

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18351 of 2016

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Dr. Shyam Bahadur Singh, aged about 80 years, Son of late Rash Bihari Singh, resident of Patliputra Path, Rajendra Nagar, P.O. Rajenda Nagar, P.S.- Kadam Kuan, Town & District-Patna. At present, Secretary, Shanti Institute of Health Education, Patliputra Path, Rajendra Nagar, Patna-800016.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department Health & Medical Education, Vikas Bhavan, Patna.
2. Direction-in-Chief, Health Services, Bihar, Vikas Bhavan, Patna.
3. Bihar Nurses Registration Council, Vikas Bhavan, Patna through its Secretary-cum-Registrar.
4. Secretary, Indian Nursing Council, 8th Floor, NBCC Centre, Plot No.-2, Community Centre, Okhla Phase-I, New Delhi-1100020.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Adv.
Mr. Satya Prakash, Adv.
Mr. Arun Kumar, Adv.

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

For the Respondent No.3 : Mr. Prabhat Kumar Singh, Adv.

For the Respondent No.4 : Mr. Ansul, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT & ORDER



Date: 11-01-2018

Heard the parties.

2. Initially the petitioner had approached this Court, seeking quashing of the orders, dated 30.09.2016, 21.10.2016 and 24.10.2016, issued by the Secretary, Indian Nursing Council, New Delhi (respondent No. 4), whereby, the institution (*Shanti Institute of Health Education*) of which the petitioner claims to be the Secretary was asked to submit Government order for permission to run nursing programme for the purpose of affiliation for the academic year 2015-16. The said impugned documents contemplated an action of withdrawal of affiliation of the institution, in question, without any further notice.

3. It is the case of the petitioner that the institution has been established by Shanti Institute of Health Education & Social Welfare Trust for imparting A.N.M. course in March, 2010.

4. In view of the certain developments during the pendency of this application, interlocutory applications have been filed, seeking amendments, being I.A. No. 3890 of 2017 and I.A. No. 7078 of 2017. An order of the Directorate of Health, Government of Bihar, dated 25.10.2016, is sought to be assailed by seeking amendment, whereby, the State



Government has taken a decision to cancel recognition for running A.N.M. course in the institution in question. Further, consequent action of the Indian Nursing Council (*in short 'the Council'*) of issuing an order, dated 13.07.2017, withdrawing the essentiality certificate of the petitioner's institution, is being sought to be assailed by seeking amendment as well through I.A. No. 7078 of 2017.

5. In view of the nature of controversy involved, I.A. No. 3890 of 2017 and I.A. No. 7078 of 2017 are allowed and, accordingly, the petitioner is permitted to assail the impugned order, dated 25.10.2016 (Annexure-14 to I.A. No. 3890 of 2017), and impugned order, dated 13.07.2017 (Annexure-16 to I.A. No. 7078 of 2017), in the present proceeding.

6. Certain facts are not at all in dispute. The institution, in question, was granted recognition by the State Government, through memo No. 781(6), dated 03.09.2010. It is the case of the petitioner that experts of the Council had inspected the institution and re-inspected the same in the year 2012 and, accordingly, the institution was granted affiliation by permitting to admit thirty (30) students for the academic sessions 2012-13, 2013-14 and 2014-15.

7. Thereafter, the petitioner was taking steps for extension of the affiliation, which was being delayed for one



reason or the other. In that process, the said letters, dated 30.09.2016, 21.10.2016 and 24.10.2016, came to be issued by the Council, which have been assailed in the present writ application.

8. As has been noted above, subsequent developments took place. The State Government constituted an inspecting team for inspection of nursing institutions, on 01.03.2016. By the said order, dated 01.03.2016, the State Government constituted eight inspection teams for the purpose of surprise inspection of private nursing training institutions in the State of Bihar. The inspecting team No. 2, consisting of (i) one Dr. Umashankar Pathak, Director, Health Services, Bihar, Patna, and (ii) Srimati Shyama Kumari, Principal, G.N.M. School, P.M.C.H., Patna, conducted inspection of the college, submitted its report, based on which a show-cause notice was issued to the petitioner in his capacity as Secretary of the institution, pointing out altogether 8 (eight) deficiencies. It was mentioned in the said show-cause notice that if the petitioner failed to submit his reply, recognition of the institution shall stand cancelled. This is also not in dispute that the petitioner submitted his reply to the said show-cause notice thereafter.

9. Considering the report of the said inspecting team No. 2 and the petitioner's reply to the show-cause



notice, impugned decision, dated 25.10.2016, has been passed, cancelling the so-called recognition granted to the petitioner to run A.N.M. course. It is the consequence of the said decision to cancel the recognition, dated 25.10.2016, that subsequent letter, dated 13.07.2017, has been issued by the Council, asking the institution to transfer the students to nearby Indian Nursing Council recognized institutions.

