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HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 02.12.2019

Judgment Delivered on : 11.12.2019

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 28 of 2018

(Arising out of order dated 02.01.2018 passed by the learned Single Judge in WPC No. 2904 of 2017)

- 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).

---- Appellant

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 Appellants	:	Mr. Kishore Bhaduri and Mr. Anand Dadariya, Advocates
For Respondents	:	Mr. B. Gopa Kumar, Assistant Solicitor General

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Per P. R. Ramachandra Menon, Chief Justice

1. Rejection of the application for extension of the tenure to continue to run a Chemist Shop in the premises of the 2nd Respondent - All India Institute of Medical Sciences (AIIMS), Raipur, ordering the premises to be surrendered for running a Generic Medical Store, supervised by M/s. HLL Lifecare Limited which is a Government of India undertaking, was declined to be interfered with by the learned Single Judge and the writ petition came to be dismissed, which is put to challenge in this appeal.

2. Heard Mr. Kishore Bhaduri, the learned counsel appearing for the Appellant and Mr. B. Gopa Kumar, Assistant Solicitor General appearing on behalf of the 1st Respondent and also for Respondents No. 2 to 4 (AIIMS).

3. The sequence of events is as follows :

(a) The Respondent - AIIMS, Raipur is one of the six health care institutes established by the Ministry of Health and Family Welfare, Government of India under the Pradhan Mantri Swasthya Suraksha Yojna (PMSSY), with intent to correct the regional imbalances in quality at tertiary level health care in the country and to attain self-sufficiency in graduate and post-graduate medical education and training. A global tender was issued by the AIIMS on 26.09.2013 inviting suppliers for setting up a Chemist Shop at the premises of the AIIMS, Raipur. The Appellant also participated in the bid and came out successful; pursuant to which, tender was awarded in favour of the Appellant on 08.01.2013, followed by execution of an agreement on 24.01.2014. As per the tender quoted by the Appellant and the terms of the agreement, the Chemist Shop was to be operated on '24x7 basis' and had agreed to supply the medicines at discounted rates, providing 65.30% rebate on the printed MRP inclusive of VAT. It was accordingly, that the Appellant was allotted a space of 735 sq.ft. in the premises on a monthly rent @ Rs. 48/- per sq.ft. The space was accordingly handed over and the Appellant started running the Chemist Shop from 17.02.2014 onwards as above. As per the terms and conditions of the contract, the tenure was for a period of 'three' years from the date of signing the contract and subject to satisfactory performance, it could be extended for a further period, as agreed between the parties, subject to the same terms and conditions.

(b) Since the initial period of 'three' years tenure was to expire on 23.01.2017, the Appellant put an application for extension of the tenure on 29.08.2016; which was replied as per communication dated 10.01.2017 by the 2nd Respondent, whereby the request was rejected and the Appellant was required to vacate the building and effecting vacant surrender to the AIIMS, Raipur on 23.01.2017 i.e. the last date as per the agreement. This was sought to be challenged by filing WPC No. 139/2017; which was dismissed on 19.01.2017 as withdrawn, with liberty to move afresh as specified therein.

(c) The Appellant submitted afresh representation on 23.01.2017 for extension of the tenure, also pointing out that huge amounts are due to be cleared and paid to the Appellant in respect of the medicines / materials already supplied. It was also pointed out that the Appellant had already invested a huge amount in procuring and arranging the stock valued at about Rs.40 lakhs; adding that if the tenure of the agreement was not extended, it would result in huge loss. In the said circumstance, the request was considered favourably as per letter dated 02.05.2017 issued by the AIIMS, whereby the period of the agreement for running Pharmacy Store was extended till 31.10.2017 on the same terms and conditions as agreed earlier.

(d) While running the Store as above, since the extended tenure was to come to an end by 31.10.2017, the Appellant made a further request for extension of the term, vide letter dated 25.10.2017 to the 2nd

Respondent; which came to be rejected without assigning any other reason, but for mentioning that directions have been issued from the PMSSY Division, Ministry of Health and Family Welfare, New Delhi, that a 'Jan Aushadhi Store' was to be opened in the premises of the AIIMS at Raipur under the supervision of M/s. HLL Lifecare Limited (Government of India undertaking), which according to the Appellant was not correct and was only to extend undue favours to M/s. HLL Lifecare Limited, who was already running a pharmacy store in the name of 'Amrit Pharmacy', nearby. The Appellant also pointed out that, if any 'Jan Aushadhi Store' was to be opened it could be opened in the same premises which was allotted to M/s. HLL Lifecare Limited and that the intent to oust the Appellant was ill-motivated.

(e) Annexure-P/1 dated 25.10.2017 was issued by the AIIMS asking the Petitioner to vacate the premises, which was sought to be challenged by filing WPC No. 2904/2017. The representation preferred by the Petitioner for extension of tenure also came to be rejected as per Annexure-P/8 dated 31.10.2017. The writ petition was sought to be amended by filing an IA. The Appellant raised a specific contention that the Deputy Director (Admin) who issued the impugned proceeding had no power, as the power was exclusively vested with the Director, which could not have been delegated. The prayers were opposed by the Respondents by filing return as to the facts and circumstances pointing out that the tenure for running the shop as per tender and the agreement executed in this regard was already over and there was no vested right for the Appellant to seek for extension of the same. The necessity to provide generic medicines at subsidised price to the needy general public was highlighted and that a 'Jan Aushadhi Store' was decided to be started under the supervision of M/s. HLL Lifecare Limited, as instructed by the Ministry. It was also brought on record that the service / performance of the Appellant was not satisfactory; insofar as various shortcomings had been brought in the inspection, as revealed from the inspection report prepared by the competent authority. Still, considering the particular circumstances, extension of tenure had been, granted based on the earlier representation, as per Annexure-P/5, enabling the Appellant to continue in the premises till 31.10.2017 on similar terms.

