

High Court for the State of Telangana

The Hon'ble The Acting Chief Justice Raghvendra Singh Chauhan

and

The Hon'ble Sri Justice A.Rajasheker Reddy

W.A. No.336 of 2019

Date: 18-04-2019

Between:

M/s. Amar Hospital
Jagitial rep. by its Proprietor
Dr. Pallerla Srinivas

...Appellant

and

The State of Telangana
Rep. by its Principal Secretary
Medical and Health Department, Secretariat
Hyderabad and 4 others

...Respondents

Counsel for the appellant: Mr. K. Venumadhav

Counsel for the respondent No.3: Mr. Y. Balamurali

**Counsel for the respondent Nos.1, 2, 4 & 5: Mr. Nagesh Bheemapaka,
GP for Medical and Health**

The Court made the following:

Judgment: (per Hon'ble Sri Justice Raghvendra Singh Chauhan)

M/s. Amar Hospital, the appellant, has challenged the legality of order dated 14-03-2019, passed by the learned Single Judge in W.P.No. 26734 of 2018, whereby the learned Single Judge has dismissed the said writ petition filed by the appellant.

Briefly, the facts of the case are that on 14-10-2014, the petitioner had applied for permission to establish a hospital at Jagitial town to the concerned authority, namely the respondent No.2. On 22-10-2014, the respondent No.2 had issued a license to the appellant for establishment of the hospital in the house bearing No.7-1-219, Santoshnagar, Jagitial, Karimnagar District. Having received the license, the appellant did establish his hospital in the address given above. For four long years, the appellant continued to operate his hospital. However, the respondent No.3, Mr. Boddukuri Maheshwar, who is the owner of the said house, filed a complaint with the respondent No.2 stating that the appellant neither has any ownership right, nor a lease agreement in his favour. Therefore, the condition mentioned in Rule 4 of the Andhra Pradesh Allopathic

Private Medical Care Establishments (Registration and Regulation) Rules, 2007 (for short 'the Rules') was violated. Having received the said complaint, on 16-07-2018, the respondent No.2 issued a notice to the appellant. Immediately, on 23-07-2018, the appellant replied to the said notice, wherein he clearly stated that since the house belonged to the respondent No.3, who is his own brother-in-law, no written lease deed was ever entered into. In fact, the parties have entered into an oral agreement of leasing out the premises in favour of the appellant by the respondent No.3. However, notwithstanding the reply submitted by the appellant, by order dated 27-07-2018, the license of the appellant to run the hospital was cancelled by the respondent No.2.

Since the appellant was aggrieved by the order dated 27-07-2018, cancelling his license, he filed the writ petition, namely W.P.No. 26734 of 2018, before the learned Single Judge. As stated above, by the impugned order, the learned Single Judge has dismissed the writ petition. Hence, this appeal before this Court.

Mr. K. Venumadhav, the learned counsel for the appellant, has raised the following contentions before this Court:-

Firstly, Rule 7 of the Rules prescribed the procedure to be followed by the concerned authority before a registration can be cancelled. According to Sub-Rule (a) thereof, initially, an enquiry has to be conducted by the concerned authority with regard to the complaint that the provisions of the Act or the Rules have been contravened. For the purpose of making the said enquiry, the written explanation of the establishment has to be called for. After considering the explanation submitted by the establishment, initially, the competent authority can only suspend the registration, but cannot cancel it forthwith. Furthermore, according to Sub-Rule (b) thereof, after suspending the certificate of registration, a second notice needs to be sent to the establishment to show cause as to why the certificate of registration should not be cancelled. The said notice has to be given fifteen days in advance. It is only after considering the explanation given by the establishment that under Sub-Rule (d) thereof, the registration can be cancelled. However, according to the learned counsel, the said procedure has not

been followed by the respondent No.2. Instead of first suspending the registration, the respondent No.2 has cancelled the registration without following the two-step procedure prescribed by Rule 7 of the Rules. Therefore, the impugned order is in violation of Rule 7 of the Rules. Hence, the same should have been set aside by the learned Single Judge.

Secondly, the learned Single Judge has erred in considering only the fact that the requirement of Rule 4 of the Rules had not been fulfilled by the appellant, namely the appellant shall produce a written lease agreement in its favour. According to the learned counsel, it is not just sufficient that the violation of Rule 4 of the Rules needs to be established, in fact, it is more important to see whether the procedure established by Rule 7 of the Rules has been followed or not. This aspect of the Rules, according to the learned counsel, has been ignored by the learned Single Judge. Therefore, the impugned order deserves to be set aside by this Court.

