

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21374 of 2018

1. Rupesh Kumar Singh, S/o Sri Krishnadeo Singh, President, Jamui Nagrik Manch, Resident of Mohalla-Babu Tota, Mahisouri, P.S.Dist.-Jamui.
2. Chandrachud Singh, S/o Late Titu Singh, District President Rastriya Bhrashtchar Mukti Morcha, and also Treasurer of Jamui Nagrik Manch, Resident of Village-Katouna, P.S.-Mallaypur, Dist.-Jamui.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Health and Family Welfare, New Delhi.
2. The Secretary, Health and Family Welfare, Union of India, New Delhi.
3. The State of Bihar through the Principal Secretary, Health Department, Govt. of Bihar, Patna.
4. The Principal Secretary, Health Department, Govt. of Bihar, Patna.
5. The Joint Secretary, Health Department, Govt. of Bihar, Patna.
6. The Commissioner, Munger Division, Munger.
7. The Collector, Jamui.
8. The Circle Officer, Khaira Anchal, Jamui.
9. The Circle Officer, Jamui, Dist-Jamui.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Madan Prasad Singh No-2, Advocate
Mr. Arun Kumar Singh, Advocate

For the Union of India : Mr. S. D. Sanjay, Addl. S. G. I.
Mrs. Punam Kumari Singh, CGC

For the State : Mr. S.D.Yadav -AAG 9
Mr. Braj Bhushan Mishra, AC to AAG-IX

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 17-12-2019



Whether the decision of the State Government, in choosing to establish a new Medical College, attached with the existing District/Referral Hospital at the identified place in village Bela under Khaira Anchal, District-Jamui can be said to be arbitrary, capricious and whimsical or not is the question which this Court is called upon to answer.

2. It is a common case of the parties that District Jamui, State of Bihar is infected with major anti national terrorist activity (Naxalite activity). The petitioners contend that the *situs* of the institution is arbitrary, irrational, illogical, inasmuch as the said place is in the thick of such terrorist activity. As such, it is their contention, that at the Headquarter itself, i.e. Jamui township, there is a hospital which can be upgraded and expanded, which in turn would facilitate easy access of medical treatment and facilities to the general public.

3. In support of the petition, Shri Madan Prasad Singh, learned counsel for the petitioners, has made the following submissions:-

- (a) Recommendation made by the Deputy General Manager (Project) (Annexure-9) expressing his concern with regard to the choice of the site stands ignored by the authorities and also not dealt with by



the respondents in their response; (b) the existing hospital can be upgraded; (c) newly identified site is at a distance of 15 Kms, having poor connectivity and as such not easily accessible by the public; and (d) establishing an institution at a new place would incur huge cost which can be saved by simply augmenting the already existing hospital where the land is adequately available.

4. Shri S. D. Sanjay, learned Additional Solicitor General of India, appearing on behalf of the Union of India, controverting such contentions, inviting our attention to the transparency in the decision making process, accounting for all other factors, including security, vehemently urged the Bench to dismiss the petition to enable the Government to establish the Hospital at the earliest.

5. It is a matter of record that the Government of India has formulated a scheme for the “Establishment of New Medical Colleges Attached with Existing District/Referral Hospitals”. The funding is in the ratio of 90:10 for North East/ Special category States and 60:40 for other States. The cost of establishment of one Medical College, in the first phase was approximately Rs.189 crores. In Bihar, under Phase II of the said Scheme, in principle, a



decision was taken to cover 24 districts with the object of making available, good and modern medical facilities covering at least three Parliamentary Constituencies. The estimated cost under the said phase II is approximately Rs.250 Crores per college to be born in the ratio of 60:40 respectively by the Central Government and the State Government.

6. It has come on record, which fact is not disputed, that the Government directed the Collector of five districts, including the Collector of Jamui, to identify and make available land free from all encumbrances to the extent of 25 acres, the area minimally required as per the standards prescribed by the Medical Council of India for establishing a new Medical College.

7. The proposal was to establish one college for Jamui Parliamentary constituency.

8. Pursuant thereto, spot verification was carried out in village Sonpe, Village Barhat, Village Bela, Village Ballopur and Village Guguldih and it was only in the concerned Village that land suitable in all respects, free from all encumbrances, could be identified which information was so furnished to the Government vide communication dated 3rd of July, 2018.

9. The issue of augmenting the existing Medical Health Institution, i.e. the Hospital at Jamui, was also examined in the



proposal but not favourably considered, for inadequacy of adequate land and the other institutions, including the judiciary, having already selected the land adjoining to the existing hospital, for establishment of its infrastructure.

10. It is in this backdrop the Government took a decision to establish the college at the selected site.

11. We are of the considered view that such decision cannot be said to be arbitrary, irrational, illogical in any manner.

