



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

W.P. (MD)No.14327 of 2019

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M.G.Raja

... Petitioner

Vs.

1.Union of India,
Rep.by the Defence Secretary,
Ministry of Defence,
South Block,
New Delhi 110 011.

2.The Managing Director,
Central organization of ECHS,
Adjutant General Branch,
Integrated HQ of BOD (Army),
Maude Lines,
Delhi Cantonment - 10.

3.The Officer in charge,
Station Head Quarters (ECHS Cell),
Garuda Lines,
Trichy - 1.

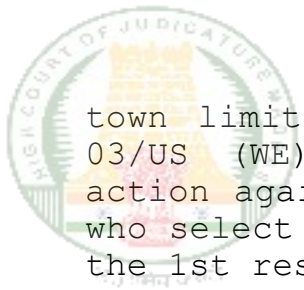
4.The Head Quarters,
Dakshin Bharat Area (AT & K and K Area) (ECHS),
Island Ground,
Chennai - 9.

5.The Officer in charge,
ECHS Polyclinic (Type C),
Pillayarnatham (VIII & BO),
Srivilliputhur 626 125.

6.The District Collector,
Virudhunagar, Virudhunagar District.

... Respondents

Prayer: The petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of the 2nd respondent in his proceedings in B/49705-Srivilliputhur / AG / ECHS / 2019, dated 01.02.2019 and consequent to this order the 3rd respondent has passed an order in his proceedings in 2012/HRG/SVPR/ECHS(PC) dated 28/03/2019 and quash the same as illegal and consequently, direct the respondents 1 to 4 to shift the 5th respondent ECHS Polyclinic from the present location to any other suitable place, within the



town limit, Sriviliputhur, as laid down in proceedings No.24(14)/03/US (WE)/D(Res.), dated 31.01.2005 and also take appropriate action against the authorities who misguided the higher authorities who select the 5th respondent ECHS polyclinic in a place contrary to the 1st respondent proceedings dated 31.01.2005.

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For Petitioner : Mr.J.Jeyakumaran
For Respondents : Mr.D.Saravanan, for R1 to 5
Mr.V.Anand, G.A.for R6

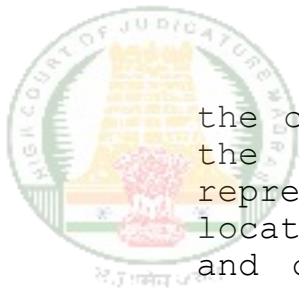
O R D E R

The prayer in the Writ petition is for a Writ of Certiorarified Mandamus, to quash the impugned order of the 2nd respondent in his proceedings in B/49705-Srivilliputhur / AG / ECHS / 2019, dated 01.02.2019 as illegal and consequently, direct the respondents 1 to 4 to shift the 5th respondent ECHS Polyclinic from the present location to any other suitable place, within the town limit of Sriviliputhur, vide proceedings No.24(14)/03/US (WE)/D (Res.), dated 31.01.2005 and also take appropriate action against the authorities concerned, who misguided the higher authorities for selecting the 5th respondent ECHS polyclinic in a place.

2.Heard Mr.J.Jeyakumaran, learned counsel for the petitioner, Mr.D.Saravanan, learned Standing Counsel appearing for the respondents 1 to 5 and Mr.V.Anand, learned Government Advocate appearing for the 6th respondent.

3.The issue raised in this Writ petition is that an hospital called ECHS Poly Clinic, for the benefit of Ex-servicemen, was functioning in the town limit of Srivilliputhur Town, Virudhunagar District and the same was shifted to a permanent location, called Pilliyarnatham, which is 6 kms. away from Srivilliputhur bus stand. By virtue of shifting of the said hospital, the petitioner, who is one of the beneficiary as he is one of the Ex-serviceman, had already approached this Court by filing a Public Interest Litigation in W.P.(MD)No.660 of 2019. The said Writ petition, on 24.01.2019, was disposed of by this Court by passing the following order:

"3.On a consideration of the submissions made by the counsel representing their respective parties, we are of the considered view that it would suffice at this stage, to permit the petitioner to submit a comprehensive representation to the officer in charge, station Headquarter (ECHS Cell), Ministry of Defence, Government of India, Garuda Lines, Trichy for rectifying all the defects, with a copy sent to the District Collector, Virudhunagar, by 15.02.2019. On receipt of such representation, the officer in-charge, Station Headquarters (ECHS Cell), Ministry of Defence, Government of India, Garuda Lines, Trichy shall in consultation with



the concerned authorities and other stakeholders, examine the difficulties expressed by the petitioner in such representation in the light of the norms prescribed for locating ECHS polyclinic and take appropriate decision and communicate the same to the petitioner and file a report of such compliance before the Registrar (Judicial) of this Court by 31.03.2019."

