

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 691/2013 & CM APPL. 1313/2013

ROYAL EDUCATIONAL AND SOCIAL
WELFARE SOCIETY

..... Petitioner

Through Mr. Mandeep S. Vinaik with
Mr. Deepak, Advocates

versus

GOVT. OF NCT OF DELHI AND ORS

..... Respondents

Through Mr. Yogesh Saini, Advocate for
Mr. V.K. Tandon, Advocate.

%

Reserved on : 14th February, 2014
Date of Decision : 10th March, 2014

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. Present writ petition has been filed challenging the termination order dated 04th January, 2013 whereby the petitioner's contract for mid-day meal had been cancelled. Petitioner has also prayed for permission to bid for fresh contracts for the supply of mid-day meal in schools run by the Delhi Government.
2. The relevant facts of the present case are that on 29th September, 2009, a Memorandum of Understanding was executed between the petitioner-Society and the respondents by virtue of which petitioner was

given contract till 28th September, 2012 to supply mid-day meal in Government and Government Aided schools of Directorate of Education, GNCT of Delhi.

3. On 26th November, 2010, a dead lizard was found in the mid-day meal supplied by the petitioner to SKV School 'O' Block, Mangolpuri, Delhi.

4. In the reply filed by the petitioner, it was stated that positioning of the dead lizard on the surface of the container was clear indication of foul play by some unknown miscreant.

5. The Inquiry Committee that was set up to examine the aforesaid allegation concluded that due to alertness of the Vice-Principal and the Member of the School level Mid-Day Monitoring Committee, the dead lizard was noticed before serving the mid-day meal to the students.

6. On 25th August, 2011, during distribution of mid-day meal supplied by the petitioner to SKV School Pooth Kalan, Delhi, a dead lizard was found in petitioner's container. Ten students complained of abdominal pain and nausea. While five students were admitted to nearby New Rohini Hospital, Avantika, Sector-1, Rohini, the other five students were admitted to Hitashi Hospital, Sector-8, Rohini, Delhi for treatment. An FIR 207/2011 under Section 366 IPC was also registered with police station Begumpur, Delhi, on the statement of witnesses.

7. On 29th August, 2011, there was a report of a third live lizard being found in the container of the mid-day meal supplied by the petitioner to Government Girls Senior Secondary School, Sector -20, Rohini, Delhi.

8. On 02nd September, 2011, a show cause notice was also issued to the petitioner.

9. On 21st September, 2011, the petitioner filed a reply stating that

finding of lizard in petitioners container was not correct and was a fabricated incident.

10. On 27th September, 2011, the Principal Secretary, Education, Government of NCT of Delhi, constituted an Inquiry Committee under the Chairmanship of Ms. Neena Kumari, DC.

11. The Inquiry Committee in its report dated 31st October, 2011, concluded as under:-

"It is fact that the lizard was found in mid day meal received on 25.8.2011 at SKV Pootkalan, Delhi and 29.8.2011 at GGSSS, Sector 20, Rohini, Delhi respectively. Considering the statements of the officials and records produced before the committee, the committee is of the opinion that the lizard might be present in the container of meal before packing in the kitchen due to negligence on the part of M/s Royal Education & Social Welfare Society, KH No.7/12-1/13, Kirari Suleman Nagar, Prem Nagar, Kirari, Delhi. Further the committee is also of the opinion that inspection of MDM must be conducted regularly as per the circular dated 29.6.2010."

12. On 17th May, 2012, a notice under Clause 44 of Memorandum of Understanding was issued to the petitioner-society to explain as to why the Agreement/MOU executed between the petitioner and respondents be not cancelled. In response, the petitioner-Society requested for a copy of the Inquiry Report. The petitioner was supplied a copy of the same.

13. On 01st January, 2013, the respondents-Government extended all contracts of supply of mid-day meal including that of the petitioner upto 31st January, 2013.

14. On 04th January, 2013, the respondents issued the impugned order cancelling the petitioner's contract to serve mid-day meal in its school.

15. Mr. Mandeep S. Vinaik, learned counsel for petitioner submitted that

the impugned order amounted to blacklisting of the petitioner and therefore it was incumbent upon the respondents to handle the issue with care and circumspection. He submitted that the impugned order of termination was without due application of mind as it was full of factual inaccuracies like the petitioner's name being wrongly mentioned and the lab report confirming the presence of a worm in the food supplied by the petitioner.

