

Constitutional Writ

Present:

The Hon'ble Mr. Justice Syamal Kanti Chakrabarti

Judgment on 06.09.2010

W. P. No. 31324(W) of 2008

Dulal Chandra Samanta

Vs

The Union of India & Ors.

Points:

**Grant –in – Aid-** Grant-in-Aid to the N.G.O. whether can be withheld without giving opportunity to remove defect and without suitable modification of the existing guidelines- Constitution of India Art 226

Facts:

The petitioner is the Secretary of Haldia Samaj Kalyan Parshad which is a Non-Government Organization. The said organization is set up and running for years together in different schemes sanctioned by the State Governments as well as by the Central Government. The State Government is the recommending authority and the Central Government is the funding authority to disburse all the amounts in respect of the day care centers. The present NGO received last payment from the Central Government for six months during the period 2002-03. Thereafter, no payment was made by the Central Government for running those day care centers though the State Government made their recommendation from year to year. Therefore, they had to take loan from the outsiders in order to run the said day care centers for safeguarding the interest of old aged persons. But the Central Government did not release any fund from the financial year 2002-03

(second part) to 2006-07. The present writ application is against the order issued by the Joint Secretary, Government of India, Ministry of Social Justice and Empowerment rejecting the claim of the petitioner for release of grant-in-aid to the Haldia Sakan Kalyan Parshad for running three day care centers from the year 2006-07 to 2007-08.

Held:

In absence of any adequate financial provision, therefore, rejection of prayer on the grounds of non-availability of medical facility to the beneficiaries cannot be treated as valid and legitimate since they have provided recreation and lunch facilities to the full satisfaction of two DCCs. The basic object of running such day care center is to take care of the old and infirm people as a cherished object of social welfare state. The expectation of the Central Government officials in running such day care center should be quite consistent with the limitation of fund extended by them. Such expectation in my opinion is quite inconsistent with the quantum of financial assistance given. The basic principle of grant-in-aid to the NGO is to extend partial financial assistance i.e., 90% as mentioned in above order and it is the duty of the NGO to give sufficient information to the Central Government the manner in which the amount sanctioned by the Central Government as grant-in-aid has been utilised by them and whether it is utilised for the purpose for which such amount is sanctioned. There is also no allegation that the NGO has not utilized the entire amount of grant-in-aid for the purpose for which it is sanctioned. Rather the full utilisation of the fund would be reflected from their audit report. Without increasing the quantum of financial aid the Central Government official cannot expect more facilities to the beneficiaries from the NGOs organising the same having no financial independence of their own.

Para 16

The NGOs are not competitors of the Government but they are working in aid of the Government to promote wellbeing of the common downtrodden people under approved schemes. They are not responsible for the patent defect of this scheme framed without guidelines. If a Government employee does not perform his duties and refuses to follow norms and regulations, his salary is not withheld, but he is subjected to disciplinary action to regulate his conduct. When the NGO is not following the desired norms the Government officials, instead of withholding the grant-in-aid, could issue necessary directions to rectify their defects like discontinuation of cash transaction and thus an opportunity could easily be given to them to motivate and regulate their conduct.

Para 18

The revised scheme is also silent on accounting procedure to be followed by the NGO and extent of medical facilities to be provided for the beneficiaries. Therefore, without suitable modification of existing guidelines, respondent no. 2 cannot deny grant grant-in-aid to the NGO.

Para 21

For the Petitioner : Mr. Sardar Amjad Ali,

Mr. Soumen Dutta.

For the State : Ms. Suchitra Saha,

Ms. Moupiya De.

For the Union of India : None appears.

**Syamal Kanti Chakrabarti, J.:**

The present writ application is directed against the order dated 14.11.2008 issued by the Joint Secretary, Government of India, Ministry of Social Justice and Empowerment rejecting the claim of the petitioner for release of

grant-in-aid to the Haldia Sakan Kalyan Parshad for running three day care centers from the year 2006-07 to 2007-08.

2. The petitioner claims that he is the Secretary of Haldia Samaj Kalyan Parshad which is a Non-Government Organisation having its office at Village Nandarampur under the Sutahata PS, District Purba Medinipur. The said organization is set up and running for years together in different schemes sanctioned by the State Governments as well as by the Central Government such as a) Destitute Children Home; b) Juvenile Justice Home; c) Anganwadi Workers' Training Centre; d) Short Stay Home; e) De Drug Addiction Centre and f) ICDS project etc.

