

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2062 of 2019

- Community Action Through Motivation Programme “CAMP” Through its Authorized Representative, Mr. Pradeep Rai, Aged About 37 Years S/o Late Mr. Prakash Rai, R/o Flat No. 1427/ Sector B, Pocket -1, Vasant Kunj New Delhi

---- Petitioner

Versus

1. State of Chhattisgarh (Through Secretary, Department of Health And Family Welfare) Mantraya, Mahanadi Bhawan, Atal Nagar, Raipur, Chhattisgarh
2. DKS Post Graduate Institute And Research Centre (Through Its Hospital Superintendent And Administrative In-charge) DKS Bhawan, Shastri Chowk, Raipur, Chhattisgarh
3. The Director D. K. DKS Post Graduate Institute And Research Centre, DKS Bhawan, Shastri Chowk, Raipur, Chhattisgarh

-----Respondents

For Petitioner	: Shri Kishore Bhaduri and Shri Pankaj Singh, Advocates
For Respondents/ State	: Shri Sudeep Agrawal, Deputy Advocate General

**Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board**

Per PR Ramachandra Menon,CJ

18.11.2019

1. The contract awarded to the Writ Petitioner with regard to the running of an ambulance service with a centralized call centre, as per Annexure P2, came to be unilaterally cancelled as per Annexure P1 order dated 16.05.2019; which made the petitioner to feel aggrieved and approach this Court by filing the Writ Petition with the following prayers:

“10.1 This Hon'ble Court may kindly be pleased to call for record of entire tender process which is subject matter of the present petition.

10.2 That the Hon'ble Court may kindly be pleased to quash the impugned termination notice dated 16.05.2019 passed by the respondent No.2 and thereby direct restoration of the contract awarded to the petitioner and allow the petitioner to render the services in accordance with the terms of Contract.

10.3 That the Hon'ble Court may kindly be pleased to direct the respondent authorities to make good remittance of the payment pending to be made to petitioner for the services already rendered by the petitioner in accordance with the terms of the contract.

10.4 That the Hon'ble Court may kindly be pleased to grant any other relief(s)/order(s)/direction(s) in favour of petitioner, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, in the interest of justice.

10.5 Cost of the petition.”

2. The prayers were sought to be resisted from the part of the respondents. Considering the rival contentions, various interim orders have been passed by this Court at different points of time, and today the matter has been taken up for final hearing. We heard the learned counsel for the petitioner as well as learned Deputy Advocate General at length.

3. Earlier, this Court had considered whether there could be any interference with regard to the course and events, particularly, it being a matter of contract and effective alternative remedy by way of Arbitration was available. But then, on taking into consideration of the nature of contentions raised from the part of the respondents, particularly paragraph-8 of their return to the effect that the respondents had already satisfied the entire amount payable to the petitioner till the date of termination and further that if at all any amount was still to be paid, they were ready to

satisfy the same, subject to approval of the competent authority with regard to the claim in this regard, we found it appropriate to cause the matter to be considered only with regard to the 'undisputed liability', if at all any, so as to cause disbursement of the said amount; more so when paucity of funds was pointed out as the reason for delay in effecting timely payments and for putting an end to the arrangement.

4. In the course of proceedings, the deeds and misdeeds on the part of the Writ Petitioner were seriously put on record by respondents/State, stating that they were not rendering proper service; that there was an attempt to interdict the deployment of ambulances belonging to the respondents; the keys of the ambulance were snatched away, when the matter was reported to the Police and a Crime was registered. The insinuation levelled against the petitioner from the part of the respondents was sought to be rebutted by the petitioner, pointing out various aspects in this regard. The rival pleadings and proceedings were taken note of and it was accordingly, that various interim orders were passed as mentioned above.

5. Today, when the matter is taken up for consideration, with reference to the pleadings and proceedings, the learned counsel for the petitioner points out that the order of termination is *per se* wrong and illegal; insofar as absolutely no reason has been stated therein. Learned counsel also places reliance on the verdict passed by the Apex Court in the matter of **Mohinder Singh Gill and another Vs Chief Election Commission** reported in 1978 SCC (1) 405, particularly, with reference to paragraph-8, to the effect that an order which does not disclose the reasons and bad in

all respects, cannot be validated by supplementing reasons in the form of pleadings in the counter affidavit or such other proceedings.

