passed by the High Court in a Writ Petition filed by the first respondent seeking to challenge the steps which were initiated by the State Government to formulate and implement a holistic policy for ‘telemedicine’ within the State. The object of formulating such a policy is to ensure that the benefit of technology is made available for a wide dispersal of medical benefits to the population of the State of Odisha.

The first respondent has a Memorandum of Understanding of 2008 in terms of which it claims to have imparted training to individual entrepreneurs within the State and who, according to the first respondent, are presently running some of the telemedicine centers.

Initially by an interim order dated 1 October 2015 which was passed in Writ Petition (C) No. 17691 of 2015, a Single Judge directed that centers where the telemedicine programme is being run shall continue until the next date of listing. Subsequently, this order was continued on 17 November 2015.

On 14 December 2015, the following directions were issued:-

“In view of the above fact and circumstances and the interim order passed by this Court on 17.11.2015, the letter dated 29.11.2014 issued by opposite party No. 1 is stayed till next listing. As an interim measure there is no bar to open telemedicine centres at the respective DHH, CHC, PHC and Medical Colleges and the concerned C.D.M.Os. shall allow the persons who have applied to open such center to operate.”

Thereafter, further directions were issued by the High Court on 13 July 2016. The High Court in the course of its interim direction called upon the State to file an affidavit setting out the activities which have been undertaken by the entrepreneurs who had been selected. An affidavit was filed on behalf of the State Government by the Additional Secretary in the Health and Family Welfare Department. The State explained that 396 entrepreneurs were selected in two phases. Loans were sanctioned to 127 entrepreneurs but disbursement had taken place by the bank concerned to 27 entrepreneurs. It is stated that actual disbursement to the rest was stayed pursuant to a letter of the MSME Department after a meeting held under the auspices of the Chief Secretary on 7 April 2015. According to the State, 35 units were currently functional in eight districts.

The State took a decision that unless it revisited the policy with a holistic perspective, no further expansion would be permitted.

At this stage, it may also be noted that in the affidavit which has been filed before the High Court, it is stated that it is the grievance of the State that no data has been provided to it of the actual benefits which have been provided to the beneficiaries and that telemedicine nodes have not been opened by the first respondent in several areas. The State also averred in its affidavit before the High Court that the concerned department is working on a telemedicine policy in the PPP mode and when the policy is notified, the selection of partners will be made in accordance with the policy that may be formulated by the State. Finally, it is stated that once such a policy is formulated, it would be open to the writ petitioners as well as to other third parties to participate in the process after expressions of interest are called. However, in the meantime, it has been submitted that the writ petitioners

would be allowed to operate the nodes which are under operation with the additional 27 nodes until an evaluation is made by a third party. The State Government, however, submitted that it must be allowed to proceed with the selection process in a transparent manner after a request for proposal is made through the process of tendering.

The process of reviewing the policy which has been undertaken by the State has been stultified by the interim orders of the High Court. Prima facie, we find merit in the submission which has been urged on behalf of the appellants by Mr. Ravi P. Mehrotra, learned counsel that the High Court in doing so has transgressed into an area of policy. Since the writ petition is pending before the High Court, we desist from making any observation which will affect the adjudication of the writ petition on merits by the High Court. At the same time, we are clearly of the view that there was no valid justification to restrain the State from reviewing its policy and from formulating an appropriate policy to govern telemedicine centers in the State of Odisha. This is a matter which is purely in the executive domain. The High Court was not justified in entrusting the exercise of verification to a former Judge of that Court.

In view of the above position, we issue the following directions:

- (i) The restraining orders passed by the High Court preventing the State from reviewing its policy and from formulating an appropriate policy to govern telemedicine centers within the State of Odisha shall stand vacated;
- (ii) We leave it open to the State to conduct an appropriate exercise as it deems fit for formulating and implementing an appropriate policy;
- (iii) Insofar as the first respondent, namely the original petitioner before the High Court is concerned, we record the assurance of the State which was made on affidavit before the High Court and which has been reiterated in the course of submissions in the present proceedings, that the State shall permit during the pendency of the writ proceedings the first respondent to operate the nodes which are presently in operation and in addition thereto, 27 nodes, pending further orders before the High Court. The State shall, however, verify the exact number of nodes in operation;

(iv) The direction which has been passed in the above terms shall be without prejudice to the rights of the State Government to move the High Court for appropriate modification, should the exigencies of public interest so demand.

We request the High Court to take up Writ Petition (C) No. 17691 of 2015 and Writ Petition (C) 9883/2018 for expeditious disposal and to endeavor to do so within a period of three months from the receipt of a certified copy of this order. We request the learned Chief Justice of the High Court to take up the matter before a Bench presided over by His Lordship so that finality to the dispute can be effectively made.

We accordingly, set aside the interim order of the High Court dated 10 April 2019. The above order passed by this Court shall now govern the two writ petitions which are pending before the High Court in supersession of all other interim directions. Save and except for the first and second respondents, who have appeared in these proceedings, it has not become necessary to issue notice to the other official respondents.

The appeals are, accordingly, disposed of.

Pending application(s), if any, shall also stand disposed of.”

Urgent certified copy of this order be granted on proper application.

.....
K.S. JHAVERI
(CHIEF JUSTICE)

.....
K.R. MOHAPATRA,
(JUDGE)