

*** HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+ WRIT PETITION No.30285 OF 2017

% 21st September, 2017

Sri Krishna Nursing Home, Pebbair Village and Mandal, Wanaparthi District, rep. by its Proprietor Sri Dr..K.Aravinda Sagar.

... Petitioner..

AND

\$ State of Telangana represented by its Principal Secretary, Medical and Health Department, Secretariat, Hyderabad and 3 others.

... Respondents

! Counsel for the Petitioner : Senior Counsel Sri Ghanta Rama Rao

^ Counsel for the respondents : Government Pleader for Medical and Health (TG)

< Gist:

> Head Note:

? Cases referred:



THE HONB'E SRI JUSTICE CHALLA KODANDA RAM**WRIT PETITION No.30285 OF 2017****ORDER:**

As per the Writ Affidavit filed, petitioner Nursing Home is established by the deponent Dr.K. Aravinda Sagar, who claims himself to be a qualified MBBS Doctor with Post Graduation Degree in M.S. (General Surgery). As per the Writ Affidavit petitioner was granted Certificate of Registration of Allopathic Private Medical Care Establishments by the 3rd respondent, vide Certificate dated 06.03.2012 and the same is valid upto 05.03.2017. Petitioner was issued with a Notice on 16.08.2017 alleging that on the 2nd respondent's inspection of the petitioner's hospital on 11.08.2017 at 7 p.m., he found that one illegal abortion placed in Labour Room with the medicine administered on patient by name Smt. Rathlavath Devi W/o Nariya, resident of Natelli Tanda. As the abortion that is to be conducted is illegal and the establishment not having renewal of the hospital registration certificate, petitioner was show caused to submit his explanation for the above lapses, Why action should not be taken in accordance with the rules? Petitioner submitted explanation on 21.08.2017 admitting the presence of the patient viz., Ratlavath Devi, 28 years W/o Ratlavath Naria, resident of Natelli Thanda and admission of the said patient on 11.08.2017 at about 3 p.m. complaining of the decreased fatal movements since night and spotting since morning. The

scan report suggested IUD of foetus and after examination by Dr. Spandana and after explaining the risks involved, the said patient was advised to go to higher centre for further management. After considering the request of the patient and attendees and after obtaining consent for high risk termination of pregnancy procedure was initiated at 4.30 p.m. So far as renewal of licence is concerned, renewal application was made to DMHO, Mahabubnagar on 24.02.2017 and they are awaiting response from the DMHO, Mahabubnagar with a further request to open the hospital, which was seized on 12.08.2017. Thereafter, proceedings dated 23.08.2017 was issued by the 2nd respondent stating that the petitioner is running Nursing Home without any registration as per the T.S. Allopathic Medical Care Establishments (Registration and Regulations) Act 2002 and Rules, 2007 (in short “the TSAPMC Est. Act and Rules”) and thereby the running of the Nursing Home is illegal and the deponent doctor Dr.K. Aravind Sagar, is no way concerned with the hospital as he is working as Senior Resident at District Hospital, Wanaparthy and being a Government servant he is running an establishment is impermissible. Though, in the explanation it was stated that interventions were done on the patient viz., Ratlavath Devi on account of the scan report suggesting IUD, the petitioner has not submitted USG report and opinion of gynaecologist and further any intervention with regard to pregnant woman can be done only by obtaining second opinion of the 2nd

gynaecologist as per the Medical Termination of Pregnancy Act, 1971 and Rules 2003 (in short “MTP Act and Rules”) and further the establishment is not authorised to undertake termination of pregnancy under the MTP Act and Rules. The establishment also further failed to maintain Admission Register and Form-II as per the MTP Act and Rules. The explanation that petitioner had submitted renewal application on 24.02.2017 to the DMHO Office at Mahabubnagar is not believed as the new Districts were formed on 16.10.2016, thus the explanation is not acceptable.

2. In the above stated facts, Sri Ghanta Rama Rao learned counsel for the petitioner submits that there is no power under the TSAPMC Est. Act and Rules to seize the hospital and further in the show cause notice dt.16.08.2017 was with respect to the intervention done on the patient and with the allegation of non-renewal of the hospital registration. So far as hospital registration is concerned, the application was submitted on 24.02.2017 to the 3rd respondent by paying the requisite fee and in support of which petitioner submits that a demand draft for Rs.7,500/- dt.11.08.2017 was submitted. The subsequent proceedings dated 23.08.2017 is with fresh allegations and after seizure of the hospital on 12.08.2017. Drawing attention to Section 8 of the TSAPMC Est. Act, particularly Section 8(2) of the TSAPMC Est. Act, learned Senior Counsel contends that the act does not contemplate seizure of the hospital but permits only to seize the

documents. In those circumstances, learned Senior Counsel prays for declaring the seizure of the hospital as illegal with a consequent direction to remove the seals. Learned Senior Counsel also would submit that the intervention which was undertaken by the doctors in the petitioner's hospital is squarely falls within the exception contained in Section 5 of the MTP Act, and in those circumstances, in the facts of the present case, the intervention initiated based on the scan report, suggesting IUD, is proper and in order, as otherwise, there was a danger to the life of the patient. He would also submit that in fact, the abortion carried out on the patient at Area Hospital, Wanaparathi confirmed that the abortion on the patient with a dead baby.

