



Darshan Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8318 OF 2024

1. **M/S. OM SHAKTI MAHILA SEVA
SAHAKARI SANSTHA MARYADIT,**
Phase 3, A 1014, New Golden Nest, 90
Feet Road, Bhayender East, Dist.
Thane

... PETITIONER

~ VERSUS ~

1. **MIRA BHAYENDER MUNICIPAL
CORPORATION,**
Dr. Babasaheb Ambedkar Bhavan,
Mandli Talav, Bhayender West, Dist.
Thane - 401101

2. **EDUCATION OFFICER
MIRA BHAYENDER MUNICIPAL
CORPORATION SCHOOL
SECTION,**
Dr. Babasaheb Ambedkar Bhavan,
Mandli Talav, Bhayender West, Dist.
Thane - 401101

... RESPONDENTS

APPEARANCES

FOR THE PETITIONER

**Mr P M Mokashi, i/b Mr Aniket P
Mokashi.**

**FOR RESPONDENTS
NO.1 AND 2**

Mr Narayan Bubna.

**CORAM : M.S.Sonak &
Kamal Khata, JJ.**

RESERVED ON : 01st July 2024

PRONOUNCED ON : 3rd July 2024

JUDGMENT (Per MS Sonak J):-

1. Heard learned counsel for the parties.
2. This petition challenges the impugned communication/order dated 14 May 2024, by which the Mira Bhayender Municipal Corporation (“Corporation”) terminated the contract awarded to the petitioner for the supply of mid-day meals to schoolchildren in about 12 schools within the Corporation’s limits.
3. Mr. Mokashi, learned counsel for the petitioner, submitted that the impugned termination order relies on clause 2.21 of the terms and conditions governing the contractual relationship between the Corporation and the petitioner. He submits that clause 2.21 provides that the Corporation has the right to terminate the contract without giving any prior written notice. He submitted that such a clause is unconscionable and violative of Article 14 of the Constitution of India. He submitted that such a clause is also opposed to public policy and consequently violative of Section 23 of the Indian Contract Act. He submitted that the termination based on such a clause is void and must be struck down. Mr Mokashi relies on *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, along with*

*connected appeal*¹ and *D.K. Yadav Vs. I.M.A. Industries Ltd.*² in support of his contention.

4. Mr Mokashi submitted that on one or two occasions, the Corporation brought to the petitioner's notice some complaints of deficiencies in the meals supplied to the school children. He submitted that the petitioner did not admit any defaults but, out of politeness, assured the Corporation about the improvement in the position of supply of mid-day meals to school children. He submitted that such responses would not have been held as an admission on the petitioner's part. Based upon such alleged admission, the impugned termination order could not have been issued. He submitted that the Corporation has not acted fairly in this matter, so the impugned termination order is liable to be set aside.

5. Mr Mokashi referred to a document (at Exhibit 'E' colly. page No. 67 of the paper book), which, according to him, records that the Municipal Commissioner participated in the mid-day meals at some of the schools within the Corporation limits. In one of the schools that was catered by the petitioner, he submitted that the Municipal Commissioner praised the food and, therefore, the grounds about the food being unsatisfactory or not cooked were clearly incorrect. He submitted that this is yet another ground to interfere with the impugned termination order.

6. For all the above reasons, Mr Mokashi submitted that the impugned termination order should be set aside, and the petitioner must be allowed to supply mid-day meals to the school children.

¹ (1986) 3 Supreme Court Cases 156

² (1993) 3 Supreme Court Cases 259

7. Mr Bubna, learned counsel for the Corporation, referred to several notices addressed to the petitioner pointing out the deficiencies and the below-par quality of the food supplied by the petitioner to the school children. He pointed out that such notices were sent to the petitioner because of the complaints from the school children, their parents, and school staff. He pointed out how, on some occasions, school children had to go hungry on account of un-cooked food supplied by the petitioner. Mr Bubna submitted that more than ample opportunities were granted to the petitioner. Still, the petitioner, except for assuring to improve food quality, continued to supply sub-standard meals, leaving the Corporation with no option other than to terminate the contract. Mr Bubna submitted that this is not a case where no prior written intimation was given to the petitioner or that the petitioner was denied an opportunity to improve the quality of food supplied. He submitted that valid reasons have also been set out for terminating the contract. Accordingly, he submitted that the decision relied upon by the petitioner would not apply to the fact situation in the present case.

