

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 6538 of 2022****With****R/SPECIAL CIVIL APPLICATION NO. 8917 of 2022**

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MADYAHAN BHOJAN YOJNA KARMACHARI SANGH

Versus

STATE OF GUJARAT

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Appearance:

MR KR KOSHTI(1092) for the Petitioner(s) No. 1

MR. UTKARSH SHARMA, ASSISTANT GOVERNMENT PLEADER for the  
Respondent(s) No. 1

AISHVARYA(8018) for the Respondent(s) No. 3

DS AFF.NOT FILED (N) for the Respondent(s) No. 1  
for the Respondent(s) No. 2

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**CORAM:HONOURABLE MR. JUSTICE BIREN VAISHNAV****Date : 15/07/2022****ORAL ORDER**

1 Both these petitions are filed by Madyahan Bhojan Yojna Karmachari Sangh essentially praying for declaring the action of the respondent authorities of outsourcing the work and administration of the Mid Day Meal Scheme. For the purposes of brevity, facts and documents of Special Civil Application No. 6538 of 2022 shall be considered.

2 The prayer in the petition would read as under:

*“7(B) Your Lordships may be pleased to issue a*

*writ of mandamus or any other appropriate writ /order / direction to hold and declare that the respondent authority in passing order dtd.28.01.2022 for outsourcing the work and administration of Mid Day Meal for 77 centers of the area of Vejalpur, Asarwa, Ghatlodiya, Vatva, Sabarmati of Ahmedabad Municipal Corporation and i.e. also without giving any opportunity of hearing to the concerned workers is illegal, arbitrary contrary to the guidelines and violative of article 14, 21, 39(d),(f) and 47 of the Constitution of India.*

*(C) Your Lordships may be pleased to quash and set aside the order dtd. 28.01.2022 issued by the respondent No.2 for outsourcing the work and administration of the running the 77 centers of the area of Vejalpur, Asarwa, Ghatlodia, Vatva, Sabarmati area of Ahmedabad Municipal Corporation for Mid Day Meal illegal, arbitrary contrary to the guidelines issued by the Government of India as well as the Hon'ble Supreme Court and also contrary to provision of law.*

*(D) Pending admission, hearing and final disposal of the present petition, Your Lordships may be pleased to stay the further execution, operation and implementation of the order dtd. 28.1.2022 in the interest of justice."*

2.1 The case of the petitioner is that it is a registered association working as Organizer under the Mid Day Meal Scheme. Having challenged the legality and validity of the order dated 28.01.2022 where the supply of mid day meal to the students of the schools run by the Municipal Corporation of Ahmedabad have been

outsourced and given to one Stri Shakti Sansthan, Ahmedabad.

3 Mr.K.R.Koshti, learned counsel for the petitioner, would submit as under:

(I) He would submit that in the State of Gujarat, the concept of Mid Day Meal Schemes in the schools run under the State Primary Schools was first introduced by a Resolution dated 09.11.1984. Amongst other things, the resolution indicated the administrative set up for the purposes of implementation of the Scheme.

(ii) Inviting the Court's attention to the set up set out in the resolution, he would submit that it would include employees whose orders of appointments shall be issued by the Collector or Dy.Collector. The personnel who will man the Scheme were the organizers, cooks and helpers. There is no qualification prescribed for such posts. The purpose as is evident on reading the resolution was that preference would be given to the widows and other

women who had no sufficient supporting means.

(iii) Inviting the Court's attention to the Resolution dated 03.10.2016, he would submit that the State Government reiterated its commitment in implementing the Scheme to see that the women belonging to the reserved categories, widows and other women should be given preference for appointment as cooks and helpers. This was in accordance with the directions of the Hon'ble Supreme Court in its order dated 20.04.2004 passed in Writ Petition No. 196 of 2001.