4. Mr. Kishore Bhaduri, the learned counsel for the Appellant submits that the offer made by the Appellant and accepted by the AIIMS is the best one; insofar as the medicines / materials are being supplied at 65.30% rebate on the MRP, also paying rent @ Rs.48/- per sq.ft. for the area of 735 sq.ft. occupied by the Appellant. It is pointed out that the insinuation levelled against the Appellant is not correct and that the only instance which agitated the AIIMS was the demand raised by the Appellant to satisfy the huge arrears in respect of the supply already effected. It is also pointed out by the learned counsel that the space, if at all, required to sell the generic medicines is only 120 sq.ft. and that the Appellant is ready to make available / surrender the said extent from the area already allotted area of 735 sq.ft.; adding that the Appellant has already deployed 20-25 employees and the running of the Chemist Shop is the only means of livelihood for the Appellant and also the said employees. The above submissions were sought to be supported based on the principle of

'legitimate expectation' placing reliance on the verdicts passed by the Apex Court in ***M.P. Oil Extraction and another v. State of M.P.***[1] and others (paragraph 44) and ***State of U.P. and others v. Lalji Tandon (Dead) Through Lrs.***[2] (paragraphs 18 & 19).

5. Mr. B. Gopa Kumar, the learned Assistant Solicitor General representing the 1st Respondent as well as the Respondents No.2 to 4 - AIMMS, submits that there is absolutely no basis for the plea set up with reference to the doctrine of 'legitimate expectation', pointing out that as per the tender notified and the agreement executed, the tenure was only for a period of 'three' years, which is over. There is no vested right and no promise or assurance was given by the AIIMS to have it extended, as a matter of right, except for extension to an appropriate extent, if agreed by the AIIMS, subject to the same terms. A 'policy decision' has been taken to run 'Jan Aushadhi Store' so as to implement the policy of the Government with intent to make generic medicines available to the patients at subsidised rates, under supervision of M/s. HLL Lifecare Limited, which is also a 'Government of India Undertaking' and that vacant surrender was demanded only after expiry of the lease period. It is also pointed out that, admittedly, considering the application for extension of tenure, it was extended till 31.10.2017. The learned counsel submits that the performance of the Appellant was also not satisfactory, insofar as various shortcomings were noted in the course of inspection as borne by the inspection report; adding that such inspections were conducted invoking the power and procedure as mentioned in the

[1] (1997) 7 SCC 592
[2] (2004) 1 SCC 1

relevant clause incorporated in the agreement. The learned Assistant Solicitor General submits that, as per the current policy, no private venture is intended or to be promoted within the premises of the AIIMS and no private person / firm is permitted to run any Medical Store in the premises of any of the 'six' AIIMS Centres situated in different parts of the country. Even after expiry of the tenure and dismissal of the writ petition, the Appellant is continuing for more than 'two' years, based on the interim order passed by this Court on 30.01.2018, staying dispossession. It is pointed out that absolutely no right of the Appellant, much less any fundamental right is infringed in any manner.

6. With regard to plea set up with reference to principles of 'legitimate expectation' or 'promissory estoppal', the learned Assistant Solicitor General sought to place reliance on the verdicts passed by the Apex Court in ***Sethi Auto Service Station v. DDA***[3] (paragraph 32) and ***Hira Tikkoo v. Union Territory, Chandigarh and others***[4] (paragraph 20), besides ***State of W.B. and others v. Niranjan Singha***[5] (paragraph 4). It is asserted that no part of the premises belonging to the AIIMS is intended to be given to any private agency, as a matter of policy and hence there is no right for the Appellant to continue in the premises.

7. After hearing both the sides, we find that the contentions put forth before this Court were exactly the same as raised before the learned Single Judge. The reliance sought to be placed by the Appellants on ***M.P. Oil Extraction*** (supra) and ***Lalji Tandon*** (supra) were considered by the learned Single Judge. At the same time, the dictum in ***Hira Tikkoo***

[3] (2009) 1 SCC 180
[4] (2004) 6 SCC 765
[5] (2001) 2 SCC 326

(supra) and ***Niranjan Singha*** (supra) dealing with the principles of 'legitimate expectation' and as to the promises made by the public authorities, to be considered in the light of 'larger public interest' was also discussed in detail. The learned Single Judge placed further reliance on the verdicts passed by the Apex Court in ***Union of India v. Hindustan Development Corporation***[6], ***Madras City Wine Merchants' Assn. v. State of T.N.***[7], ***Sethi Auto Service Station*** (supra) and ***Union of India and another v. Arulmozhi Iniarasu and others***[8] to answer the question in favour of the Respondents. It was accordingly, that the matter was finalized giving weightage to the overriding public interest as discussed in paragraph 15; which is reproduced below :

> "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

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[6] (1993) 3 SCC 499
[7] (1994) 5 SCC 509
[8] (2011) 7 SCC 397

> more subsidised rates which is one of the policy decisions of the Government of India and to implement the same, he shop / 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."

Based on the above finding, the learned Single Judge held that it was difficult to accept the claim of the writ petitioner that he was having a legally enforceable and substantive right in the shape of 'legitimate expectation' for issuance of a writ of mandamus and to get the lease renewed in his favour; in turn, leading to dismissal of the writ petition.

8. After hearing both the sides and after going through the finding and reasoning given by the learned Single Judge, we are of the firm view that the verdict passed by the learned Single Judge is perfectly within four walls of law and does not warrant any interference. Appeal fails, it is dismissed accordingly.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	**Judge**

Chandra