

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.19175 of 2015**

Veterans Forum For Transparency In Public Life

... .. Petitioner/s

Versus

The Union Govt. Of India Through The Secretary, Ministry Of Health And Family Welfare, Govt. Of Ind

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 20444 of 2014**

Indian Association Of Pathologists And Microbiologists

... .. Petitioner/s

Versus

The State Of Bihar and Ors

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 19175 of 2015)

For the Petitioner/s : Mr. Dinu Kumar, Advocate  
Mr. Arvind Kumar Sharma, Advocate

Amicus Curiae : Ms. Ritika Rani, Amicus Curiae

For the Respondent/s: Mr. Lalit Kishore A.G.  
Mr. Pushkar Narain Shahi, AAG-6  
Mr. Sanjeet Kumar Singh, AC to AAG-6  
Mr. Ram Anurag Singh, C.G.C.

(In Civil Writ Jurisdiction Case No. 20444 of 2014)

For the Petitioner/s : Mr. Md. Shamimul Hoda, Advocate

Amicus Curiae : Mr. Ram Krishna, Amicus Curiae

For the State : Mr. Prashant Pratap, GP-2

For the UOI : Mr. Sujeet Kumar Sinha, CGC

For the NMC : Mr. Kumar Brijnandan, Adv

For Intervenors : Mr. Y.V. Giri, Sr. Advocate

Mr. Sumit Kumar Jha, Advocate

**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE S. KUMAR**

ORAL ORDER

**(Per: HONOURABLE THE CHIEF JUSTICE)**

11 19-03-2021

Heard learned counsel for the parties.

Indulgently, we request learned counsel for the



respondents to positively file their response to the affidavit filed within a period of six weeks from today.

Equally, such of those respondents who have already filed their response may file additional/supplementary affidavit, if so, required and desired.

Learned *Amicus Curiae* Ms. Ritika Rani, invites our attention to the provisions of the Clinical Establishments (Registration and Regulation) Act, 2010 (hereinafter referred to as the Clinical Act).

Establishment which can be termed as "Clinical Establishment" stands defined under Section 2(c) of the Clinical Act. Evidently, all clinical establishments are mandatorily required to be registered under the Act as is stipulated under Section 12. The authorities constituted under the Clinical Act are also required to, mandatorily, maintain record in digital format which is evident from Section 37. Inaction in complying with the provisions of this statute, entails, both civil and criminal consequence.

Learned *amicus curiae* further contends that the National Council is mandatorily required to be constituted by virtue of section 5 of the Clinical Act and the object and duties, are manifold including, to collect the statistics in respect of



clinical establishments. She further states that similar body at the state level is required to be constituted under the provisions of the clinical Act. It is brought to our notice that both Central as also the State rules stand enacted for implementation of the Act. She further states that certain provision of the Acts and Rules stands unimplemented so far as State of Bihar is concerned. Learned *amicus curiae* has prepared a note in which she has culled out in tabular form, which we extract hereinunder, provisions of the Act and Rules which have yet not been complied:-

"That it is relevant to bring in tabular form the provisions which are not strictly complied by the State of Bihar, which are as follows:-

<b>Provisions not implemented of Rules, 2013</b>	<b>Provisions not implemented of Rules,2012</b>	<b>Provisions not implemented of the ACT,2010</b>	<b>Remedial measures under Provisions</b>
Rule 4	Rule 9	Section 5	Rule 30 of RULES, 2013
Rule 12		Section 11	SECTION 32 of Act, 2010
Rule 13		Section 32	SECTION 33 of ACT, 2010
RULE 20		Section 37	SECTION 40 OF ACT, 2010
RULE 23		Section 40	SECTION 41 of ACT, 2010
RULE 26		Section 41	
RULE 30		Section 42	

She has also highlighted further deficiency in para 14, 15, 16 and 17 of her note which is extracted as under:-

"14.That the district Authority was also not



imposing fine/penalty against clinics as defined under section 2(c) of the Act, 2010, which are running without registration which is in complete violation of section 13, 20, 23, 26 and 30 of Bihar Clinical Establishments (Registration and Regulation) Rules, 2013. The District Authority are also not inspecting hospital and Clinics hospitals which are not registered under Clinical Establishment (Registration and Regulation) Act, 2010, so it requires registered hospitals and clinics only be designated as COVID Hospitals.

