

**HIGH COURT OF MADHYA PRADESH : PRINCIPAL SEAT AT JABALPUR**

**(Single Bench : Hon'ble Shri Justice Vivek Agrawal)**

**W.P No. 7486 of 2019**

Aman Bachat Mahila Swa Sahaiyata Samuh Rahatgarh & ors

Vs.

The State of M.P & ors;

**W.P No. 9426 of 2019**

Jai Maa Beejasen Swa Sahayta Sauh Aachwal Ward Bina & ors

Vs.

The State of M.P & ors;

**W.P No. 15608 of 2019**

Shri Krisna Self Help Group Khurai & ors

Vs.

The State of M.P & ors;;

**W.P No. 15610 of 2019**

Rahmat Bachat Sakh Samuh Rahatgarh & ors

Vs.

The State of M.P & ors;;

**W.P No.15795 of 2019**

Shri Banke Behari Self Help Group Sahpur & ors

Vs.

The State of M.P & ors; ;

**W.P No. 16040 of 2019**

Nav Jagrati Swa Sahyta Samooh Makaroniya Sagar through Smt.

Shashi Pandey & ors

Vs.

The State of M.P & ors;

**W.P No. 16660 of 2019**

Om Sai Ram Self Help Group Garakota & anr

Vs.

The State of M.P & ors;

**And**

**W.P No.18469 of 2019**

Shiv Shankar Self Help Group Sahpur & ors

Vs.

The State of M.P & ors;

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Shri Shyam Yadav, learned counsel for petitioner in W.P No. 7486/19, W.P No.15608/19, W.P No.15610/19, W.P No.15795/19, W.P No.16660/19 and W.P No. 18469/19.

Ms. Sanjna Sahni, learned counsel for petitioner in W.P No.9426/19.

None for petitioner in W.P No. 16040/19

Shri Ashish Anand Bernad, learned Deputy Advocate General for the respondent/State.

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**Order**  
**{ 04/12/2021 }**

**Per Vivek Agrawal, J :**

These bunch of petitions have been filed by various Swashayata Samuh challenging the act of the respondents in amending the directions, rules, and conditions for execution of Mid-Day Meal Programme in urban areas as is contained in office memo dated 26/07/2016 passed by the Deputy Secretary of Panchayat & Rural Development Department providing for Centralized Community Kitchen Shed arrangement for supply of Mid-Day Meal in urban areas.

**2.** Learned counsel for the petitioners submit that as per provisions contained in order dated 12/09/2005, it is evident that State Government had envisaged an opportunity to provide self employment to the members of women self help group while providing Mid-Day Meal in primary schools and categorically noted that if aim and utility of Mid-Day Meal programme is deliberated upon then this scheme provides an opportunity to connect poor women with activity of self employment through self help groups. It

is submitted that this aim and object has been lost sight of while issuing order dated 26/07/2016 providing for Centralized Community Kitchen Shed arrangement for supply of Mid-Day Meal in urban areas.

**3.** Learned counsel for petitioner submits that several women will lose their jobs and in fact it is evident that work has been granted to a Delhi based company. She further submits that provisions contained in the original scheme cannot be changed by way of amendment and on these grounds impugned order providing for supply of Mid-Day Meal through Centralized Community Kitchen Shed is illegal and arbitrary thus deserves to be set aside.

**4.** Shri Bernad, learned Deputy Advocate General for the State in his turn submits that in a connected petition State has taken a stand that Union of India has notified Mid-Day Meal Rules, 2015 under National Food Security Act, 2013. It is submitted that Rule 5(2) provides that “.....schools in urban area may use the facility of centralized kitchens for cooking meals wherever required in accordance with the guidelines issued by the Central Government and the meal shall be served to children at respective schools only”.

**5.** It is further submitted that National Programme of Nutritional Support to Primary Education, 2006 (Mid-Day Meal Scheme) is governed under the guidelines issued by Union of India and as per these guidelines also there is provision for association of voluntary organizations for the purposes of supply of cooked mid-day meal and resource support to the programme.

**6.** It is submitted that Clause 3.6 (ii), provides and reads as under:-

**3.6 Management at the Local Level:-**

(i)....

**(ii) Responsibility for Cooking/Supply of Cooked Mid-Day Meal**

As far as possible, responsibility for cooking/supply of cooked mid-day meal should be assigned to one of the following:-

- (a) Local women's/mothers' Self-Help Group,
- (b) Local Youth Club affiliated to the Nehru Yuvak Kendras,
- (c) A voluntary organization fulfilling requirements laid down in para 3.9, and
- (d) By personnel engaged directly by the VEC/SMDC/PTA/Gram Panchayat/ Municipality.

**7.** Further Clause (iii) specifically provides which reads as under:-

(iii) In urban areas where a centralized kitchen setup is possible for a cluster of schools, cooking may wherever appropriate, be undertaken in a centralized kitchen and cooked hot meal may then be transported under hygienic conditions through a reliable transport system to various schools. There may be one or more such nodal kitchen(s) in an urban area, depending on the number of clusters which they serve."

Thus reading the provisions of the Rules contained in Rule 5(2) of Mid-Day Meal Rules, 2015, so also the guidelines issued by the National Programme of Nutritional Support to Primary Education, 2006 as quoted above, it is evident that both the guidelines as well as Rules provides for operationalizing centralized kitchens in urban areas.

