(2018) 12 RAJ CK 0261

In the Rajasthan High Court

Case No : Civil Writ No. 12676 Of 2016

C.R.D. Healthcare Private Ltd — APPELLANT

Vs

State Of Rajasthan And Ors — RESPONDENT

Date of Decision : 21-12-2018

Acts Referred:
Constitution Of India, 1950 — Article 226

Citation : (2018) 12 RAJ CK 0261

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Siddharth Joshi, Dinesh Ojha

Final Decision : Allowed

Judgement

Facts in brief are that the Government of Rajasthan and the petitioner herein entered into a MOU dated 25.05.2015 so as to provide proper health care and medical facilities at the Community Health Center, Gudamalani, District Barmer. The MOU was effective for five years and further extendable by a period of five years. The petitioner has set up a case that it was entitled to charge fees and moneys from the patients as permissible by law and as per the MOU and that only certain categories of patients falling in the BPL, etc. were entitled to free medical facilities at the CHC. It is also stated by the petitioner in the writ petition that at the time when the CHC was handed over to it, the entire set up was virtually defunct and the petitioner, significantly improved the facilities, infrastructure thereof and started operating the CHC with significant improvements from the previously available facilities being provided by the Government inasmuch as, various specialised doctors were posted; latest and modern equipments were installed, the operation theater of the CHC which was virtually non-existent was refurbished and complicated surgical procedures were conducted therein. It is the petitioner's case that the persons bearing ill-will and jealous, made frivolous complaints in order to frustrate the noble and pious endeavour attempted by the petitioner to provide advanced and skilled medical

care to persons living in such a remote area. Frivolous complaints were filed against it and in furtherance thereof, the competent authority issued a notice dated 12.08.2016 to the petitioner alleging that it was not providing facilities to the parties as per the MOU. The petitioner promptly replied to the notice refuting the allegation that proper facilities were not being provided at the CHC. Another notice dated 24.08.2016 was served upon the petitioner whereunder, the petitioner was directed to fill in vacancies in the CHC and to provide proper facilities to the patients. However, the petitioner claims that inspection which was carried out by the authorities of the Medical & Health Department in the contemporaneous period and resulted into a finding that the position of the CHC had significantly improved and the management was verified as efficacious. While offering reply vide letter dated 29.08.2016, the petitioner pertinently, apprised the respondent authorities that General Medical Officers, Dental Surgeon, Orthopedic Surgeon, Gynecologist, Anesthesiologist, Pediatrician, General Surgeon, Ophthalmologist and necessary staff totaling to 40 had been appointed in the CHC and that 28 major surgeries had been conducted therein. A comparative status report of the CHC, Gudamalani before and after the petitioner took charge thereof with requisite data was provided by the petitioner to the respondents on 08.09.2016. The petitioner has further claimed that persons bearing ill-will and malice against it, filed a Public Interest Litigation No.14510/2015 in the Hon'ble High Court for challenging the government action in handing over the CHC Gudamalani to the petitioner under Public Private Partnership.

The learned Additional Advocate General appearing on behalf of the State authorities made a categoric statement before the Division Bench on 27.09.2016 that doctors and other necessary nursing staff had been posted at the CHC, Gudamalni and that the same were functioning satisfactorily. Upon receiving this status report and accepting the statement of the AAG to be bonafide, the Division Bench disposed of the PIL on the very same day. Just a week later i.e. on 03.10.2016, the respondent Department issued the order dated 03.10.2016 cancelling the MOU by effect whereof, the CHC Gudamalani had been handed over to the petitioner under a PPP MOU. The petitioner submitted a representation dated 05.10.2016 to the respondent department praying for cancellation/revocation of the order dated 03.10.2016. However, rather than accepting the representation submitted by the petitioner, the respondent CMHO, Barmer posted/deputed Government staff at the CHC Gudamalani by order dated 10.10.2016. Being aggrieved by the orders dated 03.10.2016 and 10.10.2016, the petitioner herein has approached this Court by way of this writ petition filed under Article 226 of the Constitution of India.

