

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 34167 of 2022

*M/s. Choudhury Medical Store,
BBSR*

Petitioner

Mrs. Pami Rath, Advocate

*Union of India and others
Vs.*

Opposite Parties

*Mr. P.K. Parhi, DSGI along with
Mr. S.S. Kasyap, CGC &
Mr. P.K. Muduli, AGA*

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

15.12.2022

Order No.

01.

This matter is taken up through hybrid mode.

2. Heard Mrs. Pami Rath, learned counsel for the petitioner, Mr. P.K. Parhi, learned DSGI along with Mr. S.S. Kasyap, learned Central Government Counsel for the Union of India and Mr. P.K. Muduli, learned Additional Government Advocate for the State.

3. Though Mr. Biswajit Nayak, learned counsel along with his associates has entered appearance for the caveator and a copy of the writ petition has already been served on Mr. S. Samantaray, learned counsel for the caveator, none appears today when the matter is taken up.

4. The petitioner has filed this writ petition seeking to quash the order of termination of his contract dated 02.12.2022 passed by opposite party no.4 under Annexure-14, and to issue direction to opposite party no.2 to allow the petitioner to run the 24x7 Medicine Store inside the campus of AIIMS, Bhubaneswar

5. Mrs. Pami Rath, learned counsel for the petitioner contended that

show cause was called for from the petitioner vide notice dated 16.11.2022 on the grounds not germane to the issue and that the defects having been complied with, the reasons assigned for termination of the contract cannot sustain. It is further contended that the petitioner as such has already filed reply on 21.11.2022, pursuant to the notice of show cause dated 16.11.2022, but that was inadequate as some subsequent developments have been taken place in this matter in view of the documents procured by the petitioner. Therefore, it is contended that liberty may be granted to the petitioner to place all the materials before the Senior Administrative Officer, AIIMS Bhubaneswar-O.P.4, pursuant to the show cause notice dated 16.11.2022, so that the same can be considered and disposed of in accordance with law.

6. Mr. P.K. Parhi, learned DSGI appearing along with Mr. S.S. Kasyap, learned Central Government Counsel contended that if the petitioner has got material to show that he has complied all the requirements as raised in the notice, then the authority shall reconsider the matter without giving effect to the order of termination of the contract till the matter is reconsidered.

7. Mr. P.K. Muduli, learned Additional Government GA contended that the certificate which was called for by the AIIMS authority, having been granted by the State, nothing more remains to be considered by the State, so far as allotment of shop in favour of the petitioner is concerned.

8. Having heard learned counsel for the parties and after going through the records, this Court finds that with the issuance of show cause notice simultaneously termination of the contract has been made. Once the notice of show cause was issued, simultaneously termination order should not have been passed. Thereby, this Court is of the considered view that pursuant to notice of show cause, if the petitioner has already

filed a reply and also obtained subsequent materials, the same should be placed before the authority, so that the authority can consider the same and pass appropriate order in accordance with law by affording opportunity of hearing to the parties. Since the order of termination of contract has already been passed along with the notice to show cause, such order of termination of contract cannot sustain in the eye of law as because on the one hand one cannot ask for show cause and on the other hand terminate the contract, as has been fairly admitted by P.K. Parhi, learned DSGI. Therefore, it is directed that let opposite party no.4 take into consideration the objection raised by the petitioner and pass appropriate order in accordance with law by affording opportunity of hearing to the parties.

9. With the aforesaid observation/direction, the writ petition stands disposed of.

10. Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

(B. P. SATAPATHY)
JUDGE

Arun