

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18205 of 2021

Indradeo Singh Seva Sansthan through its Secretary Rajgaurav, aged about 40 years, male, son of Chaturbhuj Prasad, Resident of Mohalla Lilawati Niwas, Praduman Shah Ka Hata, Ramgarhia More, P.S.- Town, District- Bhojpur, Ara.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. The District Health Society Kaimur at Bhabua, through the District Magistrate-cum- Chairman, District Health Society, Kaimur at Bhabua.
3. The District Magistrate-cum- Chairman, District Health Society, Kaimur at Bhabua.
4. The Civil Surgeon-cum- Member Secretary District Health Society, Kaimur at Bhabua.
5. District Program Manager, District Health Society, Kaimur at Bhabua.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y.C. Verma, Sr. Advocate Mr. Ram Kumar Singh, Advocate
For the State	:	Mr. Mujtabaul Haque, GP-12 Mr. Manish Kumar, AC to GP-12

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 23-11-2021

It appears from the pleadings on record that the State of Bihar has, in policy, decided to outsource certain services for maintenance and functioning of the hospitals in the State e.g. sanitation cleaning, lighting and laundry. The petitioner asserts that it is a registered welfare society and the work for sanitation



of hospitals, namely, Sadar Hospital, Bhabhua, Referral Hospital Mohania, Referral Hospital, Ramgarh, Referral Hospital, Aghaura, Primary Health Centres at Bhabhua, Chainpur, Chand, Kudra, Durgavati, Rampur, Bhagwanpur, Nuwao all in the District of Kaimur (Bhabhua) was outsourced to it after a notice inviting tender, pursuant to which it had participated amongst others and had become a success.

2. The work order was issued on 02.09.2020. The agreement was subsequently signed between the Society and the Civil Surgeon-cum-Secretary, District Health Society (DHS for short). Indisputably, the term of agreement was for one year. It was, however, provided in the agreement that in case of satisfactory performance of work, the District Magistrate-cum-Chairman, DHS could extend the period of contract for a maximum period of three years, on recommendation of the Secretary, DHS, Kaimur.

3. It is the petitioner's case that its performance was found to be satisfactory, in support whereof certificates were issued by the concerned authorities from time to time. However, ignoring the clause in the agreement which required extension of the term of contract for a period of three years, respondents have come out with a notice dated 01.10.2021 uploaded on web portal



of the DHS, Kaimur on 06.10.2021 for the work which the petitioner has satisfactorily executed in the hospitals, primary health centers, noted above.

4. In the aforesaid background, the petitioner has filed this writ application seeking quashing of the said notice inviting tender dated 01.10.2021 and a direction to the respondents to allow the petitioner to execute work by extending the period of contract as stipulated in the agreement.

5. A supplementary affidavit has been filed bringing on record a letter dated 27.05.2010, said to have been issued by the Health Department, Government of Bihar under the signature of its Principal Secretary, addressed to all the Civil Surgeons in the State of Bihar, which contains the decision of the State Government to the effect that if work of an Agency under public-private partnership mode is found to be satisfactory for a term of one year, the term of contract can be extended for a maximum period of three years so as to facilitate utilization of equipments and other infrastructure put in place by such agency.

6. Mr. Yogesh Chandra Verma, learned Senior Counsel appearing on behalf of the petitioner has submitted that the said decision communicated by the Health Department, Government of Bihar to all the Civil Surgeons is the apparent basis for



inclusion of the clause in the agreement providing for extension of term of contract in case work of an outsource agency is found satisfactory. He has referred to certain certificates which have been brought on record to contend that the petitioner's work has been certified to be satisfactory by the concerned Medical Officers/ Managers. He has drawn our attention to another communication dated 04.10.2012 issued by the Health Department, addressed to the Civil Surgeon, Motihari, wherein the earlier decision of the State Government, as contained in letter dated 27.05.2010, has been reiterated. He has argued that the said communication dated 27.05.2010 is in the nature of guidelines issued by the State Government in relation to extension of the term of contract of the works outsourced for sanitation, lighting and laundry in the hospitals.