Detailed reply to the writ petition has been filed by the respondents wherein, the impugned orders are sought to be justified on the strength of an averse inspection reports (Annexure-R/2) dated 14.09.2016 and 21.09.2016 prepared by the SDO, Gudamalani, District Barmer to the concerned authorities.

The petitioner has filed a detailed rejoinder to the reply, annexing therewith, copies of attendance register and the list of the doctors posted by it at the CHC. It is claimed in the rejoinder that the inspection report dated 14.09.2016 submitted by the SDO Shri Nathu Singh Rathore is absolutely incorrect, biased and laconic. It is further claimed that the CHC which is located in a remote area was given to the petitioner under the PPP Mode and was being run efficiently and efficaciously. The petitioner made huge investment therein. The virtually defunct operation theater of the CHC was restored and rejuvenated and was made functional, and major surgeries were conducted therein, thereby providing great relief to the people of the nearby areas who had to approach distant cities like Barmer or Jodhpur for tending to their major medical needs. It is further claimed in the rejoinder that the inspection reports dated 14.09.2016 and 21.09.2016 are fabricated because the same do not bear signature of any representative of the petitioner. It is further alleged that had there been an iota of truth in these reports then the Government Counsel would not have made a statement before the Division Bench approving the facilities provided by the petitioner in the CHC.

While considering the matter, this Court passed the following order on 14.05.2018:

"Though not taken in reply, Mr. Ojha has raised an oral preliminary objection regarding maintainability of the writ petition on the ground of arbitration clause provided for in the disputed contract, but after examining the facts available on record, this court is least convinced by the said preliminary objection, which is hereby turned down.

On perusal of the reply filed by the State of Rajasthan to the D.B. Civil Writ Petition (PIL) No.14510/2015, particularly at page No.56 of the paperbook, it is manifest that the State Government has appreciated the efforts of the petitioner herein regarding setting up of the facilities in the disputed CHC. Thereafter manifestly the Director, Medical and Health Service acted on sheer whims and caprices and based upon the so called order passed in the above PIL, the petitioner was notified that it was not complying with the terms and conditions of the MOU. In the notice dated 24.08.2016, it is mentioned that the requisite posts had not been filled in. However, this allegation as recorded in the notice dated 24.08.2016 is totally falsified by the annexed inspection note and the reply of the State Government in the above PIL. It is virtually admitted by the respondents that the statutory notice of 3 months was not provided to the petitioner before revoking the contract.

Thus, the Principal Secretary, Medical and Health Services, Government of Rajasthan as well as the Director (who was holding the post at the relevant time), Medical and Health Services, Government of Rajasthan are directed to remain personally present before this court on the next date to furnish explanation regarding the apparent anomalies and arbitrariness in the impugned proceedings"

The Additional Chief Secretary of the department appeared in the Court on 10.09.2018 and on her suggestion, this Court passed the following order:-

"Learned Additional Advocate General, upon being instructed in this behalf, has assured the Court that the Department will take the issue at its highest level for reconsideration to restore the MOU issued in favour for the petitioner, which was cancelled under the impugned action, more particularly, looking to the fact that the facilities being provided by the medical staff posted through the petitioner were definitely better than what have been provided thereafter and that the State Government is facing a serious shortage of trained medical staff.

Pragmatic approach of the Additional Chief Secretary in trying to resolve the issue is appreciable."

After this order had been passed, the matter was reconsidered at the level of the Government but it could not be resolved.

Shri Siddharth Joshi, Advocate representing the petitioner thereafter filed a counter affidavit on its behalf annexing therewith, copies of certain documents, the insurance contracts, etc.

