
(2008) 09 AHC CK 0042
In the Allahabad High Court

Ashok Madheshiya

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 16-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 09 AHC CK 0042

Hon'ble Judges : Ashok Bhushan, J;A.P. Sahi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ashok Bhushan and A.P. Sahi, JJ.—The petitioner who is a Corporator of Nagar Palika Paralishad, district Deoria, has preferred this petition praying for quashing the advertisement dated 31.7.2008 published by the District Basic Shiksha Adhikari, Deoria respondent No. 3 inviting applications from non-governmental self help groups registered under the Societies Registration Act for carrying out the programme of distribution of mid day meal in basic schools of the municipal area of Deoria and Gaura Barhaj of the same district. The challenge is on the ground that the aforesaid advertisement violates the D.O. Letter dated 14.9.2007. A supplementary affidavit has also been filed alleging that the advertisement is in violation of the government order dated 17.2.2006 against which the petitioner has preferred a representation.

2. We have heard Sri H.P. Misra learned Counsel for the petitioner and the learned standing Counsel who has produced before us a compilation of the government orders in circulation that govern distribution of mid day meal in basic schools through out the state.

3. The contention raised on behalf of the petitioner is that the distribution has to be made by the concerned local bodies in the urban area, and it is only in the event that in case the local body expresses inability to do so, then the said function can be delegated to a non-governmental organisation. Sri Misra

contends that no inability has been expressed by the local body at Deoria and on the contrary the experience in the past has shown that the self help group that was headed by Smt. Girja Tripathi, had committed defaults in distributions of mid day meal and therefore, adopting the same procedure by inviting applications, is in violation of the guidelines and the policy laid down by the government itself.

4. Learned standing Counsel on the other hand has invited the attention of the Court to the various government orders indicating that the District Magistrate is, the nodal officer and there are Committees constituted which are entrusted with the task of managing these affairs in coordination with the the Basic Education Officer. It has been urged on behalf of the learned standing Counsel that this is a policy decision and there are no statutory rules conferring any rights of which the petitioner is being divested so as to enable him to maintain this petition. It is urged that neither any statutory right is being infringed nor any fundamental right has been violated so as to give any cause of action to the petitioner to approach this Court. The necessity of inviting self help groups depends upon the local conditions of every district and there is no justifiable cause for the petitioner to approach this Court.

5. Having heard learned Counsel for the parties and perused the records, we find from the compilation of the government orders that on 25.6.2004 a government order was issued in compliance of the directions of Hon"ble the Supreme Court dated 28.11.2001 in the matter of distribution of mid day meals. According to para 2 of the said government order it was decided to distribute cooked meal to the students of basic institutions through me concerned village Panchayat in rural areas and through the Ward Committees in the urban areas. A Committee for the Villages is provided in for para 8 of the said government order and for the urban areas/local bodies is provided in para 9 of the said government order. In urban areas the concerned Corporator of the Ward in which the institution is situate, will be the President of such Committee and two nominated female members who are guardian of some student. Apart from this, the Head Master of the Institution and two male guardian members to be nominated by the Corporator, are also included in me said Committee. A Nodal Committee at the district level with the District Magistrate as its Chairman and the District Basic Education as a Secretary, has also been constituted for supervising the said distribution.

6. A decision was taken at the government level to appoint the District Magistrate as the Nodal Officer which was communicated through letter dated 1.9.2004 and in para 5 of the said letter it is indicated that the distribution system should be coordinated with the social and self help groups as well. It was also indicated that in case such groups are available then the distribution and the conversion cost should be made available directly to them. This was followed by a resolution passed in a meeting dated 23.11.2004 under the Chairmanship of the Chief Secretary of the Government and vide resolution No. 9, the said views were reiterated with a further suggestion that a central kitchen should be allowed to be operated. It was further resolved that in case there is no objection from the

concerned Village Panchayat or the local bodies, then for a period of three months, the District Magistrate can make arrangements for distribution of mid day meal through self help groups or non-governmental organisations and institution. For this, the mid day meal materials and the conversion cost should be made available to the self help group directly.

7. Some complaints were received that certain self help groups who had been entrusted with the task in the district pilfered the grains for mid day meal, as a result whereof another government order was issued on 17.2.2006, on which reliance has been placed by the learned Counsel for the petitioner, wherein it was provided that henceforth the distribution of mid day meal should be given to self help groups only if the Local Bodies and the Gram Panchayat express their inability to carry out the distribution. This experiment was being carried out and alternative arrangements were made by the government presumably to ensure the effective distribution of mid day meal. Other complaints were forthcoming that the Village Panchayat and the Local Bodies were unable to ensure healthy cooked meal being served in the institutions. Reports were also made pointing out the instances of food poisoning.

8. It is, thus clear that the policy of mid day meal being distributed by self help groups, had not been abandoned and was kept in the alternative. This was again expressed through a decision taken by the State Govt. in the communication dated 28.11.2007 wherein it was resolved that the distribution can be attempted through self help groups who have had a good reputation in the past. It cannot be therefore said that the District Magistrate who is the Nodal Officer is denuded of any authority to invite any such application. As contended by the learned Counsel for the petitioner, there does not appear to be any violation of the D.O. letter dated 14.9.2007 which requires the operation of the account through the Corporator and the Executive Officer of the Local Bodies. As a matter of fact the said letter nowhere touches the contention which has been raised on behalf of the petitioner and relates only to the operation of the accounts.

9. So far as the government order dated 17.2.2006 is concerned, the same cannot be said to be an absolute bar for the option to be exercised by the District Magistrate for ensuring the distribution of the mid day meal. The said government order does not confer any vested or absolute right upon the petitioner to claim the exclusive privilege of distribution of mid day meal. The distribution is only to ensure the fulfilment of the objects as discussed by the apex court in the judgment dated 28.11.2001 referred to in the government order and indicated herein above.

10. In our considered opinion, this petition does not raise any substantial issue nor does it involve any such justifiable cause which may call upon the Court to adjudicate the violation of any fundamental right of the petitioner. We, therefore, decline to exercise our extra ordinary jurisdiction under Article 226 of the Constitution.

11. The writ petition is, accordingly, dismissed.