7. He has relied on a Supreme Court's decision in case of *Narendra Kumar Maheshwari vs. Union of India & Ors.* reported in *1990 (Supp) SCC 440* to contend that even non-statutory and administrative guidelines issued by the State Government are binding on the functionaries of the State Government and, therefore, the concerned respondents are obliged to extend the period of work by three years, in respect of the petitioner. He has placed heavy reliance on the observations



made in paragraph 107 of the Supreme Court's decision in case of *Narendra Kumar Maheshwari* (supra).

8. On the basis of what has been asserted in the writ petition and in the wake of the submissions advanced on behalf of the petitioner, three questions have emerged to be addressed with by this Court in the present matter :-

(i) Whether the communication dated 04.10.2012, issued vide Memo No. 8493, is in the nature of mandatory guidelines requiring the concerned respondent to essentially extend the period of contract, in case, the work of an outsource agency is found to be satisfactory?

(ii) Whether the stipulation in the agreement dated 03.12.2020 confers upon the petitioner any right for extension of the work awarded to it, enforceable in a proceeding under Article 226 of the Constitution of India?

(iii) Whether the petitioner has been able to make out a case for extension of work even on the strength of the said letter dated 27.05.2010?

9. For better appreciation, it is considered appropriate to quote the communication of the State Government dated 27.05.2010, an English translation of which would read thus :-

*“Letter No.- SHSB/NGO/32/05/17446
To,
All Civil Surgeons,*



Bihar.

Patna, Dated- 27-05-10

Subject :- Regarding arrangement of sanitation and light in hospitals.

Sir,

With regard to the abovementioned subject, I have to state that different agencies have been outsourced for arrangement of light, sanitation and laundry in all the hospitals of the State under private partnership. For making the service better and effective, it is necessary that capacity of the agencies concerned and technology in use may be strengthened. Agencies may be motivated to bring in use wiper, automatic cleaning machine, silent generator, washing machine, better management etc. under the new technology. Generally the introduction of better technology and management is capital intensive. Hence, it is necessary that the policy of public partnership may be made far reaching.

Accordingly, It has been decided after due consideration that if the work of any agency working under public-private-partnership is found satisfactory till one year, the next period of the said agency may be extended for three years, so that there is no difficulty in getting better facility available through better equipment in the hospitals by it.



For healthy Bihar.

Yours faithfully,

Sd/-

(illegible) ”

10. On careful reading of the said communication, it is evident that the primal purpose of the decision of the State Government to permit the competent authorities to extend the period of outsourced work under public private partnership mode is optimal utilization of the equipments installed by the agencies, other infrastructure created and investments made, for execution of the work awarded to them. The decision was taken manifestly on consideration that introduction of advanced technology and management is capital intensive.

11. In the present case, the petitioner has nowhere stated in the writ petition as to what investment it had made and what kind of equipments it had installed for the purpose of execution of work awarded to it. In our opinion, in the absence of any such specific assertion in the writ petition, the petitioner cannot seek any remedy on the strength of the said communication dated 27.05.2010.

12. Further, in our opinion, the said communication dated 27.05.2010 is not in the nature of guideline, rather it enables/ permits the competent authorities to extend the period of



contract awarded under public private partnership mode. The said communication does not cast any obligation on the concerned authorities to extend the period of contract, even if the work is found to be satisfactory.

We are, however, of the view that in case an agency to which the works enumerated in the said letter dated 27.05.2010 are outsourced under an agreement consequent upon which the agency makes substantial investment and, thereby, puts in place equipments and other technologies for better management and efficient execution of the work awarded to it, the competent authority should consider extending the period of contract if the work is not otherwise found to be unsatisfactory. This serves the public interest which has been acknowledged by the State Government in its decision as communicated through letter dated 27.05.2010. It is, however, always open to the executive to take a decision which serves the public interest most.

