

Court No.
17
Item Nos.
4 to 20
ssi
21.04.
2021

MAT 297 of 2021

**IA No: CAN 1 of 2021
(stay application)**

**Akbar Ali Khan
-vs-
State of W.B. & ors.**

With

MAT 306 OF 2021

**IA No: CAN 1 of 2021
(stay application)**

**Sajjad Ali
-vs-
Akbar Ali Khan & ors.**

With

MAT 323 of 2021

**IA No: CAN 1 of 2021
(stay application)**

**Pranab Kumar Paul
-vs-
Akbar Ali Khan & ors.**

With

MAT 324 of 2021

**IA No: CAN 1 of 2021
(stay application)**

**Biswajit Saha
-vs-
Akbar Ali Khan & ors.**

With

MAT 325 of 2021

**IA No: CAN 1 of 2021
(stay application)**

**Biswajit Saha
-vs-
Akbar Ali Khan & ors.**

With

MAT 327 of 2021

**IA No: CAN 1 of 2021
(stay application)**

Tejbul Hasan

-vs-

Akbar Ali Khan & ors.

With

MAT 328 of 2021

**IA No: CAN 1 of 2021
(stay application)**

Nazir Khan

-vs-

Akbar Ali Khan & ors.

With

MAT 329 of 2021

**IA No: CAN 1 of 2021
(stay application)**

Md Akhtar Ali

-vs-

Akbar Ali Khan & ors.

With

MAT 330 of 2021

**IA No: CAN 1 of 2021
(stay application)**

Pravat Kumar Saha

-vs-

Akbar Ali Khan & ors.

With

MAT 331 of 2021

**IA No: CAN 1 of 2021
(stay application)**

Koushik Dey

-vs-

Akbar Ali Khan & ors.

With

MAT 332 of 2021

**IA No: CAN 1 of 2021
(stay application)
Santosh Bhakat**

-vs-

Akbar Ali Khan & ors.

With

MAT 333 of 2021

**IA No: CAN 1 of 2021
(stay application)
Rahamatullah Sk**

-vs-

Akbar Ali Khan & ors.

With

MAT 334 of 2021

**IA No: CAN 1 of 2021
(stay application)
Shyam Sundar Mondal**

-vs-

Akbar Ali Khan & ors.

With

MAT 335 of 2021

**IA No: CAN 1 of 2021
(stay application)**

Mukti Lal Das

-vs-

Akbar Ali Khan & ors.

With

MAT 336 of 2021

**IA No: CAN 1 of 2021
(stay application)
Arpa Chakraborty**

-vs-

Akbar Ali Khan & ors.

With

MAT 337 of 2021

**IA No: CAN 1 of 2021
(stay application)**

**Ramela Begum
-vs-
Akbar Ali Khan & ors.**

With

MAT 340 of 2021

**IA No: CAN 1 of 2021
(stay application)
Kanika Das
-vs-
Akbar Ali Khan & ors.**

**Mr. Jaydip Kar, Sr. Adv
Mr. Pingal Bhattacharyya
Mr. Prosenjit Mukherjee**

**.....for the appellant in MAT 297 of 2021
Mr. Susovan Sengupta
....for the State in MAT 297 of 2021
Mr. Samrat Sen
.....for the DM**

**Mr. Saptangshu Basu, Sr. Adv
Md. Nauroz Rahber
Ms. Fatima Nissa**

.....for the appellant in item nos. 5 to 20

**Mr. Debrabrata Saha Roy, Sr. Adv
Mr. Subhankar Das
Mr. Neil Basu**

...for the respondents in item nos. 4 to 20

**Mr. Samrat Sen, Ld. AAAG
Mr. Amitava Mitra
Mr. Saikat Chatterjee
...for the State in item nos. 5 to 6**

**Mr. Sirsanya Bandopadhyay, JSC
Mr. Arka Kr. Nag
...for the State in item nos. 7 to 8
Mr. Susovan Sengupta
...for the State in item no.9
Mr. Jaharlal Dey
Mr. Shamim-ul-Bari
...for the State in item no. 10**

Mr. Sirsanya Bandopadhyay, JSC
Mr. Arka Kr. Nag
 ...for the State in item no.11

Mr. Susovan Sengupta
Mr. Manas Kumar Sadhu
 ...for the State in item no.12
Mr. Jahar Lal De
Mr. Pranab Halder
 ...for the State in item no.13

