AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.2904 of 2017

(Arising out of memo/communication No.Admin/Medical Store/2017/ AIIMS.RPR/1782 dated 25-10-2017 issued by the Senior Administrative Officer, All India Institute of Medical Sciences, Raipur)

Order reserved on: 30-11-2017

Order delivered on: 2-1-2018

Seema Agency, A proprietorship firm, through its Proprietor Jitmal Jain, through its Power of Attorney Holder Sanjay Kumar Jain, S/o Jitmal Jain, aged about 49 years, R/o Ward No.12, National Highway 201, PS & Post Kesinga, District Kalahandi (Odisha).

---- Petitioner

Versus

1. Union of India, through Secretary, Ministry of Health and Family Welfare, New Delhi

2. All India Institute of Medical Sciences (AIIMS), Raipur, through the Director, All India Institute of Medical Sciences (AIIMS), Tatibandh, Raipur (C.G.)

3. Senior Administrative Officer, All India Institute of Medical Sciences (AIIMS), Tatibandh, Raipur (C.G.)

4. Administrative Officer, All India Institute of Medical Sciences (AIIMS), Tatibandh, Raipur (C.G.)

---- Respondents

For Petitioner:	Mr. Anand Dadariya, Advocate.
For Respondents:	Mr. B. Gopa Kumar, Assistant Solicitor General of India and Mr. Vaibhav P. Shukla, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The petitioner is a chemist and supplier of various types of drugs / medicines, whereas respondent No.2 herein – All India Institute of Medical Sciences (AIIMS), Raipur, is one of the health care

institutes established by Ministry of Health and Family Welfare, Government of India under the Pradhan Mantri Swasthya Sukraksha Yojna (PMSSY) with the aim of correcting regional imbalances in quality tertiary level health care in the country and for attaining self-sufficiency in graduate and post-graduate medical education and training. In order to achieve its aim, the respondent AIIMS issued a global tender inviting applications for establishment of Chemist shop at AIIMS, Raipur and ultimately, upon completion of formalities, the petitioner's offer was accepted and letter of award was issued to the petitioner on 8-1-2013 and agreement was signed on 24-1-2014 to setup and operate 24x7 pharmacy/chemist shop within the premises of AIIMS, Raipur for supply of medicines/ surgical consumables/implants/orthotic and prosthetic devices etc. on discounted rates with a condition of maximum accepted discount of 65.30% rebate on printed MRP inclusive of VAT. The petitioner was allotted 735 sq.ft. as earmarked on monthly rent of ₹ 48/- per sq.ft. and ultimately, shop was handed-over to the petitioner on 1-2-2014 and it is stated to have been made functional by the petitioner with effect from 17-2-2014. The said shop was allotted for a period of three years. The terms and conditions which is a part of the agreement provides a clause i.e. clause 4.04 which specifically provides that the contract shall initially be for a period of three years from the date of signing of contract, however, strictly on the basis of satisfactory performance, it may be extended for a further period agreed between the parties on same terms and conditions.

Since the petitioner's term was going to expire on 23-1-2017, the petitioner made a request before the AIIMS authorities on 29-8-2016 for extension of agreement of the said shop for a further period which has been regretted by respondent No.2 on 10-1-2017 leading to filing of a writ petition questioning the memo dated 10-1-2017, but later-on the writ petition was withdrawn with liberty to move fresh and by letter dated 2-5-2017, the petitioner's agreement for running the pharmacy store was extended till 31-10-2017 on the same terms and conditions as earlier agreed upon between the parties. Upon completion of six months, when fresh notice dated 25-10-2017 was served to the petitioner that no further extension can be granted and as per PMSSY Division, Ministry of Health and Family Welfare, New Delhi, a Jan Aushadhi Store is to be opened in the premises of AIIMS, Raipur, this writ petition has been filed feeling aggrieved and questioning that order.

