

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7028 of 2016

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1. Sukhdeo Sharma Son of late Kara Thakur resident of Village- Mastlipur, P.O. Baragendhar, P.S Muffasil, District Gaya.
 2. Mani Kumar Son of Ram Babu Rai Resident of Village Khpura, P.O. Khanpur, Pakari, P.S Bidupur, District Vaishali.
 3. Neeraj Prasad Pal Son of Daroga Prasad Pal Resident of Village- Basgaon Prasauni, P.O. Majhriya, P.S. Bhairoganj, District East Champaran.
 4. Ravi Shankar Sharma Son of Ramanand Sharma Resident of Village- Purainiyan, P.O Kinjar, District Arwal.
 5. Niranjana Kumar Son of Brjesh Sharma Resident of Sammat Wigaha, P.O Sarta, District Jehanabad.
 6. Sunil Ram Son of Sri Bhikhu Ram Resident of Village- Dular patti (navka Hall) P.O. Parsa Kothi, P.S. Sanipari, District East Champara,.
 7. Satya Narayan Sah Son of late Ruplal Sah Resident of Vilalge- Tehri P.O. Shilhori, P.S Madhaura, District Chapra Saran.
 8. Bachchan lal Rai Son of late Ganesh Rai Resident of Village+PO- Aranda, P.S M.H. Nagar, District Siwan.
 9. Jai Prakash Mishra Son of Balram Mishra Resident of Village+PO. Kasamepur, P.S. Sahpur, district Bhojpur.
 10. Aftab Alam son of Aminuddin Resident of Villae- Sisona, P.O+P.S. Jokihat, District Araria.
 11. Durgesh Kumar Pandey Son of Vivekant Pandey R/o Ram Janki Chowk, Ward No. 12, Resident of Village+ P.O. Nariyar P.S Saharsa, district Saharsa.
 12. Sapan Kumar Son of Late Sukhdeo Pandit Resident of Village- Mojahida, P.O. Parvatta, District Khagaria.
 13. Yogendra Prasad Son of Sri Ram Bachan Singh Resident of Village- Salempur, P.O. Jabra, P.S Nokha, District Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. The Principal Secretary, Department of Health Government of Bihar, New Secretariat, Patna.
3. The Director-in-Chief, Department of Health Government of Bihar New Secretariat, Patna.
4. The Executive Director, Bihar Health Society, Bihar Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Awadhesh Kumar Mishra
For the Respondent/s : Mr. Durgesh Nandan, AAG 14
Ms Manisha Prakash, AC to AAG 14
For Health Society : Mr Satyavrat Verma

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 08-08-2016



There are 13 petitioners in the present writ application. They are all ambulance drivers. Their hiring was done as part of the package deal as well as outsourcing which the State Health Society decided in terms of the previous tender and settlement thereof. The ambulance service, which is provided 24x7 on a centralized telephone call across the State of Bihar, was being provided by a company known as Dr Jain Video on Wheels. The details of the terms and conditions for such hiring and providing of service are reflected from Annexure- 1 to the writ application filed by the petitioners themselves. The service provider was the hirer of the petitioners and neither the State Health Society nor the State of Bihar had any role in their hiring. In fact, for the purposes of the record, at the very outset it is clarified that the State of Bihar has nothing to do as such with the kind of service, which is being provided or hired. Such hiring is done by the State Health Society, which is a registered society and has its own independent identity.

Since the company Dr Jain Video on Wheels did not provide proper service, the contract was annulled and an alternative method of keeping the service going on has been envisaged and worked out by the State Health Society. As part of the same exercise, a Notice Inviting Tenders was issued by the Executive Director of

State Health Society on 30.1.2016. A copy of the said Notice Inviting Tenders (NIT) is Annexure- 5 to the writ application. The terms and conditions of the NIT are unambiguous. The object behind issuance of the NIT also does not suffer from any ambiguity.

Because of issuance of Annexure- 5, the alarm bell has been set ringing and it is in this background that the petitioners have rushed to this Court seeking quashing of the NIT with a direction upon the respondents to continue with the engagement of these petitioners as ambulance drivers. The writ application, therefore, sought quashing of Annexure- 5. Subsequently I.A. No.6115 of 2016 has also been filed when a NIT was invited for Outsourcing of Centralized Call Centre and Operation and Management of Fleet of Ambulances and Mortuary Vans in State of Bihar on 18.6.2016. A prayer has now been made for quashing the said NIT as well.

The main thrust of the argument made on behalf of the petitioners is that there are some decisions, which have been rendered by the High Court where it has been observed that one set of contract employees are not required to be replaced by another set of contractual engagements by ousting the earlier appointees on contract. Counsel for the petitioners has produced one order passed in the case of Vimal Prakash & others v. the State of Bihar & others, which was CWJC No.3919 of 2013, decided on 15.7.2013, by a learned Single

Judge. Another decision, which is a reported decision of a Division Bench, is in the case of Bihar State Aids Control Society v. State of Bihar, reported in 2015 (2) PLJR 765.

The Court has gone through both the decisions. Both the cases relate to hiring done by Bihar Aids Control Society. When certain decisions were taken by the said Society to disengage a set of earlier hired personnel and go for yet another set of new hiring, the learned Single Judge as well as the Division Bench did frown up such exercise and that was the background under which the observation was made that one set of contractual employees are not required to be replaced by another without any rationality as such.

So far as the present writ application is concerned, the hiring of these petitioners was part of outsourcing and package. The ambulance service was provided by the company as a package and deal, which included drivers for running the services of the ambulance. The State Health Society much less the State has nothing to do with the service or the hiring of these drivers. The hiring was done by the Jain Video on Wheels and these petitioners are contractual employees or whatever be the arrangement between them and the Jain Video on Wheels. There is no co-relation of any kind between hiring of these petitioners or the ambulance service and the State Health Society. Since the Jain Video on Wheels is virtually on



the verge of losing out on the contract since it has been terminated and it led to certain litigations and those litigations are before different forums, the issue with regard to their continuance will be dependent upon the outcome of such proceedings, which are under consideration. The fate of these petitioners, therefore, will be decided by the outcome of those litigations.

However, looking at the necessity of continuance with the 24x7 service for the people of the State of Bihar, methods had to be worked out. Gaining from the past experience, if not a sad experience, certain innovations have been done with regard to outsourcing. The NIT contained in Annexure- 5 and Annexure- 9 is the outcome of such deliberations and decision of the Bihar State Health Society.

These petitioners, therefore, have neither a locus nor any authority to challenge the NIT contained in Annexure-5 or Annexure- 9 merely because it may create an apprehension in their mind but the same cannot form the basis for entertaining a writ application and interfering with the same. In fact, the Court gets a feeling that the writ application is a sponsored kind of litigation by vested interest for obvious reasons.

Even if the benefit of doubt is given to the petitioners, there is no occasion for this Court to give any direction and create any obligation upon the State Health Society or the State of Bihar with

their continued engagement or hiring for the ambulance service. They can very well approach other agencies or authorities, who may succeed in cornering the tender in terms of Annexure5 and Annexure-9, which will be a matter between two private individuals. Neither the State Health Society nor the State of Bihar can be compelled to create any obligation upon themselves by way of a mandamus in the given facts. Writ application, therefore, is totally misplaced and in fact, should have been dismissed with suitable cost upon the petitioners but the Court is taking a magnanimous view because these petitioners are in difficult situation after the annulment of the contract with Jain Video on Wheels.

Writ application has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

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