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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.31865 of 2014

&

M.P.No.1 of 2014

M/s.Geekay HR Solutions Pvt. Limited,
Rep. by its Director Mr.S.Ambigaidass
#405, GCK Complex, T.H.Road,
Thiruvottriyur, Chennai - 600 019.

... Petitioner

vs.

The Dean,
Rajiv Gandhi Govt. General Hospital,
Chennai - 600 003.

...Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India for writ of declaration to declare the act of respondent herein deducting payment in monthly bills of the petitioner is unreasonableness, arbitrary, unfair and violating Article 14 of the Constitution of India and consequently, direct the respondent to release the deducted monthly bill sum for the period of 01.06.2012 to 31.05.2014.

For Petitioner : Mr.V.Arun

For Respondent : Mr.K.Ravikumar,
Additional Government Pleader

ORDER

This writ petition has been filed for declaration to declare the act of the respondent in deducting the payment in the monthly bills of the petitioner as unreasonable, arbitrary, unfair and violative of Article 14 of the Constitution of India and consequently direct the respondent to release the deducted monthly bill sum for the period between 01.06.2012 to 31.05.2014 to the petitioner.



2. It is the case of the petitioner that they were awarded a contract for house keeping services with the respondent hospital, pursuant to a tender issued by the respondent on 14.01.2012. It is the case of the petitioner that the respondent issued the work order on 15.05.2012. According to the petitioner, as per the work order, he was awarded the work for a period of one year initially and being satisfied with his service, it was extended for another one year. According to the petitioner, the respondent arbitrarily deducted the amounts from the bills submitted by him towards house keeping services rendered by him for the respondent hospital for the contractual period.

3. According to him, arbitrarily the respondent has deducted between 10% to 46% without giving any notice and without following the procedure laid down under the terms and conditions of the work order. According to the petitioner, despite several representations made by them for the payment of the balance amount due and payable to them for the bills raised by them, the respondent failed to release the unlawfully deducted amounts. In such circumstances, this writ petition has been filed for a declaration that the act of the respondent is deducting payments from and out of the monthly bills raised by the petitioner is unreasonable, arbitrary, unfair and violative of Article 14 of the Constitution of India and consequently, the petitioner seeks for a direction to the respondent to release the deducted monthly bill sum for the period between 01.06.2012 to 31.05.2014.

4. A counter affidavit has been filed by the respondent wherein they have stated that the performance of the petitioner was evaluated by a monitoring committee and only based on the recommendations of the said committee, the percentage of payment was deducted from and out of the bills raised by the petitioner with the respondent. It is their case that all minutes conducted by the monitoring committee were communicated and the petitioner attended the some monitoring committee meeting and orally he was communicated about the deficiencies.

5. It is also their case that the monitoring committee comprised of eight members and all of them are high ranking persons. It is their case that the resident medical officer of the respondent hospital pointed out the following deficiencies to the petitioner and issued notice on various dates and the reply furnished by the petitioner was also not satisfactory: (a) Based on the statement furnished by the resident medical officer, the petitioner has not produced the number of workers as already ordered in the tender condition; (b) The performance



committee have insisted to upkeep the hospital neat and clean every month, they have failed to do so; and (c) The explanation submitted by the petitioner for the above lapse is not satisfactory and not acceptable.

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6. The petitioner has filed typed set of papers along with this writ petition. As seen from the typed set of papers, the work order dated 15.05.2012 was issued by the respondent to the petitioner which contains the terms and conditions of the contract for house keeping services awarded to the petitioner. The duration of the contract as seen from the work order is valid for a period of one year after the issue of letter of intent and the contract will be evaluated by the respondent at the end of the first year and after that, second year contract will be continued based on the satisfactory performance of the contractor.

7. Admittedly, in the case on hand, the contract has been extended after the completion of one year in favour of the petitioner. If the respondent was not satisfied with the service of the petitioner, they would not have extended the contract for another period of one year. The extension of contract for another one year makes it clear that the respondent was satisfied with the services of the petitioner.

8. The work order also enjoins the respondent that if they find any deficiency with regard to the agreed level of performance of the petitioner, the respondent will have to issue a notice of deficiency on the petitioner. Only if the petitioner fails to respond to the notice of deficiency issued by the respondent within 15 days, the respondent hospital has got authority to deduct 10% of money in the running monthly bill of the petitioner and it gets incremented by 5% for every 30 more days till the performance gap is filled up with respect to the agreed level of services. The relevant clause found in the work order is extracted hereunder:

"The performance of your services will be monitored by an effective performance monitoring tool. If there is any deficiency in the level of service with respect to the agreed level of key performance indicator (KPI) in the service level agreements a deficiency notice will be issued by the hospital authority on receiving a notice of deficiency, if you show no response for 15 days, then the hospital authority reserves all rights to deduct 10 % of money in the running month bill and it gets incremented by 5% for every 30 more days till the performance gap is filled up with respect



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to the agreed level of service. If you show no response for a period of 60 days on receiving a letter of deficiency the hospital authority has all rights to terminate contract without any liability on the part of the hospital authority.

