

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1015 of 2015

=====

Nagrik Adhikar Manch through its Settler namely Shiv Prakash Rai, Son of Late Nageshwar Rai Resident of village - Gali No. 2 Dhobighat Charitarwan, Buxar, P.S. - Town, P.S. - Buxar, District - Buxar.

... .. Petitioner

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Health and Education, Family Welfare Department, Government of Bihar, Patna.

... .. Respondents

=====

Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar Singh, Advocate.
	:	Mr. Dinu Kumar, Advocate.
For the State	:	Mr. S.D. Yadav, AAG-9.

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE DR. ANSHUMAN)

Date : 03-08-2022

The present writ petition has been filed in which initially there were 7 respondents but subsequently vide order dated 23.01.2017 the name of respondent nos.4 to 7 were directed to be deleted, as such presently there are only 3 respondents related to the present case.

2. By the present Public Interest Litigation the petitioner seeks following reliefs :-

(I) For directing the respondents concerned specially Principal Secretary, Vigilance Department to enquire into the matter about the

role attributed by Dr Santosh Kumar, the then Deputy Superintendent, NMCH, Patna in purchasing sub standard city scan machine amounting Rs.1.50 crores causing loss to the government exchequer and depriving the medical facilities to the patients.

(II) Also for directing the I.G. Economic Offence, Bihar to enquire into the matter about illegal property earned by Dr. Santosh Kumar the then Deputy Superintendent, NMCH and now Superintendent and suppressing the details of the declaration of the property given for the year 2013 and 2014 with respect to the house standing in Kankarbagh, Patna amounting more than 5 crores and other movable and immovable properties either in his name or family name.

(III) Also directing the State Authority including the Principal Secretary, Health Department, Government of Bihar to recover Rs.1.50 crores cost of sub-standard city scan machine from Dr. Santosh Kumar now Superintendent, NMCH, Patna.

(IV) And also for necessary relief/reliefs, order/orders, direction/directions for which the petitioner will be entitled in the law as well as in the facts of the case.

3. By filing the present Public Interest Litigation the petitioner was targeted to respondent no.7 for his alleged conduct by which huge loss taken place to the Government and respondent no.7 was alleged to earn more than Rs.5 crores in the form of movable or immovable property either in his name or in the name of his family and, therefore, petitioner has requested to this Court to issue a writ of mandamus or appropriate detailed orders to direct respondent no.4 to inquire about the role of respondent no.7 and also to inquire about the illegal property earned by him through economic offence wing of the State Government. There were series of counter affidavits, supplementary counter affidavits, supplementary affidavits, total 36 in number filed in the present petition, which make this case voluminous. There are in total 37 orders passed in this case. For final disposal of this case the stage of this case may be divided into two parts. The stage prior to 23.01.2017 and the stage after 23.01.2017 which is figured by order no.22 of this writ petition.

4. By virtue of this PIL, a vigilance case has been

instituted against the respondent no.7 and, therefore, this Court has find that presence of respondent no.4 to 7 i.e. Principal Secretary, Vigilance Department, Government of Bihar, Inspector General of Police, Economic Offence, Bihar, Patna, Superintendent of Police, Economic Offence, Bihar and Dr. Santosh Kumar, the then Superintendent, Nalanda Medical College and Hospital, Patna, respondent no.4 to 7 respectively, are no longer required and, therefore, their names was ordered to be deleted on 23.01.2017. But in the same order, the State of Bihar submits that C.T. Scan and M.R.I. Machines shall be installed within 4 weeks in Nalanda Medical College and Hospital. The State also seeks some time to find out the status of installation of C.T. Scan and M.R.I. Machines in the other medical colleges of the State.

5. In the above mentioned background, the present PIL at this juncture has been confined only and only to issue a writ of mandamus directing the State Authorities to install C.T. Scan and M.R.I. Machines in all medical colleges of the State. In this regard, it is necessary to bring the important materials for just decision of the present writ petition. Firstly, the factual matrix which was brought on the record by the petitioner and respondent authorities-State, secondly, the orders passed by this

Court on different occasions and the undertakings given by the State Authorities before this Court on different occasions, thirdly, the position of law particularly the responsibility of the State with regard to public health and hospitalization according to the Constitution of India and fourthly, the conclusion.

