

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 662 of 2020**

Dinesh Kumar Kachhwaha, son of Durga Prasad Kachhwaha, aged about 40 years, R/o. behind Bandhu Complex, Chantidih, Bilaspur, Tahsil and District-Bilaspur, (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through, Secretary, Department of Health and Family Welfare, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, District - Raipur (C.G.)
2. Dean, Chhattisgarh Institute of Medical Science (CIMS), Bilaspur, District – Bilaspur (C.G)

---- Respondents

(Cause-title taken from Case Information System)

For Petitioner	: Mr. Sushobhit Singh, Advocate.
For Respondents - State	: Mr. Ayaz Naved, Government Advocate.
Date of hearing	: 12.11.2021.
Date of Judgment	: 10.12.2021

Hon'ble Shri Arup Kumar Goswami, Chief Justice

Hon'ble Shri Arvind Singh Chandel, Judge

C.A.V. Order

Per Arup Kumar Goswami, Chief Justice

By filing this application under Section 226 of the Constitution of India, the petitioner prays for quashing of tender notice dated 04.11.2019 and for issuing a direction to respondents to renew the lease agreement in favour of the petitioner for running a juice centre.

2. The case of the petitioner is that he is the authorized agent for the distribution of the juice products manufactured by M/s Himachal Pradesh Horticulture Product Marketing & Processing Corporation (HPMC). By letter dated 29.01.2004 an application was submitted by HPMC for running a juice shop in the premises of

Chhattisgarh Institute of Medical Science (CIMS) and on the basis of the same, the respondents allotted a shop to the petitioner in the premises of CIMS for distribution of juice product and accordingly, the petitioner entered into an agreement with respondent No. 2 for running of the juice centre in the premises of CIMS and the said agreement was renewed from time to time.

3. A fresh lease agreement was executed on 04.07.2013 for a period of five years. Clause 7 of the agreement provides for a renewal clause and before expiry of the period of five years, the petitioner had been submitting repeated applications for renewal of the lease, but without responding to the said request, the impugned tender notice dated 04.11.2019 was issued inviting application for fresh bidding for allotment of the juice centre in the premises of CIMS.

4. Reply was filed on behalf of respondents No.1 and 2. In the said reply, it is stated that the petitioner is running his shop within the building whereas tender notice was issued for running the shop in the newly constructed canteen outside the CIMS hospital building.

5. It is further stated that an application dated 29.01.2004 was submitted by HPMC to the Chief Medical Officer of CIMS for allotment of space to the authorized dealer for selling of its products which included juices to the patients in the hospital and without issuing any tender, only on the basis of said application, shop No.2 situated at CIMS campus by the side of Red-Cross at MRD building was given on temporary lease for a period of one year on 01.09.2005 and that the lease agreement which was executed on 04.07.2013 for a period of five years, had expired on 03.07.2018. It is stated that an eviction notice was issued to the petitioner on 01.10.2019 in public interest as the space allotted to run the juice centre inside the building is causing hurdle to the hospital authority as the number of patients are increasing day by day. While total number of patients including IPD and OPD in the year 2007 was 97,691, the same increased to 3,80,652 in the year 2019, and therefore, decision was taken to close the juice centre permanently so that inconvenience of the patients can be minimized by utilizing the space where the juice centre is being run by the petitioner. Accordingly, Public Works Department (PWD)

was requested to prepare an estimate for a new canteen outside the hospital building but within the hospital premises and accordingly, PWD had prepared an estimate of Rs. 21.90 lakhs for renovation and modification of an old existing building inside the hospital premises. After obtaining the technical sanction, the project was started on 01.09.2015 and the same was completed on 18.02.2016. On 30.09.2019, a tender notice was issued to run the said canteen but the same had to be cancelled and later on, the present tender notice was issued on 14.11.2019, which is challenged in the present writ petition. It is also stated that the tender has already been awarded to one M/s C.H. Philip Caterers on 24.02.2020, and despite it being a necessary party, it has not been impleaded in the writ petition. It is stated that rent was not paid before 10th of every month as per terms and conditions. It also pleaded that the Clause 7 of the lease agreement does not give to the licensee a vested right for renewal and renewal cannot be claimed as a matter of right by the petitioner.

