

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP No.18725 of 2018

ORDER::

This writ petition is filed assailing the order dated 21-05-2018 passed by the 1st respondent in suspending the licence of the petitioner-Continental Hospital to conduct organ transplants, on the ground of violation of the Transplantation of Human Organs and Tissues Act, 1994, (for short, "the Act").

2. Facts stated are:-The petitioner-Continental Hospitals Private Limited, is a company incorporated under the Companies Act, 1956 and started its operations from the year 2013 and has been conducting organ transplantations from the year 2014, by following all applicable laws and regulations governing the field. While so, one Dr.S. Praveen Kumar filed a complaint with the 1st respondent alleging certain irregularities in respect to kidney transplantation of two international patients from Bangladesh viz., Mrs.Taslima Islam and

Mr.Mohd. Jahangir Hussain. Based on the said complaint, 1st respondent issued a notice dated 20-11-2017, to which petitioner submitted explanation, but not satisfied with the explanation and having reached a conclusion that the donor and the recipient of the organ in respect of the said two persons are not biologically related; their applications stood rejected by the internal Committee of the Hospital; the records submitted contained glaring discrepancies in the certificate of Police verification and appear to be fabricated, the petitioner was issued with a show cause notice dated 21-04-2018 purporting to suspend/cancel the registration for the violation of the provisions of the Act. Petitioner filed his reply to the queries raised in the show cause notice with supporting documents. But, without considering the same, the impugned order dated 21-05-2018 came to be passed whereby and whereunder the licence of the petitioner to conduct organ transplantations has been suspended stating that the explanation submitted by the petitioner is very superficial and

did not answer the specific points in the notice. Hence, this writ petition.

3. Sri K. Ramakrishna Reddy, learned senior counsel appearing for the petitioner-hospital made following submissions:-

- i) that the show cause notice dated 21-04-2018 issued invoking the provision of the Act, being a Central Act not applicable to the State of Telangana, and the Andhra Pradesh Transplantation of Human Organs Act, 1995, which is made applicable to the State of Telangana by virtue of Telangana Adaptation of Laws Order, 2016, being the relevant statute, the impugned order is void *ab initio*.
- ii) that in all international transplantation cases as in the instant case (foreign nationals) referred to in the complaint, organ transplantation is conducted after obtaining approval from the authorization Committee, *i.e.* the Director of Medical Education, Hyderabad.
- iii) that the impugned order is passed without affording opportunity to access to the documents relied on by the 1st respondent and not referred to in the show cause notice dated 21-04-2018, which itself is gross violation of principles of natural justice and neither the show cause notice nor the impugned order, there is specific mention of provision of the Act of which the petitioner is purported to have breached.
- iv) that the impugned order is not a speaking order as it does not advert to the various contentions raised by the petitioner;
- v) that the 1st respondent was not authorized to conduct the proceedings and issue the impugned order as his very appointment as the Director of Medical Education was

suspended by this Court in a writ petition instituted being WP no.1644 of 2018, though it was later withdrawn.

4. On the other hand, learned Government Pleader for Medical, Health and Family Welfare made the following submissions:-

- i) that petitioner's case is not prejudiced by wrong reference to a statute or rule and mere quoting of a wrong provision of law will not itself make the impugned order ineffective and without jurisdiction, inasmuch as the Act, insofar as organ transplantations, is in *parie materia* with the Andhra Pradesh Transplantation of Human Organs Act, 1995 which *mutatis mutandis* made applicable to the State of Telangana.
- ii) that the petitioner-hospital has an internal transplant committee and the committee of the petitioner's hospital has rejected the transplantation of the two foreign national patients. That for monetary gains, the petitioner indiscriminately undertaking kidney transplantations in utter defiance of the provisions of the Act including creating bogus documents.
- iii) that the petitioner-hospital has a facilitation agreement with one Mr.Tarque Azam Chodhury, resident of Bangladesh, and the said person was arrested in September, 2011 in Dhaka, Bangladesh, for his involvement in illegal human organs trade and for forcing the gullible people to sell their kidneys.
- iv) that the petitioner has been given opportunity of being heard and he submitted explanation to the show cause notice dated 21-04-2018 and participated in the enquiry conducted by 1st respondent and it is incorrect to state that no opportunity was given to the petitioner.
- vi) that it is equally false to state that no documents are supplied to the petitioner as the petitioner itself is in

possession of all the documents, including the fabricated documents in respect of the two foreign nationals.