6. Vide order dated 01.03.2017 (Order no.23) it has been directed by the Court that State shall disclose the steps taken by them for installation of M.R.I. and C.T. Scan Machines in the other medical colleges. Later on vide order dated 19.06.2017 (Order no.26) it has been observed that in paragraph nos.9 and 10 of the counter affidavit filed by the State Government it is stated that the process of installation of C.T. Scan machines in certain medical colleges and hospitals and purchase of M.R.I. machines in 5 medical colleges and hospitals is in progress and it is indicated that within a period of 2-3 months, the entire process shall be completed. Subsequently, vide order dated 17.07.2017 (Order no.28) it transpires that respondent no.3, Principal Secretary, Health Department, Government of Bihar has informed that in NMCH, Patna the C.T. scan machines and M.R.I. machines have been installed and became functional but the counsel for the petitioner informed that those machines have not been made functional as

on the said date. It was also informed that in DMCH, Laheriasarai, Darbhanga C.T. Scan Machines and M.R.I. machines are in progress of being installed but no indication was made as to when and by what time the installation would be completed and machines in these hospitals would become functional. This court has further directed to provide the proper time frame for installation machines in other medical colleges and hospitals and the matter was adjourned. Thereafter, various dates crossed i.e. 18.08.2017, 29.08.2017, 08.12.2017, 03.01.2018 and 14.02.2020 but no information was provided by the respondents about installation of C.T. Scan and M.R.I. machines in all the medical colleges and hospitals in the State of Bihar. Lastly, vide order dated 24.02.2020, this Court has specifically directed to the Principal Secretary, Health Department to file an affidavit in terms of order dated 17.07.2017 and also stating latest position with regard to functioning of C.T. Scan machines and M.R.I. machines in all the medical colleges and hospitals in the State of Bihar within a period of 4 weeks and case was fixed to be listed on 30.03.2020. Vide order dated 23.11.2020 (Order no.35) learned counsel for the State again sought 2 week's time but this Court had appointed an amicus curiae in this case and also acknowledged

that the order dated 24.02.2020 demanding the progress about the installation of C.T. Scan and M.R.I. machines in the different hospitals established within the State of Bihar.

7. Most surprisingly vide order dated 15.12.2020 (Order no.36) it has been ordered that

“since 2015, residents of the state have been struggling for getting proper medical treatment with the use of modern technology and equipment in the Government Hospitals within the State of Bihar.

Shockingly, it appears that since 2018, with each affidavit either the truth is suppressed or a totally different and divergent versions brought on record. The issue is simple, but it has been made complex on account of the lack of coordination of the authorities, resulting into filing contradictory affidavits.

Whether C.T. Scan and M.R.I. machines are installed and operational/ functional, in all the ten hospitals established by the State within the State of Bihar is the only issue. And, if so, then it is on what basis (P.P.T. Mode or otherwise). Also what

are the charges which a poor patient is required to pay is all that is required to be made known to the Court.

Unfortunately, since 2015 this answer has not come out.

As such, we are constrained to direct the Principal Secretary, Health, to have the entire issue examined; have the facts ascertained; and file his personal affidavit indicating the exact status and position.”

8. On 12.01.2021 an advance copy of affidavit was filed on behalf of Principal Secretary, Health in which it has been intimated that in 9 medical colleges of Bihar C.T. scan machines are functional in P.P.P. mode and in 5 medical colleges of Bihar, M.R.I. machines are functional. It has also been indicated that under Ayushman Bharat-Pradhan Mantri Jan Arogya Yojana (AB-PMJAY) free C.T. Scan and M.R.I. facility is available for the second edition (HBP-2.0) of the health benefit package and it was requested that in view of the aforesaid facts and circumstances appropriate order may kindly be passed.

9. In reply to the above said alleged advanced counter

affidavit dated 12.01.2021 filed by the present Principal Secretary. Petitioner has filed its rejoinder on 03.02.2021 stating therein that the State respondents have admitted that 4 medical colleges are running without M.R.I. machines and 9 medical colleges have not its own C.T. Scan machines rather it is running on P.P.P. mode. The writ petitioner has also annexed different letters annexed as Annexure no.13 series by which it has been informed by the Superintendent of NMCH to the Health Department that C.T. Scan machines and M.R.I. machines running on P.P.P. mode by Medanta Hospital is not acceptable by Medical Council of India and in this way the respondent has suppressed the actual existence of C.T. Scan machines and M.R.I. machines. Similarly by the supplementary counter affidavit dated 23.08.2017 filed by the Principal Secretary, Health Department, Government of Bihar. It has already been informed that 5 times standard was floated for M.R.I. machines in S.K.M.C.H., Muzaffarpur, J.L.N.M.C.H., Bhagalpur, A.N.M.C.H., Gaya, 3 times tenders were floated for M.R.I. machines for V.I.M.S. Pawapuri and B.M.C.H., Bettiah. It has also been stated that the C.T. Scan machines on P.P.P. mode by Kalpana Nursing Home Pvt. Ltd. is without indicating the place in JKTMCH Hospital, Madhepura. It has been pointed

