

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2158 of 2023

Rastriya Lok Vikash Sangh Society registered under the Societies Registration Act having its registered office at Nala Jheel, Majhaun, Ara, Bhojpur, through its Chairman Smt. Savita Devi, Female, aged about 55 years, Wife of Birendra Kumar Pandey, Resident of Jai Hind Colony, Nala Road, Arrah P.S. Town, District- Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Govt. of Bihar, Patna.
2. District Magistrate cum Chairman, District Health Committee, Bhojpur.
3. Civil Surgeon cum Member Secretary, District Health Committee, Bhojpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Basant Kumar Chaudhary, Sr. Advocate Mr. Nilanjan Chatterjee, Advocate Mr. Gouranga Chatterjee, Advocate Mr. Sahil Kumar, Advocate
For the State	:	Mr. Ramadhar Singh (GP25) Mr. Harendra Kumar, AC to GP25

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 20-03-2023

In the instant petition, petitioner has prayed for the following relief:-

“i. For issuance of writ/ order/ direction including writ in the nature of mandamus commanding the respondents to adhere to the terms of the contract dated 17.05.2022 between the petitioner and respondents in which it was agreed that in the event the work of the agency is found satisfactory the contract of the agency may be extended for a further term of three years.



ii. For issuance of writ/ order/ direction including writ in the nature of mandamus directing the respondents not to issue any tender for the work which is being done by the petitioner for which the petitioner had made a prayer before Respondent No.-3 which was rejected by office order issued vide Memo No. 48/DHS dated 09.01.2023

iii. For issuance of writ/ order/ direction including writ in the nature of mandamus commanding the respondents to allow the petitioner agency to continue working during pendency of the instant writ application.

iv. For any other relief / reliefs for which the petitioner is found entitled to on the facts and in the circumstances in the instant case.”

2. The petitioner was a contractor in maintaining hospitals to that effect an agreement was entered into with respondent concerned for a period of three years during the period from 2016-2019 with a clause that contract could be renewed for a period of 3 years if the work of the petitioner was found to be satisfactory. Accordingly, it was renewed for further period of three years and one year and during the intervening period from 2019-2023. At the time of last renewal of contract, identical condition was imposed to the extent that in the event of petitioner's work was found to be



satisfactory work contract would be renewed by three more years.

3. In the light of conditions imposed in the later agreement that in the event of petitioner's work is satisfactory he is entitled to further three years period of contract is subject matter of the present petition.

4. Learned counsel for the petitioner submitted that he has a vested right to continue for three more years in the light of condition in the later agreement. In not adhering to the condition imposed in the later agreement there is a violation of Article 14 and other principle laid down by the Apex Court in the case of *Harbanslal Sahni & Anr. vs. Indian Oil Corporation Ltd. & Ors.* reported in *(2003) 2 SCC 107*.

5. *Per-contra*, learned counsel for the respondent resisted the aforesaid contentions and submitted that Cabinet has taken a decision to resort to yet another policy vide Cabinet decision vide dated 27.01.2023 item no. 12. In the light of the Cabinet decision the State has taken a decision not to renew the contract of the petitioner. Therefore, indefinitely the petitioner is not entitled to continue the contract while violating Article 14 for other similarly situated contractors to participate in the process of fresh tender. It is also submitted



that writ petition is not maintainable insofar as implementation of various conditions of the agreement.

6. Heard the learned counsels for the respective parties.

7. Undisputed facts are that the petitioner is a contractor and he has been awarded work order for the period from 2016-19 for a period of three years insofar as execution and maintenance of certain hospitals. In terms of one of the conditions in the agreement that contract could be renewed for three years on the score that his work was satisfactory. While executing the second agreement identical conditions were imposed. Identical condition was not given effect to on the other hand concerned respondent resorted to different policy, hence, petitioner is aggrieved in not giving effect to renewal of contract.

8. Before advertng to the contentions of the respective parties it is necessary to take note of preliminary issue that whether writ petition is maintainable or not insofar as execution of terms and conditions stated in the agreement. The petitioner has remedy before the appropriate forum in terms of following clause:-

"विवादों का निपटारा:-



करार अवधि में यदि संवेदक तथा विभाग के बीच किसी भी तरह का विवाद उत्पन्न होता है तो सम्बंधित विवाद के सर्वप्रथम बातचीत द्वारा हल किये जाने का प्रयास किया जाना चाहिए। विवादों के निपटारा हेतु न्यायालय की शरण में जाना पड़े तो क्षेत्र भोजपुर होगा।

उपरोक्त सभी कार्यो हेतु मशीन / सामग्रियों की आपूर्ति संवेदक को करनी होगी।

1) सभी कर्मियों को निर्धारित पोषाक तथा पहचान पत्र संवेदक द्वारा उपलब्ध कराया जायेगा। संवेदक द्वारा सभी सफाई कर्मियों मरीजों एवं उनके परिजनों को प्रति व्यवहार मृदु एवं सहयोगात्मक होना चाहिए। यदि कर्मियों का व्यवहार अस्पताल प्रशासन द्वारा अच्छा नहीं”

9. In the light of the aforesaid clause the petitioner should have approached this court with clean hands, on the other hand in the writ petition in the pleadings the petitioner has pleaded as under:-

“15. That the petitioner has no other alternative remedy equally efficacious other than to file the instant writ application.”

10. On the other hand, the petitioner should have been fair enough to apprise this court that he had a remedy in terms of the aforesaid clause mentioned (supra), therefore, the present petition is liable to be dismissed on the ground that the petitioner has not approached this Court with the clean hands.



11. Be that as it may, it is necessary to take note of whether is there any violation of Article 14 insofar as not giving effect to the one of the conditions in the later agreement to the extent that petitioner is entitled to renewal of his contract for further period of three years. At this stage, it is to be noted that petitioner is executing the work for the last six years with reference to initial agreement for a period of three years. Indefinitely the petitioner is not entitled to continue to hold the work order merely because one of the signatories is official of the State Government. Before such renewal arrangement is made by the official respondent he/she must think of Article 14 to the extent that they are depriving others the opportunity of participating in the process of execution of public work like the present one. State largesse is required to be distributed in compliance to Article 14 of Constitution.

12. The cited decision do not assist the petitioner for the reasons that it is not a case that impugned action is by an incompetent authority or impugned action is in violation of Article 14. That apart, it is noticed that State Government has taken policy decision in the light of Cabinet decision dated 27.01.2023. Cabinet decision at title no. 12 reads as under:-

*"12. राज्य के सभी सदर/जिला
अस्पतालों तथा अनुमंडल अस्पतालों में*



अन्तःवासी (Indoor) मरीजों के वस्त्रों की आपूर्ति, अस्पताल भवनों एवं परिसर की साफ-सफाई एवं वस्त्रों की धुलाई की सेवा तथा सभी चिकित्सा महाविद्यालय अस्पतालों में अन्तः वासी (Indoor) मरीजों के लिए वस्त्रों की आपूर्ति एवं अस्पताल के भवनों एवं परिसर की साफ-सफाई का कार्य बिहार ग्रामीण जीविकोपार्जन समिति द्वारा संपोषित सामुदायिक संगठन "जीविका" के नाध्यम से किये जाने की स्वीकृति के संबंध में ।"

13. In the light of these facts and circumstances the petitioners have not made out a case so as to interfere with the impugned action accordingly, writ petition stands dismissed reserving liberty to the petitioner to invoke remedy before the appropriate forum in terms of condition, namely, settlement of dispute (cited supra).

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Himanshu/
Daya/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.03.2023
Transmission Date	NA

