

D/L
Item No. 10
28.04.2023
KOLE

**FMA 555 of 2020
With
IA No. CAN 1849 of 2019
Bibekananda SGSY Group
-Vs.-
The State of West Bengal & Ors.**

*Mr. Tanmay Basu,
Mr. A. Iqbal,*

...for the appellant.

*Mr. Sirsanya Bandopadhyay,
Mr. S. Sen Gupta,*

...for the State.

*Mr. Debrup Bhattacharjee,
Mr. S. Barman,*

...for the respondent/writ petitioner.

A judgment and order dated December 18, 2018, whereby the writ petition of the respondent nos. 8-55 was disposed of is under challenge in this appeal. The appellant was the private respondent in the writ petition.

The writ petitioners approached the learned Single Judge contending that the Mid-day Meal Scheme of the Central Government which is to be implemented by engaging self-help groups, envisages engagement of such self-help groups on a rotational basis. In this connection, the writ petitioners relied on Clause 4.4 of the National Programme of Nutritional Support to Primary Education, 2006 Guidelines (in short “the 2006 Act”). The said Clause reads as follows:-

“4.4 Community Support:

School managements should also be encouraged to draw on the support of the community. Gram Panchayats and Village

*Education Committees may be approached for arranging community members to regularly, on a rotation basis, help the school management in ensuring efficient cooking, serving and cleaning operations. The involvement of teachers and community members in ensuring that children eat together in a spirit of camaraderie and develop sensitivity to their peers with different abilities, by offering them precedence, and instilling values of equality and cooperation would be very valuable support to the implementation of the programme. Support of the community members, including mothers groups, could also be solicited to ensure that children wash their hands with soap before eating, use clean plates and glasses, avoid littering and wastage of food, and clean their plates, rinse their hands and mouth after eating. Advisories issued by Central Government on mobilization of mothers in connection with the programme may be seen at **Annexure-10.***

MDM Scheme also offer wide opportunity of self-employment to poor women who could constitute self-help groups. Such groups can take the responsibility of cooking and serving mid day meal with the over all assistance of the local level implementing agency. Mid Day Meal Scheme can provide the groups the scope of income generating activities such as growing & supplying vegetables, preparing condiments, etc., Mid Day Meal Scheme could also provide opportunity for involvement of SHGs in the management of the programme, thus ensuring that teaching-learning process in the classroom are not affected, while SHGs take responsibility for regular the procurement, cooking and distribution process. In the selection priority should be given to SHGs with membership of poor women, and whose children are participating in the MDM programme.

School managements may also be encouraged to seek local support for drawing out varied, but wholesome and nutritious menus.

School Managements should maintain a roster of community members who will be involved in the programme. Community members should be encouraged to their observations on the implementation of the

scheme and the School Management should make available a register for regular recording of such observations.”

Their grievance before the learned Judge was that although there was an agreement between the respondent no. 8 in the writ petition who is the appellant herein and the writ petitioners that the cooking job would be taken up by them on rotation basis, such agreement was not being adhered to. The private respondent in the writ petition was being engaged all the times.

It appears that in an earlier round of litigation, a learned Single Judge of this Court had passed an order directing the concerned Block Development Officer (in short the “BDO”) to pass an order in respect of the dispute regarding engagement of self-help groups. Pursuant to such order of this Court, the concerned BDO passed an order dated August 2, 2017. The relevant portion of the said order reads as follows:-

“After careful observation of all the views and papers the undersigned has directed that as the MID-DAY Meal Programme will be maintained by Bibekananda S.G.S.Y Group, as the group has been engaged by the Managing Committee of the S.S.K at first no other group will be entertained in the said SSK because, no other proceedings drawn against them by the SSK authority of MDM regarding their performance. Also the resolution adopted by the managing committee in presence of SHGs representative on 25.11.2012 not followed according to MDM guideline. The committee are also directed to ensure uninterrupted running of the programme at the institution-Nabadoy SSK. The Bibekananda SGSY Group are also directed to make all due payment to the other SGSY Groups for the period for which they have performed as cook after verifying all of their claims.”

In terms of such order of the BDO, the concerned school passed an order dated August 28, 2017 whereby the appellant herein was engaged to do the cooking. The writ petitioners challenged the order of the BDO before the learned Single Judge.

The learned Judge set aside the order of the school dated August 28, 2017 and disposed of the writ petition with the direction that: “the order of the BDO shall be implemented and the agreement between the parties dated 25th January, 2013 shall be implemented in letter and spirit by Naboday Sisu Sikshya Kendra.”

Being aggrieved, the private respondent in the writ petition has come up by way of this appeal.

We have heard the learned Counsel for the parties at length. We see from annexure P-3 to the writ petition, a copy whereof has been made available to us, that an agreement dated January 25, 2013, was arrived at by and between the members of several self-help groups, including the members of the appellant herein as well as the writ petitioners. The agreement is to the effect that engagement of self-help groups for preparing mid-day meals will be on a rotational basis.

Learned Advocate for the appellant says that this agreement was not arrived at either in the presence of any Government Officer or in the presence of the School Authorities.

That may be so, however, we are of the view that since the appellant and the writ petitioners have voluntarily arrived at an agreement, they should adhere to the same.

Further, the spirit of the 2006 Guidelines is that all self-help groups should get an opportunity to participate in the programme and no group should have a monopoly. Therefore, the engagement of self-help groups should be by rotation, in all fairness.

Accordingly, the learned Judge has rightly held that the agreement between the parties dated January 25, 2013, shall be implemented in letter and spirit by the concerned school. However, it appears that inadvertently the learned Judge has also directed that the order of the BDO shall be implemented. It is the order of the BDO which was under challenge before the learned Single Judge in the writ petition and we do not find such order to be in consonance with the spirit and intent of the 2006 Guidelines. That order of the BDO and the agreement between the parties dated January 25, 2013 cannot both be implemented as they are inconsistent in nature. We set aside the order of the BDO and uphold the portion of the impugned judgment whereby the learned Judge has directed the private agreement between the parties to be implemented.

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)