Mr. Susovan Sengupta
 ...for the State in item no.14
Mr. Sirsenya Bandopadhyay
Mr. Sutanu Chakrabarti
 ...for the State in item no.15

Mr. Jaharlal De
Mr. Sudip Sarkar
 ...for the State in item no.16

Mr. Jaharlal De
Mr. Sudip Sarkar
 ...for the State in item no.17

Mr. Susovan Sengupta
Mr. Mrinal Kanti Biswas
 ...for the State in item no.18
Mr. Susovan Sengupta
Mr. Manas Kumar Sadhu
 ...for the State in item no.19
Mr. Susovan Sengupta
Mr. Aswini Kr. Bera
 ...for the State in item no.20

By consent of the parties, all the appeals and the stay applications are taken up together for consideration and dispose of by this common order.

The petitioners are all aggrieved by the order passed by the learned Single Judge in WPA No. 4786 of 2021 (Akbar Ali Khan –vs- The State of W.B. &ors.) decided on 23.2.2021 by which the BDO,Jalangi, Murshidabad Block

Development was directed to issue a corrigendum to the Notice Inviting Application for appointment as carrying cum distributing agent by specifically mentioning in the corrigendum that “distributors/carrying contractors of the Food & Supply Department” are eligible to participate in the selection exercise for carrying cum distributing agent under Cooked Mid Day Meal Programme.

Mr. Akbar Ali is the appellant in MAT 297 of 2021. The other petitioners are not parties to the original petition, nor they were added in the said proceeding. They preferred applications for leave to appeal which we allowed today and allowed the learned counsel representing the said applicants/petitions to make their submissions in relation to the impugned order as Mr. Akbar Ali and the other applicants are standing on the same footing and the order affects their rights.

Mr. Akbar Ali filed the writ petition on the ground that although he was eligible under the extant rules for distribution of Mid-Day Meals in Schools, his agency agreement was arbitrarily terminated after awarding the contract by the District Magistrate *de hors* the rules and guidelines operating in the field. The further grievance of Mr. Akbar Ali was that no opportunity was given to him before the letter of termination was issued by the District Magistrate, Murshidabad on 10th February, 2021 after he had qualified under the tender. The other applicants have similar grievances. As by reason of the order of the

learned Single Judge, they would now be excluded or their existing arrangement may be discontinued and there is every possibility that similar letter of termination may be issued against them without giving an opportunity of hearing to the said applicants, the applicants are heard.

Mr. Jaydip Kar, learned senior counsel, has appeared on behalf of Mr. Akbar Ali and Mr. Saptangshu Basu, Sr. Adv, appeared on behalf of the other applicants.

The principal argument was advanced by Mr. Kar. The learned Senior Counsel has submitted that the appellant Akbar Ali was recommended on 6th July, 2020 for being appointed as carrying cum distribution agent for Mid-Day Meal ("in short" MDM) Scheme under Jalangi, Murshidabad Block Development. The District Magistrate without disclosing any reason and only referring to one order passed by a learned Single Judge dated 12.3.2020 in W.P. No.22939 (w) of 2019 (***Bijay Shankar Nandi v. State of West Bengal & Ors.***), terminated his appointment as carrying-cum-distribution agent vide letter dated 10th February, 2021.

The concerned District Magistrate in terms of the letter dated 22.03.2018 has directed the concerned Sub Divisional Officer and the concerned Block Development Officer to publish the notice inviting tender in the newspaper and in terms of the order dated 22.03.2018, the concerned authority has published the said notice

inviting tender in newspapers having wide circulation. The appellant participated in the tender and was declared as a successful bidder. Thereafter on 27.11.2018 the District Magistrate has selected the appellant as lowest bidder for carrying cum distribution agent of food grains of CMDMP in his Block i.e. Jalangi and the appointment has been given and subsequently the engagement letter dated 13.12.2018 was issued in favour of the appellant.

On the basis of the aforesaid the appellant worked as a carrying-cum-distribution agent for supply of the foodgrains within Jalangi Development Block and the said engagement has been extended by letter dated 27th December, 2019 till 31st March, 2020. On 12th March, 2020 being the date of interim order passed in Bijoy Shankar Nandi (*supra*) the appellant/petitioner was performing his duties as such agent.

