

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13625 of 2016

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Venus Mediscience Pvt. Ltd. Son of Sri Shiv Kumar Singh, having its
registered office at Ganipur Hanuman Nagar Near Kendriya V

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Department of Health, Govt. of Bihar, Patna
3. The Director - in - Chief, Department of Health, Govt. of Bihar, Patna
4. The Director - in - Chief Nursing , Department of Health, Govt. of Bihar,
Patna
5. The Regional Deputy Director, Health Services, Department of Health,
Muzaffarpur
6. The Civil Surgeon Cum Chief Medical Officer, East Champaran, Motihari
7. The Superintendent, Sadar Hospital, East Champaran, Motihari

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Satyendra Rai
For the Respondent/s : Mr.Suryadeo Yadav- Aag9

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
C.A.V. JUDGMENT

Date : 15-12-2023

Heard the learned counsel for the parties.

2. This writ petition has been filed for the following
relief(s);

*“a) For quashing the order dated
contained in memo no. 238(12) dated
05.03.2016 issued by the respondent no.
4 whereby the claim of the petitioner
company contained in the representation
dated 13.07.2015 submitted in pursuant
to the order dated 29.06.2015 passed by
this Hon’ble Court in CWJC No.*



7879/2015 has been rejected.

b) For a direction to the respondent nos. 6 & 7 to make the payments in regard to the supply of the medicines made in execution of purchase orders contained in letter no. 504 dated 02.03.2015, letter no. 505, dated 02.03.2015, letter no. 506 dated 02.03.2015, letter no. 507 dated 02.03.2015, letter no. 511 dated 02.03.2015, letter no. 594, dated 16.03.2015 as well as another purchase order contained in letter no. 153 dated 03.03.2015 issued by the respondent no. 6.

c) For a direction to the respondent no. 6 to ensure receiving of supply of remaining part of medicines made by the petitioner in pursuant to the purchase order issued by the respondent no. 6 contained in letter no. 504, dated 02.03.2015, letter no. 505, dated 02.03.2015, letter no. 506 dated 02.03.2015, letter no. 507 dated 02.03.201, letter no. 511 dated 02.03.2015, letter no. 594, dated 16.03.2015.”

3. Learned counsel for the petitioner has stated that the petitioner company is engaged in the distribution, sale and supply of medicines and surgical items. That on the requisition



made by the Respondent No. 6, the petitioner company had supplied various medicines to the Respondent No. 6 at the rate quoted in the purchase orders and on the said terms and conditions envisaged therein. That the Respondent No. 7 has also placed orders for supply of medicines and the petitioner has supplied as per the terms and conditions of the purchase order and the petitioner has supplied medicines under different invoices between 11.03.2015 and 19.03.2015. That in the above period, the petitioner had supplied medicines worth Rs. 59,75,046/- to the Respondent No. 6 under the invoices which were dated between 16.03.2015 and 20.03.2015, and the petitioner had supplied medicines worth Rs. 23,05,170/- to the Respondent No. 7. That a major portion of the medicines which were directed to be supplied have been delivered to the Respondent Nos. 6 and 7 and it was informed vide letter dated 16.03.2015 that the balance medicines will be supplied positively by 30.03.2015. That on 29.03.2015 the petitioner tried to supply the balance medicines to the Respondent No. 6 however the same were not received by the store keeper and returned back. Thereafter, the petitioner has been making several representations to the various authorities and has also approached this Hon'ble Court seeking a direction to the



authorities concerned to receive the balance medicines and also for making the necessary payments for the medicines already supplied. Learned counsel for the petitioner has stated that the medicines which have been supplied to the Respondent No. 6 and 7 are specially marked with the monogram 'Bihar Government Supply' and 'Not For Sale' and the said medicines cannot be supplied to any other individual or sold outside. That in spite of making several representations, the amounts due to the petitioner have not paid and neither the balance medicines which were sought to be delivered would be handed over to the authorities concerned. That the petitioner has approached this Hon'ble Court by way of C.W.J.C. No. 7879 of 2015 for release of the payment and also for acceptance of the remaining part of the medicines. The said writ petition was disposed of on 29.06.2015 with the liberty to the petitioner to approach the Respondent No. 3 (The Director-in-chief, Department of Health, Government of Bihar) by way of Representation. That the petitioner pursuant to the said order has made a representation dated 13.07.2015 to the Respondent No. 3 herein. As there was no response from the Respondent No. 3, the petitioner was constrained to file an M.J.C. No. 2574 of 2015.

4. Pending the above MJC, the Respondent No. 3



has passed an order dated 05.03.2016. The M.J.C. No. 2574 of 2015 was disposed on 27.07.2016 granting liberty to the petitioner to assail order dated 05.03.2016. That the order dated 05.03.2016 passed by the 3rd respondent legally untenable grounds were taken by the authorities concerned to deny the payment to the petitioner for the medicines already supplied. Assailing the order dated 05.03.2016, the present writ petition is filed.