16. He contended that the factual inaccuracies in the impugned order clearly showed that the respondents with a pre-meditated mind had eliminated the petitioner from the process of appointing new contractors for mid-day meal scheme.

17. He submitted that the action of terminating the contract was *malafide* since much after the occurrence of the alleged incident, the petitioner had been permitted to continue to serve mid-day meals in the schools of the respondents.

18. On the other hand, Mr. V.K. Tandon, learned counsel for respondents specifically denied all allegations of malice and contended that the petitioner's contract had been terminated after conducting a detailed inquiry and after following the principles of natural justice.

19. He lastly stated that as there was some typographical error in the impugned order dated 04th January, 2013, a corrigendum dated 11th March, 2013 was issued. The relevant portion of the said corrigendum reads as under:-

"Sub: Cancellation of contract cum withdrawal of work order.

In partial modification of the office order No.F.DE.23/ MDM/Royal/2010-11/1584-89 dated 4.1.2013 on the 1st page of the order in the 2nd para, M/s Royal Educational & Social Welfare Society may be read in place of M/s People Welfare Society.

Further on the 3rd page of the order, the last para shall be read as "And

*whereas, the competent authority considering the reply of M/s. Royal Educational & Social Welfare Society the report of inquiry committee, seriousness of the incident, is of the view that reply of the M/s Royal Educational & Social Welfare Society is not satisfactory.
Other contents of the order remain the same.*

This issues with the prior approval of the Competent Authority."

20. This Court takes judicial notice of the fact that most of the State Governments in India have introduced mid-day meal schemes to encourage children from poor strata to attend school and pursue education. It is of paramount importance that the food served under Mid-day meal Scheme is hygienic and of good quality. If this condition is not met it would defeat the very purpose of enacting mid-day meal schemes. Moreover, life of innocent children supersedes all other interests. Consequently, a zero tolerance policy with regard to food poisoning/contamination has to be adopted.

21. This Court in the present case is of the opinion that there was no malice on the part of the respondents in passing the impugned order of blacklisting. Though allegation of malice and pre-determined mind have been levelled by the petitioner on account of factual errors in the impugned order, yet this Court is of the view that they are just clerical errors on account of a 'cut and paste job' done by a Computer Assistant. In any event, the said errors have been rectified by a corrigendum. Also inefficiency and callousness on the part of respondents' officials cannot vest any right in favour of petitioner.

22. The respondents after due care, circumspection and after following the principles of natural justice in a rather detailed and elaborate manner concluded that lizards were found in the meals supplied by the petitioners not once but thrice in three different schools on three different occasions.

The fact that due to the unhygienic food provided by the petitioner several students fell sick and were admitted to hospital is not disputed. This Court finds it difficult to believe that students who fell sick and were admitted to hospital either '*feigned illness*' or were '*paid actors*'.

23. In fact, on a detailed analysis of the case, this Court is of the opinion that the respondents should have suspended the food supply of the petitioner immediately after the first incident dated 26th November, 2010 when a dead lizard was found. It seems respondents got '*lost in procedure*'. Respondents failed to appreciate that principles of natural justice are no untruly horse and, in fact, are flexible. The Supreme Court in *M/s. Shrikrishnadas Tikara Vs. State of M.P. and Others, AIR 1997 SC 1691* has held, "*It is well-established that the principles of natural justice cannot be petrified or fitted into rigid moulds. They are flexible and turn on the facts and circumstances of each case.*"

24. This Court is of the view that inaction on the part of the respondents in not immediately suspending the petitioner's contract amounted to putting life of the students at risk. Consequently, this Court is also of the opinion that petitioner cannot derive undue benefit of the fact that it was permitted to supply mid-day meal for a long period after the first or last incident.

25. It is, however, clarified that any finding rendered by this Court would not prejudice any of the parties during the criminal trial and the trial court would decide the matter on its own merits. With the aforesaid observations, present petition and application are dismissed, but with no order as to costs.

MANMOHAN, J

MARCH 10, 2014

rn/js/ro