

(1999) 11 PAT CK 0069

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 5488 of 1998

Dr. Ajit Kumar Verma and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-11-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2000 Patna 81 : (2000) 3 PLJR 379

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Advocate : Narendra Prasad, Parimal Chandra Das and Satyavrat Verma, Pushkar Narain Shahi, Ashutosh Singh, Ram Vinay Sharma and Dharendra Kumar Munna, for the Appellant; Ashok Kumar Singh, S.C. P.K. Singh, J.C., Tara Kant Jha and Awadhesh Kumar Mishra, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Rai, J.—The three petitioner, who are working as Associate Professor, Assistant Professor and the Orthotic and Prosthetic Engineer in the Department of Physical Medicine and Rehabilitation, P.M.C.H., Patna, have filed the present writ application for quashing the part of the resolution contained in memo No. 102(1) / Health dated 29-3-1998, Issued under the signature of the Deputy Secretary, Department of Health, Medical Education and Family welfare, Government of Bihar, whereby a direction has been issued that, the viklang Bhavan Hospital along with its artificial limb centre, which was previously under the control of the Department of Physical Medicine and Rehabilitation of the P.M.C.H. would be a part of the newly created Bihar College of Physiotherapy and Occupational Therapy.

2. The petitioners' case is that in 1987, the Medical Council of India made a recommendation that a separate Department of Physical Medicine and Rehabilitation would be one of the minimum standard requirement in a medical college having 100 admissions annually. It also recommended that the

Department should have a minimum of 30 beds constituting a single unit to be headed by a Professor or Associate Professor. The State Government taking into consideration the aforesaid recommendation of the Medical Council of India by resolution dated 11-4-1988 took a decision to constitute the existing Vikalang Bhavan Hospital, along with its Artificial Limb Centre & Medical Rehabilitation Unit of the P.M.C.H. as the Department of Physical Medicine and Rehabilitation of P.M.C.H. Patna. It was also decided that the School of Physiotherapy and Occupational Therapy, which was running in the P.M.C.H., would be a part of the aforesaid newly constituted Department of the P.M.C.H. A copy of the aforesaid resolution has been appended as Annexure 2 to the writ application.

3. The further case of the petitioner is that the Physical Medicine and Rehabilitation, which is a speciality of Medicine, deals with the prevention, diagnosis, treatment and rehabilitation or disease, defect or disability by the use of physical medicines and rehabilitative measures, as also restoration of the individual to maximum physical, emotional, mental, social vocational and economic usefulness. Apart from medically qualified Doctors, technicians/paramedical staff are required to help in making patients exercise and in use of Orthotics and Prosthetics like Crutches, Calipowers, Artificial limbs etc. On the recommendation of the qualified Doctors, certain other technicians help in manufacture of Artificial limb and other devices for the rehabilitation of the patients. The use paramedical staff and technicians is not confined only to the Department of Physical Medicine and Rehabilitation. Other departments also require technicians. On account of pressures by the paramedical staff and technicians of the department in question, the Government came out with the impugned resolution dated 29-3-1998, a copy of which has been appended as Annexure 3, whereby the School of Physiotherapy and Occupational Therapy of P.M.C.H. was upgraded to a Bihar College of Physiotherapy and Occupational Therapy (hereinafter referred to as the College). It was further provided in the said resolution that the Vikalang Bhavan Hospital along with Artificial Limb Centre of the Department of Physical Medicine and Rehabilitation would now be a part of the newly upgraded College. It is further asserted by the petitioners that the school in question, which was upgraded as a College, had no separate building, space, instruments, equipments, gadgets and the facilities of the said department were being utilised by the students of the said school. As a result of the said notification, the Vikalang Bhawan Hospital along with its Artificial Limb Centre of the Department of Physical Medicine and Rehabilitation has been made a part of the College and as such the Department of Physical Medicine and Rehabilitation in P.M.C.H. will become defunct and the M.B.B.S. students will be deprived of the facility of bed etc.

4. In this connection, it is further asserted by the petitioners that after an independent Department of Physical Medicine and Rehabilitation was created and the University permitted the Medical College to start the above courses, in 1990, the Medical Council of India sent an Inspector for inspecting the said department for grant of recognition to the said department, in pursuance of which the

Department of Physical Medicine and Rehabilitation was inspected on the 14th and 15th of March, 1991, in relation to grant of approval for starting M.D. (Physical Medicine and Rehabilitation Course), as also Diploma Course in Physical Medicine and Rehabilitation under Patna University. The Inspector recommended for opening M.D. and Diploma Courses in Physical Medicine and Rehabilitation after taking into consideration the fact that the Vikalng Bhawan Hospital along with 35 in-door beds with Operation Theatre, as also the Orthotic and Prosthetic workshop are the part of the said department. In case these facilities are taken away, the Medical Council of India will take steps to dcrecognise the M.B.B.S. and M.D. Degrees from the P.M.C.H. A copy of the report dated 18-3-1991 is appended as Annexure 6 to the writ application.

