

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2016

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.29664 of 2016

and W.M.P.Nos.25672 to 25674 of 2016

Sri Vidya Hospital
Rep. By Dr.C.Vidya

...Petitioner

-Vs-

1.The Secretary to Government,
Health & Family Welfare Department,
Fort St. George,
Chennai -9.

2.The Director of Medical and Rural Health Services
Cum State Appropriate Authority,
Chennai - 600 006.

3.The Joint Director of Health Services
Cum State Appropriate Authority,
Krishnagiri,
Govt. Head Quarters Hospital,
Krishnagiri.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent relating to the impugned suspension order in Ref.No. 5306/A4/2014 dated 10.10.2014 and impugned communication in R.No. 4563/A4/2015 dated 30.09.2015 quash the same and restrain the respondents from interfering with the petitioner's hospital and its premises without following due process of law.

For Petitioner : Mr.I.Abrar MD Abdullah

For Respondents: Mr.R.Govindasamy,

Special Government Pleader

O R D E R

By consent, this Writ Petition is taken up for final disposal.

2. The petitioner claims that she is a medical practitioner of repute, practicing in Krishnagiri and dedicated her entire career for the upliftment of women and providing services in the medical field and having a specialized in the field of Obstetrics & Gynecology and her husband is also a reputed Doctor specialized in the field of Anesthetics and both claim to be rendering good and quality services to the community at large in their District without commercializing their services. It is further stated by the petitioner that she and her husband are running hospital in the name and style of Sri Vidya Hospital which caters to the basic medical needs of patients and since the petitioner is a specialist in the field of Obstetrics, she had installed scan machine in terms of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and she also issued with registration certificate, which having a validity for a period of five years until 02.04.2019. It is further stated by the petitioner that the third respondent had filed a private complaint in C.C.No.140 of 2014 on the file of the Court of Judicial Magistrate, Krishnagiri for the alleged commission of offences under Sections 23, 25, 26 & 29 of the said Act and it was taken cognizance and pending disposal of the private complaint, the petitioner also filed an application for discharge in C.M.P.No.6179 of 2014 under Section 245 of Cr.P.C., and vide order dated 27.11.2014, the said Court held that Section 23 of the said Act was not attracted, but the complaint can be prosecuted in respect of other provisions.

3. The petitioner would further state that on a wrong legal advice, she filed an application in CrI.M.P.No.6888 of 2014 in C.C.No.140 of 2014 on the file of the said Court seeking for the stay of the order of suspension passed by the third respondent and it was also dismissed on 26.12.2014. The petitioner also filed two petitions in CrI.M.P.No.63 of 2015 and 922 of 2016 praying for relaxation of conditions which prescribes that the machine can be put in a workable conditions and both applications are also dismissed.

4. The learned counsel appearing for the petitioner would submit that as against the order of suspension dated 10.10.2014 passed by the third respondent appeal is maintainable under Section 21 of the said Act before the appropriate authority within a period of 30 days from the date of order of cancellation or suspension of registration and on a wrong legal advice, the petitioner has approached the Court of Judicial

Magistrate, Krishnagiri and therefore, he may be permitted to file an appeal before the first respondent and he may be directed to dispose of the appeal without putting the issue of limitation and prays for appropriate orders.

5. Heard the submission of Mr.R.Govindasamy, learned Special Government Pleader, who accepts notice on behalf of the respondents.

6. The third respondent has passed an order of suspension on 10.10.2014 and the materials placed before this Court would prima facie indicate that on the wrong legal advise, the petitioner instead of approaching the first respondent had approached the Court of Judicial Magistrate, Krishnagiri in which, C.C.No.140 of 2014 is pending and after realizing the mistake prayed for leave to file an appeal to the first respondent.

7. Since the petitioner on the wrong legal advise, was diligently prosecuting the matter before the Court of Judicial Magistrate, Krishnagiri, this Court is of the view that time spent in prosecuting the legal proceedings is to be excluded and the petitioner is at liberty to file an appeal before the first respondent in terms of Section 21 of the said Act.

8. In the result, this Writ Petition is disposed of and the petitioner is at liberty to file an appeal challenging the order of suspension dated 10.10.2014, passed by the third respondent within a period of two weeks from the date of receipt of a copy of this order and the first respondent, on receipt of the same, shall entertain the said appeal, without putting the issue of limitation and if the papers are otherwise in order, number the appeal and pass orders in accordance with law, within a further period of six weeks thereafter and communicate the decision taken to the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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+1 cc to Mr.M.Devaraj Advocate sr 49369

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