
(2019) 11 JH CK 0015
In the Jharkhand High Court
Case No : Writ Petition (c) No.4551 Of 2019

Renu Kumari Singh

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 14-11-2019

Acts Referred:

Constitution Of India, 1950 — Article 136, 226

Citation : (2019) 11 JH CK 0015

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, Pankaj Kumar

Final Decision : Dismissed

Judgement

1. This writ petition is under Article 226 of the Constitution of India by which the prayer for quashing of the letter No.204 (PMU) dated 14.03.2019 (Annexure-7) issued by the Civil Surgeon-cum-Chief Medical Officer, Palamau has been assailed whereby and whereunder the order has been passed to close the medical shop namely, Vananchal Aushadhi Kendra and vacate the medical shop without providing the alternative space as per the agreement made in between the petitioner and the respondents and without providing opportunity for filing the show cause.
2. The matter is under the heading for 'Fresh Filing'. Counter affidavit has been filed. It has been stated at bar that the copy of the counter affidavit has been served upon the learned counsel for the petitioner to which the learned counsel for the petitioner has not sought for time for filing response thereof.
3. This Court after taking into consideration of the fact that the pleading is complete, has proceeded for final disposal of the writ petition at this stage.
4. The decision has been taken as per Annexure-1 dated 15.01.2014 issued under the signature of Deputy Superintendent, Sadar Hospital, Medeninagar, Palamau addressed to the Civil Surgeon-cum-Chief Medical Officer, Palamau for

opening of generic and general medicine shop in pursuance to the offer shown by the petitioner.

In pursuance to the said communication, Civil Surgeon-cum-Chief Medical Officer, Palamau has made a communication to the Regional Deputy Director, Health Services, Palamau Division, Medeninagar by forwarding the representation of the petitioner for taking decision for opening of Generic and general medicine shop.

The Regional Deputy Director, Health Services, Palamau Division, Medeninagar in pursuance of Annexure-2 has made a recommendation before the Director-in-chief, Health Services, Jharkhand, Ranchi for taking decision for opening of the Generic and general medicine shop.

The Director-in-chief, Health Services, Jharkhand, Ranchi in pursuance to the aforesaid recommendation has granted permission to open the shop within the premises of the Sadar Hospital, Daltonganj on certain conditions i.e., the generic medicine would be sold out @ 50% of the M.R.P.; the shop would be opened after getting drug licence from the competent authority and the space/room is to be arranged within the premises of the Sadar Hospital, Daltonganj on its own with the stipulation that the said decision with the due approval of the concerned Minister of Health, Medical Education and Family Welfare Department.

In terms of the aforesaid decision as contained under Annexure-4 an agreement has been arrived at in between the petitioner and the Civil Surgeon on 28.06.2014 and thereafter the petitioner has started carrying out his business after getting the drug license vide Annexure-6 and while doing so, all of a sudden the impugned order has been passed on 14.03.2019 communicating the petitioner about the decision of closure of the medicine shop with immediate effect with a direction to vacate the premises forthwith.

5. Mr. Anil Kumar Sinha, learned counsel for the petitioner has submitted that the impugned decision is nothing but an arbitrary piece of exercise since the decision has been taken without disclosing any reason.

He submits that the reason has been tried to be demonstrated in the counter affidavit i.e.,

(i) upgrading the hospital but according to him, the reason shown in the affidavit cannot improve the reasoning contained in the impugned order;

(ii) the agreement contains a provision of providing alternative room/space but no alternative arrangement has been provided before taking such decision;

(iii) the ground as has been agitated in the counter affidavit in justification of the decision as contained under order dated 14.03.2019 which is for upgrading the Sadar Hospital but as yet no decision has been taken and in absence of such decision, to close the shop is not for the bona fide reason and finally the ground of violation of principles of natural justice has been taken.

The issue of jurisdiction has also been agitated since according to the petitioner

permission to run the shop has been granted by the Director-in-chief, Health Services, Jharkhand, Ranchi but decision for closure has been taken by the Civil Surgeon who is subordinate to the Director-in-chief and therefore, Civil Surgeon has acted exceeding his jurisdiction.