15. That the State of Bihar has also designated COVID hospitals to private hospitals which are not registered under Clinical Establishments (Registration and Regulation) Act, 2010, so it requires registered hospitals and clinics only be designated as COVID Hospitals.

16. That the State Government has also empanelled many hospitals and clinics under Ayushman Bharat Scheme which are not registered under Clinical Establishment (Registration & Regulation) Act, 2010.

17. That in view of the aforesaid facts, it is fit to direct the respondents to bring on record the number of hospitals/clinics which are duly registered in the State of Bihar and what concrete steps have been taken against the clinics running without registration. The inaction of the respondents are only harming the health of the public at large but also boosting the quackery practice by unqualified doctors in the State of Bihar."

We appreciate the efforts put in by learned *amicus curiae* in undertaking such an exercise and ably assisting the Court .

We direct the respondents to deal with each one of the issues which the learned amicus has indicated in her note. Copy thereof already stands supplied to all the learned counsels.

Mr. Ram Krishna, who was appointed as learned *amicus curiae* by this Court on 23.11.2020 (CWJC No. 20444 of 2014), has also prepared a note indicating the action required to



be undertaken by the State of Bihar in complying with the provisions of the Act. The note is exhaustive and self explanatory. Para 1 thereof is extracted hereunder:-

"Checklist prepared by the Amicus Curiae with regard to the action to be taken on behalf of the State.

1. That it is most humbly submitted that inter alia, the following points are a bird's eye view of the steps required to be taken by the State Government to show compliance in terms of the relevant provisions of the Clinical Establishments (Registration & Regulation) Act, 2010) and the Clinical Establishments (Central Govt.) Rules, 2012 in the instant matter:

The effectiveness of the working of the State Council of Clinical Establishment (Reference: **Section 8** of the Clinical Establishments (Registration & Regulation) Act, 2010). Has the same been constituted within the State of Bihar?

Is the necessary information being provided to the National Council by the State Council for Clinical Establishments under **section 9** of the Clinical Establishment (Registration & Regulation) Act, 2010?

Has the District Registering Authority been constituted for each of the Districts within the State of Bihar under **Section 10** of the Clinical Establishments (Registration & Regulation) Act, 2010 and how effectively has it been working? In this regard, attention is also invited to **Rule 8** of the Clinical Establishments (Central Govt.) Rules, 2012.

Whether the District Registering Authority has been displaying information with respect to the grant of provisional registration, the name of the clinical establishments, address, ownership, name of person in-charge, details of the medical staff (doctors, nurses, etc)?(Reference: **Regulation 27** of the Bihar Clinical Establishments (Registration and



Regulation) Rules, 2013 @ **internal page 17** of the 15th Supplementary counter affidavit filed on behalf of the State.

How many raids have been conducted so far in accordance with **Regulation 29** of the Bihar Clinical Establishments (Registration and Regulation) Rules, 2013?

Whether the list of valid and invalid laboratory centers has been regularly uploaded on District Websites? (Reference: Publication dated 23.12.2019 in the Times of India by the Health Department, Government of Bihar @ **internal page 54** of the 15th supplementary counter affidavit filed on behalf of the State).

Is the State Government maintaining a State Register of clinical establishments within the State as per **section 38** of the Clinical Establishments (Registration & Regulation) Act, 2010?

What all penalties and punishments have been imposed by the State Government so far upon the various clinical establishments and pathological laboratories on account of contravention of provisions of **Sections 40, 41, 42, 43 and 44** of the Clinical Establishment (Registration & regulation) Act, 2010?

What is the action taken by the State Government so far towards compliance of **section 54** of the Clinical Establishments (Registration & Regulation) Act, 2010?

Whether the provisions of **Rule 8-A** and the **Schedule** thereto and **Rule 9** of the Clinical Establishments (Central Govt.) Rules, 2012 are being duly complied with in all the pathological laboratories within the State of Bihar. ?"

We appreciate the efforts put in by learned *amicus*



*curiae* in undertaking such an exercise and ably assisting the Court .

We direct the respondents to deal with each one of the issues which the learned amicus has indicated in his note. Copy whereof already stands supplied to all the learned counsels.

We direct the respondents to also deal with the note as also account for the suggestion and action taken by them.

List both these cases on 10.05.2021.

**(Sanjay Karol, CJ)**

**( S. Kumar, J)**

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