
(2013) 07 MP CK 0380

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4245 of 2013

Amardeep Bachat Sakh Samiti and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 07 MP CK 0380

Hon'ble Judges : U.C. Maheshwari, J;Anil Sharma, J

Bench : Division Bench

Advocate : R.P. Singh, for the Appellant; M.P.S. Raghuwanshi, Additional Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

U.C. Maheshwari, J.—The petitioners, total six in numbers known in the different names of Swa Sahayata Samuh, as stated in the cause title of this writ petition have filed this writ petition under Article 226 of the Constitution of India for quashment of NIT, dated 10.6.2013, (Ann. P-1) published on behalf of Zila Panchayat Morena under the authority of CMO of Zila Panchayat Morena for inviting tender to provide the facilities with Centralized Kitchen and supply the cooked food under the Mid Day Meals Scheme to the students of 72 different schools including the schools situated in Municipalities, limit of Morena and also of the schools of villages which have been proposed to add or added to constitute the Municipal Corporation, Morena. The facts giving rise to this petition in short are that the petitioners-institutions under some agreement with the respondents-authorities are running their respective Swa Sahayata Samuh to provide the Mid Day Meals for the students of their respective schools under the Mid Day Meal Programme in accordance with the scheme promulgated long before by the State of M.P. As per further averments, they are supplying the proper food comfortably to the students of the schools through their management by maintaining its quality as per guidelines of the scheme. It is also stated that the aforesaid Mid

Day Meal Scheme has been implemented for the students of the schools situated in the township and rural areas for betterment of the economy condition of the weaker sections or the poor persons also because an account of such scheme they have got employment by constituting their respective Swa Sahayata Samuh and obtaining the aforesaid work to supply the cooked food to the schools for the students. It is further stated, that the petitioners are supplying the aforesaid food without any complaint in accordance with the scheme and there is no necessity to implement the scheme of Centralized Kitchen at Morena. If such scheme is implemented, then the members of the petitioners - Swa Sahayata Samuh shall come at the stage of starvation and they shall be deprived from the employment and pursuant to it, they have to suffer the financial loss in a lot. It is also stated that the aforesaid scheme of the Centralized Kitchen has been implemented by the State of M.P. only in Municipal Corporation Areas and not in the Municipalities Areas. So in such premises, the impugned NIT published for Morena, being municipality area and not the Corporation Area deserves to be quashed. With these averments, prayer for quashment of aforesaid NIT is made. In addition to it, the prayer for appropriate direction to the respondents-authorities not to interfere directly or indirectly in the peaceful and regular Mid Day Meal Supply Programme of the petitioners is also made. Alongwith the petition, Scheme of Mid Day Meal, (Ann. P-2) and copies of some agreements taken place between the authorities and the petitioners - Swa Sahayata Samuh, some photo copies of registration of Swa Sahayata Samuh and some resolutions of the same are annexed with the writ petition.

2. On behalf of the respondents--authorities by filing the return, averments of the petition relating to the right of the petitioners to continue supply under the aforesaid scheme, have been denied. In addition to it, it is stated that the Centralized Kitchen Scheme has been promulgated by the State under the direction of the Central Government and the same is under implementation. The Central Government has issued such direction long before in compliance of some observations and directions given by the Apex Court in the matter of Shagun Mahila Udyogik Sahakari Sanstha Maryadit Vs. State of Maharashtra and Others, . It is further stated that initially such scheme was implemented in the Corporation Areas namely Bhopal, Indore, Gwalior, Jabalpur and Ujjain, as stated in Annexure A-3, filed today on behalf of the respondents alongwith IA No. 5565/13 and subsequently, it was implemented in some other Municipal Corporation areas of the State of M.P. namely Dewas, Sagar, Rewa, Katni, Khandwa, Singrauli, Burhanpur Ratlam and Satna, vide circular dated 19.9.2011, (Ann. A-1) issued by the Panchayat Avam Gramin Vikas Vibhag, Bhopal and subsequent to it, on giving proposal by the authorities of Morena empowered to manage the affairs of the mid day meal to include the Morena under the Centralized Kitchen Scheme, the matter was considered and accepted by the State of M.P. and vide notification dated 20.6.2012, bearing No. 8193/22/V-9/SDM/12 issued by the Madhyam Bhojan Karyakram Parishad of Panchayat Avam Gramin Vikas Vibhag of State of M.P. according to the terms of earlier circulars of

aforesaid Panchayat Avam Gramin Vikas Vibhag of State of M.P. bearing No. 14173/22/V-9/SDM/2011, dated 19.9.2011, (Ann. A-1) and No. 16306/22/V-9/SDM/2011, dated 17.11.2011, (Ann. A-2) Morena township area was permitted to include in the Centralized Kitchen Construction & Programme. The same is placed as part of Annexure R-1 alongwith the return of the respondents. With these averments by stating that the aforesaid NIT was invited in accordance with the procedure prescribed under the Scheme, Annexure A-2 and prayer for dismissal of the writ petition is made.

