

**IN THE HIGH COURT OF TELANGANA AT HYDERABAD**

**W.P.No.36111 OF 2021**

**Between:**

S.M.Associates

**... Petitioner**

**And**

The Commissioner of Health & Family Welfare  
& Mission Director & others

**... Respondents**

**JUDGMENT PRONOUNCED ON: 18.03.2024**

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

1. Whether Reporters of Local newspapers  
may be allowed to see the Judgment? : **Yes**
2. Whether the copies of judgment may be  
marked to Law Reporters/Journals? : **Yes**
3. Whether Their Lordships wish to  
see the fair copy of the Judgment? : **Yes**

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**SUREPALLI NANDA, J**

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA****W.P.No.36111 OF 2021****% 18.03.2024****Between:**

# S.M.Associates

... **Petitioner****And**\$ The Commissioner of Health & Family Welfare  
& Mission Director & others... **Respondents**

&lt; Gist:

&gt; Head Note:

**! Counsel for the Petitioner** : Mr.A.Venkatesh,  
learned Sr.Counsel,  
representing  
Mr.R.Anurag**^ Counsel for Respondents** : Mrs.Vedula Chitralkha

? Cases Referred:

**HON'BLE MRS JUSTICE SUREPALLI NANDA****W.P. No. 36111 of 2021****ORDER:**

Heard the Learned Senior Counsel Mr. A.Venkatesh, representing the learned counsel on record Mr. R.Anurag appearing on behalf of the Petitioner and heard the Learned Advocate General appearing on behalf of Respondent Nos.1 to 4 and the learned counsel Smt.Vedula Chitralekha on behalf of Respondent Nos.6 and 7.

2. **The petitioner approached this Court seeking prayer under a, b, c and d but the learned Senior Counsel for the Petitioner fairly submits that the prayers in so far as a, b, c are concerned are infructuous and the prayer at clause 'd' alone subsists and the same is extracted hereunder :**

“(d) declaring the action of the respondents in not paying the arrears of payment for the services rendered, around Rs.5.5 Crores up to 18/11/2021 and for the services provided from 18/11/2021 as per Clause No.2.17 of the Agreement No.135/QA/NHM/P5/2018-19 dated 19/02/2018 issued by the 1<sup>st</sup> respondent, as equally arbitrary, illegal, and unconstitutional, violating Articles 14, 19(1)(g) and 21

of the Constitution of India and issue consequential directions, restraining the respondents from proceeding further in pursuance of the Notification No.GEM/2021/B/1519384, 15191251, 1519335, 1519115, 1518637 dated 14/09/2021 and Notification No.GEM/2021/B/1753650, 1753731 dated 10/12/2021, more particularly in respect of the hospitals which were allotted to the petitioner in pursuance of the Notification Ref.135/QA/NHM/P5/2018-19 dated 18/11/2017 issued by the 1<sup>st</sup> respondent and further direct the respondents to forthwith extend the tenure of the petitioner's contract beyond the period of 3 years for a further period of 2 years in terms of Clause 1.1.8 and 2.16 of the Agreement No.Notification Ref. 135/QA/NHM/P5/2018-19 dated 19/02/2018 and also further direct the respondents to forthwith pay the arrears of service charges due to the petitioner as per Clause No.2.37 of Agreement No.135/QA/NHM/P5/2018-19 dated 19/02/2018 up to 18/11/2021 i.e., around Rs.5.5 Crores as well as charges for the services rendered by the petitioner from 18/11/2018 and also direct the State to conduct an independent enquiry with regard to irregularity and illegality committed in the Notification No.GEM/2021/B/1519384, 15191251, 1519335, 1519115, 1518637 dated 14/09/2021 and Notification No.GEM/2021/B/1753650, 1753731 dated 10/12/2021 and take appropriate action against the officers who are responsible and who committed irregularities."

**2. PERUSED THE RECORD :**

i) **The interim orders of this Court dated 30.12.2021 passed in W.P.No.36111 of 2021 reads as under :**

**"W.P.No.36111 of 2021**

Learned Government Pleader for Medical and Health takes notice for respondent Nos.1 and 4. Sri Kishore Rao, learned, Standing Counsel takes notice for respondent No.2. Ms. Rachana Waddepalli, learned Standing Counsel takes notice for respondent No.3. Sri Namavarapu Rajeshwar Rao, learned Assistant Solicitor General takes notice for 5<sup>th</sup> respondent. All the counsel seeks time to the counter in the

List on 10-02-2022.