Mr. Kar has referred to the guidelines issued by the Government of West Bengal, Office of the District Magistrate, Murshidabad. Mr. Kar has referred to the Mid Day Meal scheme formulated under National Programme of Nutritional support to Primary Education, 2006 (in short, Mid-day Meal Scheme), guideline issued by the Government of West Bengal regarding cooked Mid Day Meal Programme and Clause 3.8 of the guidelines under the Mid Day Meal Scheme regarding the nodal agency/agencies for transportation of foodgrains to show that with the efflux of time the eligibility criteria for

appointment as a carrying contractor for transportation of foodgrains has been relaxed so as to make it more wide. Our attention is drawn to clause 3.8 (i) and (ii) to emphasis that the District/Taluks Panchayats have been assigned the responsibility for different Districts/Taluks or groups of Districts/Taluks in the state for appointment of agencies for transportation of foodgrains under the Mid Day Meal Scheme.

It is submitted that the guidelines read with the scheme would show that the BDO and Chairperson should sub-allot the foodgrains to each school by 10th of every month depending upon the report of District Inspector of School through their carrying contractor agents to the concerned institutions and it is not restricted to the contractors of the food and supply department only.

It is submitted that the Government of West Bengal has adopted the National Programme of Nutritional Support to Primary Education, 2006 formerly known as Mid Day Meal Scheme as formulated by the Central Government for improving nutritional condition of children, encouraging poor children beginning to attend the institution and providing nutritional support to children of primary stage. Our attention is drawn to clause 5.3 of the Mid Day Scheme of 2006 regarding transportation of food grains and the guidelines issued by the Government of West Bengal with regard to allotment

of lifting of rice being Clauses 3 (iii) and 3.8 of the Central Scheme dealing with the duties of nodal agencies for transportation of food grains. It was on the basis of the said clauses, it is argued that the interpretation given by the District Magistrate in connection with the eligibility criteria for lifting of food grains is incorrect and restrictive. It is argued that the District Magistrate has failed to take into consideration the object and relevant clauses of the scheme which requires wider participation in the tender. It is submitted that the petitioner was an existing contractor and his contract should not have been terminated without giving him an opportunity of hearing. In fact, Mr. Kar has argued that the Clause 5.3 per se may not be interpreted against the petitioner having regard to the modification made to the original Clause 5.3 by the subsequent guidelines and modification issued by the Government of West Bengal. It is submitted that the order passed by the learned Single Judge in WP 22939 (w) of 2019 dated 12.3.2020 in BijoySankar Nandi (*supra*) which directed the State to issue a Notice Inviting Tender for Mid Day Meal for the region under consideration immediately so that the process of supply of the Mid Day Meal Scheme does not affect the right of Akbar Ali to function as carrying contractor of food grains. A tender was floated subsequently on 17th June, 2020 which clearly shows that the appellant is eligible to participate in the said tender as the appellant comes within the purview

of bona-fide Persons/SHGs clusters/Agencies/Contractors for appointment as carrying cum distribution agent under the “Mid Day Meal Programme” and after having participated and selected in the tender, the District Magistrate on a specious plea that there was a mistake in the eligibility criterion in the notice inviting tender could not have terminated the said contract on the ground of alleged mistake. It is submitted that the order of termination dated 10.2.2021 refers to the order passed in Bijoy Sankar Nandi (*supra*). The said order in no way could affect the right of the appellant to participate in the said tender as the learned Single Judge in the order made it clear that Akbar Ali may be entitled to participate in the said new notice for tender if he qualifies as per the guidelines of the mid-day meal scheme.

In view of the fact that Akbar Ali qualifies in terms of Clause 5.3 of the Mid Day Meal guidelines read with the modifications introduced from time to time the learned Single Judge solely relying upon the earlier observation in Bijay Shankar Nandi that the tender issued on 13th March, 2018 for appointment of a carrying-cum-distribution agent for Mid Day Meal is *de hors* the guidelines for Mid Day Meal Scheme as the eligibility criteria is in conflict with Clause 5.3 could not have dismissed the writ petition ignoring the other relevant clauses and guidelines issued by the Government of West Bengal. Mr. Kar contended that Mr. Akbar Ali qualifies

under the guideline and hence terminating the exiting contract of Akbar Ali was unfair & arbitrary.

