

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5207 of 2020

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1. Ranjan Sinha, son of Radhe Shyam Prasad, resident of Village and P.O. Malti, P.S. Asthawan, District- Nalanda, Bihar, PIN - 803107.
 2. Sheetesh Kumar, son of Jeebachh Prasad, resident of at - Hathiyahi, P.O. Biraul, P.s. Khajauli, District- Madhubani.
 3. Ashok Kumar Ojha, son of Late Raghunath Ojha, resident of Village - Basantpur, P.O. and P.S. Baniapur, District- Chapra (Saran), Bihar, PIN- 841403.
 4. RAghunandan Kumar, son of Late Ramanand Mandal, resident of village - Babhagachhi Sukhseena, P.S. Barharakothi, District- Purnea (Bihar), PIN- 854203.
 5. Md. Zafar Ansari, son of Md. Bechu Ansari, resident of Ansari Road, Mohalla - Rajopatti, P.O.- Rajopatti, P.S. Sitamarhi, District- Sitamarhi.
 6. Shailendra Prasad, son of Tulsi Mahto, resident of Bandkharo, District- Giridih, State- Jharkhand.
 7. Aarti Kumari, daughter of Binay Kumar Singh, resident of Near Golaki More, Road No. 6, Naya Chak, District- Patna.

... .. Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Health, Government of Bihar, Patna.
3. The Secretary, Department of Health, Government of Bihar, Patna.
4. The Joint Secretary, Department of Health, Government of Bihar, Patna.
5. The Under Secretary, Department of Health, Government of Bihar, Patna.
6. The Principal, Patna Medical College and Hospital, Patna.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Adv.
For the Respondent/s : Mr. Sudhir Kumar Singh, A.C. to SC-23

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 27-05-2020

The instant writ application has been filed by the
petitioners for directing the respondent authorities to grant study
leave to the petitioners so that they may pursue their higher



education as they have been qualified and selected in DNB PDCET 2020 conducted by the National Board of Examination (NBE) in their respective subjects after completing their MBBS and Post Graduate Diploma course from Patna Medical College & Hospital (PMCH).

2. The petitioners have also sought a direction for returning their original educational certificates submitted by them at the time of taking admission in Post Graduate Diploma course at PMCH for the Sessions 2017-19 so that they may participate in the counseling of DNB PDCET 2020.

3. Mr. Bindhyachal Singh, learned counsel appearing for the petitioners submitted that the action of the respondents in not granting study leave/temporary exemption to the petitioners from the condition of bond is arbitrary, malafide and bad in the eyes of law. He submitted that the respondents have failed to appreciate that the petitioners are not asking for permanent exemption rather they are asking for temporary exemption from performing three years of mandatory service in order to complete their further studies for which they have been selected. According to him, if the petitioners are compelled to leave their studies and enter into employment at this stage itself, it would act as a great obstacle for them to compete in any competitive examination



after a period of three years as the intellect of the petitioners would not be the same. He argued that the right of the petitioners to pursue higher studies is an important right in order to provide specialized service to the public in general. He also argued that the petitioners' right to carry on their profession which is guaranteed by Article 19(1)(g) of the Constitution of India is violated by the compulsory bonds.

4. Mr. Singh submitted that the impugned action on the part of the respondents in not granting study leave/temporary exemption to the petitioners is violative of Articles 14, 15, 16 and 21 of the Constitution of India.

5. Per contra, Mr. Sudhir Kumar Singh, learned counsel appearing on behalf of the State submitted that after completing the MBBS course from various colleges, the petitioners were selected for Post Graduate Diploma course in various subjects at PMCH under the Bihar State quota and at the time of taking admission the petitioners were required to sign a bond giving a declaration that after completing their Post Graduate Diploma course they would provide mandatory three years service to the State of Bihar. He contended that all the petitioners voluntarily signed the bond and completed their Post Graduate Diploma course. He submitted that as per the condition



of the bond if any of the candidates desired to leave the course in middle of the session, he could have done so by depositing an amount of Rs.15,00,000/- to the Health Department along with the total stipend received in one installment. It was also one of the requirement of the bond that if any of the candidates would not render his three years of mandatory service to the State of Bihar on completion of his Post Graduate Diploma course, he would have to deposit an amount of Rs.25,00,000/- to the State Government along with total salary received for the period. He submitted that Post Graduate Diploma course in PMCH, a Government College, is highly subsidized. The petitioners secured admission in Post Graduate Diploma course after taking an informed decision to receive medical education at highly subsidized rate. Hence, after completing their course, they cannot be permitted to question the compulsory medical service bonds. He further contended that the policy decision taken by the State Government to utilize services of the doctors, who are beneficiaries of Government assistance to complete their education, cannot be termed to be arbitrary or unreasonable.

