

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21733 of 2013

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1. M/S Alok Surgical Hospital @ Surya Clinic Through Its Proprietor Mrs. Anupam Singh W/O Dr. Mithilesh Kumar Singh Situated At Mahua, P.S.- Mahua, District- Vaishali At Hajipur

.... Petitioner/s

Versus

1. The State Of Bihar Through Its Principal Secretary, Health And Family Welfare, Government Of Bihar, Patna
2. The State Health Society, Bihar Through Executive Director, Parivar Kalyan Bhawan, Sheikhpur, Patna
3. District Magistrate Cum Chairman, District Health Society, Vaishali At Hajipur
4. Civil Surgeon Cum Member Secretary, District Health Society, Vaishali At Hajipur
5. Civil Surgeon Cum President, Quality Assurance Committee, Vaishali At Hajipur
6. Additional Chief Medical Officer Cum Member Secretary, Quality Assurance Committee, Vaishali At Hajipur
7. Dr. Smt. Malti Sinha, Medical Officer, Sadar Hospital, Hajipur Cum Member Quality Assurance Committee, Vaishali At Hajipur
8. Dr. U.P.Verma, Medical Officer, Sadar Hospital, Hajipur Cum Member Quality Assurance Committee, Vaishali At Hajipur
9. Dr. Nagendra Prasad, Primary Medical Officer Cum Member Quality Assurance Committee, Vaishali At Hajipur
10. Shri Rituraj, N.G.O., Member Quality Assurance Committee, Vaishali At Hajipur
11. Smt. Sandhya Gautam, Member Quality Assurance Committee, Vaishali At Hajipur

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.21963 of 2013

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1. M/S Harideo Clinic Through Its Proprietor Dilip Kumar Singh S/O Dharamdeo Singh, Tinpulwa Chowk, P.S. Lalganj, District - Vaishali At Hajipur

.... Petitioner/s

Versus

1. The State Of Bihar Through Its Principal Secretary, Health And Family Welfare, Government Of Bihar, Patna
2. The State Health Society Bihar Through Its Executive Director, Parivar Kalyan Bhawan, Seikhpura, Patna
3. District Magistrate Cum Chairman, District Health Society, Vaishali At Hajipur
4. Civil Surgeon Cum Member Secretary, District Health Society, Vaishali At Hajipur
5. Civil Surgeon Cum President, Quality Assurance Committee, Vaishali At Hajipur



Hajipur

- 6. Additional Chief Medical Officer Cum Member Secretary Quality Assurance Committee, Vaishali At Hajipur
- 7. Dr. Smt. Malti Sinha, Medical Officer, Sadar Hospital, Hajipur Cum Member Quality Assurance Committee, Vaishali At Hajipur
- 8. Dr. U.P. Verma, Medical Officer, Sadar Hospital, Hajipur Cum Member Quality Assurance Committee, Vaishali At Hajipur
- 9. Dr. Nagendra Prasad, Primary Medical Officer Cum Member, Quality Assurance Committee, Vaishali At Hajipur
- 10. Shri Rituraj, N.G.O., Member, Quality Assurance Committee, Vaishali At Hajipur
- 11. Smt. Sandhaya Gautam, Member, Quality Assurance Committee, Vaishali At Hajipur

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.21864 of 2013

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- 1. M/S Kunal Hospital Through Its Properitor Binod Kumar Suman S/O Shri Ram Lakhan Singh Situated At Samastipur Road, Mahua, District- Vaishali At Hajipur.

.... Petitioner/s

Versus

- 1. The State Of Bihar Through Its Principal Secretary, Health And Family Welfare, Government Of Bihar, Patna.
- 2. The State Health Society Bihar Through Its Executive Director, Parivar Kalyan Bhawan, Seikhpura, Patna
- 3. District Magistrate- Cum- Chairman, District Health Society, Vaishali At Hajipur.
- 4. Civil Surgeon Cum Member Secretary, District Health Society Vaishali At Hajipur.
- 5. Civil Surgeon Cum President, Quality Assurance Committee, Vaishali At Hajipur.
- 6. Additional Chief Medical Officer Cum Member Secretary Quality Assurance Committee, Vaishali At Hajipur.
- 7. Dr. Smt. Malti Sinha, Medical Officer, Sadar Hospital, Hajipur Cum Member Quality Assurance Committee, Vaishali At Hajipur.
- 8. Dr. U.P. Verma, Medical Officer, Sadar Hospital, Hajipur, Cum Member Quality Assurance Committee, Vaishali At Hajipur
- 9. Dr. Nagendra Prasad, Primary Medical Officer Cum Member, Quality Assurance Committee, Vaishali At Hajipur.
- 10. Shri Rituraj, N.G.O. Member, Quality Assurance Committee, Vaishali At Hajipur.
- 11. Smt. Sandhaya Gautam, Member, Quality Assurance Committee, Vaishali At Hajipur.