Mr. Saptangshu Basu, the learned senior counsel appearing on behalf of the other appellants has submitted that the said appellants are similarly placed as Mr. Akbar Ali. The applicants, however, were not parties in Bijay Shankar Nandi (*supra*) in **WPA 4786 of 2021 (Akbar Ali Khan v. State of West Bengal & Ors.)**. It is submitted that the District Magistrate could not have issued a fresh tender without giving an opportunity of hearing to the present applicants to represent the case before the District Magistrate with regard to their eligibility. In deciding the case of BijoySankar (*supra*) as well as Mr. Akbar Ali, the learned single judge has lost sight of the fact that the said order was likely to affect rights of appellants/applicants.

It is submitted that the termination by the District Magistrate relying upon the order dated 12th March, 2020 passed in Bijay Kumar Nandi (*supra*) was illegal as in implementing the said order the District Magistrate has also taken into consideration of the present applicants and apply the said order to terminate their contracts also. The said action of the District Magistrate has adversely affected the rights of the present applicants (in applications for leave to prefer appeals) to function as carrying contracts/agents. The Order dated 12th March, 2020 is only interim in nature, moreover, the said Order

cannot be extended and/or apply to the present applicants as they were not parties in Bijay Shankar Nandi(supra). The learned Single Judge has decided upon issues which was not placed in the writ petition and has gone beyond its jurisdiction thereby affecting the interest of several applicants/appellants resulting in causing miscarriage of justice.

Mr. Basu submits that the learned Single Judge did not appreciate that there exist carrying cum distributing agents in respect of Mid Day Meal Food for Murshidabad district. Initially appointment was given by Executive Officer of Panchayat samity; which from 2004 the same is governed by the Block Development Officer, wherein the appointment of carrying cum distributing agents for food grains is given District Magistrate; as and when it was required to do so. Usually the award of contract extends to one year renewable at the end of each term. The District Magistrate seeks performance report from Block Development Officer regarding the performance of each carrying cum distributing agents for food grains, and after receipt of such performance certificate may extends such award of contract upon satisfaction.

The applicants have successfully conducted the task of carrying and distribution of food grains alongside with M.R. Distributorship License holders in the district of Murshidabad.

It is argued that in deciding the issues involved in

the writ petition filed by Akbar Ali the learned Single Judge has conclusively decided upon issues which would gravely prejudice the right of the appellants/applicants of fair chances of carrying their business and has caused serious prejudice but their right to carry on business.

Mr. Susovan Sengupta, learned counsel appearing on behalf of the State has also submitted that the District Magistrate has issued the letter of termination by completely misconstruing the Clause 5.3 Mr. Sengupta has supported the cause of the appellants and submitted that the impugned order should be set aside.

Mr. Samrat Sen, the learned counsel appearing for the District Magistrate, who appears to be the lone crusader to support the order under appeal has submitted that clause 5.3 of the Mid Day Scheme of 2006 is clear in its terms as to the eligibility criteria for appointment of agents and the subsequent tender which came out for consideration before Justice S. B. Saraf in *Bijoy Sankar Nandi (supra)* and before Justice Abhijit Gangopadhyay subsequently in *Akbar Ali (supra)* would clearly show that there is an obvious mistake in the Notice Inviting Tender which upon realisation by the learned District Magistrate, may be at the stage of the contempt proceeding, was rectified. The learned District Magistrate very firmly stood to his ground to defend his action.

In order to appreciate the contentions raised by the

parties it is necessary to consider the relevant rules that are placed before us, namely, Clause 5.3 of Mid Day Meal scheme, Clause 3(iii) of the guidelines issue under the cooked Mid Day Meal Programme by the Government of West Bengal and Clause 3.8 of the national programme of Nutritional Support to Primary Education, 2006.

