

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15400 of 2023

Dr. Sandeep Kumar, Son of Sri Sitaram Singh, Resident of House No. 22,
Rajendra Path, North Sri Krishna Puri, Police Station - Sri Krishna Puri,
District - Patna - 800013.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary-cum-Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Additional Chief Secretary-cum-Principal Secretary, Health Department, Government of Bihar, Patna.
4. The Director-In-Chief, Health Department, Government of Bihar, Patna.
5. The Bihar Public Service Commission through its Secretary, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna - 800001.
6. The Chairman, Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna - 800001.
7. The Secretary, Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna - 800001.
8. The National Medical Commission through the Chairman, Pocket - 14, Sector - 8, Dwarka Phase 1, New Delhi 110077.
9. The Chariman, National Medical Commission, Pocket - 14, Sector - 8, Dwarka Phase 1, New Delhi 110077.
10. Dr. Sunil Kumar, Director, Indira Gandhi Institute of Cardiology, Ashok Raj Path, Patna - 800004.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Kumar Kaushik, Advocate
For the Respondent/s : Mr. P.K. Shahi, AG
Mr. D.K. Sinha, Sr. Advocate
Mr. Abhinay Raj, Advocate
Mr. Alexander Ashok, Advocate



**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)**

Date : 21-02-2025

The petitioner has challenged the validity of Rules 5, 6 and Appendix-1 of Indira Gandhi Institute of Cardiology Medical Service (Amendment) Rules, 2023 introduced by way of notification contained in Memo No. 487(17) dated 13.05.2023 whereby the Indira Gandhi Institute of Cardiology Medical Service Rules of 2022 (hereinafter referred to as the "Rules of 2022"), relating to eligibility and manner of appointment of the Director of Indira Gandhi Institute of Cardiology (hereinafter referred to as "the IGIC") has been changed, which according to the petitioner is manifestly illegal and violative of Articles 14 and 16 of the Constitution of India as also repugnant to the Central Law on the subject.

2. Apart from this major challenge, the other



reliefs prayed for are quashing and setting aside of Rule 17 of Rules of 2022 whereby it has been prescribed that the officers appointed prior to coming into force of the Rule would be entitled to be considered for promotion in terms of earlier notifications prior to coming into force of Indira Gandhi Institute of Cardiology Medical Service Rules, 2014 (hereinafter referred to as the “Rules of 2014”) as this also is violative of Articles 14 and 16 of the Constitution of India because it creates a class within a class without any rational basis.

3. The further prayer of the petitioner is to set aside the appointment of respondent No. 10 as Director of IGIC on regular basis in exercise of the powers under the Amendment Rules, 2023.

4. The IGIC was carved out of Patna Medical College and Hospital in the year 1980. Initially, the posts were sanctioned as teaching posts but by order dated 15.04.1984, those posts were converted into non-



teaching posts. The qualification for posts above the basic post of Assistant Director was fixed at minimum of post-graduation but superspeciality qualification was not mandatory.

5. The contention of the petitioner is that IGIC, Patna is the first specialized cardiac care centre under the Department of Health, Government of Bihar. In the year 2014, in exercise of powers conferred by proviso to Article 309 of the Constitution of India, the Government of Bihar framed the Rules of 2014 to regulate the appointment and service conditions of doctors in IGIC. Under the aforesaid Rules, IGIC medical service was declared to be a specialist service with six cadres; one being medical cardiology cadre.

6. The Rules also provided for chain of posts of different cadres.

7. Appendix-1 to the Rule of 2014 provided that for the post of Assistant Director (Medical Cardiology)



which would be by direct recruitment, the qualification would be MD(Medicine) and DM(Cardiology). The first ladder was Deputy Director (Medical Cardiology) post which was to be filled up in the ratio of 33% by direct recruitment and rest 67% by promotion. For that also, the qualifications required were MD(Medicine) and DM(Cardiology) with minimum of six years working experience in a Cardiological Institute recognised by the Medical Council of India (hereinafter referred to as “the MCI”) after doing DM.

8. The second ladder was of Joint Director (Medical Cardiology) which also were to be filled up in the ratio of 33% by direct recruitment and rest 67% by promotion. Apart from the basic qualification for this post of MD (Medicine) and DM (Cardiology), 12 years working experience in a cardiological institute recognised by MCI, after doing DM was provided.

9. The third ladder was of Additional Director



(Medical Cardiology) which was a promotional post.

