

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.87 of 2018

IN

Civil Writ Jurisdiction Case No. 17560 of 2017

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1. Apollo Nursing Training School, Saidnagar, Lehariasarai, Darbhanga through its Secretary namely, Md. Taqweem Akhtar, Son of Md. Jamil Akhtar, Resident of Village-Saidpur, P.O.-Sormar Bagla, P.S.-Moro District-Darbhangha.

..... Appellant/s
Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Govt. of Bihar, New Secretariat, Patna.
2. The Principal Secretary, Department of Health Govt. of Bihar, New Secretariat, Patna.
3. The Director In-Chief (Nursing), Department of Health, Govt. of Bihar, New Secretariat, Patna.
4. THE Officer on Special Duty (OSD), Department of Health, Govt. of Bihar, New Secretariat, Patna.
5. Indian Nursing Council, Joint Council Bhawan, Kotla Road, Temple Lane, New Delhi-110002 through its Secretary.
6. The Secretary, Indian Nursing Council Joint Council Bhawan, Kotla Road, Temple Lane, New Delhi-110002.

..... Respondent/s

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Appearance :

For the Appellant/s :Mr. Y.V. Giri, Sr. Advocate
:Mr. Arun Kumar, Advocate
For the State :Mr. S.D.YADAV -A.A.G.-9
For the N.C.I. :Mr. S.N.Pathak, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 06-10-2018

1. Feeling aggrieved and dissatisfied with the impugned order passed by the learned Single Judge dated 20.12.2017 in C.W.J.C. No.



17560 of 2017 by which the learned Single Judge has disposed of the said petition, the original writ petitioner has preferred the present Letters Patent Appeal.

2. The facts leading to the present Letters Patent Appeal, in nutshell, are as under:

2.1. That the appellant herein-original writ petitioner approached this Court by way of C.W.J.C. No. 17560 of 2017 for appropriate writ and order directing the State of Bihar to issue necessary order for permission to establish Nursing Schools and grant recognition in its favour in accordance with Bihar and Orissa Nurses Registration Act, 1935 (hereinafter referred to as the 'Act') and the Nurses Training-Recognition, Affiliation and Conduct of Examination of School of Nursing Rules, 1997 (hereinafter referred to as the 'Rules, 1997') for conducting General Nursing & Midwifery (GNM Courses) (GNM).

2.2. It was the case on behalf of the original writ petitioner that earlier on the applications submitted by the original writ petitioner for recognition of the institution, the inspection was carried out and thereafter nothing further was done and therefore, the State Government ought to have granted the recognition.

2.3. However, after taking note of the



relevant provisions of the Act and the Rules, more particularly, Rule-4, which specifically provides that it is mandatory to first obtain permission to start a Nursing Course under Sub-Rule (II) and thereafter seek recognition under Sub-Rule (III) and so far as the original writ petitioner is concerned, there was no permission to start a Nursing Course, thereafter, by a reasoned order, the learned Single Judge has disposed of the writ petition with an observation that let the original writ petitioner apply afresh for grant of permission to start GNM Course in the institution in question strictly in terms of Sub-Rule (II) of Rule 4 of the Rules. The learned Single Judge has also observed that while considering the question of grant of permission to start the Course, the Director-in-Chief, Health Services, Government of Bihar will decide the question on the basis of consideration, as prescribed under Sub-Rule (II) of Rule 4, namely:-

- (i) The availability of current Nursing School and requirement of new such Nursing School.
- (ii) Availability of trained Nurses and requirement of trained Nurses for the future.
- (iii) Other similar points worth consideration which may be proper for



grant of permission to start the courses.

2.3. The learned Single Judge has further observed that if the application for grant of permission is made within four weeks from the date of the order, the concerned authorities shall take a decision within a period of two months thereafter. The learned Single Judge has further observed that once the permission to start a course is accorded, the original writ petitioner shall be at liberty to apply for recognition of the institution. The learned Single Judge has further observed that if the permission to start the course is granted and any application for recognition and affiliation is made thereafter, the authorities shall expedite the matter to ensure that all formalities are completed before the commencement of next academic Session.

2.4. Feeling aggrieved and dissatisfied with the impugned order passed by the learned Single Judge, the original writ petitioner has preferred the present Letters Patent Appeal.

3. Sri Y.V. Giri, learned Senior Advocate appearing on behalf of the appellant-original writ petitioner has reiterated the submissions which were made before the learned Single Judge and submitted that once the inspection



was carried out on the application submitted by the appellant-original writ petitioner for recognition of the institution, the learned Single Judge ought to have directed the authority to grant recognition.

4. Per contra, Sri, S.D. Yadav, learned Additional Advocate General-9 appearing on behalf of the State of Bihar as well as Sri S.N. Pathak, learned counsel appearing on behalf of the Nursing Council of India have supported the impugned order passed by the learned Single Judge.

5. Having heard learned counsel appearing on behalf of the respective parties at length and considering the relevant provisions with respect to approval of the course and recognition of the institution, it is required to be noted that a detailed procedure is prescribed under the Rules, 1997 for recognition of the institution and approval of the course. A detailed procedure is also provided under the Act. On conjoint reading of Rule 4 of Rules, 1997 and the relevant provisions of the Act, it appears that the learned Single Judge has rightly observed that unless the course is approved and/or the institution is granted approval to run the course and thereafter all other conditions are fulfilled for grant of recognition only thereafter, the question with respect to



recognition will come. Therefore, the learned Single Judge has rightly disposed of the main petition with the specific observations in paragraphs-11 and 12 of the impugned order. We are in complete agreement with the view taken by the learned Single Judge. No interference of this Court is called for in exercise of intra Court appellate jurisdiction.

6. In view of the above and for the reasons stated above, the present Letters Patent Appeal fails and deserves to be dismissed and is, accordingly, dismissed.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

Brajesh/-

AFR/NAFR	
CAV DATE	
Uploading Date	13.10.2018
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