

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1 of 2021
In
CIVIL REVIEW No.433 of 2019

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State Health Society through its Executive Director Parivar Kalyan Bhawan,
Sheikhpura, Patna.

... .. Appellant/s

Versus

1. Dr. Manoj Kumar S/o Sri Manoranjan Paswan, Resident of Village/PO
Juniyar, PS-Hilsa, District Nalanda (Writ Petitioner of CWJC No. 13410 of
2019)
2. Khalid Iqbal, S/o Md. Islam Ansari, Resident of Village Khoripokar, PS-
Areraj, District East Champaran (Writ Petitioner of CWJC NO. 15491 of
2019)
3. State of Bihar through the Principal Secretary Department of Health Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Kishore Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Gopal Govind Mishra, Advocate
For the Intervener	:	Mr. Prashant Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 12-04-2022

Re.: **I.A. No. 1 of 2021**

This is an application making a request for impleading
the intervener as party-respondent as any decision would affect the
intervener as well.

For the reasons stated in the application, the prayer is
allowed.

The intervener/applicant is permitted to be added as
party-respondent.



L.P.A. No. 1 of 2021

Heard Mr. Kishore Kumar Sinha, learned Advocate for the appellant/State Health Society, Government of Bihar and Mr. Prashant Sinha for the Interveners. Mr. Gopal Govind Mishra, learned Advocate has presented the case for the respondents.

The challenge in the present appeal is primarily to the order passed by the learned single Judge in Review Petition (Civil Review No. 433 of 2019) which has been admitted and it has further been clarified that since no interim order was being passed by the learned single Judge, the appellant would be under an obligation to comply with the order under review dated 26.09.2019 passed in CWJC No. 13410 of 2019.

The National Health Mission, Ministry of Health and Family Welfare, Government of India had formulated a guideline called “Ayushman Bharat; Comprehensive Primary Health Care through Health and Wellness Centres – Operational Guidelines”. In terms of Section 4.1 of Section 4 of the aforesaid guidelines, Community Health Officer (CHO) is to be appointed from amongst persons who would undertake a bridge course and only those persons would be eligible to undertake that course who would either be B.Sc. in Community Health or a GNM or an Ayurveda practitioner, trained and certified through IGNOU/other



State Public Health/Medical Universities who have acquired competence in delivering public health and primary health care services.

The guidelines, therefore, is absolutely clear that such course has been tailor-made only for Ayurveda practitioners, GNMs and persons having B.Sc. Degree in community health.

In terms of the aforesaid guidelines, the State Health Society published an advertisement in the year 2017, inviting eligible persons for six months bridge course programme for an appropriate certificate in Community Health. This remained an ongoing process and twice a year such courses were organized. It further appears from the records that in the year 2019, a six months certificate course was advertised *vide* Advertisement No. 04/2019 for Ayurveda practitioners, GNMs and B.Sc. Community Health Service.

Those who would have completed the course were required to be posted as CHO on a remuneration of Rs. 25000/- per month and other incentives which could go up to Rs. 15000/- per month.

Against the aforesaid advertisement, some of the Homeopathy and Unani doctors approached this Court *vide* CWJC Nos. 13410 and 15491 of 2019, seeking a direction to the State



Health Society to permit them to participate in the bridge course programme.

The aforesaid two writ petitions were heard by the learned single Judge and an order was passed on 26.09.2019 permitting the Homeopathy and Unani practitioners also to participate in such certificate course of six months.

We notice that for passing the aforesaid order, the learned single Judge took note of the submissions of the State counsel, who had communicated to the Court the stand of the Principal Secretary, Health Department, Government of Bihar that even the Homeopathy and Unani practitioners would be eligible for participating in the six months certificate course referred to above.

In view of the aforesaid stand of the Government, such permission was granted to the practitioners in the other streams of Ayush.

With the aforesaid direction by the learned single Judge, the Advertisement No. 04/2019 referred to above was cancelled and a fresh advertisement was issued *vide* Advertisement No. 10/2019 on 19.12.2019. The practitioners of the other streams of Ayush *viz.* Homeopathy and Unani medicine were also permitted to apply with a rider that their final selection for undergoing the



course will depend upon the final orders of the Court in the review petition which has been filed by the State Health Society against the order passed in CWJC Nos. 13410 and 15491/2019.

