Pramod Kumar Singh Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Aug-29-2017

Appellant : Pramod Kumar Singh

Respondent : State of Jharkhand and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (PIL) No. 6693 of 2014 --- Pramod Kumar Singh --- ---- Petitioner Versus The State of Jharkhand & others --- --- Respondents --- CORAM:The Honble Mr. Justice Aparesh Kumar Singh The Hon'ble Mr. Justice B.B. Mangalmurti For the Petitioner: Mr. Vijay Shankar Prasad, Advocate For the Resp - State: Mr. Rishikesh Giri, JC to GP-II --- 13/ 29.08.2017 Petitioner proclaiming himself as the convener of Sanskriti Vihar Trust working in the field of welfare of people and imparting education through Bhaskar Vidyalaya, being a social activist, sought to raise concern in public interest by way of this writ petition inter-alia, asking cancellation of Memorandum of Understanding (MoU) entered between the Respondent Nos. 7 to 10 i.e. the Central Public Enterprises (CPSEs) for the purposes of rate contract for supply of 141 Schedule medicines to Jharkhand, Rural Health Mission Society for the period 25.07.2014 to 24.07.2015. He alleged that the same has been done on the basis of false affidavit and in violation of Purchase Policy adopted by the State of Jharkhand for purchase of medicines. He sought prohibition upon the Respondent Companies for supply of medicines to the State of Jharkhand as medicines are sub- standard and spurious and likely to affect the public at large. He also sought direction for purchase of scheduled medicines by inviting open tender.

2. As per the averments made in the writ petition, Jharkhand Rural Health Mission Society is responsible for providing medical facilities to the poor and downtrodden people. Under the Pharmaceutical Purchase Policy, 2013, the Mission Director, National Rural Health Mission, Jharkhand, invited various manufacturers, Public Sector Units for signing MoU for supply of medicines vide letter dated 20.06.2014. Pursuant to the said meeting vide letter dated 26.07.2014, the Mission Director informed that four Central Public Sector Enterprises (CPSEs) have signed MoU on the basis of the rates given. One of the conditions imposed was that the Company signing MoU should not be under the revival proceedings before BIFR. Pursuant thereto, a contract was signed by the Company for supply of medicines valid for the period from 25.07.2014 to 24.07.2015.

3. Petitioner contends that as per the information furnished under the RTI, Ministry of Chemicals and Fertilizers, Department of Pharmaceuticals has, by letter dated 23.06.2014, clearly informed that three Companies are rendered sick. As per purchase policy, purchase has to be made from those Companies who are Non - BIFR Companies. Further, purchase have to be done of those medicines 2. which is self manufactured by the Company. It is alleged that the supplies of medicines are made by these Companies which are not manufactured by them, rather by other Company.

4. Various contentions raised by the petitioner were asked to be responded by the Department of Health and Family Welfare, Government of Jharkhand. In the counter affidavit of the Respondent Health Department dated 11.01.2017, apart from other assertions and denials made, Respondents have brought on record the Office Memorandum dated 10.12.2013 issued by the Department of Pharmaceuticals, Ministry of Chemicals and Fertilizers, Government of India on the subject of Pharmaceuticals Purchase Policy for products of Pharma Central Public Sector Enterprises (CPSEs) and their subsidiaries. Learned counsel for the Respondents has placed Clause 2 and 3 thereof which reads as under: II. Pharmaceuticals Purchase Policy will extend only to Pharma CPSEs under the administrative control of Department of Pharmaceuticals such as Indian Drugs and

Pharmaceuticals Limited (IDPL), Hindustan Antibiotics Limited (HAL), Bengal Chemicals and Pharmaceuticals Limited (BCPL), Karnataka Antibiotics and Pharmaceuticals Limited (KAPL) and Rajasthan Drugs and Pharmaceuticals Limited (RDPL) and their subsidiaries where Government of India owns 51% or above shares. III. This would be applicable to purchases by Central Government departments, their Public Sector Undertakings, and Autonomous Bodies, etc. This would also be applicable to purchase of medicines by State Governments under Health Programmes funded by Government of India such as National Rural Health Mission etc.

5. Learned counsel submits that the entire decision to purchase 103 medicines from these CPSEs who have been impleaded as private Respondents in the instant writ petition, is based upon the policy and guidelines of Ministry of Chemicals & Fertilizers, Government of India itself. These CPSEs have specifically been mentioned at Clause 2 of the Office Memorandum Dated 10.12.2013 and that, Government of India owns 51% or above shares in these Companies. Learned counsel for the State further submits that the decision at Annexure-B taken by the specially constituted committee under the Department of Health dated 24.06.2014, is taken under the same policy of Ministry of Chemicals and Fertilizers contained in Office Memorandum dated 10.12.2013 on the rates prescribed thereunder.

6. Learned counsel for the State has also pointed out that MoU was entered after observing all procedure, as per instructions of the Government of India. It is further stated at Para-17 of the same counter affidavit that the Companies who have received rehabilitation package are excluded from the category of sick Companies. As per the affidavit submitted to the Respondent Department by the 3. Respondent Companies, they are CPSEs which have received rehabilitation package from the Government and as such, they are not to be treated as sick companies. Respondent No. 9 has been removed from the category of blacklisted companies vide Government Notification dated 11.11.2003 bearing memo no. 469(II)/Health (Annexure-G). The Appellate Authority has lifted the ban of purchasing medicines from the Respondent No. 9 as the prosecution initiated against it has been stayed by the Hon'ble High Court. The Appellate Authority has

lifted the ban with certain riders, as would be evident from the letter dated 19.03.2015 (Annexure-H).

7. In the wake of such specific assertions and denials made by the Respondent State authorities, petitioner filed a rejoinder on 12.06.201. He however sought to supplement by more supporting documents. Keeping in view the request of the learned counsel for the petitioner, by order dated 26.07.2017, two weeks time was allowed, by way of last indulgence for that purpose.

8. Matter was posted after four weeks, so that in case counsel for the Respondents needs instructions on the said affidavit to be filed, he may do so within the said period. Today when the matter has been taken up, learned counsel for the petitioner has again expressed his inability in filing the affidavit in question. He however fervently prays for one more indulgence. We accede to the prayer and adjourn the case for one more occasion, whereafter, no further adjournment would be granted.

9. List it accordingly. (Aparesh Kumar Singh, J) (B.B. Mangalmurti, J) Ranjeet/