10. One post of Director was earmarked in the 2014 Rules which was required to be filled up by selection. The basic qualification, in addition to MD (Medicine) and DM (Cardiology) or MS and MCH (Cardio Thoracic Surgery) was of working experience of 15 years in a cardiological institute recognised by MCI, which was made mandatory. However, the officers of IGIC possessing the said requisite qualification could also have applied for selection.

11. It would be relevant here only to state that IGIC has been recognised by the Diplomate of National Board (hereinafter referred to as “the DNB”) qualification awarded by National Board of Examination (hereinafter referred to as “the NBE”) in Cardiology which is equivalent to DM (Cardiology). IGIC has been recognised by MCI as a Cardiological Institute where DNB candidates could be admitted.



12. The contention of the petitioner is that a superspeciality course training of DNB is being imparted at IGIC which is only one of its kind in the entire State of Bihar insofar as Government Colleges and Hospitals are concerned. This recognition was granted to the IGIC by the NBE, New Delhi in the year 2007.

13. Under the 2014 Rules, Bihar Public Service Commission (BPSC) had issued an advertisement bearing No. 68/ 2020 on 12.10.2020, inviting applications from eligible candidates for appointment to the one post of Director, IGIC Medical Service.

14. The petitioner had applied and was the sole person shortlisted for being considered for selection. However, before the selection process could be brought to its logical conclusion, the State of Bihar repealed 2014 Rules and framed Indira Gandhi Institute of Cardiology Medical Service Rules, 2022 on 13.06.2022.

15. Basically, two changes were made in the



Rules of 2022, viz., that the recruiting agency was changed from BPSC to Bihar Technical Service Commission for appointment to the posts under the cadre including the post of Director and secondly, instead of 15 years work experience in Cardiology, Cardio Thoracic Surgery, Cardio Thoracic and Muscular Surgery Department recognised by MCI, the Rules included even such candidates who would have experience in a medical college recognised by MCI, having an independent Department of Cardiology/ Cardio Thoracic Surgery/ Cardio Thoracic and Muscular Surgery Department .

16. However, what is to be noted is that the basic qualification of superspeciality degree, viz. MD and DM or MS and MCH were not changed.

17. Shortly thereafter, this Rule of 2022 also was amended by way of notification contained in Memo No. 487(17) dated 13.05.2023, which according to the petitioner has changed the manner and eligibility of



appointment to the post of Director entirely.

18. By the aforesaid Amendment, Rule 14(1) of the Indira Gandhi Institute of Cardiology Medical Service Rules, 2022 was substituted and it was notified that appointment to the post of Director, IGIC will be made by the State Government from amongst the Additional Directors working in medical cardiology and surgical cardiology cadre on the basis of *inter se* seniority. The details were provided as to how the *inter se* seniority would be determined. Changes were made in the Appendix to the 2022 Rules too, removing the superspeciality degree mandatorily required for the post of Director.

19. The requirement of superspeciality degree for the junior posts were though left intact.

20. With the Amendment in the qualification for the post of Director, what was required was either MD(Medicine) or DM(Cardiology) or MS or MCH Cardio



Thoracic Surgery with 15 years of work experience in an institution recognised by National Medical Commission having an independent Department of Cardiology/Cardio Thoracic Surgery/ Cardio Thoracic and Vascular Surgery. The appointments were to be made by the State Government.

21. Thus, it is noticeable that with the amendment, the selection post of Director became a promotional post and the superspeciality qualification was removed.

22. It has been contended that such reduction of qualification for the post of Director is impermissible and is in conflict with MCI guidelines. It was also argued that the Government of Bihar does not have the legislative competence to amend the Rules. Even otherwise, when all the posts below the ladder require the superspecialty degree, it would appear to be anomalous that the person adorning the highest post in the cadre would not be



required to have superspeciality qualification.

23. The charge of the petitioner is that this amendment was introduced only to facilitate respondent No. 10 on permanent basis.

24. An argument was advanced that the regulations on minimum qualification having been made by MCI cannot be whittled down or reduced by a State law.

25. An additional argument also was raised with respect to Rule 17 of 2014 Rules, which prescribed that those persons appointed/promoted and working at the time of enforcement of the Rules, would not be subjected to the said Rule of 2014 and they shall work on their posts which shall be declared to be a dying cadre but they shall also be entitled to promotion in terms of earlier notification.