5. The subject of Physical Medicine and Rehabilitation is an integral part of the M.B.B.S. course, as also training of a medical graduate and, thus, the authorities have acted arbitrarily in handing over the Vikalang Bhawan Hospital and its artificial limbs to the College in question. The petitioners filed representation against the aforesaid arbitrary action, but no decision was taken. Hence, the present writ application.

6. In this writ application. Sri Saryoo Prasad, Head of the Department of Occupational Therapy of the College was arrayed as party-respondent in the writ application.

7. A counter affidavit has been filed on behalf of the respondents through aforesaid Saryoo Prasad, wherein the stand of the respondents is that the Government has taken a policy decision on 6-2-1990 to establish the College and attach the Vikalang Bhawan along with its artificial limb of the School to the newly established College after taking away the Department of Physical Medicine and Rehabilitation from the P.M.C.H. The said decision cannot be challenged in the writ jurisdiction, which was taken in public interest. When the aforesaid policy decision of the Government was not implemented, a writ application was filed by Sanjeev Kumar Singh and other students of the Physiotherapy and Occupational Therapy School being C.W.J.C. No. 5846 of 1997 and a learned Single Judge of this Court by order dated 22-10-1997 (Annexure-A/1) directed the State Government to complete necessary formalities and notify it within four months of the receipt or production of the order and, thereafter, the aforesaid decision, as impugned in this case, has been taken. It was denied that the Government has taken the aforesaid decision under the influence or pressure of any technician of Physical Medicine and Rehabilitation Department. It is further stated that the Physiotherapy and Occupational Therapy is an important branch of the Medical Science and the disability management through Physiotherapy and Occupational Therapy speciality are managed independently by the Specialist (Physiotherapist and Occupational Therapist). The petitioners are not specialised in the said field. The decision to attach the Vikalang Bhawan Hospital along with its artificial limb centre with the newly created College has been taken for smooth running of higher education and training programmes of Physiotherapy

and Occupational Therapy as well as for the purpose of training of the students of the College only and it will not affect the functioning of the Department of Physical Medicine and Rehabilitation in P.M.C.H. It is also stated that the respondents have no objection if the gadgets of Vikalang Bhawan Hospital are used by the M.B.B.S. students at the Vikalang Bhawan. The Principal of the P.M.C.H. is the controlling authority of the newly created College and he will be also co-ordinating the teaching and training programme of the newly created College as well as the students of other Departments, including the M.B.B.S. students and as such no prejudice is caused either to the Department of Physical Medicine and Rehabilitation of the P.M.C.H. or its students.

8. Respondent No.5 Saryoo Prasad also filed a separate counter-affidavit, wherein he reiterated the same thing, which was stated in the counter-affidavit filed by the respondent-state filed through him and it was further stated that prior to the separation of the College, Dr. A.K. Verma was the controlling authority of the School of Physiotherapy and Occupational Therapy and the Vikalang Bhawan Hospital, as the same was part of the Department of Physical Medicine and Rehabilitation, but after the upgradation of the said school to Degree level and after its separation from the Department of Physical Medicine and Rehabilitation, P.M.C.H. and he being the seniormost Occupational Therapist was made Professor and the Head of the Department as well as the controlling authority of the newly created College and the Vikalang Bhawan Hospital. The Physiotherapy and Occupational Therapy is an independent speciality and it has been functioning in eight other States and the same pattern has been followed by the State Government by upgrading the School to a College. He has also justified his appointment as Drawing and Disbursing Officer.

9. The petitioners filed a reply to the said counter-affidavit and have reiterated the facts stated in the writ petition. They have further stated that a minimum of 30 bed consists of single unit and prosthetic and Orthotic Workshop is the minimum bare requirement of the Physical Medicine & Rehabilitation Department for a Medical College for 100 admissions only and because of the impugned notification, the aforesaid Department has been deprived of the afore-said facilities resulting into harassment not only to the M.B.B.S. students but will also result in derecognition of the P.M.C.H.

10. In pursuance of the resolution dated 29-3-1998, another notification dated 18-8-1998 was issued, by which respondent Saryoo Prasad was appointed to the post of Professor, Occupational Therapy and was made Head of that department and by another resolution dated 19-9-1998, he was made drawing and disbursing officer of the college and the staff of the Vikalang Bhawan Hospital were put under his administrative control.

