
(2018) 09 CAL CK 0021
In the Calcutta High Court
Case No : W.P. No.4870 (W) Of 2018

Manas Neogy & Anr.

APPELLANT

Vs

State of West Bengal & Ors.

RESPONDENT

Date of Decision : 12-09-2018

Acts Referred:

Right to Information Act, 2005 — Section 6
West Bengal Clinical Establishment Rules, 2003 — Rule 11D(A)(c)

Citation : (2018) 09 CAL CK 0021

Hon'ble Judges : Tapabrata Chakraborty, J

Bench : Single Bench

Advocate : Ashok Banerjee, Bhaskar Dutta Gupta, Sanjoy Bhattacharya,
Sandipan Maity, Joytosh Majumder, Pinaki Dhole, Avishek Prasad

Final Decision : Dismissed

Judgement

Tapabrata Chakraborty, J.

1. The present writ petition has been preferred challenging inter alia a notice for termination dated 22nd March, 2018 issued by the respondent no.6.

2. Shorn of unnecessary details the facts are as follows :

a) In the year 2007, the Department of Health and Family Welfare, Government of West Bengal represented by the District Health and Family

Welfare Samity (in short, DHFWS) entered into an agreement with Advanced Immunogenetic Diagnostic Clinic (in short, the said clinic) represented

by the petitioners for the purpose of running a diagnostic clinic at Singur Rural Hospital under Public Private Partnership (in short, PPP). The said

agreement was renewed on 14th February, 2014 for a period of five years till 14th October, 2019. Prior to such renewal of the agreement, the

petitioner no.2, who is the Director (Administration) of the said clinic, submitted

an application under Section 6 of the Right to Information Act, 2005

(in short, RTI Act) on 30th July, 2013. As the said application was not disposed of, a writ petition being WP 37192 (W) of 2013 was preferred and

pursuant to the order passed in the same, a reply was furnished by a memo dated 2nd January, 2014 issued by the Special Secretary to the

Government of West Bengal, Department of Health and Family Welfare. Dissatisfied with the said reply, the petitioner no.2 submitted a further

representation on 27th January, 2014 but the same was not responded to;

b) In the midst thereof, a memo dated 26th June, 2014 was issued by the respondent no.6 directing the petitioner no.1 to close down the said clinic as it

was not functioning in consonance with the provisions of the West Bengal Clinical Establishment Rules, 2003 (in short, the said Rules of 2003).

Aggrieved thereby, the petitioner no.1 preferred an appeal before the respondent no.2 on 15th September, 2015 and as the same was not responded

to, the petitioner no.1 preferred a writ petition being WP 6200 (W) of 2015 and the same was disposed of by an order dated 7th March, 2016 directing

the respondent no.2 to consider the petitioner's appeal, in accordance with law. Pursuant to the said order, the respondent no.2 passed an order on

24th June, 2016;

c) Thereafter in connection with the RTI application, an order was passed by the Commission on 24th January, 2018 and pursuant to the directions

contained in the same and upon hearing the petitioner on 20th March, 2018, an order was passed by the Appellate Authority directing the respondent

no.6 to provide answers directly to the questions asked with necessary clarification, if required. Subsequent thereto, the impugned notice dated

22nd March, 2018 was issued by the respondent no.6.

3. Mr. Banerjee, learned senior counsel appearing for the petitioners submits that the impugned notice dated 22nd March, 2018 was issued without any

prior notice intimating the defaults and without granting any opportunity to the petitioners to rectify such defaults and such action is violative of the

provisions contained in the clauses 7.1 and 7.2 of the said agreement dated 14th February, 2014. The dispute in question is in connection with

termination of services and as such the issue cannot be relegated for arbitration, as would be explicit from the contents of clause 8 of the said

agreement.

4. He further submits that the provisions of the West Bengal Clinical Establishments Act, 1950 are not at all applicable to the operations of said PPP

Diagnostic Centres inasmuch as the same are operated under the direct supervision/control of the State Government/Central Government/Local Self-

Government/Local Authority and that where the said Act is itself not applicable, the Rules framed thereunder cannot be resorted to for purposes of

termination of the services of the petitioners under said PPP Agreements. The petitioner no.1 is a Medical Geneticist as per the provisions of the Pre-

conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) (in short, the said Act of 1994).

5. He further argues that the impugned notice is a cryptic one and has been issued on the basis of mere suspicion and allegations of substandard

service. Suspicion, as is well known, however high may be, can under no circumstances, be held to be a substitute for a legal proof and mere suspicion

cannot be a deterrent towards continuance of relationship with the petitioner.

6. Drawing the attention of this Court to the document at page 117 of the writ petition, he submits that the appellate authority ultimately passed an

order on 20th March, 2018 with a direction upon the respondent no.6 to provide answers to questions with necessary clarification, if required. Without

complying with such directive, the impugned order dated 22nd March, 2018 was passed and that too without granting an appropriate opportunity of

hearing.

7. He further argues that the impugned notice of termination was issued taking into consideration certain bills which were issued prior to issuance in

the said notice being bills dated 26th July, 2018 and 27th July, 2018. Furthermore, reliance was placed upon test samples pertaining to a diagnostic

clinic which had no nexus with the petitionersâ?? diagnostic centre. From such sequence of facts it is explicit that the respondents have proceeded in

a mala fide and illegal manner and such conduct warrants interference of this Court. In the show cause notices issued there was no indication about

any default on the part of the petitioners to run the said diagnostic clinic and as such there had been a violation of the provisions of clause 7.2 of the

agreement.

8. According to Mr. Banerjee, the respondents did not take into consideration the findings of the state level consultative committee and the impugned

notice was issued by the respondent no.6 based upon extraneous considerations.

9. Per contra, Mr. Majumder, learned Government Pleader appearing for the respondents submits that there is no infirmity in the notice for termination

inasmuch as the same was issued after granting repeated opportunities to the petitioners to rectify the default and such decision towards termination is

final and binding upon the petitioners in terms of clause 7.3(b) of the said agreement.

10. Drawing the attention of this Court to the order passed by the Principal Secretary, Government of West Bengal, Health and Family Welfare

Department on 24th June, 2016 at page 103 of the writ petition, Mr. Majumder submits that the claim of the petitioner no.1 to consider him as a

Supervisory Personnel for medium pathology laboratories was found to be untenable. The said order was accepted by the petitioner no.1 and even

thereafter he had signed test reports without having any authority to do so and complaints were lodged stating that the test reports were erroneous.

11. He further submits that after receiving complaints as regards substandard quality of service, the petitioner was first asked to attend a meeting of

the Block Health Family Welfare Samity on 29th June, 2017. The petitioner no.1 appeared before the said committee and admitted that the clinic is

being run by laboratory technicians and that the presence of a pathologist is not mandatory for running the pathology centre under the PPP project.

12. He further submits that thereafter the petitioner was issued a show cause notice on 7th July, 2017 requesting him to appear for a hearing on 11th

July, 2017. The petitioner appeared but left early on a plea of sudden illness and hearing could not be completed and accordingly a further notice was

issued to the petitioner no.1 on 14th July, 2017 but the petitioner did not attend the same on the scheduled date. By a notice dated 28th August, 2017 a

further opportunity was granted to the petitioner to attend a hearing on 6th September, 2017 at 11 am. A change in the time schedule of the proposed

meeting dated 6th September, 2017 was duly intimated to the petitioner no.1 by a further notice dated 31st August, 2017 but he did not attend the

hearing. Such facts were intimated by the respondent no.6 to the District Magistrate by a letter dated 12th October, 2017. Thereafter again a notice

was issued on 9th November, 2017 asking the petitioner no.1 to attend a meeting on 24th November, 2017 but the petitioner again did not attend the

same. The entire issue was again discussed in an Executive Committee meeting of the BHFWS held on 19th February, 2018 and it was decided that

the termination notice will be issued from the District Appropriate Authority. In the backdrop of the said facts, the allegation of denial of an

opportunity of hearing is not sustainable.

13. He further argues that the qualification of a Supervisory Personnel in medium laboratory has been laid down under Rule 11D(A)(c) of the said

Rules of 2003. The petitioner no.1 does not satisfy the qualification as laid down in the same to act as a Supervisory Personnel and as such he could

not have signed the reports as a Pathologist.

14. He submits that on the basis of the application of the petitioners to depute the services of one Dr. Md. Bani Israil, DTM & H and Ex MO of Nil

Ratan Sarkar Medical College as the notified pathologist, the agreement was entered into. However, upon enquiry it was found that Mr. Md. Bani

Israil, DTM & H and Ex MO of Nil Ratan Sarkar Medical College being his notified pathologist, never used to attend the said clinic and the same was

operating without a qualified Supervisory Personnel. In support of such contention he has drawn the attention of this Court to the documents annexed

at pages 83 to 86 of the affidavit-in-opposition.

15. In reply, Mr. Banerjee argues that no reliance could have been placed on the bill dated 26th July, 2018 and the complaint of a patient dated 27th

July, 2018, since the same were issued subsequent to the issuance of the impugned notice. Reliance was also placed upon test samples pertaining to a

different diagnostic clinic. From such sequence it is explicit that the respondents have proceeded in a mala fide manner and such action warrants

interference of this Court. In the show cause notices issued by the respondents, i.e., on 7th July, 2017, 14th July, 2017, 28th August, 2017 there is no

whisper of any substandard service or of any default on the part of the petitioners in operating the said clinic and as such the provisions of clause 7.2

of the agreement have not been adhered to prior to the issuance of the impugned notice.

