

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CMs No.15101-02-CWP of 2016 in/and  
RA-CW No.377 of 2016 in  
CWP No.27666 of 2013  
Date of decision: 07.04.2017

Association of Practicing Pathologists, Haryana (Regd.)

....Petitioner

Vs.

State of Haryana and others

.....Applicant/Respondents

CORAM: HON'BLE MR. JUSTICE S.S.SARON  
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Amit Jain, Advocate for the petitioner.

Mr. Siddharth Sanwana, DAG Haryana  
for the applicant.

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S.S.SARON,J.

The State of Haryana has filed the review application i.e. R.A. No.377 of 2016 seeking review of the judgment dated 24.3.2014 passed by a Division Bench of this Court. Along with the review application, CM No.15102 of 2016 has been filed seeking condonation of 946 days' delay in filing the review application.

Notice on the application seeking condonation of delay and review application was issued on 09.12.2016. Mr. Amit Jain, Advocate appearing for the non-applicant/petitioner accepted notice.

Replies to the application for condonation of delay in filing the review application and to the review application have been filed.

The factual position is that the non-applicant/petitioner - Association of Practicing Pathologists, Haryana filed a writ petition i.e. CWP No.27666 of 2013 in this Court under Articles 226/227 of the Constitution of India for directing the respondent - State of Haryana to take immediate steps for closing down all the unauthorized and illegal pathology laboratories which were running in the State by Laboratory Technicians or were being run by other unqualified persons/institutions. These, it was stated, were not being run by qualified Medical Practitioners i.e. M.D. (Pathology) enrolled on the State Medical Register/Indian Medical Register. A further direction was sought for directing the respondent - State to frame an appropriate policy/regulations for regulating the opening or running of the pathology laboratories in the State; besides, constitute an appropriate authority for regular checking and supervision of pathological laboratories and for taking appropriate criminal action against any person or institution that was found running an unauthorized and illegal pathology laboratory without qualified medical practitioners.

The stand of respondents No.1 to 3 in respect of the issues that were raised in the petition was that there were no guidelines in existence for the present for regulation of pathological laboratories. A meeting it was stated had been held under the Chairmanship of the Principal Secretary to the Government of Haryana, Department of Health. Representatives of the Association of Practicing Pathologists (petitioner) were called and a Committee was constituted by the Government to look into the technical and legal

aspects for formulating guidelines. A clarification was also sought from the Ministry of Health and Family Welfare vide letter dated 17.1.2014; besides, a request was made to the Medical Council of India to supply a copy of the guidelines applicable to Government and private laboratories. Six months' time was prayed for to study the technical and legal aspects to frame a policy.

The said petition was disposed of by a Division Bench of this Court on 24.3.2014, the review of the order which is now sought. In any case, in view of the said stand taken by respondents No.1 to 3, this Court called upon the Medical Council of India to respond to the communication dated 17.1.2014 of the State of Haryana and supply a copy of the guidelines, if there were any such guidelines. It was observed that a Committee had already been constituted, therefore, it was expected that the State of Haryana would take expeditious steps for framing a policy and thereafter, take action under the policy. The Committee was also to take into consideration the material placed on record by the non-applicant/petitioner. Time period up to the next date of hearing i.e. 25.7.2014 was considered sufficient for the State of Haryana to do the needful.

The writ petition was taken up for hearing on 25.7.2014 and it was stated in terms of the compliance report that was filed, that the Haryana Clinical Establishments (Registration and Regulation) Act, 2014 ('Act' - for short) had been notified on 28.3.2014. The Rules under the said Act were under preparation.

Mr. Ajay Gupta, Addl. Advocate General, Haryana appearing for the

State submitted that the Rules under the Act were under preparation and would be published within a period of six months. In view of the said position, this Court on 25.7.2014 disposed of the petition by observing that no further orders were called for in the present petition.

Thereafter, CM No.13492 of 2015 was filed by the State of Haryana for extension of time to comply with the order dated 24.3.2014. This Court vide order dated 16.10.2015 granted four months time to publish the Rules in terms of the order dated 24.3.2014.

A contempt petition i.e. COCP No.1940 of 2015 was then filed by the petitioner - Association which was dismissed at the said stage on 19.1.2016. It was submitted by learned counsel for the respondents in the said contempt petition that time had been extended till 16.12.2016. In fact, this Court vide order passed on 16.10.2015 in CM No.13492 of 2015, had granted time for a period of four months which in fact had expired on 16.2.2016 but due to a typographical mistake, it was typed as 16.12.2016.