2. It is the case of the petitioner that AIIMS is State within the meaning of Article 12 of the Constitution of India and it cannot act arbitrarily in awarding the said shop to M/s. HLL Lifecare Limited which is already running a pharmacy store in the name of Amrit Pharmacy and if at all, a Jan Aushadhi Store is to be opened, it can be opened in the same premises which is allotted to M/s. HLL Lifecare Limited. Such an action of the respondents in getting the pharmacy store allotted to the petitioner being vacated for allotting the same to M/s. HLL Lifecare Limited will not only give rise to monopoly of M/s. HLL Lifecare Limited, but also will be detrimental

to the interest of poor patients who are getting benefited from the store run by the petitioner which is providing medicines at discounted rates of 65.30% on the printed MRP. It is also the case of the petitioner that the petitioner's performance is quite satisfactory and the petitioner has a valid and enforceable right to get the lease renewed based on the principle of legitimate expectation and thus, issuance of the impugned memo is violative of Articles 14 and 16 of the Constitution of India. Therefore, the writ petition be allowed and the respondents be directed to renew the contract agreement already entered into between the parties for a reasonable period so that the petitioner can run the medical shop smoothly on the suit premises.

3. Return has been filed on behalf of the respondents stating inter alia that a Jan Aushadhi Store is required to be opened in the premises of AIIMS under the supervision of M/s. HLL Lifecare Limited. It is the case of the respondents that M/s. HLL Lifecare Limited is a Government of India enterprise. M/s. HLL Lifecare Limited apart from its products provides services like infrastructure development, health-care services and procurement & consultancy services. It is the further case of the respondents that in AIIMS, Raipur, two shops are earmarked for supply of medicines to the needy people. The other shop is already allotted to M/s. HLL Lifecare Limited for sale of general medicines under the name of Amrit Pharmacy which is for general medicines different from generic and AMRIT stands for Affordable Medicines and Reliable Implants for Treatment. Supply

of generic medicine in the new Jan Aushadhi Outlet will reduce the cost of medicine to the extent of more than 70% for needy people. The scheme of supply of drugs is formulated under the direction of the Health Ministry for supply of cheap and quality medicine to the general public especially the down trodden section of the society. The petitioner has no right of renewal as the action of AIIMS is just, proper and fair. Even otherwise, the petitioner's premises were inspected by a team constituted by the Medical Superintendent, AIIMS, Raipur known as Drug Store Inspection Committee, on 8-1-2016 and report is filed as Annexure R-2 which goes to show that the performance of the petitioner was also not in accordance with the agreed terms. The petitioner has no valid and enforceable right to get the lease renewed as there is a change in the policy and a Jan Aushadhi Outlet in the AIIMS premises has to be opened as per the notification dated 12th June, 2017 issued by the Ministry of Health and Family Welfare, Government of India, PMSSY Division, as such, the writ petition deserves to be dismissed with cost.

4. Mr. Anand Dadariya, learned counsel appearing for the petitioner, would submit that the petitioner has a legally substantive and enforceable right to get the contract renewed for a further reasonable period as per clause 4.04 of the agreement based on the doctrine of legitimate expectation, as the petitioner has incurred huge expenses in opening the chemist shop and M/s. HLL Lifecare Limited is already running a chemist shop in the premises of AIIMS, Raipur and Jan Aushadhi Outlet can easily be accommodated

therein and therefore non-renewal / eviction of the petitioner is nothing but arbitrary and mala fide exercise of power by the respondents which is State within the meaning of Article 12 of the Constitution of India as such, the writ petition deserves to be allowed.

5. On the other hand, Mr. B. Gopa Kumar, learned Assistant Solicitor General of India appearing for the respondents, would submit that directions have been issued from PMSSY Division, Ministry of Health and Family Welfare, Government of India, to open a Jan Aushadhi Outlet for sale of generic medicine in the premises of AIIMS under the supervision of M/s. HLL Lifecare Limited which is a Government of India enterprise and the petitioner's performance is also not satisfactory as evident from the inspection report of the Drug Store Inspection Committee constituted by the competent authority and for the aforesaid reasons, the petitioner's contract is not being renewed, as there is change of policy of the Government. The principle of doctrine of legitimate expectation is not applicable and the action of the Government is fair and reasonable and therefore the petitioner has no right of renewal as such, the writ petition deserves to be dismissed.

