IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4274 of 2023

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M/s Environment Care and Solution Services Branch Office at A- 506, Alankar Suncity, Kumhrar, Sandalpur, Patna through its Proprietor Sushil Kumar Rai, Aged about 50 years, Male, Son of Shivanand Rai, Resident of Garoa Maksoodpur, P.S. Suhwal District Ghazipur (Uttar Pradesh)

... Petitioner

Versus

1. The State of Bihar through the Additional Chief Secretary, Health Department, Government of Bihar, Patna.
2. The Patna Medical College and Hospital (PMCH), through its Superintendent, PMCH, Ashok Raj Path, Patna.
3. The Superintendent, Patna Medical College and Hospital (PMCH), Ashok Raj Path, Patna.
4. The Principal Secretary-cum-Commissioner, State Tax, Government of Bihar, Patna.
5. The Accountant General (Audit), Mahalekhakar Bhawan, Veerchand Patel Path, R-Block, Bihar, Patna.
6. The Joint Commissioner, State Tax, Patna North Circle, Patna.
7. The Assistant Commissioner, State Tax, Patna North Circle, Patna.

... Respondents

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Appearance :

For the Petitioner	:	Mr. S.D. Sanjay, Sr. Adv. With M/s Parul Prasad, Vishal Kumar & Lokesh Kumar, Advs.
For the State	:	Mr.Vikash Kumar, SC XI
For the AG	:	Mr. Arun Kumar Arun, Adv.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL ORDER

11 28-11-2023

Heard the learned counsel for the parties.

2. The present writ petition has been filed for the following reliefs :

i) For quashing of the Order dated 14.11.2022 passed by the Respondent Superintendent, Patna Medical College and Hospital (PMCH), Patna issued vide Memo No. 10621 and 10753 dated 14.11.2022 and 22.11.2022 respectively whereby the Petitioner has been *directed to deposit Rs. 28,11,726/- in lieu of alleged irregular levy of GST as the same is bad in law and in fact and in violation of the Principles of Natural Justice as it has been passed without giving an opportunity of hearing to the Petitioner;*

ii) For quashing of the Order dated 14.11.2022 passed by the Respondent Superintendent, Patna Medical College and Hospital (PMCH), Patna issued vide Memo No. 10621 and 10753 dated 14.11.2022 and 22.11.2022 respectively being non-est in law as the extant provision of law pertaining to the present issue and the explanation of the Petitioner on the question mentioned in the show cause notice has not at all been considered and is hence, wholly illegal and erroneous in law as also suffering from malafide in law,

iii) For direction/s upon the Respondent PMCH to forthwith release the legitimate dues amounting to Rs. 15,34,000/- (inclusive of GST amounting to Rs. 2,34,000/-) against the Bills raised by the Petitioner for the running and maintenance services provided by the Petitioner to the Respondent PMCH for a total period of four months which has been wrongly withheld by the Respondent PMCH;

iv)For issuance of appropriate writ/s, and/or direction/s upon the Respondents to restrain them from passing any other order or taking any action against the principles of natural justice; and/or for any other relief or reliefs that the Petitioner may be found entitled to in the facts and circumstances of the present case.

3. Learned counsel for the petitioner has stated that the petitioner has entered into an agreement with the Respondent no. 2, i.e., the Patna Medical College and Hospital (PMCH), through its Superintendent, PMCH, Ashok Raj Path, Patna, for running the Bio-Medical Waste Treatment Facility Plant which included running operation and maintenance of the said plant. Learned counsel has stated that as per the provisions of the GST Act, the petitioner has paid the State as well as Central GST at the rate of 18% on the service rendered by the petitioner.

4. Thereafter the 2nd Respondent has issued the impugned order directing the petitioner to refund the GST amount of 18% paid to the GST authorities, on the ground that the 2nd Respondent had received a clarification from the GST authority that no GST was payable by the Respondent no. 2 as the Bio-Medical Waste Treatment Facility Plant was exempted from such payment. Learned counsel has stated that the 2nd Respondent on the ground that the petitioner has paid

the GST without there being any demand from the authority is pressurizing the petitioner to return the 18% GST paid to the authorities and further not paying the bills submitted by the petitioner. Learned counsel has stated that the petitioner is obligated under law to comply with the provisions of the GST Act and he has accordingly paid the said amount. Further, it is stated that it is not a case where the petitioner has usurped the GST amount. That in case Respondent No. 2 has any grievance regarding the payment of the GST amount they should approach the authorities for refund of the same but cannot put pressure on the petitioner for refunding the GST amount.

5. In the counter affidavit filed by the the Respondent No. 2 it was contested that the authorities have received a clarification issued by the GST authorities stating that the Bio-Medical Waste Treatment Facility Plant installed in the premises of the 2nd Respondent is not liable for any payment on any GST services rendered by the petitioner herein and that the

petitioner on its own volition has paid the amount. Therefore, the petitioner was liable to refund the GST amount paid wrongly.

6. As there was some confusion with regard to the liability of the petitioner to pay the GST amount, this Court vide order, dated 20.09.2023, has directed the Respondent no. 4, i.e., the Principal Secretary-cum-Commissioner, State Tax, Government of Bihar, Patna, to file his personal affidavit clarifying the legal position as to whether the payment of the GST by the petitioner was in accordance with law and provisions of the GST Act or not.

7. The 4th Respondent has filed the counter affidavit in which it has been categorically stated as under :

> *"(xii) That as per clause- 1 of the agreement dated 05th October 2016, the petitioner has been awarded the work pertaining to running and maintenance of Bio Medical waste Treatment Facility installed at the premises of PMCH, which is covered by entry no. 25 Heading 9987-Maintenance, repair and installation (except construction) services under notification no. 11/2017-state tax (Rate) dated 29.06.20217, and (Notification attached).*

(xiii) That as per agreement, executed between petitioner and respondent no. 2 i.e. PMCH, petitioner was liable to dispose bio medical waste at bio medical waste disposal unit installed in PMCH campus. This service is also taxable @18% and covered by entry no. 35 Heading 9997-'Other services' of notification no. 11/2017-state tax (Rate) dated 29.06.20217 (Notification attached).”

Further the 4th Respondent has also annexed the Notification No. 12/2017 – State Tax (Rate) wherein at serial no. 75 under the heading 9994 it is stated as under :

“Services provided by operators of the common bio-medical waste treatment facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto.”

8. In view of the categorical statement made by the 4th Respondent in the counter affidavit, the payment of the GST by the petitioner has to be termed as valid and legal. Therefore the contention of the respondents that the GST amount paid by the petitioner was not mandated under the law and it was wrongly paid is without any substance and the same has to be rejected,

consequently, the impugned order passed by the Respondent no. 3 is **quashed**. The Respondent No. 2 is directed to process the pending bills, if any, of the petitioner and make the payments as expeditiously as possible preferable within a period of six weeks from the date of receipt of a copy of this order.

9. This writ petition is **allowed** to the extent indicated above.

(A. Abhishek Reddy , J)

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