(iv) Mr.Koshti, learned counsel, would submit that if the qualifications and disqualifications for the purposes of appointment under the Scheme, of Organizers, cooks and helpers is seen, it is apparent that an incumbent should have minimum qualification of SSC. The appointment orders will be issued by the Mamlatdar. The disqualifications included that if an incumbent was already serving at other place in alternative engagement, he or she will not be considered for appointment. There

should be no conviction or a criminal case pending against such incumbent which is to be considered for appointment. All this criteria, therefore, would indicate that the engagement was to be as if under the State for which appointments were to be made by the Collector or Dy. Collector in accordance with the resolution.

(v) Mr. Koshti, learned counsel for the petitioner, would invite the Court's attention to the order dated 01.03.2016 passed in Special Civil Application No. 19912 of 2015 where essentially though the dispute *inter-se* was between the parties on awarding of the tender contract for providing the work of Mid Day Meal, the Court in the final observation observed that in future, awarding such contracts would be after inviting all eligible agencies. He would also invite the Court's attention to the observations of the Division Bench in its order dated 09.06.2017 in Special Civil Application no. 7834 of 2016 which was pertaining to the subject matter of a contract of Mid Day Meal Scheme awarded by the Corporation to Akshay Patra Foundation where the Division Bench reiterated the

observations made by the earlier Division Bench to the fact that contracts be awarded in future by inviting all eligible concerned.

(vi) Mr.Koshti, learned counsel, would submit that the members of the petitioner association, Organizers of the Scheme, have therefore made representation on 21.10.2021 that they have been working under the Mid Day Meal Scheme for several years serving the purposes of the Scheme by carrying out their functions of serving the Mid Day Meals in such schools and NGOs therefore cannot be substituted to serve such meals, and therefore, cause displacement of their engagement.

(vii) The stand of the respondents according to Mr.Koshti, learned counsel for the petitioner, therefore in the reply filed to the petition that it is always open for them to enter into such tender process of awarding contracts under the Mid Day Meal Scheme by interpreting the order of the Division Bench in Special Civil Application No. 19912 of 2015 is a convenient

interpretation to justify the activities of outsourcing the engagement of the present organizers.

(viii) Mr.Koshti, learned counsel for the petitioner, therefore would submit that what is under challenge is the concept of outsourcing which is an activity taken up for the first time of challenging of undertaking implementation of the Mid Day Meal Scheme through the process of tenders when the resolutions contemplate qualifications and disqualifications for appointment of such persons in the setup which indicates that there has to be a recruitment and there is a trapping of engagement by the State as its master. The activity of outsourcing through tender would change the place of work and master and would result in unemployment of such workers who have been in employment for over 20 to 25 years.

(ix) Mr.Koshti, learned counsel, has not even been able to produce any material to substantiate that the appointment orders of such engagees was under the

appointments of the Collector or the Mamlatdar. But in fact, they were working under direct control and supervision of the State. Admittedly, in light of the model terms of the contract and the resolution of 01.08.2016, the status of the members of the petitioner association have not changed.

(x) Mr.Koshti, learned counsel, has also relied on the order of the Hon'ble Supreme Court in Writ Petition No. 196 of 2021 in connection with the Hon'ble Supreme Court directives for various States to implement the Mid Day Meal Scheme, where it was observed that the State Governments and the Union Territories are directed to pay minimum wages to the workers under the Scheme and they shall stop the use of labour displacement machines. He also relied on a Division Bench order dated 07.07.2017 passed in Letters Patent Appeal No. 107 of 2009, where considering the decisions of the Hon'ble Supreme Court in the case of ***State of Karnataka vs. Uma Devi***, reported in ***2006 (4) SCC 1***, it was observed that if the work in question was employed was continued, it would not be carried out through outsourcing and there



shall be no replacement of employee by the other ad-hoc employee. Reliance was placed on para 5 of the judgement of the Division Bench, which read as under:

