

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.3418 of 2017

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1. Balvikash Sewa Sansthan, registered under the Societies Registration Act, 1860 having registered office at D-76, Gali No.1, Swaroop Nagar, Delhi - 110042 through its Deputy Director, Sri Manoj Kumar Singh, Son of C.P. Singh, resident of village-Sheikhpur, P.O. Sheikhpur, P.S. Ahiyapur, District – Muzaffarpur.
  2. Suprabhat Educational & Social Welfare Society, registered under the Societies Registration Act, 1860 having its Head Office at A - 17/3, Rama Garden, Karawal Nagar, Delhi- 110094 through its Secretary, Sri Raman Kumar, Son of Sri S.P. Singh, resident of Karawal Nagar, District - Muzaffar Nagar, U.P.
  3. Ekta Shakti Foundation, registered under the Societies Registration Act, 1860 having its Head office at A-1, 22 Janakpuri, Main Nazafgarh Road, New Delhi represented through its vice President Sri Rajnikant Pathak, Son of Sri Dinesh Pathak, resident of Yog Maya Niketan, Apna Awas, 3-A, Nageshwar Colony, Boring Road, District – Patna.
  4. Ujwal Savera Society, registered under the Societies Registration Act, 1860 having its Head Office at 8/63, A-Sector - 3, Rajendra Nagar, Sahibabad, Gaziabad, U.P. through its Secretary, Sri Ravindra Kumar, Son of Sri Vijay Singh, resident of Gajraula, P.S. Bachraiu, District - Amroha, U.P.
  5. Paras Agro Society registered under the Societies Registration Act, 1860 having its Office at B - 23, Gali No. 5, Johripur, Ext. Delhi - 110094 through its Secretary, Sri Ankush Jain, Son of Sri Niwas Jain, resident of House No. 5, A/23, Main Road, Jawahar Nagar, Joharipur, Dayalpur, North East Delhi - Delhi – 110094

... .. Petitioners



Versus

1. The State of Bihar through Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna
3. Bihar Rajya Madhyan Bhojan Yojna Samiti through Secretary- cum -Director, Mid Day Meal Scheme.
4. The Secretary, Bihar Rajya Madhyan Bhojan Yojna Samiti,-cum- Director, Mid Day Meal Scheme.

... .. Respondents

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**With**

**Civil Writ Jurisdiction Case No. 3571 of 2017**

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Centre For National Development Initiative (Regd. N G O) through its Joint Secretary, Akhilesh Kumar Off.- S-556, office no. 7, 1<sup>st</sup> Floor, School Block, Shakarpur, Delhi.

... .. Petitioner

Versus

1. The State of Bihar, through the Secretary, Department of Education, Patna, Bihar.
2. Bihar Rajya Madhyan Bhojan Yojana Samiti, through its Director, Budh Marg, Patna, Bihar.

... .. Respondents

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**WITH**

**Civil Writ Jurisdiction Case No. 3570 of 2017**

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Dalit Prahari (Regd. N G O) through its Secretary, Anoop Kumar, Off- D-126/1, Kh No. 510, 511, 512, Harijan Basti, Kondli, Near Sankhwar Nursing Home, Delhi.

... .. Petitioner

Versus



1. The State of Bihar, through the Secretary, Department of Education, Patna, Bihar.
2. Bihar Rajya Madhyan Bhojan Yojana Samiti, through its Director, Budh Marg, Patna, Bihar.

... .. Respondents

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**With**  
**Civil Writ Jurisdiction Case No. 4144 of 2017**

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Bharat Ratana Dr. Bhim Rao Ambedkar Dalit Uthan Avam Shiksha Samiti,  
through its President Beer Singh, Off-B-153, Ranveer Colony, Delhi-110096.

... .. Petitioner

Versus

1. The State of Bihar, through the Secretary, Department of Education, Patna, Bihar.
2. Bihar Rajya Madhyan Bhojan Yojana Samiti, through its Director, Budh Marg, Patna, Bihar.

... .. Respondents

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**WITH**  
**Civil Writ Jurisdiction Case No. 3529 of 2017**

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Nav Prayas (Regd. NGO) through its Joint Secretary, Mukesh Kumar Jha,  
Off.- S- 606/607, Ground Floor, Park end Appt, Shakarpur, Delhi.

... .. Petitioner

Versus

1. The State of Bihar, through the Secretary, Department of Education, Patna, Bihar.
2. Bihar Rajya Madhyan Bhojan Yojana Samiti, through its Director, Budh Marg, Patna, Bihar.

... .. Respondents



**WITH**

**Civil Writ Jurisdiction Case No. 10880 of 2017**

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Jan Chetna Avam Shaikshanik Vikas Manch (Regd. N G O) through its  
President, Kunwar Pal, off- L-41, Ground Floor, Kalkajee. New Delhi-110019

... .. Petitioner

Versus

1. The State of Bihar through the Secretary, Department of Education, Patna,  
Bihar
2. Bihar Rajya Madhyan Bhojan Yojana Samiti, through its Director, Budh  
Marg, Patna, Bihar.

... .. Respondents

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**WITH**

**Civil Writ Jurisdiction Case No. 11396 of 2017**

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Rural Environment and Water Assets Reproductive Development Society  
(REWARDS-NGO) through its President, Kul Bhushan Gupta Off.-B-540,  
MIG East of Loni Road, Shahadara, Delhi.

... .. Petitioner

Versus

1. The State of Bihar through the Secretary, Department of Education, Patna,  
Bihar.
2. Bihar Rajya Madhyan Bhojan Yojana Samiti, through its Director, Budh  
Marg, Patna, Bihar.

... .. Respondent

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**WITH**

**Civil Writ Jurisdiction Case No. 17264 of 2017**

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1. Purvanchal Samaj Sewa Sangh registered under the Society  
Registration Act, 1860 having registered office at Ahata Thakur



Das, New Rohtak Road, New Delhi- 110005 through its Deputy Director Sri Gautam Kumar, Son of Ashok Kumar Malakar, resident of Bhagalpur, P.S.- Bhagalpur, District- Bhagalpur.

2. Asharfi Gram Udyog Sansthan registered under the Society Registration Act, 1860 having registered office at Block Colony, Chharra, Aligarh (Uttar Pradesh)- 202130 through Sri Narendra Singh, Son of Sri Bani Singh, resident of Sihawali, P.O.- Chharra, District- Aligarh (U.P.).

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Vikash Bhawan (New Secretariat), Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Vikash Bhawan (New Secretariat), Patna.
3. The Bihar Rajya Madhyan Bhojan Samittee through its Secretary-cum-Director, Mid-Day Meal Scheme, Patna.

... .. Respondents

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**Appearance :**

(In Civil Writ Jurisdiction Case No. 3418 of 2017)

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| For the Petitioner/s | : | Mr. Y.V. Giri, Senior Advocate<br>Mr. Ashish Giri, Advocate<br>Mr. Saroj Kumar Sharma, Advocate |
| For the State        | : | Mr. Kameshwar Kumar, G.P-17                                                                     |
| For the Mid Day Meal | : | Mr. P. N. Shahi, Sr. Advocate,<br>Mr. Girijesh Kumar, Advocate                                  |

(In Civil Writ Jurisdiction Case No. 3571 of 2017)

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| For the Petitioner/s | : | Mr. K. N. Choubey, Senior Advocate<br>Mr. K.B. Upadhyay, Advocate<br>Mr. Krishna Chandra, Advocate |
| For the State        | : | Mr. Madanjeet Singh, G.P.-20                                                                       |
| For the Mid Day Meal | : | Mr. Girijesh Kumar, Advocate                                                                       |

(In Civil Writ Jurisdiction Case No. 3570 of 2017)

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|----------------------|---|----------------------------------------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. K. N. Choubey, Senior Advocate<br>Mr. K.B. Upadhyay, Advocate<br>Mr. Krishna Chandra, Advocate |
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For the State : Mr. Kameshwar Kumar, GP-17  
For the Mid Day Meal : Mr. Girijesh Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 4144 of 2017)

For the Petitioner/s : Mr. Siddharth Harsh, Advocate  
For the Respondent/s : Smt. Shilpa Singh, GA-12  
Abhayanjali, A.C. to G.A.-12  
For the Mid Day Meal : Mr. Girijesh Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 3529 of 2017)

For the Petitioner/s : Mr. P.K. Shahi, Senior Advocate  
Mr. Siddharth Harsh, Advocate  
For the State : Mr. Ashutosh Ranjan Pandey, AAG-15  
For the Mid Day Meal : Mr. Girijesh Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 10880 of 2017)

For the Petitioner/s : Mr. Ashok Kumar Garg, Advocate  
For the State : Mr. S.C. Mishra, S.C.-16  
For the Mid Day Meal : Mr. Girijesh Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 11396 of 2017)

For the Petitioner/s : Mr. Dineshwar Pandey, Advocate  
For the State : Mr. Madhaw Pd. Yadav, G.P.-23  
For the Mid Day Meal : Mr. Girijesh Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 17264 of 2017)

For the Petitioner/s : Mr. Saroj Kumar Sharma, Advocate  
For the State : Smt. Binita Singh, SC-28  
For the Mid Day Meal : Mr. Girijesh Kumar, Advocate

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**

**C.A.V. JUDGMENT**

**Date : 18-05-2018**

In all group of cases, common issue has been raised by the parties and as such, all are clubbed together and are being disposed of by this common judgment.

2. For convenience, the facts of C.W.J.C. No.3418 of 2017 are being taken into consideration for disposal of batch cases.



3. In the present case, the petitioners have sought a relief of giving direction to the respondent authorities to issue work order and enter into an agreement with the petitioners, who have been duly selected in terms of invitation for proposals and expression of interest dated 06.11.2014 through N.I.T. No.01/1588/14-15 in relation to supply of hot cooked Mid-Day Meal in primary and upper primary schools of urban areas of 26 district of Bihar. Further prayer has been made to hold and declare that once the petitioners have been duly selected pursuant to selection process in terms of N.I.T. dated 06.11.2014 and allotted the districts in which they have also prepared centralized kitchen within the specified period of three months of the issue of letter of intent, the respondents are duty bound to enter into an agreement and issue work order in favour of the petitioners in terms of the N.I.T. itself. Further prayer has been made to declare that the letter no.672 dated 13.04.2016 (Annexure-4) issued under the signature of the Director, Mid-Day Meal Scheme, Bihar, Patna, by which the certificate of work capacity is required from the Committee headed by the District Magistrate before the initiation of construction of the centralized kitchen, is contrary to the terms and conditions of the N.I.T., hence, amounting to rewriting and altering the



condition of the N.I.T., which is illegal and not permissible in law, liable to be quashed. Further prayer has been made to quash the letter no.1362 dated 12.08.2016 (Annexure-6), issued under the signature of Director, Mid-Day Meal Scheme, Bihar, Patna, under which it has been recorded that in terms of the direction issued by letter 672 dated 13.04.2016 (Annexure-4) the compliance report has not been submitted till date and thus the time limit of 17.06.2017 have already expired, is wholly arbitrary, contrary to the terms and conditions of the N.I.T.

4. During the pendency of this writ petition, factual aspect of cancellation of N.I.T. came to the knowledge of the petitioners through the counter affidavit, which has been challenged by the petitioners by filing Interlocutory Application No.7399 of 2017, wherein prayer has been made for quashing the order no.813 dated 12.04.2017 (Annexure-14), issued under the signature of the Director, Bihar Rajya Madhyan Bhojan Yojana, Bihar, Patna, by which the N.I.T. bearing no.01/1588/14-15 dated 06.11.2014 has been cancelled. Further prayer has been made to issue intern orders, preventing the respondents from re-advertising the work, in question, in pursuance of the order dated 12.04.2017 (Annexure-14).

Accordingly, the Interlocutory Application is



allowed and the pleadings and prayer of the Interlocutory Application will be treated to be part of the main writ application.

