

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20444 of 2014

Indian Association Of Pathologists And Microbiologists

... .. Petitioner/s

Versus

The State Of Bihar & Ors

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 8055 of 2015

Ram Krishna Mistri

... .. Petitioner/s

Versus

Union Of India & Ors

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 20444 of 2014)

For the Petitioner/s : Mr. Md. Shamimul Hoda, Advocate

For the Respondent/s : Mr. Anil Kumar Sinha, G.A. 9

For Union of India : Mr. S.D. Sanjay, Addl. S.G.

Mr. Anshuman Singh, C.G.C.

Mr. Sanjeet Kumar Sinha, C.G.C.

(In Civil Writ Jurisdiction Case No. 8055 of 2015)

For the Petitioner/s : Mr. Shivendra Kumar Sinha, Advocate

For the Respondent/s : Mr. Roy Shivaji Nath, Advocate

For Union of India : Mr. S.D. Sanjay, Addl. S.G.

Mr. Anshuman Singh, C.G.C.

Mr. Sanjeet Kumar Sinha, C.G.C.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

24 30-08-2018

In both these Public Interest Litigation Petitions, the grievance is that in the State of Bihar various Poly-clinics, Diagnostic Centres and Nursing Homes, small, medium and large hospitals are functioning in an illegal manner, without



there being any proper regulatory measures to evaluate their functioning and various illegalities are being committed contrary to the requirements of the Statutory Rules. One of the major grievances is with respect to running the individual pathology laboratories/diagnostic centres which are being run illegally and, that too, without qualified and recognized Laboratory Technicians and/or Pathologists.

It is the case on behalf of the petitioners that as such the laboratory report is being issued and signed by the persons who are not having required educational qualifications and as such are not even the Pathologists.

It is the case on behalf of the petitioners that despite the Statutory Rules and even the guidelines issued by the Medical Council of India, which has been issued considering the decision of the Gujarat High Court in SCA No. 7999 of 1998, no further steps are taken to close/stop such pathology laboratories/diagnostic centres and even individual clinics/nursing homes, small, medium and large hospitals which do not conform to the rules. Various orders have been passed by this Court in the present proceedings by which the concerned departments are called upon to furnish the particulars (after holding necessary enquiry) in respect to various poly-clinics/



diagnostic centres/nursing homes, small, medium and large hospitals and even individual pathology laboratories.

In their counters/supplementary counters filed on behalf of the State Government through the Health Department, it is stated that on the basis of the information supplied by the concerned Civil Surgeon, it is found that a total of 58 non-standard pathology laboratories/diagnostic centres are reported in the district of Patna, 79 in the district of Bhagalpur, 13 in the district of East Champaran, 75 in the district of Katihar, 89 in the district of Sasaram, 128 in the district of Bhojpur, 38 in the district of Vaishali and 233 in the district of Darbhanga.

It is further stated that show cause notices have been issued to the concerned diagnostic centres for operating without qualified Pathologists and/or not operating as per the rules. The particulars of such illegal pathology laboratories are given/produced along with a counter affidavit.

In the further supplementary counter affidavit filed on behalf of Respondent No. 4, Director, Health Services, Bihar, dated 28.08.2018, it is stated that as per the information received from the Civil Surgeons of various districts (other than those whose particulars are given in the earlier counter), a total of 109 non-standard pathology centres/diagnostic centres are



reported in the district of Aurangabad, 92 in the district of Saran (Chapra), 19 in the district of Munger, 54 in the district of Samastipur, 27 in the district of Banka, 7 in the district of Khagaria, 14 in the district of Jehanabad, 27 in the district of Madhepura, 79 in the district of Bettiah and 13 in the district of Sheikhpura.

It is submitted that a closure notice is issued to them and out of which a few are closed. It is candidly admitted that in many of the cases no follow up action has been taken against such diagnostic centres which are running illegally.

Learned counsel appearing on behalf of the State/Director, Health Services, Bihar has fairly stated that all those pathology laboratories/diagnostic centres/nursing homes which are being run illegally and which do not meet with the norms and without having qualified pathologists are required to be closed down.

Learned counsel appearing on behalf of the Medical Council of India has supported the petition. It is stated that, in fact, after the decision of Gujarat High Court in SCA No. 7999 of 1998 and other allied civil applications, the Medical Council of India has issued a detailed guideline. It is stated that even as per the Medical Council of India, the Laboratory Technicians



being not Pathologists, cannot run any laboratory independently. They cannot directly give any report to any patient or any other individual, or to any institution or practising doctor, without any authentication of the same by the Pathologist registered with the Medical Council of India. Therefore, even according to the Medical Council of India, the pathology laboratories/diagnostic centres/nursing homes without the Pathologists and which do not meet with the norms, cannot be permitted to be run and they are required to be closed down immediately.

Learned counsel appearing on behalf of the intervenor one Dr. Deo Nandan Prasad Singh, by profession a M.B.B.S. doctor, has stated that considering the provisions of the Indian Medical Council Act, 1956, the petitioner having a M.B.B.S. degree, duly granted by a Medical College/Institution /University included in the 1st Schedule of the Indian Medical Council Act, 1956, can sign the laboratory reports. Therefore, it is the case of the intervenor that the doctors, who are having an M.B.B.S. degree and/or other degrees, as mentioned in the 1st Schedule of the Indian Medical Council Act, 1956, and more particularly considering Section 15 of the Indian Medical Council Act, 1956, they are entitled to sign the laboratory reports, irrespective of the fact whether they are registered as a



Pathologist or not and/or they are registered medical practitioners with a post graduate qualification in Pathology or not, they are entitled to sign such reports.

