

(2008) 08 JH CK 0031
In the Jharkhand High Court

J.K. Janch Ghar

APPELLANT

Vs

Damodar Valley Corporation and Others

RESPONDENT

Date of Decision : 28-08-2008

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2008) 4 JCR 361

Hon'ble Judges : M.Y. Eqbal, J; Dilip kumar sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—Heard Mr. Ram Kishore Prasad, learned Counsel appearing for the appellant and Mr. S.K. Ughal, learned Counsel appearing on behalf of the respondents.

2. This letters patent appeal is directed against the judgment and order dated 3.12.2007 passed in WPC No. 779 of 2007 whereby the learned Single Judge dismissed the writ petition. The impugned order reads as Under:

Heard

Mr. Anil Kumar, appearing for the petitioner, submitted that the impugned order dated 17.1.2007 (Annexure-9) has been passed in violation of the principles of natural justice. He submitted that in the notice dated 28.11.2006, petitioner was asked to explain certain matter, which it explained but in the impugned order apart from the said matters, other matters have also been taken into consideration about which petitioner was not given opportunity to explain and therefore the principles of natural justice has been violated by the D.V.C. which is a State within the meaning of Article 12 of the Constitution of India.

He further submitted that M/s. J.K. Janch Ghar, pursuant to the notice inviting expression of interest by the DVC applied and was selected and accordingly established its Pathological Units in the hospitals of DVC. Petitioner requested but

the respondent did not enter into agreement on the ground that there was dispute between the partners of petitioner-M/s. J.K. Janch Ghar, and on other grounds which were wholly untenable. He submitted that it is true that there was some dispute between the partners but initially J.K. Janch Ghar, was a proprietorship Firm and partnership agreement was entered into on 26.6.2006 and the same was dissolved on 19.9.2006 due to the dispute between the partners. He further submitted that on the ground of such dispute between the partners, which was ultimately resolved by dissolution of firm, respondent could not refuse to execute agreement with the petitioner. He also submitted that in the said notice dated 28.11.2006, respondent asked the petitioner to explain about four matters to which he replied on 1.12.2006 (Annexure-D) but the respondents have issued the impugned letter dated 17.1.2007 taking into consideration other grounds also namely the qualification of the doctors, about which petitioner was not given opportunity to explain. He further submitted that however petitioner has explained about the said doubts of DVC with regard to the qualification of the doctors in the writ petition.

Mr. Ughal, appearing for the DVC, submitted that in the counter affidavit, the DVC has denied and disputed the statements made in the writ petition. Referring to Annexure-9, he submitted that on the grounds mentioned therein, the DVC was fully justified in cancelling/withdrawing offer dated 12.7.2006.

This writ petition involves disputed questions of facts and moreover the disputes between the parties arise out of agreement. In such background, petitioner's contention that respondent has violated the principles of natural justice is not tenable. In the circumstances, I am not inclined to entertain this writ petition.

However, petitioner, if so advised, may file a suit for redressal of his grievances, if any, and in that event, this order will not prejudice the parties.

With these observations and directions, this writ petition is dismissed.

3. The admitted facts are that the respondent-Damodar Valley Corporation (shortly DVC) invited officers from the registered Diagnostic Centers having expertise, machineries and infrastructure for establishment of their complete Unit with men, machines and materials in the hospital of DVC, Bokaro.

4. The appellant said to have submitted application which was processed and on the basis of the documents produced by the appellant the respondent-DVC agreed to enter into an agreement with the appellant. However, subsequently many deficiencies were found in the documents and the facts represented by the appellant. In the letter dated 16th June. 2006 the respondent-DVC informed the appellant about the major lapses found in their documents which are quoted herein below:

1. Our notice for EOI dated 4.5.2006 and you have submitted your application for the said EOI (Expression of Interest) on 19.5.2006 whereas your partnership business had started on 26.6.2006 (see Clause 3 of the Partnership Deed). That

means your J.K. JanchGhar, had no existence on 4.5.2006 and also on 19.5.2006 and as such you are legally barred to apply against our advertisement for EOI.