10A. It further appears that C.W.J.C. No.8444 of 1998 was filed as a P.I.L., whereby mismanagement in the Vikalang Bhawan Hospital was brought to the notice of this Court and it was also brought to the notice of this Court that respondent No.5 Saryoo Prasad and other staff of the said Hospital were using

prefix "Doctor" before their names and were also advising patients to take allopathic medicine. This Court, by order dated 9-10-1998, found that the action of the respondent Saryoo Prasad and other similarly situated Occupational Therapists of the Viklang Bhawan Hospital amounted to misconduct and they were liable for criminal prosecution and, accordingly, directed the State Government to take action against them. In pursuance of that direction, show-cause notice has been issued to said Saryoo Prasad and others and the earlier two notifications making Saryoo Prasad, Head of the Department of Physiotherapy and Occupational Therapy and the Drawing and Disbursing Officer of the College have been recalled.

11. An intervention application has been filed on behalf of the students of the aforesaid newly created College. Another set of intervention application has also been filed by Prakash Prasad Singh, Convenor of Bihar Branch of All India Occupational Therapist Association.

12. Learned counsel for the petitioners, the respondents and the interveners were heard.

13. The learned counsel for the petitioners submitted that they have not challenged the policy decision of the State Government, by which the School of Physiotherapy and Occupational Therapy has been upgraded as a College. Their grievance is only with regard to the decision of the State Government, by which the Viklang Bhawan Hospital with its artificial limb centre has been attached and made part of the newly created College after taking it away from the Department of Physical Medicine and Rehabilitation, P.M.C.H. Their assertion is that this decision of the State Government is actuated by mala fide and bad in law. Elaborating this submission, it was submitted that the Government took a decision to open the Department of Physical Medicine and Rehabilitation and the Viklang Bhawan Hospital along with its artificial limb was made part of this department vide Annexure 2 and the same was done by the State Government to facilitate the study of M.B.B.S. students as well as the Post-graduate students and in case the same is made a part of the newly created College, the Department of Physical Medicine and Rehabilitation of P.M.C.H. would become defunct and the M.B.B.S. students and the Post-graduate students would suffer and that would be a ground to derecognise the P.M.C.H.

14. Learned counsel for the respondents, on the other hand, submitted that to create a College and to attach a Hospital etc. with it is a policy decision of the State Government and the State Government, after having taken into consideration the relevant factors and in public interest and in terms of the direction issued by this Court, has taken the aforesaid decision making the Viklang Bhawan Hospital along with its artificial limb centre as a part of the College after taking away the same from the Department of Physical Medicine and Rehabilitation of the P.M.C.H. and the said decision of the State Government is not justiciable in the writ jurisdiction.

15. The only question that falls for consideration in this case is as to whether the decision taken by the State Government to make the Viklang Bhawan Hospital and its artificial limb centre, which were earlier a part of the Department of Physical Medicine and Rehabilitation, P.M.C.H. as a part of the newly upgraded College is valid or not ?

16. Before considering the aforesaid question, I would like to state at the very outset that the power of this Court to interfere in the policy matter of the State Government is very limited. It is not within the domain of this Court to consider the merit or pros and cons of the policy decision. This court will interfere only when the policy decision is against the constitutional mandate or it is arbitrary or violative of any constitutional, statutory or any other provision of law. The apex Court in the case of State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., held as follows :--

"So far as questioning the validity of Governmental policy is concerned in our view it is not normally within the domain of any Court, to weigh the pros and cons of the policy or to scrutinise it and test the degree of its beneficial or eductable disposition for the purpose of varying, modifying or annulling it; based on howsoever sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on a number of circumstances on beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belong to the executive."

17. In this case, as stated above, the petitioners have not challenged the aforesaid decision on the ground of lack of competence or violation of any constitutional mandate any other statutory law. They have challenged the decision of the Government only on the ground that the same is arbitrary, unjust and unreasonable.

18. There is no unfettered discretion in public law. While exercising the statutory power or dealing with the policy matter, the authority has to act reasonably in good faith and on correct grounds. If the authority has acted unreasonably, then its action will be arbitrary and capricious. In the *Rooke's* case (1598) 5 Co. Rep.99b, the principle of reasonableness was succinctly stated by Coke as follows :--

"..... and notwithstanding the words of the commission give authority to the commissioners to do according to their discretions, yet their proceedings ought to be limited and bound with the rule of reason and law. For discretion is a science or understanding to discern between falsity and truth, between wrong and right, between shadows and substance, between equity and colourable glosses and pretences, and no to do according to their wills and private affections ; for as one saith, talis discretio discretionem confundit".

19. The said principle has been followed till today and in recent years this doctrine of reasonableness has acquired a nickname "Wednesbury

Case" (Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation (1948) 1KB 223). The said case lays down the principle relating to judicial review of the administrative or statutory function. In the said case, Lord Green MR expounded it as follows :--

"It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting unreasonably. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington LJ in *short v. Poole Corporation* (1926) Ch.66 gave the example of the red-haired teacher, dismissed because she had red hair. This is unreasonable in one sense. In another it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another".

