

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6141 of 2020

Pravin Kishor Prasad Singh

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home Affairs, Government of Bihar, Patna.
2. The Principal Secretary, Department of Health and Family Welfare, Government of Bihar, Patna.
3. The District Magistrate, East Champaran Motihari, Bihar
4. The Civil Surgeon-Cum-Medical Officer, East Champaran, Motihari, Bihar
5. Mr. Sunil Kumar, Block Development Officer, Harsidhhi Block, Motihari

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.K.N. Choubey, Sr. Adv.

Mr. Prashant Kumar, Adv.

For the Respondent/s : Mr. Ajay Bihari Sinha, G.A.8

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

6 21-08-2020 Heard Mr. K.N. Choubey, learned senior counsel for

the petitioner duly assisted by Mr. Prashant Kumar, learned

junior counsel and Mr. Ajay Bihari Sinha, learned G.A.8.

2. The petitioner seeks following reliefs:-

(i) For issuance of appropriate writ, order or direction in the nature of Certiorari thereby quashing and setting aside the Memo No.1285/2020 dated 22.05.2020 whereby the District Magistrate, Motihari ordered for:

(a) Registration of F.I.R. under relevant provisions of the Disaster Management Act, 2005, the Epidemic Diseases Act, 1897 and Bihar Epidemic Diseases, COVID-19 Regulations, 2020;

(b) Replacement of the petitioner as Medical Officer In-charge (MOIC) within 24 hours;



(c) Relieving the petitioner of all his duties and responsibilities as envisaged by the Disaster Management Act, 2005;

(d) Reporting at Sub-Divisional Hospital, Chakia, Motihari in the interregnum; and

(e) Initiation of appropriate departmental proceedings within 48 hours against the petitioner for his suspension.

(ii) For issuance of appropriate order or direction for consequently quashing and setting aside the order of the respondent no.4 (Civil Surgeon, Motihari) vide Memo No.1844/2020 and 1845/2020 dated 23.05.2020 whereby charges were framed against the petitioner for departmental enquiry and he was ordered to hand over the charge and directed to report to the Sub-Divisional Hospital, Chakia, Motihari in the interregnum.

(iii) For issuance of appropriate order or direction for staying the operation of Memo No.1285/2020 dated 22.05.2020 and Memo No.1844/2020 and 1845/2020 dated 23.05.2020 issued by respondent nos.3 and 4 respectively during the pendency of the instant writ application.

(iv) For grant of such other order or direction for which the petitioner is found entitled to in the facts and circumstances of the case.

3. The factual matrix of the case is that the petitioner was posted as Additional Chief Medical Officer, East Champaran, Motihari and he was appointed as Medical Officer In-charge at Harsidhhi Primary Health Centre in terms of the Bihar Epidemic Diseases, COVID-19 Regulation, 2020. On 16.05.2020 the petitioner took samples of four persons, namely,



Wazir Alam, Kayamuddin, Manoj Kumar and Lalbabu Mahto for testing COVID-19 infection, out of which three persons were housed at Kanchewa Inter College and the remaining one, namely, Lalbabu Mahto was housed at his own house as he was living in his house from before. All four persons had complained of a history of fever but were not carrying any symptoms on the day their samples were taken for testing. Accordingly, three persons, who were housed at Kanchewa Inter College, Motihari returned to the quarantine centre and the 4th person Lababu Mahto, who was also asymptomatic, returned to his house on being quarantined in his own house, was having his oxygen level normal on the day of taking sample on 13.05.2020. On 20.05.2020 the test results of the aforesaid four persons came positive for COVID-19 infection and accordingly, they were instructed to be confined to the Isolation Centre at Motihari but the District Magistrate, East Champaran, Motihari (respondent no.3) vide letter as contained in Memo No.1285/2020 dated 22.05.2020 directed the Civil Surgeon, East Champaran, Motihari (respondent no.4) for (i) registration of F.I.R. under relevant provisions of the Disaster Management Act, 2005, the Epidemic Diseases Act, 1897 and Bihar Epidemic Diseases, COVID-19 Regulation, 2020; (ii) replacement of the