The petitioner - Association then filed another contempt petition i.e. COCP No.2016 of 2016. This Court on 22.11.2016 directed the Director General Health Services (DGHS) to remain present in Court on the adjourned date of hearing i.e. 14.12.2016.

A day earlier to 22.11.2016 i.e. on 21.11.2016 a review application (i.e. RA No.377 of 2016) along with an application (i.e. CM No.15102 of 2016) seeking condonation of delay in filing the review application were filed, which are now under consideration.

It is the admitted position on record that the Rules have not been notified till date.

Mr. Randhir Singh, Addl. A.G., Haryana appearing for the State on instructions from Dr. J.C. Garg, Deputy Director, Health Services, Haryana on 10.3.2017 submitted that 660 posts of doctors had been advertised on 31.1.2017. However, it was also submitted that all the posts that had been advertised were not necessarily for Pathologists and it was to be ascertained only after applications were received as to how many Pathologists would be there or in other words, how many doctors that had applied had the necessary qualification of being a Pathologist.

As regards the necessity of having qualified Pathologists for running pathology laboratories, it may be noticed that Hon'ble the Gujarat High Court in, Association of Pathologist of Bhavnagar v. Secretary Health Department, Special Civil Application No.7999 of 1998 on 17.9.2010 inter alia held as follows:-

"We accordingly hold that the Laboratory Technicians being not Pathologists, cannot run any laboratory independently. They cannot directly give any report to any patient or any other individual, or to any institution or practicing doctor, without the authentication of the same by the pathologist registered with the Medical Council. Though it is open to any person or institute to run a pathology laboratory, but no report can be issued without the signature or

counter signature of the practicing pathologist recognized by the Medical Council of India. The respondents are directed to ensure that no pathology laboratory is run by any unqualified person or institute having no recognized pathologists registered with the medical Council. However, if such pathological laboratory is run by a pathologist registered with the Medical Council, or if such pathological laboratory engages a pathologist registered with the Medical Council, the respondents may allow such laboratory to run. Individual Laboratory Technician cannot be allowed to run pathological laboratory independently without engaging a pathologist registered with the Medical Council.”

Apart from the above observations of the Hon'ble Gujarat High Court, the Government of India, Ministry of Health and Family Welfare vide communication dated 17.2.2016 has addressed the issue as follows:-

“S.11025/151/2002-MH/PMS  
Government of India  
Ministry of Health and Family Welfare  
Nirmal Bhawan, New Delhi  
Dated the 17th February, 2006.

To,  
The Secretary (Shri A.M. Khan)  
Medical Education and Drugs Department,  
Mantralaya, Government of Maharashtra,  
Mumbai-400032.

Sub: Issue as to whether the DMLT Diploma holders are entitled to run Pathology Laboratory independently.

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Sir,  
I am directed to refer to your letter No.MMC-2001/2498/CR-380/01/ACT dated 29th December, 2005 regarding your request for Government of India's comments on the issue as to whether the DMLT Diploma Holders are entitled to run Pathology Laboratory independently. In this regard, it is to say that the issue was earlier examined in the Ministry and the experts were of the opinion that Pathology Laboratories cannot be run independently by persons who are holding Diploma in Laboratory Technology (DMLT), since the said qualification is not recognized by the Indian Medical Council Act, 1956 for practice of medicine. The technicians (the DMLT Diploma holders) provide assistance in conducting tests to the Pathologists/Laboratory Physician and work under their guidance. Pathologists are also a part of process of diagnosis as while reporting he provides final diagnosis by considering/correlating the clinical details.

Yours faithfully,  
Sd/-  
(Arvind Kumar)

Under Secretary to the Govt. of India"

Despite this position, the State of Haryana has not taken any effective steps to comply with the orders passed by this Court.

It may also be noticed that the Haryana Clinical Establishments (Registration and Regulation) Act, 2014 has been notified on 28.3.2014. Section 1 (3) of the Act enjoins that it shall come into force on such date, as the State Government may, by notification, appoint. The proviso envisages that different dates may be appointed for different categories of clinical establishments and for different recognized systems of medicines. Admittedly, no date has been notified for clinical establishment of pathology laboratory as defined in Section 2 (b) (ii) of the Act.

