

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7229 of 2023

Vikash Chandra @ Guddu Baba S/o Late Ramashraya Prasad, Residing at Mahatma Gandhi Path, Kurji- Baluper, P.O.- Sadalat Ashram, P.S.- Digha, District- Patna, presently residing at Mohala- Indrapuri, Road No. 12, P.O.- Keshari Nagar, P.S.- Patliputra, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna.
2. The Secretary, Animal and Fisheries Resources Department Govt. of Bihar, Patna.
3. The Director, Animal Husbandry, Govt. of Bihar, Patna.
4. The Vice- Chancellor, Bihar Animal Sciences University, Veterinary College Campus, Samanpura, Patna (Bihar)- 800014
5. The Registrar, Bihar Animal Sciences University, Veterinary College Campus, Samanpura, Patna (Bihar)- 800014

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Vikash Chandra @ Guddu Baba (In Person)
For the Respondent/s : Mr. Ajay Behari Sinha, GA8

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

9 03-11-2023 1. Heard the petitioner in person and learned Government Advocate for the respondents.

2. The petitioner has filed the instant application praying for a direction to the respondent authorities to ensure that storage, distribution of medicines etc. be done only through pharmacist.

3. It is stated that no post of pharmacist is sanctioned



and as per the Drugs and Cosmetics Act, 1940 and the Rules framed thereunder it is only the pharmacist who can do the job of storage, distribution and administration of medicine.

4. A counter affidavit as also a supplementary counter affidavit have been filed on behalf of the Secretary, Animal & Fisheries Resources Department, Government of Bihar, Patna and the Director, Animal Husbandry, Government of Bihar. Besides, a counter affidavit has also been filed on behalf of the Vice Chancellor and Registrar of the Bihar Animal Sciences University.

5. Learned counsel for the respondents submits that it is the Veterinary doctors who are discharging their duties of distribution of medicine etc. in the veterinary hospitals which is in accordance with the provisions of the Pharmacy Act, 1948.

6. Having heard learned counsel for the parties and having perused the material on record it may be observed that section 42 of the Pharmacy Act, 1948 prohibits dispensing of medicine by unregistered persons on the prescription of a medical practitioner; but with a rider that medical practitioners themselves could do it. For ready reference section 42 of the Act is reproduced hereinbelow:-

“42. Dispensing by unregistered persons. -(I)
On or after such date as the State Government



may by notification in the Official Gazette appoint in this behalf, no person other than a registered pharmacist shall compound, prepare, mix, or dispense any medicine on the prescription of a medical practitioner.

Provided that this sub-section shall not apply to the dispensing by a medical practitioner of medicine for his own patients, or with the general or special sanction of the State Government, for the patients of another medical practitioner.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one thousand rupees or with both.

(3) Cognizance of an offence punishable under this section shall not be taken except upon complaint made by 1[order of the State Government or any officer authorised in this behalf by the State Government or by order of the Executive Committee of the State Council]:

2[Provided further that where no such date is appointed by the Government of a State, this sub-section shall take effect in that State on the expiry of a period of '[eight years] from the commencement of the pharmacy (Amendment) Act, 1976.]”

7. On perusal of section 42 as quoted hereinabove, it



would be evident that though section 42(1) provides that no person other than registered pharmacist shall compound, prepare, mix, or dispense any medicine on the prescription of a medical practitioner, however, proviso to section 42(1) carves out an exception and provides to the effect that the said subsection shall not apply to the dispensing of medicine by a medical practitioner for his own patients or with the general or special sanction by the State Government for the patients of another medical practitioner.

8. From the contents of the supplementary counter affidavit filed on behalf of the respondent nos.2 and 3 it would transpire that the categorical stand of the respondents is that the veterinary doctors discharge their duties of distribution of medicine in the veterinary hospitals in accordance with section 42 of the Act.

9. Thus in view of the facts and circumstances of the case, the provisions of the Pharmacy Act, 1948 and specially proviso to section 42(1) thereof as quoted hereinabove together with the contents of the supplementary counter affidavit filed on behalf of the respondent nos. 2 and 3, the Court is of the opinion that there is no illegality and the distribution of medicine etc. by the veterinary doctors in discharge of their duties is in



accordance with section 42 of the Act.

10. The Court finds no merit in the instant public interest litigation and the same stands disposed of.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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