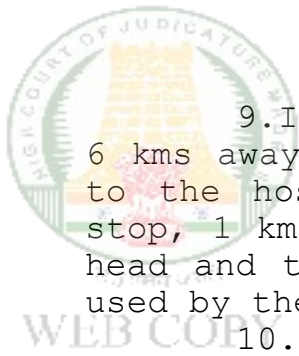
4.The grievance of the petitioner is that though such an order was passed by the Division Bench of this Court in the said Public Interest Litigation, filed by the very same petitioner, and the copy of the order was made ready only on 15.02.2019, before giving a chance to the petitioner to give a comprehensive representation to rectify the deficiencies, the 2nd respondent has passed the impugned order dated 01.02.2019, whereby, the 2nd respondent has reiterated the stand that the hospital has already been established in the new location and therefore, the same cannot be shifted back to the old place, where it was running for some years in a rental building.

5.Aggrrieved over the said order dated 01.02.2019, the present Writ petition has been filed.

6.The learned counsel appearing for the petitioner submits that, first of all, the location is not suitable for the patients, who are age old, as the hospital is located in a remote place and not in the main road, having bus facilities and it is 2 kms. away from the main road between Srivilliputhur Town and Krishnan Kovil Town.

7.He would further submit that there is no water facility available in the hospital. Therefore, the patients, who are coming to the hospital, are suffering. Further, there is a TASMACH shop located very near to the hospital and the same has not so far been shifted. Therefore, that causes some nuisance to the patients, who are coming to the hospital and in order to rectify all these mistakes, even though the petitioner, as directed by the Division Bench of this Court in the judgment referred to above, has made a comprehensive representation on 13.02.2019 before deciding the same as directed by the Division Bench of this Court, the present impugned order dated 01.02.2019 was passed and therefore, the said order has to be interfered with.

8.Heard the learned standing counsel appearing for the respondents 1 to 5, who would submit that, this is not the first time, these issues have been raised by the petitioner. Earlier occasion also he has raised these issues and in fact, every such issue raised by the petitioner, has already been answered by the respondents and in this regard, he relied upon a communication of the respondents dated 31.07.2018 where all these issues have been



9.Insofar as the locality of the hospital is concerned, it is 6 kms away from the bus stand of Srivilliputhur and upto 1 km near to the hospital, bus facilities are available and from that bus stop, 1 km travel can be covered by share autos by paying Rs.10 per head and that facilities shall always be available, which is being used by the patients.

10.Insofar as the High Tension electricity line is concerned, steps have been taken to remove such High Tension electricity line and in respect of the grievance with regard to the drinking water facility, the learned counsel by relying upon the reply given by the respondent in the communication dated 31.07.2018 has submitted that, originally, water connection was provided from the nearby over head tank of the Panchayat of Pilliyarnatham. However, subsequently, by virtue of the objections raised by the villagers, the water supply through the pipeline from the village over head tank has been cut off and in order to meet the water requirement, initially, the hospital has spent Rs.54,000/- to purchase water through lorry and subsequently, by sanctioning of Rs.2,65,500/- a new bore-well was drilled, where motor has been fitted and as of now, absolutely, there is no water crises and enough water for the hospital usage is being provided from the said bore-well and pump-set.

11.By relying upon these reply given by the respondent in the said communication, the learned counsel for the respondents 1 to 5 would submit that all these issues raised by the petitioner have already been answered and more over, the hospital originally was located in the rental premises in the Srivilliputhur Town, subsequently, a retired army personal like the petitioner had voluntarily donated his land at Pilliyarnatham to construct this hospital, since the respondents were searching for a suitable place for locating the hospital, had decided to construct the hospital and accordingly, hospital was constructed in that location and it was opened in the year 2016 and since then, the hospital has been functioning in that location. Everyday number of patients are visiting to the hospital and they are taking treatment.

12.Assuming that if at all any comprehensive representation had to be given by the petitioner as permitted by the Division Bench of this Court, those issues raised in the comprehensive representation dated 13.02.2019 allegedly, given by the petitioner, had already been met by the respondents and therefore, on the ground of his comprehensive petition has not been considered by the respondents, the impugned order, which is nothing but a communication, explaining the said position, passed by the respondents dated 01.02.2019, requires no interference from this Court.

13.I have considered the said submissions made by the learned counsel appearing for both parties and perused the materials placed before this Court.



14.The petitioner being an aggrieved party and also on behalf of the general public i.e., the other beneficiaries, who are similarly placed person like the petitioner, had already approached this Court by way of Public Interest Litigation, where the Division Bench of this Court by order dated 24.01.2019 permitted the petitioner to give a comprehensive representation to the respondents, listing out all his grievances and based on which, the same can be considered and decided by the respondents.

15.No doubt, the Division Bench order was dated 24.01.2019 and the copy of the order was made ready on 15.02.2019. Pursuant to the said order, even though, it was claimed by the petitioner that, he had given comprehensive representation on 13.02.2019 and before such representation reached the respondents and before considering the same, the present impugned order dated 01.02.2019 has been passed.

16.The following has been made in the said impugned order. For easy reference, the same is extracted hereunder -

"1.Refer your letter dated 19 Dec. 2018.

2.The subject issue has been examined by HQ Southern Command and intimated that issue regarding reconsideration of loc of ECHS polyclinic Srivilliputhur were already known to the ESM during the conception and constr stage of the ECHS at Srivilliputtur in 2014. A large amount of Govt.funds have been invested in the project to create and develop the infrastructure. Therefore, it is not feasible to shift the ECHS polyclinic Srivilliputhur to new location due to issues of fund / land availability and gestation period.

3.The other concerns of ESM regarding public transport, water and tele connectivity are being addressed by Stn. HQ, Trichy."

17.On perusal of the impugned order, this Court finds that it was only a communication or reply given by the respondents to the petitioner's earlier representation dated 19.12.2018, where also, according to the respondents, the petitioner has raised all these grounds.

18.Assuming that the comprehensive representation, as permitted by the Division Bench of this Court, has not been considered by the respondents or before the same is filed, the present impugned order is passed by the respondents, in the comprehensive petition, a copy of which, has been filed before this Court, the petitioner has raised and discussed issues such as, location of the hospital, bus facility, connectivity, logistics, water facility, nuisance from liquor shop, etc.



19.Those issues, one by one, had been cleared by the respondents and in this regard, the communication, passed by the respondents on 31.07.2018 has given the complete answer.

20.Since those issues raised by the petitioner has already been addressed by the respondents and more over the hospital, functioning in a rental place, has been shifted to its own place in the land donated by an ex-serviceman by spending huge money for construction, where the hospital started functioning 3 years back, cannot be put back to the original place, where it was located in a rental premises.

21.More over, for the hurdles earmarked or pin pointed by the petitioner in his comprehensive petition, such as bus facilities, nuisances from liquor shop, water facilities, etc., which affects the patients, who come to the hospital for treatment relate to the logistics as well as the water facility. As far as the logistics is concerned, there is a bus stop just 1 km away from the hospital from where share auto facilities are available.

22.As far as the water facilities are concerned, through the bore-well already drilled by the respondents, enough water is available and according to the respondents, absolutely, there is no water crises in the hospital campus.

23.Insofar as other peripheral issues are concerned, the same shall be addressed by the respondents and as far as possible, those issues also to be rectified in due course.

24.Therefore, for the said reasons as has been projected by the petitioner through the learned counsel appearing for the petitioner in this Writ petition, this Court cannot interfere with the functioning of the hospital, which has already been established or shifted and started functioning from 2016 in its own place. Therefore, in that context, the impugned order, which is nothing but a reply to the petitioner for his representation, need not be interfered with or cannot be found fault with. Therefore, this Court is inclined to dismiss this Writ petition with an observation that, any other peripheral issues, projected by the petitioner, shall be addressed by the respondents at the earliest and the same shall also be communicated to the petitioner then and there immediately after those issues are rectified by the respondents.

25.With this observation, this Writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)



Nbj

To

1.The Defence Secretary,
Ministry of Defence,
South Block,
New Delhi 110 011.

2.The Managing Director,
Central organization of ECHS,
Adjutant General Branch,
Integrated HQ of BOD (Army),
Maude Lines,
Delhi Cantonment - 10.

3.The Officer in charge,
Station Head Quarters (ECHS Cell),
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4.The Head Quarters,
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Pillayarnatham (VIII & BO),
Srivilliputhur 626 125.

6.The District Collector,
Virudhunagar, Virudhunagar District.

+1.CC. To Mr.D.Saravanan, Advocate in SR No.74795

+1.CC. To Mr.J.Jeyakumaran, Advocate in SR No.75094

W.P. (MD) No.14327 of 2019
10.07.2019

MK (02.01.2020) 7P 9C