



Neutral Citation Number is 2023:DHC:5200

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 25th JULY, 2023

IN THE MATTER OF:

+ **W.P.(C) 3826/2023 & CM APPL. 14888/2023**

SECRETARY, FOOD AND BEVERAGE FOUNDATION
SOCIETY REGD. Petitioner

Through: Mr. V. K. Garg, Sr. Advocate with
Mr. P. S. Singal, Advocate.

versus

DIRECTORATE OF EDUCATION, GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. Anupam Srivastava, ASC for
GNCTD with Mr. Vasuh Misra,
Advocate.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The instant Writ Petition under Article 226 of the Constitution of India has been filed challenging the Order dated 14.02.2023, passed by the Respondent herein/ Directorate of Education, Mid Day Meal Branch, Room No-252, Old Secretariat, New Delhi – 110054, debarring the Petitioner from supplying Mid Day Meals under the Central Government's Mid Day Meal Scheme with immediate effect in the Respondent's schools.

2. The facts, in brief, leading to the filing of the present Writ Petition are as under:

a. The Petitioner herein is the Secretary of Food and Beverage Foundation Society, having its registered office at House No. 214, Khasra No. 1099, Bhalswa Village, Near Laxmi Narayan Mandir, New Delhi 110033. It is stated that the Petitioner/Society is engaged in the work of providing dry



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ration and cooked meals under the Mid-day Meal Scheme being run in Government Schools in Delhi.

- b. It is submitted that in the year 2020, in view of the contingency caused by the COVID-19 pandemic which disrupted the provision of cooked and served meals in schools under the Central Government's Mid-Day Meal Scheme, due to the nation-wide closure of schools for prolonged periods, the GNCTD announced distribution of dry-ration kits containing six-month provision including wheat, rice, pulses and oil to students of classes Nursery to Class VIII in all Government and Government-aided schools in the NCT of Delhi. It is stated that in view of the changed circumstances owing to the Covid-19 Pandemic, an agreement was entered into by the Petitioner/Society, to supply dry ration kits to a list of schools as prepared by the Directorate of Education, GNCTD.
- c. It is stated that S.V.K. No. 2 School, Ghonda (ID-1104019) (*hereinafter referred to as 'the School in question'*) was among one of the schools receiving dry ration kits from the Petitioner/Society. It is stated that on 31.02.2022, the Petitioner/Society supplied a batch of food materials including oil and fats, and gram to the school in question. It is stated that when the school authorities opened the box of dry ration for distribution it was found that the *chana*/gram received from the Petitioner/Society was rotten and that *vanaspati/dalda* was supplied by the Petitioner/Society in place of refined oil. It is stated that the Petitioner/Society agreed to replace the rotten gram and the *vanaspati/dalda* supplied by it.



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- d. It is stated that during a series of ‘*Jan Sunwai*’/Public Hearings of Social Audit under PM POSHAN scheme (earlier referred to as Mid-day Meal Scheme) which was conducted on 02.09.2022, Chief Consultant, PM POSHAN, Ministry of Education was informed by the SCM Coordinator that the dry ration kits which were supplied by the Petitioner/Society to the School in question on 30.08.2022 had *vanaspati/dalda* in them in place of refined oil despite the NGO mentioning refined oil in the summary slip.
- e. On the basis of the recommendation of the Chief Consultant, PM-POSHAN, Ministry of Education, Government of India, a Show Cause Notice dated 27.12.2022 was issued to the Petitioner for violation of PM POSHAN food norms to show cause as to why the petitioner should not be treated as negligent in supply of good quality ration and why action should not be taken against the petitioner for supplying sub-standard items i.e. *vanaspati/dalda*, in place of refined oil and packets of rotten *Chana* which were not fit for human consumption.
- f. It is stated that a reply to the Show Cause Notice dated 27.12.2022 was given by the Petitioner on 04.01.2023 wherein it is stated that in the office orders issued by the Education Department it is not mentioned anywhere that only refined oil has to be supplied to the students as a part of the dry ration kit. It is further stated that in the school in question the Petitioner has supplied the best quality of oil and fat, i.e. of Rasoi No.1 *Vanaspati* which contains edible vegetable oil and not *Dalda* as has been alleged in the Show Cause Notice dated 27.12.2022. It



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was further submitted that the receiving slip dated 31.01.22 mentions 'oil/fat' and not 'refined oil' as has been alleged in the Show Cause Notice. It is also submitted that there was a delay of about seven months in distribution of the dry ration kits by the School Authorities and with the passage of rainy season between the date of receipt of the food items and its distribution to eligible students, it is possible that the ingredients of the ration kit might have rotten. It is further stated in the said reply that on being informed by the School authorities about the quality of the ingredients supplied by the Petitioner/Society, the same had been replaced.

