

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

WRIT PETITION No.20070 of 2024

Dr. P. Indeevar, S/o Late P. Chinnapa Reddy, aged about 44 years, Flat No.1003, Vijaya Block, Manjeera Monarch Apartment, Mangalagiri – 522 502

... Petitioner

Versus

The State of Andhra Pradesh, Represented by its Principal Secretary, Department of Medical Health and Family Welfare, Secretariat Buildings, Velagapudi, Guntur District and others.

... Respondents

DATE OF ORDER PRONOUNCED : **20.02.2025**

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

1. Whether Reporters of Local Newspapers may be allowed to see the order? : Yes/No
2. Whether the copy of order may be marked to Law Reporters/Journals? : Yes/No
3. Whether His Lordship wish to see the fair copy of the order? : Yes/No

SUBBA REDDY SATTI, J

*** HONOURABLE SRI JUSTICE SUBBA REDDY SATTI**
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... Respondents

! Counsel for Petitioner : Sri D S Sivadarshan
^ Counsel for Respondents : Smt. K.S.G. Padmavathi and
Sri S. Raju, learned Assistant
Government Pleader

< Gist:

> Head Note:

? Cases referred:

- 1) (1974) 2 SCC 831
- 2) (1984) 2 SCC 369
- 3) (1974) 4 SCC 3
- 4) (1981) 1 SCC 722
- 5) (1993) 4 SCC 6

This Court made the following:

APHC010391772024



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3331]

THURSDAY, THE TWENTITH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

WRIT PETITION NO: 20070/2024

Between:

Dr. P. Indeevar

...PETITIONER

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1. D S SIVADARSHAN

Counsel for the Respondent(S):

1. GP FOR SERVICES IV

2. K.S.G.PADMAVATHI SC FOR Dr.Y.S.R AAROgyASRI HEALTH
TRUST

The Court made the following:

:: ORDER ::

Challenging the proceedings dated 30.08.2024 issued by respondent No.3 terminating the services of the petitioner as Joint Executive officer, the above writ petition is filed.

2. Facts in brief, as per the writ affidavit, the Government introduced a scheme i.e. 'Arogya Andhra Pradesh' with an endeavour to provide quality

healthcare to the poor. The Government, for effective implementation of the scheme, formed respondent No.2-Trust, under the Chairmanship of the Hon'ble Chief Minister of Andhra Pradesh. Respondent No.3 is the executive authority of the Trust. A paper publication was issued on 28.06.2019 for filling up the post of Joint Executive Officer (Dental) (for short 'JEO'). The petitioner, after undergoing the selection process, was appointed as JEO on a contract basis, for one year. The petitioner was responsible for multiple dental clinics and approval of claims raised under the scheme, for further approval by his seniors, including respondent No.3. The petitioner's services were renewed every year and the petitioner's term was completed on 24.07.2024. However, the petitioner's services were continued with an assurance that regular renewal proceedings would be issued soon.

b) While so, on 08.08.2024, the petitioner was summoned by an enquiry committee constituted to inquire into the allegations raised by Sridevi Smile Dental Clinic, Kadapa, calling for his explanation and the said notice was served on the petitioner on 28.08.2024. The petitioner by mail dated 30.08.2024 requested respondent No.3 to grant seven days to submit the explanation. On 30.08.2024 around 12:45 P.M. the enquiry committee summoned the petitioner to chambers and forced him to submit a reply to the show the cause notice with an assurance that there was no merit in the allegations raised by Sridevi Smile Dental Clinic and inquiry proceedings would be closed. The petitioner, in his reply dated 30.08.2024 stated that most of the cases mentioned in the show cause notice were not approved by him and the minor overpayment was due to oversight. The approved claim amount, including the minor overpayment, did not exceed the pre-authorised amount. The inquiry report furnished to respondent no.3 with certain findings was prepared without the issuance of any show cause notice to the petitioner.

c) On 03.09.2024, the petitioner was informed about his termination. A copy of the termination order was served on the petitioner on 05.09.2024,

wherein it was stated that the petitioner's services were no longer required given the expiry of his contract. The petitioner is entitled to fair, non-discriminatory treatment and parity with other employees. The services of the petitioner are still required, there was no reason to refuse to renew the petitioner's contract while continuing the other employees. It is a settled position of law that even in the cases of contractual employment, no decision can be made arbitrarily. 30 days is required even for terminating a contract employee.

