

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6226 of 2015

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B. Chand Foundation having its registered office at Bhariya Rahika, Mahananda Colony, B.M.P. - 7, Katihar through its Secretary Chandana Kumari W/o Sanjay Kumar Jha resident of Bhariya Rakhika Chowk, P.S. - Sahayak (Katihar), District - Katihar.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Social Welfare Department, Govt. of Bihar, Patna.
2. The Managing Director, Women Development Corporation, Bihar, Patna.
3. The District Magistrate, Katihar.
4. The District Programme Officer, Katihar.
5. The District Welfare Officer, Katihar.
6. The District Project Manager, Women Development Corporation, Katihar.
7. The Sub-Divisional Officer, Katihar.
8. The Superintendent of Police, Katihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Narayan, Sr. Advocate
Mr. Bhola Prasad
For the Respondent/s : Mr. Binod Kumar
Mr. AJAY BIHARI SINHA

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 08-12-2015

The writ petitioner is an organization registered under the Societies Registration Act and claims working for the development and welfare of women. One of the avowed objectives of the petitioner society is implementation of the social and welfare schemes of the government and was thus chosen to run a Women's Help Line and Short Stay Home (for short 'SSH') for women under the Mukhyamantri Nari Shakti Yojna (for short 'the Yojna'). The guidelines for selection of such organization to run the Help Line and the SSH for women is Annexure-E of the counter affidavit of



Respondent nos. 3 and 4. Under the said Yojna, the State is required to set up a Help Line in every district to combat diverse atrocities hurled on women in the society. A SSH is also to be established and run for all districts. The Women Development Corporation (for short 'the Corporation') is required to set up such Help Line /SSH. The another option of the government is to select a non-government organization like the petitioner who has unblemished track record and requisite expertise or experience. Under the alternative scheme as provided in the Yojna, the petitioner organization was selected to run the Help Line and SSH for women in the district of Katihar. By the impugned order dated 15th January, 2015, passed by the District Magistrate, Katihar, the petitioner society has been directed to close the SSH/ Help Line and all the female inmates are directed to be shifted to another SSH established in the nearby district of Khagaria. All papers, documents, registers and other facilities provided by the Corporation have been directed to make over to the Project Manager, Katihar. The said order has been passed in the light of the communication issued by the Managing Director of the Corporation dated 09.01.2015 (Annexure-3). These two orders are under challenge in the present writ petition.

Heard Mr. Rajendra Narayan for the petitioner, A.C. to S.C. 19 for the State and Mr. Binod Kumar for the Corporation.

It has been submitted that the impugned order has been passed

without affording an opportunity of hearing to the petitioner society. The same is, therefore, violative of principles of natural justice. The impugned orders are result of the colourable exercise of power of the respondent guided by some rival organization. Although, an agreement is required to be entered between the parties for running such Help Line or SSH for women as per the format enclosed with the guidelines of the Yojna, but in the case of the petitioner society, no such agreement was entered and it was allowed to run the Help Line and SSH since last several years. The orders impugned in the writ petition are prejudicial to the interest of the petitioner organization and, as such, the authorities were duty bound to provide an opportunity for filing show cause or representation before passing the order.

The Counsel for the State as well as the Corporation have, however, supported the impugned order(s).

A brief background emanating from the case file in which the action has been taken against the petitioner organization is as under:-

One of the inmates of the petitioner society namely Pushpa Kumari was found pregnant and while being carried to the Sadar Hospital, Katihar, she delivered a baby child. At the hospital, she died. Her dead body was found deserted on the bank of Kari koshi river. Indisputably, the deceased was handed over by the district administration to the SSH of the petitioner who was her lawful



guardian. On retrieval of the dead body, an F.I.R. was lodged and the matter was investigated. In recent past, another inmate (Sambasiny) namely Muskan Begum had fled from the petitioner's Help Line/SSH. An enquiry with regard to the death of Pushpa Kumari was made by the district administration which found incriminating materials against the petitioner society. Prior to this, three other inmates (Sambasinies) from the SSH of the petitioner had fled who were later recovered. In relation to the said occurrence, in which criminality of the petitioner society was found, an F.I.R. was also lodged vide Katihar Town P.S. Case No. 361 of 2013 dated 19.7.2013 under sections 363, 366A and 376 and sections 5 and 6 of Prevention of Immoral Trafficking Act. Prior to this, another F.I.R. being Katihar Town P.S. Case No. 142 of 2011 was also registered against the petitioner in which charge-sheet was submitted under sections 469, 468, 471 and 420 IPC. These incidents reflected complete mismanagement of the SSH/Help Line and mishandling of the inmates besides raising serious apprehension of malfunctioning of the SSH in which the inmates were exploited and there was serious threat to their life and safety.

Indisputably, the SSH or Help Line run by NGO's is one of the alternatives as provided in the guidelines (Margdarshika). The State Counsel has drawn attention of the Court to Clause (5) of the Margdarshika (Annexure-E) to urge that any such NGO selected to run Help Line or SSH shall be on the basis of an agreement or office

order for a period of 12 months as specifically spelt out in the format of the agreement. On finding any deficiency in the running of the SSH or the Help Line even during the pendency of the agreement period, the State shall have power to cancel such office order or the agreement reached between the parties. Such power has been vested with the District Magistrate or the Managing Director of the Corporation.

If the series of incidents indicated by the respondents in their counter affidavits provide material to come to a conclusion that the SSH or Help Line run by the petitioner organization is not being run properly then the State respondents is adequately vested with power to direct stoppage of such SSH or Help Line. What is paramount is the safety and welfare of the female inmates of the SSH. The matter relates to the human beings in a SSH which is a sensitive matter. The series of incidents or facts, which could be interlinked, give rise to a strong suspicion of mishandling or mismanagement touching on the border of criminality, the administration being the best judge of the circumstances of the necessities can pass orders. After all, the selection of the petitioner society was under the Margdarshika and not under any statutory provision. Obviously, there is no violation of any statutory provision or crystalised legal rights. To top it all, it has been brought to the notice of the Court that while the criminal cases lodged against the petitioner organization was under investigation, the

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petitioner herself requested the District Magistrate vide communication dated 28.12.2014 (Annexure-G series) for shifting of the female inmates of the SSH to another SSH as she was unable to shoulder the responsibility in the circumstances detailed therein relating to these incidents several representations were filed by the petitioner society, It is not, therefore, a case where the action under challenge is taken as a surprise to the petitioner. In such matter, non-issuance of a notice prior to action, in my view, shall be of not much consequence. Indisputably, the petitioner was running the Help Line/SSH since last several preceding years. Obviously, this was on the basis of office order and not agreement as claimed by the petitioner. In such view of the matter, the withdrawal of the office order resulting in the impugned action cannot be said to be wholly arbitrary or unjustified, particularly, when the matter relates to safe handling of human beings who are either destitute(s) or sufferer of the onslaught of the society and the corresponding duty on the State.

For the reasons discussed above, I am unable to find any merit in the case.

The writ application is dismissed.

(Kishore Kumar Mandal, J)

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