

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17528 of 2017

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Yamuna Institute Of Nursing (G.N.M. School), Begusarai through the President of Orhul Yamuna Foundation (N.G.O.) namely Dr. Ramashray Singh, aged about 65 years, Son of Late Yamuna Singh, Resident of Mohalla-Pokhariya, P.O.+ P.S. & District- Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Govt. of Bihar, New Secretariat, Patna. null null
2. The Principal Secretary, Department of Health, Govt. of Bihar, New Secretariat, Patna. null null
3. The Director In- Chief (Nursing), Department of Health, Govt. of Bihar, New Secretariat, Patna.
4. The Officer on Special Duty (OSD), Department of Health, Govt. of Bihar, New Secretariat, Patna.
5. Indian Nursing Council, Joint Council Bhawan, Kotla Road, Temple Lane, New Delhi- 110002 through its Secretary.
6. The Secretary, Indian Nursing Council, Joint Council Bhawan, Kotla Road, Temple Lane, New Delhi- 110002.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 17560 of 2017

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Apollo Nursing Training School, Saidnagar, Leharisara, Darbhanga through its Secretary namely Md. Taqweem Akhtar, aged about 34 years, Son of Md. Jamil Akhtar, Resident of Village- Saidpur, P.O.- Sormar Bagla, P.S.- Moro, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Health, Govt. of Bihar, New Secretariat, Patna.
2. The Principal Secretary, Department of Health, Govt. of Bihar, New Secretariat, Patna.
3. The Director In-Chief (Nursing), Department of Health, Govt. of Bihar, New Secretariat, Patna.
4. The Officer on Special Duty (OSD), Department of Health, Govt. of Bihar, New Secretariat, Patna.
5. Indian Nursing Council, Joint Council Bhawan, Kotla Road, Temple Lane, New Delhi- 110002 through its Secretary.
6. The Secretary, Indian Nursing Council, Joint Council Bhawan, Kotla Road, Temple Lane, New Delhi- 110002.

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 17528 of 2017)



For the Petitioner/s : Mr. P. K. Shahi, Sr. Adv.
With Mr. Arun Kumar
For the Respondent/s : Mr. BIRJU PRASAD -GP13
(In Civil Writ Jurisdiction Case No. 17560 of 2017)
For the Petitioner/s : Mr. P.K. Shahi, Sr. Adv.
With Mr. Arun Kumar
For the Respondent/s : Mr. BINOD KR.YADAV -SC18

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

5 20-12-2017 Heard learned counsel for the parties.

2. The petitioners in both the writ applications seek direction to the respondents-State of Bihar to issue necessary order for permission to establish Nursing Schools and grant recognition in their favour in accordance with the Bihar and Orissa Nurses Registration Act, 1935 (hereinafter referred to as the Act) and the Nurses Training-Recognition, Affiliation and Conduct of Examination of School of Nursing Rules, 1997 for conducting General Nursing & Midwifery (GNM) Courses) (GNM).

3. These applications have been filed through the office bearers of the respective Registered Societies under which the Nursing Schools are to be established.

4. Before appreciating the facts asserted in the writ applications and counter affidavits filed on behalf of the State of Bihar, I must first take note of relevant provisions under the Act and the Rules, which have been framed by the State Government in exercise of power conferred under Section 17 of



the Act.

5. Sub-Section (8) of Section 2 of the Act defines *Anumati*/permission as permission to start Nurses training course in favour of an institutions, by the State Government. Recognition is also to be granted by the State Government as is evident from sub-Section (10) of Section 2 of the Act.

6. Rule 4 of the Rules lays down the procedure for grant of permission and recognition. Sub-Rule (I) of Rule 4 of the Act states that an institution shall not be given a permission to start a Nursing Schools till the said institution fulfills the requirements prescribed by the Indian Nursing Council in respect of the teaching faculty, amenities, Hostel and Hospital etc. Sub-Rule(II) of Rule 4 of the Act lays down the specific procedure for grant of permission which requires filing of an application before the Director-in-Chief, Health Services, Bihar along with:-

- (i) Proposed and available physical amenities in detail.
- (ii) Availability of fund.
- (iii) An undertaking to the effect that:-
 - (a) The institution is not going to be established for the purpose of profiteering.
 - (b) The Institution shall inform the State Government



immediately in respect of any change in the Management or the Governing Body of the Institution and its Bye-laws.

(c) All fees or donations or any money received from other sources shall be deposited in the account of the Nursing School, which will form the corpus of the Nursing Schools and shall be operated by two members of the Nursing Schools.

(d) In no case, number of students to be admitted shall be increased beyond the number of seats sanctioned by the State Government without prior permission of the State Government.

(e) The standard fixed under the Indian Nursing Act, 1947 and the Rules frames thereunder as well as the provision under the Rules shall apply to the said Nursing School.

