

(2010) 06 DEL CK 0041

In the Delhi High Court

Case No : Writ Petition (C) No. 2714 of 2010

Harit Recyclers Association

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 03-06-2010

Acts Referred:

Constitution of India, 1950 — Article 11, 13, 21, 21A, 226

Citation : (2011) 7 RCR(Civil) 858

Hon'ble Judges : Madan B. Lokur, J;Dipak Misra, J

Bench : Division Bench

Advocate : Tariq Adeeb with Mr. Pankaj Sinha, for the Appellant; A.S. Chandhiok, ASG with Mr. Atul Nanda, Advocate for respondent No. 1 and Mr. N. Waziri, Advocate for respondent No. 2, Mr. Ashwani Kr. Dubey, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, C.J.—In this public interest litigation preferred under Article 226 of the Constitution of India, the petitioner, a non-governmental organization, has prayed for many a relief but basically for issue of a writ of mandamus commanding the respondents No. 1 and 2, namely, Union of India and its Ministry of Women and Child Development and Chief Secretary of Government of NCT of Delhi to investigate into the health hazard that was suffered by the children of the Sarvodaya Kanya Vidyalaya in Block 20 of Trilokpuri in East Delhi, who were forced to eat contaminated food under the Mid Day Meal Scheme on 25th of November, 2009 and prosecute the persons who have failed in their duty and, further, to award compensation to the children who were affected after consuming such food.

2. The facts which are essential to be adumbrated are that there is a set of guidelines, namely, National Programme of Nutritional Support to Primary Education, 2006 (Mid Day Meal Scheme) Guidelines (for short "the Scheme") under which the mid day meal is served to the young children as an

encouragement to attend the school. For supply of mid day meal at Sarvodaya Kanya Vidyalaya, a non-governmental organization, namely, Rao Raghuvir Seva Samiti was awarded the contract. It is pleaded that apart from the award of contract for the aforesaid school, the said organization was also awarded contract for number of schools in Delhi. On 25th of November, 2009, the children of the said school consumed the food supplied by the contractee NGO. After they consumed the food, the children developed serious health problems and no medical help was rendered immediately. However, they were rushed to a public hospital and eventually, a first information report was lodged at Mayur Vihar Police Station against the 4th respondent, Rao Raghuvir Seva Samiti (for short "the Samiti"). The children who had suffered critical health problem belonged to the poor strata of the society. Some of them were treated in Lal Bahadur Shastri Hospital at Trilokpuri by the school authority and some by their parents. An information submitted by Lal Bahadur Shastri Hospital regarding the treatment and prescription of all 126 children has been brought on record as Annexure P-2.

3. It is contended that the children could not deny to eat the food and they had no inkling that the food would be contaminated. It is averred that no one had checked the food before it was served to the students. It is alleged that the food was served in non-conducive and unhygienic surrounding. Because of the aforesaid incident, the Mid Day Meal scheme remained suspended for two months at Sarvodaya Kanya Vidyalaya. Reference has been made to the orders passed by the Apex Court in PUCL v. Union of India WP (C) No. 196/2001 about the various directions issued by the Apex Court on implementation of various guarantees including the supply of Mid Day Meal by the government. Reference has also been made to the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights (ICESCR) to indicate how the physical and mental health does matter and it is put forth that India has accepted the said Covenant. Reliance has also been placed on Article 25 of the Universal Declaration of Human Rights, 1948.

4. It is contended that with a view to enhance enrolment, retention and attendance and simultaneously for improvement of nutritional levels amongst children, the National Programme of Nutritional Support to Primary Education (NPNSPE) was launched as a centrally sponsored scheme on 15th August, 1995. The said Scheme solely covered many categories of schools. It is also set forth that the Scheme was reviewed from time to time to make the supply of food more nutritious so that the children of the nation would grow properly and also become enthusiastic to receive education.

5. It is further contended that because of the supply of contaminated food, the right to life of children to live with dignity has been seriously jeopardized and as the same eventually affected the enrolment and attendance of the children, the right to education as engrafted under Article 21A is dented and further, the stoppage of the Mid Day Meal for a period of two months tantamounts to deprivation and denial of food which fossilizes the right to food, a basic human

right. That apart, it is contended that the 4th respondent, who is responsible for supplying this food, cannot be allowed to supply food in any school as that will give a premium to an organization which had caused a health hazard.

