

(2017) 05 PAT CK 0043
In the Patna High Court
Case No : 13853 of 2016

Dr. Dhiraj Kumar Jaiswal

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 15-05-2017

Acts Referred:

Constitution of India, Article 21 -
Amendment of the Schedule

Citation : (2017) 05 PAT CK 0043

Hon'ble Judges : Chakradhari Sharan Singh

Bench : SINGLE BENCH

Advocate : T. N. Maitin, ?Rajeev Kumar Sinha, Nagendra Pd.Yadav

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the parties concerned.
2. Following reliefs have been sought by the petitioner in the present writ application, which is evident on close reading of paragraph 1:-
 - (i) Issuance of writ of mandamus commanding the respondent no. 6, i.e. Medical Council of India, to derecognize Patna Medical College and Hospital, Patna, for imparting a course, not recognized by the Medical Council of India;
 - (ii) The Patna University, Patna, should be derecognized for issuance of certificate of a course, which was not recognized by the Medical Council of India; and
 - (iii) The petitioner should be compensated by the

State and the University by awarding a damage cost to the tune of Rs. 50 lakhs.

3. So far as the relief nos. (i) and (ii), noted above, are concerned, Mr. T. N. Maitin, learned Senior Counsel, appearing on behalf of the petitioner, keeping in mind the incongruity in the said reliefs, has submitted that he will not be pressing those reliefs. Evidently thus, the only relief, which the petitioner is seeking in the present application, is for grant of compensation to him to the tune of Rs. 50 lakhs, by the State of Bihar and the Patna University, in the facts and circumstances of the case.

BACKGROUND FACTS:-

4. The background facts, which have been pleaded in the writ application, as the basis for the petitioner's claim for grant of compensation, are as under:-

(i) The petitioner holds M.B.B.S. qualification. In the year 1999, the petitioner had appeared for the test held by the Department of Health, Government of Bihar, for admission to post-graduate medical course on the basis of which he was allowed admission in diploma course in OTO-Rhino-Laryngology (DLO) in 1999-2000 session in Patna Medical College and Hospital, Patna. He completed the course and accordingly he was granted certificated by the University. There is statement in paragraph 4 of the writ application that the petitioner had no knowledge that the college was not recognized by the Medical Council of India.

(ii) The petitioner joined Department of Railway, Government of India, as Assistant Divisional Medical Officer, South-Central Railway, and he is working as Senior Divisional Medical Officer, at Jamalpur Railway Station (at the time of

filing of the present application).

(iii) The petitioner was willing to pursue further education and in the year 2016, he applied for DNB Training in the specialization of ENT, in response to an advertisement, issued by the National Board of Examination, New Delhi (NBE) for admission to post-graduate, DNB (Secondary) course of January, 2016. The said test is called "Diploma of National Board Post-Graduate Centralized Entrance Test" (PGCET).

(iv) The NBE, after holding counselling. Allowed the petitioner to pursue DNB (Post-Diploma, ENT) Course, at Manipal Hospital, Bangaluru, and he was admitted to the said college subject to the verification of his certificates. The certificate issued in favour of the petitioner by the Patna University of having passed the examination of DLO was sent for verification to Medical Council of India to confirm whether said diploma certificate was recognized by the Medical Council of India under Indian Medical Council Act or not. His candidature was, subsequently, turned down to pursue DNB (Post-Diploma, ENT) Course since the Medical Council of India informed NBE that Patna Medical College and Hospital, Patna was not recognized to impart diploma course in DLO.

(v) It is the case of the petitioner that he sought information from the Patna Medical College and Hospital, Patna, in this regard under Right to Information Act, 2005. From the information furnished by the Patna Medical College and Hospital, Patna, the petitioner learnt, in 2016, that the course was not recognized by the Medical Council of India.

(vi) It is accordingly the case of the petitioner that the Patna Medical College and Hospital, Patna, allowed him to take admission to a course which was not duly recognized by

the Medical Council of India and the Patna University, Patna, issued, to the petitioner, a certificate which had no recognition by the Medical Council of India. According to the petitioner, the State of Bihar, thus, cheated the petitioner because of which the petitioner had to spend his valuable time and money in pursuing the said unrecognized diploma course.

STAND OF THE RESPONDENTS:-

5. The State of Bihar has filed a counter affidavit.

It is the stand of the State of Bihar, inter alia, that the petitioner cannot take this plea that he did not know whether Patna Medical College and Hospital, Patna, had recognition in the concerned course or not. These facts are not hidden truth; rather, it is known to the general teachers of the Institution and those who joined and continued their studies in the Institution. It is also the specific stand, with reference to the counter affidavit sworn by the Principal of the Patna Medical College and Hospital, Patna, that the status of recognition of a course is made to be known to each student at the time of admission. The petitioner was also aware about this fact that the said DLO course was not recognized by the Medical Council of India at that point of time.

6. These specific averments have not been controverted by the petitioner by filing its reply or rejoinder.

7. It is the further case of the State of Bihar that because the Medical Council of India has not conducted inspection of the college in relation to recognition of few diploma courses, the matter of recognition is still pending and the courses, in question, have been conducted in anticipation of grant of recognition by the Medical Council of India. It has been stated that admission in a course is taken by the

concerned Medical College in anticipation of the recognition by the Medical Council of India and recognition is normally granted by the Medical Council of India with retrospective date of admission.