- g. It is stated that being dissatisfied by the reply of the Petitioner/Society, the Directorate of Education *vide* order dated 14.02.2023 debarred the Petitioner/Society from supplying mid-day meals to any school of the Respondent with immediate effect.
- h. It is stated that a letter dated 16.02.2023 was sent by the Petitioner/Society to the Director of Education seeking revocation of the debarment order which has not been considered by the Director of Education.
- i. The Petitioner has, thereafter, approached this Court by filing the present Writ Petition.

3. Notice was issued on 27.03.2023. Status Report has been filed. In the Status Report it is stated that on the basis of complaints received against the Petitioner/Society and on the recommendations of the Chief Consultant, PM-POSHAN, Ministry of Education, Government of India *via* email dated 15.12.2022, a Show Cause Notice dated 27.12.2022 was issued to the



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Petitioner to explain as to why sub-standard items, i.e. *dalda* instead of refined Oil and rotten *Chanas*, were supplied by it as a part of the dry ration kits. It is stated that a letter was also sent to the HOS, SKV No. 2 Ghonda, Delhi for seeking a report of the matter wherein it was affirmed by the school authorities *via* reply dated 18.04.2023 that the Petitioner/Society has supplied low quality *Chana* and has also supplied *Dalda* in place of refined oil. It is stated in the Status Report that after taking into account all the facts and in view of the letter dated 18.04.2023 and also on the basis of the recommendation of the Chief Consultant, PM-POSHAN, the Director, Department of Education GNCTD, *vide* order dated 14.02.2023 debarred the Petitioner/Society from serving food under PM-POSHAN. It is also stated in the Status Report that as per the reply received from the School in question the Dry Ration kits were supplied by the petitioner on 29.08.2022 and 30.08.2022 as opposed to 31.01.2022 as has been claimed by the Petitioner thereby disregarding the seven-month delay in distribution having caused the deterioration of the quality of the *Chana* supplied in the dry ration kits.

4. It is contended by the learned counsel for the Petitioner that the packets of *Chana* were opened only in the month of September and the possibility of *Chana* getting rotten in seven months period after its supply cannot be ruled out. He further states that there was no specific issue that only refined oil had to be supplied and that the supply of *vanaspati* was prohibited. He further submits that in the Status Report it has been alleged that supplies were made in the month of August 2022, and when the packets were opened it was found that the *channa* supplied by the Petitioner was rotten. He contends that the receiving slips does not have any details as to who was the concerned person in the school who accepted the goods. He also contends that the receiving slips are not on the letter head of the school



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and they do not even reflect the person who has taken delivery of the supply. He, therefore, states that the order debarring the Petitioner is without any basis. He further states that as per Clause 126 of the Request for Proposal issued by the Respondents, Directorate of Education in furtherance of the award of work of supply of the Mid-Day Meal Scheme, allows for punitive measures like blacklisting and cancellation of contract only against the '*supply of contaminated/defective cooked Mid Day Meal resulting in illness/hospitalisation of children*'. He, therefore, contends that since the provision of dry ration kits by the Petitioner does not amount to directly providing any cooked meal, the actions of the Respondent in debarring the Petitioner is against the Request for Proposal issued by the Respondent. It is further contended by the learned Counsel for the Petitioner that as per the Social Audit Hearing conducted on 02.09.2022, apart from the Petitioner herein three other NGO's namely, Ghanshyam Sew Samiti, Suprabhat Educational and Social Welfare Society and Surya Charitable and Welfare Society, also supplied *Vanaspati/Dalda* to the schools, however, they have not been debarred by the Respondent as has been done with the Petitioner.

5. *Per contra*, Mr. Anupam Srivastava, learned ASC for GNCTD, contends that the Order of debarment does not require any interference from this Court. He states that the Petitioner is guilty of supplying rotten *channa* to the School in question. He states that PM POSHAN Scheme (which was earlier known as Mid Day Meal Scheme) was introduced to give food to the children. He states that during Covid-19 pandemic as the schools were closed, instead of providing cooked meals to the students it was decided to provide dry ration to them. He states that the Ministry of Education had, way back in 2017, issued guidelines to clarify that 'oil and fats' means oil of soya bean, refined/mustard oil etc. and fat must not be interpreted as