12. A new Hospital is required to be established equipped with modern facilities as is evident from the communication dated 1st of February, 2018 that of the Government of India to the States. In the State of Bihar, the Central Government approved the following 5 Blocks of parliamentary constituencies for establishment of 5 new Medical Colleges:-

State	Identified Blocks	Parliamentary Constituencies cover under the
Bihar	Block -1	Sheohar Sitamarhi Madhubani
	Block-2	Jhanjharpur Supaul Araria
	Block-3	Vaishali Gopalganj Siwan
	Block-4	Pataliputra Arrah Buxar
	Block-5	Jamui



13. Pursuant thereto, a memorandum of understanding dated 22nd June, 2018 also stands executed between the Government of India (Ministry of Health & Family Welfare) and the State of Bihar.

14. The selection of the site is based on the objective appreciation of the entire material collected from the field agencies. Both the State and the Central Government have addressed the concerns of the petitioners with regard to security angle. It has come in the affidavit that in close proximity, in fact, immediate vicinity, there is a camp office of *Seema Surakhasha Bal* (S.S.B.) and the Para Military Forces. In fact, one battalion of C.R.P.F. is already posted near the proposed site. So even the site stands evaluated from the security point of view.

15. There appears to be some dispute with regard to an actual distance of the site from the main town. Whereas the petitioners want the Court to believe it to be of 15 Kms, the State contends it to be only 4 Kms. Well, any which way it could not make any difference. The place is not so distant that it cannot be covered even in a case of an emergency. The condition of the road may be bad, but then that itself cannot be a ground or reason enough to reject the site, for the welfare State is duty bound to maintain the roads as per budgetary planning and allocation.



16. In Jamui town, there is no land available, necessarily required as per the guidelines laid down by the Medical Council of India.

17. Insofar as communication dated 10th of July, 2018 that of the Deputy General Manager (Project) is concerned, it nowhere suggests the proposed site to be not suitable within the parameters laid down by the Medical Council of India. All that is expressed is the problem which may come in the functionality of the institution upon its establishment on account of lack of proper infrastructure, which may be faced by a common man and the employees. In fact, he has himself given a solution suggesting that residence would have to be constructed for the employees. Well, all this is part of planning and we see no reason as to why it cannot be done or the State could not take care of such a requirement.

18. It is settled principle of law that the least the court may do is examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases, the court may go further, but how much further would depend on the circumstances of the case. However the court will not attempt to nicely balance relevant considerations. When the question involves the nice balancing of relevant considerations, the court may feel justified in resigning itself to acceptance of the decision of the



concerned authority. Also on matters affecting policy and requiring technical expertise, the court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the court will not interfere with such matters.

19. In **Jal Mahal Resorts (P) Ltd. v. K. P. Sharma, (2014) 8 SCC 804**, the Hon'ble Apex Court in paragraph 137 observed as under:-

“..... it is clear that although the courts are expected very often to enter into the technical and administrative aspects of the matter; it has its own limitations and in consonance with the theory and principle of separation of powers, reliance at least to some extent to the decisions of the State authorities, specially if it is based on the opinion of the experts reflected from the project report prepared by the technocrats, accepted by the entire hierarchy of the State administration, acknowledged, accepted and approved by one Government after the other, will have to be given due credence and weightage.”

20. In **M.P. Oil Extraction v. State of M.P. (1997) 7 SCC 592** has unequivocally observed in paragraph 41 as under:-

“41. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of



judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields.”

21. It is a settled principle of law that the scope of judicial review with regard to policy decision is limited and restricted. Unless the decision is capricious, malafide, irrational, arbitrary or in exercise of abuse of power, on the mere asking of the party, such decisions cannot be interfered with, more so when it is based on the objective consideration of the material arrived at by the expert.

22. The site has been chosen to achieve larger public interest and for a legal and legitimate public purpose. The Court should not, unless so warranted, interfere with such decision. In fact, in national interest as also in the interest of residents of the State facilitate in the development of the infrastructure. If only a fully equipped modern Hospital is established at the site, it would benefit large number of people both within the Jamui township and its adjoining areas. One cannot be unmindful of the fact that the Hospital is sought to be established with the avowed object of providing medical facilities to the general masses, residing in three parliamentary constituencies. From all angles, the site is centrally



located and best suited. With the establishment of the College, the infrastructure is going to expand and in fact it is in public interest that already clogged markets and township be de-congested with the shifting of the establishments in the peripheral areas. Certain vested interest cannot be allowed to obstruct development of the area. Establishment of health related institution is in consonance with the constitutional mandate and directives, which the Courts are duty bound to ensure compliance of. The obstructionist approach in development of the National growth needs to be deprecated.

23. For all the aforesaid reasons, we dismiss the writ petition. Interim order dated 23.10.2019 stands vacated.

24. We further direct the respondent-State and the Central Government to forthwith take steps for establishing the Hospital at the earliest.

(Sanjay Karol, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	09.01.2020
Transmission Date	