20. The apex Court has followed the aforesaid principle with regards to reasonableness and has held that to arrive at a decision of reasonableness, the Court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the Court to substitute its view. (See *Union of India and another Vs. G. Ganayutham (Dead)* by LR.,).

21. Thus, while exercising the power of judicial review over administrative action, the Court has only to see that the authority acts within the scope of its power and has exercised its discretion in reasonable manner. In other words, it has not to act in arbitrary and capricious manner.

22. Now the facts of this case have to be considered to find out as to whether the decision complained of is valid or not. The admitted facts are that the Department of Physical Medicine and Rehabilitation was opened in the P.M.C.H. and vide notification dated 11-4-1988, as contained in Annexure 2, the Viklang Bhawan Hospital and its artificial limb centre were made part of this department. It appears from Annexure 1, which is a recommendation of the Medical Council of India, that a separate Department of Physical Medicine and Rehabilitation would be one of the minimum standard requirement in a medical College having 100 admissions annually and there should be having a minimum 30 beds consisting a

single unit to be headed by a Professor / Associate Professor. It further appears that the inspection was made by the Medical Council of India on 15-3-1991 in relation to grant of approval for starting M.D. (Physical Medicine and Rehabilitation Course), as also Diploma Course in Physical Medicines and Rehabilitation under Patna University and it was found that the Department has been given a separate building with ground area of 3.5 acres called Viklang Bhawan Hospital which is situated at one and half kilometers from the Patna Medical College. The said Viklang Bhawan Hospital has a comprehensive rehabilitation set-up with 35 indoor beds and an operation theatre with modern facilities and on that basis recommendations were made for the Post-Graduate studies. Thus, it is clear that the Viklang Bhawan Hospital along with its artificial limb centre were made by the Government as a part of the Department of Physical Medicine and Rehabilitation in the P.M.C.H. It is also an admitted position that the Government took a decision to upgrade the School of Physiotherapy and Vocational Therapy to the College and there was a delay in implementing the aforesaid decision and the matter came to this Court and this Court directed to consider the matter in pursuance of which the impugned resolution was taken upgrading the school to the College and by the said resolution, the Viklang Bhawan Hospital along with its artificial limb centre has also been attached and made a part of the newly created College.

23. There is no dispute that the subject of Physical Medicine and Rehabilitation is taught to the students of the M.B.B.S. course. The students are to be provided with the facilities of training in the Hospital and that is an integral part of the M.B.B.S. Course. The said training was done In the Vikalang Bhawan Hospital and its artificial limb centre. The effect of taking away the aforesaid Hospital along with its artificial limb centre from the Department of Physical Medicine and Rehabilitation, P.M.C.H. and attaching and making the same as a part of the College will deprive the said Department of its basic facilities, which are necessary for imparting training to the Under Graduate as well as Post Graduate students. The result of the aforesaid deprivation will be that the said Department will become defunct and the students will not get proper education and the Medical Council of India in due course will derecognise the P.M.C.H. -can this type of action of the State Government be said to be reasonable ? It appears that the Government has not taken into consideration these aspects of the matter while taking a decision to take away the Viklang Bhawan Hospital along with its artificial limb centre from the Department of Physical Medicine and Rehabilitation, P.M.C.H. and making the same a part of the newly created College. No body can prevent or challenge the authority of the State Government to open a new College in accordance with law but the State Government cannot act in a manner to deprive the Medical College of the basic requirements for the sake of opening other College of Physiotherapy and Occupational Therapy. The action of the State Government is based on irrelevant considerations and has been taken in haste only to comply with the direction issued by this Court in the earlier writ application.

24. In my considered view, the decision taken by the State Government is such that no reasonable man will take such a decision, the effect of which is to make the Department of Physical Medicine and Rehabilitation of the P.M.C.H. as defunct. This action of the State Government is wholly unreasonable, arbitrary and capricious.

25. Thus, paragraph No.3 of the impugned resolution dated 29-3-1998, as contained in Annexure 3, by which the Viklang Bhawan Hospital along with its artificial limb centre has been attached or made a part of the newly upgraded College of Physiotherapy and Occupational Therapy is quashed. The State Government is directed to consider the matter afresh. It will constitute a Committee of three persons, headed by the Health Commissioner. The other two members will be the Director-in-chief or the Director of Health Services, whoever is available, and a Member of the Medical Council of India. The Committee should consider the matter and then should advise the Government with regard to the matter in controversy and, thereafter, the Government will take a fresh decision in accordance with law.

26. In the result, this application is allowed. There shall be no order as to cost.