

GAHC010107872023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2784/2023

M/S KARBI ANGLONG HOSPITALS PVT LTD
RENGPOLI MULTI SPECIALTY HOSPITAL AND RESEARCH CENTRE,
RONGBIN AKLAM, WARD NO. 3, DIPHU, KARBI ANGLONG, REPRESENTED
BY ITS DIRECTOR DR. MONGVE KRO, AGED ABOUT 36 YEARS, SON OF SRI
DHANSING KRO, RESIDENT OF TEACHERS COLONY, P.O. AND P.S. DIPHU,
DIST. KARBI ANGLONG, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, HEALTH AND FAMILY WELFARE DEPARTMENT, DISPUR,
GUWAHATI-781006.

2:THE JOINT DIRECTOR OF HEALTH SERVICES CUM CONVENER

DISTRICT REGISTRATION AUTHORITY
KARBI ANGLONG DISTRICT
DIPHU
KARBI ANGLONG
ASSAM
PIN- 782460.

3:THE SECRETARY
HEALTH AND FAMILY WELFARE DEPARTMENT
KARBI ANGLONG AUTONOMOUS COUNCIL
DIPHI CUM CHAIRPERSON
DISTRICT REGISTRATION AUTHORITY
KARBI ANGLONG DISTRICT
KARBI ANGLONG
ASSAM- 782460.

4:THE JOINT SECRETARY
HEALTH AND FAMILY WELFARE DEPARTMENT

KARBI ANGLONG AUTONOMOUS COUNCIL
DIPHU CUM CHAIRPERSON
DISTRICT REGISTRATION AUTHORITY
KARBI ANGLONG DISTRICT
DIPHU
KARBI ANGLONG
ASSAM-782460.

5:THE UNDER SECRETARY
HEALTH AND FAMILY WELFARE DEPARTMENT
KARBI ANGLONG AUTONOMOUS COUNCIL
DIPHU CUM CHAIRPERSON
DISTRICT REGISTRATION AUTHORITY
KARBI ANGLONG DISTRICT
DIPHU
KARBI ANGLONG
ASSAM-782460.

6:THE SUPERINTENDENT OF POLICE
MEMBER
DISTRICT REGISTRATION AUTHORITY
KARBI ANGLONG DISTRICT
DIPHU
KARBI ANGLONG
ASSA

Advocate for the Petitioner : MD F FARIDI

Advocate for the Respondent : SC, HEALTH

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 19-05-2023

Heard Mr. F. Faridi, learned counsel for the petitioner; Mr. A. Chaliha, learned Standing Counsel, Health and Family Welfare Department for the respondent no. 1; Mr. J. Chutia, learned Standing Counsel, KAAC for the respondent nos. 2 – 5; and Mr. K. Gogoi, learned Additional Senior Government Advocate, Assam for the respondent no. 6.

2. The petitioner has instituted the instant writ petition under Article 226 of the Constitution of India challenging an order dated 16.05.2023 passed by the respondent no. 2 herein. The petitioner's application dated 24.12.2022 for renewal of provisional certificate applied on 16.12.2022 is rejected by the order dated 16.05.2023 which order is stated to have been passed in exercise of powers conferred on the said authority under Section 32[1] of the Clinical Establishments [Registration and Regulation] Act, 2010. The said authority has further ordered that all OPD/OT/emergency and other activities shall be stopped, except treatment of existing IPD patients for a period of 10 [ten] days. The order has further mentioned that it has the approval of the competent authority of the KAAC.

