

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

WPA No. 19732 of 2023

**Setara Begam
Vs.
The State of West Bengal & Ors.**

**For the petitioner : Mr. Debabrata Saha Roy,
Mr. Pingal Bhattacharyya.**

**For the State : Mr. T. M. Siddiqui,
Ms. Amrita Panja Moulick.**

**For the respondent
No. 8 : Mr. Timir Baran Saha.**

Judgement on : 28.08.2023.

Bibek Chaudhuri, J.

In the instant writ petition dispute relates to detagging of some blocks or areas from the distributorship of the petitioner in respect of distribution of Mid Day Meal rice as storing-cum-carrying agent in spite of the fact that the said two/three blocks which has been detagged from his responsibility to act as carrying-cum-storing agent of Mid Day Meal rice, the petitioner acts as MR Distributor.

Before delving with the facts of the case I like to state that the policy of providing Mid Day Meal to the students of primary and

secondary schools envisaged jointly by the Central Government as well as the State Government. Mid Day Meal scheme states:-

“5.3. The School Education Department will convey the allocation of foodgrains for the districts after receipt of district-wise allocation from the Government of India. The District Magistrate will sub-allocate the districts’ allocation for the year to each school/institution for supply of cooked Mid Day Meal as per its entitlement on a month wise basis and will also inform concerned officers of FCI.

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”.

It is contended on behalf of the State respondent, specially District Magistrate, Murshidabad that the matter of selecting/appointing agent for lifting rice from FCI and transporting the same to the school under Mid Day Meal scheme is left to the District Magistrate. He may appoint/engage anybody whom he thinks fit and suitable after inquiry/verification of the candidates’ antecedents and credentials for the job under the scheme. The above letter was issued by the Project Director (MDM), School Education Department vide Memo No. 248-ES dated 31st May, 2012. Thus, it is contended on behalf of the State respondents that District Magistrate holds absolute power to select carrying-cum-storing agent of Mid Day Meal rice and this power cannot be questioned before any judicial authority. In other words, the said power conferred by letter dated 31st May, 2012 is not subjected to judicial review. Under such backdrop, let me state the facts in brief.

The petitioner is MR Distributor of entire Farakka block, entire area of Dhulian Municipality, entire Samsherganj block except Nimtita and Chachanda GP of Samsherganj block and Umrapur GP of Suti-II block. It is the case of the petitioner that as a distributor of the area where the petitioner operates under the Food and Supplies Department, she had reasonable expectation to have been selected as carrying-cum-storing agent of Mid Day Meal rice.

The District Magistrate by a letter dated 17th March, 2023 requested the District Controller, Food and Supplies, Murshidabad to furnish the list of all MR Distributors within the jurisdiction of Murshidabad District along with their assigned area of operation to the office of the District Magistrate. The District Controller duly sent the said information and the working area of the petitioner as MR Distributor was clearly delineated in serial no. 5 of the excel sheet annexed with the forwarding letter of the District Controller, Food and Supplies, Murshidabad. Subsequently, the District Magistrate issued an Order No. 36 dated 30th March, 2023 wherefrom it is found that the petitioner was given the responsibility to act as carrying-cum-storing agent in respect of entire Dhulian Municipality, entire Farakka block. However, in respect of Samsherganj block though the petitioner is working as a distributor of eight Gram Panchayats the said Gram Panchayats were detagged from him and tagged with the private respondent as carrying-cum-storing agent of Murshidabad. In respect of Suti-II block also the private respondent was entrusted to act as carrying-cum-storing agent in respect of entire block.

It is on record and pointed out by the learned Advocate for the petitioner that the MR Distributor Association, Murshidabad District Committee informed the above-mentioned anomaly to the District

Magistrate, Murshidabad. The petitioner also made a representation before the District Magistrate but nothing was done by the respondent authorities. This compelled the petitioner to file WPA/10766/2023 before this Court. A Coordinate Bench disposed of the said writ petition on 4th May, 2023 directing the respondent no. 4, i.e. the District Magistrate, Murshidabad to consider the writ petitioner's representation within a fortnight from the date of communication of this order upon hearing the petitioner and thereafter communicate the result to the petitioner within a week. The District Magistrate duly considered the representation. The petitioner was represented by her learned Advocate before the District Magistrate, Murshidabad and by an order dated 21st July, 2023 the representation of the petitioner is rejected.