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vanaspati/dalda. He, therefore, states that the stand of the learned Counsel for the Petitioner that there was no clarification as to whether *vanaspati* could have been supplied or not cannot be accepted. He further states that all the NGOs present in the public meeting had been informed about the guidelines issued by the Ministry of Education on 26.04.2017 which states that only packed dals, salt, spices, condiments and oil with AG-MARK/FSSAI quality symbol should be used for cooking of Mid Day Meal and, therefore, *vanaspati* type of fats was not allowed under the PM-POSHAN Scheme. He further states that in the report prepared by the Chief Consultant, PM-POSHAN, Ministry of Education, it is stated that the *Vanaspati*, as provided by the Petitioner, is very harmful as it increases the cholesterol levels in the blood sugar and leads to cardiac problems in persons consuming it and, therefore, it is not fit for human consumption. It is also iterated that *Vanaspati* is not a substitute of Oil as per the ministry guidelines. He further submits that generally when supplies are made to the schools only hand-written slips are used as receipts of goods and the Petitioner/Society cannot take advantage of the fact that the slip was not issued on the letter head of the school. He further draws the attention of this Court to the receipts dated 29.08.2022 and 30.08.2022 where the name of the school in question, the name and phone number of the person receiving the goods and the quantity of the goods is mentioned. The receiving slips also bear the signature of the person receiving them. He, therefore, states that the Petitioner/Society cannot raise an objection that rotten *chana* was not supplied by it in the month of August and it was the *chana* supplied by it in the month of January which has rotten with the passage of time and also due to rainy season. He, therefore, states that the order debarring the Petitioner does not call for any interference by this Court.



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6. Heard the Counsels and perused the material on record.
7. The PM POSHAN (POshan SHAkti Nirman) Scheme for providing hot cooked meal in Government and Government-aided schools from 2021-22 to 2025-26, earlier known as ‘National Programme for Mid-Day Meal in Schools’ popularly known as Mid-Day Meal Scheme, is a Centrally-Sponsored Scheme which covers all school children studying in Classes I-VIII in Government, Government-Aided Schools, about 11.80 crore children studying in 11.20 lakh schools across the country. The said guidelines above issued by the Directorate of Education for the supply of dry ration kits to schools in Delhi was an interim policy measure to ensure that the lack of provision of Mid-Day meals under the PM-POSHAN Scheme during the period of COVID-19 due to nationwide shut down of schools does not detrimentally affect the ability of children eligible under the scheme to receive one nutritious meal a day. The standards set under the original scheme therefore, applicable to cooked meals, ought to be read to also apply to the ration kits supplied under the scheme thereof, which was merely introduced to remedy the inability of providing cooked meals during periods of school closures.
8. The contention of the learned Counsel for the Petitioner that the clarification given by the Ministry in 2017 applies only to the cooked meals and cannot be extended to dry ration cannot be accepted. Dry ration was being provided to the children only because of Covid-19 pandemic. In the public meetings also it was clarified by the Department that the NGOs have to supply only refined oil/mustard oil and, therefore, there was no question of supply of *vanaspati/dalda*, which has specifically been mentioned in the guidelines of the Ministry.



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9. Further, this Court can take judicial notice of the fact that *chana* cannot rot in seven months time and, therefore, even if this Court accepts the contention of the learned Counsel for the Petitioner that the *chana* which was found to be rotten was not supplied by the Petitioner in August, 2022 but was supplied by it in January and due to passage of time and rainy season the *chanas* rot, even then, it cannot be said that the *chanas* would have rotten in seven months time. Therefore, the case of the Petitioner cannot be accepted. In any event, there is no reason for this Court to doubt the receipts given in the month of August, 2022 which shows supply of *chana* to the School in question. It is not the case of the Petitioner that there is malice on the part of the Respondent or that the Order of debarment is effected by *mala fides* or that the Petitioner has been debarred to favour any other NGO or company. In absence of any *mala fides* there is no reason for this Court to disbelieve receipts on which reliance has been placed by the Respondent.

10. In any event, all the material was presented before the Chief Consultant, PM POSHAN, Ministry of Education, in the public hearing and after hearing the parties, the Chief Consultant was of the opinion that the Petitioner has supplied rotten *chanas* and has also supplied *vanaspati/dalda* to the School in question. A perusal of the Report submitted by the Chief Consultant, PM POSHAN, Ministry of Education, shows that the public hearings were conducted in a transparent and unbiased manner.