*“5. By virtue of the impugned judgement of the Learned Single Judge, the Appellants were terminated from their services. However in the present Appeal, while admitting the appeal, this Court, by an order dated 16.12.2009, had passed an order below Civil Application No. 1014 of 2009, the order reads as under:*

*“2. Taking into consideration the facts of the case and the fact that the applicants are without any livelihood, the prayer prayed for in clause-(D) of para-3 is granted. Respondent Nos.2 and 3 are directed to see that the applicants are allowed to discharge the duties which they were discharging prior to their termination and they shall be paid as they were being paid prior to termination. Respondent Nos.2 and 3 are also directed to see that the applicants are reinstated on or before 23.12.2009 and report compliance on 24.12.2009. It is also a settled law that employer cannot replace an ad hoc employee by another ad hoc employee, as laid down by the Hon'ble the Apex Court in the matter of State of Karnataka Vs. Umadevi, reported in 2006 (4) SCC 1.*

*3. Learned Assistant Government Pleader Mr.Devang Vyas submitted that no relief is required to be granted, in view of the fact that the alleged illegal termination, even if it is held to be legal, has taken place in the year 2007. The fact that the Court has admitted the appeal, the applicants - appellants - original petitioners cannot be left to starve and therefore the aforesaid order is passed.*

*“4. The application is disposed of accordingly.*

*Rule is made absolute to the aforesaid extent. No costs. At the request of the learned advocate for the applicants, it is clarified that it will be open for the applicants to press for the other reliefs prayed in this application either by filing a separate application or as it is. At the request of the learned Assistant Government Pleader, it is clarified that the reinstatement of the applicants will be on the same terms and conditions on which they were working prior to termination and the present order of the reinstatement will not create any equities in favour of the applicants."*

4 Mr.Utkarsh Sharma, learned Assistant Government Pleader for the State would submit that the Scheme was a scheme envisaged for the purpose of encouraging primary education, a benevolent concept to bring education to all. In order to encourage the young rural folk to send their wards for education in schools, the Scheme of Mid Day Meal was introduced so as to encourage the children to attend schools.

4.1 Mr.Sharma, learned AGP, would further submit that there was never a concept of engaging people under the Scheme to foster employment opportunities. By virtue of the process of implementing the Scheme, persons were to be engaged on an honorarium basis.

4.2 He would further submit that the process of engaging services of contractors through the tender process is not something which is new or foreign to foster the Scheme. He would invite the Court's attention to the affidavit-in-reply filed by one Shri Siddharth Trivedi, working as an Assistant (In-charge) Commissioner of Mid Day Meal Office, Gandhinagar. The preliminary objection is raised as to not joining of the beneficiary of the order of 28.01.2022 "Stri Shakti Sanstha".

4.3 Mr.Utkarsh Sharma, learned AGP, would submit that in light of the decision of the Division Bench of this Court rendered in Special Civil Application No. 19912 of 2015, a tender process was initiated and contract has been awarded to Stri Shakti Sanstha. He would submit that the Ministry of Human Resources has issued guidelines for engagement of civil society organizations / non government organizations for supply of hot cook meals under the Mid Day Meal Scheme. The guidelines which were subsequently amended in the year 2017 are produced on record, which according to Mr.Sharma, learned AGP, makes it amply clear that the service of the

civil society organizations could be obtained by the State Government. Circular of 01.08.2016 prescribing that an advertisement has to be issued for undertaking a tender process is placed on record.

4.4 Mr.Sharma, learned AGP, would further submit that the Stri Shakti Sanstha is already awarded the contract under the Mid Day Meal Scheme for the primary schools run by the Ahmedabad Municipal Corporation (East). An advertisement was issued on 24.08.2021 for tender process pursuant to which by the impugned order of 28.01.2022 after undertaking the process of tender in accordance with law, the Mid Day Meal Scheme contract has been awarded. He would invite the Court's attention to the communication of the State dated 01.08.2016 to submit that the spirit of engaging organizers, cooks and helpers in consonance with the policy and not disturbing their service conditions has sufficiently been taken care of in the document dated 01.08.2016.