- vii) the allegation that the 1st respondent was not authorized to issue the impugned order as his appointment as Director of Medical Education was suspended at the relevant time is out of context and should not be disturbed in the interest of stability and continuity and is not *per se* illegal. He also submits that writ petition no.1644 of 2018 filed against the Director was later withdrawn as such the interim order stands withdrawn from the date of institution of the writ petition.

5. It is to be seen, as is evident from the very show cause

notice dated 21-04-2018, the 1st respondent initiated

proceedings invoking the provisions of Transplantation of

(Human Organs and Tissues), Act, 1994, which is a Central

Act. As contended by learned Government Pleader mere

quoting a wrong provision of law, the proceedings *per se* will

not become inoperative, but that analogy holds good if a

wrong provision is quoted from the same statute. In this

case, admittedly, the Central act is not adapted by the State

and it does not apply to the State of Telangana. The 1st

respondent is not a competent authority under the Central Act

to initiate the proceedings. A perusal of the provisions of the

Central Act *vis-à-vis* the State Act, even if it is construed for the time being *mutatis and mutandis* much of the provisions are analogous with the provisions of the State Act, the petitioner would not be in a position to avail the remedy of filing appeal against the impugned order, as appellate authority specified under the Central Act and the State Act are not the same, thereby the petitioner is denied opportunity to avail the remedy of filing appeal before the appellate authority under the State Act. Petitioner in his reply, to the show cause notice 21-04-2018 at para 2 specifically highlighted to the 1st respondent that notice issued invoking the provisions under the Central act is not applicable and despite raising such a plea the same was not considered nor adverted to in the impugned order which shows non application of mind. Para 2 of the reply notice filed by the petitioner reads thus:-

“2. Before responding to any of the allegations raised in your Notice, we hereby raise a preliminary objection regarding the

validity of the Notice. The Notice is purportedly issued under the Transplantation of Human Organs and Tissues Act, 1994 (“THOT Act”) a legislation passed by the Parliament of India. It is respectfully submitted that the said legislation does not even apply to the State of Telangana. It is respectfully submitted that the Andhra Pradesh Transplantation of Human Organs Act, 1995 (Act No.24 of 1995) applies to the State of Telangana by virtue of the Telangana Adaptation of Laws (No.2) Order, 2016. In the light of this, the said Notice is not even maintainable under law and must be recalled forthwith.”

6. The affect of quoting inapplicable statute in a proceeding and proceed to invoke power under that statute was considered by the Supreme Court in **DEO NARAIN vs. DADDAN SINGH**¹ and held that mistake in not applying the relevant statute makes the order invalid.

7. A perusal of the show cause notice dated 21-04-2018 disclosed the charge made against petitioner by one Dr. S. Praveen Kumar, alleging certain irregularities committed by some of the employees of the petitioner-hospital and the material submitted by him pointed to certain wrong doings by the management of the petitioner-hospital. It further reads

¹ 1986 (Suppl.) SCC 530

that the information sought and furnished by the management of the petitioner-hospital was very superficial in nature and did not address the main complaint. The wrong doings attributed to the petitioner-hospital is with respect to kidney transplant applications of two international patients from Bangladesh, one donor and another recipient and they are not biologically related and as such their applications for kidney transplantation were rejected by the internal committee of the hospital; that there are some glaring discrepancies in the certificate of police verification submitted by hospital and the documents appear to be fabricated. But the impugned order dated 21-05-2018 refers to facilitation agreement dated 01-07- 2016 with one Mr.Tarque Azam Chodhury, resident of Bangladesh, and the said person providing diverse range of healthcare services including referral of patients to medical institutions and he has entered into an facilitation agreement with the petitioner-hospital and petitioner is paying referral fee, which the petitioner stoutly denied. It is also stated in the

impugned order that the said person was arrested in September 2011 in Dhaka, Bangladesh, due to his involvement in illegal human organs trade by attracting hardship people to sell off their kidneys. The impugned order also refers to internal transplant committee in the hospital itself and scrutiny of applications by the said committee.

Petitioner denies to have any internal transplant committee in their hospital and it is stated that the applications of the two foreign nationals for organ transplantation were validated by the High Commission of Bangladesh, New Delhi, and then submitted to the 1st respondent.