3. After taking us through the averments of the petition as stated above Shri R.P. Singh, the petitioners' counsel has argued that contrary to fundamental rights of livelihood of the members of petitioners Samuh, so also in the absence of any complaint against any of the petitioners - institutions with respect of their cooked food and their services to supply the same to concerning schools under the scheme, their rights of employment and livelihood is being curtailed by the respondents-authorities by inviting the tender through NIT, (Ann. P-1) to implement the Centralized Kitchen and allot such work to the successful tenderer. In support of his arguments, he has also referred various averments of the scheme, Annexure P-2, annexed with this petition. He further said that State is not having any infrastructure at present at Morena to start the Centralized Kitchen according to the proposed scheme and in such premises, also the State has no authority to invite the tender for Centralized Kitchen and prayed for admission and allowing this writ petition.

4. On the other hand, Shri M.P.S. Raghuwanshi, Additional Advocate General after taking us through the averments of the return as well as annexed documents with the return, so also the documents filed alongwith IA No. 5565/13 by justifying the publication of aforesaid NIT, argued that the same has been issued in accordance with the State's notification and the circulars promulgated by the State of M.P. for the welfare of the students of the concerning schools to supply them Mid Day Meals after preparing the same through Automated Plant with Zero Infection. He also submits that if once the notification/circulars has been issued by the authorities of the State of M.P. for the students of 72 schools situated in the township of Morena and the adjoining villages for implementation of the Centralized Kitchen Scheme, then unless such notification is recalled or set aside by any of the competent authority or the court, the impugned NIT could not be quashed. In this regard, he also said that this petition has not been filed for quashment of aforesaid circulars and notifications promulgated to implement the scheme of the notification by which the schools of Morena and adjoining villages have been permitted to implement such scheme, has not been challenged. So in the lack of it, the petitioners are not entitled to any relief in the present writ petition. In continuation, he said that the impugned scheme is being implemented for the welfare of the students of concerning schools and not for the benefit of the petitioners or to provide the employment of their members. With these submissions prayed for dismissal of this writ petition.

5. Having heard the counsel at length, keeping in view their arguments, We have carefully gone through the papers placed on record. It is apparent fact that before including the alleged schools of Morena Township and its adjoining villages under the aforesaid scheme of Centralized Kitchen the Mid Day Meal was being supplied by the private Swa Sahayata Samuh including the petitioners and at present in the lack of any other arrangement or finalization of tender still they are supplying the same.

6. It is undisputed fact from the prayer clause and other averments of the petition that the petitioners have challenged only the aforesaid NIT, (Ann. P-1), which has been published in compliance of the circular of the aforesaid Panchayat Avam Gramin Vikas Vibhag of the State of M.P., dated 20.6.2012, according to which the aforesaid schools of Morena and adjoining villages have been included under the scheme of Centralized Kitchen on the same terms enumerated in the notification/circulars, dated 19.9.2011, (Ann. A-1) and 17.11.2011, (Ann. A-2) but for the reasons best known to the petitioners any of the aforesaid notifications or the circulars promulgated by the State of M.P. has not been challenged in this writ petition and unless the same are set aside by any of the authorities or same are declared to be ultra vires by any competent court, the action of the State, authorities carried out under the circulars and notifications for implementation of scheme could not be struck down by entertaining and allowing this writ petition of the petitioners. So firstly on this count only the petition deserves to be dismissed.

7. Apart the aforesaid, it is apparent from the papers annexed with the return and Ann. A-1 to A-4 annexed with IA No. 5565/13 collectively Ann. R-1, the same are different circulars and the minutes/proceedings of meeting of concerning Parishad/Committee of Panchayat Avam Gramin Vikas Vibhag of State of M.P. promulgated for implementation of Centralized Kitchen Scheme that earlier everywhere in the State of M.P. for every school, Scheme, Annexure A-2 was being followed and still in various areas of the State, the same is being followed but in view of above mentioned decision of the Apex Court in the matter of Shagun Mahila Udyogik Sahakari Sanstha Maryadit (supra) some directions by way of circulars dated 9.5.2012 were issued by the Central Government to all the States, as submitted by the Additional Advocate General and pursuant to that in order to provide the better cooked food with Automated Machine with Zero Infection to the school boys and girls, the alleged Scheme of Centralized Kitchen was implemented firstly in respect of the students of five Corporation areas in the State of M.P., as stated above. Subsequently some Corporations areas were also included in such scheme and on giving proposal of the concerning authority of Mid Daly Meals of Morena, after considering the same by the State Authorities, the aforesaid notification, dated 20.6.2012, (part of Ann. R-1) to include the township of Morena and adjoining villages areas, which have been proposed to include to constitute the Morena Municipal Corporation has been issued. This scheme has been directed to implement in accordance with the terms of circulars dated 19.9.2011 and 17.11.2011, (Ann. A-1 and A-2). Pursuant to it, the

aforesaid NIT has been published under the authority of the CEO of Zila Panchayat, Morena. On going through the papers placed on record either by the petitioners or on behalf of respondents, we have not found that by implementation of Centralized Kitchen Scheme any fundamental rights of any of the members of the petitioners- institutions guaranteed under the Constitution is being violated. Infact the alleged scheme is promulgated and is being implemented by the State of M.P. under the guidelines of the Central Government based on the observations of Supreme Court in the aforesaid cited decision to supply better cooked food prepared by Automated Plant/Machine with Zero Infection for betterment of the school going children and pursuant to that the impugned NIT has been issued by the authorities. So in such premises, it does not require any interference at the instance of the petitioners. Consequently, this petition being devoid of any merits deserves to be and is hereby dismissed.