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.21653 of 2013



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1. M/S Nandraj Nursing Home Through Its Proprietor Subodh Kumar Yadav S/O Nandlal Prasad Yadav Situated At- Tinpulwa Chowk, Lalganj, Vaishali

.... Petitioner/s

Versus

1. The State Of Bihar Through Its Principal Secretary, Health And Family Welfare, Government Of Bihar, Patna
2. The State Health Society Through Its Executive Director Parivar Kalyan Bhawan, Sheikhpur, Patna
3. District Magistrate Cum Chairman, District Health Society, Vaishali At Hajipur
4. Civil Surgeon Cum Member Secretary, District Health Society, Vaishali At Hajipur
5. Civil Surgeon Cum President, Quality Assurance Committee, Vaishali At Hajipur
6. Additional Chief Medical Officer Cum Member Secretary, Quality Assurance Committee, Vaishali At Hajipur
7. Dr. Smt. Malti Sinha, Medical Officer, Sadar Hospital, Hajipur Cum Member Quality Assurance Committee, Vaishali At Hajipur
8. Dr. U.P.Verma, Medical Officer, Sadar Hospital, Hajipur Cum Member Quality Assurance Committee, Vaishali At Hajipur
9. Dr. Nagendra Prasad, Primary Medical Officer Cum Member Quality Assurance Committee, Vaishali At Hajipur
10. Shri Rituraj, N.G.O., Member Quality Assurance Committee, Vaishali At Hajipur
11. Smt. Sandhya Gautam, Member Quality Assurance Committee, Vaishali At Hajipur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anurag Saurav

For the Respondent No. 2 : Mr. K.K. Sinha
Mr. Shashi Shekhar

For the State : Mr. Kinkar Kumar S.C. -9
Mr. Sajid Salim Khan, S.C.-25
Mr. Upendra Pratap Sinha, A.C. to S.C.-9
Mr. R.P.N. Tiwari, A.C. to S.C.-25

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

3 30-10-2017 Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State. Learned counsel for the State Health Society is also present.



The present writ applications have been filed for quashing the letter bearing No. DHS/907/12 dated 20.10.2012 issued by the Civil Surgeon-cum-Member Secretary, District Health Society, Vaishali, by which the aforementioned functionaries has rejected the claim of making payment to the petitioners on the ground that the Civil Surgeon-cum-Chief Medical Officer was not authorized to constitute the Quality Assurance Committee who had inspected and recommended the accreditation of the nursing homes for conducting delivery and family planning operations under the Janani Bal Suraksha Yojana Scheme and the District Magistrate was the authorized person to constitute and chair the Quality Assurance Committee for recommending such accreditations.

Learned counsel appearing on behalf of the petitioners submits that earlier the petitioners had been issued letters of accreditation and they had performed and conducted such operations under the authority granted to them by means of Annexure-5 and, thereafter, on demand being made by them for payment of dues for conducting such operations, the same has been denied to them. It is further contended by learned counsel for the petitioners that earlier the matter had come before this Court in C.W.J.C. No. 18226 of 2009 and in the aforesaid writ



application, the respondents authority appeared and filed counter affidavit and in paragraph No. 15 of the counter affidavit which was common to all these petitioners, the respondents did not deny the claim of the petitioners for payments which is quoted hereunder for ready reference:-

“That the averment made in paragraph no. 27 of the writ application, it is stated that there is an error in calculation of the persons operated by the petitioner no. 4 it may be read of 648 persons and amount may read as of Rs. 9,72,000/- instead of 973500/-.”