**IA.No.5 of 2021**

Learned Counsel for the Writ Petitioner seeks time to Me counter.

List on 10-02-2022.

**IA.No.1 of 2021**

Heard learned Counsel for petitioner and perused the record.

Petitioner contends that the condition No.5.5 of the tender conditions imposing restriction on participation by the intending bidders beyond one zone at the bid stage itself is violative of fundamental right to carry on business,

**Sri V.Srinivas, learned Senior Counsel for implead respondents and Sri O.Manohar Reddy, learned counsel appearing for the caveator would submit that petitioner has filed this Writ Petition by suppressing the fact of he having taken part in the tender process and therefore he is not entitled for grant of any relief having been unsuccessful therein.**

Learned Senior counsel appearing for implead respondents submits that his client has been declared as L1 in respect of Zone II and IV, while Sri O.Manohar Reddy, learned counsel appearing for caveator submits that his client has been declared as LI in respect of Zone-III in terms of Notification dt.14-09-2021. It is also contended that upon being declared as successful bidders, their clients have furnished necessary Bank Guarantees in favour of Official respondents and were issued with Letter of Intent to commence work. Thus both the learned Senior Counsel submit that this Court should not interdict them from providing their services in terms of the agreement.

In so far as the tender Notification dt.10-12-2021, Sri Kishore Rao, learned Standing Counsel submits that the tender process has been completed. However, he does not dispute that no letter of intent commence work has been issued thereunder.

Having regard to the above, considering the fact that the condition imposing restriction of participation of bidders at the stage of bidding process prima facie appears to be in

violation of fundamental rights, the respondents are directed to maintain status quo in respect of Bid Number: GEM/2021/B/1753731 dt.10.12.2021 only.

**ii) The counter affidavit filed by Respondent No.2, in particular, Paras 4, 6 and 7 read as under :**

**"4. Further it is to respectfully submit that as per the request made by the 2<sup>nd</sup> Respondent's Corporation, the 1<sup>st</sup> Respondent vide letter dated 17-10-2022 informed the 2<sup>nd</sup> Respondent that a decision has been taken to remove the Clause No: 5.5 in the RFP and Tender Document for Zone I and V honouring the directions of the Hon'ble High Court and communicated the modified RPF. The same is filed as Annexure-3.**

6. Further it to respectfully submit that as per the information received from the 1st Respondent's office, the 2nd Respondent, with due deference to orders of the Hon'ble Court, has cancelled/ withdrawn both the Tenders bearing No: GEM/2021/B/1753650, dt: 10.12.2021 (Zone-I) and GEM/2021/B/1753731, dt: 10.12.2021 (Zone-V) from the GeM Portal. The same are filed as Annexure- 5 and 6.

**7. Further it is to respectfully submit that the actual MoU was entered between the Petitioner and the office of the 1<sup>st</sup> Respondent is valid till 18-11- 2021 only and all the payments due to the Petitioner till 18-11-2021 are paid to the Petitioner vide**

**proceedings dated 02-01-2023 of the 1<sup>st</sup> Respondent.**  
**The same is filed as Annexure -7."**

**3. The case of the Petitioner, in brief, as per the averments made in the affidavit filed in support of the present writ petition is as follows :**

Petitioner's Firm was registered in the name of SM Associates in the year 2012 to do business in Health Care by providing Services in Hospitals whenever the hospitals require such services from the Petitioner. The 1<sup>st</sup> Respondent issued a Notification reference 135/QA/NHM/P5/2018-19, dated 18.11.2017 calling bids through e-procurement platform for providing mechanised laundry services in the District and Area hospitals. The successful laundry service contractor should provide linen services as per Agreement executed by the Competent Authority. In pursuance to the said notification the 1<sup>st</sup> Respondent allotted 2 Zones i.e., Zone III and Zone IV consisting of 16 hospitals i.e., 2300 beds. Apart from the aforesaid 2300 beds another 550 beds enhanced because of strengthening the beds in the hospitals after allocating the services to the Petitioner.



It is further the case of the Petitioner that as per Agreement the Petitioner installed all necessary infrastructure i.e., equipment, civil work, plumbing, electrical, etc., and started agreed services from April 2018 to August 2018 and the services are being continued as on date pursuant to the orders passed by this Court in Zone III and Zone IV including the hospitals which have enhanced the bed capacity that are duly intimated to the official respondents. It is further the case of the Petitioner that in the Agreement at page No.8 clause No.1.1.8 it is clearly mentioned that effectiveness and duration of contract was from the date of commencement i.e., 36 months and with satisfactory performance extendable for another 24 months. It is further the specific plea of the Petitioner that since the Petitioner provided satisfactory services during the tenure and therefore as per the condition imposed at the time of awarding the contract to the Petitioner the 1<sup>st</sup> Respondent ought to have extended the contract tenure for another 2 years. Therefore the 1<sup>st</sup> Respondent ought to have allowed the Petitioner to provide services till 18.02.2023 i.e., two years after lapse of three years i.e., 18.02.2021. The Petitioner even after completing the afore said 3 years period and even without extending another 2 years as agreed is providing services without putting any inconvenience

either to the hospitals or the patients. Though the Respondent Authority did not release the entire charges upto 18.11.2021 and nearly Rs.5.5 crores are due to the Petitioner from the Respondents, the Authority remains silent in the matter. In spite of the Petitioner's specific request for extension of Petitioner's tenure beyond 3 years for a period of 2 years as per Agreement, the 2<sup>nd</sup> Respondent proceeded and issued Tender Notifications inviting fresh tenders by Notification No.GEM/2021/B/ 1519384, 15191251, 1519335, 151995, 1518637, dated 14.09.2021 and Notification No.GEM/2021/B/1753650, 1753731, dated 10.12.2021. The said tender notification stipulated a condition that one bidder shall participate in one zone only and he cannot participate in other zones was not a fair and reasonable condition. Aggrieved by the same the Petitioner approached by filing the present writ petition contending that the Respondents are bound to continue the Petitioner by extending the tenure of the contract beyond 3 years as per Clause No.1.1.8 and 2.16 of the Agreement dated 19.02.2018 duly considering the request made by the Petitioner through the representations dated 03.02.2021, 15.11.2021 and 01.12.2021 and to release all the arrears of service charges which are due to the Petitioner upto 18.11.2021 as per Clause No.2.37 of the Agreement dated

19.02.2018 as well as towards the service rendered by the Petitioner after 18.11.2021 and to set aside the condition of Clause 5.5 of the Notification which stipulates that bidder should participate in one zone only.

**4. The Learned Senior Counsel appearing on behalf of the Petitioner mainly put-forth the following submissions :**

i) It is false to state that the Petitioner received all payments due to the Petitioner till 18.11.2021 since the MOU entered into between the Petitioner and the Office of the 1<sup>st</sup> Respondent is valid till 18.11.2021 as averred in the counter affidavit at para 7. The learned Senior counsel placing reliance on the Memo dated 06.03.2023 filed along with few material documents contends that in pursuance to the orders passed by this Court dated 30.12.2021 the Petitioner is still continuing to provide services in Zone III and Zone IV including the hospitals which have enhanced the bed capacity that are duly intimated to the official Respondents and in fact Petitioner is entitled for dues to a tune of Rs.9,33,43,758/- since July 2022 and the Respondents are liable to compensate and release the same.

ii) The learned senior counsel placing reliance on the proceedings of the Commissioner Telangana Vidya Vidahana

Parishad the 3<sup>rd</sup> Respondent herein addressed to the 1<sup>st</sup> Respondent herein RC No.135/QA(NHM)/TVVP/2017, dated 06<sup>th</sup> August 2022 contends that it is not correct to state that the petitioner received all the amounts due to the petitioner. In fact a bare perusal of the said proceedings dated 06.08.2022 of the 3<sup>rd</sup> Respondent addressed to the 1<sup>st</sup> Respondent indicates that as borne on record the services of the mechanized laundry of the Petitioner herein had been extended vide proceedings dated 20.03.2021 and 23.08.2021 of the 1<sup>st</sup> Respondent herein from 19.02.2021 to 18.11.2021. **The relevant portion of the proceedings dated 06.08.2022 of the 3<sup>rd</sup> Respondent addressed to the 1<sup>st</sup> Respondent reads as under :**

**"All the bills are enclosed with performance certificates issued by respective hospital Superintendents as work done satisfactory providing the Laundry Services.**

It is also submitted that all the above firms have furnished Performance Securities in the way of Bank Guarantees as prescribed by the Mission Director, NHM & CH&FW, TS, Hyderabad.

Hence, I am herewith submitting the Abstract of pending requirement towards the Mechanized Laundry bills

for release of budget to vendors of Zone I to IV is as mentioned below.