5. Learned counsel for the petitioner has stated that the authorities concerned has passed the impugned order dated 05.03.2016 in a post haste manner only to escape the consequences of M.J.C. filed by the petitioner. Learned counsel has stated that the grounds which were taken in the Order dated 05.03.2016 are not legally sustainable and contrary to the facts of the case. Learned counsel has stated that the petitioner has supplied various medicines based on the purchase order issued by the Respondent Nos. 6 and 7. Learned counsel has stated that the following letters have been issued by the Respondent No. 6 for supply of the medicines i.e. letter no. 505, dated 02.03.2015, letter no. 506 dated 02.03.2015, letter no. 507 dated 02.03.2015, letter no. 511 dated 02.03.2015, letter no. 594, dated 16.03.2015 and the petitioner has supplied the medicines at the rates quoted



and on such terms and conditions mentioned in the above letters. That the Respondent No. 7 vide letter no. 153 dated 03.03.2015 has placed order for supply of the medicines and a part of the said supply was fulfilled by the petitioner. Learned counsel has stated that under different invoices dated between 11.03.2015 to 19.03.2015 medicines worth of Rs. 59,75,046/- were supplied to the Respondent No. 6 and the under various invoices dated between 16.03.2015 to 20.03.2015 medicines worth Rs. 23,05,170/- were supplied to the Respondent No. 7. That the balance medicines which were sought to be supplied to the Respondent No. 6 were actually supplied on 29.03.2015, however, the store keeper did not receive the same and as such they were returned to the petitioner. That the authorities have not followed the procedure as contemplated under the law for rejecting the claim of the petitioner. Some of the grounds for rejecting the claim of the petitioner are: (a) that the rates of the medicines supplied by the petitioner were approved by BMSICL for the year 2013-14 whereas the purchases were made in the year 2014-15 and the same will not same as per rules. (b) That the medicines were supplied in excess of the list. (c) That the Civil Surgeon was not competent to issue the said purchase orders etc. These grounds are all concocted for the purpose of



defeating the claim of the petitioner. That the Civil Surgeon is a competent authority who is authorized to place the orders and pursuant to the order placed by the Respondent Nos. 6 and 7 only, the petitioner has supplied the medicines. That the rates which were approved for the year 2013-2014 will be applicable for the year 2014 and 2015 also as no new rates have been approved and the old rates will prevail. That the petitioner cannot be blamed for any violation of the procedure or rules by the authorities concerned while procuring the medicines, that the petitioner is no way concerned with the said aspect. That the petitioner has established that the medicines were supplied to the authorities concerned and having consumed the same, the authorities are legally bound to make the necessary payments. Therefore, learned counsel for the petitioner has prayed this Hon'ble Court to allow the present writ petition.

6. Per contra, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition. Learned counsel has stated that the present writ petition is liable to be dismissed on the ground that the petitioner has connived with the authorities concerned for defrauding the exchequer, that the medicines which were supplied by the petitioner were not supported by



any quality certificate, that the civil surgeon has not followed the guidelines issued by the Health and Finance Department while procuring the medicines. That the rates which were approved for the year 2013-14 have been followed for the year 2014-15, that the civil surgeon was not competent to place the order to the petitioner without calling for any tenders. Learned counsel has stated that the petitioner as well as some officials of the Department have connived to defraud the exchequer and have submitted fake and false invoices. That the Department has instituted an enquiry and found that there are various discrepancies in procuring the medicines. That the Civil Surgeon was hand-in-glove with the petitioner in playing fraud and necessary disciplinary action has been initiated against the officials concerned. Therefore, learned counsel for the respondents has prayed for dismissal of the present writ petition.

7. Admittedly, in the present case, the respondent No. 6 vide letter nos. 504, dated 02.03.2015, letter no. 505, dated 02.03.2015, letter no. 506 dated 02.03.2015, letter no. 507 dated 02.03.2015, letter no. 511 dated 02.03.2015, letter no. 594, dated 16.03.2015 as well as another purchase order contained in letter no. 153 dated 03.03.2015 issued by the respondent no. 7 placed orders for supply of medicines to the petitioner herein.



8. A perusal of the record shows that the petitioner has supplied the medicines which were sought to be procured vide various invoices which are dated between 11.03.2015 and 19.03.2015, the petitioner had supplied medicines worth Rs. 59,75,046/- to the Respondent No. 6 and under the invoices which were dated between 16.03.2015 and 20.03.2015, the petitioner had supplied medicines worth Rs. 23,05,170/- to the Respondent No. 7.

9. Admittedly in this particular case, the medicines which were procured by the authorities have been consumed by the authorities. Neither in the counter affidavit nor in the submissions made by the counsel, the fact that the medicines to the tune of Rs. 59,75,046/- supplied to the Respondent No. 6 and Rs. 23,05,170/- supplied to the Respondent No. 7 have not been consumed or returned to the petitioner has been stated. Further, except making bold statement that the Civil Surgeon is not a competent authority to issue purchase order, the authorities have not filed any material to support that the Civil Surgeon is not competent to place the orders. Even though, it is stated in the counter affidavit that disciplinary proceedings have been initiated against the authorities for not following the procedure prescribed by the Health/ Finance Department, it is to be noted



that the petitioner cannot be blamed for the lapses if any committed by the authorities. Once it is established that the petitioner has supplied the medicines under various invoices and the same were consumed by the respondents, the payment for the said medicines cannot be denied. Further as seen from the averments in the counter affidavit, the amounts which were withdrawn by the Civil surgeon are lying in the account of the bank and they have not been misappropriated or embezzled in any manner, therefore, the stand taken by the authorities for denying the payment to the petitioner is legally not tenable. Therefore, this Court is inclined to allow the present writ petition in part and direct the authorities to make the payment of Rs. 59,75,046/- and Rs. 23,05,170/- to the petitioner as expeditiously as possible preferably within a period of eight weeks from the date of receipt of the copy of this order. In so far as the other contentions raised by the petitioner with regard to other reliefs sought by the petitioner are concerned, this Court is not inclined to go into the same as they are disputed questions of fact which cannot be gone into the present writ petition. Therefore, the same is rejected leaving it open to the petitioner to pursue his remedies under the common Civil law, if he is so advised.



10. With the above directions, the writ petition is
allowed in part to the extent indicated.

(A. Abhishek Reddy , J)

Gauravkr/-

AFR/NAFR	NAFR
CAV DATE	21.08.2023
Uploading Date	30.01.2024
Transmission Date	N/A

