

(2022) 05 PAT CK 0014

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 10854 Of 2020

Kajal Kumari

APPELLANT

Vs

Union Of India

RESPONDENT

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**Date of Decision:** May 11, 2022**Acts Referred:**

- Constitution Of India, 1950 - Article 226

**Hon'ble Judges:** Chakradhari Sharan Singh, J; Madhuresh Prasad, J**Bench:** Division Bench**Advocate:** Nagendra Kumar, Basant Vikash, Dr. K. N.Singh**Final Decision:** Dismissed

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### Judgement

1. The writ application has been filed seeking a direction upon the respondents for allocation of space for opening of Pradhan Mantri Bhartiya Jan

Aushadhi Kendra (hereinafter referred to as "Kendra") within the jurisdiction of Mansik Arogyashala, Koilwar (hereinafter referred to as

"Arogyashala"). The petitioner has also sought a direction upon the respondents to issue necessary permission and to take a decision for

operating the Aushadhi Kendra at the Arogyashala.

2. The case of the petitioner is entirely based on the Pradhan Mantri Bhartiya Jan Aushadhi Pariyojana (hereinafter referred to as "Pariyojana")

to be implemented in the country through the Bureau of Pharma Public Sector undertakings of India (BPPI), a Society set up under the Department of

Pharmaceuticals, Ministry of Chemicals and Fertilizers, Govt. of India. The BPPI is registered under the Societies Registration Act and suitably

assisted by the Central Government both financially and technically.

3. The petitioner claims to be a graduate. She made an application dated 08-04-2019 (Annexure-3), on her own initiative, before the Director of the

Arogyashala expressing her desire to open a Kendra at the Arogyashala, for which she sought permission. Annexure(s)-4 and 5 are two

representations dated 19-07-2019 and 09-09-2019 for the same purpose. It is the petitioner's case that the Director of the Arogyashala has issued

a No Objection Certificate in favour of the petitioner, out of five applicants and has thus recommended the name of the petitioner for establishment of

Arogyashala. It is also the petitioner's case that her application was forwarded by the head office of the BPPI to the Director of the Arogyashala

under communication dated 27-09-2019. Thereafter, it is the petitioner's case that the BPPI, under communication dated 03-12-2019 (Annexure-

8) asked the petitioner to submit some documents for further processing of her application.

4. The Director of the Arogyashala, under communication dated 02-01-2020, had requested the Management Committee of the Arogyashala formally

known as Bihar State Institute of Mental Health & Allied Sciences (BIMHAS) as well as the Principal Secretary, Health Department, who is also the

Chairman of the Management Committee of BIMHAS, forwarding details of five applicants, who were desirous of establishing a Kendra at the

Arogyashala; and requested the Management Committee to send necessary directions, based on which, the process of selection could be carried out

in this regard. The petitioner also has represented to the Principal Secretary, Health Department, again on 14.12.2020 (Annexure-10).

5. A counter affidavit has been filed on behalf of the Director of the Arogyashala. The stand of the Director is that the petitioner's claim is based on

the parijojana, a centrally sponsored Scheme. The procedure and process to be followed for opening Kendra within the premises of the Arogyashala

have neither been communicated to the Management Committee nor to the Arogyashala. Letters dated 28.02.2019 and 09.05.2019 were written by

the Director of the Arogyashala to the Chairman of the Management Committee-cum-Principal Secretary, Health Department for allotment of land

within the premises of the Arogyashala for the purposes of the establishment of Kendra.

6. The result of the various correspondence was issuance of communication dated 30.12.2020 (Annexure- E to the counter affidavit) whereby the

Health Department has informed the Director of the Arogyashala that since it is an autonomous institution, it is itself competent to make available

space for opening and operation of Kendra at the Arogyashala. The stand of the Arogyashala is that the guidelines issued by the BPPI does not spell

out the criteria and procedure for determination of relative merit for selection of the agency to establish and operate the Kendra, from amongst the

various applicants. BIMHAS has never issued any advertisement or public notice inviting applications for opening a Kendra in their premises.Â Stand

of the Arogyashala in paragraph 16 of the counter affidavit, sums up its concerns and is, therefore, useful to reproduce:-