6. The minimum sequence of events is descendable from the various interim orders passed by this Court, which are given below in chronological order:

“28.06.2019

In response to the observation made by this Court on 25/06/2019, the petitioner filed additional affidavit on the same date, wherein the ongoing proceedings before the Secretary, Department of Health & FW and Medical Education, for resolving the issue, has been specifically stated.

Learned Additional Advocate General submits that since the issue is pending consideration, the conveyance of the patients from DKS Hospital to Mecahara, which is a stretch of nearly 200 Meters, will be done by the authorities themselves, for the time being.

The learned counsel for the petitioner submits that the petitioner will definitely yield to any request for the service of ambulance, by making the same available and that the payment for the said service could be subject to consideration by the Secretary, and if it is further necessitated, by this Court in the due course.

Post the matter on Monday i.e. on 01/07/2019.

18/07/2019

In view of nature of contentions raised from the part of the State and particularly the admission in Para-8 of the return dated 3.7.2019, the agency is under liability to effect the undisputed payment as per terms of the agreement till the date of termination of the contract. We find it appropriate to get instructions as to the undisputed liability, as on the said date, and to cause payment of the same, relegating the petitioner to pursue the remedy before the sole Arbitrator, who has already been moved from their side in terms of Clause 20.2 of the agreement for settlement of the dispute.

Learned Additional Advocate General seeks for breathing time in this regard.

We find it appropriate to have the matter listed on 25.7.2019.

31/07/2019

The learned Additional Advocate General submits that in the course of further deliberation, some information / input has been furnished by the authority concerned, however, since it is not exhaustive, breathing time is sought for to get the particulars as to undisputed amount which is to be given to the Petitioner with reference to the contents of the paragraph 6 of the statement filed before this Court on 09.07.2019. It is stated that the exact figure will be submitted before this Court to cause the disbursement of the said amount forthwith.

As requested by the learned Additional Advocate General, post for further consideration on 19.08.2019. No further adjournment will be granted under any circumstance.

19.08.2019

It appears that the order passed by this Court on 31.7.2019 has been paid only scant regards by the 2nd respondent and no information is forthcoming as to the undisputed amount by virtue of which further proceedings may have to be initiated against the said respondent.

We had made it clear in the said order itself that no further adjournment would be granted under any circumstance.

Learned Additional Advocate General submits that the order was communicated to the 2nd respondent then and there over telephone through the Officer-in-Charge appointed for dealing with this case.

However, considering the persuasive submissions made by learned Additional Advocate General, we find it appropriate to list this matter tomorrow i.e. on 20.8.2019, for further consideration after getting instructions.

List it on **20.8.2019**.

03/09/2019

The matter was heard elaborately in view of the particular nature of dispute raised and the relief which could be granted in exercise of jurisdiction of this Court under Article 226 of the Constitution of India.

Earlier, we had an occasion to note that the termination of the contract was subject to arbitration at the instance of Petitioner by invoking Clause 20.2 before the Secretary, Department of Health & Family Welfare, Government of Chhattisgarh, in conformity with Clause 20.2 and the memorandum of agreement executed in this regard. The termination was upheld, but then, the grievance of the Petitioner with regard to the non-payment of the amount due in respect of the service rendered till the termination of the contract on 16.06.2019 was directed by the Arbitrator to be considered by the 2nd Respondent and to effect the payment accordingly. The payment was sought to be disputed after the termination of the contract. The justification sought to be placed by the Respondents for putting an end to the contract was mainly with regard to the lack of necessary funds with regard to which the facts and figures were furnished before this Court in their return and such other proceedings filed at different points of time referring to the liability of the 2nd Respondent to various financing institutions adding that the amounts due were being paid with huge interest and under such other heads. It was also pointed out that the 2nd Respondent was having a right to put an end of the contract by serving one month's notice which was done in the instant case. It was thereafter that a different step was taken by the 2nd Respondent by issuing some notice or proceedings to the Petitioner as to some mistakes or lapse on the part of the Petitioner in meeting the requirements with regard to the terms of contract, which was sought to be rebutted from the part of the Petitioner; who has filed supplemental pleadings.

