

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 1921 of 2016

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Bindeshwari Singh aged about 54 years Son of Late Mithla Prasad Proprietor of Eliot Folcon's having his Office at Dheeraj Commercial Complex 3rd Floor Boring Road P.S. S.K. Puri, District – Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Health Department having his office at Vikas Bhawan P.S. Sachivalaya, District – Patna.
2. The Director-in-Chief Health Department having his office at Vikas Bhawan, P.S. Sachivalaya, District – Patna.
3. The Superintendent Patna Medical College and Hospital having his office at Patna Medical College and Hospital, P.S. Pirbahore, District – Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 09-03-2016

Heard learned counsel for the parties.

The writ application has been filed for a direction to the respondents to allow him to employ 75 extra security personnel based on a decision taken by the Government for the purpose of smooth working of the Patna Medical College and Hospital (hereinafter referred to as the 'PMCH'). It appears that pursuant to filing of the writ petition, notice in the daily newspaper has also been published on 28.01.2016 inviting tender for providing security services in the PMCH.

Learned counsel for the petitioner submits that as per the initial agreement of three years i.e., from 01.07.2013 to 30.06.2016, the petitioner was given the contract of providing 75 security personnel and was doing the work satisfactorily but due to



the pressure of work and requirement of extra hands, the authorities themselves felt the need that more security personnel were required for the job and accordingly a recommendation was made by the PMCH authorities to the Government which, by letter No. 1283(1) dated 20.11.2015 approved the increased strength of security personnel to be employed on the PMCH campus by further 75. It is thus submitted that once the enhancement has been made keeping in mind the security requirement, the petitioner may be allowed to provide the extra hands at least till the period his contract is valid. Learned counsel submits that even in the initial notice inviting tender pursuant to which the contract was given to him, there was a stipulation that the number of personnel may be enhanced lateron. Learned counsel submits that the authorities have tried to make out a case against him by giving instances of the security personnel deployed by the petitioner not to have performed their duties satisfactorily. However, it is submitted that the so called misconduct besides being beyond the terms of duty of the security personnel provided by the petitioner, no supporting evidence by way of CCTV footage etc. was provided so as to meet the charge. Learned counsel submits that as far as the allegation of one of the personnel having misbehaved with the Superintendent of PMCH is concerned, prompt action was taken in terms of the agreement and service of the said person was terminated within 24 hours and intimation given to the authorities. It is submitted that for no valid reason, the authorities are withholding the

enhancement of security personnel which is having an effect on the general maintenance of order on the PMCH campus. Learned counsel has also referred to certificate issued by the Superintendent, PMCH dated 01.11.2014 in which it is clearly written that the service provided by the petitioner is satisfactory.

Learned counsel for the State submits that right from the middle of the year 2015, the personnel supplied by the petitioner were found either to have acted in an indisciplined manner or have not performed, the duty which was required to be performed for which repeatedly notices were given but still the work was not satisfactory. It is further submitted that the petitioner was given the contract for supplying security personnel at three locations in PMCH and not the whole campus and thus the petitioner cannot have any right to claim that even the enhanced personnel required for the purposes of maintaining order on the PMCH campus should be through his firm without him having taken part in the procedure as prescribed by law to ensure that all parties have an equal chance to take part in the tender process. Learned counsel submits that for the said purpose, the advertisement has already been published on 28.01.2016. He further takes a categorical stand that the contract with the petitioner's firm till date has not been terminated and thus it is an imaginary fear in his mind with regard to the action of the respondents and further that for the period of his contract, as of now, he shall not be disturbed subject to his performance in

future, till the time the contract is valid. He further submits that pursuant to the tender notice dated 28.01.2016, the petitioner's firm has not applied for the contract.

At this juncture, by way of reply, learned counsel for the petitioner submits that he had gone to the office of the Superintendent of PMCH for applying but was told that due to there being error in the tender notice, the same was going to be cancelled and thus, he did not apply. He further submits that in the notice dated 26th July, 2015, the date of the alleged incident which took place in the campus is mentioned as 25.11.2015 whereas the signature on the said notice is dated 24.11.2015 which clearly indicates that the letter is an afterthought and manufactured document.

Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find that the petitioner has any enforceable right for enhancement of the security personnel of PMCH for the simple reason that when he had taken the contract, he knew the number of personnel he was allowed and he has never even taken up the matter with the authorities for enhancement citing any difficulty in performing the duty. It is further not the case of the petitioner that the places where he has been allotted the security work is tried to be encroached upon or he is being disturbed from the same or prevented from discharging the duties by the authorities. Thus, in the considered opinion of the Court the petitioner has not made

out a case for grant of the relief sought for in the writ petition.

However, having been made aware of the tender notice dated 28.01.2016, though it has been explained by learned counsel for the State that it was meant to take effect from 01.07.2016, but the language or the notice neither indicating the same nor indicating the location of the security personnel who were sought to be hired for the said purpose, the Court finds that the notice is inherently defective and any award of contract pursuant to the said notice cannot be sustained.

In view of the aforesaid, the notice published in the daily newspaper dated 28.01.2016, copy of which has been made Annexure-E to the counter affidavit filed on behalf of the respondent no. 3, stands quashed. However, the respondents are at liberty to re-advertise the matter in accordance with law either for fresh settlement of the entire campus or keeping in mind that there is already a valid contract existing for the said work with the petitioner at least till 30.06.2016, till the time it is not terminated in accordance with law, if already not cancelled by the respondents.

The writ petitions stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

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