26. It was urged that if such appointees were to



be treated as dying cadre, there would have been no difficulty but affording to them the prospect of promotion would be in conflict with Articles 14 and 16 of the Constitution of India. Rule 17 of 2014 Rule, referred above, was retained in the 2022 Rules also, which in *pari materia* is found in Rule 17 of 2022 Rules. It amounted to giving promotions to those who were appointed before the Rules of 2014 without the degree of DM. They could not have only continued in service but would be granted promotion to higher posts also even in the absence of possession of minimum qualification required for that post under the 2014 Rules.

27. The BPSC withdrew the Advertisement No. 68 of 2020, referred to above, and appointed respondent No. 10 to the post by order dated 21.08.2024 for a period of three years or until regular appointment of the Director was made.

28. Thus, the challenge of the petitioner is



manifold, *viz.*, (i) the State Government does not have the competence to reduce the qualification of the post of Director since IGIC is a stand alone Teaching Institute apart from being a hospital; (ii) IGIC is a Superspeciality Cardiology Institute in which even the basic post of Assistant Director requires the qualification of DM; (iii) the Rule was amended only to accommodate respondent No. 10, who continues on the post even after his superannuation; (iv) the selection process already begun could not have been cancelled because of an amendment made during the pendency of the same, as the State does not have the absolute freedom to abandon a selection process without any reason, after commencement of the same.

29. Responding to the aforementioned challenge, the learned Advocate General made a slender argument that IGIC is not a Teaching Institute but a stand alone hospital with superspeciality services in cardiology. That



being the situation, the Rules prescribed by Medical Council of India (Minimum Qualification for Teachers in Medical Institutions) Regulation, 1998 with superspeciality degree would not be applicable; thus, negating the arguments of the amendment carried out in the 2022 Rules to be *ultra vires* the Constitution on the ground of it being repugnant with the Central Law in that regard.

30. The National Medical Commission (Post-graduate Medical Education Board) has come out with teachers eligibility qualification in Medical Institutions Regulations, 2022, which provides for general norms for appointment of faculty in medical institutions.

31. These regulations further provide that the DNB degree in broad speciality and superspeciality qualifications when granted in a medical institution with attached hospital or in a hospital with the strength of 500 or more beds by the National Board of Examinations, it



shall be equivalent in all respects to the corresponding Speciality (MD/MS) and Superspeciality (DM/MCH) Postgraduate qualification.

32. It was submitted by the State as also by respondent No. 10 that *vide* resolution of the Government of Bihar in its Health Department dated 15th of April, 1984, it was clarified that IGIC was separated from Patna Medical College and Hospital and was established as an independent Institute/ hospital. All the posts were initially made the teaching post but because of great difficulty in filling up of such teaching posts, it was decided to convert those posts to non-teaching posts. This decision was taken also for the reason that when it was manned by persons on non-teaching posts, it had done much better in providing medical services in the Department of Cardiology.

33. On a careful consideration of all these facts, the State Government took a decision that all the



teaching posts of the institute would be converted into non-teaching posts. It was also pointed out that notwithstanding the accreditation of IGIC by the National Board of Examinations for award of DNB degree, IGIC does not become a Medical institute; rather it is a stand alone hospital dealing with patients in Cardiology Department. Merely because an institution is listed and accredited by National Board of Examination for DNB degree, the officers of the institute do not become teachers and the Institute does not become a Medical Institution. In fact, DNB accreditation is given to private hospitals also where no teaching is imparted.

34. Since the National Medical Commission and its Chairman were also impleaded as respondents No. 8 and 9 to the writ petition, a counter affidavit was filed on their behalf as well, the affidavit having been sworn by an Under Secretary with the National Medical Commission. The affidavit clearly states that National



Medical Commission only provides the minimum standard of qualification under teachers eligibility qualification in Medical Institutions Regulation, 2022 and does not provide for Recruitment Rules for appointment of faculties in hospitals. Rather, the Regulation 3.6 of the Teachers Eligibility Qualification in Medical Institutions Regulation, 2022 provides that the position of Dean/Director/Principal of Medical College/Institutions should be held by a person possessing recognized Postgraduate Medical Degree from a recognized institution with a minimum of 10 years teaching experience as Professor/Associate Professor in Medical College/Institution, out of which at-least five years should be the experience of Professor in the Department. The appointment to these posts would be made on Seniority-cum-Merit basis and the Dean/Director/Principal shall not hold the post of the Head of the Department.



35. It was, therefore, averred that the recruitment rules comes under the purview of the State Government, where qualification and experience could be provided in the Recruitment Rules by the Government.

