

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10826 of 2017

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Maa Tara Foundation through its trustee Sri Alok Kumar, S/o- Sri Mithilesh Kumar, R/o- Mohalla- Shivpuri, Road No. 1, P.S.- Shastri Nagar, Patna- 800023.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Health Department, Govt. of Bihar, Patna.
3. The Director in Chief, Health Department, Govt. of Bihar, Patna.
4. The Joint Director, Health Department, Govt. of Bihar, Patna.
5. Bihar Nurses Registration Council through its Registrar, P.H.E.D. Bhawan, 1st Floor, Bailey Road, Patna.
6. The Registrar, Bihar Nurses Registration Council, P.H.E.D. Bhawan, 1st Floor, Bailey Road, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siddhartha Prasad Mr.Kaushtubh Mr. Om Prakash Kumar Mr Sunit
For the State	:	Mr. Niraj Kumar, AC to G.A.10

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

6 15-05-2018 Following are the relief(s) sought for on behalf of the petitioner.

“For commanding the respondents
to grant the No Objection Certificate
(NOC/Temporary Registration in favour of
Anjula Institute of Nursing Sciences and
Research, an institute established by the
petitioner in Patna for imparting Auxiliary



Nurse and Midwife course, as per the provisions contained in Bihar and Orissa Nurses Registration Act, 1935, and Nurses Training-Recognition, Affiliation and Conduct of Examination of School of Nursing Rules, 1997, since the said Institution fulfils each and every requirement, as laid down by the Indian Nurses Council for grant of Such No Objection Certificate (NOC)/Temporary Registration.

For issuance of appropriate writ(s)/order(s)/ direction(s) holding that the notification dated 15.02.2017 issued by the Health Department, Govt. of Bihar laying down fee and land requirement for establishing Nurses New Training School/College in the State of Bihar does not apply in the case of Anjula Institute of Nursing Sciences and Research”

2. The petitioner claims that it is a charitable public trust created under the Indian Trust Act, 1882, duly registered with the State Government of Bihar. The trust is said to have established a Nursing Institute in the name of Anjula Institute of Nursing Sciences and Research in Gola Road, Patna. An



application for issuance of No Objection Certificate/Temporary Registration for the said Institute was made on 16.07.2012. It is the grievance of the petitioner that since nothing tangible was done, he had to approach this Court by filing a writ application, being CWJC No. 5984 of 2013, which came to be disposed of on 11.04.2013, in the light of the order of this Court dated 20.03.2013, passed in CWJC No.661 of 2013. Subsequently, for the purpose of taking a decision on the petitioner's application, a four-member committee was constituted. An inspection was conducted on 02.04.2014. Certain discrepancies were pointed out and the institute was directed to make good the same. The petitioner claims that the required documents were made available to the competent authority on 27.6.2014. Thereafter, through a letter dated 09.10.2014, the petitioner was asked by the Director-in-chief, Health Services, Govt. of Bihar, to make available the certified copy of the lease agreement in respect of the building for running training centre and hostel after getting them registered. The petitioner sought for exemption from filing of the copy of the registered lease agreement. The petitioner, through a letter dated 29.05.2015, requested the respondents to grant permission and assured that once permanent affiliation was granted, the lease deed shall be got registered since



registration of rental agreement had a huge financial implication. It is further case of the petitioner that recently, through notification dated 15.02.2017, issued by the Health Department, Govt. of Bihar, a new standard has been laid down in respect of payment of application fee and other requirements. By the said notification dated 15.02.2017, an institution seeking no objection certificate is required to pay fee as mentioned thereunder. In addition, for running ANM Training School, 80 decimal of land has been prescribed as the requirement for grant of recognition/no objection.

3. This is to be noted that during the pendency of the application, the petitioner's claim came to be rejected by an order issued bearing memo no.41(6) dated 19.01.2018. The petitioner has been given liberty to file a fresh application, along with required documents. The said decision dated 19.01.2018, is sought to be challenged by seeking an amendment through I.A. No. 1196 of 2018. Considering the averments made therein, prayer for seeking amendment is allowed and, accordingly, the petitioner is granted liberty to question the legality of the order dated 19,01.2018, rejecting the petitioner's application for grant of permission.

4. I.A. No. 1196 is allowed.



5. A counter affidavit has been filed on behalf of the respondent-State of Bihar.

6. It is the case of the respondents that the petitioner was asked to submit registered rent agreement of training building as well as hostel building, so that further action could be taken. The Institute, vide letter dated 29.05.2015, had sought exemption from submission of the aforesaid documents. It is the case of the respondent-State of Bihar, based on the notification dated 15.02.2017, that minimum standard in respect of the land was determined by the Department, which requirement the petitioner does not fulfil.

7. From the stand taken on behalf of the respondent-State of Bihar in the counter affidavit, it transpires that the main ground for rejection of the petitioner's application is absence of registered lease agreement for training building and the hostel building.

8. Mr. Sidhdhartha Prasad, learned counsel, appearing on behalf of the petitioner, has submitted that, for the first time, in the year 2017, the notification dated 15.02.2017, came to be issued providing for 80 decimal of land as a requirement for running A.N.M. Institute. He has submitted that there was no such requirement prior to issuance of the said notification dated



15.02.2017, either under the Act or under Regulations framed thereunder. He contends that rejection of the application, in the background of these facts, are sustainable.

9. Mr. Niraj Kumar, AC to GP-10, on the other hand, opposing the writ petition, has contended that the essential requirement of having 80 decimal of land could not be fulfilled by the petitioner inasmuch as no lease agreement in respect of the area of the land, as required for the purpose of establishing an ANM Institute, could be presented by the petitioner. It is accordingly his plea that there is no illegality in the impugned order dated 19.01.2018.

10. This is to be noted that when the matter was taken up on 08.05.2018, the Court had directed the State-respondent to file an affidavit stating the source of power under which the notification no.116(6) dated 15.02.2017 had been issued by the Health Department. In response to the said order, a supplementary counter affidavit has been filed, stating in paragraph 6 that it was decided in larger public interest to prescribe the said requirement. It is also stated that the said notification dated 15.02.2017 has been issued under the signature of the Officer-on-special duty, Health Department, Govt. of Bihar, after obtaining necessary approval of the



Hon'ble Minister of the Department.

11. It is evident from the supplementary counter affidavit that except that a decision has been taken to provide for the said requirement, neither a reference has been made to any statutory provision under which the said decision has been taken, nor the basis for reaching such decision is being shown.

12. In case of **Yamuna Institute of Nursing Vs. State of Bihar**(decision dated 20.12.2017 in CWJC No. 17528 of 2017 and another analogous case), this Court had the occasion to deal with various provisions of the Bihar and Orissa Nurses Registration Act, 1935, and the Nurses Training-Recognition, Affiliation and Conduct of Examination of School of Nursing Rules, 1997, which govern General Nursing & Midwifery (GNM). Various provisions of the Act and Rules have been dealt with in paragraphs 5 and 6 of the said decision which read thus:-

“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”.



13. It has been held that there is significant difference between grant of recognition to Nursing School under Rule 4 of the Rule and grant of permission to establish the same. In paragraphs 7 and 8 of the said decision in case of **Yamuna Institute of Nursing**, this Court has held as under:-

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 Rule 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.”

14. In the present case, admittedly, no permission to start the course has been granted to the Institution. The case of the Institution has to be considered for grant of permission only at this stage, as stipulated under Sub-Rule (II) of Rule 4 of the Rules. The State, for the purpose of grant of permission under the said Rule, cannot insist on compliance of the requirement for grant of recognition under Sub-Rule (III). The considerations for grant of recognition have been specifically provided under Sub-Rule (II) of Rule 4 which has already been taken note of in case of **Yamuna Institute of Nursing** (supra). The impugned order dated 19.01.2018 requires interference in the light of the law laid down by this Court in the case of **Yamuna Institute of Nursing** (supra).

15. In the facts and circumstances of the case, as



noted above, I dispose of this writ application with an observation that let the petitioner apply afresh for grant of permission to start the course in the institution, in terms of Sub-Rule (II) of Rule 4 of the Rules. The institution will be required to give an undertaking, as contemplated under Sub-Rule (II) of Rule 4 of the Rules. While considering the question of grant of permission to start course, the Director-in-chief, Health Services, Govt. of Bihar, will decide the question on the basis of consideration as prescribed under Sub-Rule (II) of Rule 4 only, which has been taken note of in paragraph 11 of the decision in the case of **Yamuna Institute of Nursing** (supra).

16. It is directed that, 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 the course is granted, the petitioner will be at liberty to apply for recognition of the institution. If the permission to start the course is granted and any application for recognition and affiliation is made thereafter, the authorities should expedite the matter to ensure that the formalities are completed expeditiously.

17. This writ application is allowed with the direction



and observation as above.

(Chakradhari Sharan Singh, J)

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