3. It is further claimed that the said Haldia Samaj Kalyan Parshad is running three day care centers one at Hoomtia, Gopiballavpur Block I in the District of Paschim Medinipur, second at Teor in the District of Dakshin Dinajpur and the third at Kashipur in the District of Purba Medinipur. The purpose of such scheme is to accommodate old aged persons for providing recreation and lunch in the concerned center in order to safeguard the old aged persons in the locality.

4. It is further contended that the State Government is the recommending authority and the Central Government is the funding authority to disburse all the amounts in respect of the day care centers. It is claimed that the organization is to defray approximately a sum of Rs. 1,95,050/- for running each day care center in a year. The present NGO received last payment from the Central Government for six months during the period 2002-03. Thereafter, no payment was made by the Central Government for running those day care centers though the State Government made their recommendation from year to year. Therefore, they had to take loan from the outsiders in order to run the said day care centers for safeguarding the

interest of old aged persons. But the Central Government did not release any fund from the financial year 2002-03 (second part) to 2006-07. Therefore, a lawyer's letter was issued demanding such amount for the years from 2003-04 to 2007-08 on account of running those three day care centers.

5. It is their further case that the Central Government has asked the State to explain why 45 old aged persons were present out of 50 in respect of the day care centers run by Haldia Samaj Kalyan Parshad during their inspection. As a consequence a writ petition was filed being W. P. No. 7393(W) of 2008 which was disposed of directing the Secretary, the respondent no. 2 to take an appropriate decision upon granting the petitioner an opportunity of hearing on his representation for release of fund for maintaining day care center in accordance with law within a period of eight weeks from the date of communication of the order. It was further directed that while considering the issue the respondent no. 2 shall consider the recommendation made by the State Government. However, if the prayer of the petitioner is rejected the order must have the support of reason and it shall be communicated to him immediately thereafter. All points are kept open to be urged before the respondent no. 2. In pursuance to such order dated 11.06.2008 the matter was heard upon notice to the parties. But after perusal of documents and materials produced before the authority, it was decided that for Parishad's claim for the last two financial years i.e., for 2006-07, 2007-08 State Government's recommendations need be examined as per applicable procedure and the decision needs to be conveyed to it within a reasonable time frame. Since the State Government has recommended the Parishad's case despite certain negative findings of the Inspecting Officers there is a need for further verification of the matter in which the three day care centers are functioning. Therefore, the following directions were made:-

*“(i) The concerned Principal Secretary, Government of West Bengal, be immediately requested, demi-officially, to elucidate, within a fortnight, the discrepancy between the negative findings of their inspecting officers, in various report, including those mentioned in paras 4 and 11 above, and the State Government’s positive recommendations;*

*(ii) The Ministry of WCD, which is concerned with some of the activities of the Parishad, be also requested to inform whether they have found its performance over the years to be satisfactory, to the extent of activities, if any, funded by it.*

*(iii) A suitable officer of the level of Dy. Secretary/Director of the Ministry be deputed to inspect the 3 DCCs and submit his report within one month from the passing of this order. The inspection should, inter alia, include a thorough enquiry into whether – and if yes, to what extent – the DCCs were actually run in 2006-07 and 2007-08 and the manner in which finance were arranged for the purpose;*

*(iv) On the basis of the report mentioned in (iii) above, along with responses, if any, received with reference to (i) and (ii) above, a decision be taken at the earliest, about whether GIA for the years 2006-07 and 2007-08 should be paid to the Parishad. In case, it is decided that GIA should be so paid, the necessary sanction be issued latest by 15.11.08. On the other hand, in case it is decided that the Parishad is not eligible to receive GIA for the two years, the decision to that effect, along with reasons, be conveyed to it latest by the same date i.e., 15.11.08. The Joint Secretary concerned of this Ministry shall ensure compliance with the above directions.”*

6. In accordance with such direction of the Secretary, Ministry of Social Justice and Empowerment dated 09.09.2008 the Director, Government of India, Ministry of Social Justice and Empowerment made an inspection of

the three day care centers but his report has not been supplied to the writ petitioner. On the basis of his report, however, the Secretary, Government of India, Ministry of Social Justice and Empowerment passed an order rejecting the claim of the Parishad for release of grant-in-aid in favour of those three day care centers from 2006-07 onwards. Therefore, the present writ petition has been filed with a prayer for directing the respondents to release the grant in aid in favour of the Haldia Samaj Kalyan Parishad on the basis of the recommendation made by the State Government for the years 2006-07 and also for 2007-08 along with the current year's dues for running the aforesaid three day care centers within a period of one month from date of communication of the order.

