

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 7448 of 2012

1. Vanvasi Seva Kendra, Adhaura, Po & Police Station - Adhaura, District- Kaimur through its Secretary.
2. Sadanand Rai, Son of Late Chandradeo Rai, Secretary, Vanvasi Seva Kendra, Adhaura, Resident of Village - Dora, Police Station - Sadat, District - Gazipur (UP).

..... Petitioners

Versus

1. The State of Bihar through Principal Secretary, Department of Health, Medical Education & Family Welfare, Government of Bihar, Patna
2. The Principal Secretary, Department of Health, Medical Education & Family Welfare, Government of Bihar, Patna
3. The Secretary, Department of Health & Family Welfare-Cum-Executive Director, State Health Society, Government of Bihar, Patna
4. The State Programme Officer, State Health Society, Govt. of Bihar, Patna
5. The District Health Society through the District Magistrate-Cum-Chairman, District Health Society, Saran at Chapra
6. The District Magistrate, Saran at Chapra
7. The District Health Society through the District Magistrate-Cum-Chairman, District Health Society, Aurangabad
8. The District Magistrate, Aurangabad
9. The Deputy Development Commissioner-Cum-Vice Chairman, District Health Society, Saran at Chapra
10. The Deputy Development Commissioner-Cum-Vice Chairman, District Health Society, Aurangabad
11. The Civil Surgeon-Cum-Chief Medical Officer-Cum-Member Secretary, District Health Society, Saran at Chapra
12. The Civil Surgeon-Cum-Chief Medical Officer-Cum-Member Secretary, District Health Society, Aurangabad

..... Respondents

Appearance:

For the Petitioners : Mr. Ashok Kumar Singh, Sr. Advocate
Mr. Prabhat Kumar Singh, Advocate

For the State : Mr. S.K. Singh, AC to AAG IV

For the State Health Society : Mr. K.K. Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 06-09-2016

Heard learned senior counsel for the petitioners and learned

counsel for the respondents State Health Society.

2. The present writ petition has been filed with the following prayers —

“(i) For issuance of an appropriate writ/writs, order/orders, direction/directions in the nature of a writ of certiorari for quashing the order contained in Memo No. 1158 dated 10.02.2012 (Annexure-13) issued by the Secretary, Health Department-cum-Executive Director, State Health Society, Bihar, Patna by whom the selection of the petitioner-Vanvasi Seva Kendra (hereinafter to be referred as ‘the Kendra’) for running Nutritional Rehabilitation Centres (hereinafter to be referred as ‘NRC’) in the districts of Saran and Aurangabad has been cancelled with immediate effect, and the Kendra blacklisted contrary to the provisions of the Memorandum of Understanding (hereinafter to be referred as ‘MoU’) signed by the Civil Surgeon-cum-Chief Medical Officer-cum-Member Secretary of the District Health Society, Aurangabad and the Secretary of the Kendra as also the Civil Surgeon-cum-Chief Medical Officer-cum-Member Secretary of the District Health Society, Saran (Chapra) and the Secretary of Kendra. Further the Kendra has been blacklisted not to participate in any bid of Health Department, State Health Society Bihar, District Health Societies, Medical Colleges, Hospitals, Institutions for five years and before passing such order no any opportunity of hearing whatsoever has been given to the petitioner-Kendra in violation of the principle of natural justice.

(ii) For quashing the subsequent order passed by the Member Secretary, District Health Society, Saran (Chapra) vide his letter contained in Memo No. 115 dated 11.02.2012

(Annexure-14) terminating the service being provided by the Kendra for running NRC in the district and blacklisted the Kendra.

(iii) For a direction to restore the running of the NRC at Aurangabad and Chapra by Kendra and to release the grant-in-aid in favour of the petitioners for the work done at Saran and Aurangabad for running NRC for payment of staff, who were duly employed by the Kendra for smooth functioning of the NRC and other establishment costs and also 10% of the total project cost as service charges as per MoU.