Canvasing the case of the petitioner, Shri Joshi vehemently and fervently urged that the inspection reports dated 14.09.2016 and 21.09.2016 submitted by the SDO were never communicated to the petitioner. These reports do not form the foundation of the impugned orders and manifestly, they have been prepared fraudulently. Had there been an iota of truth in the allegations as set out in these reports then the Additional Advocate General would not have made a statement before the Division Bench appreciating the petitioner's conduct in managing the affairs of the CHC under the PPP Mode. He further urged that the allegation regarding the petitioner having flouted the condition of the MOU by charging money from certain patients is absolutely unfounded. In this regard, he referred to the guidelines applicable to the Bhamashah Swasthya Beema Yojana and the rate list displayed by the petitioner at the CHC (filed alongwith the counter affidavit) and urged that whatever charges were taken by the petitioner were in accordance with the scheme and guidelines. He contended that had there been an iota of truth in the allegation that the conditions of the MOU which was effective for five years and further extendable by a period of five years, were flouted by the petitioner by illegally charging money from the patients then, this fact would have definitely been noted in the inspection reports prepared by the authorities of the Medical and Health Department on 24.08.2016 and 12.09.2016. He further urged that in neither of the two notices dated 12.08.2016 (Annexure-2) and 24.08.2016 (Annexure-3), served upon the petitioner, was there any allegation regarding the petitioner having charged any illegal amount from the patients nor is any such allegation reflected in the impugned order (Annexure-8) dated 03.10.2016.

In support of his contentions, Shri Joshi relied upon the Supreme Court decision in the case of Commissioner of Police, Bombay vs. Gordhans Bhanji, reported in

AIR 1952 SC 16(1) and urged that the reasoning assigned in the impugned order cannot be substituted or supplemented by subsequent explanations. On these grounds, he urged that the writ petition should be accepted and while quashing the impugned orders, the MOU in question be restored and the respondents be directed to permit the petitioner to continue to operate the CHC.

Per contra, Shri Dinesh Ojha, Advocate associate to Shri P.R. Singh, AAG vehemently opposed the submissions advanced by Shri Joshi and urged that the petitioner was found indulged in charging illegal amounts from the patients contrary to the Bhamashah Scheme. Notices of these material irregularities were served upon the petitioner and the replies offered by the petitioner to such notices were found unsatisfactory whereupon, the MOU was terminated and possession of the CHC has been resumed by the Government in an absolutely lawful manner. He urged that the petitioner has admitted on more than one occasions that money was charged from the patients whereas total medical facilities are to be provided free of cost to all the patients in Government Hospitals. Thus, by illegally charging money from the patients, the petitioner blatantly flouted the terms and conditions of the MOU and have authorities rightly cancelled the MOU while resuming the charge of the CHC. He thus craved dismissal of the writ petition.

I have given my thoughtful consideration to the arguments advanced at bar and have gone through the material available on record.

At the outset, it may be noted here that the fact regarding absolute lack of facilities and infrastructure in the CHC Gudamalani (which is located in a remote area of Barmer) before charge thereof, was given to the petitioner under the disputed MOU is admitted. When the matter was heard on 10.09.2018, the Additional Chief Secretary, Medical and Health Department, Government of Rajasthan, with assistance of the other officials of the department, candidly conceded before this Court that the facilities provided by the petitioner institution at the CHC, Gudamalani were far better than what the Government has to offer even as on date. It was candidly conceded before the Court that not a single major surgical procedure has been performed at the CHC after the MOU was cancelled and charge of the CHC was resumed by the Government. The Government is under an obligation to provide proper medical and health care to the citizens at convenient locations. It cannot be denied the Gudamalani is located in a remote corner of Rajasthan. If a patient has to run from pillar to post and has to travel hundreds of miles for getting medical attention in this advanced age then, it would be nothing short of sheer travesty of justice. These very conditions prevailed at the CHC Gudamalani before the petitioner was permitted to run the same under the MOU (Annexure-1) and sadly enough, after the MOU was cancelled by the authorities on 03.10.2016 the situation of anarchy has been restored. Various posting orders which were shown to the Courts during the course of hearing, reflect that doctors were hastily posted/deputed at the CHC, Gudamalani so as to make an attempt to satisfy the Court that the Government