5. These matters relate to provide the hot cooked meal to the school children from Government and Non-Governmental aided schools. This scheme has been started to improve the nutrition level of the children who are attending in classes from I to V, later on, added to the children upto the level of Classes VI to VIII in the Government, Local Body and Government aided schools and E.G.S. and A.I.E. centres. This programme has two aims, objects and advantages; first, encouraging children belonging to disadvantaged sections, to attend the school more regularly and help them to concentrate in classroom activity. At the same time, the idea is to provide nutritional support to children of primary stage in drought and flood affected areas, disadvantage class of children. It is a part of the programme of nutrition support to primary education which was launched as a Centrally Sponsored Scheme. In the year 2001, the Hon'ble Supreme Court of India ordered all the State Governments and Union Territories to implement Mid-Day Meal Scheme and provide cooked food to school children of Government and Government aided schools. With the



support of the Central and State Governments, the scheme of Mid-Day Meal are operating with a broad object to improve child health, proper growth and provide quantity of calories and proteins required for children from specific age groups, taking into consideration the number of children attending the classes the quantity of grains proportionate to each children is allotted and for running the scheme private assistance are taken, it runs as Public-Private Partnership model. It is also a goal that no person in the Indian Republic to remain hunger even for a single day. At the same time, there should be a proper growth of health and the mental status of growing children who can later be proved as an asset. The Mid-Day Meal is operating nationwide to implement the nutrition status of the school going children. The programme supplies free lunches on working day for children in primary and upper primary classes in Government, Government aided, local body, Education Guarantee Scheme and alternate innovative education centres, Madarsa and Maqtabas supported under Sarva Shiksha Abhiyan and National Child Labour Project Schools run by the Ministry of Labour and beneficiaries are 120,000,000 in over 1,265,000 schools, which is one of the largest programme in the world. The Government of India is one of the signatories of Convention on the Rights of



the Child, in which under Article-24, it has been provided to supply nutritious food to the children. As being a signatory of Convention, the obligation lies upon the Union of India to provide adequate nutritious food to the children. The Scheme is covered by the National Food Security Act, 2013, which is similar to the scheme operating in the U.S. through the National School Lunch Act. This is not a new initiative, but the root of the programme can be traced back to the pre-independence era, when a Mid-Day Meal programme was introduced in 1925 in Madras Corporation by the British Administration. A Mid-Day Meal programme was introduced in the Union Territory of Ponducherry by the French Administration in 1930. The State of Tamil Nadu has taken initiative to provide Mid-Day meal to the children, which began under the Mid-Day Meal Programme in primary schools in the year 1962-63. The State of Tamil Nadu is a pioneer in introducing Mid-Day Meal in India to increase the number of kids coming to school and first time was introduced by the then Chief Minister of Tamil Nadu, namely, Thiru K. Kamaraj and later on extended the same in all districts of Tamil Nadu. Later on i.e. in 1982, another Chief Minister, namely, M.G. Ramachandran upgraded the existing Mid-Day Meal Scheme in the State keeping in mind that 68 lakhs children were



suffering from malnutrition and later on, other States followed and introduced the Scheme gradually.

6. The Government of India initiated the National Programme of Nutritional Support to Primary Education (NP-NSPE) on 15<sup>th</sup> August, 1995. Initially, the Scheme was implemented in 2,408 blocks of the Country to provide food to the students in classes and later on, the Scheme was implemented across the India. Under the Scheme, cooked Mid-Day Meal with 300 calories and 12 grams of protein is provided to all children enrolled in classes I to V. In October, 2007, the Scheme included students in upper primary classes of VI to VIII in 3,479 educationally backward blocks and the name was changed from 'National Programme for Nutrition Support to Primary Education' to 'National Programme of Mid-Day Meals in Schools'.

7. Legal history can be traced on this issue goes to People's Union for Civil Liberties (PUCL) initiated the Public Interest Litigation (*People's Union for Civil Liberties v. Union of India and Others*), which is popularly known as '*Right to Food case*'. This Scheme came into force with the Hon'ble Supreme Court's order dated 28.11.2001, which requires all the Governments and Government-assisted Primary Schools to



provide cooked Mid-Day Meals. In the aforesaid case, on 23.07.2001, the Hon'ble Supreme 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.”*

8. 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 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 Hon'ble Supreme Court issued certain directions, which is reproduced herein below:-

*“1. All such States and Union Territories who have not fully complied with the order dated 28<sup>th</sup> 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 1<sup>st</sup> September, 2004.*

*2. All Chief Secretaries / Administrators are directed to file compliance report in regard to directions no. 1 on or before 15<sup>th</sup> 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 loss 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 10<sup>th</sup> 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.”*

9. This Court reproduced the said directions only to highlight how seriously the Hon’ble Supreme 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.”*

**10.** 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 Hon'ble Supreme 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 v. State of U.P. AIR 1996 SC 1051***, 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”*

11. In ***Paschim Banga Khet Mazdoor Samity and others v. State of West Bengal and another*** reported in ***AIR 1996 SC 2426***, 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 ***Shantistar Builders v. Narayan Khiomalal Totame*** reported in ***AIR 1990 SC 630***, 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 reasonable home particularly for people in India can even be mud-built thatched house or a mud-built fire-proof accommodation.”*

12. In ***P.G. Gupta v. State of Gujarat and others*** reported in ***1995 Supp. (2) S.C.C. 182***, 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.*** reported in ***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....”*

13. The 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 civilized society as man cannot be allowed to have animal existence. When the food is not available to meet the cry of hunger, 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 morality, poetry or look at the moonlit sky.

14. So, the idea is the universal coverage of children, they should not remain unhealthy, their physical built and mental growth should progress in a proper ratio, that can be an asset for the entire society, as undeveloped child is a burden to the family as well as to the society. So, there should be a proper growth of the children and be a tool for national growth. For effective implementation of the programme, it was decided to create a centralized kitchen for supply of hot cooked Mid-Day Meal from Semi Automated kitchen to the children of primary and upper primary Government and Non-Governmental Schools in urban areas of 26 districts of Bihar. Making it a ground reality, the Bihar Rajya Madhyan Bhojan Yojna, Education Department, Government of Bihar, under the signature of Secretary, Bihar Rajya Madhyan Bhojan Yojana Samiti-cum-Director, Mid-Day Meal Scheme, Bihar, Patna, floated an invitation to Tender (N.I.T.) bearing no.01/1588/14-15 dated 06.11.2014, inviting proposal and expression of interest from reputed NGOs/Society/Trust/ voluntary Organization, registered



under the Society Registration Act/Public Trust Act, for supply of hot cooked Mid-Day Meal in primary and upper primary schools situated in urban areas of 26 districts mentioned therein.

**15.** In pursuance of the N.I.T., altogether 32 bidders participated and after proper filtration, 13 bidders were selected by the respondents, is reflected from letter no.452 dated 15.03.2016 (Annexure-2). Accordingly, the work was distributed, the petitioner no.1 has been allotted the Districts of Gopalganj, Saran and Siwan. The petitioner no.2 has been allotted Bhojpur District. The petitioner no.3 has been allotted Darbhanga and Madhubani Districts. The petitioner no.4 has been allotted Buxar District and petitioner no.5 has been allotted Madhepura District. In pursuance thereof, different office orders vide nos. 482, 486, 478, 487 and 480, all are dated 17.03.2016 were issued respectively in favour of the petitioners, wherein it has been specifically provided that in terms of Clause-7 of the N.I.T. the construction of the centralized kitchen is to be completed within 90 days and where-after Four Member Team of Bihar Rajya Madhyan Bhojan Yojana will inspect the centralized kitchen and if the Inspecting team would found any deficiency, the same has to be removed within 15 days. In failure to remove the same, the Samiti, without further notice,



will cancel the selection and for that the N.G.O. will itself be responsible. Further directed, the petitioner would communicate the plan and place for construction of centralized kitchen to the Madhyan Bhojan Yojana Samitti, Bihar, Patna. The kitchen must have a capacity for cooking the food for 25,000-50,000 children, so that hot cooked food can be supplied. After construction of the centralized kitchen, on information, the agreement would be executed in connection with supply of hot cooked meal to the students ranging from Class-I to VIII, further stipulated that the N.G.Os. would have to abide by each terms and conditions.

**16.** As per the statement made, it has been stated that in pursuance of the letter of intent, the petitioners have invested approximately 50 lakhs each for construction of kitchen in terms of the N.I.T. lands have been acquired through the lease deed incurring heavy expenditure by way of rent for the purposes of construction of centralized kitchen, the Director, Mid-Day Meal, Government of Bihar, Patna, called a meeting with selected N.G.Os on 12.04.2016, in the meantime, a notice vide letter no.672 dated 13.04.2016 (Annexure-4) was issued, stipulating the condition, that prior to construction of kitchen, a certificate of working capacity to be obtained from the Committee headed by the District Magistrate, only after the certificate, selected



N.G.O.s would proceed with the construction of the Kitchen. The Clause-2 of the said letter stipulates, before starting the construction of the kitchen, a certificate with respect to place of kitchen is to be obtained from the District Level Committee about suitability for construction of the kitchen, only after, the petitioners would proceed for construction of kitchen. On receipt of the said letters, petitioners have raised objection (Annexure-5) by writing letter to the Principal Secretary, Education Department, Government of Bihar, Patna, raising the objection that the condition which has been mentioned in the letter dated 13.04.2016 (Annexure-4) having not been mentioned in the N.I.T. and the contents of the letter are *dehors* to the agreement arrived during the discussion and it has been mentioned that in terms of the letter no.452 dated 15.03.2016 (Annexure-2) the petitioners have started construction of the centralized automated kitchen, for appraisal of status of the construction of the kitchen, a meeting dated 12.04.2016 was organized. It has further been said that in terms of the N.I.T., there is no provision that the District Level Committee will make inspection, also objected the conditions for obtaining the work capacity certificate from the said Committee as they have already invested substantial amount for construction of the



centralized kitchen to carry out the responsibility conferred upon them. On account of failure to obtain certificate as per guideline, all these petitioners received letter no.1362 dated 12.08.2016 (Annexure-6) issued by Director, Madhyan Bhojan Yojana, Bihar, Patna, mentioning therein that the instructions mentioned in the letter no.672 dated 13.04.2016 has not been complied with in time, as non compliance report has been received and 90 days time has already expired on 17.06.2017. On receipt of the said letter, the petitioners replied vide letter dated 24.08.2016 (Annexure-7) to the Director, Madhayan Bhojan Yoajana Samiti, Bihar, Patna, mentioning therein that in terms of the N.I.T the Kitchen was to be constructed within 90 days and where-after a Four Men Committee would make inspection of the constructed kitchen. In the meeting dated 12.04.2016 the petitioners informed the status of the construction and the department also assessed the level of work that was completed, the letter no.672 dated 13.04.2016 is *dehors* to the verbal direction issued during the discussion. It has also been stated that they have started construction of kitchen in pursuance of letter no.486 dated 17.03.2016, at the same time also mentioned that the petitioners were selected after making assessment of their capacity to carry out the work, where-after



obtaining the certificate of work capacity from District having no relevance. It has been pleaded that the respondent authorities cannot take a contrary stand beyond the conditions mentioned in the N.I.T. and letter of intent, by which the Director, Madhyan Bhojan Yoajan Samiti has altered the condition after investing the huge money in construction of centralized kitchen. Whereafter, the petitioners vide different letters informed the respondent authorities of their readiness to operate centralized kitchen.

17. The Mid-Day Meal has filed its response, wherein basically the objection has been raised that the petitioners-N.G.Os. failed to carry out the work order, not completed the kitchen within the period of 90 days. As the purpose of providing the hot cooked food is being defeated on account of dilly-dally tactics adopted by the petitioners and challenged the maintainability of the writ petitions, placing reliance on the judgment of *Radh Krishan Agrawal vs. State of Bihar and Ors.* reported in *A.I.R. 1977 S.C.C. page- 1496*. It has been said that the expression of interest does not bar issuance of further guidelines in connection with quality control and for that the letter dated 13.04.2016 was issued, is not contrary to any terms of the N.I.T., they have acted in terms of the letter dated



13.04.2016. The petitioners have adopted the lackadaisical approach. It has been mentioned that most of the N.G.Os. have even failed to select the land for the construction of the kitchen, the ultimate beneficiaries is the children and detailed guidelines were issued by the Directorate looking to the central point of the benefit for the children, which provides that before the construction of centralized kitchen, selected N.G.Os. have to obtain clearance of the land where the kitchen is to be set up and later they have to take certificate of their work competency from the District Midi-Day Meal Committee constituted under the Chairmanship of the District Magistrate. The letter was issued keeping the object in mind that the Committee was receiving regular complaint against the N.G.Os., to keep the watch on their activity, such certificate of their competency is required. Further, the idea to obtain such certificate is to ensure the proper location of the kitchen on the land having hygienic environment and having easily approachable road. The guideline issued on 13.04.2016 was ignored by the N.G.Os. except Ekta Shakti Foundation. The Kitchen was to be completed within 90 days, is reflected from letter dated 17.03.2016, the Committee reviewed the entire fact and situation and opined that two and half years already passed and in the meantime, several complaints were



received against some of the N.G.Os. and with respect to some cases reports were received of blacklisting. In the aforesaid backdrop, it was decided to cancel the N.I.T. dated 06.11.2014 vide order dated 12.04.2017 (Annexure-14) with immediate effect.