13. Though, after having opined that the said communication is not in the nature of guideline, the decision of the Supreme Court in case of *Narendra Kumar Maheshwari* (supra) relied upon by Mr. Verma, learned Senior Counsel has no relevance in the present matter. However, we are of the view that even for the argument sake, if the said communication dated



27.05.2010 is deemed to be in the nature of guideline, the same cannot be considered enforceable in writ jurisdiction. The answer to the submission made by Mr. Verma, learned Senior Counsel lies in the paragraph 106 of the said decision of the Supreme Court in case of **Narendra Kumar Maheshwari** (supra), which reads as under :-

“106. It may, however, be stated that being not statutory in character, these guidelines are not enforceable. See the observations of this Court in G.J. Fernandez v. State of Mysore [(1967) 3 SCR 636 : AIR 1967 SC 1753] (Also see R. Abdullah Rowther v. State Transport Appellate Tribunal [AIR 1959 SC 896] ; Dy. Asstt. Iron & Steel Controller v. L. Manekchand, Proprietor [(1972) 3 SCC 324 : (1972) 3 SCR 1] ; Andhra Industrial Works v. CCI [(1974) 2 SCC 348 : (1975) 1 SCR 321] ; K.M. Shanmugam v. S.R.V.S. Pvt. Ltd. [1964) 1 SCR 809 : AIR 1963 SC 1626]) A policy is not law. A statement of policy is not a prescription of binding criterion. In this connection, reference may be made to the observations of Sagnata Investments Ltd. v. Norwich Corpn. [(1971) 2 QB 614, 626 : (1971) 2 All ER 1441 : (1971) 3 WLR 133] Also the observations in British Oxygen Co. v. Board of Trade [1971 AC 610 : (1970) 3 All ER 165] . See also Foulkes' Administrative Law, 6th edn.



at pp. 181-184. In R. v. Secretary of State, ex parte Khan [(1985) 1 All ER 40] the court held that a circular or selfmade rule can become enforceable on the application of persons if it was shown that it had created legitimate expectation in their minds that the authority would abide by such a policy/guideline. However, the doctrine of legitimate expectation applies only when a person had been given reason to believe that the State will abide by the certain policy or guideline on the basis of which such applicant might have been led to take certain actions. This doctrine is akin to the doctrine of promissory estoppel. See also the observations of Lord Wilberforce in IRC v. National Federation [1982 AC 617 : (1981) 2 All ER 93 : (1981) 2 WLR 722] . However, it has to be borne in mind that the guidelines on which the petitioners have relied are not statutory in character. These guidelines are not judicially enforceable. The competent authority might depart from these guidelines where the proper exercise of his discretion so warrants. In the present case, the statute provided that rules can be made by the Central Government only. Furthermore, according to Section 6(2) of the Act, the competent authority has the power and jurisdiction to condone any deviation from even the statutory requirements prescribed under Sections 3 and 4 of the Act. In Regina



v. Preston Supplementary [(1975) 1 WLR 624, 631 : (1975) 2 All ER 807] it had been held that the Act should be administered with as little technicality as possible. Judicial review of these matters, though can always be made where there was arbitrariness and mala fide and where the purpose of an authority in exercising its statutory power and that of legislature in conferring the powers are demonstrably at variance, should be exercised cautiously and soberly.”

14. Further, we notice from Annexure-6 to the writ application that relying on certain certificates issued in March, April and June 2021 the petitioner had approached the Civil Surgeon-cum-Member Secretary, District Health Society, Kaimur on 09.08.2021 for extension of the period of contract. On plain reading of the said letter dated 09.08.2021, we find that there is no assertion about the investments made by the petitioner, installation of equipments etc. in the concerned hospitals/ primary health centres for execution of the work awarded to him, to make out any prejudice caused to him because of non-extension of the work in question.

15. For the aforesaid reasons, we do not find any merit in this application, which is accordingly dismissed. The Interlocutory Application stands disposed of.



16. The petitioner shall be required to remove the defects, pointed out by the Registry within six weeks.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.12.2021
Transmission Date	NA