6. I have heard rival contentions, perused the materials on record and duly considered the factual matrix of the case as also the applicable legal position.



7. The brief facts of the case are as under :-
- (a) After completing their MBBS course through various colleges, the petitioners were selected for Post Graduate Diploma course for various subjects at PMCH under Bihar State quota.
 - (b) At the time of taking admission, all the candidates including the petitioners were required to sign a bond that after completing their Post Graduate Diploma course they shall serve the State Government for a period of three years failing which they will be required to deposit an amount of Rs.25,00,000/- to the State Government along with total salary received for the period of bond. It was also stated in the service bond that if any of the candidates desires to leave the course in the middle of the session, then he can do so by depositing an amount of Rs.15,00,000/- to the Health Department along with the total stipend received in one installment.
 - (c) The petitioners voluntarily signed the bond and pursued their Post Graduate Diploma course. After the petitioners completed their Post Graduate Diploma course, they have been posted at various Health Centres across the State as general duty medical officer or specialized medical officer



vide order dated 13.11.2019 issued under the signature of the Joint Secretary, Department of Health with a direction to the petitioners to immediately give their joining at the respective place of posting in order to render their three years of mandatory service to the State of Bihar.

- (d) The petitioners, after completing their Post Graduate Diploma course participated in the entrance examination of DNB PDCET 2020 and were selected. They were required to appear for counseling
- (e) In order to pursue higher studies, the petitioners made representation before the Principal Secretary, Department of Health for grant of study leave and release of their original documents submitted at the time of taking admission in Post Graduate Diploma course.
- (f) The representation submitted by the petitioners did not find favour. Hence, the instant writ petition has been filed.

8. The facts noted above would make it manifest that the controversy in this case pertains to compulsory bonds executed by the petitioners at the time of taking their admission in the Post Graduate Diploma course.

9. At this stage, it would be relevant to note that the issues raised in the present writ petition are no more *res integra*.



Similar issues were under consideration before the Supreme Court in *Association of Medical Superspeciality Aspirants & Residents Vs. Union of India*, since reported in (2019) 8 SCC 607. In that case, the Supreme Court was considering civil appeals along with writ petitions wherein a prayer was made for quashing of compulsory bond conditions, as imposed in the superspeciality courses by the States of Andhra Pradesh, Goa, Gujarat, Himachal Pradesh, Karnataka, Kerala, Maharashtra, Orissa, Rajasthan, Tamil Nadu, Telangana and West Bengal respectively. Further, a direction was sought for returning the original mark-sheets, certificates and other documents retained by the respective State authorities after the completion of the superspeciality courses concerned. The civil appeals impugned the judgments of Calcutta, Karnataka, Kerala, Bombay and Gujarat High Courts, which had upheld the compulsory bond conditions imposed by the respective States.

10. In the said case, the Supreme Court rejected the submission made on behalf of the appellants that the States lack the authority and competence to issue the notifications imposing a condition of execution of compulsory bonds at the time of admission to Post Graduate courses and superspeciality courses by observing that the notification issued by the State



Governments imposing a condition of execution of compulsory bond at the time admission to Post Graduate courses and Superspeciality courses cannot be said to be vitiated due to lack of authority or competence. The observations made by the Supreme Court are extracted as under:-

“17. Schedule VII List I Entry 66 to the Constitution refers to coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Schedule VII List III Entry 25 deals with education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I. Legislations can be made by the State Legislature relating to medical education subject to the legislation made by Parliament. The Medical Council of India Act governs the field of medical education in this country. Admittedly, there is no provision in the Medical Council of India Act touching upon the subject-matter of compulsory bonds. Therefore, the States are free to legislate on the subject-matter of medical bonds. Executive authority of the State Government is co-extensive with that of the legislative power of the State Legislature. Even in the absence of any legislation, the State Government has the competence to issue executive orders under Article 162 of the Constitution on matters over which the State Legislature has the power to legislate. The notifications issued by the State Governments imposing a condition of execution of



compulsory bonds at the time of admission to postgraduate courses and superspeciality courses cannot be said to be vitiated due to lack of authority or competence. The field of bonds requiring compulsory employment is not covered by any Central legislation. Therefore, the submissions made on behalf of the appellants that the States lacked competence to issue the notifications as the field is occupied are rejected.”