3. a) A counter affidavit was filed for respondents 2 and 3. It was contended, *inter alia*, that the writ petition is not maintainable, since the petitioner is a contractual employee, and his service can be terminated at any point as per the terms and conditions. The petitioner failed to explain the infringement of rights under Part III of the Constitution of India. It was not disputed about the petitioner's appointment and his joining service, in pursuance of paper publication issued by the 2nd respondent trust. After the expiry of the contract, the 2nd respondent has decided not to extend the services of the petitioner, since his services are no longer required.

b) The complaints/petitions dated 10.07.2024, 07.08.2024 and 27.08.2024 were made by one Dr.Prasanna Kumar alleging that the petitioner caused mental agony by threatening to delist the hospital if his demands were not met. The 2nd respondent received a complaint dated 07.08.2024 and 27.08.2024 from the Managing Director of Sridevi Smile Dental Clinic, Porumamilla alleging that the petitioner collected a bribe for revoking the suspension of the licence and the petitioner was also involved in cancelling the licence of Dental Clinics, those who did not heed his demands.

c) Sridevi Smile Dental Clinic filed W.P.No.16351 of 2024 challenging the proceedings issued against it, making serious allegations against the petitioner. The said writ petition was disposed of on 01.08.2024 directing the 2nd respondent to conduct enquiry regarding allegations. In pursuance of the

order, in the writ petition, and serious allegations levelled against the petitioner, a committee was constituted by the 3rd respondent and enquiry was duly conducted law by, affording opportunity to the petitioner. In the committee report dated 27.08.2024, it was observed that the petitioner caused a huge financial loss to the 2nd respondent trust. A show cause notice dated 28.08.2024 was issued to the petitioner and the petitioner sent an explanation and the same will be considered as per law. The decision not to extend the term of petitioner was taken by considering the committee report dated 27.08.2024 and therefore, the 3rd respondent issued proceedings impugned in the writ petition.

d) As per the terms of the contract, Clause No.6 indicates that the agreement will automatically lapse at the end of tenure. The petitioner is bound by the terms of the contract. The 2nd respondent followed the due procedure and eventually prayed to dismiss the writ petition.

4. A rejoinder was filed by the petitioner. It was contended that the inspection of Sridevi Smile Dental Clinic was officially assigned by the CEO based on a complaint. The petitioner and other officers were assigned to carry out the task. The complaint made by Dr.Prasanna Kumar Reddy alleging bribery was made since the licence of the hospital was suspended. In fact, the State Disciplinary Committee report dated 19.04.2024 found that the clinic was involved in fraudulent claims. Even the enquiry committee appointed to enquiry into the allegations made by Dr.Prasanna Kumar Reddy, did not believe those allegations and found them to be untrue and false. No reasonable opportunity was provided to the petitioner to respond to the show cause notice properly. Despite the request made by the petitioner, to extend the time to submit the explanation, the order impugned was passed. The action of the trust in terminating the services of the petitioner, while continuing the contracts of similarly situated employees, is arbitrary and discrimination.

Even after the expiry of the contract period i.e. 24.07.2024, the services of the petitioner were utilized till the date of termination proceedings.

5. Heard Sri K.Sivadarshan, learned counsel for the petitioner; Smt. K.S.G.Padmavathi, learned standing counsel for respondents 2 and 3 and Sri S.Raju, learned Assistant Government Pleader for Services-I for respondent No.1.

6. Learned counsel for the petitioner would submit that though the petitioner is a contractual employee, termination of the petitioner is stigmatic and without considering the explanation and thus the proceedings impugned are vitiated. The show cause notice dated 28.08.2024 (Ex.P4) was issued, for which the petitioner submitted a formal reply on 30.08.2024 (Ex.P5) seeking time to submit a proper reply and thereafter submitted a preliminary reply on the same day (Ex.P6). The other Joint Executive Officer, contract employee, continued and hence, not extending the contract of the petitioner would amount to parity and discrimination. Except for the petitioner, none of the other Doctors against whom the committee prima facie found irregularities were issued with notices. The authorities pre-meditated and issued the proceedings impugned.

7. *Per contra*, learned standing counsel for respondents 2 and 3 would submit that the order of termination was issued in terms of Clause No.6 of the contract. In fact, the term of the petitioner was completed and the contract has not been renewed. There is no discrimination and parity. The enquiry against the petitioner is pending. The petitioner failed to demonstrate violations of any fundamental right to invoke the jurisdiction of this Court under Art 226 of the Constitution of India.

8. Now, the point for consideration is:

Whether the proceedings impugned suffer from illegality or arbitrariness?

9. Shorn of all details, there is no dispute regarding the petitioner's appointment on a contract basis in pursuance of Ex.P2 notification and the petitioner rendering services till issuance of proceedings impugned. As per the contract, the tenure of the petitioner expired on 24.07.2024, however, the petitioner was allowed to work till 30.08.2024.

10. A show cause notice dated 28.08.2024 (Ex.P4) was issued calling upon the petitioner to submit an explanation within one day. Immediately, the petitioner submitted a representation dated 30.08.2024 (Ex.P5) and requested seven days. In fact, the petitioner submitted a preliminary reply to the show cause notice on 30.08.2024 (Ex.P6). The basis to issue the show cause notice is the enquiry report dated 27.08.2024.

11. It is apposite to mention here that the enquiry committee's report was filed along with a counter affidavit (Ex.R5).

12. A perusal of Ex.R5, Committee report dated 27.08.2024, would disclose the following findings:

- 1) There is a nexus between the petitioner and M/s. Raghavi Dental Hospital, Porumamilla and Identity Dental Hospital, Kadapa, with improper approvals and escalated payment to the specific hospitals, which caused huge financial loss to the Dr. NTR Trust and the misappropriated funds may be calculated for giving notices to the concerned Trust employees;
- 2) there is nearly 100% increase in Trust Doctor and JEO approved amount in comparison with Panel doctor approved amount; and
- 3) as per the random verification of approved cases, it has been noticed that the Dental wing has become a syndicate.

13. Acting upon the said report (Ex.P4), a show cause notice was issued to the petitioner pointing out eight irregularities and directing the petitioner to submit an explanation within one day. Accordingly, the petitioner submitted a preliminary explanation under Ex.P6.

14. In the explanation, the petitioner specifically pleaded that in respect of the first and second allegations, the said cases were not approved by him; that regarding the third allegation, an amount of Rs.1,768/- was paid by oversight; that in respect of the fifth allegation, it was pointed out that the evidence attached, is found to be correct; that in respect of sixth allegation, it was pointed out that the discrepancy amount is Rs.848/- and it is due to oversight; that in respect of seventh allegation, it was mentioned that the petitioner did not approve that case; that in respect of eight allegation it was mentioned that the evidence attached is found to be correct; that as JEO (Technical), the petitioner has cleared around 1,75,000 cases, since 2019 and oversight in one or two cases is an unintentional; that the petitioner has never deviated from the Trust guidelines.

15. Subsequently, the proceedings impugned (Ex.P1) were issued. It is appropriate to extract the first two paragraphs of the proceedings :

“Vide reference 1st cited, Dr. P. Indeevar was appointed as Joint Executive Officer (Dental) to work on contract basis initially for a period of one year. His services are extended to work on contract basis up to 24.07.2024. Now, the contract period of the said contract employee is expired on 24.07.2024. He was allowed to work up to 30.08.2024.

In view of the expiry of contract period, his services are no longer required. Hence, the services of Dr. P. Indeevar Reddy, Joint Executive Officer (Dental), Dr. NTR Vaidya Seva Trust are dispensed w.e.f. 30.08.2024 AN and relieved of his duties accordingly.”

16. It is appropriate to note here that in para No.8(j) of the counter affidavit, it was pleaded as follows:

“... It is further submitted that respondent No.2 decided to terminate the services of Petitioner herein under Clause 2(c) of the FTE Contract by following the due process of law, in view of the Committee’s Report dated 27.08.2024 finding that the Petitioner herein is causing huge financial loss to the Respondent No.2 Trust.”

