

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2020

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MRS.JUSTICE R.HEMALATHA

W.P.No. 7788 of 2020
& W.M.P.No.9187 of 2020

Jipmer Registered Nurses Association
Reg.No.565/20 Having its office at
JIPMER Dhanvanthri Nagar Puducherry Rep by
its Genral Secretary Mr.Senthilkumar .. Petitioner

Vs

- 1.The Union of India
Through its Secretary,
Ministry of Health and Welfare Department,
Nirmal Bahwan,
New Delhi.
- 2.The Secretary to Government
Health and Family Welfare Department,
Victor Simonel Street, Puducherry.
- 3.The Director
Jawaharlal Institute of Post Graduate
Medical Education Research,
Jawaharlal Campus Road, Gorimedu, Puducherry.
- 4.The Deputy Director
Jawaharlal Institute of Post Graduate
Medical Education Research,
Jawaharlal Campus Road, Gorimedu,
Dhanvantri Nagar, Puducherry.
- 5.Pantaegis Security and Facility Services
Rep by its Director,
Having Office at 307 phase IV Udyog Vihar,
Sector 18,Gurugram,Haryana 122 015. .. Respondents

Writ petition filed under Article 226 of the Constitution
of India praying to issue a writ of mandamus forbearing the 1st
to 4th respondents from in any way permitting the 5th respondent

to recruit for Staff Nurse on contractual basis for COVID-19 project in JIPMER Hospital Pondicherry vide notification issued by the 4th respondent in his proceedings No.JOSW 17(2) 2010 dated 03.04.2020 and consequently by considering their representation dated 24.04.2020 within stipulated time fixed by this court.

For Petitioner .. Mr.S.Nagarajan

For Respondents ..Mr.R.Sankara Narayanan,ASG
Assisted by
Ms.Sunitha Kumari, SPC
for R1, R3 and R4
Mr.Ravichandran Devakumar
for R2

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

The petitioner, which is stated to be a Registered Association, has come forward to file this writ petition, seeking a writ of mandamus directing respondents 1 to 4 from permitting the fifth respondent to recruit Staff Nurses on contractual basis pursuant to the Notification issued by the fourth respondent dated 03.04.2020.

2. The sum and substance of the grievance of the petitioner is that the fifth respondent, which is a recruiting agency to whom the job of identifying the temporary Nurses to undertake the work with respondents 3 and 4, does not include the local nurses emanating from the Union Territory of Puducherry.

3. Learned counsel appearing for the petitioner submitted that there is neither a logic nor a reason for recruiting the persons outside the Union Territory of Puducherry which will affect not only the public interest but also the other averments such as spread of pandemic and the incidental cost factor.

4. Learned Additional Solicitor General and the learned counsel appearing for respondents 1,3 and 4 submitted that the writ petition itself is not maintainable on two counts. Firstly, there is a false averment to the effect that the petitioner is a registered Association which infact is not correct. Secondly, the matter can only be raised before the Central Administrative Tribunal, being the service dispute.

5. Incidentally, the petitioner has not even challenged the Notification issued and the process adopted. The fifth respondent has infact recruited the requisite number of Nurses

on temporary basis who are working for three months. The period itself is for six months. There is already a recruitment process, which could not be proceeded further in view of the pandemic situation. As among the vacancies notified, only 85 were sought to be filled up but the process got stalled due to the pandemic. Thus, the petitioner does not have a legal right to maintain the writ petition. It is not as if the fifth respondent has been identified and given the work by respondents 3 and 4. The fifth respondent is one among the twenty-four agencies participated in tender, out of which 11 agencies were rejected due to non-submission of valid documents as it was found to be the lowest bidder, its name was selected through GeM Software. Therefore, even on merit, the writ petition is liable to be dismissed.

6. Though our sympathies are with the Nurses who are yet to be employed in the Union Territory of Puducherry, we do not find any legal infraction involved. As stated, the petitioner seeks to raise the dispute which may not be amenable before this Court. The petitioner is not even a Registered Association.

