

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21040 of 2019

Jan Chetna Evam Shaikshanik Vikash Manch (Regd. NGO) through its President
Ratna Bharti Off- L- 41 Ground Floor Kalkajee, New Delhi- 110019. At present Flat
No- A2/105 Nutan Tower Kankarbagh Main Rd. PS- Kankarbagh, Distt- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Govt. of Bihar, New Secretariat, Patna.
2. The Director, Madhya Bhojan Yojna, Bihar State Madhyan Bhojan Samiti, Bihar, Patna.
3. The District Education Officer, Madhyan Bhojan Yojna, Patna.
4. The District Program Officer, Madhyan Bhojan Yojna, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. S.D. Sanjay, Sr. Advocate Mr. Anjani Pd. Singh Mr. Mohit Agarwal, Advocate Ms. Sushmita Mishra, Advocate
For the Respondent/s	:	Mr. Subash Chandra Mishra (Sc16)
For Mid Day Meal	:	Mr. Girijesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 16-02-2023

In the instant petition, petitioner has prayed for the following relief(s):-

“That this is an application for issuance of an appropriate writ(s), order(s), direction(s) to the respondents for setting aside the office order dated 07.08.2019 vide Memo – No. MDM-ES-1520 issued by the Director Mid Day Meal Scheme Bihar, Patna who without giving show cause, without opportunity of hearing following the terms of agreement, directed to stopped the supply of Mid day Meal on 27.07.2019, thereafter asked show cause and without look into the terms of agreement cancelled the all three agreement out of which one is not in operation.”

2. By the impugned action, petitioner has been



prevented in supplying the Mid Day Meal to the respective institution. The aforementioned action has been taken by the respondents based on the news item in the newspaper read with Constitution of committee of three members read with its report.

3. Perusal of the records, it is evident that petitioner was not permitted to participate in the three members' committee when the inquiry was conducted by the three members. Thereby, the petitioner has not been provided opportunity of hearing before adverse report was prepared by the committee.

4. Learned counsel for the respondent resisted the grievance of the petitioner on the score that there is arbitration clause and further contract has lapsed as on today and third party right is created. Therefore, the present petition do not survive for consideration.

5. Heard learned counsels for the respective parties.

6. The contention of the respondent that arbitration clause is available to the petitioner cannot be appreciated for the reasons that as and when the respondents noticed that there were certain alleged irregularities in supplying Mid Day Meal on behalf of the petitioner, they should have resorted to arbitration clause, on the other hand, they have resorted to in appointing three members' committee to inquire into the matter. Therefore, the aforesaid contention of the respondents is hereby rejected. Further in respect



of lapse of contract period would not be hurdle, for the reasons that whatever the impugned action taken by the respondents attaches stigma and it may be hurdle for the petitioner to participate in future tenders.

7. Yet another contention raised by the learned counsel for the respondent that third party right has already created insofar as supplying of Mid Day Meal to the respective institution. We are not directing the petitioner to carry out in supplying Mid Day Meal to institutions. On the other hand, our decision is only to the extent of impugned decision that it is illegal and arbitrary.

8. The impugned action is behind the back of the petitioner in obtaining the report from the three members' committee and acting on the same and passing adverse order.

9. Accordingly, the petitioner has made out a *prima facie* case so to interfere with the impugned action. Accordingly, office order dated 07.08.2019 is set aside. Present writ petition stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

shoaib/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.02.2023.
Transmission Date	NA

