

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No. 17149 of 2015 (O&M)

Date of Decision: 15.09.2015

Satvir and another

--Petitioners

Versus

State of Haryana & others

--Respondents

**CORAM:- HON'BLE MR.JUSTICE S.J. VAZIFDAR.
HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.**

Present:- Mr. S.S. Sahu, Advocate for the petitioners.

Mr. Rahul Dev Singh, D.A.G., Haryana.

TEJINDER SINGH DHINDSA, J. (Oral)

The Medical Superintendent, Lok Nayak Jai Parkash Hospital, Kurukshetra issued a notice inviting tenders for outsourcing of security services at the hospital for a period of one year on contract basis. Vide letters of offer/acceptance carrying even date i.e. 20.7.2015 at Annexures P-4 and P-5 the petitioners herein were granted the work order for providing security services and additional support services at the hospital for a period of one year i.e. 4.8.2015 to 3.8.2016.

2. The instant petition has been filed impugning two separate orders both dated 12.8.2015 at Annexures P-6 and P-7 in terms of which the contract awarded in favour of the petitioners, has been terminated.

3. Counsel for the petitioners has contended that the action of respondent no.4 in terminating their contract is arbitrary and patently illegal. It has been argued that even though in the impugned orders, which are identically worded, it has been mentioned that the termination is in pursuance to the recommendations of an Inquiry Committee and as per directions of the Civil Surgeon, Kurukshetra on account of the petitioners

having committed “**huge irregularities**” still no such inquiry was conducted and in any case the petitioners had not been associated with the same.

4. Upon notice of motion having been issued, written statement of the Medical Superintendent of the hospital has been filed on behalf of all the official respondents. The action of termination of contract is sought to be justified by stating that complaints had been filed by the workers, who had earlier been outsourced by the previous contractor and the allegations were that the present petitioners had been demanding a bribe of Rs.20,000/- each for providing them a job in pursuance to the contract awarded for the current year. Stand on behalf of the State is that Inquiry Committee had been duly constituted and it was after following due process of law, a decision has been taken to terminate their contract.

5. Counsel for the parties have been heard.

6. The scope of judicial scrutiny in such matters would be extremely limited and would be confined to the decision making process rather than the decision itself. To examine the validity of the orders dated 12.8.2015 at Annexures P-6 and P-7 whereby contract awarded to the petitioners had been terminated, we had called upon Mr. Rahul Dev Singh, learned D.A.G., Haryana to produce the original records in the nature of the recommendations made by the Inquiry Committee, statements that may have been recorded during the course of inquiry as also other documents and evidence duly adduced before the Inquiry Committee. The requisite record was duly produced before us and has been perused.

7. We are of the considered view that the inquiry conducted at the hands of a Committee was seriously flawed and the impugned orders passed

against the petitioners in pursuance to such inquiry process cannot sustain.

For taking such view the following reasons are assigned:-

(i) The process of inquiry was apparently initiated on account of a communication dated 5.8.2015 having been written by the Civil Surgeon, Kurukshetra and addressed to respondent no.4 i.e. the Medical Superintendent of the hospital in question on the subject of grave irregularities having been committed by the outsourcing contractors i.e. the present petitioners. In terms of such communication directions have been issued to respondent no.4 to conduct an inquiry on the allegations that the contractors had taken/demanded huge sums of money for appointment of employees. The record also reveals that the employees of the previous contractor had made complaints in the nature of bribes to the extent of Rs.20,000/- having been demanded by the present petitioners for engaging them and providing them a source of livelihood on account of the contract for the current year having been awarded. Even though, such complaints were targeted specifically against the present petitioners, still, copies of the complaints were never supplied to them.

(ii) Inquiry Committee was constituted by respondent no.4 to go into the allegations of **huge irregularities** against the petitioners. Specific articles of charge were never formulated. It is not permissible to hold an inquiry on vague charges. As and when action is proposed to be taken and inquiry is to be initiated definite articles of charge have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstances which is proposed to be taken into consideration. Unless such course of action is followed it would never give a clear picture to the charged person to make out an effective

defence as he would be unaware of the exact nature of the allegations against him and what kind of defence he should put up for rebuttal thereof.

(iii) Even though, the record would reveal that statement of petitioner no.1 had been recorded by the Inquiry Committee on 8.8.2015 and such statement at the bottom even carries the signatures of petitioner no.2, wherein the allegations as regards “**irregularities**” having been denied, yet, the Inquiry Committee while furnishing recommendations on 11.8.2015 for termination of the contract had recorded the statements of the complainants and certain other witnesses. Concededly such statements were never supplied to the petitioners and they were not afforded a chance to confront and cross-examine the complainants and other witnesses.

(iv) The recommendations of the Inquiry Committee are contained in a report dated 11.8.2015 which has recorded a conclusion that money transactions have taken place while providing employment to the employees by the petitioners and that trained manpower had not been provided. Accordingly, Inquiry Committee recommended to respondent no.4 i.e. The Medical Superintendent of the hospital for termination of the contract by giving notice of 24 hours. Strangely even though the conclusion has been arrived at by the Committee and drastic recommendations have been made, yet, there is no specific finding recorded by the Committee based on the oral or documentary evidence that may have been adduced during the course of inquiry.

(v) Yet another infirmity that has been noticed is that the recommendations of the Inquiry Committee have been blindly accepted by respondent no.4. We certainly would not expect the competent authority to record detailed reasons for termination of a contract but the original records

must necessarily reflect application of mind by respondent no.4 on the recommendations made by the Inquiry Committee prior to taking a decision to terminate the contract. We find such application of mind totally lacking.

8. In view of the facts and circumstances noticed herein above, we hold that the inquiry conducted by the official respondents is vitiated having been conducted in violation of the principles of natural justice. The impugned orders dated 12.8.2015 at Annexures P-6 and P-7 and which entail adverse civil consequences cannot sustain on the basis of an inquiry which has not followed due procedure as per law.

9. We, therefore, intend remanding the matter for a fresh inquiry. We are, in the facts of this case, inclined to permit the petitioners to continue working under the contract although it is one relating to security for more than one reason. There is no allegation against the petitioners regarding the quality of services provided. There is no allegation against the petitioners with respect to their performance of the contract qua the official respondents. The allegations made have not been substantiated by or in a proper inquiry.

10. In view of the above, present petition is allowed. Impugned orders dated 12.8.2015 at Annexures P-6 and P-7 are set aside. Matter is remanded to the Director General, Health Services, Haryana, respondent no.2 for conducting an inquiry afresh against the petitioners strictly in consonance with the principles of natural justice, fair play and equity. It would be open for respondent no.2 to conduct an inquiry himself or at the hands of any other senior responsible official of the Health Department, State of Haryana. Such inquiry be initiated and finalized within a period of four weeks from the date of receipt of a copy of this order. Till such time

the petitioners are permitted to continue with the work allotted to them in terms of the letters of offer/acceptance dated 20.7.2015 at Annexures P-4 and P-5. Further action as regards continuation of the work contract in favour of the petitioners up to 3.8.2016/termination thereof and calling for fresh tenders would depend on the outcome of the fresh inquiry that has been directed.

Petition is disposed of in the aforesaid terms.

(S.J. Vazifdar)
Acting Chief Justice

(Tejinder Singh Dhindsa)
Judge

15.09.2015
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Whether to be referred to Reporter? Yes.