

**(2015) 05 PAT CK 0037**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 17680 of 2014

Vijay Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 11-05-2015

**Acts Referred:**

**Citation :** (2015) 4 PLJR 814

**Hon'ble Judges :** Ajay Kumar Tripathi, J

**Bench :** Single Bench

**Advocate :** Prabhat Ranjan, for the Appellant; Devendra Kumar Sinha, AAG, Advocates for the Respondent

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## **Judgement**

Ajay Kumar Tripathi, J.—By virtue of Annexure-5, dated 7.10.2014, petitioner with three other Doctors came to be transferred from Patna Medical College Hospital (PMCH). He is sent to Anugrah Narain Magadh Medical College, Gaya. The other three have been transferred to some other Medial Colleges of the State of Bihar. The issuance of the order of transfer has a history behind it relating to an incident, which happened at Gandhi Maidan of Patna on the day of Dushhara when effigy of Ravan was being burnt.

2. It is widely known and reported that because of the excess number of people, who had assembled on that evening, and due to certain rumours spread at the venue, a stampede happened where scores of people died and many were even injured. The victims were rushed to PMCH for treatment. Looking at the uproar, which was caused both in the media as well as amongst the people, the erstwhile Chief Minister made a visit to apprise himself of the kind of treatment being extended to the victims.

3. The stampede happened on 5th of October, 2014. A visit was made by the Chief minister to the Hospital on the 5th of October, 2014. Obviously, certain complaints were made to the Chief Minister in the manner in which medical treatment was being extended, by some of the patients. On the 6th of October,

2014, the Principal of the College forwards a report addressed to the Principal Secretary, Department of Health, Government of Bihar, which is Annexure-4 to the writ application. The very next day the notification dated 7th October, 2014 came to be issued transferring four of the Doctors including the present petitioner on administrative ground.

4. The stand of the petitioner is that the order of transfer is not that innocuous as it reads. The facts, some of which have already been narrated in the writ application, speak for itself as to how quickly the chain of events took place culminating into the order of transfer.

5. Counsel for the petitioner further submits that there have been pick and choose adopted in the order of transfer. Complaints with regard to functioning of the Hospital and the treatment being extended including shortage of medicines etc. were received with regard to other Medical Units and Doctors also. To some, show cause was issued and matters were allowed to die down. Whereas even without an opportunity or explanation sought from the petitioner, the order of transfer came to be issued. All this had happened in less than 48 hours.

6. Counsel for the petitioner indicates that at page 90 of the brief in para 7(ii) there is reference in relation to the petitioner of a complaint being made by one Mithilesh Yadav that he has been admitted in the Unit of the present petitioner but except for the injection, he is being compelled to buy medicines from outside.

7. With this kind of allegation how much of it can be attributed to the Doctor and how much to the administration is not required to be delved into detail. However, the state of medical facilities at PMCH and availability of medicines and other facilities is not hidden from the public or the Government. This Court can take judicial notice that many a Public Interest Litigations have been filed by public spirited people to improve the functioning of various Hospitals including PMCH. The reports filed before the Division Bench speak for themselves.

8. There is an element of rush and there is an element of appeasement involved with the order of transfer issued against the petitioner with similarly situated persons. This Court is of the opinion, looking at the materials that the order of transfer was a knee jerk reaction, to show that the Government was effective and functional and had responded to the crisis situation after the stampede and was trying to tone up the administration and send a message.

9. The Court, in fact, feels that in a crisis situation like that when large number of people was still receiving treatment, an order of transfer was the last thing, which was required to be issued at that juncture. Only after all such victims were discharged or released from the Hospital with the available hands for treatment, they ought to have been noticed as well as appropriate action taken.

10. In the circumstances noted above, the Court opines that there was an element of discrimination and haste shown in the order of transfer. The least which the petitioner deserved after so-called report of the Principal of the College

addressed to the Principal Secretary on 6th October was an explanation or response but instead of that on the 7th October itself a notification came to be issued.

11. In view of the above, the impugned order insofar as it relates to the petitioner contained in Annexure-5 stands quashed. Writ application is allowed. If the respondents are still interested in pursuing the matter beyond a point, they are still free to do so but may be after at least asking the petitioner and giving him an opportunity as to where he had erred or failed in shouldering his responsibility as the Head of the Unit in the Hospital.

12. The decision of the Division Bench relied upon by the petitioner, reported in *Sheikh Kalam Vs. The Union of India*, (2014) LabIC 4183 , which is the case of *Sheikh Kalam vs. the Union of India and others*, surely supports the proposition urged at the bar on behalf of the petitioner.

13. Writ is allowed.