

**HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**

**WRIT PETITION No.27658 of 2010**

**ORDER:**

The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of the respondents in seeking to grant lease/permission for establishing and running 4<sup>th</sup> medical shop in the premises of the 2<sup>nd</sup> respondent/Hospital without following the procedure contemplated under G.O.Ms.No.516, Health, Medical and Family Welfare (M1) Department dated 14.10.2005, as illegal, arbitrary and violative of principles of natural justice.

The factual matrix of the case is as under :

The first petitioner is a DWACRA Group represented by its Secretary and the second petitioner is the Member and President of the first petitioner/Society. The Society was formed to improve the living standards and economic standards of its members, who are all women, by participating in various schemes organized by the Government and other organizations from time to time and avail the benefits under such schemes. The second respondent/Government General Hospital was established by the first respondent/Government to cater to the medical

needs of the residents of East and West Godavari Districts. The first respondent issued G.O.Ms.No.516, Health, Medical and Family Welfare (M1) Department, dated 14.10.2005 framing guidelines for establishing and maintaining medical shops in all Government Hospitals in the State. So far as the second respondent/Government General Hospital is concerned, the third respondent i.e., the Hospital Development Society, Kakinada, is the competent body to grant lease/permission for establishing/maintenance of medical shops within the premises of second respondent/Hospital. It is stated that three medical shops which are existing in the premises of the second respondent are being leased out by the third respondent to various divisions/firms in accordance with G.O.Ms.No.516. While things stood thus, the third respondent is said to have passed a resolution for establishing and running a fourth medical shop in the premises of the second respondent/Hospital, in favour of a particular DWACRA group without conducting any public auction or without inviting applications from such other DWACRA groups or societies. The resolution passed by the third respondent was kept in secrecy but the agenda of the meeting held on 28.10.2010 shows proposal for establishment of a fourth medical shop. It is further averred that though the third respondent is seeking to permit a DWACRA group to establish fourth medical shop, till date

the construction of the shop has not yet commenced. The action of the third respondent in establishing a fourth medical shop in the second respondent/hospital without following the guidelines, is the subject matter of challenge in the present writ petition.

A counter came to be filed by the third respondent stating that the allegation of establishing a fourth medical shop in the premises of second respondent/hospital is absolutely false and incorrect. As the total bed strength of the Hospital is 1065, the respondents are eligible to maintain 3 medical shops in the Government General Hospital, Kakinada, in terms of G.O.Ms.No.516, HM & FW (M1) Department, dated 14.10.2005. It is stated in the counter that out of the three medical shops, one medical shop is being run by Pilla Bala, Rajahmundry, which is adjacent to Vijaya Bank in the premises of Government General Hospital. The second shop was allotted to T.Sai Rama Rao, Kakinada, near casualty ward at the In-gate, which was said to be under construction as on the date of filing of the counter. The third medical shop, known as M/s. Sri Rangaraya Medical shop, was previously allotted to Smt.Nadimpalli Lakshminarayana, but however, the licence was cancelled and the same was taken into possession by the Superintendent, Government General Hospital, Kakinada. The said shop is at present vacant. Thus, only

two out of three shops are functioning in the premises of the second respondent. While things stood thus, the District Collector and Chairman, Hospital Development Society, Kakinada, proposed to allot the third shop to East Godavari Mutually Aided Cooperative Mahila Samakhya through DRDA, Kakinada, which is a federation of all women self help groups. The DWACRA medical shop was to be named as "Jana Aushadhi" and the same was set up with an intention to sell only Generic medicines of good quality at very low price. In paragraph 12 of the counter, it is stated that the Hospital Development Society has unanimously decided to start the above Generic Medical shop in the place of shop allotted to Sri Rangaraya Medical Shop with an intention to sell good quality Generic medicines of top 30 pharmaceutical companies. It is further stated that the grievance of the petitioner was with regard to establishment of fourth medical shop, which is not done, since the rules permit establishment of only three medical shops in a Hospital which has more than 1000 beds.

