

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.2001 of 2016

In

Civil Writ Jurisdiction Case No. 4905 of 2015

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Shishir Kumar S/o Late Sita Ram Singh resident of Village + P.O. -
Fathapur, P.S. - Sheohar, Distt. - Sheohar.

.... Petitioner

Versus

1. The State of Bihar.
2. Mr. R.K.Mahajan, the Principal Secretary, Deptt. of Health, Govt. of Bihar, Patna.
3. Mr. Amrit Lal Meena, The Principal Secretary, Building Construction Deptt., Govt. of Bihar, Patna.
4. Mr. Shekhar Chandra Verma, The Joint Secretary, Deptt. of Health, Govt. of Bihar, Patna.
5. Mr. Deo Chandra Chaudhary, The Under Secretary, Deptt. of Health, Govt. of Bihar, Patna.
6. Mr. Raj Kumar, The District Magistrate, Sheohar.
7. Mr. Bishambhar Thakur, The Civil-Surgeon-cum-Chief Medical Officer, Shekhar.
8. Mr. Hari Gopal Singh, The Executive Engineer, Building Division, Sheohar.

.... Opposite parties

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with

Miscellaneous Jurisdiction Case No.2821 of 2018

IN

Miscellaneous Jurisdiction Case No. 2001 of 2016

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Shishir Kumar, S/o Late Sita Ram Singh, resident of Village- Fatahpur,
P.S.- Sheohar, District- Sheohar.

.... Petitioner

Versus

1. The State of Bihar
2. Mr. R.K. Mahajan, the Principal Secretary, Deptt. of Health, Govt. of Bihar, Patna.
3. Mr. Amrit Lal Meena, The Principal Secretary, Building Construction Deptt., Govt. of Bihar, Patna.
4. Mr. Shekhar Chandra Verma, The Joint Secretariat, Deptt. of Health, Govt. of Bihar, Patna.
5. Mr. Deo Chandra Chaudhary, The Under Secretary, Deptt. of Health, Govt. of Bihar, Patna.
6. Mr. Raj Kumar, The District Magistrate, Sheohar.
7. Mr. Bishambhar Thakur, The Civil- Surgeon-Cum- Chief Medical Officer, Sheohar.
8. Mr. Hari Gopal Singh, The Executive Engineer, Building Division, Sheohar.



.... Opposite parties

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Appearance :

(In MJC No.2001 of 2016)

For the Petitioner/s : Mr. Sunil Kumar Verma, Adv.
Mr. Suman Kumar Verma, Adv.
For the Respondent/s : Mr. Anil Kumar Verma, AC to AAG 9
For the Intervener : Mr. Dinu Kumar, Adv.
Ms. Ritika Rani, Adv.
Ms. Kumari Neha, Adv.
Mr. Vijay Vimal, Adv.

(In MJC No.2821 of 2018)

For the Petitioner/s : Mr. Sunil Kumar Verma, Adv.
Mr. Anish Kumar, Adv.
For the Respondent/s : Mr. Anil Kumar Verma, AC to AAG 9
For the Intervener : Mr. Dinu Kumar, Adv.
Ms. Ritika Rani, Adv.
Ms. Kumari Neha, Adv.
Mr. Vijay Vimal, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

15 23-08-2018

Re: MJC No. 2821 of 2018

This miscellaneous application has been filed praying for recall of our order dated 9.07.2018, inter alia, on grounds that in the process of implementation thereof, the functioning of Saroja Sitaram Government Sadar Hospital is getting affected.

Having considered the submission of Mr. Sunil Kumar Verma, learned Counsel for the petitioner and learned Counsel for the State, we are of the opinion that in case the State Government has chosen to misinterpret our order passed on 09.07.2018, the pending contempt application can well take care of that and for



such purpose, there is no occasion for the petitioner to seek recall of the order.

Resultantly, this recall application is held devoid of merit and is dismissed accordingly.

Re: MJC No. 2001 of 2016

This contempt application arises from an order passed in CWJC No. 4905/2015, whereby taking note of the complaint made by the petitioner, who claims to be the donor of the land on which the new superspecialty having the status of the Sadar hospital was constructed, regarding the laid back attitude of the authorities in the Health Department in ensuring functioning of the hospital, it is on assurance given of proper action by the respondents, the writ petition was disposed.

The pleadings on record would show that it is following an advertisement issued by the State Government in its Health Department bearing no. 1/2005-2006 expressing intent for construction of 100 bed Sadar hospital at Sheohar along with similar proposals relating to the District of Araria and Kishanganj, that the petitioner offered land at Sheohar with a stipulation that the hospital be named after his parents. A decision was taken by the Health Department to accept such prayer of the donor as circulated vide Memo No. 315 dated 28.03.2008, a copy of which



has also been enclosed at Annexure-F to I.A. No. 4643/2018 filed by one of the local residents of the District of Sheohar raising voice against the attempted closure of the existing Sadar hospital on the commissioning of the new hospital.

