

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2018

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.30490 and 27141 of 2016

M/s M.R.Hospital

Duly represented by its Managing Director

Dr.M.R.Murali Krishnan

No.20, Govindan Street

Ayyavoo Colony

Aminjikarai

Chennai 600 029

... Petitioner in both the writ petitions

-vs-

1. The Principal Secretary to Government  
Health and Family Welfare Department  
Secretariat  
Chennai 600 009

2. State Appropriate Authority  
Transplantation of Human Organs and Tissues  
Act 1994 (Central Act 42 of 1994) &  
The Director of Medical and Rural Health  
Services

Chennai 600 006 .. Respondents in both the writ petitions

W.P.No.30490 of 2016 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the second respondent to process the Renewal Application dated 04.08.2016 of the petitioner hospital originally granted in Ref.No.85942/E7/4/1995 dated 01.09.1996 for further period of 5 years by following the procedures contemplated under the Transplantation of Human Organs and Tissues Act 1994 and the rules framed thereunder, which is due for renewal on 31.08.2016.

W.P.No.27141 of 2016 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for entire records relating to the impugned order of the second respondent Ref. No.4312/E7/1/2014 dated 27.01.2014 and the order of the first respondent letter No.10705/Z1/2016-1 dated 02.05.2016 and quash the same with a direction to the first and second respondents to strictly follow the procedures contemplated under "The

The petitioner, M/s M.R.Hospital is a multi-speciality hospital established in the year 1990 to provide a broad range of medical services to serve the public health care needs like cardiac surgeries/coronary bypass, valve replacement, congenital heart surgery and thoracoscopic surgery. The learned senior counsel for the petitioner also submitted that the petitioner hospital also obtained licence from the Director of Medical and Rural Health Services, being the State Appropriate Authority under the Transplantation of Human Organs and Tissues Act 1994 (Central Act 42 of 1994), hereinafter referred to as "the Act", to perform the organ transplantations like kidney, liver transplantations etc., vide Ref.No.85942/E7/4/1995 dated 1.9.96. The said licence also was periodically renewed, as per Rule 25 of the Transplantation of Human Organs and Tissues Rules, upto 31.8.2016. Explaining further, the learned senior counsel submitted that for the purpose of undertaking renal transplantation, the hospital will have to see whether the first degree relatives are found fit or unfit. If the first degree relatives are found unfit, they are advised to bring the second degree relatives or friends. If they are found medically fit, the petitioner hospital used to collect the necessary documents as required under Form-11 of the said rules from both the donor and the recipient and refer the same to the second respondent for necessary approval, who will follow the procedure in accordance with Rules 18 & 19 and finally take a decision under Rule 23. When the petitioner hospital was strictly following the procedures contemplated under the provisions of the Act and Rules framed thereunder, they have successfully performed 192 kidney transplantations with a good success rate.

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of the medical fitness, they were forwarded for clearance by the second respondent. Surprisingly, the order dated 27.1.2014 impugned in W.P.No.27141 of 2014 was passed suspending the registration granted to the petitioner for performing the renal transplantation without even issuing notice whatsoever. Assailing the impugned order of temporary suspension of the registration closing one of the units viz., renal transplantation in the petitioner hospital, it is contended that when a First Information Report was registered on 24.1.2014 against others accusing them for violation of the various provisions under the Act, no mention has been made against the petitioner hospital in the said First Information Act. Now the case is also pending in FIR No.76 of 2014 for the offence under Sections 420, 465, 468, 471 of IPC and when there is no allegation of possible involvement of the petitioner hospital, their doctors and staff, the impugned order of temporary suspension cannot be passed on 27.1.2014, as a result, for the past 2 ½ years, the petitioner hospital is not able to open the renal transplantation unit, which causes grave prejudice to the petitioner, since there is no show cause notice issued against the hospital. Moreover, when the First Information Report No.76 of 2014 has been already registered for the offence under Sections 420, 465, 468, 471 of IPC on 24.1.2014, there is no involvement made by the petitioner hospital. Therefore, the impugned order is liable to be quashed not only on the ground that no notice was issued against the petitioner before passing the impugned order, but also on the ground that there is no implication made against the petitioner for prosecuting them on the basis of the First Information Report, he pleaded.

3. A detailed counter affidavit has been filed by the respondents. The learned Additional Government Pleader for the respondents fairly submitted that in the First Information Report dated 24.1.2014 bearing No.76 of 2014 for the offence under Sections 420, 465, 468 & 471 of IPC, the name of the hospital has not been shown. The First Information Report shows only the names of the donors and the recipients, therefore, the role of M/s M.R.Hospital could not be brought on light.

4. Heard both sides.

5. It may be mentioned herein that when the petitioner has approached the Director of Medical and Rural Health Services, Chennai with a representation dated 28.1.2014 to revoke the temporary suspension order issued against them on 27.1.2014 so as to provide medical services to their patients with an undertaking that they would render all assistance in any form during the conduct of enquiry, a notice was also issued on 20.11.2014 informing the petitioner that an enquiry team has been constituted under the Chairmanship of Additional Director



of Medical and Rural Health Services (P&D), Chennai to enquire into the issues relating to the suspension of registration in respect of M.R.Hospital, Chennai with effect from 27.1.2014 for performing renal transplantation, with a request to the petitioner to depute a responsible person along with the connected records to appear before the enquiry team on 9.12.2014 at 11.00 AM. Accordingly, the petitioner appeared. However, the communication dated 15.2.2016 issued by the Director of Medical and Rural Health Services, Chennai to the petitioner hospital shows that in view of the pending criminal case, the suspension of registration of M/s M.R.Hospital cannot be revoked till the pending case is decided finally. When the petitioner has not been implicated in the pending criminal case, it is not known how the respondents can say that in view of the pending criminal case, the suspension of registration cannot be revoked. It is also seen that as against the said order dated 15.2.2016, the petitioner has also preferred an appeal before the Government on 2.3.2016. The Government also passed a cryptic proceeding dated 2.5.2016 reiterating the same reason that in view of the pending criminal case against the hospital, refused to revoke the order of suspension.

6. For the reasons mentioned above, when the First Information Report No.76 of 2014 implicates only the names of the donors and the recipients for the offence under Sections 420, 465, 468 & 471 of IPC and the name of the petitioner hospital has not been shown therein, this Court is inclined to set aside the impugned orders dated 27.1.2014 and 2.5.2016. Accordingly, the impugned orders are set aside and the W.P.No.27141 of 2016 stands allowed. In the light of the reasons mentioned above, the respondents are directed to renew the licence of the petitioner, by considering the application of the petitioner, within a period of four weeks from the date of receipt of a copy of this order. Accordingly, W.P.No.30490 of 2016 also stands allowed. Consequently, W.M.P.No.23311 of 2016 is closed. No costs.

सत्यमेव जयते Sd/-

Assistant Registrar (CS-vi)

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Sub Assistant Registrar

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To

1. The Principal Secretary to Government  
Health and Family Welfare Department  
Secretariat  
Chennai 600 009
2. The Director of Medical and Rural Health  
Services / State Appropriate Authority  
Transplantation of Human Organs and Tissues  
Act 1994 (Central Act 42 of 1994) &  
Chennai 600 006

+1cc to Mr.V.SRINIVASABABU, Advocate, S.R.No. 49779

W.P.Nos.30490 & 27141 of 2016

VG II(CO)  
TR(01/08/2018)



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