8. It is to be seen that new allegations are made in the impugned order which are not part of the show cause notice. It is the strenuous argument of the learned senior counsel that had the show cause notice dated 21-04-2018 contained detailed and specific allegations levelled against the petitioner, the petitioner would have rebutted the same with cogent proofs. Learned counsel referred to the reply to show cause

notice wherein it is admitted that the petitioner entered into facilitation agreement with Mr.Tareque Azam Chowdhury and entering into facilitation agreement is not violative of any provisions of the Act muchless any relevant rules. There is no proof of furnishing the documents to the petitioner, which are subject matter of enquiry before the 1st respondent and formed basis of taking the impugned decision. As held by the Supreme Court in **K.VIJAYLAKSHIM vs. UNION OF INDIA**², **PURTABPORE COMPNAY LIMITED vs. CANE COMMISSIONER OF BIHAR**³, **SBI vs. DC AGARWAL**⁴ & **MA JACKSON vs. COLLECTOR OF CUSTOMS**⁵, and it is settled proposition of law that failure to supply documents on which the competent authority places reliance violates the principle of reasonable opportunity of being heard and it is a flagrant violation of *audi alteram partem* rule and renders the impugned order invalid and unsustainable in law. The

² (1998) 4 SCC 37

³ (1969) 1 SCC 308

⁴ (1993) 1 SCC 13

⁵ (1998) 1 SCC 198

scrutiny of the show cause notice as also the impugned order discloses that the 1st respondent failed to spell out the precise allegations against petitioner to find out whether the facts alleged could satisfy the conclusion reached to suspend the registration of the petitioner-hospital.

9. The impugned order of the 1st respondent appears to be largely influenced by the complaint lodged by Dr.S.Praveen Kumar, wherein he has alleged certain irregularities. The main theme of his complaint is that the petitioner-hospital is having a facilitation agreement with Mr.Tareque Azam Chowdhury and has been paying commission on every medical bill charged to the patient to him and such payment is conveniently coined by the petitioner as facilitation fee. But, all these allegations which are emanating from the impugned order are not mentioned in the show cause notice. The 5th respondent also filed documents by way of annexures in support of the allegations made by him and those documents,

which the 1st respondent relied on are not furnished to the petitioner, thereby denied him to put up its defence.

10. For all these reasons, the impugned order dated 21-05-2018 and the show cause notice dated 21-04-2018 which preceded the impugned order are liable to be set aside on the short ground that the action taken to suspend the registration of the petitioner-hospital is not traceable to power conferred under the Central Act. The impugned order dated 21-05-2018 is also bad for failing to supply the documents which form the basis for the decision to suspend the registration of the petitioner- hospital.

11. A Constitution Bench of the Supreme Court in **S. PRATAP SINGH vs. STATE OF PUNJAB**⁶, observed that if the government servant is under suspension, no work can be undertaken by him and he ceases to work in the post. The other proposition laid down in **GOKARAJU RANGARAJU vs.**

⁶ AIR 1964 SC 72

STATE OF ANDHRA PRADESH⁷ by the Supreme Court, relied on by the learned Government Pleader is to the effect that one who holds office under colour of lawful authority, even though his appointment is defective and may later be found to be so, whatever be the defect of his title to the office, the decisions taken and acts done by him when he was clothed with the power and functions of the office, *albeit* unlawfully, have the same efficacy as the decisions taken and acts done by him with authority under law. Be that as it may, inasmuch as this Court is of the opinion that the impugned order and the show cause notice are liable to be set aside on the grounds of invoking inapplicable statute (Central Act), when the subject matter is governed by the State Act, as also the petitioner had not been supplied with the documents, which formed the basis for taking impugned decision to suspend the registration of the petitioner hospital, other aspects need not be dwelled into.

⁷ (1981) 3 SCC 132

12. In the result, the writ petition is allowed and the impugned order dated 21-05-2018 is set aside. However, this order will not preclude the 1st respondent from initiating proceedings against the petitioner *de-nova* under the applicable law detailing the specific allegations and for violations if any, if so advised. Miscellaneous petitions if any pending in the writ petition shall stand closed. There shall be no order as to costs.

A.RAJASHEKER REDDY, J

Dated: 28-08-2018
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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY



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