6. I have heard learned counsel for the parties and considered the rival submissions made herein-above and also gone through the record with utmost circumspection.

7. It is not in dispute that agreement was entered into between the

petitioner and the respondents and the subject shop was given on contract for a period of three years by agreement dated 24-1-2014 with a clause providing for extension for further period on the basis of mutual agreement based on satisfactory performance and after completion of three years, six months' period was extended, but thereafter, the Government of India, Ministry of Health and Family Welfare, PMSSY Division has taken a decision to open a Jan Aushadhi Outlet in all the six AIIMS established by the Government of India under the supervision of M/s. HLL Lifecare Limited with effect from 1-11-2017 and object of the Jan Aushadhi Outlet is to provide generic medicine to the poor and down trodden people at subsidised rates for which the respondent AIIMS has directed the petitioner to vacate the suit premises so that the Jan Aushadhi Outlet can be opened in the said shop in accordance with the policy decision so taken.

8. The petitioner's main ground of challenge is based on the doctrine of legitimate expectation relying upon a decision of the Supreme Court in the matter of **M.P. Oil Extraction and another v. State of M.P. and others**[1] in which it has been held that the doctrine of "legitimate expectation" operates in the domain of public law and in an appropriate case, constitutes a substantive and enforceable right. The petitioner also relied upon the decision of the Supreme Court in the matter of **State of U.P. and others v. Lalji Tandon (Dead)**

1 (1997) 7 SCC 592

<u>Through LRs</u>[2] in which the Supreme Court has held that there is a difference between an *extension of lease* in accordance with the covenant in that regard contained in the principal lease and *renewal of lease*, again in accordance with the covenant for renewal contained in the original lease.

9. "*Salus populi est suprema lex: regard for the public welfare is the highest law*". This principle is based on the implied agreement of every member of society that his own individual welfare shall in cases of necessity yield to that of community. His property, liberty and life shall under certain circumstances be placed in jeopardy or even sacrificed for the public good. This legal maxim has been followed by Their Lordships of the Supreme Court in the matter of **<u>Hira Tikkoo v. Union Territory, Chandigarh and others</u>**[3] and it has been held that in public law in certain situations, relief to the parties aggrieved by action or promises of public authorities can be granted on the doctrine of "legitimate expectation" but when grant of such relief is likely to harm larger public interest, the doctrine cannot be allowed to be pressed into service.

10. In the matter of **<u>State of W.B. and others v. Niranjan Singha</u>**[4], the question before the Supreme Court was whether denial of extension of period of agency by the Government inviting fresh bids amount to arbitrariness. It has been held by Their Lordships that it is open to the Government to have a fresh agreement by enhancing the

2 (2004) 1 SCC 1
3 (2004) 6 SCC 765
4 (2001) 2 SCC 326

consideration payable to it if it is economically more beneficial and further held that the doctrine of "legitimate expectation" is only an aspect of Article 14 of the Constitution in dealing with the citizens in a non-arbitrary manner and thus, by itself, does not give rise to an enforceable right and observed as under: -

> "4. ... An extension of an agreement or renewal is granted on the expiry of the period of the existing agreement. Either the extension or the renewal of the existing agreement may be on the same terms or on different terms. If it is a case of extension of the existing agreement on the same terms and conditions and such consideration gives rise to a question of legitimate expectation being a part of the agreement concerned, economic consideration of getting higher bid for the same period would be a relevant consideration. If the governmental authorities had found that it would be feasible to have the agency, as in the present case, on fresh terms by enhancing the amount payable to the Government, it would be a relevant factor and in such a case it cannot be said that the legitimate expectation of the respondent had been affected because the public interest would outweigh the extension of the period of the agreement. The doctrine of "legitimate expectation" is only an aspect of Article 14 of the Constitution in dealing with the citizens in a non-arbitrary manner and thus, by itself, does not give rise to an enforceable right but in testing the action taken by the government authority whether arbitrary or otherwise it would be relevant. ..."

