

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23927 of 2018

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Rajeev Kumar Jayswal @ Rajeev Jayswal S/o Sunil Prasad Jayswal Resident
of village- Station Road, Mahanar, P.S.- Mahnar, Dist-Vaishali

... .. Petitioners

Versus

1. The State Of Bihar through the District Magistrate, Vaishali at Hajipur.
2. The Director, Health Services, Government of Bihar, at Patna
3. The Principal Secretary, Health Services, Bihar at Patna
4. District Magistrate, Vaishali at Hajipur
5. The Civil Surgeon, Vaishali at Hajipur

... .. Respondents

with

Civil Writ Jurisdiction Case No. 24701 of 2018

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1. Sanjay Kumar Sah S/o Nagendra Prasad Sah, Resident of Mahnar, P.S- Mahnar, Dist- Vaishali, the proprietor Sanjivani Janch Ghar, Samstipur Road, Mahua, P.S- Mahua, Dist- Vaishali.
 2. Ajay Kumar @ Ajay Kumar Sah S/o Ram Ekwil Sah Resident of village- Baksama Goraul, P.S- Goraul, Dist- Vaishali, the proprietor, Sahara Diagnostic Center, Samastipur Road, Mahua, P .S- Mahua, Dist- Vaishali

... .. Petitioner/s

Versus

1. The State Of Bihar through the District Magistrate, Vaishali at Hajipur.
2. The Director, Health Services ,Government of Bihar at Patna
3. The Principle Secretary, Health Services,Bihar at Patna
4. The District Magistrate, Vaishali at Hajipur
5. The Civil Surgeon, Vaishali at Hajipur
6. The Deputy Superintendent Sub-Divisional Hospital Mahua, Distt. Vaishali

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Mahendra Thakur, Advocate
For the Respondent/s	:	Mr. Ramadhar Singh, GP-25
		Mr. Upendra Pd. Singh, AC to GP-25

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
C.A.V. JUDGMENT

Date : 15-03-2019

Both the writ applications have been preferred for



issuance of a writ of mandamus commanding the respondent authorities to unseal the premises of the petitioners which are said to have been sealed by the respondent authorities on 11.09.2018 without giving any notice to show cause to the petitioners. The sealing of the premises, is said to have been done in the name of the order passed by the Hon'ble Division Bench of this Court in the Public Interest Litigation being CWJC No. 20444/2014 (Indian Association of Pathology Vs. State of Bihar and others).

This court has been called upon to look into the action of the respondents in the light of the order passed by the Hon'ble Division Bench as it is the case of the petitioners that the respondent authorities are acting illegally and arbitrarily as also without there being any order of the Hon'ble Division Bench to seal the premises without giving an opportunity to show cause to the persons likely to be affected by such sealings. It is being contended that this is a case where the sealing of the premises has been done in complete violation of principles of natural justice.

This court will examine both the writ applications hereunder by taking into consideration the facts of the respective cases in the light of the order of the Hon'ble Division



in CWJC No. 20444/2014.

CWJC No. 23927/2018

In this case the petitioners claimed that he is authorised collection agent of Thyrocare Technologies Limited D-37/3,TTC MIDC, Turbhe Navi Mumbai-400703. Being a collection agent he is collecting the samples for different types of pathological test and sends it to the Thyrocare Mumbai for test and a report thereon. The report is provided online and it is also handed over to the concerned persons. A copy of the authorization of Thyrocare has been brought on record as Annexure-‘1’.

It is stated that all of a sudden when the collection centre of the petitioner was closed, the respondent authorities on 11.09.2018 sealed the collection centre situated at Subhas Chowk, Navin Cinema Road, Hajipur, District – Vaishali and posted a notice at the door of the collection centre as contained in Annexure-2 to the writ application. The notice mentions the case number of PIL and a letter no. 18/court-22/2018-162)19) dated 31.08.2018 issued by the Principal Secretary, Department of Health, Government of Bihar.