As a result of such decision the new Sadar Hospital came to be known as Saroja Sitaram Rajkiya Sadar Hospital. Up to this level, there is no issue. In fact even when the contempt application was filed, there was no issue arising because the functioning of the existing Sadar hospital was not being disturbed. In fact a conscious decision was taken at the level of the State Government in its Health Department to keep the old hospital functional despite the construction of the new Sadar Hospital, as manifest from the letter dated 19.04.2017 placed on record at Annexure-G to the interlocutory application of the intervener. Paragraph-1 of the letter reads thus:

“निदेशानुसार उपर्युक्त विषयक, जिला पदाधिकारी, शिवहर के प्रासांगिक पत्र के माध्यम से विभिन्न जन प्रतिनिधियों से प्राप्त जन आकांक्षाओं की सूचना के आलोक में सम्यक विचारोपरान्त शिवहर जिला स्थित पुराने अस्पताल को चालू रखते हुए नये निर्माणाधीन सरोजा सीताराम अस्पताल को सदर अस्पताल के रूप में विकसित करने का निर्णय लिया गया है।”

This decision of the Health Department to keep the existing hospital functional at Sheohar was further reiterated by a second letter of the Joint Secretary, Health Department bearing



Memo No. 441 dated 26.04.2017 when at paragraph-4 it reads that the functioning of the existing hospital would remain as it is and all Medical Officers and Para Medical Staff posted therein would extend their service to the new hospital. Paragraph 4 and 5 of the order of the Health Department dated 26.04.2017 reads thus:

“4. वर्तमान का अस्पताल यथावत कार्यरत रहेगा एवं इसमें पदस्थापित चिकित्सा पदस्थापित चिकित्सा पदाधिकारियों, पारा मेडिकल कर्मियों एवं अन्य कर्मियों की सेवा को सरोजा सीताराम सदर अस्पताल, शिवहर के बाह्य कक्ष (OPD) सेवा प्रारंभ करने में ली जाएगी।

5. शिवहर के पुराने सदर अस्पताल में पदास्थापित चिकित्सा पदाधिकारी, पारामेडिकल कर्मी एवं अन्य कर्मी सरोजा सीताराम सदर अस्पताल, शिवहर के कर्मी माने जाएंगे। शिवहर के पुराने अस्पताल हेतु आवश्यक पदों के सृजन की कार्रवाई अलग से की जाएगी।”

It is when the authorities in the Health Department proceeded to obstruct the functioning of the existing hospital at Sheohar on the commissioning of the New Sadar hospital that the intervener filed an interlocutory application raising his voice against this action of the State Government, as according to him, there was no occasion to close the existing hospital simply because a new Sadar hospital had been made functional. I.A. No. 4643/2018 was filed to such effect. When this matter came up for consideration on 09.07.2018 that taking note of the submissions advanced by Mr. Verma appearing for the petitioner, Mr. P.N.



Shahi, learned AAG 6 and Mr. Dinu Kumar, learned Counsel for the intervener, we expressed our anguish over the action of the department in attempting to close the existing hospital because in our opinion, even if the new Sadar hospital had become functional, it could not be at the cost of closure of the existing Sadar hospital nor its functioning could be hampered. The relevant part of the order dated 09.07.2018 reads thus:

“We have considered the submissions of Mr. Sunil Kumar Verma, learned Counsel appearing for the petitioner, Mr. P.N. Shahi, learned AAG 6 for the State and Mr. Dinu Kumar, learned Counsel appearing for the intervener and prima facie we are of the opinion that even if a hospital with superspecialty facility is coming up in the District of Sheohar, it can not be at the cost of closure of a functional Sadar Hospital nor the functioning of the Sadar Hospital can be hampered.”

Today when the matter comes up, Mr. Dinu Kumar in reference to the supplementary affidavit filed in the interlocutory application informs that the old hospital has been closed, despite our order dated 9.7.2018.

Learned Counsel for the State in justification of the action complained, submits that there can not be two Sadar hospitals in the District. We fail to appreciate the justification because as we have already expressed, a commissioning of a new



hospital does not justify reason for closure of the existing hospital and in case there cannot be two Sadar hospitals in a district, the old hospital can well bear the status of a Referral Hospital or a Sub Divisional Hospital, as the case may be. In fact, the two decisions of the Health Department which we have referred to above do conceive of this position by allowing functioning of the existing hospital while recognizing the status of the newly constructed superspecialty as the Sadar Hospital.

In the circumstances noted, the closure of the existing hospital despite our order passed on 9.07.2018 which records our opinion that the functioning of the superspecialty neither can lead to the closure of the existing hospital nor could hamper its functioning, is prima facie contempt. The supplementary affidavit filed on behalf of the intervener today encloses two letters of the Superintendent, Sadar Hospital, Sheohar addressed to the Superintendent of Police, Sheohar which is dated 17.08.2018 and the other addressed to the Civil Surgeon-cum-Chief Medical Officer, Sheohar. While making reference to a letter of the Principal Secretary bearing no. 3235 dated 06.08.2018 and the letter of Civil Surgeon bearing no. 931 dated 8.08.2018, the Superintendent, Sadar Hospital proceeds to ensure the closure of the old hospital at Sheohar. Since the letter of the Superintendent,



Sadar hospital purports to implement the direction of the Principal Secretary, Health Department, for ensuring closure of the old hospital despite our direction present in the order dated 09.07.2018, we would put the Principal Secretary, Health Department, the Director-in-Chief, Health Department, the Civil Surgeon-cum-Chief Medical Officer, Sheohar and the Suprintendent, Sadar hospital, Sheohar on notice as to why they be not proceeded for contempt, for violation of our direction contained in the order dated 9.7.2018 and for the purpose seek their attendance on Tuesday i.e. 28th of August, 2018 at 10:30 a.m when they should be ready with their respective show cause(s).

List this matter on Tuesday i.e. 28.08.2018.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

Archana/Surendra

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