After hearing both the sides, we found it appropriate on 18.07.2010 that considering the nature of rival contentions, the parties were to be relegated to move the remedy under arbitration, with regard to the disputed amount. In the said circumstances, we found it proper to cause disbursement of the 'undisputed amount' and it was accordingly, that an order was passed in the following terms:

“ In view of nature of contentions raised from the part of the State and particularly the admission in Para-8 of the return

dated 3.7.2019, the agency is under liability to effect the undisputed payment as per terms of the agreement till the date of termination of the contract. We find it appropriate to get instructions as to the undisputed liability, as on the said date, and to cause payment of the same, relegating the petitioner to pursue the remedy before the sole Arbitrator, who has already been moved from their side in terms of Clause 20.2 of the agreement for settlement of the dispute. Learned Additional Advocate General seeks for breathing time in this regard. We find it appropriate to have the matter listed on 25.7.2019."

After much time and deliberations, the Respondents have filed a covering memo dated 26.08.2019 along with copies of some documents as to how the undisputed amount has been worked out to the tune of Rs.19,28,175/-; as against the claim of more than Rs. 1.5 crores.

The learned counsel for the Petitioner submits that there is absolutely no basis for the course now sought to be pursued by the 2nd Respondent insofar as the service rendered by the Petitioner at no point of time was disputed by the Respondents in any manner. That apart, the relevant clauses in the tender and also the memorandum of the undertaking clearly enabled the Petitioner to have Rs.1,89,500/- as the basic minimum amount to be paid in respect of each Ambulance every month, apart from the eligibility to get the due amount based on running kilometers. Regarding the service rendered in respect of the 11 ambulances, 9 ambulances were provided by the 2nd Respondent, while 2 were provided by the Petitioner. Among the 9 Ambulances, given by the 2nd Respondent, 6 were having only the 'Basic Life Support' infrastructure, where deployment of one driver and one emergency technician was enough, whereas, in respect of the other Ambulances, the Petitioner had to make huge investments to provide additional infrastructure as to provide 'Advanced Life Support' system. Similar facilities have been installed in the two Ambulances provided by the Petitioner as well. There was no dispute with regard to the engagement of Doctors or staff at any point of time. As per the terms of the agreement, the Petitioner had to provide six doctors who were to be there in the 'call center' set up in the premises of the 2nd Respondent, who were to monitor and provide necessary help / advice through the electronic screen available at the call

center and as displayed through the screens installed in the ambulances, besides the duty to accompany the patient in appropriate cases where there was an emergent situation.

The learned counsel for the Petitioner submits that though the Petitioner is ready to take up the matter by way of arbitration in respect of the amounts payable with reference to the mileage or in respect of the alleged diversion of service (carrying patients to the private hospitals) and under such other heads, there cannot be any dispute with regard to the basic minimum amount of Rs.1,89,500/- to be paid per Ambulance per month, and this by itself will come to a sizeable amount, despite which the balance amount now stated as payable by the 2nd Respondent is far below.

Shri Shailendra Dubey, the learned Additional Advocate General and Shri Gagan Tiwari, the learned Deputy Government Advocate assisting the learned Additional Advocate General, submit that the course and proceedings as to how the undisputed amount payable has been worked out have been clearly stated in the version filed before this Court. It is stated that the Petitioner was required to produce relevant materials as to the engagement of 6 doctors and as to the payment made to them, which was not complied with. In the said circumstance, the amount stated as payable under that head (Rs. 70,000 x 6 x 10 months = Rs. 42,00,000/-) was disallowed. With regard to the necessity to engage 99 staff for operating the 11 ambulances in three shifts, only 33 persons were engaged by the Petitioner, thus, with a deficit of 66. Since the per month salary payable to such staff is stated as Rs. 12,000/-, a sum of Rs.79,20,000/- (66 x Rs. 12,000 x 10 months) also came to be deleted. There was deletion of amounts under some other heads as well and the total amount which came to be disallowed amounted to Rs. 1,24,63,520/- as against the total sum of Rs. 1,88,12,051/- claimed by the Petitioner. Thus, the actual amount payable, according to the Respondents was only Rs. 63,48,531/- and after giving credit to the sum of Rs. 31,61,946/- paid earlier and a further a sum of Rs. 15,00,000/- paid subsequently, the balance, came only to Rs. 19,28,175/-. After deducting the TDS, the Petitioner has already been issued a cheque for the sum of Rs. 18,89,611/-, a copy of which has already been put on record.

The learned counsel for the Petitioner vehemently opposes the course and events being pursued by the Respondents; stating that it is highly arbitrary and illegal in all respects, adding that the Petitioner at no point of time had expressed any unwillingness in producing the particulars of engagement and the payments effected to the Doctors and the other staff. It is stated that the Petitioner is ready to have the same produced before the Respondents.