Contention of the petitioner is that prior to sealing of the collection centre no notice to show cause was ever served



upon the petitioner and further that his case would not be covered by the direction of the Hon'ble Division Bench in CWJC No. 20444/2014.

Learned counsel for the petitioners in both the cases has read out the order dated 30.08.2018 passed by the Hon'ble Division Bench of this court in the case of Indian Association of Pathologists and Microbiologists Vs. State of Bihar and others (CWJC No. 20444/2014). The said writ application is a Public Interest Litigation brought by the petitioner association in which it has been alleged that in the State of Bihar various Polyclinics, Diagnostic Centres and Nursing Homes, Small, Medium and large hospitals are functioning in an illegal manner, without there being any proper regulatory measures to evaluate their functioning and various illegalities are being committed contrary to the requirements of the Statutory Rules. With respect to running of the individual pathology laboratory/diagnostic centres it was alleged that those are being run illegally and without there being any qualified and recognized laboratory Technicians and/or Pathologists.

In the nature of the complaint the Hon'ble Division Bench called upon the concerned department to furnish the particulars (after holding necessary inquiry) in respect to various



poly clinics, diagnostic centres/nursing homes, small, medium and large hospitals and even individual pathology laboratories. The Department of Health, Government of Bihar filed its counter and supplementary counter affidavits before the Hon'ble Division Bench. The Hon'ble Court was informed that in the district of Vaishali 38 non-standard pathology laboratories/diagnostic centers were operating. The court was also informed that the show cause notices had been issued to the concerned diagnostic centers for operating without qualified pathologists and/or not operating as per the Rules. The particulars of such illegal pathology laboratories were produced along with counter affidavit. It was submitted before the Hon'ble Division Bench that a closure notice had been issued to them out of which few were closed. After taking note of the submissions of the parties, the Hon'ble Division Bench in its operative part of the order recorded as under:

“Identical question came to be considered by a Division Bench of Gujarat High Court in a bunch of petitions including Civil Application No. 7999 of 1998 and other allied civil applications and by a detailed judgment and order and even considering the provisions of the Indian Medical Council Act, 1956, ultimately, in paragraph No.33 the Division Bench has concluded as under:

“We accordingly hold that the Laboratory Technicians being not Pathologists, cannot run any



laboratory independently. They cannot directly give any report to any patient or any other individual, or to any institution or practising doctor, without the authentication of the same by the pathologist registered with the Medical Council. Though it is open to any person or institute to run a pathology laboratory, but no report can be issued without the signature or counter signature of the practicing pathologist recognized by the Medical Council of India. The respondents are directed to ensure that no pathology laboratory is run by any unqualified or institute having no recognized pathologists registered with the Medical Council. However, if such pathological laboratory is run by a pathologist registered with the Medical Council, or if such pathological laboratory engaged a pathologist registered with the Medical Council, the respondents may allow such laboratory to run. Individual Laboratory technician cannot be allowed to run pathological laboratory independently without engaging a pathologist registered with the Medical Council.

The writ petition preferred by the Association of Pathologists of Bhavnagar in Special Civil Application No. 7999 of 1998, North Gujarat Pathologists Association in Special Civil Application No. 17485 of 2006 and Gujarat Association of Pathologists and Microbiologists in Special Civil Application No. 8211 of 2008 are allowed. The contrary prayers made by the Association of Self Employed Owners (Para Medical) of Private Pathology Laboratories of Gujarat in Special Civil Application No. 6715 of 2008 and Anand People's Medicare Society and others in Special Civil Application No. 8193 of 2009 are rejected."

A similar submission has been made by the learned counsel appearing on behalf of the



intervenor, a practising doctor having the qualification of M.B.B.S., which has been negative by the Division Bench having considered various provisions of the Indian Medical Council Act, 1956.

It is reported that the aforesaid judgment of the Gujarat High Court has been affirmed by the Hon'ble Supreme Court vide order dated 12.12.2017 in Petition(s) for Special Leave to Appeal (C) No(s). 28529/2010 and the Hon'ble Supreme Court has disposed of the Special Leave Petitions by taking a view that the stand of the Medical Council of India that the laboratory report can be counter-signed only by a registered medical practitioner, with a post graduate qualification to Pathology, is correct. Therefore, as per the decision of the Hon'ble Supreme Court, the laboratory reports can be counter-signed only by a registered medical practitioner, with a post graduate qualification in Pathology only.