In the instant writ petition, the petitioner has challenged the said order.

Having gone through the impugned order it is found that the District Magistrate, Murshidabad has assigned the following reasons in support of his decision rejecting the petitioner's representation:-

- (a) Obtaining MR Distributorship upon a specific area does not automatically entitle the incumbent to become the carrying-cum-distribution agent of PM-Poshan (Mid Day Meal) for that same particular area of his operation;
- (b) There is no uniform policy for engaging the carrying-cum-distributorship agent of PM-Poshan in the Murshidabad District entitling the MR Distributors to be appointed as carrying-cum-storing agent of Mid Day Meal rice as a thumb rule of policy making;

- (c) Even in the current scenario engagement of carrying-cum-distribution agent for the year 2023-24, there are several other blocks and municipalities as well where there is more than one agent has been engaged to cater to a particular block or municipality or to only one agent has been engaged in spite of the fact that there are more than one MR Distributor operating in that block or municipality for hassle-free and effective implementation of the programme;
- (d) The petitioner cannot claim automatic entitlement of her appointment of carrying-cum-storing agent of Mid Day Meal on the ground of her distributorship;
- (e) Having a godown near the school of a particular MR Distributor is not a ground to grant agency of carrying and storing of Mid Day Meal rice.

Thus, the District Magistrate, Murshidabad held that the petitioner fails to substantiate her claim through the documents and testimonials submitted by her.

Having heard the learned Advocates for the petitioner, State respondents and the private respondent this Court is of the view that whenever a power of selection is imposed upon an administrative authority that power must be exercised fairly and not arbitrarily so that exercise of power may not be subjected to judicial review. Needless to say that the power of selection of carrying and storing agent of Mid Day Meal granted to the District Magistrate vide letter dated 31st May, 2012 is an absolute power. Though this Court does not find any material to hold against the District Magistrate on the basis of the off quoted sermon "power corrupts man and absolute

power corrupts absolutely". The act of the District Magistrate, Murshidabad being absolutely selective compels this Court to observe that the District Magistrate, Murshidabad exercised his absolute power on the basis of his whims and caprice and also without following the rule of equality.

I have already stated the grounds for which the District Magistrate rejected the representation of the petitioner. The District Magistrate in the impugned order did not state any ground as to why the petitioner was detagged from some of her areas to act as carrying and storing agent in spite of the fact that the petitioner has her godown near the school. Entrusting a distributor whose godown is situated far of places of the schools of a particular block or area cannot be said to be a hassle-free arrangement of supply of Mid Day Meal rice to the schools.

At this stage, it is submitted by the learned Advocate for the private respondent that the godown of the private respondent is also situated near the schools to which he has been directed to cater.

Be that as it may, on perusal of impugned order, I do not find ingredients of uniform decision in respect of the question in hand. There are in all 28 distributors in the district of Murshidabad. It is not stated in the impugned order as to why the anomaly took place in respect of only two distributors. When order to act as carrying and storing agent of Mid Day Meal rice in respect of the entire locality of 26 distributors remained in tact by the District Magistrate, there is no ground stated in the impugned order as to why in respect of the two distributors, amongst whom the petitioner is the one, some areas were detagged. Here lies the case of arbitrariness, mala fide and non-consideration of the representation of the petitioner judiciously.

On these grounds the impugned order is subject to judicial review under Article 226 of the Constitution.

In view of the above discussion, the impugned order dated 21st July, 2023 passed by the District Magistrate, Murshidabad is quashed and set aside. The District Magistrate, Murshidabad is directed to dispose of the representation of the petitioner afresh in the light of the observation made in the instant writ petition within three weeks from the date of communication of the order.

The parties are at liberty to act on the server copy of the order.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No. 03.