

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14397 of 2016

Maitri Charitable Trust , through its Administrator & Director, Ms. Adriana Ferranti, P.O. Dodhgaya, District-Gaya, Pin Code-824231.

... .. **Petitioner**

Versus

1. The Union Of India, Through the Secretary, Ministry of Health & Welfare, Government of India, New Delhi.
2. The Secretary, Ministry of Health & Welfare, Government of India, New Delhi.
3. The Special Health Secretary, Mission Director (NRHM), Ministry of Health & Welfare, Government of India, New Delhi.
4. The Director General, Central T.B. Division, Ministry of Health & Welfare, Government of India, New Delhi.

... .. **Respondents 1st Set.**

5. The State of Bihar through the Principal Secretary, Health Department, Government of Bihar, Patna.
6. The Principal Secretary, Health Department, Government of Bihar, Patna.
7. The State T.B. Officer cum-The Deputy Director, Health Services Tuberculosis cum State Programme Officer, Agamkuan, Patna, Bihar.
8. The District Magistrate cum Chairman District Health Society, Gaya.
9. The Additional Chief Medical Officer cum District Tuberculosis Officer, District health Society, Gaya.
10. The Civil Surgeon cum Chief Medical Officer cum Secretary RNTC, Gaya.
11. The District Tuberculosis Officer, Gaya.
12. The Mission Director, NRHM, SHS, Government of Bihar, Patna.
13. The Deputy Director Reproductive & Child Health, State Health Society, Parivar Kalyam Bhawan, Sheikhpur, Patna.
14. The In-Charge, T.B. Unit State Health Society, Parivar Kalyam Bawan, Sheikhpura, Patna.

... .. **Respondents 2nd Set.**

Appearance :

For the Petitioner/s : Mr. Archana Prasad, Advocate.
For the Respondent/s : Mr. Rajeshwar Singh, GA-10.

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

7 21-09-2023 Heard learned counsel for the parties.

2. The present Writ Petition has been filled for the following reliefs:-

“That the instant writ petition is directed against the order dated 08.05.2012 vide letter no. 427 (contained in Annexure-5, herein) issued by Respondent no. 7. Dy.



Director, Health (Tuberculosis) cum State Programme Officer, Agamkuan, Patna, Bihar and for setting aside / quashing of the same and also the order dated 01.04.2016, issued vide letter no. 87, by Civil Surgeon cum Secretary, R.N.T.C.P. Gaya (Respondent No. 7 herein) as contained in Annexure-'4' to this petition which has been issued on receipt of the representation filed by the petitioner dated 23.02.2016 on a direction issued by this Hon'ble Court in CWJC No. 8457 of 2014 on 05.02.2016 (contained in Annexure-1' & Annexure-2", respectively for passing appropriate order in the facts and circumstances of the case granting following reliefs :-

(i) to make the full and final payment of the due amount as claimed by the petitioner by filing a series of representations and finally on 23.02.2014 on the direction of this Hon'ble Court vide order dated 05.02.2014 passed by Hon'ble Justice Vikash Jain in CWJC No. 8457 of 2014 for the services rendered by the petitioners and availed of the same by the Respondents, mandatorily in the light of Revised Natural Tuberculosis Programme Guidelines (hereinafter as RNTCP guidelines).

(ii) to issue writ of mandamus commanding the authority concerned after setting aside the order impugned herein to review the entire matter in the light of the Government decision relating to RTNTPC guidelines and other relevant orders issued by the Government, relating to the said programme as claimed by the respondents to have achieved the said programme as laid down and reported to have been implemented as per the World Health Organization sponsored scheme, to be implemented in all the States of India by the active involvement of the Central Government, State



Government and the private participation of Non-Governmental Organization having infrastructural facilities.

(iii) to call for the reports which have been submitted by the State authorities, i.e. respondent 2nd set, to the Central Government authorities, i.e. the Respondent 1st set, and also the reports finally communicated by the Central Government to the World Health Organization (W.H.O.), if any, by the Central Government authorities towards achievement of goals relating to various schemes of Programmes of RNTC, in various states and in particular relating to the 10 blocks of the District of Gaya, at Bodhgaya in which the petitioner participated and rendered services as per the RNTCP guidelines.

(iv) to pay interest at market rate on delayed payment of amount due to the petitioner to be paid, till the date of payment and the cost of litigation, separately and also to compensate for the injury /damage so caused, to the petitioners”.

3. This Hon'ble Court vide order dated 05.02.2016 passed in CWJC No. 8457 of 2014 directed the Deputy Director of Health services to consider the representation of the petitioner and pass a reasoned order.

4. Learned counsel for the petitioner has stated that the impugned order of rejection of the claim of the petitioner has been passed by the Civil Surgeon-cum-Secretary, R.N.T.C.P. Gaya dated 01.04.2016 in Letter No. 87 who is not competent to pass the order. That the Civil Surgeon did not have the



necessary authorization nor the power to pass the impugned order. Further the learned counsel has drawn the attention of this Court to the Memorandum of Understanding entered between the parties especially the clause 6(iii) stipulates that in case of any dispute the State T.B. Officer and the petitioner may try to resolve the said dispute and if it is not possible then a final decision with regard to the dispute shall be taken by the State Director of Health Services or his/her designee. Learned counsel has stated that as per the above MoU it is only the State Director of Health Services who is a competent authority to pass any order. Therefore prayed this Court to set aside the order of rejection and remand the matter back to the competent authority to pass orders afresh.

5. Learned counsel for the petitioner has stated that the Deputy Director of Health Services is also of the same cadre as that of the Director, therefore, taking the said factor into consideration this Court has directed the Deputy Director to pass necessary orders.

6. Though the learned counsel appearing on behalf of the respondents has tried to support the order passed by the Civil Surgeon, he was unable to satisfy this Court as to under what provisions of law or under what terms of agreement he is



authorized to pass any order. Learned counsel has fairly stated that the order may be set aside and remanded back to the Deputy Director of Health Services to consider the representation of the petitioner afresh and pass orders accordingly.

7. Having regard to the above made submissions, without going into merits or demerits of the case, the impugned order is set aside and the matter is remanded back to the Deputy Director for passing orders afresh.

8. It is needless to mention that before passing any order the petitioner shall be put on notice and given an opportunity of hearing. The entire exercise shall be completed as expeditiously as possible preferably within a period of eight weeks from the date of receipt of the copy of this order. Any order passed shall be communicated to the party.

9. Accordingly, the present Writ Petition stands allowed to the extent indicated.

(A. Abhishek Reddy , J)

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