6. A counter affidavit has been filed by the respondents No. 2 and 3 contending, inter alia, that on 25th November, 2009, after consuming Mid Day Meal, some of the students of the school were hospitalized in Lal Bahadur Shastri Hospital Khichripur and Dr.Hedgewar Arogya Sansthan, Karkardooma and all the requisite medication was immediately made available to the children who had complained of uneasiness, vomiting and illness. There was no complaint of lack of appropriate medical care by the hospital authority from any parent and no parent had asked for any monetary assistance for treatment of his/her ward who had taken ill on that day. Inquiry was made by the Department of Education which revealed that for distribution on that date, the food was tasted by the H.O.S. and other members of the school level Mid Day Meal Committee and on being found appropriate, it was distributed amongst the children of primary classes between 10.00 a.m. to 10.30 a.m. However, due to the ongoing Disaster Management Programme for higher classes in the school on that day, the food was distributed to the upper primary classes around 11.00 a.m. and this continued till 11.45 a.m. About 11.45 a.m., it was reported by two of the teachers, namely, Mrs. Anita Ahuja and Mrs. Meena that the food was smelling. Thereafter, the distribution of the food was immediately stopped and all students were directed not to eat the food. In the meantime, some students complained of stomachache and were immediately rushed to the hospital. It is put forth that it is the duty of the MDM Committee members along with the H.O.S. to taste the food before its distribution and the said procedure was followed on that day. It is asseverated that in the school, 19 class rooms were demolished by DSIIDC in July 2009 for reconstruction and the students of these class rooms were adjusted in the Labs, Library, Games room, Hobby room, Examination room, Music room, Drawing room etc. However, still five classes could not be adjusted and had to sit outside in the open area under the trees. On the day of the incident, these classes (3 sections of class VI and 2 sections of class VII) were sitting in the open area and food was served to them in the open. The rest of the students were served the meal in their respective class rooms. The surrounding environment was hygienic and tents were arranged to protect the children from cold weather. Nevertheless the children were taken ill. They were first rushed to the nearest medical institution for medical care. After the incident, the Scheme for providing Mid Day Meal was suspended by the department to comprehensively review the whole situation and thereafter, a high level meeting was held and guidelines were issued to all DDEs, HOSs, DEOs ad Eos for intensive monitoring of the Mid Day Meal Scheme at the school level and arrangements for frequent inspection of kitchens of all Service Providers were made to ensure that no such untoward incident may happen in future. Copy of the minutes of the meeting held by the high level committee and the instructions have been brought on record as Annexures A and B. It is put forth that in addition to the already existing service

providers, six new service providers were selected after due procedure including inspection of their kitchens and after ensuring their capability for the supply of hygienic / good quality food and the same was done to reduce the number of children allotted to the then existing service providers for smooth supply of mid day meals. The Scheme of Mid Day Meal was temporarily put on hold to review the whole situation so as to prevent the happening of any unfortunate event in future and such an exercise was necessary in the interest of the safety of the children. It is further put forth that the Scheme of the Mid Day Meal is carefully monitored to ensure that no untoward incident takes place as regards the quality of the food that is offered to school children and the number of suppliers have also been enhanced so as to reduce the pressure on some NGOs who were earlier catering to a large number of schools.

7. An additional affidavit has been filed by the petitioner stating, inter alia, that though in the counter affidavit it has been stated that certain measures have been taken, yet the respondents are still providing food of substandard quality which has resulted in serious health hazards to the students who are studying in various schools at Delhi and the said information has been made available by some of the public spirited citizens who are actively working for the cause of children. It is also contended that after 15 days of filing of the present writ petition, another incident of irregularity in Mid Day Meal occurred on 6th May, 2010 where 29 students fell ill after eating the contaminated mid day meal in Government Girls Middle School in Hauz Qazi near Ajmeri Gate and were later on admitted in LNJP Hospital, Delhi Gate.