36. Before advertng to the arguments on behalf of the parties, it would be relevant to state that in ***State of Tamil Nadu vs. P. Krishnamurti : (2006) 4 SCC 517***, the Supreme Court listed the following principles while adjudging the validity of subordinate legislation, including regulations. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well-recognized that a subordinate legislation can be challenged under any one of the following grounds, *viz.*,

(a) Lack of legislative competence to make the subordinate legislation.

(b) Violation of fundamental rights guaranteed under



the Constitution.

(c) Violation of any provision of the Constitution of India.

(d) Failure to conform to the statute under which it is made or exceeding the limits of the authority conferred by enabling Act.

(e) Repugnancy to laws of the land, i.e., any enactment and if manifest arbitrariness/unreasonableness (to an extent where the Court might well say that the Legislature never intended to give authority to make such Rules).

37. In summary, the judicial review of Government policies encapsulates determining whether they infringe upon the fundamental rights of citizens, contravene constitutional provisions, violate statutory regulations or display manifest arbitrariness, capriciousness, or *mala fides*.

38. The focus of judicial scrutiny is limited to the legality of the policy, excluding any evaluation of its



wisdom or soundness.

39. The Court cannot compel the Government to formulate a policy, evaluate alternatives or assess the effectiveness of existing policies, which constraint stems from the principle of separation of powers, where the Courts lack the democratic mandate and institutional expertise to delve into such matters (Also refer to ***In Re Section 6A of the Citizenship Act, 1955: 2024 SCC Online SC 2880***).

40. In ***Shudhir and Anr. vs. State of Kerela and Ors. : (2015) 6 SCC 685*** cited by the petitioner, the primary ground on which the challenge to the validity of the legislation was mounted by the writ petitioner was that the State Legislature could not enact law that would make selection for admission to the Postgraduate courses dependent solely on seniority of the in-service candidates without prescribing the minimum conditions of eligibility for the candidates concerned.



41. Whereas, in the present case, Rules have been made under the exercise of powers conferred by proviso to Article 309 of the Constitution of India which relates to Medical Education and Medical Profession falling in list-III of Schedule-7 to the Constitution of India and the Central Law, *viz.*, Medical Council Regulations are applicable only for teaching posts in a Medical College and Hospital.

42. Thus, the challenge that the State Government does not have the competence to reduce the qualification of the post of Director is not sustainable. The State Government has the power to come out with such notification prescribing the qualification required for the post of Director in a stand alone hospital like IGIC.

43. Since IGIC is not a Medical Institution falling under the definition of Medical Institutions under the MCI Act, it cannot be said that the regulations by the MCI were tinkered with which would have been impermissible, had IGIC been a Medical Institute and



Hospital.

44. Even at the risk of repetition, it is being stated here that the position is clear that IGIC is a stand alone hospital of speciality.

45. Only for the reason of accreditation by the NBE of IGIC for permitting training of DNB course, IGIC does not become a Medical Institution. The saving provision in Rule 17 of both 2014 and 2022 Rules is meant for saving the persons who had entered the institute prior to the formulation of Rules of 2014 which is treated as a dying cadre. It appears that somehow or the other, there would be no person available in that cadre now.

46. The further objection of the petitioner that with the amended Rules of 2023, there would be an anomalous situation, is not sustainable for the reason that a Director is expected to run the institute more on his administrative capabilities than the medical



superspeciality; whereas the other doctors would be treating the patients with their superspecialised qualifications.

47. The selection process though had begun but the State Government in its wisdom, for the purposes of effective management and running of the hospital, thought it fit to make change in the Rules which is permissible. Had the selection process been completed and the writ petitioner would have been selected and appointed, the situation would have been different and then the change of Rules would have been read as an attempt to purposely exclude the writ petitioner from being the Director of the Institute.

48. The challenge of the petitioner on all the grounds, thus, fails.

49. However, after having said this, we do conclude that the Government must resort to appointing regular Director in accordance with the Rules of 2022,



amended in 2023, and not keep the post filled by a contractual appointee.

50. The learned Advocate General has submitted that the post shall be filled up by way of promotion and regular appointment shortly.

51. Thus, the writ petition stands disposed off in terms of what has been held above.

(Ashutosh Kumar, ACJ)

Partha Sarthy, J : I agree.

(Partha Sarthy, J)

Rajesh/Manoj

AFR/NAFR	NAFR
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