5 Ms.Aishvarya Gupta, learned advocate appearing for and on behalf of respondent No.3, Ahmedabad Municipal

Corporation, also would fall back on the reply filed by the Dy.Collector, Mid Day Meal (Ahmedabad City). She would make the following submissions:

(I) By the impugned order of 28.01.2022, an advertisement for administration of Mid Day Meal for 77 schools of the area of Vejalpur, Asarva, Ghatlodiya, Vatva and Sabarmati, workers working in the schools has been produced. Of the 77 schools, for only 28 schools the Mid Day meal contract has been awarded to the Stri Shakti Sanstha. For the remaining 49 schools, falling within the west zone of Ahmedabad, the work has been awarded to Akshay Patra way back in the year 2021, and therefore, it is only for the 28 schools it appears that the petitioners are aggrieved.

(ii) She would submit that the Mid Day Meal Scheme is being implemented since the year 1984. She would invite the attention of the Court to the Resolution of 03.05.2006 by the State which tracing the history of the Mid Day Meal Scheme in accordance with the Memorandum of Understanding entered into by the State awarded the

contracts of certain areas of Ahmedabad and Valsad to NGO - Stri Shakti Sanstha. Subsequently, the Scheme has been implemented through such execution of tender process in accordance with the spirit of the Scheme. Various NGOs have thereafter been considered for implementing of the Mid Day Meal Scheme and the activity of cooking carried out in the centralized kitchen from where the food is transported to the respective schools. Cooking cost and food grain cost is reimbursed to the concerned NGOs. The concept of awarding such contracts has been done even earlier in point of time as is observed by this Court in Special Civil Application No. 19912 of 2015.

(iii) As far as the apprehension of the petitioner that there will be displacement of the existing setup of personnel engaged on honorary basis, she would rely on the model terms of the tender which provided that the Non Government Organization has to ensure that the cook-cum-helpers already engaged in the schools are not displaced. The tender process carried out in the year 2018 for 329 schools in the Ahmedabad Municipal

Corporation has been explained in the affidavit-in-reply where the Stri Shakti Foundation was awarded the contract for some of the schools and to the others, it was the Akshay Patra Foundation. For the year 2021, 330 schools were engaged in supply of Mid Day Meal through a tender process. In other words, it is the stand of the Corporation that the concept of outsourcing the entire mission of the Mid Day Meal Scheme is not something that is new to it. In fact, even after the merging of certain areas into the Ahmedabad Municipal Corporation, the schools have been brought under the Corporation and consequentially such schools also would be part of the Mid Day Meal Schemes under the tender process.

6 In Special Civil Application No. 8917 of 2021 too, since the prayers are the same, Mr.Utkarsh Sharma, learned AGP for the State would adopt the same arguments. Ms.Sejal Mandavia, learned advocate, appears for respondent No.3, Bhavnagar Municipal Corporation.

7 Essentially, the grievance of the association of

organizers of the Madhyahan Bhojan Yojana Karmachari Sangh is that their work is being outsourced to private contractors by a tender process which will jeopardize their employment prospects as employees under the Mid Day Meal Scheme wherein, according to Mr.Koshti, learned counsel, they are being paid paltry honorarium. Briefly considering the history of the Mid Day Meal Scheme, what is evident is that it is since the year 1984 that the State of Gujarat took upon itself with a view to promote literacy to take upon itself serving of meals, popularly known as Mid Day Meals in schools so as to encourage attendance in schools and attract students from various villages to undertake education at primary levels. The concept was introduced with twin aim of encouraging education and nutrition. For the purposes of implementation of the Scheme, the resolution of 1984 provided that the entire expense for implementing the project would be undertaken by the State, however, the participation of local bodies, voluntary organizations and private organizations will be welcomed.