out that cost of C.T. scan machines and M.R.I. machines in the medical colleges and hospitals differs from one hospital to another. It is also evident that price of C.T. Scan machine is same for Government patients and private patients which proves that the patients who are below poverty line are bound to pay price testing on equal footing as like that of patients above poverty line. The Government of Bihar has decided to make PMCH at World class hospital but from the affidavit filed by the Principal Secretary, Health Department, it transpires that in PMCH which is said to be oldest hospital of Bihar has not having its own C.T. Scan machines and M.R.I. machines till now.

10. The petitioner also raised the point that it can be imagine as to how the treatment of patients admitted in the Government hospitals from block level to State capital used to go in the absence of C.T. Scan machines and M.R.I. machines even after 75 years of independence of India. The petitioner also made specific allegation against the State in its rejoinder that actually the State Government is not interested to install the C.T. Scan machines and M.R.I. machines on its own and only interested to establish C.T. Scan machines and M.R.I. machines on PPE mode in order to give monetary benefits to private

persons at the cost of public money, though, it is required to provide C.T. Scan machines and M.R.I. machines free of cost to the patients admitted to the hospital.

Position of Law

11. With a view, to decide the present PIL by this Court, it is necessary to discuss the position of law related to health.

12. Entry-6 of List-2 of Schedule-7 of the Constitution of India covers the subject Public Health and Sanitation, Hospitals and Dispensaries. It is basically the State subject as per the Constitution. The Constitution of India does not expressly provide guarantee for fundamental right to health. But there are multiple references in various parts of the Constitution relating to public health and also on the role of State in providing the health and care to the citizens.

13. The directive principles of State policy in Part IV of the Constitution of India provide a basis for the right to health. Article 38 of the Constitution lays down the responsibility of the State to secure social order for the promotion of the welfare of public health, Article 39 (E) directs the State to secure health of workers, Article 42 directs the State to just and humanly conditions of work and maternity relief,

Article 47 casts a duty on the State to raise the nutrition level and standard of life of people and to improve public health, Article 243 (G) read with Entry-23 of Schedule-11 also endows the Panchayats and Municipalities to strengthen public health.

14. It is true that the directive principles hold only persuasive value and the State used this as a weapon to escape its duty, responsibility and liability in providing and protecting health of the common public, therefore, the Hon'ble Supreme Court of India came to the rescue and brought the right under the purview of Article 21 of the Constitution. The scope of Article 21 has thus been widened and it has been hold that Article 21 ensures the right of life and liberty to each individual citizen or non-citizens, mean to include not only the right to life and liberty of a person but right to health as well.

15. In **State of Maharashtra Versus Chandrabhan, AIR 1983 Supreme Court 803**, the Hon'ble Supreme Court held that:

“right to life enshrined in Article 21 means something more than survival or animal existence. It includes all those aspects of life which go to make a man's life meaningful, complete and worth-living that which alone can make it possible to live, must be declared to be an

integral component of the right to life.”

16. In the light of the finding given by Apex Court in the case of **Rakesh Chandra Narayan Versus State of Bihar reported in 1996 (8) Scale 33:-**

“It has been held that the Government has obligation to ensure that medical attention is provided to every citizen in the country.”

17. It is obvious that right to adequate medical facilities or health care is not only obligation of the State under Part-IV and Article 47 of the Constitution of India and also found right granted under Article 21 as providing medical care facet of protection of right to life under under Article 21 of the Constitution of India.

18. In case of **Consumer Education & Research Center and others Vs. Union of India & others reported in 1995 (3) SCC 42** the Hon’ble Supreme Court has held in dealing with the rights of workers of asbestos manufacturing and health hazards related to it. The Hon’ble Court has pleased to observe:

“..... that right to health and health care of a worker is a component of the fundamental right to life guaranteed under Article 21 of the Constitution of India. The Court further

observed that, Article 38(1) lays down the foundation for human rights and enjoins the State to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life.”