11. In the matter of **Union of India v. Hindustan Development**

Corpn.[5], the Supreme Court has held that the doctrine of legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negativing a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightaway from the administrative authorities as no crystallised right as such is involved. The protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words where a person's legitimate expectation is not fulfilled by taking a particular decision then decision-maker should justify the denial of such expectation by showing some overriding public interest. Therefore even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. Legitimate expectation being less than a right operates in the field of public and not private law and to some extent such legitimate expectation ought to be protected though not guaranteed.

12. Likewise, in the matter of **Madras City Wine Merchants' Assn. v. State of T.N.**[6], the Supreme Court has held that legitimate expectation may arise—(a) if there is an express promise given by a public authority; or (b) because of the existence of a regular practice which the claimant can reasonably expect to continue; (c)

5 (1993) 3 SCC 499
6 (1994) 5 SCC 509

such an expectation must be reasonable. However, if there is a change in policy or in public interest the position is altered by a rule or legislation, no question of legitimate expectation would arise.

13. In the matter of **<u>Sethi Auto Service Station v. DDA</u>**[7], the Supreme Court summarised the nature and scope of the doctrine of legitimate expectation as under: -

> "32. An examination of the aforenoted few decisions shows that the golden thread running through all these decisions is that a case for applicability of the doctrine of legitimate expectation, now accepted in the subjective sense as part of our legal jurisprudence, arises when an administrative body by reason of a representation or by past practice or conduct aroused an expectation which it would be within its powers to fulfill unless some overriding public interest comes in the way. However, a person who bases his claim on the doctrine of legitimate expectation, in the first instance, has to satisfy that he has relied on the said representation and the denial of that expectation has worked to his detriment. The Court could interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in public interest. But a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles."

14. The aforesaid principle of law laid down in **<u>Sethi Auto Service Station</u>** (supra) has been followed with approval by the Supreme Court in the matter of **<u>Union of India and another v. Arulmozhi</u>**

7 (2009) 1 SCC 180

Iniarasu and others[8].

15. After having noticed the principles on which the legitimate expectation works, reverting back to the facts of the case, it would be apparent that in the instant case, the subject shop was given by contract agreement dated 24-1-2014 to the petitioner for a period of three years and was extended for a further period of six months, but thereafter, the Government has taken a policy decision to open Jan Aushadhi Outlet for providing generic medicines to poor and down trodden people, in all the six AIIMS premises which was conveyed through the memo dated 12th June, 2017 to the respondent AIIMS and thus, the competent authority of the respondent taken a decision not to renew the contract agreement for further period and decided to open the Jan Aushadhi Outlet in the said premises, in larger public interest, that too through M/s. HLL Lifecare Limited which is a Government of India enterprise. The Government / respondents are free to take a decision in this regard particularly when the opening of Jan Aushadhi Outlet has become imperative for them. There are stronger reasons not to protect the claim of legitimate expectation on behalf of the petitioner as the decision has been taken in overriding public interest particularly keeping in view the provision for providing generic medicines to the weaker and down trodden sections of the society in more subsidised rates which is one of the policy decisions of the Government of India and to implement the same, the shop /

8 (2011) 7 SCC 397

outlet in question is required to be established by the respondents. Therefore, in my considered opinion, no question of legitimate expectation would arise and such a doctrine cannot be pressed into service competently and also for the reason as the petitioner's performance was not found satisfactory.

16. As a fallout and consequence of aforesaid discussion, it cannot be held that the petitioner has a legally enforceable and substantive right in the shape of legitimate expectation for a writ of mandamus for getting the lease renewed in its favour. Consequently, the writ petition deserves to be and is accordingly dismissed, leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma