

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15102 of 2018

Elite Falcons son of Sakaldeo Singh resident of Gadaychak, Police Station - Parwalpur, District - Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Health Department, Government of Bihar, 1st Floor, Vikas Bhawan, Bailey Road, Patna-800015
2. The Principal Secretary, Health Department, Government of Bihar, 1st Floor, Vikas Bhawan, Bailey Ro
3. The Executive Director, State Health Society, Parivar Kalyan Bhawan, Sheikhpura, Patna.
4. The District Magistrate cum Chairman, District Health Society, Nalanda, Biharsharif.
5. The Civil Surgeon cum Member Secretary, District Health Society, Nalanda, Biharsharif.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ajit Kumar, Advocate Mrs. Archana Sinha, Advocate
For the Respondent No.3:		Mr. K. K. Sinha, Advocate Mr. Shashi Shekhar, Advocate
For the State-Respondent:		Mr. Rajeshwar Singh, SC

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 writ petition, petitioner has prayed for
the following relief(s):-

*“For issuance of writ in the nature
of Certiorari quashing the letter dated
02.07.2018 contained in letter no. 1315 issued
by the Civil Surgeon Cum Member Secretary,
District Health Society, Nalanda (for brevity*



“respondent no. 5”) whereby a direction was issued to the petitioner to remove its all the security guards from the institutions except Sadar Hospital, Sub Divisional Hospital and Primary Health Centers which was being provided by the petitioner pursuant to, an agreement dated 05.05.2017, which was further amended vide agreement dated 17.05.2017 executed between the petitioner and the respondent no. 5 and further it was directed to stop the payment of the employees serving as security guards till further order;

ii. Further, for issuance of a writ in the nature of mandamus directing the respondents to release the payment towards the services provided by the petitioner pursuant to the afore stated agreement and for any other relief[s] for which the petitioner may be found entitled to in the facts and circumstances of the present case.”

02. On perusal of record, it is evident that supply of the Security Guard to the District Health Society, Nalanda at Biharsharif, was in vogue during the intervening period from 03.05.2017 to 04.05.2020. Meanwhile, concerned Respondent noticed that the petitioner was not maintaining records in terms of the conditions stipulated in the agreement like EPF, ESI, Service Tax and GST etc.



03. In this regard, notice is stated to have been issued on 12.05.2018 seeking explanation from the petitioner and it is also learnt that petitioner had submitted his explanation on 14.06.2018. Instead of analyzing show-cause notice, reply of the petitioner to the show-cause notice and thereafter taking action, the concerned authority is stated to have invoked shortcut method in dispensing the contract. Annexure-A/7 reads as under:-

" पत्राक 1315

प्रेषक,

सिविल सर्जन-सह-सदस्य सचिव,
जिला स्वास्थ्य समिति, नालन्दा।

सेवा में,

एलाईट फॉलकन्स,
धीरज कॉमर्शियल कॉम्प्लेक्स,
तीसरा तल्ला, बोरिंग रोड,
पटना 800001

बिहारशरीफ दिनांक 02/07/2018

विषय: सदर अस्पताल, बिहारशरीफ, अनुमंडलीय अस्पताल, हिलसा एवं राजगीर तथा सभी प्राथमिक स्वास्थ्य केन्द्र को छोड़कर शेष सभी संस्थानों से सुरक्षा गार्ड की सेवा को समाप्त करने के संबंध में।

महाशय,

उपर्युक्त विषयक जिला पदाधिकारी नालन्दा के द्वारा निर्देशित किया गया है कि " सदर अस्पताल, अनुमंडलीय अस्पताल एवं प्राथमिक स्वास्थ्य केन्द्र को छोड़कर सभी जगह से सुरक्षा कर्मी तुरंत प्रभाव से हटाए तथा SDO Rajgir के प्राप्त प्रतिवेदन, माननीय मंत्री, स्वास्थ्य विभाग द्वारा दिनांक 23.06.2018 को दी गई निर्देश के आलोक में तत्काल भुगतान पर पूर्ण रोक रहेगी।"

अतः दिये गये निर्देश के आलोक में निदेशित है कि



सदर अस्पताल, बिहारशरीफ, अनुमंडलीय अस्पताल हिलसा एवं राजगीर तथा सभी प्राथमिक स्वास्थ्य केन्द्र को छोड़कर शेष सभी स्वास्थ्य इकाईयों से सुरक्षा कर्मी की सेवा को अविलम्ब तत्काल प्रभाव से समाप्त करना सुनिश्चित करें। साथ ही निर्देशानुसार सुरक्षा गार्ड के भुगतान पर अगले आदेश तक रोक रहेगा।

इसे इस हद तक एकरारनामा में संशोधित समझा जाय।

विश्वासभाजन

ह 0

2.7.2018

सिविल सर्जन सह सदस्य सचिव,
जिला स्वास्थ्य समिति, नालन्दा ।"

04. The aforementioned action is not in consonance with principles of natural justice. No doubt show-cause notice has been issued and official respondents are in receipt of reply to the show-cause notice. In such circumstances, it was bounden duty of the concerned Respondent while passing Annexure-7 on 02.07.2018 to refer and analyze show-cause notice and reply of the petitioner before taking impugned action. Therefore, the impugned action is bereft of reasons and in non-consideration of petitioner's version. Impugned action is amenable to judicial review. In such circumstances, the concerned authority should have passed a detail speaking order and the same is not forthcoming.

05. Accordingly, the petitioner has made out a *prima facie* case, so as to interfere with the impugned action of the Respondent and the same is set-aside, reserving liberty to the



concerned official Respondent to proceed in accordance with law. At the same time, the petitioner is at liberty to file appropriate application or petition in claiming damages, for the reasons that tenure of the contract has already elapsed as on 04.05.2020.

06. With the above observation, the writ petition stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Ashish/-
Balmukund/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.03.02023
Transmission Date	NA