17. Thus, though nothing was revealed in Ex.P1 to dispense with the services of the petitioner, it is clear that dispensing with the petitioner’s service is based on the committee’s report and the show cause notice. Mere non-mentioning of the background situation in the order dated 30.08.2024 (Ex.P1), cannot by itself be determinative of the nature of the order.

18. The Hon’ble Apex Court in **Samsher Singh v. State of Punjab**¹ and **Anoop Jaiswal v. Government of India**² has observed that the form of an order is not its final determinant and the Court can find out the real reason and true character behind terminating/removing an employee. In **Samsher Singh’s** case, it was held as under:

“80. ... The form of the order is not decisive as to whether the order is by way of punishment. Even an innocuously worded order terminating the service may in the facts and circumstances of the case establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311 ...”

19. In **Anoop Jaiswal’s** case, it was held as under:

¹ (1974) 2 SCC 831

² (1984) 2 SCC 369

“12. It is, therefore, now well settled that where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. If the court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee.”

20. In the case at hand, as discussed supra in Ex.P1, nothing was detailed regarding the report and notice. However, the basis for not extending the petitioner's contract is apparent and, it is the report, wherein some allegations were made against the petitioner and the inquiry is yet to be concluded. If the services of the petitioner are dispensed with at that juncture, certainly it will cause a stigma to the petitioner. The procedure adopted by the CEO of respondent No.2 suffers from arbitrariness.

21. The Hon'ble Apex Court in **E.P. Royappa v. State of Tamil Nadu and another**³, while dealing with Articles 14 and 16 of the Constitution of India, observed regarding arbitrariness:

“85. The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground, it is really in substance and effect merely an aspect of the second ground based on violation of 14 and 16. Art. 16 embodies the fundamental guarantee that Arts. 14 as there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of

³ (1974) 4 SCC 3

the new classless egalitarian society envisaged in the Constitution, Art. 16 is only an instance of the application of the concept of equality enshrined in Art. 14. In other words, Art. 14 is the genus while Art 16 is a species, Art. 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Arts. 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art. 14, and if it affects any matter relating to public employment, it is also violative of Art. 16. Arts. 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on relevant principles applicable alike to all similarly situated and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Arts. 14 and 16. Mala fide exercise of Power and arbitrariness are different lethal radiations emanating from the same vice : in fact the latter comprehends the former. Both are inhibited by Arts. 14 and 16."

22. The same was reiterated by another Constitutional Bench in **Ajay Hasia and Others v. Khalid Mujib Sehravardi and Others**⁴.

23. At the hearing, learned counsel for the petitioner would elaborate the scheme of approval *qua* the role of JEO regarding the bills, as follows:

“Whenever the Hospital raises a claim, it will go to Claim Trust Executive (Employees of Trust) (hereinafter referred to as ‘CTE’) for preliminary check to ensure that the patient against whom the claim was raised had proper entitlement under the Employee Health Scheme. Thereafter, the claim will be transferred to Claim Panel Doctor (for short ‘CPD’). The CPDs are external independent doctors engaged by the Trust for a preliminary assessment of the claim. After a claim is assessed and approved by the claim panel doctor, it is forwarded to the Claim Trust Doctor (Employee of Trust) (for short ‘CTD’). CTD further assesses the claim of the Hospital based on the evidence. In cases where there is a disagreement between the decisions of the CPD and CTD the case will be escalated to the JEO, to resolve the difference in approvals. If there is no difference of opinion between the CPD and CTD, the case will be directly forwarded to the Executive Officer and subsequently to the Chief Executive Officer for final approval.

In most cases, differences in approvals arise due to incomplete or missing evidence submitted by the hospital at the initial stage of raising the claim before the CPD. In such circumstances, the CPD may disapprove the claim and disapprove the claim and forward it to CTD. At that stage, the hospital will be afforded an opportunity to corroborate its claim by attaching the necessary supporting evidence. The CTD may review the evidence provided, assess the claim and approve the claim or reject the claim.