7. Despite service of notice upon the respondent nos. 1 and 2 none has contested this writ petition on their behalf. Learned lawyer for the respondent no. 3 has contended that points raised in this writ petition relate to disputed question of fact disclosed after due enquiry and as such the same cannot be decided by affidavit. The mode of enquiry made was also transparent and fair with notice to the NGO. Therefore, recommendation of the State Government is not binding upon the Central Government. Moreover, no right has accrued in favour of the writ petitioner to claim such grant-in-aid and so he is not legally entitled to claim any relief. Thus the points for consideration in this writ petition are as follows:-

- a) Whether the writ petition is maintainable in its present form?
- b) Whether respondent no. 2 is justified in refusing grant-in-aid to the NGO for irregularities detected in course of official inspection? AND
- c) Whether writ petitioner is entitled to claim any relief as prayed for?

8. So far as question of maintainability is concerned it appears that the writ petitioner Dulal Chandra Samanta has filed the instant writ petition in his

individual capacity but in his averment (paragraph 3) he has claimed that as Secretary of the Haldia Samaj Kalyan Parshad he has been authorised by other members to move the present writ application. But nobody has raised any objection regarding authorization of the present writ petitioner to move the same. From the cause title of the Writ Petition No. 7379(W) of 2008 (Annexure P-5 to the writ petition) I find that in the same manner the writ petitioner filed the above suit in individual capacity over the same issue in which this Hon'ble Court by order dated 11.06.2008 issued certain directions upon the respondents regarding release of fund in respect of the aforesaid three day care centers maintained by the Haldia Samaj Kalyan Parshad of which the writ petitioner was the Secretary. The present writ petition is a sequel to the aforesaid writ petition which has already been disposed of with a prayer for consideration of some subsequent facts claiming the same right to have central fund for running the said day care centers. Moreover, in his order dated 09.09.2008 the respondent no. 2 has admitted that the Ministry of Social Justice and Empowerment is implementing the scheme called "Integrated Programme for Older Persons" under which grant-in-aid is provided to non-governmental organisations for maintenance of old age homes, day care centres and other welfare projects for older persons from 1996-97 to 2007-08. The scheme has been renewed with effect from 01.04.2008. In 2001-02 and 2002-03 they have also released Rs. 5.87 lakhs and Rs. 2.93 lakhs respectively to the organisation of the writ petitioner which has generated a legitimate expectation in the mind of the NGO for fulfilment of which they are entitled to approach the writ court. Considering this aspect I hold that the instant writ petition is maintainable in its present form praying for judicial review of administrative action taken by the Union of India in refusing release of grant-in-aid for

annual maintenance of their day care centers. I further hold where such legitimate expectation of NGO has not been fulfilled judicial review of administrative action in writ petition is maintainable even if aggrieved party has acquired no legal right to claim such relief.

9. So far as the merit of the instant writ petition is concerned I find from paragraph 12 of the order dated 9th September, 2008 passed by the Secretary, Ministry of Social Justice and Empowerment, Government of India that they had certain reservation in releasing the grant-in-aid to this NGO on the following grounds:

a) That the recommendation received from the State Government in favour of the Parishad for successive years are generally anomalous inasmuch as while they have on the one hand, recommended continuation of grant-in-aid for the three day care centers, the Inspection Reports enclosed with their letters of recommendations, have year after year, pointed out lacunae in the facilities made available by the Parishad specially in the day care center at Kashipur by way of inadequacies in accommodation, nutritional supplement and medical facilities among others;

b) It has also been brought to the notice of the Ministry that Rule 209(6)(viii) of the General Financial Rules of the Government of India prohibits payments of arrears of grants which are more than two years old to NGOs and for this reason they were unable to release the fund for 2002-03 (second instalment), 2003-04, 2004-05 and 2005-06.

The said proviso is quoted below:

**“Grants-in-aid may be sanctioned to meet the bona fide expenditure incurred not earlier than two years prior to the date of issue of the sanction”.**

But as regards claim for 2006-07 and 2007-08 they felt it necessary for further verification of the manner in which the said three day care centers were functioning and accordingly directed the Principal Secretary to the Government of West Bengal to “elucidate, within a fortnight, discrepancy between negative findings of their Inspecting Officers in various reports including those mentioned in paragraph nos. 4 and 11 of the letter under reference with the State Government’s positive recommendation” and also called for a report of the Ministry of WCD etc.