From the narration of events, it is clear that only three medical shops can be established by the third respondent and out of them two shops are functioning and the third shop which was initially licensed to Sri Rangaraya Medical shop was cancelled and in its place the Collector

proposed establishment of a Generic medical shop with a view to sell medicines at a low price. It is to be noted that the present Writ Petition was filed in the year 2010 and there was no stay with regard to establishment of any medical shop.

As seen from the material, the grievance of the petitioner is with regard to establishment of a fourth medical shop. The counter, which has been filed before this Court, clearly states that the establishment of fourth medical shop would not arise since the second respondent/Hospital, which has a capacity of above 1000 beds, is permitted to have only three medical shops. Hence, the request as sought for in the Writ Petition would not arise for adjudication.

However, the learned counsel for the petitioner strenuously contends that the third medical shop cannot be leased or licensed to any of the DWACRA groups without following the procedure contemplated under G.O.Ms.No.516 and the subsequent G.Os. It is true that G.O.Ms.No.516 dated 14.10.2005 contemplates procedure mainly inviting tenders from registered firms/Pharmacies/Institutions having experience of minimum five years of running medical shops apart from other conditions. Subsequently, G.O.R.T.No.729, dated 24.06.2006 came to be issued whereby the Government

decided to bring legislation for allotment of medical shops in Government Hospitals to bring in uniformity and transparency in the allotment process. Later, the Government constituted a committee comprising of District Collector as its Chairman, D.M. & H.O., and District Coordinator Hospital Services as its Members and the Superintendent of the concerned Hospital as its Convener.

The material filed along with the counter shows that a note was put up before the District Collector and Chairman referring to the three G.Os., issued by the Government from time to time, with regard to the procedure to be followed while allotting medical shops, cycle stands etc., in Government Hospitals. In paragraph 23 of the counter it has been specifically stated that if the procedure laid down in G.O.Ms.No.516 dated 14.10.2005 is followed and tenders are called for, the intention of the District Collector and Chairman, Hospital Development Society, would be defeated. It was further stated that if the tenders are called for, the tender of the highest bidder is to be accepted, the third respondent has to sell medicines at a higher rate.

Definitely the stand taken by the respondents in not following G.O.Ms.No.516, on the ground that the same would defeat the intention of the District Collector and Chairman, Hospital Development Society, is not be correct.

Establishment of Medical shops in Government Hospitals are for the benefit of poor patients who go to these hospitals for a good and better treatment. They are not established to fulfill the intention or desire of the Chairman of the Hospital Development Authority. Medicines, more particularly the Generic medicines, have to be made available to the patients in Government General Hospitals and to general public at a very low price. The intention of the third and fourth respondents is laudable, but at the same time the element of arbitrariness in allotting shops to a particular DWACRA group ignoring all the other DWACRA groups would be contrary to G.Os., circulars issued by the Government from time to time and also the judgments of the Apex Court.

Further, the reason given for allotting shops to a particular group is to avoid bidding of the shop at higher rate thereby allowing the licensee to sell the same at higher rate, may not be correct at all times. A close reading of G.O.Ms. No.516 does not anywhere state that tender of highest bidder has to be accepted. It only refers to the modalities that have to be followed while allotting the shop. Except clause 3 of G.O.Ms.No.516, which speaks of escalation of 10% after the first year, the other clauses are only procedural in nature. In my view, conditions in clause 3 can be taken care of, while allotting medical shops.

In order to maintain transparency, it is advisable if the third respondent, in future, shall call for tenders giving the list of Pharmaceutical companies and the Generic medicines of those Pharmaceutical companies to be sold in the said medical shop to be established in the Government Hospital, as done now, and allot the shop to the lowest tenderer, if all other conditions are fulfilled.

With the above observation, the Writ Petition is disposed of. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this writ petition shall stand closed.

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**JUSTICE C. PRAVEEN  
KUMAR**

Dt:20.11.2015  
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