The learned Additional Advocate General as well as the learned counsel representing the Government submits that the Respondents are ready to approach the issue with an open mind and they only want to have the relevant materials / evidence to support the payment, as claimed by the Petitioner. Reference is also made to Annexure R/10 dated 23.08.2019 issued to the Petitioner in this regard. If the Petitioner produces the particulars of the Doctors and the staff along with details proof of payments effected to them, the matter will be examined further and eligible extent of payment will be released to the Petitioner within two weeks of producing the relevant materials in this regard; submits the learned counsel representing the Respondents.

In the said circumstances, the Petitioner is required to produce the documents called for as per Annexure R/10 and such other relevant documents, if any, which shall be submitted within 10 days from today. On submitting the said documents, the veracity/credibility of the same shall be looked into by the competent authority of Respondents No. 2 and 3, granting an opportunity of hearing to the petitioner to substantiate/confirm the proceedings and this shall be done within a further period of two weeks. The amount due, based on such exercise, shall be released to the Petitioner within a further period of one week thereafter.

List the matter for further consideration on 23.10.2019.

23.10.2019

The learned Deputy Advocate General submits that pursuant to the order dated 03.09.2019, the matter has been considered elaborately with the records made available by the Petitioner and the order has been passed on 15.10.2019. The learned counsel seeks for time to place the said order as part of the records.

List this matter after Diwali Holidays.”

7. From the above orders/ proceedings, it is seen that the course of action pursued by the respondents after availing service of the petitioner and declining to effect the payment, at least in respect of the undisputed extent, was deprecated by this Court and it was caused to be disbursed which is stated as effected to the admissible extent.

8. When the matter came up for consideration earlier, it was also observed that the respondents had expressed their willingness to have the issue considered and to effect further payments, if at all any and if the Writ Petitioner produced relevant documents/proof with regard to the claim. According to the respondents, the requisite number of doctors were never engaged, the service was not done properly, claim was raised also in respect of the instances where the patients were lifted to the hospitals/medical colleges in the ambulances belong to the respondents and such other counts and hence the dispute on the claim.

9. The learned counsel for the petitioner had submitted that the petitioner was ready to submit all the relevant documents. It was accordingly, that a detailed order was passed on 03.09.2019 enabling the Writ Petitioner to submit all the documents, with consequential direction to the respondents to have it considered and to pass an appropriate order. It is brought to the notice of the Court that, pursuant to the said order, a representation was submitted by the Writ Petitioner only on 23.03.2019. The version of the respondents is that all the documents submitted by the Writ Petitioner were considered with reference to the representation and an order was passed on 15.10.2019, a copy of which has been produced along with IA-2 of 2019, filed on 23.10.2019, seeking to accept the said

document as an additional document on record. As per said proceedings, it is stated that the documents stated as produced by the petitioner did not establish a right to get further amount from the respondents and at the same time, they reiterated that, if any other additional documents are there and if the same is produced, they are ready to have it considered.

10. Learned counsel for the petitioner submits that all the documents produced before the respondents have been compiled and produced before this Court, along with an additional affidavit dated 18.11.2019.

11. Learned Deputy Advocate General submits that many of these documents were not produced before the respondents, despite the opportunity given and the contention of the petitioner is not liable to be sustained.

12. The respondents concede that they are bound to effect payment for the service actually availed, adding that termination of the contract was within their purview, to save the money, considering the economic constraints and further that they were ready to do the operation themselves. Hence it was not proper for this Court to have it interdicted; more so, in view of the disputed facts. The endeavour of this Court was only to see that undisputed amount was caused to be released to the petitioner; for which there was absolutely no reason or rationale on the part of the respondents to have it retained under any circumstances.

13. Today, after hearing both the sides, this Court finds that there is serious dispute with regard to the factual aspects in relation to the contract awarded and the service rendered by the petitioner. This factual

adjudication cannot be done by this Court in exercise of discretionary jurisdiction under Article 226 of the Constitution of India. This Court has interfered in the matter and relief to the possible extent has already been extended to the petitioner, by causing disbursal of the undisputed amount. The remaining issues with regard to the balance amount payable, if any, and such other counts could be agitated by the petitioner by pursuing other appropriate remedy by way of Arbitration or otherwise in accordance with law. Without prejudice to the rights and liberty in this regard, interference is declined and the Writ Petition stands disposed off.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge