

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8227 of 2015

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1. M/s J.M.S. Construction, through Srikant Siri one of partner, son of Sri Ramlakha Singh, resident of Sri Krishna Nagar, Panchoo, P.O. and P.S. Hisua, District- Nawada

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Health, Bihar, Patna
2. The Principal Secretary, Department of Health, Bihar, Patna
3. The Executive Director, State Health Society, Bihar, Patna
4. The District Health Society through its Secretary, Nawada
5. The Civil Surgeon cum Member Secretary, District Health Society, Nawada,
6. The District Magistrate, Nawada

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Tej Bahadur Singh, Sr. Advocate
Mr. Ravi Bhardwaj, Advocate.
For the State : Mr. Madanjeet Kumar, G.P.20

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 03-02-2017

Heard learned counsel for the petitioner and learned counsel for the State.

In the present case, petitioner is challenging the fresh NIT dated 9.1.2017 issued by the District Health Society, Nawada to the extent it relates to provide generator facilities at the various hospitals including the Primary Health Centre's, Referral Hospitals within the district of Nawada and for further direction to the respondents to extend the contract of the petitioner.

Earlier petitioner raised grievance against issuance of fresh



advertisement challenging the NIT dated 9.5.2015 issued by the District Health Society, Nawada for appointing fresh contractor by the District Health Society, Nawada and made prayer to extend the period of contract as the petitioner has provided unblemished services in terms of agreement and work order. This Court has considered the case of the petitioner and passed the following order:

“The writ petitioner had a tender for installing generator for supply of electricity as a stand by basis for which it had entered into an agreement with the Civil Surgeon-cum-Member Secretary of the District Health Society, Nawada. It was in respect of Akbarpur Primary Health Centre and for the period 10.7.2012 to 9.7.2014. Similar are agreements for three other places in Nawada itself and the periods are also more or less the same. Clause 9 of the said agreement provides that upon satisfactory service, the agreement shall be extended by further period of two years. Clause 10 provides cancellation of agreement upon the terms mentioned therein. It appears that once the term ended, without extending the period, fresh tenders were issued. This was challenged by the petitioner before this Court in CWJC No.22491 of 2014. During pendency of the writ petition, the said tender was cancelled and, accordingly, the writ petition was disposed of with an observation that under the changed circumstances, the respondents may consider the possibility of renewal of contract and in event, such renewal is not granted, respondents may go ahead with fresh tender programme.

Mr. Tej Bahadur Singh, learned Senior Counsel submits that as per Clause 9, subject to satisfactory service, renewal was as a matter of course. Cancellation could only be on specified grounds. All Health Centers have duly reported and certificates are appended to the writ petition certifying satisfactory service.



Prima facie, the writ petitioner has a case. It not being a case of any unsatisfactory service, renewal for further two years ought to have been as a matter of course.

Accordingly, let respondents seek instructions and file a comprehensive counter affidavit.

Till further orders, the fresh tender issued on or about 09.05.2015, as contained in Annexure 8, shall not be proceeded.

List For Admission on 22nd of June 2015 before an appropriate Bench.”

Till date no counter affidavit has been filed by the State though this Court has directed the State to file counter affidavit one and half years earlier.

An interlocutory application vide I.A. No. 181 of 2017 has been filed by the petitioner for amendment of the writ petition bringing on record making a prayer for quashing NIT dated 9.1.2017 published in Dainik Bhaskar with respect to providing generator facility at all Health Centres in the district of Nawada and made a prayer that period of contract be further extended for two years as has provided smooth service. There is no dispute in the fact that petitioner was given two years time in terms of the first agreement to provide the service but subsequently fresh tender was published which was challenged before this Court which was/were not materialized but further tender has been issued which has again been challenged by the petitioner. He has taken a plea that all through he has supplied the power in



terms of the agreement to the satisfaction of all concerned and in pursuance thereof different authorities of the different Health Centre's have provided certificate showing satisfactory service discharged by the petitioner.

This Court asked from learned counsel for the petitioner whether he has participated in fresh NIT, the answer has come from the Bar that petitioner has applied for the fresh NIT. It has been submitted that technical bid has already been opened but result has not been published. In the present case petitioner has already rendered service beyond two years i.e. beyond the period of contract is also one of the party to the fresh NIT

In such view of the matter, Selection Committee of the District Health Society, Nawada is directed to consider the case of the petitioner. While considering the case of the petitioner the Selection Committee will take into consideration the certificate issued in his favour by the different authorities and if the petitioner is found eligible it goes without saying that there would not be hurdle for the selection of the petitioner without being prejudiced on account of fact that petitioner has approached this Court for extension of period. The Committee will consider the case on its own merit.

Learned counsel for the petitioner submits that petitioner



has already rendered service and there is outstanding dues of Rs.50,00,000/- over the Heath Society.

The Executive Director of Health Society, Bihar, Patna will look into the claim of the petitioner and after due consideration whatever admitted dues comes out in his favour that must be released without unnecessary delay.

For convenience petitioner is directed to file a detailed representation before the Executive Director, Health Society, Bihar, Patna who will consider the case of the petitioner in accordance with law and pass a reasoned order within a period of three months from the date of filing of the representation.

With the aforesaid observation and direction this writ petition is disposed of.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	7.2.2017
Transmission Date	NA