Clause 5.3 of the Mid Day Meal Scheme, inter alia, states:

5.3. Lifting of Food grains: *The foodgrains allocated to district will be lifted by the distributors/carrying contractors of the Food & Supply Department for transportation from the nearest FCI godown to every school. The Foodgrains will have to be stored in the school unless it is found absolutely impossible to do so. In case of the latter, the decision will have to be taken in a meeting involving the VEC, MTA and other parents. The S.I. of Schools in consultation with the BDO will monitor actual utilization of foodgrains supplied to school and would suitably regulate further delivery to it, taking into account unconsumed balance, if any. The total balance amount of foodgrains will have to be subtracted during lifting for the next month. One visiting team, to be constituted by the District Magistrate for the district headquarters. BDO/SI, Member of Panchayat Samiti will invariably visit the FCI godown before lifting and will ensure supply of foodgrains of best available quality or at least of Fair Average Quality (FAQ). A report on monthly off-take of rice in Form-1 should be furnished by the District Magistrate to the School Education Department by the 10th of the following month.*

“The foodgrains allocated to district will be lifted by the distributors/carrying contractors of the Food & Supply Department for transportation from the nearest FCI godown to every school.”

(emphasis supplied)

The Cooked Mid Day Meal Programme guidelines issued by the Government of West Bengal in Clause 3 (iii) refers to “Allotment, sampling and lifting of rice”. It, inter alia, reads:

3.(iii) *“The BDO and Chairperson should sub-allot the foodgrains to each school by 10th of every month depending upon the DISE report and existing stock of rice in that educational institution and deliver the foodgrains through their carrying contactor/agents to the concerned institutions.”*

Furthermore, Clause 3.8 of the National Programme of Nutritional Support to Primary Education, 2006 also known as Mid Day Meal Scheme guideline refers to the nodal agency/agencies for transportation of food-grains which reads as follows:

“ 3.8 Nodal Agency/Agencies for transpiration of food-grains:

Transportation of good grains from nearest FCI depot to each Primary School/EGS-AIE Centre is a major logistical responsibility. State Government will be expected to make arrangements in this regard in the following manner:-

(i) Wherever appropriate, a single Govt./Semi

Government agency with State wide jurisdiction and network, e.g. State Civil Supplies Corporation, may be designated as the State Nodal Transport Agency. This Agency will be responsible for lifting food grains from FCT godowns and delivering them to designated authority at the taluk/block level. State Government will also need to make fool-proof arrangements to ensure that the food grains are carried from the taluk/block level to each school, etc., in a timely manner.

- (ii) *Alternatively, District/Taluks Panchayats may be assigned the responsibility for different districts/taluks or groups of districts/taluks in the State.”*

We may also refer to the communication of the Project Director(MDM), School Education Department to the District Magistrate, Murshidabad dated 31st May, 2012 as strong reliance has been placed with regard to the clarification on appointment of carrying agent which reads as follows:

“With reference to your letter above, this is to inform that the matter of selecting/appointing agent for lifting rice from F.C.I and transporting the same to the school under Mid-Day Meal scheme is left to

the District Magistrate. He may appoint/engage any body whom he thinks fit and suitable after enquiry/verification of candidates/ antecedents and credentials for the job under the Scheme.

This has the approval of the Principal Secretary to the Govt. of West Bengal School Education Department.” (emphasis added)

The aforesaid clauses with the letter of the Project Director dated 31st May, 2012 are required to be considered in the light of the submissions made by the parties before us.

It should also be mentioned at this stage that before Justice S.B. Saraf, Mr. Akbar Ali was a party and after hearing parties Justice Saraf accepted the interpretation given by Mr. D. Saha Roy, Id. Advocate appearing for Bijoy Sankar Nandi (supra) that Clause 5.3 clearly stipulates that only the person who is distributor/carrying contractor of Food and Supply Department, Government of West Bengal can be engaged. Following the direction passed observations the State issued a fresh notice inviting tender immediately so that no harm is caused to supply under the Mid Day Meal Scheme. Mr. Akbar Ali was a private respondent in the said proceeding. Mr. Akbar Ali accepted the said order. However, towards the end of the order, Justice Saraf has made the following observations:

“I make it clear that the private respondent, if he qualifies as per the guidelines of the mid-day meal scheme shall be entitled to participate in the said new notice for tender”

This has prompted Mr. Kar, learned Senior counsel appearing on behalf of the appellant to argue that when an advertisement is published and a direction is given that if Akbar Ali qualifies as per the guidelines then his candidature cannot be ignored and his appointment could not have been terminated. The issue is whether Mr. Akbar Ali and all other appellants are qualified to participate in the tender and whether the exclusion of the fresh bona-fide Person/SHGs clusters/Agencies/Contractors from the new notice inviting tender was justified. We have considered the aforesaid clauses and the clarification letter.

