

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.59 of 2017

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1. Dr. Ajay Kumar, S/o Sri Jag Lal Choudhary, R/o Village- Sohsarai, P.S.- Sohsarai, District- Sheikhpura.
 2. Dr. K. Purushotam, Son of Late KNP Sinha, Resident of IIMS (Station Road), Sheikhpura for Ishant Institute of Medical Sciences, Sheikhpura, District- Sheikhpura.
 3. Dr. Ravi Ranjan Rajesh, S/o Late Harilal, Resident- Kathal Tola, Sohsarai, District- Nalanda, for Nishant Surgical Clinic, Sheikhpura, District- Sheikhpura.
 4. Dr. Ashok Kumar Singh, S/o Late Krishna Bahadur Singh, At+P.O.- Bajitpur, P.S.- Triveniganj, District- Supoul for Sri Ram Hospital and Research Centre, Sheikhpura, District- Sheikhpura.

.... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary.
2. The Principal Secretary, Department of Health, Government of Bihar, Patna.
3. The Principal Secretary, Department of Labour Resources, Government of Bihar, Patna.
4. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
5. The Secretary, Bihar State Human Rights Commission, Patna.
6. The Officer on Special Duty, Department of Health, Government of Bihar, Patna.
7. The District Magistrate, Sheikhpura.
8. The Deputy Development Commissioner -cum- District Kiosk Manager, Sheikhpura.
9. The Civil Surgeon, Sheikhpura.
10. The Additional Chief Medical Officer -cum- ADKM, Sheikhpura.
11. The Director, RSBY, Labour Resource Department, Government of Bihar, Patna.
12. The Assistant Registrar, Bihar State Human Rights Commission, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. P.K. Shahi, Sr. Advocate with
Mr. Subodh Kumar Jha, Advocate

For the Respondent/s : Mr. Nagendra Pd.Yadav, SC-23

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 17-10-2017

Heard Mr. P.K. Shahi, learned senior counsel appearing
on behalf of the petitioners along with Mr. Subodh Kumar Jha and
Mr. Nagendra Prasad Yadav, learned Standing Counsel No.23 for



the State.

The petitioners herein are aggrieved by the order bearing No.2144 (18) dated 25.11.2016 of the Officer On Special Duty, Health Department, Government of Bihar, Patna as contained in Annexure-1, whereby instructions have been issued to all the Civil Surgeons of Bihar to take action against such of the Surgeons who have removed the uterus of under aged girls and women. The advisory also directs them to suitably compensate such of the victims. It is proceeding on the basis of the said advisory that order has been passed by the Additional Chief Medical Officer –cum-ADKM, Sheikhpura, whereby the petitioners whose names appear at serial nos.2, 3, 1 and 4 respectively have been held guilty of such violation and in turn has been directed to pay compensation of Rs.50,000/- per patient by way of compensation.

While the petitioner nos.1 and 2 have been found guilty of committing such illegality in 8 cases each, the petitioner no.3 has been held guilty of 7 cases and the petitioner no.4 has been held guilty of 21 cases.

The short argument which was advanced by Mr. Shahi, learned senior counsel appearing for the petitioners to question the order passed by the Additional Chief Medical Officer –cum-ADKM, Sheikhpur bearing Memo No.451 dated 2.12.2016 is that



even if the same was issued in compliance of the advisory present at Annexure 1, at least the petitioners herein were entitled to a hearing to defend themselves. It is taking note of his submission that the order was ex-parte and in violation of the principles of natural justice that the State Counsel was directed to seek instruction on this issue vide order recorded on 4.9.2017 and the operation of the order of the Additional Chief Medical Officer cum- ADKM, Sheikhpura bearing Memo No.451 dated 2.12.2016 was stayed.

It is in compliance of the order of this Court that a supplementary counter affidavit has been filed by the Civil Surgeon, Sheikhpura and who in paragraph 6 thereof has admitted that an enquiry was held confidentially into the allegation and since secrecy had to be maintained that no information was given to the petitioners on the enquiry which is admitted in paragraph 7 of the supplementary counter affidavit. The plea so advanced by the petitioners of denial of opportunity is thus, admitted.

In my opinion, even if serious allegations were facing the petitioners as it transpires from the advisory issued by the Health Department dated 25.11.2016, the doctors facing such allegation were entitled to an opportunity to respond to the charges. The order under challenge becomes unsustainable because the Civil Surgeon, Sheikhpura fairly accepts in paragraph 6 of the supplementary



counter affidavit that an enquiry into the allegation was held in secrecy in the year 2012 i.e. much prior to the advisory issued by the Health Department. It is thus conceded that the enquiry was ex-parte. In my opinion even if any such kind of enquiry had been made by the respondents, the law requires that the petitioners be confronted with the findings of the enquiry and opportunity of hearing be given to them to contest the allegation. Such is not the position rather the position is admitted that it is on the basis of the enquiry so held and in view of the advisory issued by the Health Department subsequently at Annexure 1 that the penal order at Annexure 2 has been passed without opportunity of hearing to the petitioners.

It does not require any reference to judicial pronouncement to hold that the order passed by the Additional Chief Medical Officer –cum- ADKM, Sheikhpura dated 2.12.2016 is in violation of the principles of natural justice as the right vested in the petitioners to defend themselves against the alleged act, has been forfeited and confidentiality of the enquiry certainly cannot be any reason to deny these petitioners, the right so vested in them.

In the circumstances so discussed, the order of the Additional Chief Judicial Magistrate –cum- ADKM, Sheikhpura bearing Memo No.451 dated 2.12.2016 in so far as it concerns the



four petitioners is quashed and set aside. The matter is remitted to the Additional Chief Medical Officer –cum- ADKM, Sheikhpura who, if so advised, can proceed in the matter afresh against the petitioners and pass orders in accordance with law but only after giving them opportunity to defend themselves against the allegations facing them as present in the enquiry report which forms the foundation of such proceeding and copy of which should be supplied to them. It also goes without saying that the petitioners be also given an opportunity of hearing on the allegation.

With the observations aforementioned the writ petition is allowed.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02-1-2017
Transmission Date	NA