6. Mr. Pankaj Kumar, learned AC to Sr. SC-II representing the State of Jharkhand has submitted by pressing the stand inter alia taken in the counter affidavit wherein it has been stated that the decision has been taken allowing the petitioner to open Generic and general medicine shop with the condition that he is to make its own arrangement as would appear from Annexure-4 i.e., the order granting permission to run the shop, however, the petitioner has been provided with a space within the premises of the hospital since it was available but the petitioner has to act upon in pursuance to the terms and conditions of the agreement wherein the condition No.4 stipulates that in case of any necessity of the space for the hospital the premises has to be vacated and in case of any requisition, if made by the petitioner, for making alternative arrangement the room/space would be provided but according to the stand of the State-respondent no such requisition has been made by the petitioner and as such no decision has been taken in terms of the aforesaid condition of the agreement as contained under Condition No.4.

It has further been submitted that the reason which has necessitated the respondent-authorities in taking such decision which is impugned in this regard is due to the decision of upgradation of the hospital in pursuance to the policy decision taken by the State of Jharkhand by virtue of Circular dated 14.08.219 annexed as Annexure-D.

7. So far as the contention agitated by the learned senior counsel for the petitioner that the reason which has been shown in the counter affidavit necessitating for vacating the premises is not available in the impugned decision and as such the same cannot be allowed to be developed by way of affidavit, submission has been made that the aforesaid settled position of law is not applicable in view of the specific condition of the agreement as contained under condition No.4.

8. This Court, after having heard the learned counsel for the parties and on appreciation of their rival submissions as also the ground agitated on their behalf, has found from the material available on record that on a requisition of the Deputy Superintendent, Medeninagar, Palamau a proposal has been made by him before the Civil Surgeon-cum-Chief Medical Officer, Palamau for opening of a Generic and general medicine shop by making recommendation to open it by permitting the petitioner.

It is evident therefrom that at the time of seeking such permission one medicine shop in the name of "Birsa Aushadhi Sewa Kendra" was being carried out on the permission granted by the Health Department and space has also been earmarked by the Health Department.

Such recommendation has been referred by the Civil Surgeon-cum-Chief Medical Officer, Palamau before the Regional Deputy Director, Health Services, Palamau for according approval by taking such decision.

The Deputy Director, Health Services, Palamau has forwarded it with its recommendation before the Director-in-chief, Health Services, Jharkhand, Ranchi as would appear from Annexure-3.

The Director-in-chief, Health Services, Jharkhand, Ranchi has granted such permission by making communication to the Civil Surgeon-cum-Chief Medical Officer, Palamau on three conditions, which are:

- (i) the generic medicine would be sold @ 50% of M.R.P.;
- (ii) the shop would be carried out after getting the drug licence from the competent authority;
- (iii) the space/room shall be arranged on its own within the premises of the Regional Hospital, Daltonganj.

9. In pursuance to the order as contained under Annexure-4 dated 23.05.2014 an agreement has been arrived at in between the petitioner and the Civil Surgeon-cum-Chief Medical Officer, Palamau as contained under Annexure-5 dated 28.06.2014 one of the condition of the agreement as contained under condition No.4 is that if the space which would be provided within the premises of hospital and if it required for hospital itself, the same will have to be vacated and after vacating the premises if any requisition would be made by the petitioner the alternative arrangement by providing room/space would be made available.

The petitioner after accepting the terms and conditions of the agreement has started carrying out the business within the premises of the hospital as has been provided by the Civil Surgeon and after due drug licence issued in this regard.

The respondent-Civil Surgeon-cum-Chief Medical Officer, Palamau has issued a communication dated 14.03.2019 addressed to the Manager/Proprietor of the Vananchal Aushadhi Kendra, the petitioner herein, communicating a decision to close with immediate effect the running shop and vacate the premises which is impugned in the present writ petition.

As would appear from the stand taken by the State-respondent in the counter affidavit that the decision as has been impugned has been taken on the ground which now requires for the hospital use itself due to the policy decision taken by the State of Jharkhand as on 14.08.2019 by which the 300 beds hospital within the district of Palamau has been decided to be upgraded by establishing new medical college.

10. It further appears from the said decision that in pursuance to the letter dated 19.02.2014, three medical colleges are to be established in the State of Jharkhand i.e., Hazaribagh, Palamau and Dumka which has been approved and

memorandum of understanding has also been signed with the Government of India on 11.09.2014.

