

**W.P.A. 10711 of 2021
(Through Video Conference)**

**Md. Akhar Ali & Ors.
Vs.
The State of West Bengal & Ors.**

**Mr. Pratip Chatterjee
Mr. Chittta Priya Ghosh
...for the petitioners
Mr. Sushovan Sengupta
Mr. Subir Pal
..for the State
Mr. K.J. Tewari
...for the U.O.I.
Mr. Samrat Sen
Mr. Amitava Mitra
Respondent nos. 4&8
Mr. Debabrata Saha Roy
Mr. Pingal Bhattacharya
Mr. Subhankar Das
Mr. Neil Basu
...for intervenor**

This writ petition has been filed by the petitioners challenging the decision of the Additional District Magistrate & Collector, Murshidabad contained in Memo No. 132(31)/MDM/MSD dated May 28, 2021 and subsequent implementation of the said decision culminating in issuance of Notices Inviting Tenders with regard to supply of Mid Day Meals in different blocks in Murshidabad. The petitioners were engaged as a Carrying-Cum-Distribution Agent for cooked Mid Day Meal under the Mid Day Meal Programme in respect of several blocks under the Murshidabad District.

It is the specific contention of the petitioners that before the petitioners their ancestors were similarly engaged. The petitioners have continued to perform such function under their respective contracts which allegedly are still subsisting.

This writ petition has been filed on the allegation that the petitioners would be disengaged and denial of their participation in the subsequent tender process was arbitrarily illegal and discriminatory, being restricted only to a certain class of people. Only persons registered as Distributors and Carrying Contractors with the Food and Supplies Department were eligible to participate.

Mr. Chatterjee, learned Advocate for the petitioners submits that the said clause in the Notices Inviting Tenders is not only discriminatory, arbitrary but also contrary to the provisions of clause 5.3 of the Mid Day Meal Scheme floated by the Union of India. He submits that the existing contractors will suffer irreparable loss and financial hardship as they would be put out of business and their means of livelihood.

Mr. Samrat Sen, learned Assistant Additional Advocate General, who is appearing on behalf of the tender issuing authority submits that the said eligibility clause in the Notice Inviting Tender which the petitioners are aggrieved by was inserted on the basis of the order of the

Hon'ble Division Bench dated April 21, 2021 passed in a series of appeals. Relevant portion of the above decision of the Hon'ble Division Bench is quoted below for convenience.

“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.”

Mr. Sen further assures the Court that the petitioners would be allowed to complete their tenure and tenders are for subsequent periods.

Mr. Sengupta, learned Advocate for the State respondents submits that although the interpretation of the scheme by the Hon'ble Division Bench was not in consonance with the guidelines laid down by the State Government and the tender cannot be restricted to a particular group of persons yet, until and unless the Special Leave Petition pending before the Hon'ble Apex

Court against the order of the Division Bench is decided, the state respondents are duty bound to obey the order of the Hon'ble Division Bench. Hence, the tender notice was floated with the above eligibility criteria.

Mr. Saha Roy, seeks to intervene in the matter. For the purposes of disposal of this writ petition, Mr. Saha Roy need not be heard at this stage, in view of the submissions made hereinabove.

Mr. Tewari, learned Advocate appearing on behalf of the Union of India submits that unless the issue is decided by the Hon'ble Apex Court, the prayers of the petitioners in this writ petition cannot be granted.

Having considered the rival contentions of the parties and after perusal of the direction of the Hon'ble Division Bench and also upon taking into account the fact that the said tender notices have been floated for subsequent periods, after the contract of the petitioners expire, no relief can be granted at this stage. If the petitioners are aggrieved by the portion of the order of the Hon'ble Division Bench on the basis of which their participation in the tenders have been denied, the petitioners may pursue their remedy either before the appropriate forum as per law.

This writ petition is disposed of.

There will be however no order as to costs.

All parties are directed to act on the server copy of this order.

(Shampa Sarkar,J.)