Therefore, all these pathology laboratories, which are being run and not meeting with the norms and/or which are being run illegally, cannot be permitted to be run any further as it is a danger to the health and the life of the citizens. Nobody can be permitted to play with the health and life of a human being. All those pathology laboratories/diagnostic centres being run illegally and not meeting with the requirement are required to be closed down. Mere issuance of show cause notices is not enough; thereafter, concrete steps are required to be taken to stop such illegal pathology laboratories/ diagnostic centres.

Under the circumstances, by way interim direction, the State through the Principal Secretary, Health Department, is hereby directed to close all those illegal pathology laboratories/ diagnostic centres/clinics and nursing homes which do not meet with the norms and whose particulars are given in the counters/supplementary counters within a period of two weeks from today as it is reported



that all those are already issued show cause notices and submit their compliance report before this Court.

So far as those clinics, which are found to be run illegally and which do not meet with the norms as per the Clinical Establishments (Registration and Regulation) Act, 2010 is concerned, it is reported that in view of the interim order passed by the learned Single Judge in C.W.J.C. No. 9091 of 2016, by which the State Government is restrained from taking any coercive action against the Indian Health Services Associations, let C.W.J.C. No. 9091 of 2016 be heard along with the present writ petitions on the next date of hearing so as to avoid any further conflicting order.

Let the registry obtain the appropriate order from Hon'ble the Chief Justice in administrative side.

From the report, it appears that still the enquiry with respect to other districts is going on. The same may be concluded and a further counter be filed with respect to the remaining districts.

Put up on 24th of September, 2018.”

It is the contention of learned counsel for the petitioners that the true import of the aforesaid order of the Hon'ble Division Bench is reflected where it is directed that by way of interim direction the Principal Secretary, Health is directed to close all those illegal pathology laboratories which do not meet with the norms and whose particulars are given in the counters/supplementary counters as it was reported to the Hon'ble Bench that in all those cases show cause notices had already been issued. It was never the intention of the Hon'ble



Bench muchless any direction to close all the centres without giving any show cause notice and without holding necessary inquiry. In earlier part of the order dated 30.08.2018, the Hon'ble Division Bench has recorded inter alia that "*Various orders have been passed by this court in the present proceedings by which the concerned departments are called upon to furnish the particulars (after holding necessary enquiry) in respect to various poly-clinics/diagnostic centres/nursing homes, small, medium and large hospitals and even individual pathology laboratories.*"

A careful reading of the judgment of the Hon'ble Division Bench would make it crystal clear, according to learned counsel for the petitioners that at no stage the Hon'ble Division Bench directed the respondents to close any centre without holding necessary enquiry and without giving an opportunity to show cause to such centres. It is contended that the Hon'ble Division Bench never authorized the respondents to violate the principles of natural justice in the garb of executing the court's order.

CWJC No. 24701 of 2018

In this writ application the grievance of the petitioners is that their diagnostic centre namely Sanjivini Janch Ghar, and



Sahara Diagnostic Centre, respectively both situated in Samastipur Road Mahua, P.S. – Mahua, District – Vaishali have been sealed on 11.09.2018 without giving any opportunity to show cause and without holding any enquiry. It is stated that petitioner no. 1 is carrying its centre under the guidance and supervision of Dr. Naveen Kumar, MD and the path Lab is being run under the supervision of Dr. Md. Hashim, M.B.B.S. (Pat). Petitioner no. 2 is holding Diploma in Medical Lab Technology from a recognized institution.

It is their contention that the sealing of the premises of the petitioners in the garb of the order of the Hon'ble Division Bench of this Court is not in accordance with the direction of the Hon'ble Division Bench rather it is a case of arbitrary exercise of power on the part of the Principal Secretary, Department of Health, Government of Bihar.

