

Alpa Utpanna Ghatt Mahila Ghruh Udyog ... vs Municipal Commissioner, Malegaon ... on 8 February, 2023

Author: Neela Gokhale

Bench: G.S. Patel, Neela Gokhale

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Gaikwad RD

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9556 OF 2022

Anjuman Moinut Tulba Through its Chairman/Secretary & Ors	...Petitioners
Versus	
Education Officer Primary & Ors	...Respondents

WITH
INTERIM APPLICATION NO. 393 OF 2023
IN
WRIT PETITION NO. 9556 OF 2022

Alpa Utpanna Ghatt Mahila Ghruh Udyog Sahakari Udyogig Utpadan Sanstha Ltd.	...Applicant
In the matter between	
Anjuman Moinut Tulba Through Its Chairman & Ors	...Petitioners
Versus	
Education Officer Primary & Ors	...Respondents

WITH
WRIT PETITION NO. 938 OF 2023

Alpa Utpanna Ghatt Mahila Ghruh Udyog Sahakari Udyogig Utpadan Sanstha Ltd & Ors	...Petitioners
Versus	
Municipal Commissioner, Malegaon Municipal Corporation & Ors	...Respondents

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Mr NR Bubna, for the Petitioners in WP/9556/2022.

Mr Mukesh Vashi, Senior Advocate, with Jaynil Vasi, Manisha
Desai i/b. MP Vashi & Associates, for the Petitioner in
WP/938/2023.

Mrs SS Bhende, AGP, for the Respondent Nos. 2,3,4 & 8.

Mr Rahul S Kate, for the Respondent Nos. 5,6 & 7.

CORAM G.S. Patel &
 Neela Gokhale, JJ.

DATED: 8th February 2023

PC:-

1. The Writ Petitioner in Writ Petition No. 938 of 2023, Alpa Utpanna Ghatt Mahila Ghruh Udyog Sahakari Udyogig Utpadan Sanstha Ltd ("Mahila Udyog Sanstha") is the intervenor in Writ Petition No. 9556 of 2022. These two petitions are taken up together. In Writ Petition No. 9556 of 2022 there are as many as 40 Petitioners. Some of them are Minority Trusts. These Trusts run one or more of the Petitioner Schools. There is a complicated description of which trust runs what school in paragraph 1.

2. The Trust and Schools' Petition seeks the following two reliefs:

(a) For a writ of mandamus, for a writ in nature of mandamus and/or for any other appropriate writ, direction or order directing the respondents to forthwith start supply of food grains to petitioners as required under Mid-Day Meal Scheme and permit them to get the same cooked and serve the same to children as per applicable guidelines and norms.

(b) For a writ of mandamus, for a writ in nature of 8th February 2023

905.ASWP-9556-2022.DOC mandamus and/or for any other appropriate writ, direction or order directing the Respondents not to force them to accept services of contractor appointed by them for supply of Mid-Day Meal contrary to government policy and guidelines."

3. There is a prayer for an interim relief in terms of prayer clause

(a).

4. From this it is evident that what this Trust and School want is that food grain should be supplied to them so that they can, effectively, outsource it for cooking.

5. The Mahila Udyog Sanstha opposes this Petition. It is represented by Mr Vashi.

6. The point in controversy is narrow. The question is whether the Minority Trusts and Schools have, in their schools, adequate storage and cooking facilities of sufficient standards and capacity to provide mid-day meals to their own students. This is not merely a question of municipal permissions for what has been described in these papers as 'a cooking shed'. This is a question of whether these schools have proper, hygienic and safe food preparation facilities with adequate ventilation, drainage, water supply, sanitary facilities, garbage disposal, etc according to the standards under the Food Safety and Standards Act 2006 and according to the standards set in corporation law.

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7. The reason that this becomes important is the wording of prayer clause (a). These Trusts do not say in this prayer that they are in a position to cook these meals themselves. They describe Mr Vashi's clients as "Contractors" and that is decidedly less than generous. That Mahila Udyog Sanstha has established a large, fully equipped kitchen that meets necessary standards. It is prepared to receive the food grains and undertake a distribution of the mid-day meal scheme in a safe, controlled and hygienic manner to all the schools including the Petitioner's Trusts and Schools. Mr Bubna for these minorities does not want to be subjected to any centralized food distribution system by what he described as a "contractor".

8. He claims now, despite the wordings of prayer clause (a), that the Minority Trusts and schools will cook the food themselves. He claims that they have adequate facilities.

9. We have every reason to doubt the correctness of these instructions. The existing reports at page 165 of the present Petition indicate substantial non-compliance inter alia with fire safety norms. Exhibit "D" at page 37 of the Mahila Udyog Sanstha Petition shows that the Petitioner's Schools are not amongst those listed as standards-compliant.

10. The State Government's approach is straightforward. There is no absolute prohibition on a school receiving food grains and each school preparing a mid-day meal itself and in-house, provided it has the necessary supporting infrastructure and maintains the necessary standards. It is equally not necessary for a school to have this

905.ASWP-9556-2022.DOC infrastructure. Instead, it may receive the mid-day meal from a provider such as the Mahila Udyog Sanstha represented by Mr Vashi. This submission by Mrs Bhende is completely correct. It is in line with the statutory framework. Mr Kate for the municipal authorities is in accord with this submission.

11. The in-between position that Mr Bubna implicitly suggests, viz., that a school will be entitled to receive food grain and cook the meal apparently without requiring to meet and maintain standards, is not a submission that appeals to us in the least. Since Mr Bubna says that his clients' schools are fully compliant, we will ask the Municipal Corporation to submit an affidavit with an updated inspection report of all the Petitioners' schools with photographs. In particular, the report must address all relevant concerns including

-- but not limited to -- the square foot area available for cooking, the actual fittings in the kitchen and whether they are of proper quality, whether the so-called kitchen sheds are temporary and unfinished or are permanent authorized structures, whether these meet the requisite sanitary, hygiene and fire safety norms, have running water for washing, adequate potable water supply for cooking and for staff, sanitary facilities, waste disposal, ventilation, lighting, and whether there is full time staff available for the kitchen and for handling received food grains. The report must also indicate whether there are proper systems in place for inventory and stock taking. On no account do we want this to be used as a method of pilfering food grains or diverting them elsewhere than their intended purpose.

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12. Our listing above is indicative, not exhaustive. The report may include, in addition, comments about the quality of equipment and materials in the kitchens, etc. Kitchen design for food preparation on scale is not, as the Trusts and Schools seem to suggest, simply a matter of throwing produce into a pot, lighting a fire under it and hoping for the best.

13. Mr Bubna complains that the inspection reports disclosed in his Petition were all "behind the back" of the Petitioners. He says that they were taken without notice. In fact, this is precisely what we want -- that no notice should be given. The Trusts' and Schools' preparedness and suitability is not something that can be run up hastily to prepare for an advance-intimation inspection. These kitchens must be standards-complaint at any time. Therefore, we do not want the Municipal Corporation to give any of these schools advance notice. We have every reason to believe that overnight some sort of arrangement will be made to display ostensible compliance. No such notice is to be given for the purposes of compliance with this order. The Municipal Corporation inspectors may visit the schools at any time during working hours (not just school timings, which may be shorter) on any day.

14. The Municipal Corporation affidavit is to be filed by 22nd February 2023.

15. Until the next day, we permit the Mr Bubna's clients to receive Mid-Day Meals from the Mahila Udyog Sanstha, Mr Vashi's clients.

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16. List the Petition on 28th February 2023.

(Neela Gokhale, J)

(G. S. Patel, J)

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