10. From the letter dated 14.11.2008 of the Director (SD)-CDM, Ministry of Social Justice and Empowerment, Government of India addressed to the Honorary General Secretary, i.e., the present writ petitioner (Annexure P-10) it will appear that finally after further enquiry the Government of India has refused to release the grant in aid for running those three day care centers for the years 2006-07 and 2007-08 on the following grounds:-

- a) The State Government has not clarified as to how it had recommended the release of grants to the Parishad, though the Inspecting Officers had pointed out lacunae in the facilities made available in the DCCs, by way of inadequate accommodation, nutritional supplement and medical facilities etc.,
- b) The letter of the Secretary, Department of WCD dated 16.02.2008 is also silent on the remedial action taken by them, if any, against the Parishad in view of ADM’s report of June, 2003;
- c) The State Government have simply forwarded a copy of the inspection report of the organizations projects conducted during February, 2006, without commenting on the lacunae pointed out in its report;
- d) The report has not brought any additional fact which may be of any help in taking a decision on release of grant in aid for 2006-07 and 2007-08;

e) Ms. Nidhi Khare, Director (SCD), Ministry of Social Justice and Empowerment inspected the three DCCs from 26.09.2008 to 29.09.2008 in presence of the present writ petitioner with prior intimation at Kashipur and Teor center. The outcome of such inspection is enumerated below:-

I) DCC Kashipur –

i) All beneficiaries were present on the date of inspection and since satisfied with the service available at the center;

ii) Regarding availability of fund the Secretary informed that the organization consisting of 120 members who along with some well-wishers provided loans for the purpose of running the center. But the transactions in the loan register and loan book receipts was not numbered and made in cash and not through bank which raised reasonable suspicion. The loan register records has only shown the name and village of the creditors. So it is difficult to conclude that Kashipur center was running regularly during 2006-07 and 2007-08.

II) DCC Hoomita - Conflicting views were available regarding smooth functioning of this day care center. It was claimed by some that same was not running for last 1 or 2 years which was contradicted by some other villagers. The register of assets were not maintained at all and the register for consumable items were not maintained for 2006-07 and 2007-08. The cash accounts register also appears to be totally new, all the day to day transactions were shown in cash and no bank pass book was produced during inspection, the inmate register was also found to be new though it was from March, 2006 to March, 2008. It was alleged by some local people that only 10 to 15 persons came to the DCC. TV has been placed one day before the inspection and no member was provided with medical facilities and that one Debductta Sahoo working in the DCC was not given salary for

last 34 months. Therefore, it was difficult to conclude that the said DCC functioned regularly during the year 2006-07 and 2007-08.

III) DCC Teor – All the beneficiaries were present at the center at the time of her visit and were satisfied with the facilities provided. But the register of assets and consumable items were not found to have been maintained for 2006-07 and 2007-08. Perusal of loan register and cash books again reveals that no bank account was maintained and all transactions including loan were made in cash. Contact with few persons granting loan to the organization reveals in course of such enquiry that the creditors have provided loans to the schemes run for destitute children and not explicitly for day care center for old aged people. Therefore, the Enquiry Officer insisted for through verification of the identity of the creditors including their source of income and extension of such loan facilities without cheques, demand drafts and other legal documents. Under the aforesaid circumstances it was also not possible to conclude beyond doubt that the Teor DCC function regularly during the years 2006-07 and 2007-08.

IV) The Ministry of Women and Child Development did not release any grant to the Parishad during the last four years since certain shortcomings were noticed in ADMs report of June, 2003. The Government of West Bengal have also not commented on the deficiencies noticed in the inspection report sent along with their recommendations.