On the other hand, the learned Government Pleader for respondent Nos.1 and 2, has strenuously contended that

even according to the appellant, there was only an oral agreement, which existed between him, and the respondent No.3, his brother-in-law. But, the requirement of Rule 4 of the Rules is that a documentary proof of existence of a lease has to be produced by the establishment, in case it is not the owner of the premises. Therefore, Rule 4 of the Rules does not admit of an oral lease agreement. Since the appellant had failed to produce the written lease agreement, it had violated one of the requirements of the Rules. Therefore, the respondent No.2 was well justified in cancelling the registration by the impugned order. Thus, according to the learned Government Pleader, the learned Single Judge was justified in dismissing the writ petition filed by the appellant.

Mr. Y. Balamurali, the learned counsel for the respondent No.3, has adopted the contentions raised by the learned Government Pleader.

Heard the learned counsel for the parties, perused the impugned order, and considered the Rules.

It is, indeed, trite to state that once a procedure has been established by law, the same cannot be deviated from.

Sub-Rules (a) and (b) of Rule 7 of the Rules are as under:-

“(a) The Registering Authority on receipt of reliable information that the applicant for registration has been convicted or has been censured by any judicial or competent authority in relation to his/her professional character or has been guilty of any misconduct or on a written complaint that a Private medical care establishment has violated any of the terms and conditions of the registration or any of the given directions it was given or has contravened any of the provisions of the Act or these Rules, the Registering Authority after making enquiries there to and after written explanation is called for from Establishment on the allegations leveled against Establishment may order suspension of the certificate of registration for such a period as it may think fit, if the Registering Authority is satisfied that a prima-facie case has been made out.

(b) The Registering Authority, immediately after suspending the Certificate of Registration shall send a registered notice to Establishment, in writing in Form VIII informing the time, date and place at which the case will be heard by the Registering Authority. The registered notice shall be sent to the Establishment at least by giving 15 days time for hearing. The Registering Authority shall also direct the establishment to surrender their certificate of Registration on or before date of hearing.”

A bare perusal of the above Sub-Rules clearly reveal that a two-step procedure has been established by Rule 7 of the Rules. *Firstly*, an opportunity of hearing has to be given

to the establishment prior to suspension of its registration.

Secondly, even after suspension of the registration, the concerned authority is required to give a notice of atleast fifteen days to the establishment to show cause as to why its registration should not be cancelled. It is only after giving an opportunity of hearing to the establishment that the concerned authority would be justified in cancelling the registration under Rule 7(d) of the Rules.

However, in the present case, a bare perusal of the notice dated 16-07-2018, issued by the respondent No.2, clearly reveals that the said notice has not been given under Rule 7(a) of the Rules. Moreover, a perusal of the impugned order dated 27-07-2018, clearly reveals that prior to passing of the said order, no order suspending the registration was ever passed by the respondent No.2. Therefore, the respondent No.2 has failed to conform to the requirement of Sub-Rules (a) and (b) of Rule 7 of the Rules. Instead of first passing a suspension order, the respondent No.2 has directly passed the impugned order dated 27-07-2018, cancelling the registration. Hence, the impugned order dated 27-07-2018,

is in violation of the procedure established by Rule 7 of the Rules.

A bare perusal of the impugned order passed by the learned Single Judge clearly reveals that the learned Single Judge has emphasized the fact that the requirement of Rule 4 of the Rules, whereby a copy of the lease agreement has to be furnished by the respondent No.2, has not been fulfilled. However, the learned Single Judge has overlooked the fact that the procedure established by Rule 7 of the Rules has not been followed in the present case. Even if the requirement of Rule 4 of the Rules has not been fulfilled, even then the procedure established by Rule 7 of the Rules, necessarily, has to be followed. Therefore, the learned Counsel for the appellant is justified in contending that the procedure established by law has been violated by the respondent No.2, while passing the order dated 27-07-2018.

For the reasons stated above, the order dated 14-03-2019, passed by the learned Single Judge in W.P.No. 26734 of 2018, is hereby set aside. Consequently, the impugned order, dated 27-07-2018, passed by the respondent No.2 is set aside. However, liberty is granted to the

respondent No.2 to re-initiate the procedure for cancellation of the registration, if the need so arises. It is made clear that the procedure established under Rule 7 of the Rules, necessarily, has to be followed by the respondent No.2.

With these observations, the appeal is, hereby, allowed.

As a sequel, Miscellaneous Petitions, pending if any, stand disposed of.

(Raghvendra Singh Chauhan, ACJ)

(A.Rajasheker Reddy, J)

Dt: 18th April, 2019
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