Earlier, after hearing learned counsel for the petitioners and the State, this Court, in order to verify the facts called upon the Civil Surgeon, Vaishali to file an affidavit disclosing the true and correct facts firstly as to whether any show cause notice was served upon the petitioners in both the cases prior to sealing of the premises and secondly as to whether or not these petitioners figure in the list of 38



centres/laboratories which were mentioned in the list filed before the Hon'ble Division Bench.

A counter affidavit and a supplementary counter affidavit have been filed by respondent nos. 4 & 5. It is admitted in paragraph-‘7’ of the supplementary show cause that no show cause notice was served upon the petitioners. Again in paragraph-‘8’ of the supplementary affidavit it is clearly stated that the name of petitioners’ centres did not figure in the list of 38 centres/laboratories which were mentioned in the list filed before the Hon'ble Division Bench, but then it is the contention of the respondent Nos. 4 & 5 that in the light of letter issued by the Principal Secretary, Department of Health, Government of Bihar, the centre of the petitioners had not produced any document at the time of enquiry. Neither in the counter affidavit nor in the supplementary counter affidavit respondent nos. 4 & 5 have anywhere stated that the direction of the Principal Secretary, Department of Health, Government of Bihar was ever brought to the notice of the petitioners calling upon them to produce relevant papers regarding their respective Diagnostic Centres.

After hearing learned counsel for the petitioners as well as the State and on going through the order of the Hon'ble



Division Bench, this court comes to a conclusion that so far as these two petitioners are concerned, admittedly no enquiry whatsoever were held in respect of the petitioners. In the list of 38 centres which was produced before the Hon'ble Division Bench also the name of these petitioners do not figure, therefore, apparently the interim order of the Hon'ble Division Bench is not covering the cases of these petitioners.

A careful reading of the order dated 30.08.2018 passed by Hon'ble Division Bench passed in CWJC No. 20444/2014 would go a long way to show that at no point of time the Hon'ble Division Bench gave any direction to the respondent authorities to seal any premises without giving any opportunity to show cause to the persons likely to be affected by such sealings. An enquiry giving an opportunity to show cause to the persons likely to be affected was a *sine quo non* and the respondents were obliged to hold an inquiry by giving an adequate opportunity to show cause to the petitioners. It has not been done in the present case. Annexure-'2' which is said to be a notice posted on the premises of the petitioners mentions the case number being CWJC No. 20444/2014, in my opinion, District Administration, Vaishali was not justified in giving an impression that the sealing in these cases at least were in terms



of any order passed by the Hon'ble Division Bench.

The action of the respondent authorities is thus not in accordance with the principles of natural justice and/or in terms of the interim direction of the Hon'ble Division Bench.

Although the action of the respondents at present stage cannot be approved on the ground of violation of principles of natural justice but this court is conscious of the fact that a direction to unseal the premises without verifying the correctness of the claim of the petitioners by the competent authority would not be just and proper, therefore, the court is not giving a positive direction to unseal the premises.

The petitioners are directed to submit within two weeks from today all relevant papers on which they are willing to rely to show that their diagnostic centres are being run in conformity with the judgment of the Hon'ble Supreme Court and the Hon'ble Division Bench.

The Principal Secretary, Department of Health is directed to give an opportunity of hearing to the petitioners, allow them to produce all such materials which may be required to verify the claim of the petitioners and take a decision thereon keeping in mind the judgments of the Hon'ble Supreme Court in Special Leave to Appeal (C) No. 28529/2010 as also the



directions of the Hon’ble Division Bench of this Court in CWJC No. 20444/2014. A reasoned decision after considering the submissions of the petitioners and other documents which may be produced must be taken within a period of 30 days from the date of receipt/production of a copy of this order. If the petitioners still feel aggrieved by the decision of the Principal Secretary, they may, if so advised, seek their remedy before the Hon’ble Division Bench in the pending Public Interest Litigation.

Both the writ applications are disposed of.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	11.03.2019
Uploading Date	19.03.2019
Transmission Date	