11. While drawing my attention to the aforesaid irregularities revealed in the enquiry report in question for which the claim of the petitioner society for grant-in-aid has been rejected for the year 2006- 07 and 2007-08, learned lawyer for the petitioner has submitted that so far as the day care center at Kashipur and Teor are concerned, during inspection all beneficiaries were found present and all of them were satisfied with the services available at the

center. Regarding affairs of the DCC at Hoomtia doubt may be raised but the Central Government has taken a very unscrupulous decision to withhold the grant-in-aid though out of the three, two day care centers were running smoothly to the full satisfaction of the beneficiaries. The grant-in-aid scheme is the State assistance to the NGOs to promote welfare of the downtrodden and deserted villagers of the country. In a welfare state the progress of the society and upliftment of the standard of living of the citizen has to be taken into account as the cherished goal of the nation which cannot be fulfilled solely by the state machineries. Since the Non-Government Organisations like the present one are coming forward, the Central Government has as of principal decided to come forward in their aid and formulated continued scheme for elderly people but too much emphasis on technicalities and manner and method of running their centers in the way desired by the Government of India cannot altogether deny legitimate expectation of the NGO without opportunity of rectification in absence of specific guidelines for the NGOs which are to be followed as condition precedent to the release of such grant-in-aid from year to year.

12. In his supplementary affidavit filed on 08.03.2010 the writ petitioner has filed audit report of the aforesaid organization for the year 2006-07, 2007-08 and 2008-09 from which the quantum of loan received from different persons will be reflected to prove that during 2006-07 the organization took loan of Rs. 5,87,700/- and Rs. 5,88,000/- during the financial year 2007-08 from private individuals to run the said day care centers. In another supplementary affidavit the writ petitioner has placed on record some substantial facts which were admitted by the State Government in their inspection on the basis of which they have written a letter to the Central Government recommending release of grant in favour of the writ petitioner.

13. It is also on record that the present organization received grant-in-aid from the respondent Central Government amounting to Rs. 5.87 lakhs per DCC for 2001-02 for 4 DCC and Rs. 2.93 lakhs for 3 DCC as first instalment for 2002-03 but their activities were not up to the expectation of the inspecting authority which has laid much emphasis on technical aspects of accounting procedure but in the relevant order refusing such prayer there is no whisper regarding inadequacies of recreation and lunch provided by the organization in running the day care centers. From the guidelines it will appear under item no. 3 of the order dated 09.09.2008 that maximum amount is meant for health care in terms of doctor, medicine and nutritional supplements. From the objection raised I do not find that there is any dearth of nutritional supplement provided by the NGO to the three Day Care Centres. As regards health care, I fear there is hardly any scope for providing sufficient fund to meet the needs of the beneficiaries. In the past while the Central Government released the fund the organization was maintaining their accounts in their cash book and ledgers in the same manner without operating every transaction through bank. If such cash transaction is accepted by the Government in releasing grant in the past, I fail to understand why such claim will be refused at present without giving any direction upon such NGO to maintain all their transactions through banks in future.

14. In their supplementary affidavit filed the petitioner has shown their audited statement as on 31st March, 2007 to prove that they have accounts with the Punjab National Bank being account no. 7512 and account no. 11933 and in the balance sheet as on 31<sup>st</sup> March, 2008 the Punjab National Bank account no. has been shown as 2314002100011933 and in the balance sheet as on 31st March, 2009 also the said Punjab National Bank account no.

11933 has been cited. It also appears from the letter dated 06.04.2009 of the Joint Secretary, Department of Women and Child Development and Social Welfare, Writers' Buildings regarding integrated programme for older persons that they have made their recommendations for the year 2008-09 in their letter no. 2157-SW and they have also recommended in their letter no. 3948-SW dated 02.09.2009 for release of grant-in-aid for 2009-10 in favour of the present NGO addressed to the Joint Secretary, Government of West Bengal, Ministry of Social Justice and Empowerment.

15. It is also noticed that one of the grounds for refusal of such grant-in-aid is that the beneficiaries are not provided with medical facilities. From the materials on record I find that the annual recurring expenditure for each day care center is 1,95,050/- and the same is maintained by the NGO with 90% Central Government grant-in-aid. If medical facility is to be extended at least in each day care center there should be one doctor to be assisted by one compounder with sufficient medicines and medical appliances for immediate treatment sine no such part-time doctor and para-medical staff will be available in rural areas. Therefore, the NGO is to keep three doctors and three compounders/ nurses in three day care centers for extending such real medical facilities. The total expenditure for such purpose will be not less than Rs. 12,00,000/- in a year. From the order dated 09.09.2008 of respondent no. 2 it will appear that their expenditure norms were as follows:

“Component Permissible Expenditure (per annum)