On the basis of such submissions, the writ application was disposed of on 24.11.2011 with a liberty to the petitioner to approach the Civil Surgeon-cum-Member Secretary, District Health Society, Vaishali along with an application giving the details of the claims and interests which was disposed of in the following terms:-

“Considering the averments made by learned counsel for the parties and the materials on record, this writ petition is disposed of with a liberty to the petitioner to approach the Civil Surgeon-cum-Member Secretary, District Health Society, Vaishali along with an application giving the details of his claims and interest. If such an application is filed by the petitioner within fifteen days from today along with a copy of this order, the said authority shall consider the same in accordance with law and shall decide it by a speaking order within



three months thereafter and if any amount or interest is found admitted and payable it should be paid to the petitioner immediately thereafter. However, if any amount or interest is not admitted and payable in the said order, the petitioner will be at liberty to challenge the same before an appropriate forum.

It was thus evident from the order that another direction had been issued to the Civil Surgeon-cum-Member Secretary, District Health Society to look into the issue and decide their cases and make payments within three months thereafter and if any amount or interest is found admitted and payable, it should be paid to the petitioner immediately thereafter.

The impugned orders which are here in these writ applications, however, show no application of mind in the light of the directions issued by this Court. It is further evident that at the earlier stage, the State has not contended that the District Magistrate was the person duly authorized for the said process. The accreditation, admittedly, had been granted by the Civil Surgeon-cum-Member Secretary, District Health Society, Vaishali and, thus, the matter was sent back to him for re-consideration and payment in the light of the counter affidavit filed by the State.

In the present impugned orders which have been assailed in these writ applications, the stand of the State is that



since the Civil Surgeon was not authorized to chair the Quality Assurance Committee, any order of accreditation issued in favour of the petitioners' claims was wholly illegal and, therefore, any operations conducted by them could not be considered to be legal and could not authorize them for receipt of any payments for such operations conducted by them. The counter affidavit which has been filed clearly indicates and endorses the said view.

On the last occasion, considering the counter affidavit which had been filed earlier, this Court had noticed that while disposing of the claims of the petitioner, no consideration had been given by the Civil Surgeon or any enquiry had been conducted by the said authorities to consider as to whether the petitioners were entitled to receive any payment or not. The only consideration which had been accorded and was stated in the impugned order was that, they were not competent to run such clinics as they were lacking in Infrastructure. Thus, clearly the impugned order did not indicate that the petitioners' payments could be made or not or whether they had conducted any such operations. There is also no answer in the present counter affidavit filed today as to whether this aspect has been considered by them. The earlier query made by this Court still remains to be answered which clearly indicates that they have no explanation to offer.



Having considered at length the entire issues, it appears that there was an admission by the State that the petitioners' hospitals have, in fact, conducted the operations but presently it has been contended that the accreditations to them were not in the proper order. Even so there is nothing on record in the order of accreditation to show that the Civil Surgeon was not authorized at that point of time to grant such letters of accreditation.

So far as deposit of bank guarantee is to be considered, the letter itself indicates that the amounts were to be determined and could be modified as per the discretion of the Civil Surgeon himself. Furthermore, it appears that the petitioners started work and conducted operations till the time the operation was stopped by the subsequent letter which was the impugned letter in the earlier writ application and which has already been set aside.

The present impugned orders indicates that the clinics were not properly equipped is a matter which is not under issue in the present application and has also not been challenged by the petitioners. The only issue which is to be resolved here is as to whether the petitioners are entitled to payment for the operations that they had conducted in pursuance of Annexure-5.



It appears from the earlier counter affidavit that such a fact has not been denied by them and at this stage no further enquiry can be conducted to verify its veracity after such a considerable length of time. Thus, the only viable option which remains is to accept the statement made by the State earlier and issue appropriate directions for making payments to the Petitioners' Nursing Homes in accordance with admissions made by the State.

It is made clear that the matter has remained pending for a considerable length of time i.e., from 2008 till 2017 and the considerable amount of money of each of the Nursing Homes has remained blocked at the hands of the State which has caused them substantial loss. Thus, in accordance with earlier direction by this Court further directions are hereby issued to the Respondents that the payments which are due to the petitioners in each of the writ applications shall be calculated and they have to be paid along with due interest from the date the said amounts became due till the date of actual payment at the relevant bank rates in the respective years. The said payments shall be released in favour of the respective petitioners within a period of three months from the date of receipt/production of a copy of this order.

With the aforementioned directions, the writ



applications stand allowed.

(Anjana Mishra, J)

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