8. Mr Bubna, without prejudice to the above, submitted that this petition involves disputed questions of fact that this Court may not consider in exercising its extraordinary jurisdiction. He submitted that the petitioner has been treated fairly and that there is no public law element involved in the issue raised by the petitioner.

9. For all the above reasons, Mr Bubna submitted that this petition may be dismissed.

10. The rival contentions now fall for our determination.

11. The petitioner and some other non-governmental organisations were appointed as contractors to provide mid-day meals to schoolchildren studying in schools within the Corporation's jurisdiction. The petitioner was awarded a contract to supply mid-day meals to about 12 schools within the Corporation's jurisdiction. Admittedly, this contract was subject to the terms and conditions set out in the agreement dated 03 August 2022 placed on record at Exhibit 'B' to the petition.

12. The impugned termination order does refer to clause 2.21 of the agreement/contract dated 03 August 2022. However, the materials on record do not indicate that the impugned termination order was issued without minimum compliance with the principles of natural justice and fair play or the impugned termination order was issued without prior written intimation to the petitioner granting the petitioner opportunity to improve the quality of mid-day meals and otherwise plug the deficiencies that were repeatedly pointed out to the petitioner. Therefore, even though the impugned termination order refers to clause 2.21, this is not a case of some arbitrary termination without adhering to the doctrine of fairness or without complying with the principles of natural justice and fair play. The record bears out that repeatedly, notices were addressed to the petitioner pointing out the deficiencies, and the petitioner was granted an opportunity to improve. Finally, given the fact that there was no improvement, the impugned termination order came to be issued.

13. Therefore, in the fact situation of the present case decision in *Central Inland and Water Transport Corporation Limited and Anr.* (supra) and *D.K. Yadav* (supra) would not assist the petitioner's

cause. This is not a case where the Corporation has terminated the contract without assigning any reasons or without following principles of natural justice and fair play. Here, the impugned termination order gives the reasons, and there is ample record that bears out the compliance with principles of natural justice and fair play before the impugned order was issued.

14. In *Central Inland and Water Transport Corporation Limited and Anr.* (supra) services of an employee were terminated by relying on rule 9(i), which permitted termination of services with immediate effect by paying three months' salary and nothing more. This clause did not require stating reasons or did not contemplate any compliance with principles of natural justice and fair play before the termination can be made effective. In such circumstances, rule 9(i) was described as the "Henry VIII Clause" and was struck down as arbitrary, unfair, unreasonable, and opposed to public policy. Such a situation does not obtain in the facts and circumstances of the present case.

15. Similarly, in *D.K. Yadav* (supra), certified standing orders enabled the employer to terminate the services of an employee without minimum compliance with principles of natural justice and fair play and without even assigning any cogent reasons for the termination. It is in the context of such a clause that the Hon'ble Supreme Court held that the standing orders that have statutory force must be in consonance with the principles of natural justice that mandate Articles 14 and 21 of the Constitution of India. Again, in the fact situation of the present case, no such issue arises, and therefore, even this decision would not assist the petitioner.

16. The record bears out that the Corporation, by communication dated 22 January 2023, pointed to the petitioner that the inspection team found several deficiencies in the petitioner's work. Substandard quality food was supplied to the school children, but the food was not supplied on time. The petitioner was called upon to show cause, failing which the petitioner was informed that it would be blacklisted. The petitioner replied on 31 January 2023 by pointing out that it had supplied good-quality food and had not received any complaints from any of the schools. Still, the petitioner assured the Corporation that it would supply improved quality food henceforth.

17. Possibly, accepting the petitioner's assurance, no immediate action was taken against the petitioner. However, since there was no improvement in the quality of the supply of food, the Corporation, by another communication dated 10 July 2023, once again informed the petitioner that in some of the schools, students found worms/insects/weevils in the cooked food supplied by the petitioner. The petitioner's attention was invited to the complaints made by the principals of the schools. The communication dated 10 July 2023 states that despite repeated instructions, there was no improvement in the petitioner's supply, and this was a serious matter. The communication refers to the adverse impact on the health of the school children. Again, the petitioner was given notice to show cause as to why it should not be blacklisted.

18. The petitioner submitted a response on 11 July 2023. This time, the petitioner admitted to having received complaints about food supplied to the schoolchildren. The petitioner assured the corporation that hereafter, there shall be no negligence on the

petitioner's part, and all care would be taken to ensure that the health of the school children is not adversely affected. The petitioner requested another opportunity and pleaded that it should not be blacklisted.

