

(2022) 11 SC CK 0069

In the Supreme Court Of India

Case No : Civil Appeal No. 8927 Of 2022

Mukesh Kumar @APPELLANT @Has State Of Bihar & Ors.

Date of Decision : 29-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Pharmacy Act, 1948 — Section 10, 18, 45(5)

Citation : (2022) 12 JT 23 : (2022) 17 Scale 168

Hon'ble Judges : M.R. Shah, J; M.M. Sundresh, J

Bench : Division Bench

Advocate : Rachitta Rai, Amitesh Kumar Singh, Nandani Yadav, Abhinav Mukerji, Pratishtha Vij, Bihu Sharma, Akshay Srivastava, Zoheb Hossain

Final Decision : Allowed

Judgement

M. R. Shah, J

1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 09.12.2019 passed by the High Court of Judicature at Patna in Civil Writ Jurisdiction Case No. 8384/2018, by which, the Division Bench of the High Court has disposed of the said writ petition by way of public interest litigation, the original writ petitioner has preferred the present appeal.

3. That the appellant herein filed the writ petition by way of public interest litigation before the High Court for the following reliefs: -

"(i) For issuance of necessary direction upon the respondent authorities to not to allow any person other than a registered Pharmacist to compound, prepare, mix or dispense any medicine on the prescription of any medical practitioner because in various Govt. Hospitals, the persons, who are not a registered Pharmacist have been allowed to discharge the function of a Pharmacist inasmuch as at some places, even the Clerks, ANMs, Staff Nurse etc. have been assigned with the duty to be performed only by a registered Pharmacist.

(ii) For holding that by allowing a non-pharmacist to discharge the duty and responsibility of Pharmacist, the respondent authorities are not only violating the provisions of the Pharmacy Act, 1948 as well as Pharmacy Practices Regulation, 2015 but they are also playing with the health of the concerned patients.

(iii) For issuance of necessary direction upon the respondent authorities to implement the Pharmacy Practice Regulation, 2015 framed by the Pharmacy Council of India in exercise of powers conferred under Section-10 & 18 of the Pharmacy Act, 1948, inasmuch as the said Regulation provides for creation of various types of posts with diverse types of responsibilities for regulating the profession of Pharmacy so that the quality of health care may improve, the Pharmacist may maintain high standard in their duty, the cost of health care may reduce and the criminal abuse of medicines may be stopped.

(iv) For holding that the Govt. of Bihar has not created a post except for the post of Pharmacist under the Pharmacy Practice Regulation, 2015 and as such, the respondents may be directed to create such posts and appoint eligible persons on such posts so that the objectives of the Pharmacy Practice Regulation, 2015 may be achieved.

(v) For necessary direction upon the respondent authorities to constitute an Enquiry Committee in terms of Section-45(5) of the Pharmacy Act, 1948 to enquire into the functioning of the Bihar State Pharmacy Council because the Bihar State Pharmacy Council is not functioning in accordance with the provisions of the Pharmacy Act, 1948 and Pharmacy Practice Regulation, 2015 inasmuch as the Bihar State Pharmacy Council is involved in grant of fake and illegal registration to the fake Pharmacists.

(vi) For any other direction, which your Lordships may deem fit and proper in the facts and circumstances of the case.”

Without going into details of the grievances voiced before the High Court, the High Court has disposed of the writ petition in a most casual manner by taking note of the fact that the Bihar State Pharmacy Council has submitted that the fact-finding committee was constituted and they forwarded its report to the State Government. The High Court has disposed of the said public interest litigation – writ petition by observing that the appellant, after verifying each case individually may invite the attention to such illegality either to the Bihar State Pharmacy Council or the State of Bihar.

4. Serious allegations were made against the Bihar State Pharmacy Council and the State of Bihar for not taking any action with respect to fake pharmacist and/or running the Government's hospitals and/or other hospitals without registered pharmacist and the in-action on the part of the Bihar State Pharmacy Council/ State Government has resulted into the affected health of the citizen, the High Court ought to have called upon the Bihar State Pharmacy Council to file the status report on the allegations of fake pharmacist and/or on how many Governments' hospitals/hospitals in the State are running without registered

pharmacist. Running the hospitals/dispensaries in absence of any registered pharmacist and/or running such hospitals by fake pharmacist and even running the medical stores by fake pharmacist and without even any pharmacist will ultimately affect the health of the citizen. The State Government and the Bihar State Pharmacy Council cannot be permitted to play with the health and life of the citizen.

4.1 Under the provisions of the Pharmacy Act, 1948 as well as the Pharmacy Practice Regulations, 2015, it is the duty cast upon the Pharmacy Council and the State Government to see that the hospitals/medical stores, etc., are not run by the fake pharmacist and are run by the registered pharmacist only. The manner in which the High Court has disposed of the public interest litigation – writ petition ventilating the very serious grievances touching the health and life of the citizen is disapproved. The High Court has failed to exercise the powers vested in it under Article 226 of the Constitution of India. The impugned judgment and order passed by the High Court disposing of the writ petition is unsustainable.

5. In view of the above and for the reasons stated above the present appeal is allowed. The impugned judgment and order passed by the High Court disposing of the writ petition is hereby quashed and set aside. The matter is remanded to the High Court to consider the writ petition afresh after calling the detailed report/counter from the State of Bihar and Bihar State Pharmacy Council on: -

- (i) how many Governments' hospitals/hospitals/medical stores/private hospitals are being run either by fake pharmacist or without registered pharmacist;
- (ii) whether any action is taken by the State Government on the fact-finding committee report submitted by the Bihar State Pharmacy Council which was reported to be forwarded to the State Government;
- (iii) whether there are any fake pharmacists as alleged in the writ petition;
- (iv) any action is taken by the State Government or by the Bihar State Pharmacy Council against such fake pharmacist;
- (v) whether the Pharmacy Practice Regulations, 2015 are being followed in the entire State of Bihar or not.

While considering the writ petition the High Court should bear in mind the public interest and the health of the citizen. The High Court to take up the writ petition for hearing on remand within a period of four weeks from today. The Registry is directed to send the copy of this order to the High Court forthwith. With this, the present appeal is allowed accordingly. In the facts and circumstances of the case there shall be no order as to costs.