(iv) For issuance of any other relief or reliefs to which the petitioners may be found entitled to on the facts and circumstances of this case.”

3. At the outset, learned senior counsel for the petitioner, Mr. Ashok Kumar Singh, states that both Memoranda of Understanding dated 31.05.2011 and 30.05.2011 relating to the Districts of Saran and Aurangabad respectively, were operative only for a period of one year which has since elapsed and hence prayer no. (ii) and a part of prayer no. (iii) with regard to termination of services of the petitioner's NRC are not pressed, and the same are dismissed as such.

4. According to the petitioner, a registered NGO, an advertisement was published on 18.08.2010 in which the petitioner participated and was selected for running NRCs in the Districts of Saran and Aurangabad and for which the aforesaid two MoUs dated

31.05.2011 and 30.05.2011 were entered into between the parties. The terms of both MoU contemplated as follows —

“DHS will release an advance of Rs. 2,11,270/- to Vanvasi Seva Kendra to facilitate operationalization of NRCs specially for fixed assets and equipments for NRCs as per the guidelines provided on page 3 of EOI (Annexure-B). (This clause is applicable for 30 districts only).

An Advance of Rs. 1,02,500/- (i.e. 50% of the Rs. 2,05,000/-) maximum monthly running cost by Vanvasi Seva Kendra will be given to the Vanvasi Seva Kendra by the 10th of every month by DHS-Saran. The Vanvasi Seva Kendra will have to submit the bills for each month by the 5th Day of the next month. As per the actual, the DHS Saran will release the remaining amount of money to the Agency/NGO within 5 days of receiving the bills, i.e. by 10th of the month along with the 50% advance for the next month as per the guidelines provided on page 4 of EOI (Annexure B).”

5. By letter dated 06.06.2011 (Annexure-6), a show cause notice was received by the petitioner from the State Health Society, Bihar for cancelling the petitioner's selection and placing it in the blacklist for a period of five years in view of unnecessary delay in commencement of the NRC in the Districts of Saran and Aurangabad. In its reply dated 23.06.2011, the petitioner stated that the advance amount contemplated under the MoU had not been received and hence it had not been possible to purchase the requisite equipment and



apparatus. Moreover, it was pointed out that the premises proposed for the Aurangabad NRC were not found suitable and information in this regard had been given to the Secretary, District Health Society, Aurangabad. The alternative premises as proposed were found to be occupied and as such the petitioner informed that it would not be possible to commence work unless vacant possession of the premises was handed over. While these aspects have not been denied by the respondents, it is also not disputed by them that Rs. 2,11,270/- by way of advance for fixed assets and equipment was belatedly released to the petitioner on 13.07.2011 for Saran. A similar amount was received for Aurangabad as well. A further show cause notice dated 06.09.2011 (Annexure-10) relating to Saran NRC was issued to the petitioner, once again stating that the requisite equipment had not been purchased or relevant bills not submitted by the petitioner. It was thus alleged that the petitioner was not taking proper interest in setting up and running the Saran NRC. The petitioner was informed that he was required to commence the NRC within a period of one week, failing which it would be placed in the blacklist for a period of five years.

6. Learned senior counsel for the petitioner submits that the action of the respondents in passing the impugned order dated 10.02.2012 (Annexure-13) is wholly arbitrary and unsustainable in law, having been passed in violation of principles of natural justice and on extraneous considerations. It is submitted that in its reply to the



show cause letter dated 06.06.2011, the petitioner had informed regarding non-payment of advance to the petitioner for the two NRCs as well as the non-availability of proper premises for Aurangabad NRC, and these facts are not disputed by the respondents. The advance towards fixed assets was made available after an inordinate delay, which resulted in the petitioner's inability to commence the NRCs within time. The subsequent show cause notice dated 06.09.2011 was restricted only to Saran NRC and no such show cause notice was received for Aurangabad NRC. It is pointed out from the impugned order dated 10.02.2012 that even though the so-called shortcomings enumerated therein related only to the Saran NRC, the petitioner's selection has been terminated for both Saran and Aurangabad NRCs, and the petitioner has been placed in the blacklist for five years. It is submitted that the petitioner was never served with a copy of the letter No. 77 dated 30.01.2012 said to have been issued by the Civil Surgeon-cum-Chief Medical Officer-cum-Member Secretary, District Health Society, Saran, which forms the very basis for the impugned order of blacklisting. Such denial has resulted in violation of the principles of natural justice and caused serious prejudice to the petitioner.