19. Again, it appears that the Corporation granted an additional opportunity to the petitioner; however, since there was no improvement, the Corporation, by its communication dated 01 September 2023, again pointed out the deficiencies in the food supply by the petitioner. In particular, the petitioner was informed that in ward No. 14 and at school No.19, the food supplied by the petitioner was below par, comprising almost daily "Dal Khichadi" or "Dal Bhaat". The communication again required the petitioner to show cause as to why the contract should not be terminated.

20. The petitioner responded on 04 September 2023, denying that each day only "Dal Khichadi" or "Dal Bhaat" was served. The petitioner again assured the Corporation that there would be no negligence and that every effort would be made to ensure that the children's health was not adversely affected by the food supplied by the petitioner.

21. On 08 February 2024, again the petitioner was informed about the bad quality food supplied by him. The petitioner was informed about the complaints received and was again given the opportunity to clarify. The petitioner on 09 February 2024 responded by stating that the petitioner always tries to supply good quality food and all efforts are made to sieve food grains properly.

22. On 23 March 2024, the petitioner was informed that on 04 March 2024, the meal supplied at one of the schools comprised only “Khichadi”. Further, since the rice in “Khichadi” was uncooked, the school children went hungry. The petitioner was informed that this complaint was made by the principal of the said school. Again, the petitioner was asked to show cause, and even a copy of the principal’s complaint was supplied to the petitioner. The petitioner, by three-line communication dated 22 March 2024, informed the Corporation that the “Khichadi” was cooked and, in any case hereafter, proper care would be taken before sending “Khichadi”.

23. Thus, finally, the impugned order dated 14 May 2024 terminated the petitioner’s contract/agreement. The termination letter refers to various defaults and how, despite several opportunities, the petitioner’s food supply did not improve.

24. Thus, from the record, it is apparent that the Corporation complied with the principles of natural justice and fair play. The Corporation, in fact, granted several to the petitioner to improve. Finally, since there was no improvement whatsoever, the impugned termination order was issued. Therefore, this is not the case of either failure of natural justice or unfairness. This is not the case where the petitioner’s contract was terminated without assigning any reasons or without minimum compliance with the principles of natural justice and fair play. In the fact situation bore not of the record, we can hardly say that there was any violation of Articles 14 and 21 of the Constitution of India.

25. From the response submitted by the petitioner, it does appear that the petitioner did not even deny the lapses brought to its notice.

The vague denials followed by the assurance of improvement can hardly be styled as some serious denials. Upon cumulative consideration of materials on record, we can hardly fault the Corporation's action.

26. The mid-day meals scheme is a beneficial scheme to encourage students to attend school. It is a scheme meant to increase the nutrition of schoolchildren, including children belonging to weaker sections of society. Despite several opportunities, the quality of food supplied by the petitioner had not improved, and there have been several other lapses. The Corporation was thus justified in its action. The Corporation's action was not knee jerk. More than several opportunities were granted to the petitioner to improve the service.

27. In the present case, we agree with Mr Bubna that the Corporation was rather lenient with the petitioner and a number of opportunities were granted to the petitioner to improve the service. But we think that it is our duty to add that such leniency should not be at the cost of the health of the school children. This is a matter where for over a period of 15 months no action was taken against the petitioner, though during this period the petitioner was pointed out the repeated lapses in its catering service. After about 23 students reported worms in the meals or when students had to go hungry because the meals supplied were inedible, the Corporation should have acted with promptitude.

28. In such matters, the Corporation must be vigilant, considering the object of the mid day meals scheme and the target beneficiaries. The Corporation must conduct frequent and surprise

checks so the the students from the marginalised sections do not suffer in silence and pain. The document about the Commissioner being satisfied with the quality of meals on one occasion appears to be some press report. When high officials or dignitaries come to schools with prior announcement and fanfare, the quality of the meal, no doubt surges upwards. But that can hardly be the criterion to assess the overall quality of the service and the supply. Based on such unverifiable document therefore, no case is made out to warrant interference with the Corporation's action in this case.

29. For all the above reasons, we see no merit in this petition. The Writ Petition is dismissed.

30. There shall be no orders as to the costs.

(Kamal Khata, J)

(M. S. Sonak, J)