GAHC010039772022

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1565/2022

AKRITI (REGD. NGO)

REPRESENTED THROUGH ITS PRESIDENT
KUNWAR PAL
62 YEARS
G-89
GROUND FLOOR
KALKAJI
NEW DELHI.

VERSUS

THE STATE OF ASSAM AND ANR
THROUGH THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
EDUCATION (ELEMENTARY DEPARTMENT)
DISPUR
GUWAHATI.

2:THE OFFICE OF THE STATE NODAL OFFICER
REPRESENTED THROUGH THE MISSION DIRECTOR
SAMAGRA SHIKSHA AND STATE NODAL OFFICER
MID-DAY-MEAL SCHEME
SSA CAMPUS
KAHILIPARA
GUWAHATI
ASSAM

Advocate for : MR. P MAJUMDAR
Advocate for : SC
ELEM. EDU appearing for THE STATE OF ASSAM AND ANR

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 26.06.2023

Heard Mr. G.N. Sahewalla, learned senior counsel, assisted by Mr. K.B. Upadhyay, learned counsel for the petitioner. Also heard Mr. S.M.T. Chistie, learned standing counsel for the Elementary Education Department, representing respondent no. 1 and Mr. S. Bora, learned standing counsel for Samagra Siksha Abhiyan (SSA for short), representing respondent no. 2.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the impugned order dated 10.08.2020, thereby cancelling the contract agreement executed between the Axom Sarba Siksha Abhiyan Mission (SSA for short) and the petitioner for providing hot cooked mid-day meal to students in schools in Darrang District of Assam.

3. In brief, the case of the petitioner is that it is an NGO, and after tendering process vide "expression of interest" invited for the purpose, it was empanelled to provide hot cooked mid-day meal to children in allotted elementary schools through centralized base kitchen. Work order was issued on 11.01.2019 to establish centralized kitchen. The inspection was carried out and other formalities for allowing the petitioner to lift food-grains and informing the various school management committees were also completed. However, it is alleged that despite rendering satisfactory service for some time, in guise of conducting further inspection, the scheme was put on hold vide letter dated 10.11.2019, issued by the Mission Director, SSA & State Nodal Officer, MDMS. As

the petitioner was not permitted to resume its contract work despite submitting representations, the present writ petition has been filed.

4. The learned senior counsel for the petitioner had submitted that the SSA authorities did not permit the petitioner to continue with their contract work without issuance of notice and therefore, which amounted to termination of the service of the petitioner without notice and without giving a reasonable opportunity to the petitioner of being heard. Accordingly, it was submitted that not only the petitioner had suffered heavy financial loss by establishing base kitchens and engaging man-power, but the right of the petitioner to earn livelihood, which was to sustain a large number of employees and workers engaged by the NGO of the petitioner was taken away without following due process of law. In support of his submissions, the learned senior counsel for the petitioner has referred to the cases of (i) *Doiwala Sehkari Shram Samvida Samiti Ltd. v. State of Uttaranchal & Ors., (2007) 11 SCC 641*, and (ii) *Beg Raj Singh v. State of U.P. (2003) 1 SCC 726*, and it was submitted that the respondents were bound to allow performance of contract by the petitioner.

5. Considered the submissions made by the learned senior counsel for the petitioner as well as the contents of the writ petition. Also considered the cases cited by the learned senior counsel for the petitioner.

6. It is seen that vide Memorandum of Understanding (MoU for short) dated 26.10.2018, the period of engagement of the petitioner was for an initial period of 3 (three) years with effect from 01.01.2019. Therefore, the normal three year tenure of the MoU is found to have already expired on 31.12.2021. Therefore, as the contract is found to be determinable in nature, the petitioner is not found to be entitled to any further specific performance of

contract after lapse and/or expiry of the contract period covered by the said MoU. At best, the petitioner would perhaps be entitled to approach the civil court for seeking damages and/or compensation, if so advised.

7. The cases cited by the learned senior counsel for the petitioners would also not help the petitioner in any way because on facts, the cited cases are distinguishable. In the case of *Doiwala Sehkari Shram Samvida Samiti Ltd. (supra)*, the appellant before the Supreme Court of India was granted minor mineral mining lease for 10 (ten) years, but due to change in policy decision, the agreed lease period was sought to be curtailed and therefore, as the change of policy came during the currency of the lease agreement, the Supreme Court of India had held that the appellant therein was entitled to relief of continuing the lease till the expiry of lease for 10 (ten) years. Similarly, in the case of *Beg Raj Singh (supra)*, the mining lease was for 1 (one) year in accordance with the policy decision, and when renewal was sought for another two years, the lease was granted for only one year, when it should have been for three years and under such circumstances, the Supreme Court of India had held that the petitioner should be allowed to operate the mining lease for full period of lease, subject to adjustment for the period for which he has already operated. Therefore, the said two cases cited on behalf of the petitioner are not authority on the point that even if the contract period is lapsed, the High Court in exercise of writ jurisdiction under Article 226 of the Constitution of India can direct the respondents to continue the contract for any further period.

8. Therefore, this writ petition fails and the same is dismissed.

9. However, before parting with the records, as the learned senior counsel for the petitioner had referred to clause 56 of the MoU, which contains

arbitration clause, the Court is inclined to provide that the dismissal of this writ petition shall not be a bar for the petitioner to invoke arbitration clause. In the said regard, as the present writ petition was filed on 25.02.2022, it is provided that in respect of the period spent before this Court from 25.02.2022 till the date of passing of this order, the petitioner would be entitled to claim extension of time of proceeding *bona fide* in Court without jurisdiction.

10. The parties are left to bear their own cost.

JUDGE

Comparing Assistant