

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10746 of 2018

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The Imperishable Security Services Pvt. Ltd. having its Corporate Office at Kanta Chown, N.H. - 57, Mahesh Bhagat, Banwarilal Intermediate College Road, Bairiya, P.S. - Town Muzaffarpur, District – Muzaffarpur – 842003 (Bihar) represented through its Director namely Kaustubh Ranjan, son of Prabhu Sharan Giri, Resident of Hira Nagar, Damadarpur, Post Office- Damodarpur, Police Station- Kanti, District- Muzaffarpur.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Health Services, Government of Bihar, Patna.
2. The Director in Chief, Health Services, Government of Bihar, Patna.
3. The District Officer, Sitamarhi.
4. The District Health Society through its Chairman cum District Officer, Sitamarhi.
5. The Civil Surgeon cum Member Secretary, District Health Society, Sitamarhi.
6. The Deputy Superintendent, Sadar Hospital Sitamarhi.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Karandeep Kumar, Advocate
For the Respondent/s : Mr.Ajay Behari Sinha- GA8

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 05-07-2019

The present writ application has been preferred
for the following reliefs:

(i) For quashing the letter bearing no. 370(12) dated 12.04.2018 (Annexure – 7) issued under the signature of the Director-in-Chief, Health Services, Bihar, Patna as well as the consequential order contained in memo no. 1129 dated 23.04.2018 (Annexure -8) under the signature of the Civil Surgeon cum Chief Medical Officer, Sitamarhi, whereby the agreement entered into between petitioner and the respondent in regard to supply of Generator facility has been cancelled and the



petitioner has been put in the black list.

(ii) Also for quashing the letter no. 317 dated 18.05.2018 (Annexure-9) issued under the signature of the Deputy Superintendent, Sadar Hospital, Sitamarhi, whereby the services being provided in regard to supply of the guard has been stopped in view of the petitioner having been put in the black list, vide Annexure -8 to the present writ application, despite the fact that the said order of blacklisting is having no concern with the agreement in regard to providing the facility of security guards.

(iii) Also for commanding the respondent to allow the petitioner in providing the said generator facility within the district of Sitamarhi by extending the period of agreement in question.

(iv) Also for commanding the respondents to make payment of the entire due amount as agreed between the parties in regard to the services rendered by the petitioner for supply of Generator and washing facilities at different health centre within the district of Sitamarhi.

(v) Also for any other relief(s) for which the petitioner is found to be entitled in fact and circumstances of the case.”

The petitioner is a private limited company engaged in providing security services. It is the case of the petitioner that pursuant to the notice inviting tender as contained in Annexure ‘1’ to the writ application, he was selected, a formal agreement dated 23.08.2016 was signed



between the petitioner and the respondent – Civil Surgeon-cum-Member Secretary, District Health Society, Sitamarhi. Accordingly a work order vide Annexure ‘2’ to the writ application was issued in favour of the petitioner. The petitioner claims that he was discharging his obligation in terms of the agreement providing the Generator facility at different health centres within the district of Sitamarhi and vide Annexure ‘4’ to the writ application he was granted certificate of satisfactory service. It is, however, submitted that there had been some problems at Primary Health Centre, Parsauni where the staff of the Health Centre created some sort of hindrances so that the petitioner may not be in a position to provide that facility at that particular Centre. The earlier service provider also did not take out it’s Generator-set due to some ulterior motive. The petitioner gave several representations to the authorities to the District Health Societies, for taking appropriate action against erring officials. Copies of the representations are enclosed as Annexure ‘5’ to the writ application.

The petitioner also alleged that he was not paid the due contractual amount with regard to the different



Centres despite request being made by him. He submits that only a fraction of the due amount has been paid to the petitioner. All of a sudden the petitioner was served with letter bearing No. 370(12) dated 12.04.2018 issued under the signature of Director-in-Chief, health Services, Bihar, Patna whereby a direction has been given for cancellation of agreement and to put the petitioner in the blacklist.