7.1 For the purposes of implementing the Scheme, the



food and its supply was left to be considered by the concerned Food & Civil Supplies Department and the Collector or the Mamlatdar at the local level in tandem with the Road Transport Corporation and its godowns were roped into see that the Scheme fosters the purpose for which it was setup. The facilities like utensils and kitchen etc., were to be setup and cooks, organizers and helpers were to be engaged through the agency of the Collector or the Dy. Collector on honorarium. No qualifications were prescribed and in such engagement, priorities were to be given to widows and ladies who were dependent.

7.2 Reading the order passed by this Court rendered in Special Civil Application No. 19912 of 2015 would indicate that the work of providing of Mid Day Meals to various schools, especially the schools run, as is in the present context of the Corporation was done through awarding of contracts. Tenders were invited from all eligible contractors. The implementing agency i.e. the Contractor who have to prepare and distribute the food. The amount per child were fixed irrespective of the

tender offer. While disposing of the petition, the Court observed in its concluding para that when contracts of similar natures are awarded, in order to see that there is just participation, invitation will be given to all eligible agencies to apply. This was reiterated by the Division Bench in its order of 09.06.2017.

8 That the concept of implementing the Scheme was not foreign right from its inception as is evident from reading the resolution of 03.05.2006. It will be in the fitness of things to reproduce the same:

*“ Government of Gujarat  
Education Department  
Sachivalaya, Block No. 5<sup>th</sup>, 7<sup>th</sup> Floor,  
GR No. MBY-132005/518-R  
Gandhinagar, Dated 3<sup>rd</sup> May 2006*

*Read : GR MBY-1384-k dated 9<sup>th</sup> November 1-11-1984 E.D.*

*National programme on nutritional support to primary education commonly known as Mid day meal was launched in November 84 in the Gujarat State with the objective to provide nutritional support to students of primary stage in the villages and in the areas of municipal corporations. Government was considering the proposal to hand over the implementation of the scheme of Mid Day meal to non-government organizations in certain areas on a pilot basis. After careful consideration and after examining the draft of memorandum of understanding, submitted by the STRI SHAKTI a non-government organization State Government has*

*decided to hand over the implementation of Mid-day meal programme in the areas of Ahmedabad city situated to the east of Sabarmati river and Valsad district for three years on experimental basis. The terms and conditions for handing over the scheme to NGO i.e. STRI SHAKTI will be governed by the draft memorandum of understanding attached to this order. Municipal Commissioner Ahmedabad, and Collector Valsad are assigned with the power of signing the memorandum of understanding with the STRI SHAKTI, A-49, New Krishna Park, Vikashpuri, New Delhi-110018 respectively.*

*Expenditure on management and personnel shall be borne by STRI SHAKTI out of the Rs.2 per child per day payable to the said NGO by the State Government for all cost other than food grains which will be provided free of cost to the NGO@100 gms per child per day.*

*This order is issued after approval of finance department dated 27<sup>th</sup> April, 2006 on this file and shall come into force at once and providing midday meal in the selected areas by the STRI SHAKTI will begin from new educational year which is to begin in June 2006.”*

8.1 Reading of the resolution makes it clear that the Scheme was launched in the year 1984 in the State of Gujarat with the objective to provide nutritional support to students of the primary stage in villages and in areas of Municipal Corporations. At that point, the government was considering a proposal to hand over the implementation of the Scheme to Non Government Organizations on pilot basis. In furtherance of this policy, the Stri Shakti Foundation was handed over the contract.

Reading of the resolution further indicates that the expenditure on the management and personnel shall be borne by the Stri Shakti Foundation at the rate of two per child per day would be payable to the NGO by the State for all cost other than food grains was provided for.

8.2 On 01.08.2016, the State came out with another document indicating that the implementation of the Mid Day Meals Scheme had to be given to the NGOs. Reference is made to the observations of this Court in the order of 01.03.2016 rendered in Special Civil Application No. 19912 of 2016. A specific emphasis is laid on that the persons engaged as organizers, cooks and helpers shall be continued when such NGOs are engaged for the purposes of implementing the scheme in question.

8.3 It is in this circumstances that the model tender which is produced with the affidavit of the Corporation needs to be appreciated. Reading the objective of the tender indicates that it will be the responsibility of the NGO which is awarded a contract to provide wholesome food having requisite calorie and protein content to the

school children of the primary, upper primary sections with a view to provide nutritional support to the children. The District Collector or the Municipal Commissioner as the case may be, in their sole and absolute discretion would amend the scope of work modify, cancel or suspend the tender process and the responsibility of the State Government was set out in Clause 10 of the tender, which reads as under:

***“10. Responsibility of State Government***

***I. Cooking Cost***

*The State government will pay / reimburse the cooking cost to the CSO / NGO as per the instruction / norms of GOI / State Government.*

***II. Supply of Food Grains***

*1 The CSO NGO shall lift the food grains from food Corporation of India (FCI)'s godown against the 'Release Order' issued by the State Government on the basis of allotted number of children and working days. Subsequently transportation charges shall also be reimbursed to the CSO/NGO as per the rates fixed by the Government of India or by the State Government.*

*Or*

*2. The State Government shall make arrangement for delivery of food grains at the centralized kitchen on the basis of allotted number of children and working days.*

***III Cook cum helpers:***

*1. The NGO may ensure that, the cook-cum-helpers already engaged in the schools are not displaced in case of expansion of centralized kitchen. All efforts should be made to retain them as*

*helpers for serving of meals, cleaning of utensils etc., in the schools.*

*2. The State Government shall get the samples tested from any reputed laboratory / regarding requisite calories and proteins contents at its own cost at regular intervals."*

8.4 Amongst other needs, as far as cook-cum-helpers is concerned, it was for the NGO to ensure that the cook-cum-helpers, already engaged in the schools are not displaced in case of expansion of centralized kitchen. All efforts should be made to retain them as helpers for serving of meals, cleaning of utensils etc., in the schools.

9 Considering all these factors in light of what is reflected in the earlier part of this order, what is evident is that the Mid Day Meal Scheme was conceived as a beneficial scheme essentially with a view to encourage nutritional and educational facilities for promoting literacy and welfare of the children. In implementing such Scheme, naturally a setup was to be in place and looking to the enormity and the responsibility foisted on the State, the resolution encouraged participation of private players in the field as is evident from reading the resolution. True it is that in the administrative setup,

necessary it was for the State in the inception and the youth of its Scheme to take up the responsibility of engaging the helpers, cooks and organizers. But what is evident from reading the Scheme in the year 2006 and also of the documents of 01.08.2016 together with the Mid Day Meal Scheme Rules is that the Scheme envisaged outsourcing of these engagements under the Mid Day Meal guidelines of 2006 and the Mid Day Meal Rules, 2015, and as amended in 2017 for setting up of centralized kitchen and for entering into MOUs and engaging civil society organizations and NGOs. An inbuilt assurance as is reflected in the Resolution of 01.08.2016 read in-tandem with the model court of outsourced indicates that the cooks and helpers engaged in the schools were not to be displaced in case of expansion of centralized kitchen, which took care of the observations of the Hon'ble Supreme Court.

10 Essentially, the petitioners are engaged on an honorarium basis for the purposes of implementation of a Scheme whereas the order of the Division Bench in Letters Patent Appeal No. 107 of 2009 dated 07.07.2017

was considered with the regularization of service of a part time sweeper engaged with the State authorities and it was in this context that the Court relying on a decision in the case of **Uma Devi (supra)** directing regularization.

11 For all these reasons therefore, the prayers made in the petitions do not deserve consideration and the petitions are accordingly dismissed.

BIMAL

(BIREN VAISHNAV, J)