7. Be that as it may, due procedure has been followed in selecting the fifth respondent. We do not wish to express anything much on the procedure adopted except recording the paragraphs 9 to 11 of the affidavit filed by respondents 3 and 4. Paragraphs 9 to 11 read thus:-

"9. It is humbly submitted that all the agencies located anywhere in the country and registered with GeM can participate in the tender. There is no north or south or east India for the purposes of providing services via GeM. Enlisting of vendors on GeM for a particular service is done by (GeM). GeM permitted the 5th respondent to participate in this system. The GeM, which is a non-profitable Government Company, has team of technical experts, service providers, market employees and government employees. GeM verifies the credentials of all registering agencies. The verification is not done by JIPMER.

10. It is humbly submitted that out of the 24 agencies that participated in the tender, 11 were rejected due to non-submission of valid documents and 13 were found qualified. Among these, the lowest bid (L1) was selected using the "Run L1 Selection" option provided in the GeM software. Therefore, JIPMER administration was not directly involved in the selection of the agency and the selection was done automatically as per the algorithm of the GeM software (Annexure 1). Hence,

the contention of the applicant regarding selection of an un-professional agency is not correct.

11. It is humbly submitted that based on selection on GeM, a Sanction Order No. JOSW 17(2)/2010, dated 03/04/2020 was issued by Deputy Director (Admn.) JIPMER to procure services of 90 Staff Nurses from an agency (M/s. Pentaegis Security and Facility Services Pvt Ltd) selected through GeM with a minimum amount of Rs.33,000/- including PF, ESI, EDLI, PF-Admn. Charges and other allowance if any person per month. The total sanction amount is Rs.1,82,25,464/- (Rupees One Crore Eighty Two Lakhs Twenty Five Thousand and Four Hundred Sixty Four Rupees only)."

8. What is being done is a temporary measure after following the due procedure. On a temporary basis, Nurses were outsourced through the fifth respondent selected, as per the procedure contemplated. Therefore, it is not as if respondents 3 and 4 have selected the fifth respondent. Any order passed by us as sought for by the petitioner would interfere with the rights of the fifth respondent accrued in pursuant to the tender awarded in its favour. The Notification issued, the procedure followed and the compliance of the tender condition by the fifth respondent are not the issues to be decided by us in this writ petition.

9. Even on equity, we find that three months have elapsed. The period itself is for six months. The situation has arisen in view of the pandemic which prevented the permanent appointments being made. Therefore, looking from any perspective, we do not find any merit in this writ petition.

10. However, we find that, in future, it may be appropriate for respondents 3 and 4 to put a clause in the Notification indicating that endeavour should be made to select and outsource Nurses on temporary basis from the Union Territory of Puducherry as far as possible. This may be for two reasons viz., a Nurse appointed though temporarily from the Union Territory of Puducherry would be in a better position to serve better. She need not worry about the stay being a local person apart from knowing the local conditions. Language barrier, if any, also would not arise. There shall be better bond between the Nurse and the patient being emanated from the same area. There will be less expenses in appointing the person from the locality. Nurses will also be more accessible for doing the duty if he/she is from the local area. Therefore, we direct respondents 3 and 4 to look into the said aspect, in future, in the event of undertaking the similar exercise towards outsourcing the Nurses

on temporary basis. We make it clear that what we have stated is only an observation as it is for respondents 3 and 4 to take a call in this regard, being the authority, knowing the ground reality.

11. With the above said observation, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

mmi/ssm

To

- 1.The Secretary,
Ministry of Health and Welfare Department,
Nirmal Bahwan,
New Delhi.
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Jawaharlal Campus Road, Gorimedu,
Dhanvantri Nagar, Puducherry.

+1cc to Ms.Sunitha Kumari, Advocate SR.No.25002

W.P.No.7788 of 2020

SSV(CO)
GMY(03/08/2020)