In consequences thereof, the Civil Surgeon-cum-Chief Medical Officer, Sitamarhi has vide his office order contained in Memo No. 1129 dated 23.04.2018 (Annexure '7') cancelled the agreement of the petitioner and his name has been put in the blacklist. In paragraph '10' of the writ application a specific statement has been made that prior to cancellation of the agreement in question and blacklisting, no show cause notice was ever served upon the petitioner. Thus, the impugned orders have been challenged on the ground for violation of principles of natural justice.

It is further submitted that as a consequence of the blacklisting of the petitioner, the Deputy Superintendent, Sadar Hospital, Sitamarhi has stopped the service of the petitioner as regards the security guard which



was being provided by the petitioner to the said Hospital. Copy of the letter No. 317 dated 18.05.2018 issued by the Deputy Superintendent, Sadar Hospital, Sitamarhi has been enclosed as Annexure '9' to the writ application and the same is also under challenge.

In response to the writ application a counter affidavit has been filed on behalf of the respondent nos. 5 & 6. It is stated in the counter affidavit that the Director-in-Chief, Health Services has not issued the letter suddenly, rather this letter has been issued after analyzing the circumstances i.e. *Tarankit* question whereby Hon'ble Member Bihar Legislative Assembly, Mrs. Sunita Singh Chauhan put question No. D-(57), and reply given by Civil Surgeon, Sitamarhi that the petitioner has stopped electric supply to P.H.Cs. hampering the health services which is an emergency service due to which health services run by the government was likely to collapse. It is in these compelling circumstances that the agreement of the petitioner has been cancelled and he has been put in the blacklist. In reply to paragraph '10' of the writ application, it is stated that the same is not correct, as the petitioner had been given certain



letters as contained in Annexure – ‘D’, ‘E’, ‘F’ & ‘G’ to the counter affidavit but he had not given proper response to the same.

This statement of the respondents have been replied by the petitioner in his rejoinder wherein he has stated that the respondents have not done their duty to facilitate the execution of work in question for which the petitioner cannot be held responsible. It is submitted that the reason for blacklisting is being changed from time to time as per desirability and suitability of the respondents.

Having heard learned counsel for the parties and on perusal of the records, this court finds from the impugned order as contained in Annexure ‘7’ & ‘8’ to the writ application that those orders have been issued without giving any appropriate opportunity of show cause/hearing to the petitioner. Although with the counter affidavit Annexure ‘D’, ‘E’, ‘F’ & ‘G’ have been placed on record, it is evident that the last letter issued to the petitioner is dated 18.01.2017. The petitioner has thereafter submitted his letter dated 08.03.2017, the agreement in question commenced from 23.08.2016 and expired on 22.08.2017 on



expiry of one year period, during this period no action was taken against the petitioner. The impugned orders have been issued on 12.04.2018 (Annexure '7') and 23.04.2018 (Annexure '8') much after the expiry of the period of agreement, that too without giving any opportunity to show cause at this stage.

With the writ application, the petitioner has brought on record several copies of letters and reminders, however, those have not been considered by the respondents and no response thereto are available on the record. In these circumstances, in the opinion of this court, Annexure '7' & '8' cannot be held legal, just and proper and hence those are hereby set aside.

Annexure '9' to the writ application has been issued on 18.09.2018 without giving any opportunity of hearing to the petitioner as admittedly no show cause notice has been issued to him by the Deputy Superintendent, Sadar Hospital, Sitamarhi and the work of the petitioner has been stopped only because the petitioner was blacklisted vide Annexure '7' & '8' to the writ application. In the opinion of this court, Annexure '9' is also liable to be held bad in law



as it suffers from the vice of violation of principles of natural justice. Accordingly, Annexure '9' is also set aside.

The petitioner has raised a grievance that his payments have not been made by the respondents. The petitioner is granted liberty to submit a fresh representation with regard to his outstanding dues to the respondents concerned which will be considered by the respondents and whatever admissible amount will be found payable, the same would be paid to the petitioner within a period of two months from the date of receipt of the representation. In case, any of the claims of the petitioner is not payable, the reasons therefor will be provided to the petitioner within next 15 days.

The application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	11.07.2019
Transmission Date	