is indeed serious in maintaining the CHC and providing proper medical facilities to the residents of the area. Any comment by this Court on these bonafides efforts is not required at this stage but the fact remains that the Government authorities have virtually admitted that after revocation of the MOU, they have failed to provide a semblance of medical facility at the CHC, Gudamalani comparable to what the petitioner was offering so as to cater to the needs of the patients requiring major surgeries, ophthalmological intervention. The Court is indeed pained to note here that the Additional Secretary and other officials of the Medical and Health Department admitted point blank that during the intervening period, all the gynecological procedures which have been carried out in the CHC were attended by male doctors/ male staff and not even a single female nurse has been posted in the CHC during the last two years. This reflects of a state of total apathy and indifference of the Government officials to cater to the needs of the citizens of the State who are living in far flung areas. This court feels that the State authorities have indirectly in a way has indulged in offending the modesty of the women who were attended to by male staff during this intergnum. A laudable effort which was initiated by executing the MOU with the private player, who tried to espaise a social cause by providing specialized medical facilities in the far flung area, has been nipped in the bud by the lackadaisical and pedantic approach of the concerned government officials. The posting order (Annexure-10) which the petitioner has annexed with the writ petition reflects that after charge had been taken by the respondents from the petitioner pursuant to cancellation of the MOU, various doctors, nurses and other staff posted at Chohtan, Dhorrimanna and Shiv Primary health Centers were deputed to CHC, Gudamalani purely by way of a make shift and make believe arrangement. A perusal of these 12 postings shows that not a single female nurse or female gynecologist has been posted at the CHC. No significant improvement in the strength of staff was shown to the Court even when the matter was being heard. Even if the impugned order is examined on merits, it is manifest that the same is totally laconic and perfunctory. The order just reads that the CRD Healthcare is not operating the CHC in accordance with the contract, however, which precise condition of the MOU which was flouted by the petitioner has not been mentioned in the order. Of course, as has been stated above and for the sake of repetition, it may be mentioned that the respondents have tried to supplement this order in the reply with reference to the inspection notes dated 24.08.2016 and 12.09.2016 allegedly prepared by the SDO concerned. But suffice it to say that the order is not founded on these inspection reports. Furthermore, these inspection reports do not bear the signatures of any of the petitioner's representatives and thus, the reliability thereof is under a big question mark. Further, the learned AAG appearing in D.B. Civil Writ Petition (PIL) No.14510/2015, made a statement before the Division Bench on 27.09.2016 that doctors and other necessary nursing staff had been posted at the CHC, Gudamalni and that the same was functioning satisfactorily. The Hon'ble Apex Court in the case of Commissioner of Police, Bombay vs. Gordhans Bhanji (supra), relied upon by Shri Joshi, Advocate has emphatically expounded

that public orders made in exercise of statutory authorities cannot be construed in the light of the explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. The public orders must be construed objectively with reference to the language used in the order itself. The thrust of the arguments advanced by Shri Dinesh Ojha associate to Shri P.R. Singh, AAG, for supporting the impugned order was that the petitioner illegally charged money from the patients and thus, acted in violation of the terms and conditions of the MOU. Suffice it to say that the MOU (Annexure-1) nowhere stipulates that the petitioner would not be entitled to charge anything from the patients approaching the CHC. Condition No.III(12) of the MOU clearly lays down that the petitioner would have to adhere all the guidelines/ schemes/ rules and regulations issued or to be issued by the Government during the tenure of the MOU. The guidelines governing the Bhamashah scheme which have been annexed by the petitioner also stipulate that amounts could be charged from the patients as per the scheme.

In this background, this Court is of the firm opinion that the bald aspersion made by the respondent's counsel that the petitioner flouted the conditions of the MOU by charging money from the patients, is absolutely untenable. As stated above, the respondent Medical and Health Department miserably failed to provide proper and advanced medical and health care to the citizens of the area. The facilities provided by the petitioner till the MOU was cancelled were manifestly far superior in quality and in numbers than what the Government has provided ever-since the CHC was established and after the MOU in question was cancelled.

In this background, this Court is of the firm opinion that the impugned order does not stand to scrutiny on the yardstick of the reasonableness, objectivity and legality. Hence, the same is liable to be struck down.

Accordingly, the writ petition deserves to be and is hereby allowed. The impugned order (Annexure-8) dated 03.10.2016 passed by the Director (Public Health), Medical and Health Services, Government of Rajasthan is hereby quashed and struck down. The MOU (Annexure-1) dated 25.05.2015 is restored. The respondents shall handover the charge of the CHC to the petitioner within a period of four weeks from today. The petitioner shall, operate the CHC in accordance with the terms and conditions of the MOU and the applicable guidelines for the remaining tenure thereof.

