

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15196 of 2016

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Shakuntala Nursing & Paramedical Institute (A. N. M. Training School), Daulatganj, Chapra through its Secretary, namely, Vidya, aged about 37 years, Daughter of Devendra Prasad, Resident of Mohalla-Daulatganj, P.O. +P.S.-Bhagwan Bazar, District-Chapra.

.... Petitioner/s

Versus

1. The State of Bihar, through 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, Health Services, Department of Health, Govt. of Bihar, New Secretariat, Patna.
4. The Joint Director, Health Services, Bihar, Patna.
5. Bihar Nurses Registration Council through its Registrar, P.H.E.D. Bhawan, Ist Floor, Bailey Road, Patna-15.
6. The Registrar, Bihar Nurses Registration Council, P.H.E.D. Bhawan, Ist Floor, Bailey Road, Patna-15.
7. Mr. R.D. Ranjan, Director-In-Chief (Nursing) , Health Services, Govt. of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Adv.

For the State : Mr. Chitranjan Sinha, PAAG-2
Mr. Niraj Kr. Sinha, AC to PAAG-2

For Respondent Nos. 5 & 6 : Mr. Prabhat Kr. Singh, Adv.

For Respondent No. 7 : Mr. Rajeev Roy, Adv.
: Mr. Makardhwaj Upadhyay, Adv.



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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL JUDGMENT & ORDER

Date: 27-04-2017

In the present writ application, filed under Article 226 of the Constitution of India, initially a direction to the respondents to grant permanent recognition from the Session 2016-17 to Shakuntala Nursing & Paramedical Institute (A.N.M. Training School), Daulatganj, Chapra, as per the provisions of Bihar and Orissa Nurses Registration Act, 1935 and the Nurses Training - Recognition, Affiliation and Conduct of Examination of School of Nursing Rules, 1997, for conducting Auxiliary Nursing and Midwifery course (*in short A.N.M.*), was sought for.

2. It is the case of the petitioner that the said Institute fulfilled the entire criteria for grant of such recognition. It is the further case of the petitioner that a duly constituted Inspecting Team was constituted for the purpose of grant of recognition in the year 2015 itself and the said Inspecting Team had submitted its report on 30.07.2015, recommending grant of recognition to the said Institute. The report of the Inspecting Team has been brought on record by way of Annexure-4 to the writ



application.

3. Since, no action was being taken despite there being favourable report, submitted on 30.07.2015, the present writ application came to be filed on 07.09.2016, seeking direction to the respondents to act in view of the said report of the Inspecting Team. The Court took serious note of the matter, when this case was taken up on 15.12.2016, over inaction on the part of the competent authority to consider the case for grant of recognition to the said Institute. Subsequent to passing of the said order, dated 15.12.2016, the Director-in-Chief (Nursing), Health Services, Govt. of Bihar, issued an order, dated 11.01.2017, rejecting the request for grant of recognition to the said Institute. The said order has been brought on record by way Annexure-B to the counter affidavit filed on behalf of the respondents-State of Bihar. The petitioner, whereafter, has challenged the said order, dated 11.01.2017, by seeking amendment in the present writ application, through I.A. No. 2911 of 2017.

4. I. A. No. 2911 of 2017 is allowed. The petitioner is permitted to challenge the legality of the said order, dated 11.01.2017.

5. I have heard learned counsel, appearing on behalf of the petitioner, learned Additional Principal



Additional Advocate General No.-2, appearing on behalf of the respondents-State of Bihar, learned counsel for respondent Nos. 5 and 6-Bihar Nurses Registration Council, as well as learned counsel representing respondent No. 7-the Director-in-Chief (Nursing), Health Services, Govt. of Bihar.

6. Learned counsel, appearing on behalf of the petitioner, has made two broad submissions, assailing the impugned order. He has submitted that the Director-in-Chief (Nursing), Health Services, Govt. of Bihar, did not duly consider the favourable inspecting report, submitted by a duly constituted Inspecting Team. He has submitted that the grounds, which are mentioned in the impugned order for refusal to grant recognition, were never intimated to the petitioner. He has also submitted that the impugned order, dated 11.01.2017, is in teeth of the Guidelines, framed by the Indian Nursing Council, New Delhi, as contained in letter, dated 16.06.2015, which has been brought on record by way of Annexure-11 to I.A. No. 2911 of 2017.

7. I find substance in the submission made on behalf of the petitioner that if there was a favourable report by the Inspecting Team for the purpose of grant of recognition, the competent authority, after taking a final decision, ought to have informed the Institute the grounds



which made the competent authority to differ with the enquiry report.

8. For the present, I am not entering into the controversy as to whether the Institute, in question, satisfies the standards prescribed for grant of recognition or whether on the basis of inspection report, the competent authority was under obligation to grant recognition. I am, however, wholly dissatisfied with the manner in which the earlier order, dated 11.01.2017, has been passed without duly taking note of favourable inspection report and without informing the Institute with respect to deficiencies which, according to the competent authority, the Institute was still having.

9. The impugned order, dated 11.01.2017, is, accordingly, quashed.

10. The competent authority is directed to pass an order afresh, taking into account the inspection report, after supplying the petitioner the reasons, if any, for refusal to grant recognition, mentioning the deficiencies which the Institute is still having.