In view of the aforesaid position, the Director General Health Services, Haryana was asked to be present in Court on the adjourned date i.e. on 17.3.2017. The Director General Health Services, Haryana in compliance to the order that was passed appeared in Court. It was submitted by him that 662 posts of doctors had been advertised on 31.01.2017. He stated that he would ascertain as to how many doctors who had applied, had the Diploma/Post Graduation in Pathology.

Mr. Amit Jain, Advocate appearing for the non-applicant/petitioner submitted that the Haryana Government had framed draft Rules, i.e. the Haryana Clinical Establishments (Registration and Regulation) Rules, 2014. However, the said Rules were not being notified. A reference has been made to draft Rule 63 relating to Standards for Running the Clinical Laboratories. Sub-rule (c) thereof envisages that the minimum qualification required for setting up a



pathological lab, signing of reports and practicing pathology is MBBS. Sub-rule (f) thereof further envisages that the doctor possessing qualification of MBBS with Diploma/Post Graduation in Pathology under the Indian Medical Council Act, 1956 are allowed to run/open pathological laboratories and sign the report (s). Further, sub-rule (g) thereof envisages that the doctor (s) possessing qualification of MBBS or above, except Diploma and Post Graduation in Pathology under the Indian Medical Council Act, 1956, so desirous in running a laboratory would be given six months training in a Medical College in the State, Government Medical College and Hospital, Sector 32, Chandigarh and Government Multi-Specialty Hospital, Sector 16, Chandigarh or under the pathologist of General Hospital of the district depending upon the availability. The mechanism, of inviting application, seats, fee charges issuance of certificates, however, needed to be elaborated.

In view of the aforesaid position, Mr. Randhir Singh, Additional Advocate General, Haryana on 17.3.2017 submitted that he would get concrete and positive inputs by the adjourned date. The case was accordingly adjourned for today.

It was hoped that the State of Haryana would take steps to comply with the order that had been passed by this Court on 24.03.2014 – the review of which is now sought.

It is to be noticed that no concrete inputs have been submitted. An affidavit of Dr. Sarita Malik, Additional Secretary to Government of Haryana, Health Department, Chandigarh has been filed in which it is submitted that the petitioner has tried to mislead

this Court because the said so called Rules had no formal existence at present and the Act had not been brought into force.

In fact it was noticed that the Rules that had been framed were only draft Rules and had not been notified; besides, the position regarding the applicability of the Act was also noticed. Some steps were liable to be taken by the State Government so as to implement and comply with the order dated 24.3.2014, the review of which is sought. In the said order this Court had observed that it would expect that the State of Haryana would take expeditious steps to frame policy for running Pathology Laboratory and thereafter, take action under the Policy. A Committee for this purpose had already been constituted before the passing of the order dated 24.3.2014. Time period upto the next date i.e. 25.7.2014 was considered sufficient for the State of Haryana to do the needful. The petition as already noticed, was disposed of on 25.7.2014. It was observed that the Act had been notified on 28.3.2014 and the Rules under the Act were under preparation. Mr. Ajay Gupta, Addl. Advocate General Haryana appearing for the State stated that Rules would be published within a period of six months. In terms of the affidavit now filed, nothing has been mentioned as to what steps the Government is taking to implement the order.

According to Sh. Jain, Advocate for the petitioner in case steps are taken to notify the Rules and these are made applicable to them, the process of having qualified persons for running Pathology Laboratories could be redressed.

It is evident that no effective and concrete steps have been taken to implement the order dated 24.3.2014, the review of which is sought. The review application in the circumstances lacks bona fide. It appears that it is only when the contempt petition was filed and the respondent in the contempt petition was summoned then the review application has been filed to get time. It is even otherwise barred by substantial time.

In the circumstances, there is no merit in the review application and the same is accordingly dismissed with cost of Rs.20,000/-. Since the review application has been dismissed on merit, the question of delay in filing the review application is only academic and the same is accordingly dismissed.

(S.S. SARON)  
JUDGE

(ARUN PALLI)  
JUDGE

07.04.2017  
A.Kaundal

Note:

1. Whether the order is speaking/reasoned: Yes
2. Whether the order is reportable : Yes