11. Noting that the amount of fees charged from the students of Government run medical colleges with Post Graduate and Superspeciality courses is meager in comparison to the private medical colleges, the Supreme Court said that the decision taken by the State Governments to impose a condition of compulsory bond for admission to postgraduate courses and superspeciality is on the basis of relevant material. The Court observed :

“Huge infrastructure has to be developed and maintained for running medical colleges with postgraduate and superspeciality courses. The amount of fees charged from the students is meagre in comparison to the private medical colleges. Reasonable stipend has to be paid to the doctors. Above all, the State Governments have taken into account the need to provide healthcare to the people and the scarcity of superspecialists in their States. Consequently, a policy decision taken by the State Governments to utilise the services of doctors who were



beneficiaries of government assistance to complete their education cannot be termed arbitrary”.

12. On the contention of the appellants that the right to carry on their profession, which is guaranteed by Article 19(1)(g) of the Constitution of India is violated by compulsory bonds, as the bonds place a restriction on their right to carry on their profession on completion of their courses, the Supreme Court, while upholding the findings of the Division Bench of Calcutta High Court, which had held that the appellants had not been able to succeed in their attempt of assailing the notifications for being violative of Article 19(1)(g) of the Constitution of India, reasoned as under:-

“20. According to the appellants, the right to carry on their profession which is guaranteed by Article 19(1)(g) is violated by the compulsory bonds. They contend that the compulsory bonds place a restriction on their right to carry on their profession on completion of their course. It is also submitted that any restriction on their right to carry on their profession by the State Government can be made only by a “law” as per Article 19(6) of the Constitution. Consequently, the notifications that were issued by the State Governments fall foul of Article 19(1)(g). The compulsory bond executed by the appellants is at the time of their admissions into postgraduate and superspeciality courses. Conditions imposed for admission to a medical college will not directly violate the right of an



individual to carry on his profession. The right to carry on the profession would start on the completion of the course. At the outset, there is no doubt that no right inheres in an individual to receive higher education. Violation of a right guaranteed under Article 19(1)(g) does not arise in a case pertaining to admission to a college. There is no doubt, that the condition that is imposed has a connection with the professional activity of a doctor on completion of the course. However, the appellants have, without any protest, accepted the admissions and executed the compulsory bonds. Execution of bonds is part of a composite package. We are in agreement with the judgment of the Calcutta High Court that the appellants have not been able to succeed in their attempt of assailing the notifications for being violative of Article 19(1)(g) of the Constitution. We uphold the said finding of the Division Bench.”

13. Another issue was raised by the appellants in ***Association of Medical Superspeciality Aspirants & Residents*** (Supra) that their liberty was curtailed by compulsory bonds.

14. The appellants contended before the Supreme Court that the condition requiring them to compulsorily work for a certain period of time with the Government corrodes their liberty affecting their right to life guaranteed by Article 21 of the Constitution of India.



15. While dealing with the aforesaid issue, the Supreme Court observed :

“Article 21 of the Constitution of India imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The government hospitals run by the State and the Medical Officers employed therein are duty-bound to extend medical assistance for preserving human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right guaranteed under Article 21 of the Constitution. [Paschim Banga Khet Mazdoor Samity v. State of W.B., (1996) 4 SCC 37, paras 9 & 16] Therefore, in a welfare State it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health.” [Vincent Panikurlangara v. Union of India, (1987) 2 SCC 165 : 1987 SCC (Cri) 329]

16. The Supreme Court further observed :

“It is for the State to secure health to its citizens as its primary duty. No doubt the Government is rendering this obligation by opening government hospitals and health centres, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, to reduce the queue of waiting lists, and it has to provide all facilities to employ best of talents and tone up its administration to give effective contribution, which is



also the duty of the Government [State of Punjab v. Ram Lubhaya Bagga, (1998) 4 SCC 117, paras 26, 27 & 35 : 1998 SCC (L&S) 1021]”.