The Mid Day Meal Scheme formulated by the Central Government has been adopted by the State Government in toto without any variation. The said Clause 5.3 is part of the Mid Day Meal Scheme issued under the National Programme of Nutritional Support to Primary Education, 2006. The Clause 3(iii) of the cooked Mid Day Meal Programme guidelines has to be read in conjunction with Clause 5.3 of the parent Scheme. The said clause has clearly stated, amongst others, that

foodgrains shall be delivered through their carrying contractor/agents to the concerned institutions, meaning thereby that the carrying contractor whom BDO and Chairperson should entrust to transport foodgrains to Educational Institution should be by the distributors/carrying contractor of the food and supply department and nobody else.

The letter of the project director dated 31st May 2012 also does not militate against the said scheme and the expression used in the said clarification as to the persons to be engaged namely “anybody whom he thinks fit and suitable after enquiry/verification of candidates/antecedents credentials for the job under the scheme” would mean that the person/s to be selected in terms of Clause 5.3 before appointment and engagement should be found to be fit and suitable after enquiry/verification of antecedents and credentials for the job under the Scheme. This is merely clarificatory and cannot be read as a modification of the parent clause. None of the aforementioned clauses including clause 3.8 of the Central Scheme in any way amend or modify clause 5.3 of the Mid Day Meal Scheme. Clause 3.8 of the Central Scheme only fixes the responsibility of the persons required to implement the object of the said scheme. The Additional District Magistrate has clearly overstepped his jurisdiction in modifying tender terms in inviting applications from person who are not eligible

under Clause 5.3 of the Mid Day Meal Scheme. This mistake the authority rectified after it was brought to its notice in the contempt proceedings. Clause (iii) forming the part of the tender dated 8th December, 2018 which was withdrawn subsequently reads as follows:

Applications from bona-fide Persons/SHGs clusters/Agencies/Contractors may be obtained at respective block office level and sub-divisional office level (for the municipality areas) for appointment as Carrying cum Distribution Agent for Mid Day Meal for a term of one year.

The aforesaid clause was withdrawn as it is in clear violation of Clause 5.3 as held by Justice Saraf. Akbar Ali had accepted the said order and did not prefer an appeal. The authority follows the said interpretation floated a new tender without realizing that the said authority had committed the same mistake for which the earlier tender was cancelled. The direction passed by Justice Saraf although appears to be at the interim stage of the writ proceeding but the interpretation of Clause 5.3 is final and conclusive and accepted by all. Neither Akbar Ali nor the other appellants who are now raising hue and cry and now have challenged the order contemporaneously raised any objection. They also did not file any separate writ petition like Akbar Ali. They all were waiting for the outcome of the writ petition filed by Akbar Ali. Akbar Ali as well as the other appellants should have known and/or deemed to have known that in the future tender process Clause 5.3 would be strictly adhered to by the authority

concerned. The subsequent notice issued is in conformity with Clause 5.3 of the Scheme and this time the District Magistrate has followed the required guidelines although we feel that use of the words “Bona-fide persons as per MDM guidelines” may again create confusion and it is advisable that the said tender should be withdrawn and a fresh tender should be issued where the language in Clause 5.3 should be reproduced as far as possible since we do not find any definition or guideline for “bona-fide persons” under the MDM guidelines for engagement of carrying-cum-distribution agent under cooked Mid Day Meal Programme. It should be specifically mentioned that the Distributor/Carrying contractors of the Food and Supply department for transportation shall be eligible to participate in the tender. Thereafter, the authority should undertake an exercise to find whether they are fit and bona-fide for appointment in terms of the clarification letter dated 31st May 2012. We should also hasten to add that there is no challenge to the scheme of 2006 in general & clause 5.3 in particular.

On such consideration, we do not find any reason to interfere with the order passed by the learned Single Judge, for the reasons, we have mentioned aforesaid.

The appeals and the connected applications are dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copies of this order may

be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)