3. The petitioner is a Private Limited Company incorporated under the Companies Act, 2013. The petitioner runs a clinical establishment in the name and style of Rengpoli Multispecialty Hospital & Research Centre as one of its units at Diphu. It is an admitted position that the said clinical establishment has to comply with the provisions of the Clinical Establishments [Registration and Regulation] Act, 2010 ['the Act, 2010', for short] and the Assam Clinical Establishments [Registration and Regulation] Rules, 2016 ['the Rules, 2016', for short]. The petitioner company had earlier obtained a provisional registration certificate bearing registration no. 1831400091 under the Act, 2010 with validity period of 1 [one] year up to 30.04.2022. The application for renewal of the provisional certificate in respect of the said clinical establishment was submitted on 24.12.2022 but by the impugned order dated 16.05.2023, the authority had rejected the petitioner's application dated 24.12.2022 in exercise of the powers conferred under Section 32[1] of the Act, 2010.

4. From a perusal of the Act, 2010 and the Rules, 2016, it is noticed that Section 32 has provided for cancellation of registration of a clinical registration and Section 36 of the Act, 2010 has provided for an appeal.

4.1. Section 32 of the Act, 2010 has provided as under :-

32. Cancellation of registration.-(1) If, at any time after any clinical establishment has been registered, the authority is satisfied that,

(a) the conditions of the registration are not being complied with; or

(b) the person entrusted with the management of the clinical establishment has been convicted of an offence punishable under this Act,

it may issue a notice to the clinical establishment to show cause within three months' time as to why its registration under this Act should not be cancelled for the reasons to be mentioned in the notice.

(2) If after giving a reasonable opportunity to the clinical establishment, the authority is satisfied that there has been a breach of any of the provisions of this Act or the rules made thereunder, it may, by an order, without prejudice to any other action that it may take against such clinical establishment, cancel its registration.

(3) Every order made under sub-section (2) shall take effect-

(a) where no appeal has been preferred against such order immediately on the expiry of the period prescribed for such appeal; and

(b) where such appeal has been preferred and it has been dismissed from the date of the order of such dismissal:

Provided that the authority, after cancellation of registration for reasons to be recorded in writing, may restrain immediately the clinical establishment from carrying on if there is imminent danger to the health and safety of patients.

4.2. The appellate remedy provided under Section 36 reads as under :-

36. Appeal. (1) Any person, aggrieved by an order of the registering authority refusing to

grant or renew a certificate of registration or revoking a certificate of registration may, in such manner and within such period as may be prescribed, prefer an appeal to the State Council:

Provided that the State Council may entertain an appeal preferred after the expiry of the prescribed period if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) Every appeal under sub-section (1) shall be made in such form and be accompanied by such fee as may be prescribed.

5. The State Government in exercise of the powers conferred under Section 54 of the Act, 2010 has framed a set of rules i.e. the Assam Clinical Establishments [Registration and Regulation] Rules, 2016. Rule 18 has provided for the procedure for preferring an appeal as well as the powers of the State Council as the appellate authority. For ready reference, Rule 18 of the Rules, 2016 is also quoted herein below in its entirety :-

(1) Any person or clinical establishment, if aggrieved by the decision of the Authority under section 31, section 41(7) and section 42(6) of the Act, may file an appeal in the Form V to the State Council.

(2) The appeal shall be sent to the State Council by registered post or in person.

(3) Every appeal shall be accompanied by a fee of rupees Two thousand under section 32 of the Act.

(4) The State Council may entertain the appeal after the expiry of 20 days if they feel the applicant has sufficient cause for appeal under section 36(1) of the Act.

(5) After receipt of the appeal, the State Council shall fix the time and date for meeting and inform the same to the appellant and others concerned by a registered letter given at least 15 days time for hearing of the case.

(6) The appellant may represent by himself or authorized person or a Legal practitioner and submit the relevant documentary material if any in support of the appeal.

(7) The State Council shall hear all the concerned, receive the relevant oral/ documentary

evidence submitted by them, consider the appeal and communicate its decision preferably within 90 days from the date of filing the Appeal.

(8) If the State Council considers that an interim order is necessary in the matter, it may pass such order, pending final disposal of the appeal. The state council will have the authority to stay the operation of the order of the district authority till such time as it deems necessary. The decisions of State Council shall be final and binding.