S.No.	Name of Vendor	Zone	Pending bill period	Total amount
1.	M/s.Chanakya Enterprises	Zone-I	November,2021 To April, 2022	15400128
2.	M/s.Eco Hospitality Services	Zone-II	November, 2021 To February, 2022	17365905
3.	M/s.SM Associates	Zone-III	November, 2021 To July, 2022	21323520
4.	M/s.SM Associates	Zone-IV	November, 2021 To July, 2022	23025600
5.	M/s.SM Associates	Zone-III	June, 2021 to October, 2021	15270750
			Nalgonda & Suryapeta beds wef.18 <sup>th</sup> & 28 <sup>th</sup> Sept.2019 till May, 2021	16230185
			Shortfall payment released for bills from Jan-Dec.2020	500100
6.	M/s. SM Associates	Zone-IV	June, 2021 to October, 2021	12109500
			MCH Jangaon (150) beds shortfall payment wef.Jan.2021 to May.21	1579500
			<b>Total Amount in Rs.</b>	<b>122805188.00</b>

Since the bills have been received for payments duly certified by the Medical Superintendents of **Respective Hospitals as mentioned above and also the said (3) firms have commenced the Mechanized Laundry Services in all the awarded TVVP hospitals it is desired to make payments as per eligibility as mentioned above.**

In view of the details mentioned above, I request you madam, kindly to sanction and release the sanctioned budget of Rs.12,28,05,188/- (Rupees Twelve Crores Twenty Eight Lakhs Five Thousand One Hundred and Eighty Eight Only) under under FMR Code 1.1.7.7 towards Mechanized Laundry Services for the Hospitals under TVVP for clearing the payments to the above firms for payment of salaries to the staff hired by the vendor and for the smooth functioning of the Mechanized Laundry services at the respective hospitals as per eligibility for the above period.

**The Learned counsel appearing on behalf of the Petitioner placing reliance on the aforesaid submissions contends that the writ petition in so far as Clause 'd' is concerned should be allowed as prayed for.**

5. The counter affidavit has been filed by the Respondent No.2 and placing reliance on the averments made in the counter affidavit filed on behalf of the 2<sup>nd</sup> respondent, the counsel for the 2<sup>nd</sup> Respondent mainly puts forth his submissions as under:

- i) That in pursuance to the interim orders of this Court dated 30.12.2021, Clause No.5.5 had been deleted from the tender document.
- ii) As per the actual MOU entered into between the Petitioner and the Office of the 1<sup>st</sup> Respondent the contract is valid till 18.11.2021 only and all the payments due to the Petitioner till 18.11.2021 are paid to the Petitioner vide proceedings dated 02.01.2023 of the 1<sup>st</sup> Respondent.
- iii) Placing reliance on the aforesaid submissions the learned counsel for the 2<sup>nd</sup> Respondent contends that the writ petition may be dismissed and the 2<sup>nd</sup> Respondent may be permitted to go for fresh tenders as per the modified tender document.

iv) The Learned Senior Counsel Mr. Vedula Srinivas appearing on behalf of Respondent Nos.6 and 7 mainly puts forth the following submissions :

- a) The plea of the petitioner that the action of the Respondent Nos.1 to 4 in not extending the contract by 2 years though the said period expired in 2021 is unreasonable and arbitrary and without any substance.
- b) In view of the fact that the nature of the service itself underwent a change the petitioner cannot demand for renewal of petitioner's contract.
- c) The Respondents 6 and 7 are already issued with letter of intent on 15.12.2021 at this stage the Petitioner cannot question the tender process as the rule of estoppel acts against it.
- d) The Petitioner on an earlier occasion filed WP No.33503/2021 seeking a direction to consider the representation for extension of petitioner's contract but has withdrawn the same with liberty to file a fresh writ petition and hence the present writ petition is not maintainable.

**DISCUSSION AND CONCLUSION :**

**6. Clause 1.1.8 and 2.16 of the Agreement dated 19.02.2018 entered into between the 1<sup>st</sup> Respondent and the Petitioner reads as under :**

**"1.1.8. Effectiveness and Duration of Contract**

The contract shall come into effect on the date of signing by both the parties. The contract shall be valid for a period of 36 (Thirty Six) months from the date of commencement of services. The contract can be extended for another 24 months (Twenty Four) on the same terms and conditions subject to satisfactory performance.

**2.16** The contract shall initially be valid for a period of Three Years and can be extended further for another two years on the same terms and conditions of the contract and at the same rates. The rates quoted by the bidder shall remain unchanged during the period of contract."