- i) Staff salary Rs. 45,000/-
- ii) Building (Rent/ maintenance) Rs. 30,000/-
- iii) Health Care (Doctor, Medicines etc.) & Nutritional Supplement Rs. 1,23,000/-
- iv) Recreation (Books, Magazines, Newspapers, Outing etc.) Rs. 12,000/-

v) Misc. and unforeseen expr. Rs. 7,500/-

Total Rs. 2,17,500/-”

16. It will appear from such norms that Rs. 1,23,000/- will have to be spent under item no. (iii) Health Care (Doctor, Medicines etc.) & Nutritional Supplement i.e., Rs. 10.250/- to be spent in a month i.e., Rs. 342/- per diem. If 50 elderly people attend a DCC and are provided tiffin/ lunch packets by way of nutritional supplement for their nourishment @ Rs. 7/- per capita, the cost under such head will be above Rs. 342/- leaving no amount for their health care for doctors and medicines. Is such amount of Rs. 7/- per capita for nutritional supplement sufficient? This ground reality has been totally ignored by the Inspecting Officers. The situation will not alter even after increase of 25% expenses on account of cost escalation. In absence of any adequate financial provision, therefore, rejection of prayer on the grounds of non-availability of medical facility to the beneficiaries cannot be treated as valid and legitimate since they have provided recreation and lunch facilities to the full satisfaction of two DCCs. The basic object of running such day care center is to take care of the old and infirm people as a cherished object of social welfare state. The expectation of the Central Government officials in running such day care center should be quite consistent with the limitation of fund extended by them. Such expectation in my opinion is quite inconsistent with the quantum of financial assistance given. I also conceive that the basic principle of grant-in-aid to the NGO is to extend partial financial assistance i.e., 90% as mentioned in above order and it is the duty of the NGO to give sufficient information to the Central Government the manner in which the amount sanctioned by the Central Government as grant-in-aid has been utilised by them and whether it is utilised for the purpose for which such amount is sanctioned. There is also no allegation that the NGO

has not utilized the entire amount of grant-in-aid for the purpose for which it is sanctioned. Rather the full utilisation of the fund would be reflected from their audit report. Without increasing the quantum of financial aid the Central Government official cannot expect more facilities to the beneficiaries from the NGOs organising the same having no financial independence of their own.

17. It is equally shocking to note that such refusal was made in total disregard of recommendation of the State Government in successive years as well as of our constitutional commitment on Centre State relation. Justice V. R. Krishna Iyer has rightly observed:

*“I agree with Sri Hedge, the Chief Minister of Karnataka, who in a recent meet like this, spoke in his inaugural: ‘The ultimate objective being the same, the Union and the States must function on mutually complementary and co-operative basis. They are and they should feel that they are equal partners in the great adventure of the national reconstruction and development. This naturally requires the recognition of equal importance of both the functions, mutual respect and honour. A super power attitude and show of superiority on the part of the Union, which is the natural consequence of the concentration of powers and resources, has been responsible for generating a feeling of frustration and sense of injustice and discrimination and helplessness on the part of the States which in turn provides the dangerous forces of regionalism’ (Constitutional Miscellany – V. R. Krishna Iyer 2nd Edition, P. 68).*

18. This helplessness of the State is exposed by rejection of their successive recommendations. The object of grant-in-aid to the NGO is for survival of the scheme for elderly hapless people. The NGOs are not competitors of the Government but they are working in aid of the Government to promote

wellbeing of the common downtrodden people under approved schemes. They are not responsible for the patent defect of this scheme framed without guidelines. If a Government employee does not perform his duties and refuses to follow norms and regulations, his salary is not withheld, but he is subjected to disciplinary action to regulate his conduct. When the NGO is not following the desired norms the Government officials, instead of withholding the grant-in-aid, could issue necessary directions to rectify their defects like discontinuation of cash transaction and thus an opportunity could easily be given to them to motivate and regulate their conduct.

19. It is not out of place to mention that the idea of remedial measures to be taken to deal with such problem came to the mind of the Director (SD-CDM) for a moment as mentioned in clause (b) of his letter dated 14.11.2008 and referred to in paragraph 10 above, but the same has, perhaps, not yet crystallised into any policy decision.

20. In such circumstances what is expected is blending of the head and the heart. The beneficiaries are the best persons whose voice should be given topmost priority in deciding the question of refusal of financial assistance to the NGO working for them and voice of their critics or opponents ought not to have been given much emphasis and precedence to the articulation of beneficiaries of at least two day care centres. Bureaucratic bounty is needed in such circumstances for successful operation of the impugned scheme, retention of good Centre State relation in our welfare State and survival of such voluntary organisation coming forward in aid of Government to implement their schemes otherwise social justice will be at stake and object of empowerment upon the NGO will be a mere lip-service to the destitute.

