

(2016) 06 KAR CK 0167

In the Karnataka High Court

Case No : Writ Petition Nos. 6778-782 of 2016 (LB-RES)

Sumangali Seva Trust, Cholanayakanahalli

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 22-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2016) 4 AirKarR 173 : (2016) 5 KantLJ 348 : (2016) 4 KCCR 3131

Hon'ble Judges : Dr. Vineet Kothari, J.

Bench : Single Bench

Advocate : Sri. Nishanth A.V, Advocate, for the Petitioner; Sri. V. Sreenidhi, AGA, for the Respondent Nos. 1, 2 and 4; IS SD and Unrepresented, for the Respondent No. 3

Final Decision : Dismissed

Judgement

Dr. Vineet Kothari, J.—The petitioners have prayed in these writ petitions that since they hold a contract for providing service in the Primary Health Centres at Bangarappanagar, Atturu, Nelamaheshwari and Mallathahalli, Bengaluru North and South Taluks, under the Scheme known as "Arogya Bhandu" Scheme up to 31-7-2017, without terminating their contract, the respondent-State cannot be permitted to engage the services of other agencies including the District Health Centres already running and managed by the State Government. While issuing notices to the respondents, the co-ordinate Bench of this Court granted an ad interim order on Annexure-J1 for a period of 3 months, which interim order is continuing until now. Annexure-L was stayed further by another co-ordinate Bench of this Court on 22-2-2016.

2. These documents in vernacular language were explained to this Court by the learned Counsel for the petitioners subject to verification by the learned AGA. By Annexure-J1, the communication dated 1-2-2016, issued by the 2nd respondent-Director, Department of Health and Family Welfare, Bangalore, addressed to all the Taluk Health Officers to the effect that "to send the details of the persons

working in the various Primary Health Centres". The said details accordingly appear to have been submitted vide a chart on page 31 of the writ petitions.

3. The respondent-State Government by a policy decision taken vide Annexure-K on 1-12-2015, signed by the Additional Chief Secretary of the Health Department stated that such Primary Health Centres manned and managed by the NGO's or public agencies under the "Arogya Bhandu" Scheme will henceforth be manned and managed by the staff of the District Health Centres.

4. In pursuance of the policy decision dated 1-12-2015, a further order appears to have been issued vide Annexure-L on 9-2-2016 by the Commissioner of Health and Family Welfare Department to the effect that payments of the concerned agencies or persons may be made and they may be relieved from the respective Primary Health Centres, so that in terms of the new policy decision on 1-12-2015, the respective District Health Centres can overtake the manning and management of such Primary Health Centres.

5. Aggrieved by these steps taken by the respondent-State, upon the change of policy in deviation with the "Arogya Bhandu" Scheme, for which the contract in question was executed by the State in favour of the present petitioners, initially vide Annexure-B on 1-8-2013, for a period of one year from 1-8-2013 to 31-7-2014, which was renewed by a separate agreement Annexure-D, dated 12-2-2015 effective for the period of 3 years from 1-8-2014 to 31-7-2017, the petitioners are before this Court. The 5 clauses of the said agreement read as under:

"1. Words and expressions used in this agreement shall have the same meanings as are respectively assigned to them in the Scheme notified by the Government Organisations in Management of Primary Health Centres.

2. The scheme notified by the Government of Karnataka for involvement of Private Medical Colleges and Non-Government Organisations in management of Primary Health Centres shall be deemed to form and be read and constructed as part of this agreement.

3. In consideration of the payments to be made by the First Party to the Second Party as hereinafter mentioned, the Second Party hereby covenants with the First Party to manage the Primary Health Centre at Bangarappanagar, Attur, Nelamahaeshwari and Malathahalli of Bangalore Urban District and the conformity with all conditions laid down under the said scheme of the Government of Karnataka.

4. The First Party covenants to reimburse the amounts to the Second Party in consideration of the provision of the Services stated above once a quarter as provided in the scheme notified by the Government of Karnataka.

5. The agreement period is for extension of three years from 1-8-2014 to 31-7-2017. An evaluation from an Independent Agency will be conducted, based on the report the Health Department may continue or cancel the agreement

made with respect to adoption of the Primary Health Centre."