petitioner as Medical Officer-In-charge within 24 hours; (iii) relieving the petitioner of all his duties and responsibilities as envisaged by the Disaster Management Act, 2005; (iv) reporting at Sub-Divisional Hospital, Chakia, Motihari in the interregnum and (v) initiation of appropriate departmental proceeding within 48 hours against the petitioner for his suspension. In pursuance of the order passed by the District Magistrate, East Champaran, Motihari, the Civil Surgeon, Motihari (respondent no.4) issued Memo No.1844 and 1845 dated 23.05.2020 whereby charges were framed against the petitioner for departmental enquiry and he was ordered to hand over the charge and to report to the Sub-Divisional Hospital, Chakia, Motihari in the interregnum.

4. Learned counsel for the petitioner submits that as per the notification issued by the Central Government dated 10.05.2020, asymptomatic patients could be allowed to leave for 'home quarantine' at the judgment/discretion of the doctor. In the instant case, the 4th patient, namely, Lalbabu Mahto had come from his house and after collection of his sample, he was allowed to return back to his 'home quarantine', since he was asymptomatic. The Government of Bihar had been carrying random sampling and there was no occasion for the petitioner to suspect anything and accordingly, Lalbabu Mahto was allowed



to leave for home isolation. It is further submitted that the petitioner had activated his Health Quarantine Centre at Mahavir Rameshwar Degree College, Harsidhhi on 02.05.2020. It is further submitted that the District Magistrate, East Champaran, Motihari vide Memo No.1306 dated 25.05.2020 had himself directed that migrant workers returning to the district could be sent to home quarantine, if they were found asymptomatic by the health officials and, therefore, there is no ground for taking any actions against the petitioner in view of the order as contained in Memo No.1306 dated 25.05.2020 (Annexure 7). It is further submitted that the petitioner had established Health Quarantine Centre at Mahavir Rameshwar Degree College, Harsidhhi. The Block Development Officer, Harsidhhi Block (respondent no.5) instructed his own officials for using the said facility as 'Quarantine Centre' under Disaster Management Act for housing migrant workers as a result thereof no space was left for the petitioner to house Lalbabu Mahto and moreover Lalbabu Mahto was asymptomatic. He was allowed to go to his house and remain in isolation. Lalbabu Mahto was living in his house from before and the administration did not keep him in isolation at designated quarantine centre as directed by the district administration to keep the migrant workers at the



quarantine centre after their arrival for 14 days.

5. It is further submitted that in view of the guidelines dated 02.05.2020 issued by the Government of Bihar in furtherance of the guidelines of the Government of India (Order No.40-3/2020-D.M.-1) (A) dated 29.04.2020, the petitioner is not at all responsible for sending Lalbabu Mahto after taking his sample to his "Home Quarantine" as he was residing in his house after return from his work place. Therefore, the order for institution of F.I.R., initiation of departmental proceeding and suspension of the petitioner is based on no ground and during the spread of COVID-19, the service of the petitioner is urgently required for the treatment of infected persons but the District Magistrate, Motihari on account of his whims directed the Civil Surgeon, Motihari for lodging F.I.R., initiation of departmental proceeding and suspension of the petitioner at the fag end of the service of the petitioner.

6. Respondent nos.3 and 5 filed counter affidavit. Respondent no.4 (Civil Surgeon, East Champaran, Motihari) also filed counter affidavit. Respondent nos.3 and 5 took their stands that the petitioner being a doctor is bound to obey the guidelines issued by the Government of India as contained in Order No.40-3/2020-D.M.-1) (A) dated 29.04.2020. In