**18.** These cases were taken up on 28.03.2017. Again the cases were taken up on 21.06.2017, wherein the statement has been made by the learned counsel for the petitioners that they have taken the land on lease and set up their kitchen, but the authority has refused to grant certificate to start the kitchen as the kitchen could not be completed within the time specified. This Court had directed the respondent nos.3 and 4 to get it verified the aforesaid fact by constituting a Three or Four Men Committee and if it is found that Kitchen is according to the specification, in such circumstance, the delay would be waived, would not come in their way in settling the dispute. This Court further directed that the Inquiry Committee will be set up by the Director, Mid-Day Meal Scheme and the process of verification be completed within a period of three weeks from today.

**19.** Where-after, the respondents have filed supplementary counter affidavit, in which it has been mentioned that this Court vide order dated 21.06.2017 directed the



respondents to make inspection by constituting a Committee. Pursuant thereof, the Committee was constituted on 03.07.2017, since all the persons of the Committee were Officers of the Mid-Day Meal, no technical person was part of that committee and considering this aspect of the matter, the previous Committee was withdrawn and a decision was taken to constitute an impartial Committee of which no officer of the Mid-Day Meal be the party so that there may not be allegation of any biasness or likelihood of biasness. Accordingly, new Committee was constituted by the Director, Mid-Day Meal, consisting of District Education Officer of concerned District, the Senior Deputy Collector of concerned District nominated by the District Magistrate, the Nodal Officer of the concerned District appointed by the Education Department and the Assistant Engineer of Sarva Shiksha Abhiyan of the concerned district. The said Committee was directed to make inspection and submit the report within two weeks, is apparently clear from the letter dated 25.07.2017 (Annexure-C). Looking to the terms and the conditions of the N.I.T. the Committee was instructed to make inspection and submit report with respect to 29 items mentioned in schedule of N.I.T.. The Committee made inspection and submitted the report. In paragraph no.7 of the Supplementary



Country Affidavit, it has been mentioned that for Chapra, Dighwara and Sonepur of the Saran District, the plotted area was found 820, 660 and 1170 sq. fts. respectively, whereas as per the N.I.T., total 500 sq. yard or 5000 sq. fts. plotted area are required for establishing the kitchen. The report with respect to Gopalganj district was not found to be proper as it was not bearing the signature of all members and the same was cancelled, whereafter the District Magistrate, was directed to submit a fresh report. So far as the Siwan district is concerned, the report was submitted on 31.08.2017 and found only 581.972 sq. yards plotted area for establishing the centralized kitchen, but out of 29 items petitioner no.1 does not fulfill 22 conditions of items of the terms stipulated in the N.I.T. Similar report with respect to Ara, Bihiya of Bhojpur district was submitted and the area was found to be 1641.4 sq. fts. of the plotted area i.e. less than 5000 sq. ft. required for the constitution of the kitchen. With respect to Bihiya, the plotted area was found to be 3592.6 sq. fts. much below than 5000 sq. fts. for construction of centralized kitchen and further mentioned that out of 29 items the petitioner no.2 fulfilled conditions of 10 items only of the N.I.T. and found to be not eligible. With respect to petitioner no.3 regarding Benipur and Mabbi within the Dharbhnaga



district is concerned, total plotted area was found to be 400 sq. fts. in Benipur, much below the 5000 sq. fts. area required for the construction of centralized kitchen as per the conditions stipulated in the N.I.T. With respect to Madhubani District, out of 29 conditions 7 conditions were found to be satisfied. With respect to Buxar district, petitioner no.4, the total land was found 4468 sq. fts. plotted area, is less than the required area of 5000 sq. fts. With respect to petitioner no.5, i.e. Madhepura district, total area was found to be 2077.16 sq. fts., is much less than 5000 sq. fts. required for the construction of centralized kitchen. As the petitioners have failed to satisfy all the conditions of the N.I.T., they cannot claim to have vested interest or any right, merely issuance of letter of letter of intent, cannot be qualified to be a contract between the parties and letter of intent does not bind other party unless both have entered into the contract. The respondents have attached the inspection report vide Annexures-D, E, F, G, H, I and J to the supplementary counter affidavit.

**20.** The rejoinder has been filed by the petitioners, challenging the report and stated that they have more than the required area as per the N.I.T. and 5000 sq. fts. area will not be exclusively for cooking the food, it will include all its



accessories such as storage, garbage disposal plant, boiler, vehicle parking area and other incidental areas. The insistence has been given by the petitioners that the report which has been submitted is based on wrong premise as they have already constructed the kitchen and waiting for its operation, qualifies all the condition mentioned therein, if any temporary deficiency is there, the respondents are at liberty to point out the same and the petitioners will remove the same within the shortest period, but cancellation of the advertisement N.I.T. itself reflects the arbitrary exercise of power by the authority in view of the facts, they failed to consider, on their invitation, every party has taken land on lease, invested huge amount in construction of building as well as paying rent to respective owners ever month, awaiting for green signal for operation, by the time, the respondents have taken illegal step cancelling the N.I.T. itself, wrongly taking plea that 500 sq. yard area which is equivalent to 5000 sq. fts. will be exclusively for kitchen area (cooking area). Further submitted that the Government of Bihar has copied the N.I.T. published by the Delhi Government as conditions and specifications in both the N.I.Ts. are identical, as like the State of Bihar, there also specification of land 500 sq. yards = 5000 sq. fts. area and within said area all arrangements have been



made and 5000 sq. fts. area is not earmarked for kitchen (cooking area) only. The petitioners have produced the photographs and the agreement with landlord shows readiness to operate the centralized kitchen to serve the hot cooked meal to the children.

**21.** In the meantime, the Director, Mid-Day Meal Scheme, vide letter dated no.813 dated 12.04.2017 (Annexure-14) has terminated the N.IT. no.01/588/14-15 dated 06.11.2014, which has been challenged in Interlocutory Application No.7399 of 2017.

**22.** These cases were taken up on 02.11.2017. On the said date, this Court has recorded that the report has been submitted by the different Committees about the status of kitchen which has been built by different N.G.Os. In all reports, it has been shown that the kitchen has not been constructed as per the specification, but in some cases serious objection has been raised about the factual status with regard to the area of kitchen. There is also a confusion that the plotted area of 500 sq. yards will be treated exclusively for kitchen shed or it will inclusive of all items within that area for placement of boiler, store, garbage disposal plant, parking space, delivery station. In some kitchens, there may be permanent deficiencies, whereas in



some kitchens there may be temporary deficiencies. This Court had directed, the Director, Mid-Day Meal, to provide the details of status of kitchens about their nature of deficiencies.

**23.** In the order dated 19.01.2018, it has been mentioned that plotted area has not been defined anywhere, the tender does not stipulates the nature of waste management and its placement as well as does not give lay out plan for placement of other items. The State has taken a plea that 500 sq. yards is exclusively kitchen area (cooking area), apart from other items. This Court had directed the respondent authorities to verify from the adjoining States such as, Jharkhand, Uttar Pradesh, West Bangal and Orissa about the lay out plan of their respective model kitchen with placement of other items in the open area. All facts should come through affidavit. This Court further directed the petitioners to bring necessary information with regard to lay out plan of kitchen in the other States. In pursuance thereof, some of the N.G.Os. has brought on record, a lay out plan of Mid-Day Meal kitchen established at different places around N.C.R. and the learned counsel for the State had taken time for verifying the authenticity of the document produced by the petitioners. But, the State has not filed any rejoinder challenging the lay out plan attached with the



supplementary affidavit.

24. This Court vide order dated 02.11.2017 directed the Director, Mid-Day Meal Scheme, to provide break up of nature of deficiency i.e. permanent deficiency and temporary deficiency. In pursuance thereof, the respondents submitted the report, pointing out the items which are permanent deficiency and the temporary deficiency (Annexure-K series), which will be discussed later on, and further attached status report of the kitchen of different N.G.Os. mentioned in Annexure-2. Pursuant to the order dated 19.01.2018, the respondents have sought information from different State Governments about the lay out plan of their respective modal centralized kitchen, attached the letters dated 30.01.2018, which have been addressed to different State Governments by way of (Annexure-R (series), but the lay out plan of the standard kitchen has not been brought on record by the respondents, whereas, the petitioners have attached the lay out plan of Delhi, reflecting the manner the kitchens have been constructed, operating and supplying the hot cooked food to the children as per the programme.

25. Learned counsel for the respondents have submitted that the present case would be governed by the decision rendered in the case of **Radh Krishan Agrawal** (*supra*)



as the petitioners have not made out any case within the contour and guidelines provided under the said judgment and as such this Court must refuse to entertain the writ petition. In the case of Radh Krishan Agrawal (supra), the Hon'ble Supreme Court has taken a view that even if the action of the authority violates Article -14 of the Constitution of India, raises doubt about maintainability of writ petition, complaint raised can only be looked in a properly constituted civil suit, the reference has been made to the judgment rendered in the case of *Additional District Magistrate vs Shivakant Shukla*, AIR 1976 SC 1207 as during the period of emergency, fundamental right was suspended and the Court held, as the emergency was in operation the question of interference does not arise.

26. It will be relevant to quote paragraph no.21 to 25 of the said judgment, which is as follows:-

*21. In the cases before us, allegations on which a violation of Article- 14 could be based are neither properly made nor established. Before any adjudication on the question whether Art. 14 of the Constitution could possibly be said to have been violated, as between persons governed by similar contracts, they must be properly put in issue and established. Even if the appellants could be said to have raised any aspect of Art. 14 of the Constitution and this Article could at all be held to operate within*



*the contractual field whenever the State enters into such contracts, which we gravely doubt, such questions of fact do not appear to have been argued before the High Court. And, in any event, they are of such a nature that they cannot be satisfactorily decided without a detailed adduction of evidence, which is only possible in ordinary civil suits, to establish that the State, acting in its executive capacity through its Officers, has discriminated between parties identically situated. On the allegations and affidavit evidence before us we cannot reach such a conclusion. Moreover, as we have already indicated earlier, the correct view is that it is the contract and not the executive power, regulated by the Constitution, which governs the relations of the parties on facts apparent in the cases before us.*

22. *The real object of the appellants seems to be to hold up any adjudication on the cases before us by taking shelter behind Art. 14 so that the stay orders obtained by them, presumably on representations made to this Court that no aspect of enforcement of Art. 14 of the Constitution was involved. We think that to accede to the prayer on behalf of the appellants to adjourn the hearing of these cases until after the Emergency is lifted and yet to continue the stay orders is to permit a circumvention of the Constitutional mandate contained in Art. 359 and to countenance a gross abuse of the processes of the Court.*

23. *A rather desperate argument which has been addressed to us on behalf of the appellants is that they were entitled to an opportunity to show cause against*



*the cancellation of the leases. It was urged, on the strength of A.K. Kraipak v. Union of India (1970) 1 SCR 457 : (AIR 1970 SC 150) that the distinction made between administrative and quasi-judicial action is thin and a vanishing one. This argument appears to us to be wholly irrelevant inasmuch as a question of the distinction between an administrative and quasi-judicial decision can only arise in the exercise of powers under statutory provisions. Rules of natural justice are attached to the performance of certain functions regulated by statutes or rules made thereunder involving decisions affecting rights of parties. When a contract is sought to be terminated by the Officers of the State, purporting to act under the terms of an agreement between parties, such action is not taken in purported exercise of a statutory power at all.*