3. Learned Government Pleader for Medical and Health (TG) by making a reference to the pleadings in counter asserts the fact that the petitioner's hospital is not registered under MPT Act and Rules, and the deponent doctor initiated abortion proceedings is admitted and cannot be denied. The learned Government Pleader also would further asserts that the contention of the petitioner that the renewal application was made on 24.02.2017 is unsubstantiated and there is no material placed before this Court to support that such application was made on 24.02.2017 and in those circumstances, the seizure of the hospital is justified. Learned Government Pleader also would submit that in terms of Section 10 read with Rule 8 the TSAPMC Est. Act and

Rules there is an appeal provided to the Appellate Board and as such the Writ Petitioner may be relegated to avail the appeal provided under the Act.

4. The Rules require an application for renewal to be made three months before expiry of the registration period of five years, which is required to be disposed of by the registering authority within three months from the date of receipt of the application, failing which it would be deemed to have been registered. On perusal of the material on record, in the absence of there being any material before this Court to substantiate the contention of the learned counsel for the petitioner seeking renewal for running a hospital even the deemed approval cannot be invoked and the argument based on the same cannot be accepted. It may be noted that the Demand Draft alleged to have been enclosed along with the application is dated 21.08.2017, whereas the petitioner claims that an application for renewal was made on 24.02.2017 to DMHO, Mahabubnagar. It is understandable how an application to be made to DMHO, that too in February, 2017 when the formation of new districts were effected in October, 2017, by issuance of G.O.Ms.No.249, dated 11.06.2016. Even assuming there is some element of delay in establishment of DMHO office at Wanaparathi, there is no acceptable explanation forthcoming for making application for renewal of the permission to DMHO, Mahabubnagar. In other words, the petitioner cannot

be permitted to run a hospital at the premises as that would amount to permitting an illegal activity. A plain reading of Section 8(2) of the TSAPMC Est. Act permits only seizure of equipment, articles or documents for the purpose of examination, analysis, investigation or evidence but not the hospital *per se*.

5. Whether the doctor who incidentally owner of the petitioner hospital could have initiated procedure for carrying out abortion to a particular patient viz., Rathlavath Devi and whether there was a gynecologist opinion and initiation of procedure was by the gynecologist Dr. Spandana and whether there were any exceptional circumstances warranting such procedure to be initiated, are all matters which are required to be dealt under MPT Act and Rules. Even assuming that the intervention carried out by the doctor at the petitioner's hospital falling within the exception carved out under Section 5 of the MTP Act and there is no explanation or excuse for not maintaining necessary record under the MPT Act and Rules, however, the subject matter of present Writ Petition being limited to the seizure of the hospital, this court is not inclined to deal with either the contentions of the petitioner or of the learned Government Pleader except to state that the rules as stand today the seizure of the hospital on the ground of violation of the MPT Act and Rules is not provided under the TSAPMC Est. Act and Rules. In those circumstances, in the light of the above illustrated legal position this court has no

option except to declare the seizure of the hospital as impermissible and in those circumstances, there shall be a direction to the respondent authorities to remove the seals.

6. However, it is made clear, as the petitioner had failed to substantiate his claim that an application as such has been made seeking renewal of the license for running a hospital, the petitioner cannot be permitted to run the hospital until and unless license as required under the TSAPMC Est. Act and Rules is obtained and it shall be the duty of the respondent No.2 to ensure that no medical treatment etc., are undertaken in the petitioner's hospital premises. However, liberty is given to the petitioner to approach the competent authority by making an application clearly setting out the nature of services which he desires to render to the public in the hospital, as provided under Rule 4 of the TSAPMC Est. Act and Rules, which shall be processed within a period of six weeks from the date of receipt of such application.

7. Having disposed of the case on merits this Court having had an occasion to study the TSAPMC Est. Act and Rules and MTP Act and Rules in the interest of general public is constrained to make certain observations to sensitize the 1st respondent State for the need and necessity of bringing in certain statutory changes:

- i) While the establishment and running a medical facility without license is made punishable, the punishment is only by way of a fine, which is monitory in nature,

which is hardly a deterrent in the present world for unscrupulous elements to establish and run ill-equipped fake hospitals.

- ii) While the rules, particularly Rule 4 of the TSAPMC Est. Rules, 2007 sets out the descriptive nature of establishment on account of various specialized fields of medicine, the list provided in the Rules is a restrictive list and probably the same is followed more in breach. In the instant case, the certificate granted to the petitioner's hospital is as against the Column No.6 the nature of medical services supposed to be provided are mentioned as 'General', which classification is not provided in Rule 4 of the TSAPMC Est. Rules. That itself shows non-application of mind by the Registering authority. Though the elaborate standards appeared to have prescribed with respect to various categories of specialization and the requirement that are required to be fulfilled, which requires specialized knowledge, whether the DMHO of a District would be competent to undertake such complicated exercise in ensuring compliance is a mute question. While the Rule 4 of the TSAPMC Est. Rules provides for, the DMHO along with a Member of District Registering Authority are part of the inspection team and there is no clarity with respect to the qualifications such members to possess, which would ensure the proper examination in the process of

inspection with respect to various requirements that are required to be complied with under the Rules. Likewise, in the Medical Termination of Pregnancy Act while in Section 5(2) punishment is provided for a person carrying out termination of pregnancy by other than a registered practitioner, there is total absence of any provision dealing with a medical practitioner transgressing the provisions of the MTP Act and Rules.

8. As stated these are only *prima facie* observations, which require attention by law making authorities, who may in consultation with the experts in the field, may find various other gaps, which would ensure the safety of the public.

9. Accordingly, this Writ Petition is disposed of. There shall be no order as to costs.

10. Miscellaneous Petitions, if any, pending in these writ petitions, shall also stand dismissed.

CHALLA KODANDA RAM, J

Date: 21.09.2017,

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