

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2996 of 2024

M/s Garg Drugs a Proprietorship firm through its Sole Proprietor Santosh Kumar Agrawal aged about 53 years (male) son of Late Mahavir Prasad Jee Agarwal, Resident of Bansal Tower A 505, 5th Floor, R.K. Bhattacharya Road, Near Exhibition Crossing, P.S. Kotwali, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. The Principal Secretary, Department of Health, Government of Bihar, Patna.
3. The Civil Surgeon-Cum Chief Medical Officer, Arwal.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Avinash Shekhar
For the Respondent/s	:	Mr. Government Advocate 8

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT

Date : 07-10-2024

Heard the learned counsel for the parties.

The present writ petition has been filed for the following

reliefs:-

“i) To issue an appropriate writ, order or direction in the nature of certiorari for quashing the order contained in memo no. 1357 dated 12.11.2022 (Annexure 20) issued by the Respondent Civil Surgeon - Cum Chief Medical Officer, Arwal whereby petitioner claim, for payment of Rs. 58,56,670 /- (Rs. 45,60,864/- + Rs. 12,95,806/-) in lieu of medicines and medical equipment supplied by the petitioner, contained in representation dated 26.11.2021 in light of order dated 15.11.2021 passed in CWJC No. 7013 of 2020 has been rejected in a completely arbitrary manner without considering the facts and circumstances of the case.



ii) Consequent to grant of relief no. (i), to issue an appropriate writ order or direction in the nature of mandamus commanding the Respondents to make payment of Rs. 58,56,670/- in lieu of medicines and medical equipment supplied by the petitioner, along with interest at the rate of 8% per annum.

iii) This Hon'ble Court may adjudicate and hold that the action of the Respondents in not making payment for the medicines and medical equipment supplied by the petitioner is highly arbitrary and unreasonable and amounts to unjust enrichment on the part of the Respondents.

iv) This Hon'ble Court may adjudicate and hold that the petitioner cannot be penalised for the acts/omissions of the then Civil Surgeon Officer, Arwal. Cum Chief Medical.

v) To grant any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case.”

3. It is the case of the petitioner, that the petitioner has supplied medicines and medical equipment as per the work order received and at the agreed rates. Thereafter, the petitioner has submitted the bills for a total amount of Rs. 58,56,670/-. However, the authorities for reasons best known to them are not paying the same.

4. Learned counsel for the petitioner has stated that pursuant to the NIT issued by the authority, the petitioner had participated in the tender process and being the lowest tenderer, he



was awarded the contract for supply of medicines and also medical equipment.

5. That the petitioner had supplied the following items from the year 2018 on wards;

I. Blood sugar kits

II. Vicryl No. 1

III. Levosalbutamol Syrup

IV. Needle Holder

V. Forceps Allies.

6. That between the year 2018-19, the petitioner had received work orders from the Civil Surgeon-cum-Chief Medical Officer, Arwal and the invoiced amount for the supplies for the above period is Rs. 12,95,806/-. However, the said amount was not paid to the petitioner. Thereafter, basing on the orders bearing Memo No. 539 & 540 dated 30.03.2019, the petitioner had supplied blood sugar kits and vicryl No. 1 and the total amount due to the petitioner under the above two invoices is approximately Rs. 27,93,500/- & Rs. 12,78,700/- respectively. It is stated that the petitioner has been supplying the above material which were especially marked as “government supply and not for sale”. That after receipt of the medicines and the medical equipment, the petitioner was informed by the Civil Surgeon-Cum Chief Medical Officer, Arwal vide Memo No. 664 dated 04.05.2019, that some of the medicines and medical equipment



supplied under supply order dated 30.03.2019 were at the fag of the financial year 2018-19 and as such petitioner was directed to take back the medicines/ medical equipment. Learned counsel has stated that though the letter was dated 04.05.2019, it was served on the petitioner only on 05.11.2019 however, the petitioner was orally informed about the said letter in the month of August, 2019. That the petitioner immediately thereafter, had informed the authority concerned that it would not be possible to take back the medicines and medical equipment as they were especially marked as “government supply and not for sale” therefore they could not be used anywhere else or sold in the open market. Further, it was informed to the officials that as a GST returns were already filed, it would not be possible for the petitioner to take back the medicines/ medical equipment. That the petitioner has been making several rounds to the office of the respondents for payment of bills but till date the amounts have not been paid. It was informed to the petitioner that the Joint Secretary, Department of Health had constituted an enquiry committee to look into the matter and the enquiry committee had submitted a report dated 04.12.2019. That as the payment of the bills was not being done, the petitioner had to approach this Hon’ble Court vide CWJC No. 7013 of 2020. This Hon’ble Court has disposed of the CWJC on 15.11.2021,



directing the petitioner to make a suitable representation. The petitioner has filed his representation dated 26.11.2011 and the said representation was rejected vide Memo No. 1357 dated 12.11.2022. Learned counsel has stated that before passing the order rejecting the claim of the petitioner, the official respondents have not put the petitioner on notice nor given him any opportunity of hearing. The petitioner left with no other option has approached this Court by way of the present writ petition challenging the Memo No. 1357 dated 12.11.2022 (Annexure-20).

