

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1499 of 2017

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1. Dr. Basant Kumar Singh @ Basant Kumar Singh Son of late Nitishwar Prasad Singh Resident of Raj Palace Road No. 3, Juran Chapra, P.S.-Brahampura, District- Muzaffarpur, A/P Secretary, Raj ANM Training School, Baban Bigha, Kanhauli, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Health & Family Welfare, Govt. of Bihar, Patna.
3. Director-in-Chief, Health Service Bihar, Patna Cum President Bihar Nurses Registration Council, Patna.
4. The Nurses Registration Council , Vikash Bhawan, New Secretariat, Patna through its Secretary-cum-Registrar.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P.K. Shahi, Senior Advocate Mr. Pramod Kumar Singh, Advocate
For the Respondent/s	:	Mr. A.B. Sinha- GA-8 Mr. Prabhat Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

4 19-04-2017 The petitioner claims to be the Secretary of Raj ANM Training School, Baban Bigha, Kanhauli (hereinafter referred to as ANM School) in the district of Muzaffarpur. An order issued vide Memo No. 910(6) dated 01.10.2016 under the signature of the Director-in Chief (Nursing), Health Services, Bihar has been put to challenge in the present writ application, whereby a proposal for extension of recognition to the ANM School, in question, has been refused.

Facts for adjudication of the issue involved in the present case are brief and not in dispute. The ANM School was



issued a show cause notice on 05.07.2016 seeking explanation, referring to certain discrepancies detected by an inspection team, in a surprise inspection conducted on 14.03.2016. There were altogether seven points mentioned in the said show cause notice dated 05.07.2016, mainly relating to the infrastructure issues. From the said show cause notice dated 05.07.2016, it appears that the report of the inspecting team was not made available to the ANM School. In response to the said communication dated 05.07.2016, the petitioner submitted his show cause reply, through letter dated 11.07.2016, dealing with all the seven points raised in the said letter dated 05.07.2016. The petitioner asserted that the Institution, in question, fulfilled all the criteria for grant of extension of recognition and there was no deficiency at all, as pointed out in the show cause notice dated 05.07.2016. The said reply to show cause notice has been brought on record by way of Annexure to the present writ application from which it appears that a detail pointwise reply/explanation was submitted by the ANM School.

It is not known what happened thereafter, before issuance of the impugned order dated 01.10.2016 whereby, referring to four categories of deficiencies in the ANM School, the Director in Chief (Nursing) rejected the proposal for grant of extension of recognition.



The said order dated 01.10.2016 is under challenge in the present writ application. A counter affidavit has been filed on behalf of the Director in Chief (Nursing) Health Services, Bihar along with the said counter affidavit. A report of an inspecting team dated 30.09.2016 has been brought on record by way of Annexure B-2. It is the case of the State-respondents that the College was physically inspected by the Director in Chief (Nursing) and Additional Director, Health Services, Government of Bihar on 21.09.2016, which is the basis for the said inspection report dated 30.09.2016. Inspection report, it appears is the basis for passing of the impugned order dated 01.10.2016.

Mr. P.K. Shahi, learned Senior Counsel appearing on behalf of the petitioner has made three fold submissions. He has submitted that a duly constituted inspecting team in accordance with the provisions of Nurses Training-Recognition, Affiliation and Conduct of Examination of School of Nursing Rules, 1997 had conducted inspection for the purpose of extension of recognition and a favourable report was submitted. There is nothing on record to show why the said report of a duly constituted inspection team was not acceptable to the competent authority. He has secondly submitted that in response to the show cause notice dated 05.07.2016 the petitioner had submitted detailed explanation which is evident from communication dated



11.07.2016, which is part of Annexure-9 to this application. According to him, there is absolutely no consideration of the petitioner's reply to the show cause notice anywhere and in any manner in the impugned order. He has thirdly submitted that it is evident from records that no notice was given to the petitioner before passing of the impugned order dated 01.10.2016 which is based on a report prepared by the so-called inspecting team on 30.09.2016.

He contends that the said order dated 01.10.2016, does not take into account at all the reply of the petitioner given in response to the earlier show cause notice dated 05.07.2016. He has accordingly argued that the order impugned is in gross violation of principles of natural justice.

He has lastly submitted, drawing my attention to Nurses Training-Recognition, Affiliation and Conduct of Examination of School of Nursing Rules, 1997 (hereinafter referred to as the Regulations) with particular reference to Rule 5, 6(g) that the said provision lays down constitution of inspecting team for the purpose of grant of a recognition, which is as follows:-

- (I) An officer not below the rank of Deputy Director of the Health Directorate.



- (II) Experts in the field Obstetrics and Gynecology not below the rank of Associate Professor.
- (III) Two experts who should be the teachers of Government Nursing Training School, with requisite qualification.

According to him, the team, which is said to have inspected the ANM School, headed by the Director-in-Chief, Health Services, was not validly constituted in accordance with the provisions of the Rule and for this reason also the impugned order dated 01.10.2016 based on report of such team is vulnerable.

Mr. Ajay Bihari Sinha, learned counsel appearing on behalf of the State of Bihar has attempted to defend the impugned order with a submission that the Director himself was part of the inspecting team and he himself found deficiencies in infrastructure maintained by the ANM School and, therefore, the decision has validly been taken.

From what emerges on the basis of facts as noted above that there can be no room for any doubt that the decision impugned is in gross violation of principles of natural justice for more than one reasons. Firstly, the order dated 01.10.2016 is said to be based on an inspection conducted by the Director and



another Officer of the Department on 21.09.2016. The deficiencies found in course of said inspection was never communicated to the petitioner, which is an admitted fact for the reason that inspection report was prepared on 30.09.2016 and the impugned order was passed on 01.10.2016. I also notice substantial variance between the deficiencies as pointed out in the show cause notice dated 05.07.2016 and the impugned order dated 01.10.2016. Some of the deficiencies which were pointed out in the show cause notice dated 05.07.2016 are not there in the impugned order dated 01.10.2016 whereas the deficiencies which are the basis for refusal for extension of recognition pointed out in the order dated 01.10.2016, were not there in the show cause notice dated 05.07.2016.

Thirdly, there is absolutely no consideration of the petitioner's reply to the show cause notice, which he had submitted on 11.07.2016. This fact cannot be disputed.

In my view, The manner in which the impugned order dated 01.10.2016 has been passed smacks of malafide. Impugned order dated 01.10.2016 is accordingly quashed.

Let a fresh order be passed on the question of grant of extension of recognition in favour of the Institute, in question, within a period of one month from the date of receipt/presentation of this order. It is directed that while taking any decision in this



regard, the competent authority shall be obliged to consider the show cause reply filed by the petitioner dated 11.07.2016, and pass a reasoned order, if reply is not acceptable by the competent authority.

This application is allowed with the observation as above.

(Chakradhari Sharan Singh, J)

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