IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17733 of 2014

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Dr. Mani Lal Rastogi, Son of Late Purushottam Lal Rastogi, Resident of Dr. B.B. Ghosh Lane, Motijhil, P.S.-Muzaffarpur Town, District-Muzaffarpur.

.... Petitioner/s

Versus

1. The Union of India through the Ministry of Chemical and Fertilizer, Government of India, New Delhi.

2. The Secretary, Chemical and Fertilizer Department, Government of India, New Delhi.

3. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.

4. The Principal Secretary, Health Department, Government of Bihar, Patna.

5. The Director-in-Chief, Health Services, Government of Bihar, Patna.

6. The Drug Controller, Bihar, Patna.

7. The State Health Committee, Bihar, Patna through the Executive Director-Cum-Secretary.

8. The Civil Surgeon-Cum-Member Secretary, District Health Committee, Gaya.

9. The Civil Surgeon-Cum-Member Secretary, District Health Committee, Sheohar.

10. The Civil Surgeon-Cum-Member Secretary, District Health Committee, Jehanabad.

11. The Civil Surgeon-Cum-Member Secretary, District Health Committee, Kishanganj.

12. The State Health Society through the Executive Director, Bihar, Patna.

13. The Managing Director, Bihar Medical Services

Infrastructure Corporation Limited.

.... ***Respondent/s***

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Appearance :

For the Petitioner/s : Mr. Vijay Kumar Singh, Advocate
Mr. Pankaj Kumar Singh, Advocate

For the Union of India: Mr. Awadesh Kumar Pandey, SCG-2

For the Respondent/s: Mr. Devendra Kr. Sinha, AAG-2
Mr. Tuhin Shankar, Advocate
Mr. Siddharth Shankar Pandey, Advocate
Mr. K.K. Sinha, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 12-02-2016

This writ application, under Article 226 of the Constitution of India, in the shape of Public Interest Litigation, has been filed seeking a direction to the respondents to cause an enquiry by an independent agency into the irregularities committed by the State and District Health Societies ***(hereinafter referred to as the 'Societies')*** and Medical Colleges and Hospitals of the State of Bihar in purchase of medicines, during the financial year

2009-2010 to 2013-2014.

2. The grievance of the petitioner is mainly to effect that the Societies and the Medical Colleges and Hospitals made payments against the bills for supplies of medicines to the suppliers, in breach of relevant instructions, issued by the Central Government as well as the State Government, which required deduction @ 2% from each bill of the suppliers for the purpose of testing the quality of the purchased medicines. It is the case of the petitioner that the Societies and the Medical Colleges and Hospitals made payments without deducting the said amount not only in violation of the instructions, issued in this regard, but also compromised with the quality of medicines so supplied.

3. Pursuant to the direction, issued by this Court, a counter affidavit was filed by Shri Jitendra Srivastava, the Executive Director, State Health Society, Bihar, stating therein, *inter alia*, that the responsibility to deduct testing charges from the invoice rested with the respective Civil Surgeons and Superintendents of various Medical Colleges and Hospitals. It has also been a word in the affidavit that the State Health Society has taken necessary steps requiring the concerned authorities to deduct the said amount of 2% from the bill amount(s). It has further been a word therein that in terms of Clause

08.11 of the rate contract, which required deduction of 2% of the bill amount to the tune of Rs.61,49,857/- were made, at least in 22 districts of Bihar. It has also been a word in the affidavit that the State Health Society is taking all necessary steps to ensure quality test of supplied medicines and directed the concerned authorities to do required monitoring over supply/distribution/consumption of the medicines. It has also been stated that there is no reported incident of supply of spurious medicines, during the period, when the State Health Society was declared as the state purchase organization of medicines.

4. It further transpires from the materials on record that the work of purchase of medicines has been assigned to the Bihar Medical Services Infrastructures Corporation Limited since 2013, which is a government company, as defined under Section 617 of the Companies Act.

5. A counter affidavit has been filed on behalf of respondent No.13, the Managing Director of the Bihar Medical Services Infrastructures Corporation Limited, wherein it has been categorically stated that the company has been deducting 2% from supplies invoices in all cases and the required amount has been deducted.

6. What concerned this Court most in the present proceeding was the statements made in the counter affidavit, filed on behalf of the Civil Surgeon-cum-Member Secretary, District Health Society, Jehanabad (respondent No.10), stating therein that instruction for making deductions @ 2% from supplies invoices was never made available to his office till receipt of a letter, dated 15.09.2011, issued by the State Health Society, Bihar, in the month of December, 2013. The District Health Society, Jehanabad, accordingly, took a plea that once it learnt about the requirement of deduction @ 2%, it (the Society), immediately, started making deductions.

7. Similar stand has been taken by the Civil Surgeon-cum-Member Secretary, District Health Society, Kishanganj, in his counter affidavit, wherein specific plea has been taken by the Society that there was no instruction for making deduction @ 2%, as indicated above.

8. There cannot be any iota of doubt that there has been deviation in strict compliance of the requirement of making deduction @ 2% from the supplies invoices, at some places, for one reason or the other. However, from the respective stands taken on behalf of the respondents, in their counter affidavits, failure to deduct the said amount appears to be primarily because of communication gap and not out of any malice or in order to do any undue favour to any one.

9. In view of the supplementary counter affidavit, filed on behalf of the State Health Society, Bihar, Patna (respondent No.7), wherein it has been stated that steps are being taken to ensure that the said amount @ 2% per annum is recovered from the suppliers, we close this proceeding with a direction to the respondents to ensure that the amount is recovered from the suppliers through process of law and the requirement of deduction, if any, is strictly implemented without any deviation in future.

10. This application, thus, stands disposed of with the observations as above.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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