

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.3204 of 2010

ORDER:

Heard Sri M.V. Prathap Kumar, learned counsel for the petitioner. No representation on behalf of the respondents.

2. The present writ petition came to be filed seeking issuance of a writ of *mandamus* declaring the proceedings in Rc.No.Dietician/Diet/DH/TNL/09, dated 24.10.2009 of the 4th respondent, as illegal and arbitrary.

2. The facts in issue are that the petitioner was a Diet Contractor, supplying food to the in-patients and Medical Officers in the District Hospital, Tenali for the period 2000-2005. The said hospital was said to be under the control of the 2nd respondent. As per G.O.Ms.No.257, dated 31.05.1995, the petitioner was paid a sum of Rs.10/- per head to general patients and Rs.15/- per head to the patients suffering from T.B. and mentally retarded persons, for the food supplied by him. Due to hike in prices and pursuant to the representations made to the 2nd respondent, the rates were enhanced vide G.O.Ms.No.255, dated 20.06.2003, whereby Diet charges were enhanced from Rs.10/- to Rs.15/- towards supply of food to general patients and from Rs.15 to Rs.20/- to the patients suffering from T.B. In spite of issuance of the said G.O., the respondents were paying the petitioner as per the terms and conditions of the old G.O. Hence, the petitioner filed W.P.No.17568

of 2004 questioning the action of the respondents in not paying the Diet charges. By the order, dated 13.09.2004, the writ petition was disposed of directing the 2nd respondent to implement G.O.Ms.No.255, dated 20.06.2003 and pay the enhanced rates within a period of two months from the date of receipt of a copy of the said order, if necessary, by addressing the Government for release of the necessary funds. Pursuant thereto, the 2nd respondent vide proceedings dated 21.09.2004 issued instructions to all the District Co-ordinators of hospitals under its control to implement G.O.Ms.No.255 dated 20.06.2003. It is stated that when the respondents were not taking any action in spite of the orders of this Court, petitioner filed Writ Petition No.19552 of 2009, wherein this Court directed the respondents therein to consider the representation dated 10.07.2009 made by the petitioner and pass appropriate orders. Pursuant to the said order, the petitioner again made a representation dated 20.10.2009 to the respondents. Without complying with the directions of this Court and without considering the representation made, respondent No.4 issued the proceedings dated 24.10.2009 alleging that the petitioner is not eligible for enhanced rates on the ground that the petitioner has not satisfied the menu prescribed in G.O.Ms.No.17343 dated 05.10.1999 and as such he is not entitled for payment at the enhanced rates for supply food to the in-patients in terms of G.O.Ms.No.255, dated 20.06.2003. Challenging the same, the present writ petition is filed.

3. Counter came to be filed by the respondents disputing the averments made in the affidavit. It is stated that the quality of cooked rice and sambar supplied on 02.01.2005 and 03.01.2005 were not satisfactory, the rice contained worms, which was reported by patients in surgical ward. It was further stated that the cooked rice supplied on 03.01.2005 was over cooked resulting in bad smell and dead red ants were seen in the sambar. It is stated that a criminal case was also registered against the petitioner under the provisions of Prevention of Food Adulteration Act, as such, the petitioner is not entitled for the relief sought.

4. A reply affidavit came to be filed disputing the averments in the counter and also bringing to the notice of this Court that the criminal case ended in an acquittal. Reiterating the grounds raised in the affidavit filed in support of the writ petition, learned counsel for the petitioner would submit that the authorities were not justified in withholding the enhanced rates in spite of issuance of G.O.Ms.No.255, dated 20.06.2003. It is urged that if really there was any adulteration or overcooking as alleged, in the year 2005, nothing prevented the authorities to intimate about the same in the earlier round of litigation.

5. In fact, no orders are passed earlier referring to the said incidents, except in the order impugned. It is not in dispute that a complaint came to be filed against the petitioner by the Food Inspector, Tenali, vice C.C.No.25 of 2005 on the file of the I

Additional Munsif Magistrate, Tenali, for violation of the provisions of Prevention of Food Adulteration Act.

6. The averments in the complaint would show that on 28.05.2004 at about 9:30 A.M., the Food Inspector along with Sanitary Maistry inspected the diet room in District Hospital, Tenali, and found the petitioner maintaining supply of meals to the patients in the hospital. On suspicion, the Food Inspector checked Dahi suspecting it be adulterated and accordingly, sent the same for analysis. The Public Analyst opined that Dahi was deficient in milk fat by about 81.0% and deficient in solid not fat by about 17.0%. However, the trial Court vide judgment dated 17.04.2007, acquitted the accused i.e., petitioner herein, which was confirmed in appeal.

7. It is to be noted here that during the course of inspection conducted on 28.05.2004, the product, which was said to have been adulterated, was curd. In the impugned proceedings, it is stated that the food, which was served to the patients was of substandard quality and the Sambar contained red ants, but strangely no proceedings came to be initiated under this Act, nor was there any complaint given to any of the authorities about the same. In fact, even in the counter filed in the earlier round of litigation, there is no reference to these incidents. If really the petitioner was supplying food, which was not to the satisfaction of the authorities from the year 1999, there is no reason as to why no action has been initiated nor his contract was terminated on coming to know of the same.

Obviously, it appears to be a case whereby the authorities, to overcome the orders passed by this Court in directing the respondents to pay the amounts as per the G.O.Ms.No.255, dated 20.06.2003, thought of denying the same by referring to some incident, which were never in existence. Apart from that, it is also to be noted here that in the month of March, 2005, the Regional Medical Officer, Tenali, has issued a 'satisfactory certificate' stating that the diet supplied by the petitioner for the period from 01.04.2004 to 09.03.2005 was satisfactory. No objection was raised with regard to quality of food supplied by the petitioner. It is to be noted here that if really the petitioner was supplying substandard food, there was no justification for the respondents to pay the amounts as per the old G.O., i.e., at the rate of Rs.10/- and Rs.15/-.

8. For the above said reasons, this Court is of the view that the impugned proceedings dated 24.10.2009 issued by the Medical Superintendent are illegal, arbitrary and incorrect.

9. Accordingly, the Writ Petition is allowed declaring the impugned proceedings in Rc.No.Dietician/Diet/DH/TNL/09, dated 24.10.2009 of the 4th respondent as illegal and arbitrary.

Consequently, Miscellaneous Petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

Date:12.09.2017
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