8. We have heard Mr.Tariq Adeeb, learned counsel for the petitioner, and Mr.A.S. Chandhiok, learned senior counsel for respondent No. 1, Mr.N.Waziri, learned counsel for respondent No. 2 and Mr.Ashwani Kumar Dubey, learned counsel for respondent No. 3. The two seminal issues that arise for consideration are that: (i) Whether the NGO, in whose favour the contract was awarded in respect of the present school in question, should be proceeded against, and (ii) Whether compensation should be granted to the parents of the children who were hospitalized.

9. At the very outset, we may mention that we are not taking into consideration the additional affidavit though we have referred to the same. The incident relates to another government school with which the main writ petition was not concerned.

10. Thus, the Court will dwell upon the controversy that has emerged. At this juncture, we may refer with profit to the background and objectives of the Mid Day Meal Scheme.

Background

With a view to enhancing enrollment, retention and attendance and simultaneously improving nutritional levels among children, the National Programme of Nutritional Support to Primary Education (NP-NSPE) was launched

as a Centrally Sponsored Scheme on 15th August, 1995, initially in 2408 blocks in the country. By the year 1997-98 the NP-NSPE was introduced in all blocks of the country. It was further extended in 2002 to cover not only children in classes I-V of government, government aided and local body schools, but also children studying in EGS and AIE centres. Central Assistance under the scheme consisted of free supply of food grains @ 100 gms per child per school day, and subsidy for transportation of food grains up to a maximum of Rs. 50 per quintal.

In September, 2004 the scheme was revised to provide cooked mid day meal with 300 calories and 8-12 grams of protein to all children studying in classes I-V in Government and aided schools and EGS/AIE centers. In addition to free supply of food grains, the revised scheme provided Central Assistance for (a) Cooking cost @ Re1 per child per school day, (b) Transport subsidy was raised from the earlier maximum of Rs. 50 per quintal to Rs. 100 per quintal for special category states, and Rs. 75 per quintal for other states, (c) Management, monitoring and evaluation costs @ 2% of the cost of food grains, transport subsidy and cooking assistance, (d) Provision of mid day meal during summer vacation in drought affected areas.

In July 2006 the scheme was further revised to provide assistance for cooking cost at the rate of (a) Rs. 1.80 per child / school day for States in the North Eastern Region, provided the NER states contribute Rs. 0.20 per child/school day, and (b) Rs. 1.50 per child/school day for other States and UTs, provided that these States and UTs contribute Rs. 0.50 per child/school day. Objectives

The objectives of the mid day meal scheme are:

? Improving the nutritional status of children in classes I-V in Government, Local Body and Government aided schools, and EGS and AIE centres.

? Encouraging poor children, belonging to disadvantaged sections, to attend school more regularly and help them concentrate on classroom activities.

? Providing nutritional support to children of primary stage in drought affected areas during summer vacation.

11. The said Scheme has been extended to the upper primary stage. We reproduce the said extension.

The Finance Minister has announced in the Union Budget 2007-08 that the Mid-Day Meal Scheme will be extended to cover children in Upper Primary Classes in 3427 Educationally Backwards Blocks (EBBs) in 2007-08. A Budget provision of Rs. 7324 crores has been made for this purpose, representing 37% increase over the budget for 2006-07.

12. In *People's Union for Civil Liberties (supra)*, on 23rd July, 2001, the Apex Court has opined thus:

In our opinion, what is of utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of

starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them. In case of famine, there may be shortage of food, but here the situation is that amongst plenty there is scarcity. Plenty of food is available, but distribution of the same amongst the very poor and the destitute is scarce and non-existent leading to malnourishment, starvation and other related problems.

13. Thereafter, their Lordships referred to the earlier order wherein it had been observed about the effect of the very existence of large section of poor people, who can ill-afford to provide their families with two square meals a day, their right to life and right to food and how their misfortune becomes further grave during famine or drought. In the said order, the Apex Court had issued certain directions, which we reproduce herein below:

1. All such States and Union Territories who have not fully complied with the order dated 28th November, 2001 shall comply with the said directions fully in respect of the entire State / Union Territory, preferably, on the re-opening of the primary schools after a long vacation of 2004 and, in any case, not later than 1st September, 2004.