(f) The Government shall have the jurisdiction to nominate :-

(i) three members of the rank not below the rank of Civil Surgeon as members of the Governing Body and the Managing Committee;

(ii) shall fix the procedure for appointment and conditions of service of teaching employees of the Nursing Schools;

(iii) the number of students to be admitted, the process of selection for appointment, fixation of fees



and provision for punishment in case of admission beyond the sanctioned strength.

6. The considerations which are to weigh for grant of permission to start GNM courses by the State Government have also been incorporated in the Rules which are as under:-

Following are the consideration for grant of permission to start GNM Course:-

(a) The availability of current Nursing School and requirement of new such Nursing School.

(b) Availability of trained Nurses and requirement of trained Nurses for the future.

(c). Other similar points worth consideration which may be proper for grant of permission to start the course.

7. Sub-Rule (III) of Rule 4 deals with the grant of recognition to such Nursing School, and contains, inter alia, the provision for inspection of the Nursing School to ensure that such Nursing School satisfies the requirement of maintenance of minimum standards in terms of faculties, physical amenities, Hostel and Hospital etc. It lays down the procedure for causing inspection. A close reading of Sub Rules (II) and (III) of Rules 4 leaves no scope of doubt that there is significant difference



between grant of permission to start a Nursing Course and grant of recognition. Recognition is to be granted only to such Nursing Courses for which there has been a permission to start the Course. The question of grant of recognition will arise only after permission to start a Nursing Course has been granted. The question of grant of affiliation by an examining body, i.e., a University or the Council arises only after recognition under Sub-Rule (III) of Rule 4 has been granted. Grant of affiliation has been dealt with in Sub-Rule (4) of Rule III of the Rules.

8. It is evident from close reading of Sub-Rules (II), (III) and (IV) of Rule 3 of the Rules that for a Nursing School, it is mandatory to first obtain permission to start a Nursing Course under Sub-Rule (II) and thereafter seek recognition under Sub-Rule (III). Once recognition has been granted, a Nursing School may apply for affiliation to the examining body, i.e., a University or Bihar Nurses Registration Council.

9. This is not in dispute that permission to start GNM Course has not been granted to these institutions. It is the case of these petitioners that the Directorate is insisting upon fulfilling all the requirements, which are requirements for grant of recognition under Sub-Rule (III) of Rule 4 of the Rules. On reading of pleadings brought on record, it is easily



noticeable that the respondents-State of Bihar is insisting the petitioners' Schools to fulfill the standards requisite for grant of recognition. It is evident that the Directorate has so far not considered the question of grant of permission to start the said courses within the meaning of Sub-Rule (II) of Rule 4 of the Rules.

10. At the time of hearing of these cases, initially the Rules as printed in the Book "Health Manual" published by Malhotra Bros, Second Edition-2012 Hotel Lane, Fraser Road, Patna was shown to me. The Court noticed apparent discrepancies in the printing of the said Rules inasmuch as "III" found occurring below Rule-6, which ought to have been somewhere after Sub-Rule (II) of Rule 4. In that background, the Court had directed learned counsel for the State of Bihar to bring on record a copy of the original notification through which the said Rules were notified. Accordingly, the said notification, dated 14.08.1997 notifying the Rules along with Rules has been brought on record by way of Annexure-D to the second supplementary counter affidavit filed in CWJC No. 17528 of 2017. The reference of the various provisions of the Rules as above, is based on the notification, which have been brought on record by way of Annexure-D to the said



supplementary counter affidavit. The rules as printed in the said Book are not at all reliable and should be taken noted of even for the future reference also.

11. In the facts and circumstances of the present case after having noticed the statutory provisions as above, I dispose of these writ applications with an observation that let the petitioners apply afresh for grant of permission to start GNM Course in the institutions in question strictly in terms of Sub-Rule (II) of Rule 4 of the Rules. As is evident, the petitioners shall be required to give the undertakings as contemplated under Sub-Rule (2) of the Rules. While considering the question of grant of permission to start the Course, the Director-in-Chief, Health Services, Government of Bihar will decide the question on the basis of considerations as prescribed under Sub-Rule (II) of Rule 4 itself, namely:-

(i) The availability of current Nursing School and requirement of new such Nursing School.

(ii) Availability of trained Nurses and requirement of trained Nurses for the future.

(iii) Other similar points worth consideration which may be proper for grant of permission to start the courses.

12. If the application for grant of permission is made



within four weeks from today, the concerned respondent shall be required to take a decision within a period of two months thereafter. Once the permission to start a course is accorded, the petitioners shall be at liberty to apply the recognition of the institutions. At this juncture, I only observe that if permission to start the course is granted and any application for recognition and affiliation is made thereafter, the authorities shall expedite the matter to ensure that all the formalities are completed before the commencement of next academic Session.

13. These writ applications are disposed of accordingly.

(Chakradhari Sharan Singh, J)

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