

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.585 of 2022
In
Civil Writ Jurisdiction Case No.15491 of 2019

Dr. Sudhir Kumar Son of Sri Vishwanath Prasad Resident of at and P.O.-
Khartari, P.S.- Chiraiya, District- East Champaran, Bihar.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Patna.
2. The State Health Committee, Through its Executive Director, Bihar, Patna.
3. The Executive Director (AYUSH), State Aayush Committee, Bihar, Patna.
4. Khalid Iqbal, Son of Md. Aslam Ansari Resident of Village- Khori Pakar, P.S.- Areraj, District- East Champaran.
5. The Union of India through the Secretary, Ministry of Health and Family Welfare, Government of India, New Delhi.
6. The National Health Mission, Ministry of Health and Family Welfare, Government of India, New Delhi.

... .. Respondent/s

with
Letters Patent Appeal No. 586 of 2022
In
Civil Writ Jurisdiction Case No.13410 of 2019

Dr. Sudhir Kumar Son of Sri. Vishwanath Prasad, Resident of AT and PO-
Khartari, PS- Chiraiya, District- East Champaran, Bihar

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Patna.
2. The State Health Committee, through its Executive Director, Bihar, Patna.
3. The Executive Director (AYUSH), State AYUSH Committee, Bihar, Patna.
4. Dr. Manoj Kumar Son of Sri. Manoranjan Paswan, Resident of Village and P.O.- Juniyar, P.S.- Hilsa, District- Nalanda.
5. Union of India, through the Secretary, Ministry of Health and Family Welfare, Govt. of India, New Delhi.
6. The National Health Mission, Ministry of Health and Family Welfare, Govt. of India, New Delhi.

... .. Respondent/s

Appearance :
(In Letters Patent Appeal No. 585 of 2022)



For the Appellant/s : Mr. Parijat Saurav, Advocate
Mr. Prashant Sinha, Advocate
For the Respondent/s : Mr. S.D. Yadav (AAG-9)
Mr. Braj Bhushan Mishra, AC to AAG-9
Md. Anisur Rahman, Advocate
Md. Akram Naiyar, Advocate
For Health Committee : Mr. P.K Shahi, Sr. Advocate
Mr. K.K Sinha, Advocate
For the U.O.I : Mrs. Sarita Bajaj, Advocate
(In Letters Patent Appeal No. 586 of 2022)
For the Appellant/s : Mr. Parijat Saurav, Advocate
Mr. Prashant Sinha, Advocate
For the Respondent/s : Mr. S.D. Yadav (AAG-9)
Mr. Braj Bhushan Mishra, AC to AAG-9
For Health Committee : Mr. P.K Shahi, Sr. Advocate
Mr. K.K Sinha, Advocate
For the U.O.I : Mrs. Sarita Bajaj, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-08-2024

1. The appeal has been filed with an application for leave numbered as I.A. No. 1 of 2022, which has been allowed by order dated 28.04.2023.

Re: I.A. No. 3 of 2022 (in both LPA No. 585 of 2022 and LPA No. 586 of 2022)

2. The present interlocutory application is for condonation of delay in filing the appeal, which delay is of 2 years 11 months and 24 days. The subject matter in the writ petition was as to whether the Unani and Homeopathic doctors would be entitled to join the six months' course in Community Health, which is a requirement, if selected as a Community Health Officer (CHO) under the directions issued by the



National Health Mission. The National Health Missions' directives only included Ayurveda, B.Sc. Nursing and General Nursing and Midwifery (GNM) to be entitled to apply for the course. The Advertisement No. 4 of 2019 dated 19.05.2019 also entitled only the above mentioned qualified persons to apply for the post of Community Health Officer; who on appointment had to undergo the six months' certificate course in Community Health. The writ petition was filed by two persons, CWJC No. 13410 of 2019 filed by a Homeopath and CWJC No. 15491 of 2019 filed by an Unani practitioner.

3. The learned Single Judge found, on the concession of the State Government that even Unani practitioners and Homeopaths would be entitled to participate in the six months certificate course in Community Health for which Advertisement No. 4 of 2019 was issued. The same ran contrary to the directions issued by the National Health Mission. The advertisement was proceeded with and the appellant came to know of this restriction only later. As of now some persons have been selected and the appellant is in the waiting list. If the Unani practitioners and Homeopaths are allowed to be considered, the appellant may lose his chance for selection. It is hence the appeal was filed with leave and the proceedings



indicate that none of the affected parties were made parties in the writ petition i.e., those who were qualified to apply as per the notification and as per the directives of the National Health Mission. It is in such circumstance that delay has occasioned which we find to have been explained satisfactorily. We hence condone the delay.

