

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18262 of 2015

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M/s Medicine Palace, West Boring Canal Road, Patna-80001, Bihar through its
Proprietor Mr. Anjani Kumar Singh son of late Ram Chandra Prasad Singh
Resident of Village Hasanpur, P.S Mahnar, District Vaishali, Bihar.

.... Petitioner/s

Versus

1. The Union of India through secretary, Ministry of Health, New Delhi;
2. All India Institute of Medical Sciences, Phulwarisharif, Patna through its
Director;
3. The Medical Superintendent, AIIMS Patna;
4. The Administration Officer (Faculty in charge), AIIMS Patna;
5. The Service Monitoring Committee, AIIMS, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mrigank Mauli, Advocate.
Mr. Sanket, Advocate.
Mr. Samir Kumar, Advocate.
Mr. Prince Kumar Mishra, Advocate.

For the Respondent/s : Mr. Binay Kumar Pandey, Advocate.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 05-01-2016

Heard learned counsel for the parties.

The challenge in the present writ application is to order
dated 16.11.2015 passed by the respondent no. 2 by which the licence
given to run a chemist shop in the premises of All India Institute of
Medical Sciences, Phulwarisharif, Patna (hereinafter referred to as 'the
Institute') has been terminated.

Learned counsel for the petitioner submits that the said
action of the respondents is fit to be interfered with only on the short
point that admittedly no show cause or notice was ever given to him
with regard to any irregularity or violation of the terms and conditions



of the agreement prior to such drastic action. Learned counsel submits that the order itself is vague as it only mentions that the Service Monitoring Committee had submitted an enquiry report which was self-speaking about omissions of rules and regulations, breach of terms and conditions of contract including illegal practices and many irregularities and shortcomings on the basis of which the competent authority had decided to terminate the contract with immediate effect. Learned counsel submits that it is a well settled principle by now that any order passed by any authority having a valid power under law, has to confirm to the basic principles of natural justice if it involves civil and penal consequences. For such proposition, he has relied upon the decision of the Hon'ble Supreme Court in the case of *S.L.Kapoor v. Jagmohan* reported in *AIR 1981 S.C. 136*, in the case of *Gorkha Security Services v. Government (NCT of Delhi)* reported in *(2014) 9 SCC 105* as also on an unreported decision of a co-ordinate bench of this Court in the case of *Murari Manohar vs. The State of Bihar & Others (C.W.J.C. No. 12822 of 2015)* decided on 13.10.2015.

It is submitted that neither was the petitioner ever noticed with regard to any complain or shortcoming nor even during the enquiry either he or any of his representative was present so as to put forward or explain his defence. Learned counsel submits that even from the point of view of there being power with the authority to



terminate the contract, the ostensible reasons given for the same like, non-issuance of proper receipt to the customers and selling of branded medicines, the same were not of such a nature so as to terminate the licence itself and thus, the decision lacks proportionality. For such proposition, he has also relied upon the decision of the Hon'ble Supreme Court in the case of *M.P. Housing and Infrastructure Development Board v. B.S.S.Parihar* reported in *AIR 2015 SC 3436*. Learned counsel further submits that in the present writ proceeding, by way of various averments made in the counter affidavit and materials brought on record, the respondents are now trying to justify the termination order which is impermissible in law. For such proposition, he relies on a decision of the Hon'ble Supreme Court in the case of *Popcorn Entertainment v. City Industrial Development Corpn.* reported in *(2007) 9 SCC 593*.

Learned counsel for respondents no. 2 to 5 submits that the writ application itself may not be entertained at the first instance as there is an alternative remedy of moving before the Director of the Institute for arbitration as per Clause 38 of the tender document itself. It is submitted that all the issues being raised by the petitioner can very well be agitated before the arbitrator and thus the petitioner ought to have moved before him and not straightway to the High Court. It is further submitted that the decision to terminate the licence



was based on admitted facts with regard to there being violation and irregularities committed by the petitioner which have been found by the Drug Controller Administration Authority in its inspection which had also led to temporary suspension of the licence for running a medicine shop in favour of the petitioner. It is submitted that the enquiry report of the Service Monitoring Committee, which has been referred to in the termination order, clearly noticed such facts and thus the issuance of a show cause notice would have been a futile exercise as the evidence collected during such enquiry was unimpeachable and thus on facts the petitioner could not have controverted such malpractices committed by him. It is submitted that the petitioner was given licence to run the medicine shop only for generic medicines whereas he was also selling branded medicines, for which he relies upon Clause 6 (a) of the Contract Form as well as from the Letter of Intent which clearly indicates that the medicine shop was for generic drugs.

Learned counsel for the petitioner, by way of reply, submits that availability of arbitration clause in agreement is not an absolute bar to invocation of writ jurisdiction under Article 226 of the Constitution of India. It is submitted that where the action of the respondents was illegal, there was violation of principles of natural justice and the writ petitioner's fundamental rights have been violated,



the courts were indulgent to interfere in the matter without relegating the party to alternative remedy. For such proposition, he has relied on the decision of the Hon'ble Supreme Court in the case of *Popcorn Entertainment (supra)* and also in the case of *Union of India v. Tania Construction (P)Ltd.* reported in (2011) 5 SCC 697. Learned counsel submits that the respondents no. 2 to 5 are taking an erroneous stand before this Court that as per the Contract Form, the drugs mentioned at Clause 6 of the Operating Instructions, though the chemical names are mentioned but the same are manufactured only by specified companies and in that view of the matter the actual medicines sold are naturally branded and thus, if they do not keep such medicines in the stores, it might be a ground for the respondents to allege violation of terms and conditions and for taking penal action against the petitioner. However, he categorically states that now as the stand has been taken by the respondents that no branded medicines should be sold, he shall not be selling any branded medicine, including those medicines mentioned in Clause -6 of the operating instructions, if the same are branded.

Learned counsel for the respondents no. 2 to 5 submits that it is the real interpretation and thus the misgiving of the petitioner that he would be penalized for not keeping the drugs mentioned in Clause-6, which are branded, are imaginary.



Having heard the parties at length, in the considered opinion of the Court, the exercise of power by the respondents no. 2 to 5 in the facts and circumstances of the present case, does not appear to be justified. Whatever be the alleged irregularity committed by the petitioner, has to be documented and he has to be noticed with regard to charges and given an opportunity to explain his position. Even otherwise, any enquiry, if conducted behind the back of the party concerned or his representative, does not have any value in the eyes of law as the authenticity and veracity and any finding recorded during the said enquiry cannot be relied upon as it is unilateral and one sided. In the present case, admittedly there has been no notice to the petitioner with regard to any irregularity or allegation which may have come before the authority and may have justified some action against the petitioner and no inspection by the respondents in the presence of the petitioner or his representative. The Court finds that in the facts and circumstances of the present case relegating the petitioner to the alternative remedy of arbitration before the Director of Institute is not equitable and accordingly the objection of the respondents no. 2 to 5 on this score stands rejected. The position thus being that the action having been taken against the petitioner without following the basic principles of natural justice cannot be sustained and the impugned order dated 16.11.2015 passed by the respondent no. 2 stands

quashed. The petitioner shall be permitted to continue running the shop as per the original agreement.

The Court hopes and trusts that the categorical undertaking given by the petitioner with regard to faithfully complying with the terms and conditions of the tender/license/contract shall be followed.

It goes without saying that the authorities have powers under the agreement as well as the tender document with regard to taking action on violation of the any terms and conditions by the petitioner but exercise of such power can only be in accordance with and after following the procedure settled in law.

The writ application stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J)

Sujit/-

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