2. There was no registration of your laboratory on 4.5.2006 and also on 19.5.2006 as the documents show that you procured the registration on 19.9.2006/25.9.2006 issued by competent authority.

3. On 25.9.2006 DVC received a letter of Advocate on behalf of Shri Binod Kumar, a partner of J.K. Janch Ghar, alleging so many disputes amongst the partners without any indication of dissolution of partnership by which only the other partner Shri Ashok Kumar Sakuja claimed to have become the sole proprietor. In such suspicious and disputed situation DVC cannot be a party to such changed disputed situation. Moreover, when you applied on 19.5.2006, there was no existence of the partnership business of J.K. Janch Ghar, which was executed on 26.6.2006.

4(a) The letter dated 19.5.2006 (written by Shri Ashok Kumar Sakuja) confirming that Dr. Krishna Mohan Sahai of Dhanbad is associated with the Partnership Firm of J.K. Janch Ghar at Bokaro from 1.3.2005 when J.K Janch Ghar, was not constituted and became effective as per Clause 3 of the Partnership Act made on 26.6.2006 this is a deliberate false statement from a Doctor on whom we can rely.

(b) Certificate of MD Degree of DR. K.M. Sahay has not been sent to us instead Order dated 11.3.1983 of Ranchi Bench of Patna High Court permitting Dr. Sahay to appear in the MD Pathology Examination has been sent. Thus, again a suspicious situation has been created.

(c) Certificate of Diploma in Medical Laboratory Technique issued by the Institute of Medical and Technological Research in favour of Shri Tanwiz Alam is not a recognized one by the Govt. of India and thus does not fulfill the requirement of EOI.

(d) Dr. Kaushik Das is having Post Graduate Degree in MS (Obstetrics and Gynaecology) and he has attendance Certificate in Ultrasonography in Obstetrics and Gynaecology which can not be treated as Degree or Diploma in Radio Diagnosis and thus it is a gross deviation from truth and does not fulfill the requirement of EOI.

5. Certification of Registration u/s 19(i) of Prenatal Diagnostic Techniques (Registration and Prevention of Misuse) Act, 1994 was granted to J.K. Janch Ghar, on 19.9.2006 and 25.9.2006 after grant of the Award of Contract on 12.7.2006 to J.K. Janch Ghar. It is not understood why two certificate dated 19.9.2006 and 25.9.2006 have been issued, this subsequent Registration does not fulfill the requirement of EOI.

6. Vide your letter No. MD/DHS/Outsource/4115 dated 14.11.2006 you have requested not install any instruments or engage any person either at BTPS or CTPS till execution of the Agreement. Your son's loan certificate granted at New

Delhi can not be equated to J.K. Janch Ghar's investment.

5. On these deficiencies the respondent-DVC cancelled the proposal given by the appellant for establishment of the unit. The concluding portion of the said letter reads as under:

The above stated documents produced by you are of suspicious nature and Registration Deed of Partnership and Registration u/s 19(1) of Prenatal Diagnostic Techniques (Registration and Prevention of Misuse) Act, 1994 were executed and procured after the grant of Award of Contract to you. Thus it is confirmed after you procured the grant of Award of Contract in your favour by misleading DVC without fulfilling the requirement of EOI.

In view of above, the offer vide No. MD/DHS/Out Source/2261 dated 12.7.2006 (under reference 2) issued by DVC to J.K Janch Ghar, for establishing USG and Pathology Unit at BTPS and USG unit at CTPS is hereby cancelled and withdrawn with immediate effect and you are advised not to proceed with the same any further and vacate the spaces allotted to you and handover the possession of the spaces to DVC at BTPS and CTPS immediately.

6. Having regard to the facts enumerated hereinabove and considering the fact that final agreement was not entered into by the respondent with the appellant, the offer given by the appellant will not confer any indefeasible right to the appellant to compel the respondents to allow it to establish the unit. The learned Single Judge, therefore, rightly held that if the cancellation is illegal or unjustified, the appellant may move the civil Court.

7. For the aforesaid reason the impugned judgment passed by the learned Single Judge needs no interference. This appeal is dismissed.

D.K. Sinha. J.

8. I agree.