17. The Court further observed :

“Right to health is integral to the right to life. Government has a constitutional obligation to provide health facilities [State of Punjab v. Mohinder Singh Chawla, (1997) 2 SCC 83 : 1997 SCC (L&S) 294] . The fundamental right to life which is the most precious human right and which forms the ark of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person. The right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter, and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live and the restriction would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights [Francis Coralie Mullin v. State (UT



of Delhi), (1981) 1 SCC 608 : 1981 SCC (Cri) 212]. To live is to live with dignity. The draftsmen of the Constitution defined their vision of the society in which constitutional values would be attained by emphasising, among other freedoms, liberty and dignity. So fundamental is dignity that it permeates the core of the rights guaranteed to the individual by Part III of the Constitution. Dignity is the core which unites the fundamental rights because the fundamental rights seek to achieve for each individual the dignity of existence [K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1]. The State's obligations are not satisfied solely by refraining from imposing limitations on the right to human dignity. The State must also take action to protect human dignity and to facilitate its realisation. The constitutional right to dignity is intended to ensure human beings' political and civil liberties as well as their social and economic freedoms [Aharon Barak, "Human Dignity: The Constitutional Value and The Constitutional Right" in Christopher McCrudden (Ed.), Understanding Human Dignity, Proceedings of the British Academy, 192 (Oxford University Press) pp. 361-80 at p. 367]”.

18. Ultimately, while rejecting the contention of the appellants that their rights guaranteed under Article 21 of the Constitution of India have been violated, the Supreme Court observed :



“While balancing communitarian dignity vis-a-vis the dignity of private individuals, the scales must tilt in favour of communitarian dignity”.

19. The Court further said:

“The above discussion leads us to the conclusion that right to life guaranteed by Article 21 means right to life with human dignity. Communitarian dignity has been recognised by this Court. While balancing communitarian dignity vis-à-vis the dignity of private individuals, the scales must tilt in favour of communitarian dignity. The laudable objective with which the State Governments have introduced compulsory service bonds is to protect the fundamental right of the deprived sections of the society guaranteed to them under Article 21 of the Constitution of India. The contention of the appellants that their rights guaranteed under Article 21 of the Constitution of India have been violated is rejected”.

20. In ***Association of Medical Superspeciality Aspirants and Residents*** (supra), while rejecting the next contention of the appellants that the conditions of the bond *per se* amount to “forced labour” and thus are violative of Article 23(1)(g) of the Constitution of India, the Supreme Court observed :

“The appellants who are required to work for a short period on a decent stipend cannot complain that they are made to perform “forced labour”, especially after



the appellants have taken an informed decision to avail the benefits of admission in government medical colleges and received subsidised education. By no means, the service rendered by the appellants in government hospitals would fall under the expression of “forced labour”.”

21. The Supreme Court further rejected the contention of the appellants that compulsory bond placed a restraint on their profession and thus would be contrary to Section 27 of the Indian Contract Act, 1872. It upheld the findings recorded by the Calcutta High Court whereby the Calcutta High Court had held that the contract to serve the government for a few years under reasonable terms cannot be described as one in restraint of trade and, thus, the bonds for admission to Post Graduate and Superspeciality courses in government medical colleges are not in violation of Section 27 of the Indian Contract Act, 1872.

22. Thus, it would be manifest from the ratio laid down in ***Association of Medical Superspeciality Aspirants and Residents*** (supra) by the Supreme Court that compulsory bond stipulating compulsory service is not unreasonable. The Government incurs huge expenditure in Government medical colleges where the fee charged from the students is meager. The students, who had accepted admission and executed service bonds cannot take a plea that the bond violates Article 19(1)(g) of the Constitution of India. The compulsory service



bond is to protect the fundamental right of deprived society guaranteed under Article 21 of the Constitution of India. Further, while balancing communitarian dignity vis-à-vis the dignity of private individuals, the scales must tilt in favour of communitarian dignity. The Government hospitals run by the State and the medical officers employed therein are duty bound to extend medical assistance for preserving human right.

23. The issues involved in the present case are squarely covered by the abovenoted judgment of the Supreme Court in *Association of Medical Superspeciality Aspirants and Residents* (supra).

24. Accordingly, keeping in view the ratio decidendi in the aforesaid judgment of the Supreme Court, the writ petition is dismissed.

No order as to costs.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	27.05.2020
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