

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

**WP(C) 2657/2025
CM(7030/2025)**

**Grooming Kashmir through
Administrator namely**

...Petitioner(s)

Tariq Ahmad Mir

S/o Ghulam Hassan Mir

Address: New Colony, Padshahi Bagh

Near Oak Hill School, Srinagar, J&K.

Through: M/s. Taha Khalil and Tehseen Sofi, Advocates.

Vs.

- 1. Union Territory of Jammu and Kashmir through its Commissioner Secretary Health and Medical Education Department, Srinagar. ...Respondent(s)**
- 2. Deputy Commissioner Srinagar/ Chairperson District Registering Authority, Srinagar.**
- 3. Director Health Services Kashmir, Srinagar.**
- 4. Additional Deputy Commissioner, Srinagar.**
- 5. Chief Medical Officer, Srinagar/ District Registering Authority, Srinagar.**
- 6. Medical Superintendent, SMHS Hospital, Srinagar.**
- 7. Station House Officer, Police Station Sadder, Srinagar.**

Through: Ms. Nadiya Abdullah, Assisting Counsel vice
Mr. Mohsin S. Qadri, Sr. AAG.

CORAM:

Hon'ble Mr. Justice Wasim Sadiq Nargal, Judge.

ORDER (ORAL)

29.10.2025

01. The learned counsel appearing on behalf of the petitioner has vehemently argued that the impugned notice is *ex-facie* arbitrary, whimsical and suffers from total non-application of mind as the same is violative of Article 14 of the Constitution of India, therefore, deserves to be set aside.

02. The learned counsel for the petitioner has placed reliance upon the Clinical Establishments (Registration and Regulation) Act, 2010 (for short "the Act of 2010") which Act has been provided for the registration and regulation of the clinical establishments in the country and the matters connected therewith or incidental thereto.

03. The learned counsel submits that there is a procedure prescribed in Section 32 of the Act of 2010 for the purpose of cancellation of the registration and that too by the Competent Authority and before taking final action for cancelling the registration, a notice was required to be issued to the concerned clinical establishment to show cause within a period of three months' time as to why its registration under the Act of 2010 should not be cancelled for the reasons to be mentioned in the notice.

04. The learned counsel submits that in the instant case, no such show cause notice has been issued to the petitioner and on the other hand, the impugned notice has

been passed, whereby the registration of the petitioner's Drug De-Addiction center i.e. Grooming Kashmir has been temporary suspended.

05. The learned counsel for the petitioner further submits that what to talk of issuance of show cause notice, even the Authority before passing the final order of cancellation of registration, has to record its satisfaction that there has been breach of any provisions of the Act of 2010 or the rules framed thereunder and it is only when such satisfaction is recorded, the final action is to be taken.

06. In the instant case, no such satisfaction has been recorded and instead the registration of the petitioner has been suspended temporarily. For facility of reference, Section 32 of the Act is reproduced 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.”

07. From a bare perusal of the Act of 2010, it transpires that a complete mechanism has been provided before cancellation of such registration and *prima facie* this Court is of the view that the procedure envisaged under the Act of 2010 with particular reference to Section 32 of the Act, has not been followed.

08. The learned counsel for the petitioner submits that Section 40 of the Act of 2010 deals with penalty clause and the penalty can be imposed in a situation if any Drug DE-Addiction Center contravenes any provision of the Act, then the said penalty can be imposed in conformity with Section 40 of the Act, which provides that for the first offence, a penalty of Rs. 10,000/- can be imposed and for the second offence,

fine can be enhanced to Rs. 50,000/- and for any subsequent offence, the fine may extend to Rs. 5.00 lakhs. For facility of reference, Section 40 of the Act of 2010 is reproduced as under:

“40. Penalty.—Whoever contravenes any provision of this Act shall, if no penalty is provided elsewhere, be punishable for the first offence with fine which may extend to ten thousand rupees, for any second offence with fine which may extend to fifty thousand rupees and for any subsequent offence with fine which may extend to five lakh rupees.”

09. The learned counsel for the petitioner placing reliance upon the aforesaid statutory provision submits that assuming though not admitting that the petitioner’s Drug Center has committed violation of any provision of the Act or the rules framed there under, then the respondents ought to have followed the procedure as envisaged under the Act, whereby the provision for penalty has been prescribed, but the same has not been done and instead the respondents have temporarily suspended the registration of the petitioner.

10. The learned counsel for the petitioner further argued that the temporary suspension of the license is not provided under the Act of 2010 and the Act only provides for cancellation of the registration and that too after following the due procedure prescribed under Section 32 of the Act of 2010. He further pleaded that the impugned notice has been issued by an incompetent authority and the respondent No. 5-Chief

Medical Officer, Srinagar has no authority under law to issue such a notice and on this count also, the impugned notice is without jurisdiction and cannot sustain the test of law.

11. Lastly, the learned counsel for the petitioner submitted that although there is alternate and efficacious remedy provided under the rules known as Jammu and Kashmir Clinical Establishments (Registration and Regulation) Rules, 2020, which have been framed in exercise of the powers conferred under Section 54 of the Clinical Establishments (Registration and Regulation) Rules Act, 2010 vide S.O 168 in terms of Rule 34 of the aforesaid rules, but the said remedy has not been availed in the light of the fact that impugned notice has been issued by an incompetent authority and too in flagrant violation of the prescribed procedure under the Act of 2010 and, thus, the case of the petitioner falls under the exception clause laid down by the Apex Court where the remedy of availing alternate and efficacious remedy can be by-passed, as such, the petitioner has filed the instant writ petition.

12. Heard learned counsel for the petitioner at length and perused the material on record.

13. *Prima facie* case for indulgence is made out.

14. At this stage, the learned counsel for the petitioner submits that the petitioner has filed a detailed representation before the competent authority/ Chief Medical Officer,

Srinagar, which has been placed on record as *Annexure-IV*, which as per the learned counsel for the petitioner has not been accorded consideration till date and he further submits that he would feel satisfied in case a direction is issued to the said respondent to decide the representation of the petitioner within some reasonable time frame, to which Ms. Nadiya Abdullah, learned Assisting Counsel appearing vice Mr. Mohsin S. Qadri, learned Senior Additional Advocate General is not averse, however, she submits that the representation of the petitioner would be accorded consideration strictly under rules and as per law.

15. With the consent of the learned counsel for the parties, the instant writ petition is taken up for final disposal and the same is accordingly disposed of with the direction to the respondent-Chief Medical Officer, Srinagar to decide the representation alleged to have been filed by the petitioner on 24th October, 2025, which has been placed on record as *Annexure-IV*, within a period of four weeks from the date copy of this order along with copy of writ petition is made available to the said respondent, strictly under rules and as per law.

16. It is made clear that till the time decision is taken by the respondent/competent authority on the representation of the petitioner, the impugned notice dated 23rd October, 2025 shall not be acted upon.

17. It is further made clear that in case if the respondent/competent authority decides to hear the

petitioner in person, the same can also be done after issuing notice to the petitioner in advance and petitioner shall be at liberty to put forth his claim before the said respondent/competent authority or produce any such document advancing his case before any said decision is taken by the respondent/competent authority within the period prescribed by this Court.

18. Writ petition along with connected CM ***disposed*** of in the manner as indicated above.

(Wasim Sadiq Nargal)
Judge

SRINAGAR:
29.10.2025
"HAMID"

- ❖ Whether Order is Speaking? Yes/No
- ❖ Whether Order is Reportable? Yes/No