24. *In Additional District Magistrate, Jabalpur, v. Shivakant Shukla, AIR 1976 SC 1207 at p. 1288, it was pointed out (at p. 1288):*

*"The principles of natural justice which are so implied must always hang, if one may so put it, on pegs of statutory provisions or necessarily follow from them. They can also be said sometimes to be implied as necessary parts of the protection of equality and equal protection of laws conferred by Art. 14 of the Constitution where one of the pillars of Dicey's principles of the Rule of Law is found embodied. Sometimes, they may be implied and read the legislation dealing with rights protected by Art. 19 of the*



*Constitution. They could at times, be so implied because 'restrictions on rights conferred by Art. 19 of the Constitution have to be reasonable'.*

*25. The limitations imposed by rules of natural justice cannot operate upon powers which are governed by the terms of an agreement exclusively. The only question which normally arises in such cases is whether the action complained of is or is not in consonance with the terms of the agreement. As already pointed out by us, even if by some stretch of imagination some case of unequal or discriminatory treatment by the officers of the State of persons governed by similar contracts is sought to be made out', a satisfactory adjudication upon the unusual facts of such a case would necessitate proper pleadings supported by acceptable evidence. In that case, the interim stay order or injunction could not be justified at all because so long as a Presidential Order, under Art. 359 of the Constitution, is operative, the enforcement of fundamental rights falling under Art. 14 is suspended. In such cases even if a petition or suit is entertained and kept pending no stay order could be passed because that would amount to indirectly enforcing the fundamental rights conferred by Art. 14 of the Constitution. It is only where a prima facie case for an injunction or stay can be made out, quite apart from a right covered by Art. 14 of the Constitution or by any other fundamental right whose enforcement may have been suspended, that an injunction or stay could be granted at all on suitable terms. As we have already said it was on such an assumption that this Court had, apparently, granted*



*the interim stay which must now be discharged.”*

The decision rendered in the case of *Additional District Magistrate vs. Shivakant Shukle (supra)* has been overruled by the Hon’ble Supreme Court in the case of ***Justice K.S. Puttaswamy (Retired) vs. Union Of India and Ors.*** reported in ***2017(10) SCC, page-1*** and subsequently, the Court has developed the principle, delineated scope and contour of judicial review, one of the grounds for exercise of power is in the event of arbitrary exercise of power by executive, including on other grounds, in the contract matter, the Court would interfere.

**27.** The power of judicial review can not be exercised as a Court of appeal, and the Constitutional Court should maintain restrain, especially in contract matter, except in certain circumstance, when the action is actuated by malafide, suffers from arbitrary and illegal exercise of power and the decision taken is wrong of such degree, no prudent person would arrive to such decision. The Court would examine decision making process not the decision. The exercise of power under judicial review has been discussed and circumscribed on many occasions by the Hon’ble Supreme Court, has drawn guideline on different occasions, outlined within which power of judicial



review would be exercised.

28. In *Tata Cellular vs. Union of India*, reported in (1994) 6 SCC 651, it has been held that in the judicial review in the contract matter, the modern trend is a judicial restraint in administrative act as the Court cannot sit as a Court of appeal but merely reviews the manner in which the decision has been taken as the Court does not have an expertise to correct the administrative decision and if it is permissible it amounts to substituting its own decision without necessary expertise in that field which may itself be fallible. The invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of the contract. The Government has freedom of contract but requires a play in the joints is necessary concomitant for administrative body functioning in an administrative sphere or quasi-administrative sphere. The decision must not only be tested on the principle laid down in Wednsebury case but must be free from arbitrariness not affected by bias or actuated with *mala fides*. There cannot be denial that the Court under the judicial review would exercise the power to interfere with the decision of the Governmental bodies in order to prevent arbitrariness or favouritism. The Government is the guardian of the finances of the State. It is



expected to protect the financial interest of the State. Right to refuse the lowest or any other tender is always available to the Government, but the principles laid down in Article 14 of the Constitution of India have to be kept in mind while accepting or refusing a tender. There cannot be challenge of infringement of Article-14 in Governmental action, but the Government tries to get the best person or the best quotation. The right to choose cannot be exercised in an arbitrary manner, if the power is exercised for any collateral purpose the exercise of that power will be struck down. Judicial quest in administration matters has to find out the right balance between the administrative discretion to decide the matter whether the contractual or political in nature or issues of social policy, they are not essentially justifiable and the need to remedy any unfairness and such unfairness is set right by application of judicial review. Judicial review is a great weapon in the hands of the judges, must be observed the constitutional limits set out in our parliamentary system has to be exercised for beneficial purpose.

**29.** It will be relevant to quote paragraphs no. 70, 71, 72 and 94 of the said judgment, which read as under:-

*“70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual*



*powers by Government bodies in order to prevent arbitrariness or favoritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.*

*71. Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy; thus they are not essentially justiciable and the need to remedy any unfairness. Such an unfairness is set right by judicial review.*

*72. Lord Scarman in Nottinghamshire County Council v. Secretary of State for the Environment proclaimed:*

*"Judicial review' is a great weapon in the hands of the judges; but the judges must observe the constitutional limits set by our parliamentary system upon the exercise of this beneficial power."*

*Commenting upon this Michael Supperstone and*



*James Goudie in their work Judicial Review (1992 Edn.) at p. 16 say :*

*"If anyone were prompted to dismiss this sage warning as a mere obiter dictum from the most radical member of the higher judiciary of recent times, and therefore to be treated as an idiosyncratic aberration, it has received the endorsement of the Law Lords generally. The words of Lord Scarman were echoed by Lord Bridge of Harwich, speaking on behalf of the Board when reversing an interventionist decision of the New Zealand Court of Appeal in Butcher v. Petrocorp Exploration Ltd. 18-3-1991."*

94. *The principles deducible from the above are :*

*(1) The modern trend points to judicial restraint in administrative action.*

*(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.*

*(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.*

*(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract.*

*Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by*



*experts.*

*(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.*

*(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure Based on these principles we will examine the facts of this case since they commend to us as the correct principles.”*

**30. In *Global Energy Limited and Another vs. Adani Exports Limited and Others*, reported in (2005) 4 SCC 435, the Hon’ble Supreme Court has held that the tender must unconditional and must conform to the terms of the obligation and further the person by whom the tender is made must be able and willing to perform his obligations. The invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. The principle is, therefore, well settled that the terms of the invitation to tender are not open**



to judicial scrutiny and the Court cannot whittle down the terms of the tender as they are in the realm of contract unless they are wholly arbitrary, discriminatory or actuated by malice.

31. It will be useful to quote relevant portion of paragraph nos. 9 and 10 of the said judgment, which are as follows:-

*“9. In Tata Cellular v. Union of India, a three-Judge Bench has explained what is a tender and what are the requisites of a valid tender. It has been held that the tender must be unconditional and must conform to the terms of the obligation and further the person by whom the tender is made must be able and willing to perform his obligations. It has been further held that the terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. In Air India Ltd. v. Cochin International Airport Ltd. the same view was reiterated that the State can fix its own terms of invitation of tender and that it is not open to judicial scrutiny...”*

*10. The principle is, therefore, well settled that the terms of the invitation to tender are not open to judicial scrutiny and the Courts cannot whittle down the terms of the tender as they are in the realm of contract unless they are wholly arbitrary, discriminatory or actuated by malice...”*

32. In **Michigan Rubber (India) Limited vs. State of**



***Karnataka and Others***, reported **(2012) 8 SCC, 216**, the Hon'ble Supreme Court has considered the facet and contour of judicial review, placing reliance on previous judgment and made quotation from different judgments and held that judicial review in administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and *mala fides*. Its purpose is to check whether choice or decision is made lawfully and not to check whether choice or decision is sound. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. The principles of equity and natural justice stay at a distance. If the decision relating to award of contract is *bonafide* and is in public interest, Courts will not exercise the power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The basic requirement of Article 14 is fairness in action by the State and non-arbitrariness in essence and substance is the heartbeat of fair play. Formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering



authority is found to be malicious and a misuse of its statutory powers, interference by Courts is very limited.

**33.** It will be relevant to quote paragraph nos. 21, 22 and 23 of the said judgment, which read as under:-

*“21. In Jagdish Mandal vs. State of Orissa, the following conclusion is relevant: (SCC pp.531-32, para 22)*

*“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or decision is “sound”. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can*



*always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:*

*(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;*

*OR*

*Whether the process adopted or decision made is so arbitrary and irrational that the court can say: “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”;*

*(ii) Whether public interest is affected.*

*If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and*



*franchises) stand on a different footing as they may require a higher degree of fairness in action.”*

22. *The same principles have been reiterated in a recent decision of this Court in Tejas Constructions & Infrastructure (P) Ltd. vs. Municipal Council, Sendhwa.*

23. *From the above decisions, the following principles emerge:*

*(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;*

*(b) Fixation of a value of the tender is entirely within the purview of the executive and the Courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;*

*(c) In the matter of formulating conditions of a*



*tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;*

*(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and*

*(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim a fundamental right to carry on business with the Government.”*

34. In the case of ***Sanjay Kumar Shukla vs. Bharat Petroleum Corporation Limited and Ors.*** reported in ***(2014) 3 SCC 493***, reiterated the principle of earlier judgments but the thrust has been given especially to the principle that even if some defect is found in the decision making process, the Court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether the intervention is called for or not.



Only when it come to a conclusion that overwhelming public interest requires interference, the Court should intervene.

**35.** It will be relevant to quote paragraph nos. 17 of the said judgment, which reads as under:-

*“17. In Air India Ltd. v. Cochin International Airport Ltd., there was a further reiteration of the said principle in the following terms:-*

*7. The law relating to award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in Ramana Dayaram Shetty v. International Airport Authority of India, Fertilizer Corpn. Kamgar Union v. Union of India, CCE v. Dunlop India Ltd., Tata Cellular v. Union of India, Ramniklal N. Bhutta v. State of Maharashtra and Raunaq International Ltd. v. I.V.R. Construction Ltd. The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is*



*free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene.”*  
(Emphasis supplied)

**36.** The Court would do make forensic examination of action of respondents in refusing to enter into an agreement, to accelerate distribution of hot cooked food to the children as well as the decision of respondents dated 12.04.20017



(Annexure-14), thereby cancelled the N.I.T. at later stage.

37. In the present case, learned counsel for the petitioners have argued that on the representation of the Bihar Rajya Madhyan Bhojan Yojana, calling upon the N.G.Os. to establish the centralized kitchen to supply hot cooked Mid-Day Meal to the students of primary and upper primary schools of urban areas, the petitioners have given their proposal and expression of interest, they were selected, in pursuance thereof, they have entered into the agreement with the land owners by way of lease and invested huge amount of money and established centralized kitchen, when everything is now ready, the Government vide letter no.831 dated 12.04.20017, cancelled the N.I.T. itself, is completely an arbitrary exercise of power on the premise that on their behest they entered into agreement for the lease of land and invested heavy amount, so now the Government cannot turn round and cancelled the invitation to tender on *ipse dixit* ground, they are by their action caused a heavy prejudice to the petitioners and equally they are bound by the *promissory estoppel* on the fact that when on their invitation they have given their proposal, selected, created infrastructure of centralized kitchen, now they cannot be allowed to change the stand on flimsy ground.



38. The principle of *promissory estoppel* has been developed and accepted by the Indian legal system on the principle of equity. The doctrine of *promissory estoppel* or *equitable estoppel* was not very much established, later on, developed by Indian Courts, introduced its applicability in administration of justice. The principle is based upon the doctrine of equity to avoid injustice. The basics of the doctrine is that where a party has by his words or conduct made to the other party a clear and unequivocal promise or representation by word which is intended to create a legal relationship or effect a legal relationship to arise in the future, knowing as well as intending that the representation and assurance or promise would be acted upon by the other party to whom it has been made and has in fact so acted upon by other party the promise, the assurance or representation would be binding on party making it and the party would not be permitted to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place or are intended to take place between the parties. The doctrine of *promissory estoppel* is applicable equally against the Government where it is necessary to prevent fraud or manifest injustice. The doctrine cannot be invoked to compel the Government or public



authority to carry out the representation of promise, which is contrary to law, but if the Government wants exemption from liability it would be for the Court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability. The Government would have to show what precisely is the changed policy and also its reason and justification so that the Court can judge itself which way the public interest lies and what the equity of the case demands. If the Court is satisfied, on the proper and adequate materials placed by the Government, the over-riding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered. In that circumstance, the Court would refuse to enforce the promise against the Government and the Court would not act on mere *ipse dixit* of the Government. The doctrine of *promissory estoppel* is not limited to its applicability to defence, but it can also be used to create a cause of action and doctrine of *promissory estoppel* would yield when the equity so required.