21. From paragraph 7 of order dated 09.09.2008 of respondent no. 2, I find

that a new procedure for release of grants to the NGOs was instituted with effect from 01.04.2007 which is quoted below:-

*“ The State Government’s recommendation for release of grants for the above 3 DCCs to the Parishad for 2005-06 and 2006-07 were received on 15.2.07 and 4.4.07, respectively. A new procedure for release of grants to the NGOs was instituted with effect from 1-4-07 (i.e. the financial year 2007- 08) vide Ministry’s leter No. 1-31/2006-Cdn. Dated 21-2-2007. As per the new guidelines, the Ministry would indicate the notional allocation for each State/UT in the beginning of each financial year. The NGOs would submit their proposals to the respective State Government and these would be considered by a State-level Grant-in-aid Committee. The State Government would send all proposals of the State, along with recommendations of the State Grant-in-aid Committee, Inspection Report and other requisite documents to the Ministry for consideration. For 2007-08, the State Government recommended the Parishad’s proposal for release of grant for 1 DCC (Dinajpur) in August ’07, and for the remainign two DCCs (Hoomita and Kashipur), In October, ’07. No decision could be taken for disbursement of grant-inaid to the Parishad for the above three years viz. 2005-06, 06- 07 and 07-08.”*

It will appear from such new guidelines that State-level Grant-in-aid Committee will consider the proposals of the NGOs and State Government will forward such proposal along with recommendations of such Committee. The revised scheme is also silent on accounting procedure to be followed by the NGO and extent of medical facilities to be provided for the beneficiaries. Therefore, without suitable modification of existing guidelines, respondent no. 2 cannot deny grant grant-in-aid to the NGO.

22. It has already been pointed out that as per existing procedure laid down in Rule 109(6)(viii) of the General Financial Rules of the Government of India such prayer beyond preceding two years cannot be considered by the Ministry of Social Justice and Empowerment. Therefore, I am reluctant to reopen the issue for the year 2006-07 and 2007-08 though refusal of such claim is unjustified and so impugned order dated 14.11.2008 of the Joint Secretary, Government of India, Ministry of Social Justice and Empowerment is opposed to public policy and for the aforesaid reasons not sustainable in law. But so far as the above recommendation for the year 2008-09 and 2009-10 are concerned I think there are ample scope for favourable consideration of such prayer and to provide ad hoc grant in the current years allotment in addition to usual grant-in-aid to liquidate the loan taken by the NGO for running the three DCCs during the past years. For technical faults if the total claim is denied it will be opposed to the public policy of a welfare state as also contrary to the principles of natural justice.

23. Therefore, I hold that there is sufficient merit in this writ petition and so I dispose of the same with the following directions:

- a) The impugned order dated 14.11.2008 of the Joint Secretary, Government of India, Ministry of Social Justice and Empowerment is hereby set aside;
- b) The respondent no. 2 is directed to consider the recommendation of the Government of West Bengal in light of the observations made above along with recommendation of the State-level Grant-in-aid Committee for the years 2008-09 and 2009-10 in respect of the three DCCs maintained by the Haldia Samaj Kaylan Parishad within two months from the date of communication of this order;
- c) And respondents shall take appropriate decision for providing grant-in-aid to the organization during the current financial year taking into account its

previous liability reflected in their audit report for the previous years including question of release of ad hoc grant in addition to usual grant-in-aid to enable the NGO concerned to tide over their existing financial contingencies arising out of previous years liabilities for non-receipt of any amount from the Central Government as reflected in their previous audit reports;

d) Suitable direction be given by the Central Government to the writ petitioner regarding the manner of maintaining the accounts of the organization and specific guidelines on manner of financial transactions to be followed by them in future for receiving such grant-in-aid, if deemed necessary; AND

e) To communicate the decision taken by the Central Government in their Ministry of Social Justice and Empowerment to the petitioner Secretary of the Haldia Samaj Kalyan Parishad within 15 days from the date of taking such decision.

24. Let urgent certified Photostat copy of this order, if applied for, be given to all the parties, upon compliance of all necessary formalities.

*(Syamal Kanti Chakrabarti, J.)`*