It further appears that under the Central Sponsor Programme (Phase-I), the 300 beds hospital is to be upgraded in the district of Palamau, Dumka and Hazaribagh by establishing the medical colleges and in order to achieve the aforesaid mission, such decision has been taken.

11. The ground upon which the impugned order has been assailed, the Court is not proceeding to scrutinize the same.

12. It requires to refer herein in order to answer the argument advanced on behalf of the learned counsel for the petitioners, the vested right or the accrual of right. The word vested as has been defined in Black's Law Dictionary (6th Edition) at page-1563, means fixed; accrued; settled; absolute; complete.

Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent.

Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights.

In Webster's Comprehensive Dictionary (International Edition) at page-1397, the word 'vested' is defined as a tenure subject to no contingency; complete; established by law as a permanent right, vested interest.

The word 'vested' is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word 'vest' has also acquired a meaning as "an absolute or indefeasible right". It had a 'legitimate' or "settled expectation" to obtain right to enjoy the property etc.

Such "settled expectation" can be rendered impossible of fulfillment due to change in law by the legislature. Besides this, such a "settled expectation" or the so-called "vested right" cannot be countenanced against public interest and convenience which are sought to be served by amendment of the law. Thus, "vested right" is a right independent of any contingency. Such a right can arise from a contract, statute or by operation of law. A vested right can be taken away only if the law specifically or by necessary implication provide for such a course.

In the light of the definition of the "vested right", it is evident that right accrues to person or persons attached to an institution or building or anything whatsoever, meaning thereby, if an incumbent is claiming a vested right, he is to substantiate before the court of law that the right has been created in his favour by an order passed in pursuance to the applicable law.

Further it is evident from the meaning of the 'vested' as per the Black's Law Dictionary which means the settled or absolute right and the settled or absolute

right will only be said to be a right in this nature if the right has been created as a permanent right.

13. It is the admitted position in the case that the petitioner is claiming his right on the basis of an agreement. It is settled position of law that if any agreement has been arrived at in between the parties, the same being the bilateral contract, binds both the parties.

It is further settled position of law that if any terms and conditions have been agreed upon by the parties the same cannot be relaxed by the High Court sitting under Article 226 of the Constitution of India otherwise it will amount to re-write the terms and conditions of contract as has been held in the case of Union Territory of Pondicherry and Ors Vs. P.V. Suresh and Ors., reported in (1994) 2 SCC 70 wherein at paragraph 11 & 12 it has been held that the Court has no jurisdiction to alter the terms or re-write the contract between the parties.

In the case of Polymat India (P) Ltd. and Anr. Vs. National Insurance Co. Ltd. and Ors., reported in (2005) 9 SCC 174 wherein the Hon'ble Apex Court by taking aid of the judgment rendered in the case of United India Insurance Co. Ltd. Vs. M.K.J. Corp., reported in (1996) 6 SCC 428 has been pleased to observe that "after the completion of the contract, no material alteration can be made in its terms except by mutual consent".

It is further settled that if the contract between the parties is in the realm of the private law, not being a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter of agitation by a Civil Court or in arbitration if provided for in the contract. Reference in this regard may be made to the judgment rendered by the Hon'ble Supreme Court in the case of Kerala State Electricity Board and Anr. Vrs. Kurien E. Kalathil and Ors., reported in (2000) 6 SCC 293.

14. So far as the ground agitated on behalf of the petitioner that no reason has been assigned in the impugned order and the reason has been sought to be demonstrated by taking the reference of Circular dated 14.08.2019 and according to the learned senior counsel that the reason which is not available on the face of the order that cannot be allowed to be improved by way of affidavit.

So far as this contention is concerned, this Court, is of the view that there is no dispute upon such settled position of law as has been held in the case of Mohinder Singh Gill and Anr. vs. The Chief Election Commissioner, New Delhi and Ors., reported in (1978)1 SCC 405 but it is also equally settled that each and every judgment is to be tested on the basis of the facts and circumstances involved in each and every case.