39. This principle of *promissory estoppel* came for consideration in the case of ***M/s Motilal Padampat Sugar Mills***



***Co. Limited vs. State of Uttar Pradesh and Others***, reported in ***(1979) 2 S.C.C. 409***. In order to understand the parameter of contour and its applicability, it will be useful to quote relevant portion of paragraph no.24 of the said judgment, which are as follows:-

*"24. This Court finally, after referring to the decision in the **Ganges Manufacturing Co. v. Surujmull** (supra), **Municipal Corporation of the City of Bombay v. Secretary of State for India** (supra) and **Collector of Bombay v. Municipal Corporation of the City of Bombay** (supra), summed up the position as follows:*

*"Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the Judge of its own obligation to the citizen on an ex parte appraisalment of the circumstances in which the obligation has arisen."*

*The law may, therefore, now be taken to be settled as a result of this decision that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the*



*Government at the instance of the promises, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Every one is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel. Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of "honesty and good faith"? Why should the Government not be held to a high "standard of rectangular rectitude while dealing with its citizens"? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the Government to repudiate even its contractual obligations, but let it be said to the eternal glory of this Court, this doctrine was emphatically negatived in the **Indo-Afghan Agencies** case and the supremacy of the rule of law was established. It was laid down by this Court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its*



*future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society and the constant endeavor of the Courts and the legislatures must, therefore, be to close the gap between law and morality and bring about as near an approximation between the two as possible. The doctrine of promissory estoppel is a significant judicial contribution in that direction. But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government...”*

40. This issue again came for consideration in the case of ***L.M.L Limited vs. State of Uttar Pradesh and Others***, reported in ***(2008) 3 SCC 128***, where the Court has held that doctrine of promissory estoppel would undoubtedly be



applicable as where an entrepreneur alters his position pursuant to or in furtherance of the promise made by a State to grant *inter alia* exemption from payment of taxes or charges on the basis of the current tariff. Such a policy decision on the part of the State was not only expressed by reason of notifications issued under the statutory provisions but also under the Executive instructions.

41. It will be relevant to quote paragraph nos. 41 and 42 of the said judgment, which read as under :-

*“41. Application of said doctrine has been analysed by this Court in several judgments. We would only refer to some of them. In Southern Petrochemical Industries Co. Ltd. vs. Electricity Inspector & ETIO, this Court upon noticing a large number of precedents including State of Punjab v. Nestle India Ltd. opined as under : (Southern Petrochemical case, SCC p.495, para 121)*

*“121. The doctrine of promissory estoppel would undoubtedly be applicable where an entrepreneur alters his position pursuant to or in furtherance of the promise made by a State to grant inter alia exemption from payment of taxes or charges on the basis of the current tariff. Such a policy decision on the part of the State shall not only be expressed by reason of notifications issued under the statutory provisions but also under the*



*executive instructions. The appellants had undoubtedly been enjoying the benefit of (sic exemption from) payment of tax in respect of sale/consumption of electrical energy in relation to the cogenerating power plants.”*

42. In *Express Newspapers (P) Ltd. vs. Union of India*, this Court held : (SCC p. 249, para 179)

*“179. It would appear that Denning, J. evoked two doctrines: (1) that assurances intended to be acted upon and in fact acted upon were binding; and (2) that where a Government department wrongfully assumes authority to perform some legal act, the citizen is entitled to assume that it has that authority, and he dismissed the contention that estoppels do not bind the Crown by saying that 'that doctrine has long been exploded' and that the Crown cannot fetter its future executive action. Professor Wade points out that the proposition about wrongful assumption of authority evoked by Denning, J. was immediately repudiated by the House of Lords in a later case in which Denning, L. J. had again put it forward in *Howell v. Falmouth Boat Construction Ltd.*. It is beyond the scope of this judgment [to enter into a discussion as to] how far Denning J's dictum can still be regarded as part of the common law in England. But there appears to be a school of thought in India laying down that the doctrine of promissory estoppel applies to the Government except under certain circumstances.”*



42. The same principle has been reiterated in the case of *State of Bihar and Others vs. Kalyanpur Cement Limited* reported in (2010) 3 SCC 274, wherein the Court has held that the Government is equally bound by its promise or representation by word or conduct, which is intended to create legal relation, on that representation other side acted upon and changed its status, now the Government cannot change its stand and change and cause prejudice to other side. It will be relevant to quote paragraph nos. 34 to 46 of the said judgment, which reads as under:-

*“34. The doctrine of promissory estoppel as developed in the administrative law of this country has been eloquently explained in Kasinka Trading v. Union of India by Dr. A.S. Anand, J, in the following words: (SCC pp.283-84, paras 11-12)*

*"11. The doctrine of promissory estoppel or equitable estoppel is well established in the administrative law of the country. To put it simply, the doctrine represents a principle evolved by equity to avoid injustice. The basis of the doctrine is that where any party has by his word or conduct made to the other party an unequivocal promise or representation by word or conduct, which is intended to create legal relations or effect a legal relationship to arise in the future, knowing as well as intending that the representation, assurance or the promise would be acted upon by the other party*



*to whom it has been made and has in fact been so acted upon by the other party, the promise, assurance or representation should be binding on the party making it and that party should not be permitted to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings, which have taken place or are intended to take place between the parties."*

*"12. It has been settled by this Court that the doctrine of promissory estoppel is applicable against the Government also particularly where it is necessary to prevent fraud or manifest injustice. The doctrine, however, cannot be pressed into aid to compel the Government or the public authority "to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make". There is preponderance of judicial opinion that to invoke the doctrine of promissory estoppel clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and that bald expressions, without any supporting material, to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. In our opinion, the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the*



*doctrine, the courts have to do equity and the fundamental principles of equity must for ever be present to the mind of the court, while considering the applicability of the doctrine. The doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation."*

*35. In our opinion, the aforesaid statement of law covers the submissions of Dr. Dhawan and Mr. Dwivedi that in order to invoke the aforesaid doctrine, it must be established that:*

*(a) that a party must make an unequivocal promise or representation by word or conduct to the other party;*

*(b) the representation was intended to create legal relations or affect the legal relationship, to arise in the future;*

*(c) a clear foundation has to be laid in the petition, with supporting documents;*

*(d) it has to be shown that the party invoking the doctrine has altered its position relying on the promise;*

*(e) it is possible for the Government to resile from its promise when public interest would be prejudiced if the Government were required to carry out the promise;*

*(f) the Court will not apply the doctrine in*



*abstract. However, since the judgments have been cited, we may notice the law laid down therein.*

36. *In STO vs. Shree Durga Oil Mills, it was held that: (SCC p.580, para 25)*

*"25. Moreover, as it has been noted earlier that the IPR itself had not granted any exemption but had indicated that orders will be issued by various departments for granting the exemptions. The exemption order under Sales Tax could only be issued under Section 6 which could be amended or withdrawn altogether. This is expressly provided by Section 6. If the respondent acted on the basis of a notification issued under Section 6 it should have known that such notification was liable to be amended or rescinded at any point of time, if the Government felt that it was necessary to do so in public interest."*

37. *In Bakul Cashew Co. v. STO: (SCC pp.369-70, para 5)*

*"5. ... In cases of this nature the evidence of representation should be clear and unambiguous. It 'must be certain to every intent'. The statements that are made by ministers at such meetings, such as, 'let us see', 'we shall consider the question of granting of exemption sympathetically', 'we shall get the matter examined,' 'you have a good case for exemption'" etc. even if true, cannot form the basis for a plea of estoppel."*



38. *In Sharma Transport v. Govt. of AP, it is observed that: (SCC pp.199-200, para 13)*

*"13. There is preponderance of judicial opinion that to invoke the doctrine of promissory estoppel, clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and that bald expressions, without any supporting material, to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine."*

39. *In Shri Bakul Oil Industries vs. State of Gujarat, this Court held that: (SCC p.36, para 9)*

*"9. Viewed from another perspective, it may be noticed that the State Government was under no obligation to grant exemption from sales tax. The appellants could not, therefore, have insisted on the State Government granting exemption to them from payment of sales tax. What consequently follows is that the exemption granted by the Government was only by way of concession. Once this position emerges it goes without saying that a concession can be withdrawn at any time and no time limit can be insisted upon before the concession is withdrawn. The notifications of the Government clearly manifest that the State Government had earlier granted the exemption only by way of*



*concession and subsequently by means of revised notification issued on July 17, 1971, the concession had been withdrawn. As the State Government was under no obligation, in any manner known to law, to grant exemption it was fully within its powers to revoke the exemption by means of a subsequent notification. This is an additional factor militating against the contentions of the appellants."*

*40. In Motilal Padampat Sugar Mills Co. Ltd. vs. State of UP, it is held that:*

*"33. We do not think it is necessary, in order to attract the applicability of the doctrine of promissory estoppel, that the promisee, acting in reliance on the promise, should suffer any detriment. What is necessary is only that the promisee should have altered his position in reliance on the promise..."*  
(SCC p. 451, para 33)

*"24. ...But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory*



*estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts as have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it."*

*(SCC p.443, para 24)*

*In the same paragraph it is further observed that:-*

*(SCC p.443-44 para 24)*

*"24.....the Government cannot, as Shah, J., pointed out in the Indo-Afghan Agencies case, claim to be exempt from the liability to carry out the promise 'on some indefinite and undisclosed ground of necessity or expediency', nor can the Government claim to be the sole judge of its liability and repudiate it 'on an ex parte appraisalment of the circumstances'. If the*



*Government wants to resist the liability, it will have to disclose to the Court what are the facts and circumstances on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability: the Government would have to show what precisely is the changed policy and also its reason and justification so that the Court can judge for itself which way the public interest lies and what the equity of the case demands. It is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest required that the Government should not be held bound by the promise but should be free to act unfettered by it, that the court would refused to enforce the promise against the Government. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by*



*the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden"*

41. It is further held that : (Motilal Padampat case, S.C.C. p.446, para 27)

*"27. ...Lastly, a proper reading of the observation of the Court clearly shows that what the Court intended to say was that where the Government owes a duty to the public to act differently, promissory estoppel cannot be invoked to prevent the Government from doing so. This proposition is unexceptionable, because where the Government owes a duty to the public to act in a particular manner; and here obviously duty means a course of conduct enjoined by law, the doctrine of promissory estoppel cannot be invoked for preventing the Government from acting in discharge of its duty under the law. This doctrine of promissory estoppel cannot be applied in teeth of an obligation or liability imposed by law."*

42. In D.C.M. Ltd. vs. Union of India, this Court reiterated that (SCC pp.471-72, para 6)

*"6. ...It is well settled that the doctrine of promissory estoppel represents a principle evolved by equity to avoid injustice and, though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. The basis of this doctrine is the inter-*



*position of equity which has always proved to its form, stepped in to mitigate the rigour of strict law. It is equally true that the doctrine of promissory estoppel is not limited in its application only to defence but it can also find a cause of action. This doctrine is applicable against the Government in the exercise of its governmental public or executive functions and the doctrine of executive necessity or freedom of future executive action, cannot be invoked to defeat the applicability of this doctrine. It is further well established that the doctrine of promissory estoppel must yield when the equity so requires. If it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be unequitable to hold the Government or public authority to the promise or representation made by it, the court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it."*

43. *In Shrijee Sales Corpn. v. Union of India (1997), it was held that (SCC p.403, para 3)*

*"3. It is not necessary for us to go into a historical*



*analysis of the case-law relating to promissory estoppel against the Government. Suffice it to say that the principle of promissory estoppel is applicable against the Government but in case there is a supervening public equity, the Government would be allowed to change its stand; it would then be able to withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such withdrawal. However, the Court must satisfy itself that such a public interest exists."*