6. The learned Counsel for the petitioners urged that without terminating the contract in favour of the petitioners in accordance with law, the respondent-State cannot replace the staff in the form of Doctors and Nurses provided by the petitioners to serve such Primary Health Centres under the contract in question and since that contract had not been terminated or determined by the respondent-State in terms of Clause 5 of the said contract or otherwise, the impugned Communications Annexures-J, K and L deserves to be quashed.

He further submitted that vide Annexures-K and L, there is an eminent threat to the contract of the petitioners and therefore, a cause of action arose to the petitioners to approach this Court and seek a direction as prayed for in the writ petitions.

7. On the other hand, learned Additional Government Advocate for the respondent-Departments, submitted that the State Government is entitled to take a policy decision with regard to providing the staff from District Health Centres to take care of the various patients who visit for treatment in the Primary Health Centres in rural areas of the State. He submitted that the State Government is entitled to take such policy decisions. Further, he submitted that no such notice for cancellation of the contract of the present petitioners is yet been issued and served upon the petitioners and therefore, no cause of action has arisen to approach this Court at this stage. He, therefore, prays for dismissal of the present writ petitions.

8. I have heard the learned Counsels for the parties and perused the materials on record.

9. This Court concurs with the submissions of the learned Additional Government Advocate. It is true that the contractual period is extended in the case of the present petitioner-Sumangali Seva Ashrama and other petitioners who are Doctors presumably serving in the Primary Health Centres that period is yet to expire on 31-7-2017, but it is equally true that no notice so far has been served upon the petitioners seeking to cancel the said contract prematurely on the part of the State Government. Clause 5 of the agreement quoted above, permits the evaluation from an independent agency and based on the report of the Health Department, the said agreement may either be continued or cancelled with respect to concerned Primary Health Centre in question. Unless a specific notice is served on the petitioners seeking to terminate the contract prematurely assigning some reasons therein, no cause of action can be said to have arisen to the petitioners, to invoke the writ jurisdiction at this stage.

10. Doubtless is that the policy decisions of the State Government are neither taken in the Courts nor they deserve to be tinkered with by the Courts of law, unless they are ex facie shown to be arbitrary and perverse affecting the legal or fundamental or civil rights of the petitioners to approach the Courts of law. The fact that the contractual period up to the particular date is yet to expire, does not

confer any vested right as such upon the petitioners to continue with the said contract up to the particular date of contract. The parties are always at liberty to go for a renewal of contract also and even rescission of the contract either mutually or unilaterally for either of the parties for given reasons. If there is any breach of contract by either of the parties, the other party is entitled to claim compensation, subject to he establishing the loss caused to him on account of such breach of contract.

11. In the present case, this Court does not find even the cause of action to have arisen to the petitioners, much less the breach of contract having occurred at all. Unless a notice is served upon the petitioners seeking to cancel the contract for the given reasons, which, of course, the petitioners are entitled to rebut and contend otherwise before the Authorities concerned and cause for approaching the Court cannot be said to be arisen in the present writ petitions. By allowing the premature interference in the policy decisions of the Government in this manner can indeed the cause serious prejudice to the State in allowing it to take even correct policy decisions which depends upon the variety of facts available with them.

12. In the background of the present case, whether it is good to engage the services of the private agencies or NGOs like the present petitioners for providing services of Doctors and Nurses staff in the Primary Health Centres or whether the regular Government employees working in the District Health Centres will be in a position to undertake and provide such services in the Primary Health Centres is absolutely within the domain of the State Government and as such, the change of policy although in deviation with the earlier "Arogya Bhandu" Scheme, cannot be said to be per se arbitrary or illegal.

13. The interference by the Court under Article 226 of the Constitution of India at the stage of taking of the policy decision itself and giving effect thereto, which has not yet adversely affected the petitioners at all, as no such notice for terminating their contract has been served upon the petitioners, will be a treading path which this Court is not expected to do. The apprehension of the petitioners that such change of policy by the State Government is likely to adversely affect their contract prematurely before the expiry of the period of 31-7-2017 is not enough to invoke the extraordinary jurisdiction of this Court presently at this stage, since it cannot be said that under no circumstances, the respondent-State can terminate or determine such contract prematurely. Clause 5 of the agreed terms between the parties itself permits it to do so. Therefore, the correctness of the decision or notice if any, yet to be given to the petitioners cannot be prejudged by this Court in the present writ petitions.

14. In view of the aforesaid, this Court is of the considered opinion that the writ petitions filed by the petitioners are premature and devoid of merits and the same are liable to be dismissed and accordingly, they are dismissed. Costs easy.