**7. It is the specific case of the Petitioner that the Respondents ought to have allowed the petitioner to continue for another 2 years in view of the good and excellent service provided by the Petitioner as per their own orders issued by the concerned Authorities, in view of the fact that Petitioners MOU though admittedly concluded on 18.11.2021 yet the 1<sup>st</sup> Respondent issued extension orders to the Petitioner's Firm to continue the services of mechanized laundry in TVVP hospitals from 19.02.2021 to 18.11.2021 along with the listed hospitals in MOU, duly considering Clause 1.1.8 of the Agreement dated**



19.02.2018 entered into by the Petitioner and 1<sup>st</sup> Respondent and further the concerned authorities ought to have strictly followed the payment procedure as per 2.37 of the Agreement dated 19.02.2018 entered into between the Petitioner and the 1<sup>st</sup> Respondent, but however, the same had not been followed in the present case.

8. This court on perusal of the proceedings of the Commissioner Telangana Vidya Vidahana Parishad i.e., 3<sup>rd</sup> Respondent herein addressed to the 1<sup>st</sup> Respondent herein RC No.135/QA (NHM)/TVVP/2017, dated 06<sup>th</sup> August 2022 opines that it is borne on record that the 1<sup>st</sup> Respondent had given extension orders to the Petitioner herein to continue the services of the mechanised laundry in TVVP hospitals from 19.02.2021 till 18.11.2021 along with the listed hospitals in MOU vide Proceedings dated 20.03.2021 and 23.08.2021 and further it is also borne on record in the last 5 paragraphs of the said proceedings dated 06.08.2022 of the 3<sup>rd</sup> Respondent addressed to the 1<sup>st</sup> Respondent (referred to and extracted above) that there are pending bills to be cleared in favour of the Petitioner herein which had been duly certified by the

Medical Superintendents of respective hospitals giving full details pertaining to 4 bills of the petitioner pertaining to Zone III, Zone IV and the amounts due to be released to the Petitioner by the 1<sup>st</sup> Respondent herein.

9. Taking into consideration the contents of the letter RC No.135/QA(NHM)/TVVP /2017, dated 06<sup>th</sup> August 2022 of the 3<sup>rd</sup> Respondent addressed to the 1<sup>st</sup> Respondent (referred to and extracted above) and also duly considering Clause 1.1.8 and 2.16 of the Agreement dated 19.02.2018 (referred to and extracted above) entered into between the Petitioner and the 1<sup>st</sup> Respondent, the Respondent No.1 herein is directed to take appropriate steps in pursuance to the letter/proceedings of the Commissioner Telangana Vidya Vidahana Parishad i.e., the 3<sup>rd</sup> Respondent addressed to the 1<sup>st</sup> Respondent RC No.135/QA(NHM)/TVVP/2017, dated 06<sup>th</sup> August 2022, within a period of 3 weeks from the date of receipt of the copy of the order as requested by the 3<sup>rd</sup> Respondent in last paragraph of the said proceedings dated 06.08.2022 of 3<sup>rd</sup> Respondent addressed to the 1<sup>st</sup> Respondent, in accordance to law and duly consider the request of the Petitioner for release of

**the payments due to the Petitioner as per Petitioner's entitlement as per record as admitted in the proceedings of the 3<sup>rd</sup> Respondent dated 06.08.2022 addressed to the 1<sup>st</sup> Respondent vide RC No.135/QA(NHM)/TVVP/2017.**

10. In so far as the prayer of the Petitioner for continuation of the tenure of the Petitioner by extending the Petitioner's contract for further period of 2 years in terms of Clause 1.1.8 and 2.16 of the Agreement dated 19.02.2018 entered into by the Petitioner and the 1<sup>st</sup> Respondent herein is concerned, the Respondent No.1 is directed to consider Petitioner's representation dated 30.11.2021 addressed to the 1<sup>st</sup> Respondent herein seeking the said prayer which has even been acknowledged by the office of the 1<sup>st</sup> Respondent on 01.12.2021 within a period of 2 weeks from the date of receipt of the copy of the order as per Clause 1.1.8 and 2.16 of the Agreement No.135/QA/NHM/P5/2018-19, dated 19.02.2018 and duly communicate the decision to the Petitioner. The writ petition is accordingly disposed. However there shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

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**SUREPALLI NANDA, J**

**Date: 18.03.2024**

**Note:** L.R.Copy to be marked  
(B/o) *Yvkr*