2. All Chief Secretaries / Administrators are directed to file compliance report in regard to directions No. 1 on or before 15th September, 2004.

3. The conversion costs for a cooked meal, under no circumstances, shall be recovered from the children or their parents.

4. In appointment of cooks and helpers, preference shall be given to Dalits, Scheduled Castes and Scheduled Tribes.

5. The Central Government shall make provisions for construction of kitchen sheds and shall also allocate funds to meet with the conversion costs of food-grains into cooked midday meals. It shall also periodically monitor the low take off of the food-grains.

6. In respect of the State of Uttaranchal, it has been represented that the scheme is being implemented in all the schools. It would be open to the Commissioners to inspect and bring it to the notice of the Court, if it is otherwise.

7. In drought affected areas, midday meal shall be supplied even during summer vacations.

8. An affidavit shall be filed by the Government of India, within three months, stating as to when it is possible to extend the scheme upto 10th Standard in compliance with the announcement made by the Prime Minister. The affidavit shall also state the time frame within which the Government proposes to implement the recommendations of Abhijit Sen Committee in respect whereof the modalities have been discussed with the concerned Ministries and Planning Commission.

9. Attempts shall be made for better infrastructure, improved facilities (safe drinking water etc.) closer monitoring (regular inspection etc.) and other quality safeguards as also the improvement of the contents of the meal so as to provide nutritious meal to the children of the primary schools.

14. We have reproduced the said directions only to highlight how seriously the Apex Court has viewed the implementation of the Mid Day Meal Scheme. The signification of food has been recognized in the Covenant, namely, International Covenant on Economic, Social and Cultural Rights. Articles 11 and 13 of the said Covenant lay down as follows:

Article-11: The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

Article 13:

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

15. The convention on the rights of the child lays immense emphasis how the States have ensured to the maximum extent possible, the survival and development of the child, their education, the creation of an acceptable atmosphere for the smooth rendering of appropriate assistance to the child and the rights of a child to enjoy the highest attainable standard of health and to avail the facilities for the treatment of the illness. There is also emphasis to recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development and how it is obligatory on the part of the State to take such steps. Article 21 of the Constitution of India, which has been treated as summum-bonum of our organic document, has been infused with life spark by the Apex Court to extend it to many a sphere regard being had to the dignity of human existence and the affirmative right to life. In *Chameli Singh and others etc. Vs. State of U.P. and another*, , while emphasizing on the right to live in a civilized society, the Apex Court has held thus:

In any organized society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights.

16. In *Paschim Banga Khet Mazdoor Samity and others Vs. State of West Bengal and another*, , it has been laid down that the Constitution envisaged establishment of a welfare State at the federal level as well as at the State level, and in a welfare State the primary duty of the government is to secure the welfare of the people. Their Lordships emphasized that Article 21 imposes an obligation on the State to safeguard the right to life of every person and preservation of human rights is of paramount importance. In *M/s. Shantistar Builders Vs. Narayan Khimalal Totame and others*, , it has been held thus:

The right to life would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body, for a human being it has to be a suitable accommodation which would allow him to grow in every aspect - physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well-built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud-built fire-proof accommodation.

17. In *P.G. Gupta Vs. State of Gujarat and Others*, , it has been held that food, shelter and clothing are minimal human rights. In *People's Union for Civil Liberties v. Union of India & Ors.* 2004 (5) SCALE 128, while dealing with right to food, it has been observed as follows:

...From the facts and figures that have been furnished to us, it seems evident that there is a large number of mal-nourished children between the age group of 0 to 6 years. These figures are based on the survey conducted under the National Family Benefit Health Scheme. The position is quite alarming. These young children are the future of the nation....

18. The need of food is the basic human need. A civilized society does not countenance starvation. In a cultured society cry for food is not thought of. Throughout the globe nutrition, health and education have been recognized as the basic needs of a member of the society as man cannot be allowed to have animal existence. When the food is not available to meet the cry of hunger, the authors have gone to the extent of saying that it tantamounts to nullification of life. The biological growth is dependent on the food. Not for nothing it had been said in the days of yore that a hungry man can commit any sin and a man in demand of food cannot conceive any kind of poetry or look at the moonlit sky.