**8.** After hearing learned counsel for the parties and going through the record, it is evident that the guidelines of 2006 makes it

abundantly clear that in 1925, a Mid Day Meal Programme was introduced for disadvantaged children in Madras Municipal Corporation. By the mid 1980s three States viz Gujrat, Kerala and Tamil Nadu and the Union Territory of Pondicherry had universalized a cooked Mid Day Meal Programme with their own resources for children studying at the primary stage. It is mentioned that school meal programmes exert a positive influence on enrollment and attendance in schools. A hungry child is less likely to attend school regularly. Hunger drains them of their will and ability to learn. Chronic hunger can lead to malnutrition besides stopping physical and mental growth of children. Malnourished child is susceptible to diseases like measles or dysentery, which can have grave consequences. Malnutrition adversely affects Universalization of Elementary Education.

**9.** It is also mentioned in the background that apart from enhancing school attendance and child nutrition, mid day meals have an important social value and foster equality. It helps child learn to sit together and share a common meal, which is expected to help in erosion of caste prejudices and class inequality. It also brings gender equality and helps in reducing the gender gap in education by enhancing female school attendance, and therefore with a view to enhance enrollment, retention and attendance and simultaneously improving nutritional levels among children, the National Programme of Nutritional Support to Primary Education (NP-NSPE) was launched as a Centrally Sponsored Scheme on 15<sup>th</sup> August, 1995.

**10.** Thus, it is evident from the submission made by learned counsel for the petitioners that the main purpose of Mid-Day Meal Programme is to help earn employment for marginalized women who are members of women self help group is not correct because that purpose may be ancillary but not main object of the Mid Day Meal.

**11.** In case of **Commercial Tax Officer, Rajasthan Vs. M/s Binnani Cement Ltd & another, 2014(3) SCR 1**, the Supreme Court has held that where a statute contains both a general provision as well as specific provision, the later must prevail i.e. where a general statute and a specific statute relating to the same subject matter cannot be reconciled, the special or specific statute ordinarily will control. The principle finds its origin in latin maxim of '*generalia specialibus non derogant*' ie general law yields. In the present case, there is no statutory provision for enlisting support of self help groups consisting of marginalized women, to provide Mid-day meals.

**12.** Chapter 6 of the National Food Security Act, 2013 deals with women empowerment and provides for treating eldest woman, who is not less than 18 years of age of every household eligible to be the head of household for the purpose of issue of ration card.

**13.** Schedule II prescribes nutritional standards according to which meal has to be prepared in accordance with the mid day meal guidelines issued by the Central Government from time to time as is provided in sub-rule (1) of Rule 5. There is no prescription for providing work exclusively to women self help groups and since

there is statutory provision as contained in sub-rule (2) of Rule 5 of Rules of 2015, administrative instructions on which lot of reliance has been placed by learned counsel for the petitioners will not supersede the statutory provisions as has been held in the case of **B.N. Nagarajan Vs. State of Mysore, AIR 1966 SC 1942: Sant Ram Sharma Vs. State of Rajasthan and others, AIR 1967 SC 1910: Union of India Etc & others Vs. Majji Jangamayya & others, AIR 1977 SCC 757** so also in case of **Naga People's Movement of Human Rights Vs. UOI & others, AIR 1998 SC 431**, that executive instructions cannot override the statutory provisions.

14. Thus when tested on touch stone of these legal provisions then it is evident that there is statutory provision contained in Rule 5(2) of Rules of 2015 for establishment of centralized kitchens for cooking meals in urban area and also in light of the fact that ancillary purpose of providing employment to marginalized women cannot overtake the main purpose and object of Mid Day Meal Programme, these petitions fail and are dismissed.

**(Vivek Agarwal)**  
**Judge**

**The High Court of Madhya Pradesh, Principal Seat At Jabalpur**

1	Case Number	W.P No.7486/2019 & connected 7 cases
2	Parties Name	Aman Bachat Mahila Swa Sahaiyata Samuh Rahatgarh & ors Vs. The State of M.P & ors
3	Date of Order	04/12/2021
4	Bench Constituted of	Hon'ble Vivek Agrawal, J.
5	Order delivered by	Hon'ble Vivek Agrawal,
6	Whether approved for reporting	Yes
7	Name of the counsel for parties	Shri Shyam Yadav, and Ms. Sanjna Sahni learned counsel for the petitioners. Shri Ashish Anand Bernad, learned Deputy Advocate General for the respondent/State
8	Law laid down	<p><b>1.</b> <i>When a statute contains both a general provision as well as specific provision, the later must prevail i.e. where a general statute and a specific statute relating to the same subject matter cannot be reconciled, the special or specific statute ordinarily will control.</i></p> <p><b>2.</b> <i>Executive instructions cannot override the statutory provisions.</i></p> <p><b>3.</b> In terms of the provisions contained in the guidelines for providing mid day meals so also in terms of the Mid Day Meal Rules, 2015 there is no provision for providing mid day meal with a view to substantially help self help groups but that is ancillary to the main aim of providing nutritional support to the children with a view to ensure better attendance and reduce adverse effects to contribute towards the universalization of Elementary Education.</p>
9.	Relevant Para	11 & 13.

(Vivek Agrawal)  
Judge