Re: LPA No. 585 of 2022 and LPA No. 586 of 2022

4. We have noticed the manner in which the judgment was passed on the concession of the State Government, which permitted Unani practitioners and the Homeopaths to apply under Advertisement No. 4 of 2019. Learned Senior Counsel, Shri P.K Shahi points out that the State Health Society after the judgment wrote to the National Health Mission on 09.11.2019 with respect to the concession made before the High Court regarding Unani practitioners and Homeopaths. The National Health Mission replied on 17.12.2019 as per Annexure-5 produced in I.A. No. 4 of 2023. The subject dealt with was the request from the State for inclusion of Unani practitioners and Homeopaths in the certificate programme in Community Health. It has been categorically stated that the Ministry of Health and Family Welfare is of the stand that the GNMs/ B.Sc. Nursing Graduates or Ayurveda practitioners or B.Sc. in Community



Health are to be enrolled for CPCH being offered by IGNOU or similar certificate courses offered by State Health Universities and this is based on the recommendations of the expert group. In such circumstances, the Ministry also apprised the State Government to file a review. The State Government has now filed a review, which the learned Senior Counsel who is also the Advocate General of the State submits would be withdrawn on the appeal being allowed or considered.

5. As far as the proceedings on review, the application for stay filed in the review application was rejected against which an appeal was filed as LPA No. 1 of 2021 which was disposed of as per Annexure-1. Annexure-1 considered the entire matter and noticed the stand of the Central Government which was in no ambiguous terms, especially in view of sub-clause (1) of Clause 4 of the “Ayushman Bharat; Comprehensive Primary Health Care through Health and Wellness Centres- Operational Guidelines”. Clause 4.1 of the guidelines mandates that a Community Health Officer would be required to be a B.Sc. in Community Health or a GNM or an Ayurveda practitioner, trained and certified through IGNOU and other State Health and Medical Universities with respect to their competence in delivering public health and primary health care



services. However, the Division Bench only directed the review to be expedited and the review was directed to be posted before an appropriate bench. The review is still kept pending in which circumstance it is expedient that the appeal be considered, especially since the selections have been held up due to the orders passed in the writ petition and also in review; wherein while rejecting the application for interim stay, it was directed that the judgment should be complied with.

6. We have looked at the guidelines and we are of the opinion that there can be no inclusion of qualifications by the State Government since it is the National Health Mission which has issued the guidelines making it specific as to who are qualified to appear for the certificate course. The concession of the State Government before the High Court is inconsequential since it has no authority to determine the eligibility qualifications.

7. The learned Counsel appearing for one of the respondent's points to Annexure-1 in the counter of respondent no.4. Therein a Division Bench refused to consider the appeal filed by a party who was not impleaded in the original proceeding. We are not apprised of the specific facts in the writ petition or the L.P.A which was rejected as per Annexure R/1



order, but however, we notice that in the present case there is a leave to appeal filed by the appellant, which has been allowed by a Division Bench of this Court. It is the settled position of law that when a person who is a necessary party in a proceeding is not made a party and an order is passed in his absence, which prejudices him, he could file an appeal from the said order, however, only with leave of the Court. In the present case, leave of the Court has been obtained and we do not think that there is any infirmity in the appeal filed. We also noticed the specific contention of the appellant that he is included in the waiting list and the selection has been stalled only because of the orders passed by the learned Single Judge again on the basis of a concession which has been reiterated in the order in review.

8. On the above reasoning, we reject the contention of the respondents regarding the maintainability of the appeal and hold that the appeal is maintainable, especially since the appellant who is prejudiced by the impugned order has obtained leave to file the appeals. We also find from the guidelines issued by the National Health Mission that there can be no addition made by the State to the eligibility conditions. It is left to the Society to immediately proceed with the further selections.

9. Learned counsel for the respondents submits that



Unani is included in Ayush. Ayush again is a scheme of the Central Government which partakes all the indigenous systems of medicines. Herein the guidelines for the certificate course in Community Health has been issued also by the Central Government, but however, excluding Unani practitioners and Homeopaths. It is not for this Court to find that the Unani practitioners and the Homeopaths are liable to be included for the purpose of eligibility to partake in the certificate course on Community Health.

10. We have also heard Mrs. Sarita Bajaj appearing for the Union of India, who has also filed a counter affidavit in support of the appeal.

11. We hence set aside the impugned judgment in both the writ petitions and allow both the appeals.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Shiv/-

AFR/NAFR	
CAV DATE	N/A
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