⁴ (1981) 1 SCC 722

In cases of differences of opinion, the matter will be escalated to JEO, who is obligated to approve the increased claim if the Trust Doctor receives valid evidence supporting the claim of the hospital. JEO can modify the approved claim either by increasing or decreasing by independently evaluating the evidence attached by the hospital. Thereafter the claims will be forwarded to the Executive Officer and thereafter to Chief Executive Officer for final approval. JEO has no power to revoke the suspension of any hospital.”

24. Learned standing counsel did not dispute the above procedure adopted by respondent No.2 Trust, regarding the schemes and the submissions of the learned counsel for the petitioner, made in that regard. A perusal of the eight alleged violations, indicated above, requires further consideration after affording opportunity to the petitioner and due enquiry. It is too early to premeditate the issue by respondent No.2.

25. Further, the terms of the contract stipulate that the agreement will automatically lapse at the end of the tenure mentioned therein. In the case of the petitioner, the contract employment expired on 24.07.2024. However, was allowed to work till 30.08.2024. This instance makes the things more than discernible that respondent No.2, initially did not think to dispense with the service of the petitioner. However, the report is the basis for every action including the proceedings impugned.

26. Of course, this Court at this juncture, is not recording any finding regarding the allegations made against the petitioner *qua* excess payments since it is the subject matter of inquiry. At the same time, the instances i.e. giving one day time to the petitioner to submit an explanation and thereafter dispensing with his services, demonstrate that the Executive Officer of respondent No.2 acted arbitrarily.

27. One of the contentions of learned standing counsel is that the petitioner being a contract employee cannot maintain the writ petition. However, given

the above discussion and the facts and circumstances of the case, since the proceedings suffer from arbitrariness, this Court holds that the writ petition is maintainable.

28. The further contention of learned counsel for the petitioner is that the petitioner was discriminated, and in fact, his services are still required and the work performed by the petitioner is being handled by someone else and the services of the employees recruited alongside the petitioner are continued on contract basis. The specific averments to this effect are made in para No.14 of the writ affidavit. However, in the counter affidavit, it was not specifically adverted to.

29. When a specific allegation was made by the petitioner, in the affidavit, and if the same was not traversed by the opponent, it amounts to an admission. The Hon'ble Apex Court, in **Lohia Properties (P) Ltd., Tinsukia v. Atmaram Kumar**⁵, while dealing with Order VIII Rule 5 of CPC, observed that non-traverse would imply admission. The relevant part is extracted hereunder:

“14. What is stated in the above is, what amount to admit a fact on pleading while Rule 3 of Order 8 requires that the defendant must deal specifically with each allegation of fact of which he does not admit the truth.

15. Rule 5 provides that every allegation of fact in the plaint, if not denied in the written statement shall be taken to be admitted by the defendant. What this rule says is, that any allegation of fact must either be denied specifically or by a necessary implication or there should be at least a statement that the fact is not admitted. If the plea is not taken in that manner, then the allegation shall be taken to be admitted.”

⁵ (1993) 4 SCC 6

30. A Coordinate Bench of this court by order dated 30.08.2024 suspended the impugned proceedings initially for three weeks and the same is being extended from time to time. Despite the interim order respondents 2 and 3 failed to implement the same. This shows the scant respect of respondents 2 and 3 to the orders of the Court. In fact, the act of the respondents, impugned in the writ petition, also violates Articles 14 and 16 of the Constitution of India.

31. Therefore, given the discussion supra, since Ex.P1 suffers from arbitrariness and violates Articles 14 and 16 of the Constitution of India, the same is liable to be set aside.

32. Accordingly, this writ petition is allowed. The proceedings No.Dr.NTR VST/HR/364/2024 dated 30.08.2024 (Ex.P1), issued by respondent No.3, is hereby set aside. Respondents 2 and 3 shall continue the services of the petitioner in respondent No.2-Trust.

The findings, if any, recorded in the order are for the disposal of the writ petition, alone.

However, this order will not preclude respondents 2 and 3 from proceeding with the inquiry initiated against the petitioner and passing appropriate orders as per the Rules. No costs.

Consequently, miscellaneous applications pending, if any, shall stand closed.

JUSTICE SUBBA REDDY SATTI

Date : 20.02.2025

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THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

WRIT PETITION No.20070 OF 2024

Dated: 20.02.2025

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