44. *In Pawan Alloys & Casting (P) Ltd. v. UP SEB, it is held that (SCC p.278, para 31)*

*"31. ... The appellants will not be able to enforce the equity by way of promissory estoppel against the Board if it is shown by the Board that public interest required it to withdraw this incentive rebate even prior to the expiry of three years as available to the appellants concerned. It has also to be held that even if such withdrawal of development rebate prior to three years is not based on any overriding public interest, if it is shown that by such premature withdrawal the appellant-promisees would be restored to status quo ante and would be placed in the same position in which they were prior to the grant of such rebate by earlier notifications the appellants would not be entitled to succeed."*



45. *In Shreeji Sales Corpn. it is also held that (SCC p.405, para 8)*

*"8. ...However, in the present case, there is a supervening public interest and hence it should not be mandatory for the Government to give a notice before withdrawing the exemption."*

46. *In Bannari Amman Sugars Ltd. vs. CTO it is observed that (SCC p.638, para 21)*

*"21. ...We find no substance in the plea that before a policy decision is taken to amend or alter the promise indicated in any particular notification, the beneficiary was to be granted an opportunity of hearing. Such a plea is clearly unsustainable. While taking policy decision, the Government is not required to hear the persons who have been granted the benefit which is sought to be withdrawn."*

43. Now, on the test of the aforesaid proposition, it has to be seen whether in the present case, the petitioners are justified in claiming the *promissory* or *equitable estoppel* on the premise that they have established the centralized kitchen and invested a huge amount for the purposes of distribution of hot cooked Mid-Day Meal to the students of primary and upper primary schools in urban areas. The scheme is in public interest as the scheme has been introduced to eradicate the mal-



nutritious of the children of the weaker section so that they may not be proved to burden to family, society and ultimately to the country but they may turn to be asset and tools for the development of the country and other idea is to maximize the number of students to attend the school at least upto the primary and upper primary level to eradicate illiteracy and country be turned universal literate, which will be beneficial to the country as well as to the society. With these motto, this scheme has been brought and the entrepreneurs have been invited and the documents are showing that all the entrepreneurs have already established the semi-automatic kitchen, reflects huge amount has been invested by the petitioners. When they have already established the kitchen, will it be a proper exercise of power and administratively sound to cancel the N.I.T. itself, this Court is of the view that it will be nothing but to prolong further time for establishing the centralized kitchen and the children of the primary and upper primary level will be deprived of the nutritious hot cooked meal. In this background, this Court is of the view that certainly the petitioners have invested huge amount on the representation made by the Government and now the respondents should not on *ipsi dixit* ground cancel the N.I.T., thereby putting all the investors in lurch and all investments will



go in waste. The equity demands that their interest should be protected, not only their interest but the interest of the common students who will be benefited by operation of kitchen. Hence, the principle of *promissory estoppel* applies in the present case and there is no valid reason or public policy to show that it will be an appropriate and proper to change the stand and withdraw the promise offered to them, but return of such finding and opinion will helpful, in such event if on scrutiny it is found that the kitchen has been established as per specification in the N.I.T.

44. In the present case, one of the disputes has been raised about the interpretation of the Clause, which is dealing with area of kitchen as to whether it would be inclusive of all items mentioned in the N.I.T. or it is excluding area of kitchen shed where food would be cooked only, without its proper analysis or resolution, the matter cannot be set at right, which is as follows:-

“Kitchen should be minimum plotted area of 500 sq. yards. If no kitchen is found in any district then minimum plotted area may be relaxed up to 250 sq. yards.”

45. The respondent authorities have taken a plea that the plotted area for kitchen must be of 500 sq. yards, meaning



thereby that the centralized kitchen should be of that area where only food would be prepared and other supporting accessories items will be situated outside the 500 sq. yards area. It will not be inclusive of all items but exclusively established in 500 sq. yards, meaning thereby, the plotted area of 500 sq. yards is the covered area for the kitchen where only food would be prepared for service.

**46.** Whereas, the petitioners have resisted this argument and submitted that plotted area of 500 sq. yards means that it includes every item such as, area where the vehicle can be parked, food can be loaded, store room where the grain and other incidental materials can be stored, washing area where the washing of utensils can be done, the boiler or any burner can be established, the area where garbage disposal plant could be established and the loading station with platform and ramp area. So, the submission has been made by the petitioners, kitchen should be inextricable connected with all arrangements is idea of centralized compact kitchen for proper operation of cooking and delivery of the hot cooked food.

**47.** The plotted area has not been defined anywhere is the gray area, is required to be deliberated upon as to whether 500 sq. yards area is exclusively for kitchen or inclusive of other



assisting necessary items. So, it is required to delve or dwell into the intention and purposes of said area requires interpretation of this part of the expression of interest, unless it is understood it will not give desired result.

**48.** While interpreting a document the dominant aim and object is to be kept in mind, the purpose and object plays important role in understanding the stipulation which plays very material for arriving to a right place. While ascertaining the intention, it has to be seen the language and purpose of the document, for ascertaining the purpose, the document has been created. The Courts from time to time laid down the principle in what manner the interpretation of document or clause therein is to be given. There is no rule or fixed formula for statutory interpretation of the document but each and every part of document is to be taken into consideration for arriving at correct juncture. For understanding real purpose of a document, the intention of the creator of the document would be gathered from the formulation of word and sentence used plays very vital and important role and words are to be taken to their literal meaning. The colour of literal meaning depends on circumstances, subject and context, in which parties have been placed. A document has to be seen as a whole. It is a well established rule of



interpretation that if two admissible constructions of a document are possible, one which sub-serve the purpose and suppress mischief while other interpretation of such clause, does render other clause, nugatory, it is the former clause would be accepted and later would be rejected on the principle expressed in the maxim *ut res magis valeat quam perpeat*, (i) A maxim of construction applied when alternative reading are possible, one of which (usually the broader reading) would achieve the meaningful purpose of the document and one of which (usually the narrower reading) would reduce it to fatality or absurdity, whereby interpreter chooses the one that gives effect to the document's purpose, (ii) A Construction which will defeat the object of statute should be avoided. A word or phrase or clause used in the document has to be seen in what context and subject has been used giving debate looking to its context and object and the intention of parties. While arriving to the right conclusion always to be kept in mind the purpose behind the creation of the said document and has to be kept in mind that if any construction of document does not sub-serve its purpose and gives an absurd result, former has to be accepted and outrightly the latter would be rejected. If any interpretation is in destructive nature and destroy the purpose of its creation, is to



be rejected.

49. In *Delhi Development Authority vs. Durga Chand Kaushish*, reported in *A.I.R. 1973 S.C. page-2609*, the Hon'ble Supreme Court in paragraph nos. 17, 18, 20, 21, 25 26 and 29 has opined thus:-

*"17. The meaning of the word "with" is generally gathered from the context and has to be considered in conjunction with word which precede and those which follow it. It is the exact meaning of the words "original term", as used in the proviso, which is far more important. It is not unlikely that the draftsman, due to an imperfect knowledge of a foreign language, which English is for us, used the expression in some special sense of his own. Its meaning could not, as pointed out above, be the initial term of ninety years, because, if that is added on to the periods of renewal of leases the total must obviously and necessarily exceed ninety years. Hence, we are compelled to resort to guesswork to make some sense out of the expression "original terms" as used in the proviso. It may be that the draftsman described the period of the first renewal as the "original term"; Or, perhaps he used it to describe the actual period of a renewal as contrasted with subsequent or previous renewals. It is quite natural to restrict this expression used in the context of renewals to a term of a renewal. This would be a logical course to adopt as the whole of covenant 9 deals with renewal of leases. In any case, this is the only way in which we can make the proviso*



*intelligible, and, therefore, unless the expression is discarded as incomprehensible or meaningless in the context, we have to read it in that sense.*

*“18. The difficulty in tearing the few words in the proviso away from the context of the rest of the covenant as well as from all other parts of the deed is that it would, if that were done, override not merely the words of demise, giving the duration of the initial lease as 90 years, but would also conflict with the contents of covenant 9 itself. As we have said earlier this covenant clearly says that it will operate only at the end of the first 90 years. If, according to covenant No.9 itself, the provisions relating to the renewal of the lease and enhancement of rent are to come into effect only at the end of ninety years’ grant, how can we shorten it, without ignoring the most essential part of the lease, and give effect to some merely presumed or guessed intention in such way as to override the plain meaning of the language used? Nothing in the proviso to covenant 9 could reasonably be used to destroy the meaning of the unambiguous opening words of the covenant showing that the whole covenant is meant to operate only “at the end of the term hereby granted” (i.e. after 90 years).*

*20. The rule stated above follows logically, from the Literal Rule of Construction which, unless its application produces absurd results must be resorted to first. This is clear from the following passages cited in Odgers' short book under the First Rule of Interpretation set out above:*



*Lord Wensleydale in Monypenny v. Monypenny (1861) 9 HLC 114 at p. 146 said:*

*"the question is not what the parties to a deed may have intended to do by entering into that deed, but what is the meaning of the words used in that deed: a most important distinction in all cases of construction and the disregards of which often leads to erroneous conclusions."*

*Brett, L.J., in Re Meredith, ex P. Chick (1879) 11 Ch. D. 731 at p. 739 observed:*

*"I am disposed to follow the rule of construction which was laid down by Lord Denman and Baron Parke... They said that in construing instruments you must have regard, not to the presumed intention of the parties, but to the meaning of the words which they have used."*

*21. Another rule which seems to us to be applicable here was thus stated by this court in Radha Sunder Dutta v. Mohd. Jahadur Rahim, AIR 1959 SC 24 at p.29.*

*"Now, it is a settled rule of interpretation that if there be admissible two constructions of a document, one of which will give effect to all the clauses therein while the other will render one or more of them nugatory, it is the former that should be adopted on the principle expressed in the maxim ut res magis valeat quam pereat".*

*25. Learned Counsel for the respondent also relied on the following passage from Glynn vs. Margeston & Co. 1893 AC 351 at p. 357 in the judgement of Lord*



*Halsbury:-*

*"Looking at the whole of the instrument, and seeing that one must regard, for a reason which I will give in a moment, as its main purpose, one must reject words, indeed whole provisions, if they are inconsistent with what one assumes to be the main purpose of the contract."*

*26. If the ambiguity created by the words used in the proviso to the 9<sup>th</sup> covenant can be resolved, assuming that two interpretations of it are reasonably possible, as it seems possible, the principle to apply would be that the interpretation favouring the grantee as against the grantor should be, accepted. This was also one of the grounds for the decision of this Court in Kkamgarh Shah's case (1960) 3 SCR 604 = (AIR 1960 SC 953) (supra).*

*29. We may also cite here Raja Rajendra Chand v. Mst.Sukhi, AIR 1957 SC 286 where it was pointed out that the English rule a grant should be construed most favourably to the Sovereign was subject to the exception that, in cases of grants made for valuable consideration, as is the position in the lease before us, the Sovereign's honour must take precedence over the Sovereign's profit. This Court said (at page 292) there :*

*"It is, we think, well settled that the ordinary rule applicable to grants made by a subject does not apply to grants made by the Sovereign authority : and grants made by the Sovereign are to be construed most favourably for the Sovereign. This general rule, however, is capable of important*



*relaxations in favour of the subject. It is necessary to refer here to such only of these relaxations as have a bearing on the construction of the document before us; thus, if the intention is obvious, a fair and liberal interpretation must be given to the grant to enable it to take effect; and the operative part, if plainly expressed, may take effect not with standing qualifications in the recitals. In cases where the grant is for valuable consideration, it is construed in favour of the grantee, for the honour of the Sovereign; and where two constructions are possible, one valid and the other void, that which is valid ought to be preferred, for the honour of the Sovereign ought to be more regarded than the Sovereign's profit (see para 670 at p. 315 of Halsbury's Laws of England Vol. VII, S.12, Simonds Editon)."*

**50.** So while considering a document for interpretation of clause the dominant intention of aims and object for which this N.I.T. has been floated to establish the centralized kitchen in a compact manner should be kept in back of the mind. The only idea is to supply hot cooked meal for transportation to destination without any delay.