11. The competent authority will be required to inform the Institute, the deficiencies, despite favourable report of the Inspecting Team, with particular reference to the Guidelines/Regulations, which mandate the



Institute to fulfill such requirements, which the Institute has failed to satisfy, within a period of ten (10) days the date of receipt/production of a copy of this order. The petitioner will be required to deal with the communication within a period of one (1) week after receipt of the notice. Final decision on the question of grant of recognition to the Institute, in question, will have to be taken by the competent authority before commencement of the next academic session.

12. It is observed that the competent authority will take into account the Guidelines, issued by the Indian Nursing Council, New Delhi, while taking any decision, which has been brought on record by way of Annexure-11 to I.A. No. 2911 of 2017.

13. Mr. Chitranjan Sinha, learned Additional Advocate General No. 2, appearing on behalf of the respondents-State of Bihar, has drawn my attention to a notification, issued by the Health Department, dated 15.02.2017, laying down standards for submission of proposal for grant of recognition to A.N.M. Training Schools. He has submitted that an Institute, not fulfilling the said standards, cannot be granted recognition.

14. Learned counsel, appearing on behalf of the petitioner, on the other hand, has submitted that his



case is not covered by the said notification, dated 15.02.2017, since the said notification relates to new proposal, whereas, his proposal is pending with the State Government for several years.

15. The competent authority shall take into account these aspects also while passing the order.

16. It is reiterated that my view that conduct of respondent No. 7, Dr. R.D. Ranjan, was *mala fide*, mentioned in the order, dated 20.04.2017, was only tentative and that observation should not prejudice the authorities in initiating departmental proceeding against him.

17. Regard may be had to the order, dated 20.04.2017, wherein, the Court found conduct of the Director-in-Chief (Nursing), Health Services, to be *mala fide*, though *prima facie*. This was because of the manner the file, in question, was handled. He had been restrained from functioning as such by the said order.

18. An interlocutory application has been filed on behalf of respondent No. 7, Dr. R.D. Ranjan, seeking recall of the order, dated 20.04.2017, to the extent it relates to restraining him from discharging the duties of Director-in-Chief (Nursing), Health Services, Govt. of Bihar.

19. A counter affidavit has been filed on



behalf of the Principal Secretary, Health Department, Govt. of Bihar. It has been stated in paragraphs 7, 8 and 9 as follows:-

"7. That at the outset, it is humbly submitted that after having knowledge about the order under compliance, the deponent (i.e. the Principal Secretary, Health Department, Govt. of Bihar) taking serious view, this matter was duly examined by himself threadbare on various aspects of the negligence on the part of the Director-in-Chief (Nursing), Health Services, Bihar and prima facie, finding him guilty of grave negligence on his part, decided to initiate departmental proceeding against him vide Health Department's Memo No. 418 (9) dated 25-04-2017 an explanation has been sought from Dr. R.D. Ranjan, Director-in-Chief (Nursing) Health Services, Bihar within fifteen days.

8. That it is humbly submitted that in compliance of Hon'ble Court order, Dr. R.D. Ranjan, Director-in-Chief (Nursing), Health Services, Bihar has been removed from this post



and Dr. Shashi Rani, Director-in-Chief (Disaster Management) has been given additional charge of Director-in-Chief (Nursing) vide Health Department's Memo No. 443 (5) dated 25-04-2017 issued under the signature of Director (Joint Secretary level), Health Department, Govt. of Bihar.

9. That it is further humbly submitted that during course of examination, the then Section Officer was also found involved in this case and thereafter, vide Health Department's Memo No 447 (5) dated 25-04-2017, a communication has also been sent to the Principal Secretary, General Administration Department, Govt. of Bihar with a request to initiate departmental proceeding against him under rule 43 (B) of the Bihar Pension Rule."

20. Mr. Rajeev Roy, learned counsel, appearing on behalf of respondent No. 7, has submitted that the impugned decision was not taken by him rather it was taken by the Principal Secretary himself. He has submitted that under the scheme of the Regulation, governing grant of



recognition to A.N.M. Institutes, the role of the Director-in-Chief (Nursing) is no more than a post-office. According to him, the Director-in-Chief is merely required to receive applications for grant of recognition and nothing else. He has, therefore, submitted that respondent No. 7 should not be solely held responsible for passing the impugned order or sitting tight over the matter for a long period. He has, accordingly, submitted that the order of this Court, dated 20.04.2017, to that limited extent be recalled.

21. The view, which I had expressed in the order, dated 20.04.2017, over the conduct of respondent No. 7, is *prima facie* and tentative. The Principal Secretary, Health Department, Govt. of Bihar, has been asked to examine the matter. He has examined the matter and has found grave negligence on the part of Director-in-Chief (Nursing) and, therefore, initiated disciplinary action against him.

22. In that view of the matter, the said order, dated 20.04.2017, need not be recalled.

23. It appears from the counter affidavit, filed on behalf of the Principal Secretary, Health Department, Govt. of Bihar, that some other person has been given additional charge of Director-in-Chief (Nursing). The decision, as regards the petitioner, shall be taken at



appropriate level, accordingly.

24. This application is, accordingly, allowed with the direction and observation as above.

(Chakradhari Sharan Singh, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18/05/2017
Transmission Date	