pursuance of the guidelines of the Government of India, the Government of Bihar issued letter no.495 dated 02.05.2020 and intimated to all the In-charges of the Health Centres and Hospitals. Besides this, the guidelines as contained in Letter No.1679 dated 11.05.2020 and Letter No.1727 dated 14.05.2020 and other letters were also issued to all the Health Officials but despite being well acquainted with the guidelines of Government of Bihar, the petitioner violated the guidelines as well as the directions of superior district authorities and allowed the COVID-19 patients not to remain in quarantine centre being run by the District Disaster Office at High School, Harsidhhi and thereby the petitioner committed offence punishable under Sections 51, 55 and 56 of the Disaster Management Act, 2005 and Section 270 of the Indian Penal Code. There is specific direction for testing and management of the patients between 5th day and 14th day of their being quarantined. The petitioner did not bother even to enquire whether COVID-19 patient Lalbabu Mahto had requisite facility of self-isolation at his home or not. The petitioner did not inform the patient nor enquired about the requisite condition available at his home quarantine as per the guidelines. Thus, the petitioner has completely ignored and violated the circulars/directions issued thereunder and liable to



be prosecuted under the different provisions of the law.

7. Mr. Ajay Bihari Sinha, learned counsel for the State submits that the case was for the first time listed for hearing on 02.06.2020 and the order as contained in Letter No.1285/2020 dated 22.05.2020 (Annexure 3) has been stayed. The State Counsel did not appear on that day and the petitioner has not brought the relevant facts for consideration before this court. It is further submitted that the Civil Surgeon, East Champaran, Motihari in his counter affidavit also reiterated the same facts and, therefore, the order for registration of F.I.R., initiation of departmental proceeding and suspension of the petitioner does not require any interference.

8. From the facts as well as from perusal of Annexure 3, it appears that the District Magistrate, Motihari has referred Clause 3(ch) and Clause 3(anga) of Letter No.495 dated 02.05.2020 as well as the notification issued by the Central Government as contained in Order No.40-3/2020-D.M.-1 (A) dated 29.04.2020 and Letter No.1679 dated 11.05.2020 and other letters for taking necessary actions against the petitioner on the ground that the petitioner violated the circulars/guidelines/directions. According to Clause 3 (ch) of the aforesaid notification, the persons, who had travelled to the



State of Bihar by train, were to be compulsorily housed at the Disaster Quarantine Centre but the Administrative Officer did not quarantine Lalbabu Mahto at designated quarantine centre and allowed him to go to his house. Lalbabu Mahto came from home for testing and when his sample was taken, he was asymptomatic. Clause 3(anga) says that the persons, who were found asymptomatic during health screening at the Disaster Quarantine Centre, were to be retained at the said facility only for the next 21 days. The aforesaid quarantine centre was under the command of Block Development Officer (respondent no.5) and since Lalbabu Mahto was not housed at the Disaster Quarantine Centre run by the Block Development Officer, the petitioner had no business and not at all authorized to ask Lalbabu Mahto, who was asymptomatic to house at Disaster Quarantine Centre. Since, Lalbabu Mahto was found asymptomatic, he cannot be transferred at the Health Quarantine Centre managed by the petitioner.

9. From perusal of Clause 3 (ch), it appears that during course of examination/screening, if a patient is found symptomatic, who had come in the district through train, they were quarantined at quarantine centre and their samples were collected but it was the duty of the Administrative Officer to



quarantine such persons in quarantine centre. There is a different provision for asymptomatic patients and symptomatic patients and after receiving the test report, the patients were sent to the treatment centres according to their severity of symptoms and if the patient is found negative, he was asked to quarantine at quarantine centre run by Disaster Management Department. Therefore, there appears no ground for taking any actions much less the drastic action for lodging F.I.R., initiation of departmental proceeding and putting him on suspension during the period of emergency where the petitioner is a front warrior of COVID-19 and his service is urgently required for the treatment of the COVID-19 patients found positive.

10. Having considered the facts and discussions made above, I find that the District Magistrate, East Champaran, Motihari has issued directions as contained in letter no.1285 dated 22.05.2020 (Annexure 3) without any basis for institution of F.I.R., initiation of departmental proceeding and suspension of the petitioner and on the face of it, it appears that it is a colourable exercise of administrative power and the order as contained in Annexure 3 is not sustainable and is fit to be set aside. The subsequent letter issued by the Civil Surgeon-cum-Chief Medical Officer, East Champaran, Motihari as contained



in letter no.1844 dated 23.05.2020 is also not sustainable. The
aforesaid letters are quashed. The writ petition is allowed,
accordingly.

(Prabhat Kumar Jha, J)

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