

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 10590 of 2024

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Rahul Kumar Son of Shri Mundrika Singh Resident of Village Bhadsheni,
P.S. Hisua, District Nawada. Petitioner/s

Versus

1. The State of Bihar through the Director Department of Health, Bihar, Patna.
2. The Director, Department of Health, Bihar, Patna.
3. The Deputy Director, Department of Health, Magadh Commissioner, Gaya.
4. The District Magistrate, Nawada.
5. The Civil Surgeon Cum Chief Medical Officer, Nawada.
6. The In-charge medical Officer, P.H.C Hisua, Nawada.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajesh Ranjan Kumar
For the Respondent/s : Mr.Advocate General

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

5 18-01-2025 Heard learned counsel for the parties.

2. The present writ petition has been filed for the
following reliefs:-

*“That this is an application for
issuance of appropriate writ/writs,
order/orders, direction/directions for setting
aside the order dated 29.05.2024 issued vide
Memon No. 1356 y which the Civil Surgeon
Surgeon Cum Chief Medical Officer,
Nawada has cancelled the Registration of
Sumitra Nursing Home, Hisua bearing Reg.
No. 5N/2020-21 with immediate effect.
And/or pass such other order/orders under
facts and circumstances of the case.”*

2. Learned counsel appearing on behalf of the
petitioner has assailed that the impugned order dated 29.05.2024
passed by the Civil Surgeon Cum Medical Officer, Nawada,
(Annexure- P3) whereby registration of the Nursing Home of
the petitioner has been cancelled. Learned counsel for the



petitioner has stated that the authority without putting the petitioner on prior notice has issued order of cancellation, which is not only contrary to the provisions of Section 41 (3) and 42 (3) of the Bihar Clinical Establishment Act, 2023 and against the principle of natural justice, that the authority without giving him an opportunity of filing the explanation pass the order of cancellation. Learned counsel has therefore prayed this Hon'ble Court to set aside the impugned order and allowed the present writ petition.

3. *Per contra*, learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition. Learned counsel has stated that the impugned order is an Appealable order and without availing the remedy of appeal, the petitioner has straightway approached this Hon'ble Court by way of the present writ petition. Learned counsel has therefore, prayed this Hon'ble Court to dismiss the present writ petition.

4. A perusal of the impugned order as well as counter affidavit filed by the respondents reveals that the petitioner was not put on prior notice before the order of cancellation was passed. The same is not only contrary to the principles of natural justice and equity but also against the provisions of the Bihar



Clinical Establishment Act, 2023 more particularly 41(3) and 42(3) of the said Act, therefore the impugned order is liable to be set aside on this ground alone.

5. The plea of the respondents that the petitioner has an alternative remedy of Appeal cannot be a ground for relegating the party to file an appeal. This Court as well as the Hon'ble Supreme Court in a *catena* of cases held that where the impugned order suffers from any illegality and not in consonance with the well established principle of law and procedure then the same is liable to be set aside. Having regard to the above facts, it has to be held that the impugned order has passed in violation of the principles of natural justice and equity and liable to be set aside and the same is accordingly set aside. In case the respondents are so advised they are free to issue a fresh notice detailing the violations, if any, duly giving the petitioner an opportunity of filing explanation and thereafter pass a reasoned order.

6. With the above directions, the present writ petition stands allowed to the extent indicated above.

(A. Abhishek Reddy , J)

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