6. Mr. Sushobhit Singh, learned counsel for the petitioner submits that tender notice was issued for the place where petitioner is running his juice centre and when the application for renewal of the lease is pending, such action on the part of the authority in issuing the tender notice is wholly arbitrary and illegal and therefore, on that ground, the tender notice is liable to be quashed. He has drawn the attention of the Court to the letter dated 01.10.2019 by which the petitioner was directed to give vacant possession so as to enable the new juice center to be set up in the place allotted to the petitioner. He places reliance on judgment of the Hon'ble Supreme Court in the case of *Senior Divisional Commercial Manager & Others v. S.C.R. Cateres, Dry Fruits Juice Stalls Welfare Association & Another*, reported in (2016) 3 SCC 582.

7. Mr. Ayaz Naved, learned Government Advocate for respondents, on the other hand, submits that the projection of the petitioner that the impugned tender notice was issued for the very same place in which petitioner is running his shop is wholly incorrect. Pursuant to the tender notice, successful tenderer is operating the canteen and therefore, no case is made out for interference with the tender notice.

8. The learned counsel submits that an eviction notice dated 01.10.2019 was issued to the petitioner about which the petitioner had remained silent though he had annexed a copy of the reply issued by him to the said eviction notice. Therefore, no direction is called for with regard to the renewal on the lease of the petitioner. He has placed reliance on judgment of the Hon'ble Supreme Court in the case of ***Chennai Metropolitan Development Authority represented by its Member-Secretary and Another v. Prestige Estates Project Limited***, reported in ***(2019) 15 SCC 212***, with particular reference to paragraph 34 thereof.

9. The reply-affidavit was filed on 16.03.2020. No rejoinder to the said affidavit was filed by the petitioner.

10. We have considered the submissions of the learned counsel for the parties and have perused the materials on record.

11. A perusal of the impugned tender notice would go to show that tenders were invited for running a canteen initially for a period of three years which may be extended subject to satisfactory performance for a total period of five years including the initial three years.

12. Although notice dated 01.10.2019 recited that a fresh tender process is to be initiated for a juice centre, for which the petitioner was asked to vacate the juice centre allotted to him, it is seen that the tender was issued for a canteen. The specific stand taken in the reply of the respondents that the petitioner is running his shop within the building whereas the tender was issued for the newly constructed building outside the CIMS has not been challenged by the petitioner by filing rejoinder-affidavit.

13. In the reply-affidavit filed by the respondents No. 1 and 2, an order dated 24.02.2020 allotting the new canteen and juice centre in the newly constructed building in favour of one M/s C.H. Philip Cateres is annexed. It is, however, noted that in the tender notice, no reference was made to a juice centre.

14. This Court, by order dated 27.02.2020, had directed maintenance of *status*

quo with regard to operation being done by the petitioner in relation to the juice shop. It is contended by the petitioner that in terms of the said order he is still operating the same.

15. Materials on record, in absence of any rebuttal by the petitioner to the contention advanced in the reply-affidavit filed by the respondents No. 1 and 2 and the fact that the petitioner is still running his juice shop, will demonstrate that the new Canteen and juice centre is being operated not in the place where the petitioner is running his juice shop but in another place.

16. The edifice of the case of the petitioner was that the tender notice was issued to allot the canteen-cum-juice centre in the place where the petitioner was running his juice centre, which, however, is not borne out of record and therefore, no case is made out for interference with the impugned tender notice.

17. In *Senior Divisional Commercial Manager* (supra), the Hon'ble Supreme Court had rejected the contention on behalf of the appellants therein that only such licensees who were granted license under the Catering Policy, 2010 were entitled to get their contracts renewed and the same benefit could not be extended to those licensees who were granted license prior to the Catering Policy 2010, by holding that the provision of the Catering Policy, 2010 is also applicable to the respondents therein. The aforesaid judgment has no application to the facts of the present case.

18. In *Chennai Metropolitan Development Authority* (supra), the Hon'ble Supreme Court had referred to the decision in *State of T.N. v. Hind Stone*, reported in (1981) 2 SCC 205, wherein, while interpreting the provisions of Rule 2(A) of the Mines and Minerals (Regulation and Development) Act, 1997, it was observed that no one has a vested right to grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions, observed that an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application. No rules have been placed on record by either of the parties with regard to grant of lease in the instant case.

19. Though the petitioner has brought on record his reply dated 21.10.2019 to the notice of eviction dated 01.10.2019, neither any challenge nor any averment is made in this petition in connection with such eviction notice.

20. In such circumstance, we are of the considered opinion that no direction for renewal of the lease agreement is called for.

21. In view of the above discussion, we find no merit in this petition and accordingly, the same is dismissed. No cost.

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(Arvind Singh Chandel)
Judge