â€œThat it is submitted that in the interest of transparency and equal opportunity, it will be fair to permit inviting of application for opening

of Jan Aushadhi Kendra within the premises of BIMHAS, after a duly published notice/advertisement to enable all interested

agencies/individuals to be able to apply and selection of operator should be made based on criteria developed to determine relative merit,

with due concurrence from the Health Dept., Government of Bihar.â€

7. The petitionerâ€™s counsel, however, on the other hand, submits that the Scheme is clear in its intent and application and it mandates opening of

Kendra in the selected hospital/medical colleges with the novel purpose of making available quality generic medicine at affordable prices for all. The

object of the scheme is to coordinate the marketing and supply of medicine/generic drugs from all sources. The Scheme, being in larger/public interest,

the authorities should immediately identify a space within the Arogyashala and issue necessary direction, allowing the petitioner to operate the Kendra

as an agency under the pariyojana (Scheme).

8. The issue, which arises for consideration, in the instant proceedings, is whether based on the Pariyojana, the petitioner has a legally enforceable

vested right to establish a Kendra at the Arogyashala for enforcement of which a writ should be issued by this Court exercising jurisdiction under

Article 226 of the Constitution of India? The law, in this regard, is well settled. It is well established law that for issuance of a mandamus, to an

authority there must be a duty cast upon the authority based on a corresponding right sought to be enforced.

9. From the pleadings, it is obvious that there were at least five applicants claiming permission for setting up a Kendra at the Arogyashala. The

petitioner, however, has asserted that No Objection certificate (Annexure-6) was issued only in her favour by the Director of the Arogyashala. Bare

perusal of Annexure-6, however, reveals that such assertion of the petitioner is incorrect. Annexure-6 is not a No Objection Certificate in petitioner's

favour. Annexure-6 is a Certificate issued in light of the petitioner's application that the Arogyashala has No objection to opening of a Kendra and that

requisite plot of land would be made available by the Arogyashala to anyone who is granted permission for opening a Kendra. Based on the No

Objection Certificate dated 09.09.2019 (Annexure-6) no legally enforceable right is made out in favour of the petitioner warranting or justifying

exercise of writ jurisdiction for issuance of orders or directions in the nature of a writ of a mandamus to the authorities for facilitating establishment of

the Kendra at the Arogyashala by the writ petitioner.

10. Another aspect of the matter, which requires consideration is the admitted fact that without any advertisement or public notice inviting application,

the petitioner, on her own initiative, has submitted her application. From the averments made in the writ petition no case is made out to establish that

based on any criteria or procedure for selecting the persons to operate a Kendra, the petitioner has been declared to be selected or a right has accrued

in her favour giving rise to a corresponding duty on the authorities to make available space for establishment of kendra and to permit her for

establishing the Kendra. No vested right is made out based on the averments made in the writ petition.

11. This Court would observe that the petitioner has not been able to establish any legally enforceable right for which this Court may issue a direction

in the nature of writ of Mandamus in exercise of its jurisdiction under Article 226 of the Constitution of India. A recent judgment of the Honâ€™ble

Apex Court in case of Hari Krishna Mandir Trust vs. State of Maharashtra and Others reported in (2020)9 SCC 356 is worth taking note of having

regard to the facts and circumstances of the instant case. This Court would, therefore, consider it useful to reproduce relevant extract of the judgment

of the Apex Court reiterating the settled principle of law regarding exercise of writ jurisdiction for issuance of an order or direction in the nature of a

writ of mandamus, which reads as follows:-

“102. In appropriate cases, in order to prevent injustice to the parties, the Court may itself pass an order or give directions which the

Government or the public authorities should have passed, had it properly and lawfully exercised its discretion. In *Director of Settlements,*

*A.P. v. M.R. Apparao* [Director of Settlements, *A.P. v. M.R. Apparao*, (2002) 4 SCC 638]. Pattanaik, J. observed: (SCC p. 659, para 17)

“17. One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the court must come to the

conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In

other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority,

could be enforced by issuance of a writ of mandamus, “mandamus” means a command. It differs from the writs of prohibition or

certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to

direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which

appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including

administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a

particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the

performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition

(emphasis ours) (see *Kalyan Singh v. State of U.P.* [*Kalyan Singh v. State of U.P.*, AIR 1962 SC 1183]). The duty that may be enjoined by

mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law.â€

(emphasis in original)

12. Considering the petitionerâ€™s case with reference to the settled law regarding exercise of jurisdiction under Article 226 of the Constitution of

India, this Court would observe that no legally enforceable right is made out by the petitioner. This Court, therefore, does not find any merit in the writ

petition. The same is dismissed.