19. In case of **Paschim Banga Khet Mazdoor Samity and Others Vs. State of West Bengal and Another**, the **Hon’ble Supreme Court further in case reported in (1996) 4 SCC 37**; “widened the scope of Article 21 and discussed about the Government responsibility to provide medical aid to every person in the country, held that in a welfare State the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare State.”

20. Similarly in the case of **State of Jammu and Kashmir Vs. Vichar Kranti International and Anr.** reported in **(2016) 16 SCC 290**, the Hon’ble Supreme Court categorically held in para 9 as follows:

“Quite apart from the issue of whether Government Doctors should be allowed to engage in private practice, there are other and, perhaps some fundamental aspects which would arise from

the public interest litigation that was instituted before the High Court. The basic issue which requires to be addressed is the availability of infrastructure and facilities in Government hospitals across the State of Jammu and Kashmir and the facilities for the treatment of patients. The respondents would be at liberty to move an appropriate application before the High Court for amending the writ petition to adduce pleadings and for claiming appropriate reliefs in that regard. However, independent of that, we are of the view that the quality of medical care in Government hospitals across the State of Jammu and Kashmir is a matter which should receive attention and oversight in the exercise of the jurisdiction under Article 226. In particular, we emphasise the following issues which would require careful scrutiny and such remedial directions as may be necessitated on the basis of the material which may become available to the High Court. The areas of concern include :

- (i) The availability of adequate infrastructure in Government hospitals;*
- (ii) The availability of essential equipment for treatment;*
- (iii) The availability of staff-medical, paramedical and of a supporting nature;*
- (iv) Enforcement of conditions of hygiene to secure proper medical treatment facilities and*

(v) The availability of essential medicines;”

21. It is also important to raise the human right issue relating to the present matter as Director General of World Health Organization to which India is a member, stated that health is a fundamental human right, the enjoyment of the highest attainable establish of health one of the fundamental right of every human being without restriction of rest reason, political belief, economic or social conditions.

22. In this background and in the light of factual matrix of the present public interest litigation where the question of providing Magnetic Resonance Imaging Machine (MRI Machine) and Computed Tomography Scan (C T Scan Machine) used to take pictures of the anatomy and the physiological process of the body as well as taking medical examination to create sectional image of the body and to provide more essential result in identifying the various disease is concerned, the State can not afford to cause any delay in the matter and compromise with the basic rights of marginalised class of the society, who are totally dependent on State run hospitals.

23. This Court has found the complete ignorance on the part of respondent state functionaries. They are ignorant in establishing those machines in all the medical colleges and

hospitals situated in the Government Sector. Even taking time and time since 2015 onwards, Government is not in a position to establish own MRI and CT Scan machines in all the hospitals.

24. From the latest counter affidavit filed by the Principal Secretary it transpires that in 9 Government Medical Colleges of Bihar the CT Scan shall be functional and in 5 Government Medical Colleges of Bihar the MRI Machines are functional but only on PPP mode. But the cost to be charges for use of those CT Scan Machines and MRI Machines in different medical colleges and hospitals differs from one govt. hospitals with that of other govt. hospitals.

25. It is unfortunate that in the present era when CT Scan and MRI Machines are one of the most essential equipment for hospitals and Medical Colleges have not been installed by the Government of its own. As claimed by the petitioner that running CT Scan Machines and MRI Machines on PPE mode is not acceptable to the Medical Council of India. The petitioner also alleged that the State Government is not interested to install CT Scan Machines and MRI Machines of its own, only and only in order to give monetary benefits to the private parties at the cost of public money. We have seen hereinabove that right to health is basically right to life, which is

one of the fundamental human right. It is obligation on the part of the State to establish CT Scan Machines and MRI Machines in each and every hospitals within a fixed time frame on its own cost.

26. In the light of the above discussion we are of the considered view that it is a fit case where writ of mandamus be issued. Hence, we direct the respondents that within 6 months from today they must install CT Scan Machines and MRI Machines in all the Government run hospitals.

27. With the aforestated direction and observations this writ petition is disposed of.

28. Registry is directed to communicate this order to respondent no.3.

(Ashwani Kumar Singh, J.)

(Dr. Anshuman, J.)

ritik/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.08.2022
Transmission Date	NA