The scheme, as it appears from the records, is that only after being selected for undergoing training, the training is to be imparted to such candidates for six months, making them eligible to be appointed as CHO. Since a rider was put with respect to the selection process itself, the result of the selected candidates was not taken out, perhaps awaiting the order of the learned single Judge in civil review which is pending consideration.

In the meantime, some of the Ayurveda practitioners approached this Court for a direction to publish the result of such selection process and proceed further with training in such course. That writ application (CWJC No. 7540 of 2020) was disposed of by order dated 23.09.2020 directing the State Health Society to publish the result on or before 29.09.2020.

After a contempt petition was preferred by the petitioners of CWJC No. 7540 of 2020 referred to above, the result of 73 Ayurveda practitioners was published, keeping the rest 227 seats reserved for the practitioners of other streams of Ayush, thereby leaving the other Ayurveda practitioners/applicants absolutely high and dry, even when the course is meant for only



Ayurveda doctors out of all the streams of Ayush along with GNM's and persons having degree in B.Sc. in Community Health.

Under such circumstances an effort was made by the State Health Society to have the order of the learned single Judge reviewed. However, the learned single Judge, as noted above, has admitted the review petition.

It has been urged on behalf of the appellant and the interveners/respondents that because of this, no result of such candidates have been published and even the practitioners of other streams who had applied for being selected for undergoing such training, remained in the wait-list.

The grievance of the interveners/respondents is that if the practitioners of other streams of Ayush would not have been permitted by the order of the Court to participate in the selection process for undergoing training, other Ayurveda practitioners would have been included in the selection process for undergoing training.

In sum and substance, the grievance of the State Health Society as also of the interveners/respondents is that if a programme has been tailor-made by the Central Government to be executed by the State Health Society and the qualification has been pre-fixed, it should not have been altered by the order of the Court.



Mr. Sinha, learned Counsel for the appellant has drawn the attention of this Court to a communication made by Government of India, Ministry of Health and Family Welfare to the society against a request for clarifying the stand with respect to inclusion of Homeopathy and Unani practitioners in the certificate programme in Community Health in which it has been clarified that such scheme of giving training to Ayurveda practitioners, GNM's and B.Sc. Community Service was based on the recommendation of an expert group which had found that only those persons have an in-depth knowledge of the Human anatomy through rigorous clinical experience in training and therefore they only would have a holistic understanding of public health which would be extremely essential in delivering comprehensive primary health care.

The objections before the Central Government of the practitioners of other Ayush streams were taken note of but it was found that only under circumstances that there are no available BAMS/Ayurveda practitioners to undergo such training, it could be extended to the practitioners of other Ayush streams as well.

The stand of the Central Government, therefore, was clarified in no ambiguous terms that in view of sub-section 4.1 of Section 4 of the "Ayushman Bharat; Comprehensive Primary



Health Care through Health and Wellness Centres – Operational Guidelines”, a Community Health Officer would be required to be only B.Sc. in Community Health or a GNM or an Ayurveda practitioner, trained and certified through IGNOU and other State Health and Medical Universities with respect to their competence in delivering public health and primary health care services.

An advisory was also issued to the Bihar State Health Service Society to proceed further for having the order of the learned single Judge permitting the practitioners of the other streams of Ayush, to be reviewed at the earliest.

Under such circumstances, we are of the view that the review petition ought to be dealt with and disposed off expeditiously to decide the entire purpose of undertaking such training programmes in order to lend competence to persons who could be appointed as Community Health Officers would get derailed.

While saying so, we have taken note of the judgment of the Supreme Court in ***Banarsidas & Ors. Vs. State of UP & Ors: AIR 1956(SC) 520***, where the scope of judicial review with regard to requisite qualification under an advertisement has been explained. It is always open to the authority to lay down such pre-requisite conditions regarding qualification which ought not to be



interfered with in the judicial side as also the decisions of the Supreme Court in *Mukul Kumar Tyagi Vs. State of UP & Ors: (2020) 4 SCC 86* and *Zahoor Ahmad Rather & Ors. Vs. Sheikh Imtiyaz Ahmad & Ors.: (2019) 2 SCC 404*.

Let a copy of this order be placed before Hon’ble the Chief Justice for placing the matter before the appropriate Bench for the needful.

The appeal stands allowed and disposed off accordingly.

(Ashutosh Kumar, J)

(Anjani Kumar Sharan, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
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