

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14815 of 2013

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M/s Arunabhashree Society, a Society registered under the Societies Act, having its Registered Office at House No. M-19, Road No. 2, Sri Krishna Nagar, Patna- 800001 through its Authorized Signatory C.E.O. Mukesh Prasad son of Shri Prem Chand Prasad, Resident of Mahendru, P.S- Pirbahore, Town and District- Patna.

.... Petitioner

Versus

1. The Bihar State Health Society, through its Executive Director, Sheikhpura, Pariwar Kalyan Bhawan, Patna.
2. The Executive Director, The Bihar State Health Society, Sheikhpura Pariwar Kalyan Bhawan, Patna.
3. The Team Leader, Asha Resources Center, State Health Society Sheikhpura, Pariwar Kalyan Bhawan, Patna.
4. The District Health Society, Nawada through Civil Surgeon cum Member Secretary.
5. The District Health Society, Bhojpur through Civil Surgeon cum Member Secretary.
6. The District Health Society, Rohtas through Civil Surgeon cum Member Secretary.

.... Respondents

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Appearance:

For the Petitioner : Mr. S.D.Sanjay, Sr. Advocate

Ms. Anubhuti Modi, Advocate

For the State Health Society: Mr. Satyavrat Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 30-09-2016

Heard learned senior counsel for the petitioner, and learned counsel for the respondents.

2. The present writ petition has been filed for the following reliefs —

“[i] For quashing of the composite order dated 02.07.2013 bearing memo no. 5225 issued under the signature of the respondent no. 2, by which the petitioner has been informed about the cancellation of the tripartite agreement dated 29.02.2012 and at the

same time the blacklisting of the petitioner has been blacklisted for five years, as being wholly arbitrary, illegal and malafide;

[ii] For quashing of that part of the order dated 02.07.2013, by which without any show cause notice, and without any hearing on the point of blacklisting being wholly arbitrary, *mala fide* in law being passed unilaterally without any adjudication;

[iii] For a direction to the respondents to allow the petitioner to complete the work in the time schedule by extending of full co-operation and providing the required assistance to be provided by the respondent Society to enable the petitioner to complete the work within the time schedule;

[iv] For restraining the respondents from continuing with the order of termination by stopping the work and to take any coercive measures against the petitioner;

[v] For restraining the respondents from invocation of the Bank Guarantee of the petitioner lying with the respondents, and/or forfeiture of the Bank Guarantee; and/or for any other relief(s) for which the petitioner may be found entitled to in the facts and circumstances of the present case."

3. At the very outset Mr. S.D. Sanjay, learned senior counsel appearing for the petitioner, invites attention to the supplementary



affidavit, enclosing a copy of letter no. 1206 dated 10.12.2014 issued by the District Health Society (Annexure-13) wherein it is stated that the petitioner was liable to refund an amount of Rs. 3,19,763/- upon final settlement of accounts. It is stated that the amount of Rs. 3,19,763/- has since been refunded by the petitioner through RTGS, as evident from the petitioner's letter dated 06.01.2015 (Annexure-13/A). It is therefore, submitted that in view of these subsequent developments, the various reliefs sought, other than with regard to blacklisting, have now become infructuous and need no longer be pressed.

4. As regards part of the impugned order dated 02.07.2013 relating to blacklisting, Mr. S.D. Sanjay submits that the same has been passed wholly without jurisdiction and in violation of the principles of natural justice. He invites attention to memo no. 1513 dated 22.02.2013 issued by the team leader, Asha Resource Centre, State Health Society, Patna, requiring the petitioner to reply within one week thereof, and informing that failure to do so would result in steps being taken for cancelling the petitioner's selection and also for blacklisting. It is submitted that such letter cannot be treated as a show cause notice for blacklisting by any stretch of imagination, inasmuch as it has only been stated that steps for blacklisting the petitioner were contemplated in case no reply from the petitioner was received within a week therefrom. It is further submitted that the portion of the impugned order dated 02.07.2013 blacklisting the petitioner cannot be sustained as the same

has been passed by the Secretary, Health-cum-Executive Director whereas the show cause notice was not issued by him.

5. Learned counsel for the respondent-Society appears and has been heard. It is submitted that the order of the Secretary, Health-cum-Executive Director has been passed after grant of an opportunity of hearing to the petitioner and after consideration of the petitioner's reply furnished in response to memo no. 1513 dated 22.02.2013, which in turn had been issued by the Team Leader, Asha Resource Centre on instructions of the Secretary, Health-cum-Executive Director.

6. Having heard the parties and on a careful consideration of the materials on record, this Court is of the view that memo no. 1513 dated 22.02.2013 cannot be treated as a show cause notice in the eye of law. A perusal of the operative part of the said letter discloses merely an intention of the respondents to take steps for blacklisting the petitioner in case of failure by the petitioner to submit its reply. The petitioner had not expressly been put on notice that failure to reply would result in blacklisting. The matter travels beyond the realm of doubt with the last sentence of the letter which reads '*Kripya ise anthim smaar samjha jaye*'. It is therefore clear that the intention behind the letter was merely to serve a last reminder to the petitioner rather than to serve as a show cause notice against proposed blacklisting.

7. In the above view of the matter, therefore, the impugned order, as contained in memo no. 5225 dated 02.07.2013, as far as it

operates to blacklist the petitioner for a period of five years, cannot be sustained in absence of a prior show cause notice for the purpose, and the same is accordingly quashed to that extent.

8. The writ petition stands disposed of as above. The remaining reliefs sought in the writ petition are dismissed as not pressed.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.10.2016
Transmission Date	NA