7. Learned counsel for the respondent Society appears and opposes the writ petition. The impugned order dated 10.02.2012 is sought to be supported with the submission that there is no violation of natural justice as the impugned order was preceded by two show



cause notices dated 06.06.2011 and 06.09.2011 respectively. While the petitioner filed its show cause to the first notice by his letter dated 23.06.2011, it did not respond to the second show cause notice dated 06.09.2011. It is submitted that the impugned order has rightly been passed in view of the petitioner's default in not starting the NRCs within time, in terms of the MoUs.

8. Having heard the parties and on a consideration of the materials on record this Court finds merit in the writ petition. It is a matter of record that in response to the show cause notice dated 06.06.2011, the petitioner raised its objection with regard to non-payment of the advance for fixed assets and equipment. The specific statements made in the chart appearing at para 23 of the writ petition shows that the advance of Rs. 2,11,270/- was due for payment on 31.05.2011, but the same was paid on 13.07.2011 after a delay of almost one and half months, and this fact has not been controverted by the respondents. The fact of delay in payment of Rs. 1,39,150/- by way of advance for running costs which was due on 15.09.2011 but paid only on 28.11.2011, has also not been controverted. Learned counsel for the respondents has also not been able to show from the pleadings that the objection of the petitioner with regard to non-availability of vacant premises for Aurangabad NRC was addressed and resolved to enable the petitioner to start the work. Similarly, the respondents have also not been able to establish that a copy of the letter no. 77 dated

31.01.2012 issued by the Civil Surgeon-cum-Chief Medical Officer-cum-Member Secretary, Saran was ever supplied to the petitioner though such letter forms the very foundation of the impugned order.

9. In the above circumstances, it becomes evident that the respondents had themselves failed to fulfil their obligations in terms of the MoU by making timely payments of the advance amount towards fixed assets as well as monthly running costs, thereby preventing the petitioner from fulfilling its part of duties. The respondents have thus unjustifiably shifted the entire burden of responsibility to allege default on the part of the petitioner, subjecting it to various penalties. Moreover, the impugned order dated 10.02.2012 has been passed without supplying a copy of the letter No. 77 dated 31.01.2012 upon which it was founded to the petitioner, which resulted in clear violation of the principles of natural justice.

10. In this view of the matter, the impugned order dated 10.02.2012 to the extent that the petitioner has been blacklisted for a period of five years thereunder is hereby set aside.

11. As regards any dues that the petitioner may claim in respect of work done by Saran and Aurangabad NRCs, the petitioner shall be at liberty to represent before the concerned Civil Surgeon-Cum-Chief Medical Officer-Cum-Member Secretary, District Health Society, at Saran and Aurangabad (respondent nos. 11 and 12 respectively) within a period of three weeks from today. If any such representations

are filed within the stipulated period, the same shall be considered and disposed of, ensuring payment to the extent found due to the petitioner, within a period of six weeks from the date of receiving the petitioner’s representation. Any delay in payment of the admitted amount beyond the stipulated period as stated above, shall entitle the petitioner to receive payment together with simple interest at the rate of 9% per annum on the admitted amount calculated from the date when the amount became due till the date of its actual payment. In case the petitioner’s claim is found inadmissible, whether in whole or in part, the petitioner’s representation shall be disposed of by a speaking order in that regard.

12. The writ petition stands allowed with the aforesaid observations and directions.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	15.09.2016
Transmission Date	N.A.