Heard learned counsel appearing on behalf of the respective parties at length and perused the materials on record placed by way of counters/supplementary counters. The issue involved in the present petitions is of a great importance and related to the health of public at large. Allegations are that in the State of Bihar, various poly-clinics/diagnostic centres and nursing homes, small, medium and large hospitals are functioning in an illegal manner without there being any proper regulatory measures and various illegalities are being committed contrary to the requirements of the statutory rules. One of the major grievances is with respect to the pathology laboratories/diagnostic centres which are being run without meeting with the required norms and, in fact, which do not have any qualified Pathologist and the laboratory certificates are being issued by the persons who are not qualified in the subject.

In the counters/supplementary counters, it is categorically admitted that a large number of pathology laboratories/diagnostic centres, nursing homes are being run illegally and many of them do not meet with the required norms.



The particulars of those are given in the counters/supplementary counters referred to hereinabove.

It is the case on behalf of the intervenor, who is a practising doctor and who seems to be running a similar pathology laboratory, that as having a M.B.B.S. degree and being a doctor recognized under the provisions of the Medical Council Act and considering Section 15 of the Indian Medical Council Act, 1956, all medical practitioners are competent and entitled to sign laboratory reports, irrespective of whether they are registered medical practitioners with a post graduate qualification in Pathology or not.

Identical question came to be considered by a Division Bench of Gujarat High Court in a bunch of petitions including Civil Application No. 7999 of 1998 and other allied civil applications and by a detailed judgment and order and even considering the provisions of the Indian Medical Council Act, 1956, ultimately, in paragraph No.33 the Division Bench has concluded as under:

“We accordingly hold that the Laboratory Technicians being not Pathologists, cannot run any laboratory independently. They cannot directly give any report to any patient or any other individual, or to any institution or practising doctor, without the authentication of the same by the pathologist registered with the Medical Council. Though it is open to any



person or institute to run a pathology laboratory, but no report can be issued without the signature or counter signature of the practicing pathologist recognized by the Medical Council of India. The respondents are directed to ensure that no pathology laboratory is run by any unqualified or institute having no recognized pathologists registered with the Medical Council. However, if such pathological laboratory is run by a pathologist registered with the Medical Council, or if such pathological laboratory engaged a pathologist registered with the Medical Council, the respondents may allow such laboratory to run. Individual Laboratory technician cannot be allowed to run pathological laboratory independently without engaging a pathologist registered with the Medical Council.

The writ petition preferred by the Association of Pathologists of Bhavnagar in Special Civil Application No. 7999 of 1998, North Gujarat Pathologists Association in Special Civil Application No. 17485 of 2006 and Gujarat Association of Pathologists and Microbiologists in Special Civil Application No. 8211 of 2008 are allowed. The contrary prayers made by the Association of Self Employed Owners (Para Medical) of Private Pathology Laboratories of Gujarat in Special Civil Application No. 6715 of 2008 and Anand People's Medicare Society and others in Special Civil Application No. 8193 of 2009 are rejected.”

A similar submission has been made by the learned Counsel appearing on behalf of the intervenor, a practising doctor having the qualification of M.B.B.S., which has been negated by the Division Bench having considered various



provisions of the Indian Medical Council Act, 1956.

It is reported that the aforesaid judgment of the Gujarat High Court has been affirmed by the Hon'ble Supreme Court vide order dated 12.12.2017 in Petition(s) for Special Leave to Appeal (C) No(s). 28529/2010 and the Hon'ble Supreme Court has disposed of the Special Leave Petitions by taking a view that the stand of the Medical Council of India that the laboratory report can be counter-signed only by a registered medical practitioner, with a post graduate qualification in Pathology, is correct. Therefore, as per the decision of the Hon'ble Supreme Court, the laboratory reports can be counter-signed only by a registered medical practitioner, with a post graduate qualification in Pathology only.

Therefore, all these pathology laboratories, which are being run and not meeting with the norms and/or which are being run illegally, cannot be permitted to be run any further as it is a danger to the health and the life of the citizens. Nobody can be permitted to play with the health and life of a human being. All those pathology laboratories/diagnostic centres being run illegally and not meeting with the requirement are required to be closed down. Mere issuance of show cause notices is not enough; thereafter, concrete steps are required to be taken to



stop such illegal pathology laboratories/diagnostic centres.

Under the circumstances, by way interim direction, the State through the Principal Secretary, Health Department, is hereby directed to close all those illegal pathology laboratories/diagnostic centres/clinics and nursing homes which do not meet with the norms and whose particulars are given in the counters/supplementary counters within a period of two weeks from today as it is reported that all those are already issued show cause notices and submit their compliance report before this Court.

So far as those clinics, which are found to be run illegally and which do not meet with the norms as per the Clinical Establishments (Registration and Regulation) Act, 2010 is concerned, it is reported that in view of the interim order passed by the learned Single Judge in C.W.J.C. No. 9091 of 2016, by which the State Government is restrained from taking any coercive action against the Indian Health Services Associations, let C.W.J.C. No.9091 of 2016 be heard along with the present writ petitions on the next date of hearing so as to avoid any further conflicting order.

Let the registry obtain the appropriate order from Hon'ble the Chief Justice in administrative side.



From the report, it appears that still the enquiry with respect to other districts is going on. The same may be concluded and a further counter be filed with respect to the remaining districts.

Put up on 24th of September, 2018.

(Mukesh R. Shah, CJ)

(Dr. Ravi Ranjan, J)

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