**51.** Some of the petitioners have produced the lay out plan of the centralized kitchen which has been established in the N.C.R. On comparison of lay out plan, it appears that the



centralized kitchen has been established around the N.C.R. area in a compact manner shows that all the accessories or supporting facilities are within the 500 sq. yards. The 500 sq. yard area is not exclusively meant for cooking area. The respondents have not provided any sketch or map of the modal kitchen or lay out plan, but it has been left for understanding for employer or the bidder. Had there been a sketch or lay out plan of standard modal kitchen or the plotted area, would have been defined in the N.I.T. in what manner the kitchen could be established but is silent, leaving to speculation. This Court, is of the view that the storage, washing area, garbage disposal plant, establishment of boiler cannot be kept far away, would be established within 500 sq. yards as aforesaid supporting system are inextricably part of the kitchen as there cannot be cooking without the assistance of these supporting accessories. So, in my view, the interpretation which has been given by the respondents that plotted area means is exclusively for cooking area does not sub-serve the purpose, but it defeats the purposes of compact centralized kitchen as kitchen will not be workable without having these facilities at proper and safe distance.

**52.** In such view of the matter, this Court is of the view that the lay out plan of the centralized kitchen of the N.C.R. is



proper lay out plan of model kitchen which is inclusive of every supporting items for running the said kitchen. Hence, the objection raised by the respondents that plotted area 500 sq. yards is exclusively for cooking area does not include other supporting items is destructive interpretation, is rejected, but the plotted area will include all the incidental items, aims for running the kitchen smoothly, the interpretation and the proposition suggested by the petitioner is accepted.

**53.** In view of aforesaid discussion, this Court is to examine the case of petitioners in background of report submitted by the Committee as to whether the kitchens established satisfy all conditions of items mentioned in the N.I.T. On perusal of items, this Court is of the view that certain deficiencies would fall in permanent deficiency and certain items of deficiency would temporary deficiencies which could be removed but has been treated to be permanent deficiency, certain deficiencies cannot be removed in any manner such as, deficiency in land is permanent deficiency but deficiencies in supporting items are curable defects/ deficiencies as that can be removed cannot be treated to be permanent deficiency. The information supplied by the petitioners with respect to respective areas of kitchen are as follows:-



C.W.J.C. No. 3570/2017

DETAILS OF KITCHEN AREA DEVELOPED BY THE PETITIONER

| S.L | DISTRICT   | KITCHEN    | PLOTTED AREA (Sq. Ft.) | COVERED AREA(Sq.Ft.) | ADDRESS                                                                                            |
|-----|------------|------------|------------------------|----------------------|----------------------------------------------------------------------------------------------------|
| 1.  | Lakhisarai | Lakhisarai | 4500                   | 3700                 | C/o-Ramesh Kumar, Chittaranjan Road, Dhaba Chawk, Purani Bazar, Opp.-Electricity Board, Lakhisarai |
| 2.  | Mungher    | Mungher    | 4100                   | 3700                 | Murabak Chawk, Dastola, Munger                                                                     |

CWJC/3571/2017

DETAILS OF KITCHEN AREA DEVELOPED BY THE PETITIONER

| S.L. | DISTRICT | KITCHEN    | PLOTTED AREA (Sq. Ft.) | COVERED AREA (Sq. Ft.) | ADDRESS                                                                                        |
|------|----------|------------|------------------------|------------------------|------------------------------------------------------------------------------------------------|
| 1.   | Purnea   | Purnea     | 7760                   | 4760                   | Sri Ashok Kr Agarwal, Beside Panjab Sindh Bank, Bijendra Public School Road, Maranga, Purnea   |
| 2.   | Araria   | Araria     | 7500                   | 6500                   | Ehsan Rasul National Service Centre, Zero Mile, Near Petrol Pump, Araria                       |
|      |          | Forbesganj | 7200                   | 6500                   | Sri Vimal Kumar Bayanwala S/o Late Lila Dhar Bayanwala R. B. Roy Lane Ward No.-5, Forbesganj   |
| 3.   | Supaul   | Supaul     | 9353                   | 5500                   | Smt. Arti Jaiswal, W/o Dr. Subhash Chandra Jaiswal, Kerala Boarding School, Pipra Road, Supaul |

CWJC/11396/2017

DETAILS OF KITCHEN AREA DEVELOPED BY THE PETITIONER

| S.L | DISTRICT  | KITCHEN   | PLOTTED AREA (Sq. Ft.) | COVERED AREA (Sq. Ft.) | ADDRESS                                                                          |
|-----|-----------|-----------|------------------------|------------------------|----------------------------------------------------------------------------------|
| 1.  | Nawada    | Nawada    | 6500                   | 5500                   | C/o Sri Naresh Kumar, Near Suraj Service Centre, Patna-Ranchi Road, Nawada Bihar |
| 2.  | Jehanabad | Jehanabad | 6000                   | 5000                   | C/o Sri Birendra Sharma, At- Damua, Kako Road, Jehanabad, Bihar                  |
| 3.  | Arwal     | Arwal     | 5500                   | 5000                   | C/o Sri Satyaprakash, Chhotki Ahiyapur, NH-98, Arwal, Bihar                      |

CWJC/4144/2017

DETAILS OF KITCHEN AREA DEVELOPED BY THE PETITIONER

| S.L. | DISTRICT | KITCHEN | PLOTTED AREA (Sq. Ft.) | COVERED AREA (Sq. Ft.) | ADDRESS                                                  |
|------|----------|---------|------------------------|------------------------|----------------------------------------------------------|
| 1.   | Saharsa  | Saharsa | 7350                   | 4000                   | Zodhi Pokhar, Kahara Kuti, Bangaon Road, Kahara, Saharsa |



CWJC/3529/2017  
DETAILS OF KITCHEN AREA DEVELOPED BY THE PETITIONER

| S.L . | DISTRICT                         | KITCHEN                | PLOTTED AREA (Sq. Ft.) | COVERED AREA (Sq. Ft.) | ADDRESS                                                                                         |
|-------|----------------------------------|------------------------|------------------------|------------------------|-------------------------------------------------------------------------------------------------|
| 1.    | <b>MOTIHARI (EAST CHAMPARAN)</b> | Motihari               | 7000                   | 5300                   | Sri Shailendra KR Mishra, Awdhesh Colony, Near Awdhesh Chowk, Motihari                          |
|       |                                  | Raxaul                 | 7000                   | 5600                   | Sri Binod Prasad, S/o Late Gena Prasad, Laxmipur (Kadiar) Raxaul,                               |
|       |                                  | Sugauli                | 6000                   | 4800                   | Sri Ram Gopal Khandelwal, Ward No 19, On Road Sugauly Gumty Bangara, Sugauly,                   |
| 2.    | <b>SITAMARHI</b>                 | Sitamarhi              | 12560                  | 10560                  | Sri Kameshwar Pd Singh, Infront of Gas Godwan, Near Dumra Chowk, Punaura Mandir Road, Sitamarhi |
| 3.    | <b>Muzaffarpur</b>               | Kanhuli, BMP-6         | 14000                  | 10000                  | Sri Brajesh Choudahary, Beside Dollpin School, Kanhuli, BMP-6, Kotiha Road, Muzaffarpur         |
|       |                                  | Near Lilawati Hospital | 10000                  | 8000                   | Bairiya Road, Behind Royal Enfield, Near Lilawati Hospital, Muzaffarpur                         |
| 4.    | <b>Samastipur</b>                | Samastipur             | 10200                  | 5200                   | Sri Prem Prakash, S/o Sri Nand Kishor Pd, Sakin, Mathurapur, OP-Varishnagar, Samastipur         |
|       |                                  | Rosera                 | 7000                   | 5000                   | Sri Moan Kr Singh, S/o late Radha Krishna Singh, Rosera, Mohalia – Dhab, Ward No.15, Samastipur |
|       |                                  | Tajpur                 | 6800                   | 4800                   | Sri Rameshwar Sah, S/o- Late Mishra Lal Sah, Vill.-Bherokhara, Thana- Tajpur Samastipur         |
|       |                                  | Dalsingsarai           | 9400                   | 5400                   | Sri Sunil Kr Singh, Pagra, Samastipur Barauni Highway, Dalsingsarai, Samastipur                 |

CWJC/10880/2017  
DETAILS OF KITCHEN AREA DEVELOPED BY THE PETITIONER

| S.L . | DISTRICT | KITCHEN       | PLOTTED AREA (Sq. Ft.) | COVERED AREA (Sq. Ft.) | ADDRESS                                                                                                        |
|-------|----------|---------------|------------------------|------------------------|----------------------------------------------------------------------------------------------------------------|
| 1.    | Patna    | Sipara        | 8400                   | 6400                   | Sri Vidya Singh, S/o Late Janak Singh, Janak Market Sipara, P.O.- Dhelwan, P.S. – Beur Patna                   |
|       |          | Near Toll Tax | 8500                   | 7500                   | Sri Krishna Deo Singh, S/o Late Nemi Lal Singh, Vill- Bypass Road Near Toll Tax (City Hotel), Didarganj, Patna |
|       |          | Gola Road     | 7000                   | 5000                   | Sri Jitendra Pd Singh, Late Ram Nandan Rai,                                                                    |



|    |                                              |             |       |       |                                                                                                       |
|----|----------------------------------------------|-------------|-------|-------|-------------------------------------------------------------------------------------------------------|
|    |                                              |             |       |       | Hanuman Chowk,<br>Gola Road, Danapur, Patna                                                           |
|    |                                              | Pandarak    | 9008  | 4015  | Sri Baban Sharma,<br>S/o Late Chandrashekher<br>Pd Singh, NH-31,<br>PO+PS – Pandarak                  |
|    |                                              | Naubatpur   | 6500  | 5460  | Sri Sushil Singh, Vill-Chiraura,<br>N.H.-98, Near Mahavir Mandir,<br>Nabatpur, Patna                  |
|    |                                              | Bihta       | 6700  | 5445  | Sri. Keshrinandan Singh,<br>S/o Pro. Kedarnath Singh,<br>Near B.S.N.L. Tower, Gultera<br>Bazar, Bihta |
| 2. | <b>Bettiah<br/>(West<br/>Champar<br/>an)</b> | Bettiah     | 7000  | 5200  | Sri Vijay Kr Singh,<br>Subodh Singh Path,<br>Adarsh Colony, Bettiha                                   |
|    |                                              | Narkatiganj | 6000  | 4900  | Sri Munna Kumar,<br>Purani Bazar, Ward No.2,<br>Campus Bhagwan Rice Mill,<br>Narkatiaganj             |
|    |                                              | Bagaha      | 6200  | 4700  | Sri Ravin Kumar,<br>S/o Manoj Kumar Verma,<br>Vill+PO-Babai Tola, Bankatwa,<br>P.S-Bagaha             |
| 3. | <b>Kishanga<br/>nj</b>                       | Kishanganj  | 12000 | 10000 | Sri Ajay Kr Singh,<br>S/o Late Ram Jatan Saha,<br>Khagra Karbala,<br>PO+PS-Kishanganj                 |

CWJC NO. 3418 OF 2017

Semi Automated Kitchen & Infrastructure Details of the Petitioners as per the requirement in the advertisement.