19. We have referred to the aforesaid pronouncements to highlight the need of the food and how it garners significance in a welfare State. It is not only a biological imperative but it is the corner stone of life which intends to realize itself with dignity. It would not be out of place if it is said that the test of true democracy is in the fulfillment of the biological and mental needs of a citizen in a State which respects liberty. In a true democracy no one would like to live without dignity. No one would like to barter his dignity for all the tea in China.

20. Coming to the case at hand, it is perceptible that the children suffered because of the consumption of contaminated food. They were treated as they suffered. The petitioner has brought on record how medicines were administered to 126 children in the casualty and how some students were given extra treatment. We think it seemly to reproduce the information given by the hospital authorities:-

1. The list of Medicine administered to the 126 children in the casualty are

- (i) Srp. Digene gel
- (ii) Tab. Metoclopramide
- (iii) Tab. Dicyclomine
- (iv) I/V Fluid Ringer Lactate

One child Gaytri, Age 11 yrs. admitted in pediatric Department. She was given following treatment :

- a. I.V. fluids
- b. Inj. Monocef
- c. Inj. Ampilicillin
- d. Inj. Ranitidine
- e. Syp. Digene & B. Complex

Her period of admission was uneventful and she was discharged on 3rd day of admission in good & satisfactory condition.

2. Four children were admitted in medicine ward

(i) Pooja 14 yrs./F, was admitted in the intensive care unit. She was given Inj. Metrogyl, inj. Amikacin, inj. Emeset, inj. Pantocid, inj. Meropenam and discharged on 27.11.2009 in stable condition.

(ii) Laxmi

(iii) Tarannum

(v) Poonam Dutt

They were treated with antibiotics, painkillers, antacids and I.V. fluids and were discharged in stable condition on 26.11.2009.

21. From the aforesaid report, even a lay man can understand that the children suffered and were administered treatment. It is not a case where they suffered only from empathetic phobia or fear psychosis. The submission of learned counsel for the State is that the parents did not spend any amount for treatment and whole expenses were borne by the State. There cannot be any iota of doubt that the State bore the expenses for treatment but, a pregnant one, the young children suffered physical pain and indubitably, mental agony. The mental shock of a child, who goes to the casualty ward, can be well imagined. The children, who were admitted in intensive care unit, have suffered more than others. The parents may not be granted any amount for expenses, but the children, who suffered, are definitely entitled to compensation for their physical pain and suffering, and mental agony and anguish. The psychology of the young children

has to be understood in proper perspective. Thus, we intend to compartmentalize the sphere of compensation. The child Pooja would be entitled to compensation of Rs. 15,000/- (Rs. fifteen thousand only) as she was admitted in the intensive care unit. The children, namely, Laxmi, Tarannum and Poonam Dutt, who were treated with antibiotics, painkillers, antacids and I.V fluids would be entitled to compensation of Rs. 10,000/- (Rs. ten thousand only) each. Gaytri, aged about 11, who was admitted in Pediatric Department, would be entitled to compensation of Rs. 5,000/- (Rs. five thousand only). The other children, who were taken to casualty and given treatment, would be entitled to compensation of Rs. 3,000/- (Rs. three thousand only) each. As the Scheme has been introduced by the government it is the obligation of the State to see that it is properly worked out and no one becomes a victim and suffers from any kind of health hazard due to consumption of bad food. The Scheme has its public character. Hence, there can be no trace or shadow of doubt that it is the State government which has to pay the compensation as the lacunae come within the State action and the grievance agitated falls within the public law domain. The State shall deposit the amount in the concerned school and the competent authority of the school administration, in presence of an authority deputed by the State government, shall disburse the amount of compensation to the students on proper identification. The amount so awarded shall be kept in a cumulative fixed deposit till he/she becomes a major.

22. As far as the second aspect that costs should be awarded and action should be directed to be taken against the 4th respondent is concerned, learned counsel appearing for the State has filed an affidavit stating, inter alia, that vide order dated 25th November, 2009, the work order of the said NGO has been suspended until further orders in public interest. In view of the aforesaid, we only direct the authorities to proceed against the said NGO in accordance with law.

23. The writ petition is allowed to the extent indicated above. There shall be no order as to costs.