10. Counter affidavits have been filed on behalf of the State of Bihar and the Council.

11. What has emerged from the materials available on record that the petitioner was pursuing his case for grant of extension of recognition for the academic session 2015-16 and onwards. The grant of recognition is admittedly governed by Bihar and Orissa Nurses Registration Act, 1935 (*in short 'the Act'*). Section 17 of the said Act, confers power on the State Government to frame Rules. In exercise of power under the said provision, Rules have been framed, known as Nurses Training Recognition, Affiliation and Conduct of Examinations of School of Nursing Rules, 1997 (*in short 'the Rules'*). Rule 4 of the said Rules deals with the procedure for grant of permission to establish a nursing training institution and recognition to such institution.

12. I am of the view, in the facts and circumstances of the case, that there should be no



controversy on the question of grant of permission for establishing the institutions, since the institutions had been granted recognition by the State Government for the previous sessions, as has been indicated above. What was lying before the respondents was apparently an application for grant of recognition for subsequent academic sessions. The recognition of nursing institution is governed by sub-Rule III of Rules 4 of the Rules. Clause (Ga) of sub-Rule III of Rules 4 of the Rules lays down the constitution of an inspection team, according to which, following should be the constitution of an inspecting team:-

(i) An officer of the Directorate, not below the rank of Deputy Director of Health;

(ii) One expert of the rank of Associate Professor of Obstetrics and Gynecology and

(iii) Two experts, who should be the teachers of Government Nursing Training School, with requisite qualification. *(Total four)*

13. It is evident from the records that the constitution of the inspecting team was not in accordance with the said provision of the Rules.

14. Learned Counsel, appearing on behalf of the



petitioner, has drawn my attention to a decision of this Court, dated 19.04.2017, rendered in C.W.J.C. No. 1499 of 2017 (***Dr. Basant Kumar Singh @ Basant Kumar Singh Vs. The State of Bihar & Ors.***), to contend that in the similar facts and circumstances, the Court interfered with the decision of the State Government, being in breach of the statutory provisions. He has also submitted that the impugned decision of the respondents is evidently in breach of the principles of natural justice inasmuch as the impugned decision does not discuss the show-cause reply filed on behalf of the petitioner in response to the notice issued.

15. In my opinion, learned Counsel, appearing on behalf of the petitioner, is correct in his submission that the constitution of the inspecting team, which had conducted the inspection and whose report is the basis for taking the impugned decision, is in teeth of the statutory Rules, particularly Rule 4-III-(Ga) of the Rules. If the respondents-State of Bihar intended to take any decision on the question of withdrawal of affiliation or grant of extension of recognition, it could have constituted an inspection team in accordance with the provisions of Clause (Ga) of sub-Rule III of Rule 4 of the Rules. The two-member committee, constituted by the State Government, was, apparently, not in accordance with the provisions of the Rules. Though, there is



no bar for the State Government to seek report and gather information in respect of an institution to ascertain whether the institution is being run in accordance with the statutory provisions. However, the information received through any mode, other than what is prescribed in the Statute, can at the maximum be the basis for initiating action under the Statute. Based on the said report of the inspection team, it was open for the State Government to constitute an inspection team in accordance with the provisions of the Rules for the purpose of taking any decision under the provisions of the Rules. Since, the decisions impugned are based on inspection report of an inspection committee, not duly constituted, the decisions based purely on such report require interference.

16. Further, learned Counsel, appearing on behalf of the petitioner, is also correct in his submission that the respondents ought to have indicated in the order the explanation given by the petitioner in response and ought to have recorded as to why such explanation was not acceptable.

17. I do not find any discussion on the petitioner's show-cause reply in the impugned decision of the State Government of Bihar, as contained in the order, dated 25.10.2016. The impugned order, dated 25.10.2016, is, accordingly, quashed. All actions taken in pursuance of the



said order, dated 25.10.2016, being illegal, are also set-aside.

18. This application is disposed of with following direction to the Director-in-Chief (Nursing), Health Services, Government of Bihar, Patna:-

(i) To constitute an inspecting team, strictly in accordance with Rule 4-III-(Ga) of the Rules, within a period of one (1) month from the date of receipt/production of a copy of this order, for the purpose of inspection of the institution, in question, and get the institution inspected within a period of one (1) month thereafter; and

(ii) Based on the inspection, the inspecting team will be required to submit its report within a period of one (1) week from the date of inspection, so conducted.

19. The Director-in-Chief (Nursing), Health Services, Government of Bihar, Patna, shall be required to ensure that a decision is taken, strictly in accordance with the provisions of the Rules, based on the report of the said inspecting team, on the question of grant of extension of recognition of the institution in question.

20. If the inspecting team points out any deficiency (ies), the Director-in-Chief (Nursing), Health Services, Government of Bihar, Patna, shall inform the institution and if permissible, allow the institution to remove such deficiency (ies) within a reasonable period.



21. With the above observations and directions,
the application stands disposed of.

(Chakradhari Sharan Singh, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	16.01.2018
Transmission Date	N/A