SUBMISSIONS ON BEHALF OF THE PETITIONER:-

8. Mr. T. N. Maitin, learned Senior Counsel, appearing on behalf of the petitioner, has submitted that the petitioner was duped by the State of Bihar, the Patna University, Patna, and the Patna Medical College and Hospital, Patna, in respect of admission in diploma course in DLO in the concerned sessions and he was offered admission, though the course was not duly recognized. According to him, there was no notice issued by the University or the State that the said course was not recognized by the Medical Council of India and, therefore, the petitioner presumed the course to be duly recognized since the admission was being offered by a prestigious college, run by the Health Department of the State Government of Bihar. He has submitted that the petitioner continued with this impression till his candidature was rejected for pursuing higher studies in the year 2016. According to him, this has caused irreparable loss to the petitioner, which should be compensated by awarding compensation of Rs. 50 lakhs to be paid by the State Government of Bihar and Patna University, Patna, since their action has caused great harm, damage and agony to the petitioner; pecuniary and mental. According to him, the State action is in breach of the fundamental right, guaranteed under Article 21 of the Constitution of India. He has placed reliance on Supreme Court's decisions, in support of his plea, in the cases of Rudal Sah v. The State of Bihar and Another (AIR 1983 SC

1086), Nilabati Bahera (SMT) @ Lalita Bahera (Through the Supreme Court Legal Aid Committee) v. State of Orissa and Others (AIR 1993 SC 1960), S. Nihaal Ahamed v. The Dean, Velammal Medical College Hospital and Research Institute and Others, reported in (2016) 1 SCC 662 and Ramawati Kuer v. The State of Bihar and Others, reported in 2004 (4) PLJR 307.

SUBMISSION ON BEHALF OF THE STATE:-

9. Learned Counsel appearing on behalf of the State, countering the submission advanced on behalf of the petitioner, has submitted firstly that a claim of compensation for alleged damaged should not be entertained in a proceeding under Article 226 of the Constitution of India. He has also submitted that this is not an admitted fact that the petitioner was not knowing that the said diploma course was not recognized.

DISCUSSION AND CONCLUSION:-

10. I have carefully gone through the pleadings on record and I have given anxious considerations to the submissions advanced on behalf of the parties. I have my three reasons to reject the relief sought for in the present writ application.

11. The first and the foremost is that there is specific stand taken in the counter affidavit filed on behalf the State of Bihar that it was within the knowledge of the petitioner that the said course was not recognized by the Medical Council of India at the particular point of time. The petitioner has stated in the writ application that he did not have any knowledge as to whether the course, which was offered to him, was recognized by the Medical Council of India

or not. It is not easy to accept the plea being taken by the petitioner, who at the time of admission to the course, in question, was already holding an M.B.B.S. degree, that he would not know the status of recognition of the course. Further, it is not his case that there was any representation on the part of the State of Bihar or the Patna Medical College and Hospital, Patna, showing the said course to be recognized by the Medical Council of India. He has also not denied the stand of the State of Bihar that normally recognition is granted by Medical Council of India retrospectively.

12. Secondly, except the fact that the petitioner's candidature to take DNB (Post-Diploma, ENT) course was rejected by Manipal Hospital, Bangaluru, there is no pleading that he suffered any actual monetary or otherwise loss because of that. The sole plea, which is being taken on behalf of the petitioner, is that the denial of admission has spoiled his career. On the basis of such vague plea, in my opinion, no compensation for damages can be awarded in Public Law Torts in a writ proceeding under Article 226 of the Constitution of India. Thirdly, the claim of the petitioner that he should be awarded compensation of Rs. 50 lakhs for the damage caused to him does not disclose any basis for his evaluation of the said amount of compensation. What formulae he has applied, what calculation he has done and what are the determinative factors for arriving at the said figure of Rs. 50 lakhs, is completely opaque.

13. Reliance placed by learned Senior Counsel for the petitioner on Supreme Court's decision, in the cases of Rudal Sah (supra) and Nilabati Bahera (supra), is of no avail for seeking specific direction in a writ proceeding to the

State-respondents for demand of compensation against damages. The said decisions of the Supreme Court enable award of compensation by constitutional courts in writ jurisdiction in case of damages suffered by a person because of administrative mal-administration, misfeasance or non-feasance. These decisions do not lay down a law that an illegal action by the executive leading to damage suffered by a person must have the consequence of award of compensation by constitutional courts, exercising writ jurisdiction under Article 226 of the Constitution of India. The said decisions of the Supreme Court do not hold writ jurisdiction to be a substitute to entertain all kinds of claims for compensation against damages caused by State action in place of ordinary civil jurisdiction of the Courts.

14. Learned Senior Counsel has also relied on Supreme Court's decision, in the case of S. Nihaal Ahamed (supra), in support of the plea that the petitioner is entitled for compensation in the writ jurisdiction against damages. In the said case, the Supreme Court had arrived at a definite conclusion that despite being there in the merit list, the appellants of that case could not secure admission. The facts of the present case are distinguishable on the plain ground that in the present case there is specific stand taken on behalf of the State-respondents that the petitioner was knowing that the course, in question, was not recognized by the Medical Council of India. There is no specific denial by the petitioner of this averment made by the State respondents in the counter affidavit.

15. The case of Ramawati Kuer (supra) cannot be applied in the facts and circumstances of the case for the

same reason and the additional reason that that was a case of death where the Court applied the principles underlying Motor Vehicles Act, 1988, and Workmen's Compensation Act, 1923 for the purpose of determination of the amount of compensation. In the present case, in the absence of any pleading, no such prayer for award of compensation can be maintained.

16. Accordingly, I do not find any merit in this application, which stands dismissed.