15. This Court, in order to examine the aforesaid position of law depending upon the facts and circumstances, is of the view that the fact involved in this case is not in such a nature making the aforesaid principle applicable, it is for the reason

that the petitioner is knowing about the terms and conditions of the agreement and in case of vacation of the premises if required for use of the hospital the alternative arrangement would be made in case of any requisition, therefore, it is not that the petitioner is not knowing about the terms and conditions of the agreement rather he is well aware from the said terms and conditions of the agreement, therefore, the ratio laid down in the case of Mohinder Singh Gill and Anr. vs. The Chief Election Commissioner, New Delhi and Ors. (supra) is not applicable in the facts and circumstances of the case.

16. So far as the question of principles of natural justice is concerned, that is also not applicable in view of the fact that the principles of natural justice is not to be followed in a straitjacket formula rather it depends upon the fact of each and every case and it can well be applicable in a case where any prejudice is being caused or the reason is not known to the party and if it is not known to the party certainly the prejudice would be caused but herein in the instant case and the admitted position is that by virtue of the bilateral contract the petitioner undertook to abide by the conditions incorporated in the terms and conditions of the agreement and one of the conditions is that if it require for the use of the hospital, the premises has to be vacated and if requisition is being made, alternative arrangement would be made, meaning thereby, the petitioner is knowing about the said situation, therefore, there is no question of causing any prejudice and as such, there is no application of the principles of natural justice in pursuance to the ratio laid down Hon'ble Apex Court Escorts Farms Ltd. v. Commissioner, Kumaon Division, Nainital, U.P. & others, reported in (2004) 4 SCC 281 wherein Hon'ble the Apex Court has held at paragraph-64 which is being quoted herein below:

"64. Right of hearing to a necessary party is a valuable right. Denial of such right is serious breach of statutory procedure prescribed and violation of rules of natural justice. In these appeals preferred by the holder of lands and some other transferees, we have found that the terms of government grant did not permit transfers of land without permission of the State as grantor. Remand of cases of a group of transferees who were not heard, would, therefore, be of no legal consequence, more so, when on this legal question all affected parties have got full opportunity of hearing before the High Court and in this appeal before this Court. Rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. In view of the legal position explained by us above, we therefore, refrain from remanding these cases in exercise of our discretionary powers under Article 136 of the Constitution of India."

17. It is evident from the definition of vested right and it can only be said to be a vested right if the right is permanent/continuous in nature but as would appear from the facts that the right which is being sought to be said to be illegal vested right by the petitioner is accruing from an agreement with certain conditions of leaving the premises in case of urgency and therefore, it cannot be construed to

be a right permanent in nature creating a legal vested right warranting this Court to invoke the jurisdiction conferred under Article 226 of the Constitution of India.

18. This Court, in view of the discussion made hereinabove, is of the view that since the petitioner is to follow the terms and conditions of the agreement, therefore, the condition being binding upon the parties, no relaxation can be shown that too by the Writ Court sitting under Article 226 of the Constitution of India in view of the settled position of law as has been settled to the effect that the terms and conditions of the agreement/contract cannot be re-write by the High Court sitting under Article 226 of the Constitution of India.

19. So far as the ground agitated by the petitioner that the permission to run the shop has been granted by the Director-in-chief, Health Services, Jharkhand, Ranchi but the decision for closure of the shop has been taken by the Civil Surgeon-cum-Chief Medical Officer, Palamau, that is also having no substance in view of the fact that the initiation has been made by the Civil Surgeon-cum-Chief Medical Officer, Palamau being the competent authority and the Chief Medical Officer of the District and the Director, Health Services have accorded permission and further in the capacity of the competent authority it is the Civil Surgeon-cum-Chief Medical Officer, Palamau who has entered into the agreement with the petitioner and it cannot be said that the Civil Surgeon-cum-Chief Medical Officer, Palamau has got no jurisdiction to act in pursuance to the condition of the agreement.

20. In view of the entirety of facts and circumstances, this Court, is of the view that the impugned order needs no interference, accordingly the writ petition fails and stands dismissed.

21. Interlocutory application being I.A. No.8185 of 2019 also stands disposed of.

22. So far as providing alternative arrangement is concerned as per the condition stipulated under condition No.4 of the agreement, if the petitioner will make any requisition in this regard, the same be considered in pursuance to the aforesaid condition by taking decision without any delay.