

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10390 of 2017

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Dr. Basant Kumar Singh, Son of late Nitishwar Prasad Singh, resident of Raj Palace, Road No.3, Juran Chapra, Police Station Brahampura, District Muzaffarpur, at present Secretary, Raj A.N.M. Training School, Baban Bigha, Kanhauli, District-Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Health and Family Welfare, Government of Bihar, Patna.
3. The Director-in-Chief, Health Services, Bihar, Patna-Cum-President, Bihar Nurses Registration Council, Patna.
4. Bihar Nurses Registration Council, Vikash Bhawan, Patna through its Secretary-Cum-Registrar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. P.K. Shahi, Sr. Adv.
Mr. Ashok Kumar Singh, Adv.

For the State : Mr. Nagendra Pd. Yadav, SC-23

For the Respondent Nos. 3 & 4 : Mr. Prabhat Kr. Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT & ORDER

Date: 09-11-2017

An order, dated 28.06.2017, passed by the Director-in-Chief (Nursing), Health Services, Govt. of Bihar, is under



challenge in the present writ application. The said order has been passed in purported compliance of this Court's order, dated 19.04.2017, passed in CWJC No. 1499 of 2017, preferred by the present petitioner.

2. From the order, dated 19.04.2017, passed in CWJC No. 1499 of 2017, it appears that an order, dated 01.10.2016, passed by the same respondent, was under challenge, whereby, a proposal for extension of recognition to Raj ANM Training School had been refused. This Court set aside the order, dated 01.10.2016, on the ground of gross violation of principles of natural justice, inasmuch as the deficiencies reported by an inspecting team were never communicated to the petitioner. The Court also noticed that though a show-cause notice was given to the petitioner and the petitioner had replied to the said show-cause notice, the order, dated 01.10.2016, did not consider the petitioner's reply to the said show-cause notice. Accordingly, the Director-in-Chief (Nursing), Health Services, Govt. of Bihar, was directed to pass an order afresh on the question of grant of extension of recognition in favour of the institute, in question. The Court emphasized that while taking any decision in this regard, 'the competent authority shall be obliged to consider the show-cause



reply filed by the petitioner on 11.07.2016’.

3. It is in that background that the impugned order, dated 28.06.2017, has been passed.

4. Learned Senior Counsel, Mr. P.K. Shahi, appearing on behalf of the petitioner, assailing the impugned order, has submitted that the impugned order does not reflect any consideration of the reply to the show-cause notice made by the petitioner. The said reply has been brought on record by way of Annexure to the writ application.

5. Mr. Shahi has further submitted that there are five deficiencies, which have been pointed out by the impugned order, as the ground for refusal to extend the recognition. Out of five points mentioned, as regards the 1st and 5th point, it has been submitted that the petitioner was never asked to explain. He has also submitted that the impugned order suffers from the vice of vagueness and arbitrariness.

6. Learned counsel, appearing on behalf of the respondent-State of Bihar, has supported the impugned order and has contended that it is mentioned in the impugned order itself that the reply of the petitioner has been considered.

7. I have carefully gone through the order, dated 19.04.2017, passed by this Court earlier, reply of the petitioner



to show-cause notice and the impugned order, which has been passed in purported compliance of this Court's order. On the face of the impugned order, it appears that it does not at all reflect consideration of the reply to the show-cause notice filed by the petitioner, dated 11.07.2016. It does not disclose as to what stand was taken in respect of the concerned deficiencies in his reply. The impugned order just records the conclusions and no consideration at all.

8. As regards, the 1st point, mentioned in paragraph 4 of the impugned order, an additional submission has been made that had the petitioner been asked, he would have deposited the said amount of Rs. 50,000/- with the Registrar, State Nursing Council. This could not have been the ground for refusal of extension. It has been submitted on behalf of the petitioner that he is ready to deposit that much of amount, as indicated in the 1st point, within a period of one month from today.

9. As regards that aspect, I observe that if the amount, as contemplated under the concerned Resolution of the Indian Nursing Council, is deposited within the aforesaid time, the deficiencies, in respect of the 1st point, shall not be taken as the ground for refusal of recognition. So far as the other points



are concerned, apparently there is total non-consideration inasmuch as it neither discusses the stand taken by the petitioner in his reply to the show-cause notice nor there is consideration over the said stand taken.

10. The impugned order is, accordingly, set-aside.

11. Since, the Court is interfering with the order, dated 28.06.2017, for the second time, on the same ground of non-application of mind, non-consideration of the points taken in the reply to the show-cause notice and thereby violation of principles of natural justice, I consider it to be a fit case for imposition of cost.

12. I, accordingly, while quashing the impugned order, dated 28.06.2017, direct the Director-in-Chief (Nursing), Health Services, Govt. of Bihar, to pass an order afresh, taking into account specifically the reply of the petitioner in respect of various deficiencies pointed out in the said show-cause notice.

13. Once having not done so, despite order of this Court, a case for contempt of Court is made out. However, if this time the order is found to be not in conformity with the direction of this Court, the Court will have no other option, but to proceed against the concerned authorities for contempt of Court.



14. This application is, accordingly, allowed with a cost of Rs. 20,000/- to be paid by respondent No. 3, the Director-in-Chief (Nursing), Health Services, Govt. of Bihar, to the petitioner, within a period of one month from today.

(Chakradhari Sharan Singh, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	15.11.2017
Transmission Date	N/A