| Infrastructure                                                       | Balvikash<br>Sewa<br>Sansthan<br>(Petitioner<br>no.1                                      | Suprabhat<br>Educational<br>& Social<br>Welfare<br>Society<br>(Petitioner<br>no.2 | Ekta Shakti<br>Foundation<br>(Petitioner<br>no.3)   | Ujwal<br>Savera<br>Society<br>(Petitioner<br>no.4)  | Paras Agro<br>Society<br>(Petitioner<br>no.5)       |
|----------------------------------------------------------------------|-------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|-----------------------------------------------------|-----------------------------------------------------|-----------------------------------------------------|
| 1. Total plotted area                                                | Chapra-6560 sq.ft.<br>Dighwara – 5200 sq.ft.<br>Sonapur-25000 sq.ft.<br>Siwan-5000 sq.ft. | Ara -6372 sq.ft.<br>Bihiya-7500 sq.ft.                                            | Benipur-3637 sq.ft.<br>Mabbi-5700 sq.ft.            | Buxar-6300 sq.ft.                                   | Madhepura-3380 Sq.ft                                |
| 2. Adequate area for means of transport to unload raw materials etc. | Yes                                                                                       | Yes                                                                               | Yes                                                 | Yes                                                 | Yes                                                 |
| 3. Store room                                                        | Yes                                                                                       | Yes                                                                               | Yes                                                 | Yes                                                 | Yes                                                 |
| 4. Washing area                                                      | Yes                                                                                       | Yes                                                                               | Yes                                                 | Yes                                                 | Yes                                                 |
| 5. Cooking unit with air blowers                                     | Yes/<br>available and will be installed immediately                                       | Yes/<br>available and will be installed immediately                               | Yes/<br>available and will be installed immediately | Yes/<br>available and will be installed immediately | Yes/<br>available and will be installed immediately |
| 6. Cooking unit                                                      | Yes                                                                                       | Yes                                                                               | Yes                                                 | Yes                                                 | Yes                                                 |



|     |                                                                      |                               |                               |                               |                               |                               |
|-----|----------------------------------------------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
|     | with burners and chimni                                              |                               |                               |                               |                               |                               |
| 7.  | Work tables                                                          | Yes                           | Yes                           | Yes                           | Yes                           | Yes                           |
| 8.  | Trolleys for loading cooked food                                     | Yes                           | Yes                           | Yes                           | Yes                           | Yes                           |
| 9.  | Dish washing unit                                                    | Yes                           | Yes                           | Yes                           | Yes                           | Yes                           |
| 10. | Storage area for container                                           | Yes                           | Yes                           | Yes                           | Yes                           | Yes                           |
| 11. | Adequate aisle                                                       | Yes                           | Yes                           | Yes                           | Yes                           | Yes                           |
| 12. | Garbage disposal management                                          | Will be installed immediately | Will be installed immediately | Will be installed immediately | Will be installed immediately | Will be installed immediately |
| 13. | Loading station with platform and ramp                               | Yes                           | Yes                           | Yes                           | Yes                           | Yes                           |
| 14. | Stone flooring slope towards the drains                              | Yes                           | Yes                           | Yes                           | Yes                           | Yes                           |
| 15. | Wall tiled upto 7 ft. height and rest white washed                   | Yes                           | Yes                           | Yes                           | Yes                           | Yes                           |
| 16. | Ventilation with wire mesh                                           | Yes                           | Yes                           | Yes                           | Yes                           | Yes                           |
| 17. | Exhaust and chuts for vapour extraction                              | Yes                           | Yes                           | Yes                           | Yes                           | Yes                           |
| 18. | Proper drains with removable covers                                  | Yes                           | Yes                           | Yes                           | Yes                           | Yes                           |
| 19. | Water purification system                                            | Only to be installed          | Only to be installed          | Only to be installed          | Only to be installed          | Only to be installed          |
| 20. | In storage area and pest control to be done every 3 months           | Yes                           | Yes                           | Yes                           | Yes                           | Yes                           |
| 21. | Closed and secure containers for transporting food.                  | Yes                           | Yes                           | Yes                           | Yes                           | Yes                           |
| 22. | LPG to be properly secured through piping system or smokeless Chulla | Yes                           | Yes                           | Yes                           | Yes                           | Yes                           |
| 23. | Boiler plant/ solar water heating system                             | Yes                           | Yes                           | Yes                           | Yes                           | Yes                           |
| 24. | Use of steam cooking concept                                         | Yes                           | Yes                           | Yes                           | Yes                           | Yes                           |



|                                                                                                             |                                             |                                             |                                             |                                             |                                             |
|-------------------------------------------------------------------------------------------------------------|---------------------------------------------|---------------------------------------------|---------------------------------------------|---------------------------------------------|---------------------------------------------|
| 25. Use of gloves, Headgears and aprons                                                                     | Yes                                         | Yes                                         | Yes                                         | Yes                                         | Yes                                         |
| 26. Use of vegetable cutting machines etc.                                                                  | Yes                                         | Yes                                         | Yes                                         | Yes                                         | Yes                                         |
| 27. Fire protection measures.                                                                               | Yes                                         | Yes                                         | Yes                                         | Yes                                         | Yes                                         |
| 28. Adequate water arrangement.                                                                             | Yes                                         | Yes                                         | Yes                                         | Yes                                         | Yes                                         |
| 29. Adequate water disposal arrangement.                                                                    | Yes                                         | Yes                                         | Yes                                         | Yes                                         | Yes                                         |
| 30. Oil trapped for cleaning wasted oil.                                                                    | Will be installed immediately               | Will be installed immediately               | Will be installed immediately               | Will be installed immediately               | Will be installed immediately               |
| 31. Adequate lighting arrangement.                                                                          | Yes                                         | Yes                                         | Yes                                         | Yes                                         | Yes                                         |
| 32. Hauler machine.                                                                                         | Available and will be installed immediately | Available and will be installed immediately | Available and will be installed immediately | Available and will be installed immediately | Available and will be installed immediately |
| 33. Adequate means of transporting cooked food                                                              | Yes                                         | Yes                                         | Yes                                         | Yes                                         | Yes                                         |
| 34. Toilet blocks and garbage collection to be at suitable distance from area where food is to be prepared. | Yes                                         | Yes                                         | Yes                                         | Yes                                         | Yes                                         |

Note: The deficiencies are only minor in nature and will be corrected immediately once the kitchen becomes functional.

It is apparently clear that the land of respective kitchens are not short of the area specified.

54. Let us examine the inspection report of the Committee in what manner they have categorized the items as ‘permanent deficiency’ and ‘temporary deficiency’. They have made classification in the following manners:-

Defect in plotted area of kitchen has been treated to



be a permanent deficiency, in view of this Court, is completely correct, cannot have any objection from any side. Is adequate area for means of transport to unload raw materials etc. is available or not, has been treated to be a permanent deficiency, is also correct. Is Storeroom provided with racks and platforms for gunny bags with separate section for oil and others, has been treated to be a permanent deficiency, is incorrect, separate section can be created in the room itself, if the storeroom is not there, in such circumstances, it is a permanent deficiency, otherwise temporary deficiency. Is Separate area for washing prior to cooking of vegetables, rice, dal etc, is available or not, has been treated to be permanent deficiency, is not correct as that space can be created and it is in the nature of temporary deficiency. Is rice cooking units with steam cookers and trays to cool rice and cooling facilitated by air blowers is available or not, has been treated to be a temporary deficiency, is correct. Is cooking/frying units with high pressure burner and vapour extraction hood/chimney is available or not, has been treated to be temporary deficiency, is correct. Is Work tables for vegetable processing, potato peelers and food processors or wet grinders for masala making available or not, has been treated to be temporary deficiency, is in view of this Court, is correct. Is



trolleys for loading cooked food available or not, has been treated to be temporary deficiency, is also correct. Is there separate dish washing unit with sanitizer, grease traps and filters installed in drains or not, has been treated to be temporary deficiency, is also correct. Is there storage area for containers, plots and pans or not, has been treated to be temporary deficiency, is also correct. Is there adequate aisle space of about 3 to 4 feet wide for the movement of personnel and material traffic, has been treated to be permanent deficiency, is correct. Is there adequate garbage disposal management, has been treated to be permanent deficiency, is not correct, it can be created in the space provided. Is there loading station with platform and ramp available or not, has been treated to be permanent deficiency, is not correct as the loading and ramp can be constructed provided there should be loading station. Is there kota or durable stone flooring sloped towards the drains or not, has been treated to be a permanent deficiency, is also not correct, as that can also be created in a given time. Is the wall tiled up to 7 feet height and the rest white washed with washable emulsion, has been treated to be a permanent deficiency, is also not correct even if not there, is a defect can be removed. Is there ventilation with wire mesh, has been treated to be temporary



deficiency, is correct. Is there exhaust and chutes for vapour extraction, has been treated to be a temporary deficiency, is correct. Is there proper drains with removable covers, has been treated to be permanent deficiency, is not correct, as that can be created with proper cover. Water purification system is installed or not, has been treated to be temporary deficiency, is correct. Concept of cooking (fire or gas etc.), has been treated to be temporary deficiency, is correct. Fire protection measures taken or not, has been treated to be temporary deficiency, is correct. Vegetable cutting machines, heavy duty grinders and other such equipment is available or not, has been treated to be temporary deficiency, is correct. The facilities of adequate water arrangement for cooking, cleaning and heating is available or not, has been treated to be permanent deficiency, is incorrect as provision can be created by the petitioners-N.G.Os. The facilities of adequate water disposal arrangement for waste water is available or not, has been treated to be permanent deficiency, in view of this Court, is not correct, as it is a temporary that facility can be created. Oil trap for cleaning wasted oil so that it does not enter the drainage system is available or not, has been treated to be temporary in nature, is correct. The facilities of adequate lighting arrangement, has



been treated to be temporary deficiency, is correct. Is the hauler machine is installed inside godown to clean the rice, has been treated to be temporary deficiency, is correct. Have trust/Society/NGOs/VOs adequate means for transporting the cooked food from kitchen to the concerned schools such as secured van, has been treated to be temporary deficiency, is correct. Is toilet blocks and garbage collection place is at suitable distance from the area where the food is to be prepared, has been treated to be permanent deficiency, but this Court is of the view that it is a semi permanent deficiency as by certain effort the toilet and garbage collection place can be shifted.

**55.** In view of the aforesaid, this Court has given its thought about the classification of each items and the Committee has to examine the deficiencies in terms of the classification made by this Court and if it is found kitchen suffers from permanent deficiency, cannot be treated to be satisfying specification of centralized kitchen, but those do not suffer from permanent defect, but suffers from temporary defect, could be rectified, will be treated to be partially ready for supplying hot cooked food, and the kitchen does not suffer from any defect will be treated to be ready to supply hot cooked food.

**56.** As this Court is not examining the report of each



petitioner as has been brought by the respondents which have to be examined independently, if there is permanent deficiency cannot be allowed to run kitchen but the deficiencies are temporary in nature, the respondents would give direction for removal of deficiencies within a reasonable period. If they do remove, in such circumstance, the respondents must enter into the agreement for supply of hot cooked food, which will be beneficial for the small children attending the primary and upper primary schools in Government and semi Government schools.

**57.** This Court is conscious of scope of interference in judicial review, this Court is of the view that when each petitioner has invested heavy amount for the construction of semi automated kitchen, merely because there is some delay, cannot be a ground for cancellation of the N.I.T. as the authority has not taken into account the fact that if the authority will go for fresh N.I.T. again it will consume a long time, neither it will be in the benefit of the school children nor for the State in view of the fact that there will be an escalation of the cost as well as the amount which has been invested by these petitioners will go in waste and will be of no use. So, taking holistic view of the matter, this Court directs the Principle Secretary, Education Department, Government of Bihar, Patna, to constitute a



Committee, which will examine the deficiency as per the classification given by this Court and if the petitioners do not suffer from permanent deficiency, the Committee will give direction for removal of temporary deficiencies within time prescribed by the Committee. If they remove such defect(s) within the stipulated time, the respondents will proceed further to enter into contract and the deficiency free kitchen will come in operation and will supply the hot cooked food to the assigned schools.

**58.** As this Court has passed the aforesaid direction, in such circumstance, the subsequent N.I.T. vide order no.813 dated 12.04.2017 (Annexure-14) is quashed. The respondents will proceed further in terms of the aforesaid directions.

**59.** Accordingly, this Court directs that the Committee, on the basis of report, would examine the case of each petitioner, if it is found that, the petitioner/petitioners are suffering from permanent deficiency, it will reject outright, in case of temporary deficiency, if it is rectified within time prescribed, the respondents would enter into contract for supply of food, and if any establishment does not suffer from any defect, straightway enter into contract for supply of cooked food without delay. All actions should be completed within the period



of 75 (Seventy Five) days from the date of receipt/production of a copy of this order.

60. With the aforesaid observations and directions, these writ petitions are allowed to the extent indicated herein above.

(Shivaji Pandey, J)

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| AFR/NAFR          | A.F.R.     |
| CAV DATE          | 21.03.2018 |
| Uploading Date    | 04.06.2018 |
| Transmission Date |            |

