



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.09.2016

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THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P. (MD) .No.17561 of 2016
and
W.M.P. (MD) No.12694 of 2016

Chinnasamy Nadar Kanthimathiammal
Charitable Trust, rep.by its Managing Trustee
115, Mandapam Street
Rayagiri, Sivagiri Taluk
Tirunelveli District ... Petitioner

-vs-

The Joint Director of Health Services
Tenkasi, Tirunelveli District ... Respondent

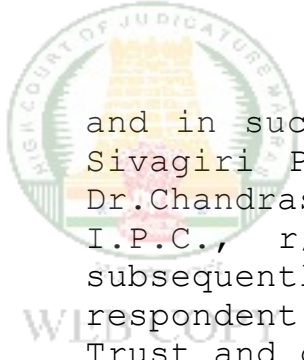
Prayer : Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned order of the respondent in Na.Ka.No.3471/Ka.7/2015, dated 31.08.2016, and quash the same and consequently direct the respondent to handover the keys of the Hospital and Medical Store by removing the seal.

For Petitioner : Mr.H.Arumugam
For Respondents: Mr.V.Muruganandam, A.G.P.

O R D E R

The prayer in the writ petition is for issuance of a writ of certiorarified mandamus to quash the impugned order, dated 31.08.2016, passed in Na.Ka.No.3471/Ka.7/2015, by the respondent herein and to direct him to hand over the keys of the petitioner's Hospital and Medical Store by removing the seal.

2. The Managing Trustee of the petitioner Trust, in the affidavit filed in support of the writ petition, would submit among other things that one Dr.Chandrasekar, who completed his medical course in Khazar University at Republic of Azerbaijan, was appointed as a Doctor in the Hospital run by their Trust and on 02.08.2016, when the officials of the respondent inspected the Hospital, it was found that the said Dr.Chandrasekar did not possess M.B.B.S.Degree and he did not register himself with the Medical Council of India and he is not a qualified practitioner



and in such circumstances, a criminal case was registered by the Sivagiri Police, in Crime No.141 of 2016, as against the said Dr.Chandrasekar as well as the Trust, under Sections 420 and 109 I.P.C., r/w 15(3) of Indian Medical Council Act, 1956 and subsequently, by the impugned order, dated 31.08.2016, the respondent locked and sealed the Hospital run by the petitioner Trust and challenging the legality of the said impugned order, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner Trust would submit that only after the inspection conducted by the respondent, they came to know that Dr.Chandrasekar is not a qualified Doctor and he did not register himself with the Medical Council of India and immediately on coming to know about the said fact, the petitioner Trust removed him from service and appointed one Dr.Suresh Babu, a qualified Doctor and unless the lock and seal are removed, the petitioner Trust will be put into irreparable loss and hardship and therefore prays for appropriate orders.

4. Further, the learned counsel for the petitioner Trust drawn the attention of this Court to the undertaking affidavit, dated 28.09.2016, filed by the Managing Trustee, wherein it is undertaken that in future, the Trust will appoint only qualified Doctors, who have enrolled themselves with the Medical Council of India and there will not be any violation in the matter of appointment of Doctors.

5. The respondent has filed a counter affidavit stating that Dr.Chandrasekar has completed his Medical Course in Russia and he has not passed the Test conducted by the Medical Council of India and he has also not registered himself with the Medical Council of India under Section 15(3) of Indian Medical Council Act and hence a criminal case was lodged against him as well the Trust and the impugned order came to be passed and if the lock and seal are ordered to be opened, then the petitioner Trust will tamper with the evidence and it will affect the pending criminal case and therefore at least till the finalization of the criminal case, the lock and seal shall not be removed and hence prays for dismissal of the writ petition.

6. Heard the rival submissions and perused the materials produced.

7. Admittedly, one Dr.Chandrasekar, who completed his Medical Course in Russia and not registered himself with the Medical Council of India was appointed as a Doctor by the petitioner Trust in their Hospital and subsequently on coming to know the fact of his disqualification, they removed him from service and appointed one Dr.Suresh Babu as a Doctor. The Managing Trustee of the petitioner Trust filed an undertaking affidavit, dated 28.09.2016,



undertaking that in future, the Trust will appoint only qualified Doctors, who have enrolled themselves with the Medical Council of India and there will not be any violation in the matter of appointment of Doctors.

8. Considering the facts and circumstances of the case and taking into consideration the undertaking affidavit filed by the petitioner Trust, this Court is of the view that the impugned order is liable to be quashed.

9. In the result, the writ petition is allowed and the impugned order, dated 31.08.2016, passed by the respondent is quashed. The respondent is directed to remove the lock and seal of the Hospital forthwith. However, it is always open to the respondent to take action in the manner known to law, if there is any violation of the undertaking affidavit and if any unqualified Doctors are appointed by the petitioner Trust in their Hospital. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To:

The Joint Director of Health Services,
Tenkasi, Tirunelveli District.

+1cc to The Spl. Government Pleader, Sr.No.57490

+1cc to Mr.H. ARUMUGAM, Advocate Sr.No.57267

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