(9) If no appeal is filed against the decision of the Registering Authority in the prescribed period (i.e.) within 30 days from the date of receipt of the order, the orders of the Authority shall be final.

(10) The appeal fees collected by the authorities shall be deposited by the Authority concerned in a Nationalized bank account opened in the name of the official designation of the State Council concerned and shall be utilized by the Council and authority for the activities connected with the implementation of the provisions of the Act as approved by the Council.

6. The State Government by a Notification dated 03.11.2016 has constituted the State Council for clinical establishments in exercise of the powers conferred by Section 8 of the Act, 2010. In the State Council so consisted, Senior most Secretary, Health & Family Welfare Department and the Director of Health Services, Assam are the Chairman and Member Secretary respectively.

7. As the petitioner has the remedy of preferring an appeal which, in the considered view of the Court, is an adequate, efficacious and statutory remedy, the petitioner should first avail such adequate, efficacious and statutory remedy of appeal provided under the Act, 2010 and the Rules, 2016 instead of the writ petition under Article 226 of the Constitution of India.

8. In such view of the matter, this Court is not entertaining the instant writ petition preferred under Article 226 of the Constitution of India. Liberty thus, stands reserved to the petitioner to avail the statutory remedy of appeal under

the Act, 2010 and the Rules, 2016.

9. On perusal of Rule 18 of the Rules, 2016, it is noticed that the period of limitation for filing the statutory appeal is 30 days from the date of receipt of an order. Under sub-Rule [8] of Rule 18 of the Rules, 2016, the State Council is empowered to pass an interim order if necessary in the matter, and it may pass such order, pending disposal of the appeal. The State Council as the appellate authority also has power to stay the operation of the order of the District Authority till such time as it deems necessary and the decision of the State Council shall be final and binding. Sub-Rule [9] of Rule 18 of the Rules, 2016 has further laid down that if no appeal is filed against the decision of the Registering Authority in the prescribed period within 30 days from the date of receipt of the order, the orders of the Authority shall be final.

10. The impugned order is passed in exercise of the powers conferred on the authority under sub-section [1] of Section 32 of the Act, 2010. As per sub-section [3] of Section 32 of the Act, 2010, every order made by the authority shall take effect [a] where no appeal has been preferred against such order, immediately on the expiry of the period prescribed for such appeal; and [b] where such appeal has been preferred and it has been dismissed, from the date of the order of such dismissal. The proviso to sub-section [3] of Section 32 of the Act, 2010 has provided that the authority after cancellation of registration for reasons to be recorded in writing, may restrain immediately the clinical establishment from carrying on if there is imminent danger to the health and safety of patients. In the case in hand, the authority while passing the impugned order dated 16.05.2023 has not recorded any reason wherefrom a inference can be drawn that there is immediate danger to the health and safety

of the patients. Yet, the authority while passing the impugned order dated 16.05.2023 has stopped all OPD/OT/Emergency and other activities in the clinical establishment with immediate effect, save and except, the treatment of existing IPD patients for a period of 10 [ten] days. It is clear from the provisions of Section 32 of the Act, 2010 that the order of the registering authority shall take effect only after expiry of the period of filing statutory appeal i.e. 30 days from the date of receipt of the order.

11. Considering the consequence that might arise to the patients undergoing treatment in the clinical establishment and the infirmity in the order dated 16.05.2023 passed by the registering authority qua the provisions contained in Section 32 of the Act, 2010, it is ordered that the operation of the impugned order regarding immediate stoppage of OPD/OT/Emergency and other activities in the clinical establishment viz. Rengpoli Multispecialty Hospital & Research Centre shall be kept in abeyance till the State Council as the appellate authority considers the statutory appeal for passing an interim order in the event such an appeal is filed by the petitioner or till expiry of the period of limitation, whichever is earlier. It is further observed that in the event no appeal is filed within the period of limitation for filing an appeal, the impugned order dated 16.05.2023 shall take effect accordingly.

12. This order disposes of the writ petition.

JUDGE

Comparing Assistant