16. Records reveal that in the meeting of the Block Health Family Welfare Samity held on 29th June, 2017, the petitioner no.1 appeared and admitted

that the centre is being run by laboratory technicians and that the presence of a pathologist is not mandatory for running the pathology centre under the

PPP project. The impugned notice was issued after issuance of the show cause notices on 7th July, 2017, 14th July, 2017, 28th August, 2017 and 9th

November, 2017. The petitioner appeared only once on 11th July, 2017 but left early on a plea of sudden illness and hearing could not be completed.

The entire issue was again discussed in an Executive Committee meeting of the BHFWS held on 19th February, 2018 and in clause VI of the minutes

it was observed as follows:

vi) Issue relating to Singur AIDC : Complainants received from Singur BHFWS for substandard reporting & non availability of Qualified doctor at

Singur PPP Lab. The proprietor admitted the allegation before BHFWS Samity meeting refer the issue to CMOH, Hooghly. The proprietor was

instructed to appear before CMOH for justification, which he did not comply. The matter was referred before DM Hooghly for arbitration. The

proprietor again did not turn up before ADM(C) office.

In one hand, the proprietor is operating PPP Lab without supervision of qualified doctor & on the other hand he did not turn up before the CMOH &

DM, it is presumed that he has nothing to justify, it was resolved that the delinquent PPP vendor will be terminated & process of engagement of new

PPP vendor for Singur RH will be initiated. It is decided that the termination notice will be issued from the District Appropriate Authority.

17. In the backdrop of the said facts the argument of Mr. Banerjee that the petitioners were not granted adequate opportunity of hearing and that the defaults were not intimated to the petitioners is not acceptable to this Court.

18. Rule 11 clause D(A)(c) of the said Rules of 2003 runs as follows :

(A) Laboratory : Supervisory Personnel (c) The medium laboratory may be manned by a DCP or DTM&H or an MBBS with at least five years

experience in laboratory medicine along with M.Sc.: Biochemistry/Medical Microbiology provided the laboratory performs the special tests.

19. Admittedly, the petitioner no.1 does not have such qualification to function as a Supervisory Personnel under the said Rules of 2003. Furthermore,

upon considering the provisions of the said Rules of 2003 and the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection)

Rules, 1996 (in short, the said Rules of 1996 framed under the said Act of 1994, the Principal Secretary, Government of West Bengal, Health and

Family Welfare Department passed an order on 24th June, 2016 arriving at a

finding that the petitioner Sri Manash Neogy's appeal to consider him as a Supervisory Personnel for medium pathology laboratories is not tenable. The said order was accepted by the petitioner no.1 and as such the contention of Mr. Banerjee that as a Medical Geneticist under the Rules of 1996 framed under the said Act of 1994, the petitioner no.1 can also function as a Supervisory Personnel in a medium laboratory is not acceptable to this Court.

20. A perusal of the agreement entered into by the petitioners would reveal that the said Rules of 2003 are applicable to the said agreement. As such the petitioner no.1 ought to have satisfied the eligibility criteria prescribed under the said Rules to function as the Supervisory Personnel. The presence of Mr. Md. Bani Israil, DTM & H and Ex MO of Nil Ratan Sarkar Medical College, who was notified to be the Pathologist of the said clinic, never attended the said clinic as would be explicit from the documents annexed at pages 83 to 86 of the affidavit-in-opposition.

21. That the conditions, as incorporated in the said agreement NIT, need to be considered together and not in isolation. A particular clause cannot be taken up and highlighted. A cumulative reading of all the clauses of the agreement would reveal that the notice dated 22rd March, 2018, was drawn in meticulous regard to the provisions of the said agreement. Upon enquiry the respondents have come to a finding that the service rendered by the petitioners was of substandard quality and that the said clinic was operating without a qualified Supervisory Personnel. In view of the nature of work and as an erroneous test report may cause life risk to the patients, the argument of Mr. Banerjee that such instances cannot be a deterrent towards continuance of relationship is not acceptable to this Court.

22. It would be iniquitous to persuade the respondents to continue their relationship with the petitioners when they had lost their faith and trust. As such the directions as prayed for in the instant petition would tantamount to grant of a premium to a recalcitrant party to the contract. No mala fide or arbitrariness can be attributed to the action of the respondents and there is also no infirmity in the decision making process warranting interference of this Court.

23. Accordingly, the writ petition is dismissed. There shall, however, be no order as to costs. Urgent Photostat certified copy of this judgment, if

applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.