11. Whilst actions undertaken involve due impact on public good concerning the health and wellbeing of children, highest care ought to be taken in ensuring the effective discharge of duties. The interpretation of 'oil and fat' to include under its ambit products like *vanaspati/Dalda* are not justified by any stretch of imagination; due attention must have been paid by



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the petitioner Society as an NGO engaged under PM POSHAN, which ought to have been well conversant with the food norms of the scheme.

12. The seriousness of the allegations in the case at hand and its impact on children, who are the future of the country, cannot be overlooked. It was the duty of the Petitioner to ensure that nutritious meal is provided to the children for their development. Supply of rotten *chana* or *vanaspati* and *dalda* cannot be condoned and persons who indulged in such activities cannot be permitted to continue to supply food items under PM-POSHAN Scheme. In fact it is incidents like these which brings bad name to a noble cause that has been initiated by the Government to encourage children to attend schools.

13. In Grosos Pharmaceuticals (P) Ltd. &Anr. V. State of U.P., (2001) 8 SCC 604, the order of blacklisting was challenged by the contractor on the ground that the contractor was not supplied with all the materials on the basis of which charges against him were based. The Apex court in the said case has held as under:

“It was sufficient requirement of law that an opportunity of show cause was given to the appellant before it was blacklisted. This Court observed that the contractor was given an opportunity to show cause and it did reply to the show¹⁶ cause to the State Government and therefore the procedure adopted by the Government while blacklisting the contractor was in conformity with the principles of natural justice.”

14. However, it is pertinent to notice that the Order of debarment does not prescribe a period for which the Petitioner/Society can be debarred. It is settled law that debarment means civil death and it can never be permanent.



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15. In Kulja Industries Ltd. v. Western Telecom Project BSNL, (2014) 14 SCC 731, the Apex Court has observed as under:

“23. As regards the period for which the order of debarment will remain effective, the guidelines state that the same would depend upon the seriousness of the case leading to such debarment

25. Suffice it to say that “debarment” is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the “debarment” is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor.

27. The next question then is whether this Court ought to itself determine the time period for which the appellant should be blacklisted or remit the matter back to the authority to do so having regard to the attendant facts and circumstances.

28. A remand back to the competent authority has appealed to us to be a more appropriate option than an order by which we may ourselves determine the period for which the appellant would remain blacklisted. We say so for two precise reasons:

28.1. Firstly, because blacklisting is in the nature of penalty the quantum whereof is a matter that rests primarily with the authority competent to impose the same. In the realm of service jurisprudence this Court has no doubt cut short the agony of a delinquent



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employee in exceptional circumstances to prevent delay and further litigation by modifying the quantum of punishment but such considerations do not apply to a company engaged in a lucrative business like supply of optical fibre/HDPE pipes to BSNL.

28.2. Secondly, because while determining the period for which the blacklisting should be effective the respondent Corporation may for the sake of objectivity and transparency formulate broad guidelines to be followed in such cases. Different periods of debarment depending upon the gravity of the offences, violations and breaches may be prescribed by such guidelines. While it may not be possible to exhaustively enumerate all types of offences and acts of misdemeanour, or violations of contractual obligations by a contractor, the respondent Corporation may do so as far as possible to reduce if not totally eliminate arbitrariness in the exercise of the power vested in it and inspire confidence in the fairness of the order which the competent authority may pass against a defaulting contractor.” (emphasis supplied)

16. A Division Bench of this Court in Mi2c Security Facilities Pvt. Ltd. v/s North Delhi Municipal Corporation & Others, 2021 SCC OnLine Del 3682, has observed as under:

“9. We have already noticed that black listing cannot be forever, and it is well settled that it has to be for a reasonable period. We are also of the view that the negative consequences of black listing cannot continue beyond the period of the black listing itself, otherwise the purpose of black listing for a particular period loses its significance. The authority which black listed the petitioner, namely the DDA, itself restricted the same up till 31.12.2020. That being the position, the petitioner was entitled to participate in any tendering process initiated by the DDA after 31.12.2020. Merely



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because the petitioner had been black listed once by the DDA, it could not legally be made as a reason to permanently debar the petitioner from tendering by the respondent corporation. The only reasonable way in which all the aforesaid clauses can be read and understood, is that they refer to current black listing and not to black listing in the past which may have happened and ended.”

17. Since the order of debarment does not specify the time limit, this Court is inclined to remand the matter back to the Respondents to fix a timeline for which the Petitioner shall be debarred from supplying Mid Day Meal.

18. With these observations, the Writ Petition is disposed of. Pending applications, if any, also stands dismissed.

SUBRAMONIUM PRASAD, J

JULY 25, 2023

Rahul

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