7. Force Majeure : As per clause 8.1 (19) and 17.25 of the bidding document.

8. You shall not assign or sublet this contract or any substantial part thereof to any other agency.

9. In the case on hand, as seen from the payment made by the respondent to the petitioner for the bills raised by him, the respondent has deducted the following percentage from and out of the bills raised by him. The details of the bills as well as the deductions are as follows:

PAYMENT SUMMARY FOR THE PERIOD FROM 01.06.2012 to 31.05.2014

Sl . No .	Bill for the month	Date of the bill	Monthly Bill Sum (in Rs.)	Date of Approval	Date of payment received	Deducted % @ monthly bill sum	Deducted sum (in Rs.)
1	June 12	05.07.12	16,38,698	10.08.12	25.09.12	10%	1,63,871
2	July 12	03.08.12	-do-	10.08.12	25.09.12	10%	1,63,871
3	Aug' 12	01.09.12	-do-	03.10.12	09.11.12	15%	2,45,806
4	Sep' 12	01.10.12	-do-	31.10.12	12.11.12	20%	3,27,740
5	Oct' 12	01.11.12	-do-	12.12.12	21.12.12	25%	4,09,675
6	Nov' 12	01.12.12	-do-	08.01.13	19.01.13	25%	4,09,675
7	Dec' 12	01.01.13	-do-	08.01.13	23.01.13	25%	4,09,675
8	Jan' 13	01.02.13	-do-	08.02.13	???	30%	4,91,610
9	Feb' 13	01.03.13	-do-	06.03.13	???	30%	4,91,610
10	Mar' 13	01.04.13	-do-	22.04.13	14.05.13	30%	4,91,610
11	Apr' 13	02.05.13	-do-	14.05.13	22.05.13	30%	4,91,610
12	May' 13	01.06.13	-do-	06.06.13	19.06.13	30%	4,91,610
13	Jun' 13	01.07.13	-do-	08.07.13	18.07.13	30%	4,91,610
14	Jul' 13	01.08.13	-do-	14.08.13	30.09.13	30%	4,91,610
15	Aug' 13	02.09.13	-do-	20.09.13	19.10.13	25%	4,09,675
16	Sep' 13	01.10.13	-do-	07.10.13	28.10.13	25%	4,09,675
17	Oct' 13	01.11.13	-do-	08.11.13	25.11.13	25%	4,09,675



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Sl. No.	Bill for the month	Date of the bill	Monthly Bill Sum (in Rs.)	Date of Approval	Date of payment received	Deducted % @ monthly bill sum	Deducted sum (in Rs.)
18	Nov' 13	01.12.13	-do-	09.12.13	23.12.13	20%	3,27,740
19	Dec' 13	01.01.14	-do-	10.01.14	03.02.14	15%	2,45,806
20	Jan' 14	01.02.14	-do-	28.02.14	20.03.14	10%	1,63,871
21	Feb' 14	01.03.14	-do-	08.03.14	28.03.14	20%	3,27,740
22	Mar' 14	01.04.14	-do-	02.06.14	10.06.14	15%	2,45,806
23	Apr' 14	02.05.14	-do-	16.06.14	17.06.14	46%	7,53,801
24	May' 14	01.06.14	-do-	16.06.14	17.06.14	46%	7,53,801
The Total deducted sum							96,19,173

10. As seen from the deductions, the respondent has deducted from the monthly bills between 10% to 46% which is not permissible as per the work order issued by the respondent in favour of the petitioner.

11. The respondent excepting for filing of counter affidavit, has not filed any documentary evidence to disprove the contention of the petitioner in this writ petition that the deductions were made arbitrarily without any notice. In the counter affidavit, they have not given details of the alleged notices of the deficiencies sent by them to the petitioner. When the work order stipulates that a mandatory notice of deficiency will have to be sent by the respondent to the petitioner for deducting any amount from and out of the bill amount, the respondent cannot arbitrarily deduct any amount from the bill amount without affording any opportunity to the petitioner. Further, the maximum deduction, the respondent can make that too after issuing 15 days notice is only 10% with an addition of another 5%. But as seen from the deduction, the respondent arbitrarily and unfairly has deducted in the range between 10% to 46%. The aforementioned factors will clearly reveal that the petitioner has not committed any deficiency in service under the work order dated 15.05.2012 issued by the respondent in its favour.



12. The petitioner has sent several representations to the respondent requesting them to release the unlawfully deducted amounts. Despite those representations, as seen from the records placed before this Court, the respondent has not sent any reply excepting for a communication dated 07.08.2014 stating that they have sent those representations to the Director of Medical Education to get instructions for further action and a reply is awaited.

13. For the foregoing reasons, this Court is of the considered view that the respondent has arbitrarily deducted the bills in violation of terms and conditions of the work order dated 15.05.2012 issued in favour of the petitioner.

14. The prayer sought for in this writ petition is for a declaration to declare the act of the respondent deducting payment in monthly bills of the petitioner is unreasonable, arbitrary, unfair and violates Article 14 of the Constitution of India and consequently directing the respondent to release the deducted monthly bill sum for the period of 01.06.2012 to 31.05.2014.

15. Insofar as the first part of the prayer is concerned, this Court declares that the deduction of payments by the respondent in the monthly bills raised by the petitioner is arbitrary, unfair and violates the terms and conditions of the work order dated 15.05.2012 issued by the respondent in favour of the petitioner.

16. However, insofar as the second part of the prayer seeking release of the deducted amounts is concerned, the respondent shall re-scrutinize all the bills raised by the petitioner for house keeping services under the work order dated 15.05.2012 and after verification, release the deducted payments to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

17. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Dean,
Rajiv Gandhi Govt. General Hospital,
Chennai - 600 003.

+1cc to Mr.V.Arun, Advocate SR.103377
+1cc to the Government Pleader SR.104031.

W.P.No.31865 of 2014

PP(CO)
CB(30/12/2019)