7. *Per contra*, the learned counsel for the respondent-State has vehemently opposed the very maintainability of the present writ petition and stated that the impugned order passed by the authority rejecting the claim of the petitioner is in consonance with the well established principles of law. Learned counsel has stated that though the fact remains that the petitioner has supplied the material as claimed by him, the work orders were issued by the then Civil Surgeon-Cum Chief Medical Officer, Arwal without taking approval of the higher officers and moreover, the orders were placed with the petitioner one day before the Civil Surgeon-Cum Chief Medical Officer was transferred. Further, it is stated that the petitioner does not have any registration as a small scale industries and without following the norms, the then Civil



Surgeon-Cum Chief Medical Officer, Arwal had issued the work orders to the petitioner, one day before the end of financial year 2018-19 and also one day prior to his transfer. That though the petitioner was directed to take back the medicines/ medical equipment which were supplied by him as the work orders were issued in violation of the guidelines issued by the Department, the petitioner failed to take them back. Further, it is stated that the Joint Secretary, Health Department vide Memo No. 1434(9) dated 28.11.2019 had constituted an enquiry committee to go into the above irregularities and the committee vide Memo No. 1431 dated 12.12.2019 has submitted report. In the report, it is stated that the supply orders were placed by the then Civil Surgeon-Cum Chief Medical Officer, Arwal one day prior to his transfer, without following the guidelines issued by the Department and at the fag end of the financial year and in excess of the requirement. Further, it is stated that necessary departmental action has been taken against the then Civil Surgeon-Cum-Chief Medical Officer, Arwal by the Department.

8. In this case admittedly as seen from the pleadings and the documents filed, the petitioner participated in the tender and the authorities having found that the rates quoted by the petitioner were the lowest, have issued the supply order by the then Civil



Surgeon-Cum Chief Medical Officer, Arwal. The petitioner has supplied the medicines/ medical equipment as per the said supply orders placed.

9. The question as to whether the Civil Surgeon-cum-Chief Medical Officer, Arwal was competent to issue the work order or not is not germane for the purpose of granting the relief sought for by the petitioner for the following reasons;

(a) If any lapses or irregularities have been committed by the then Civil Surgeon-cum-Chief Medical Officer, Arwal, in placing the supply order the petitioner cannot be blamed for the same.

(b) The medicines/medical equipment were supplied by the petitioner as per the supply order issued to him. The question as to whether the order placed by the officer is in excess of the requirement is not the concern of the petitioner.

(c) It is also an admitted fact that the medicines supplied by the petitioner were fully utilized by the Department. Further, it is to be noted that these medicines and equipment which were supplied were specifically marked as “for government use and not for sale”.

10. A perusal of the impugned order reveals that the only reason for rejecting the claim of the petitioner for payment of the bill amount was on the ground that the person who has issued the supply order was transferred one day after the supply order was placed, the amounts due to the petitioner are in two batches i.e.,



Rs. 12,95,806/- & Rs. 45,60,864/- total amounting to Rs. 58,56,670/-. However, it is not clear from the impugned order as to why the authorities have declined to make the payment of Rs. 12,95,806/- which admittedly pertain to the medicines and equipment which were supplied earlier by the petitioner. Whereas the amount of Rs. 45,60,864/- pertains to the supply order bearing Memo Nos. 539 & 540 dated 30.03.2019. The respondents have themselves admitted in their counter-affidavit that medicines/ medical equipment supplied by the petitioner were distributed to various health centers across the State and that none of the medicines/ equipment supplied by the petitioner have gone waste.

11. Having regard to the fact that the respondents have themselves submitted that the medicines/ equipment which were supplied by the petitioner were already utilized. The question of denial of the payments due to the petitioner is without any legal basis, once the order has been placed by a competent authority and the petitioner has supplied the same, the authorities are legally bound to make the necessary payments.

12. Having regard to the above mentioned facts and circumstances, the writ petition is allowed. The respondents are directed to pay the amounts due to the petitioner as expeditiously



as possible preferably within a period of eight weeks from the date of receipt of a copy of this order.

13. It is made clear that in case the due amounts are not paid to the petitioner within the stipulated period granted by this Court, the petitioner would be entitled to simple interest at the rate of 8% per annum from the date of submission of the bills till the date of actual payment.

14. With the above direction, the present writ petition stands allowed to the extent indicated.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.10.2024.
Transmission Date	NA

