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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 4050/2019**

CHAANDAN MUNJAAL

..... Petitioner

Through: Mr Sandeep Bajaj, Mr Soayib
Quresi and Mr Naman Tandon,
Advocates.

versus

GOVERNMENT NCT OF DELHI AND ANR. Respondents

Through: Mr Ramesh Singh, Standing
Counsel, GNCTD with Mr Chirayu
Jain, Advocate for GNCTD.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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22.04.2019

CM No.18280/2019

1. Allowed, subject to all just exemptions.

W.P.(C) 4050/2019 & CM No.18279/2019

2. The petitioner has filed the present petition impugning an order dated 07.02.2019 passed by respondent no.1 (Directorate General of Health Services) cancelling the registration granted to respondent no.2 (RC Healthcare Private Limited) company for rendering eye care services in the name of 'Spectra Eye Hospital'.

3. The petitioner assails the impugned order on the ground that the petitioner was not granted one month's prior notice as required under Section 8 of the Delhi Nursing Homes Registration Act, 1953 (hereafter

‘the Act’).

4. At the outset, it is relevant to note that the registration has been granted for operating ‘Spectra Eye Hospital’ to respondent no.2 company.

5. In terms of Section 8 of the Act, a prior notice is required to be served by the Supervising Authority to the applicant or to the person registered, as the case may be. In the present case, the registration certificate indicates that it is granted in favour of “Spectra Eye Hospital (A Unit of R.C. Healthcare Private Limited)”, however, it also mentions that the said unit is run by Dr. Suraj Munjal (the brother of the petitioner). In this view, the notice, if any, under section 8 of the Act was required to be issued to R.C. Healthcare Private Limited (respondent no.2). It is thus, difficult to accept that the petitioner can raise any grievance in this regard.

6. Essentially, the controversy involved in the present case stems from a dispute between the petitioner and his brother (Dr Suraj Munjal), who are both stated to be directors of respondent no.2. In view of the disputes between the parties, Dr Suraj Munjal had approached respondent no.1 for cancellation of the registration under the Act, as he was no longer desirous of running the clinic in question as an undertaking of respondent no.2 company. It is also not disputed that between the two brothers – that is, the petitioner and Dr Suraj Munjal – Dr Suraj Munjal is a medically qualified person and was in charge of running the unit. In view of *inter se* disputes, the petitioner has already approached the National Company Law Tribunal for redressal of his grievances regarding management and affairs of respondent no.2 company.

7. In view of the request made by Dr Suraj Munjal, respondent no.1 had cancelled the registration certificate granted to ‘Spectra Eye Hospital’

(a unit of respondent no.2), which was located at E-82A, Greater Kailash, Part-I, New Delhi-110048.

8. Prior to cancellation of the said registration, a show cause notice dated 25.08.2017 was issued both to Dr Suraj Munjal as well as the petitioner, calling upon them to show cause as to why registration of 'Spectra Eye Hospital' not be cancelled under the Act. Dr Suraj Munjal has responded to the aforesaid show cause notice by a letter dated 31.08.2017, confirming that he was unable to run the nursing home due to insufficient infrastructure and staff and, therefore, had reiterated his request for cancellation of the registration certificate. Thereafter, respondent no.1 had issued a cancellation order dated 14.09.2017 in terms of Section 8(2) of the Act.

9. Aggrieved by the order dated 14.09.2017, the petitioner had approached this Court by way of a writ petition – W.P.(C) 8525/2017 captioned 'Chaandan Munjal v. Govt. NCT of Delhi through Directorate General of Health Services & Ors' – impugning the cancellation order dated 14.09.2017. The said writ petition was disposed of by an order dated 22.09.2017 calling upon respondent no.1 to examine the response submitted by the petitioner and to take an informed decision.

10. Thereafter, another show cause notice dated 24.10.2017 was issued by respondent no.1, which was addressed to Spectra Eye Hospital but was forwarded to Dr Suraj Munjal as well as the petitioner. Further, by a letter dated 03.11.2017, the respondent also called upon the petitioner as well as Dr Suraj Munjal to appear for an oral hearing on 27.11.2017.

11. Aggrieved by the decision of this Court remanding the matter to respondent no.1, Dr. Suraj Munjal filed a review petition (Review Pet

456/2017), *inter alia*, stating that he was a qualified doctor, who was running an eye clinic in question and the petitioner had no professional qualification in this regard. He had further submitted that although the licence was issued in the name of Spectra Eye Hospital, it was described as being run by him and, therefore, he had the right to surrender the same. The said review petition was disposed of by an order dated 26.10.2017, wherein this Court had clarified that the principal reason for remanding the matter to respondent no.1 was that the order of cancellation dated 14.09.2017 was passed prior to the expiry of 30 days from the show cause notice and section 8 of the Act mandates that at least one month's prior notice be issued for cancellation of the registration.

12. During the course of hearing relating to the aforesaid review petition, the learned counsel for respondent no.1 had also pointed out that a show cause notice dated 24.10.2017 had been issued, which was addressed to the petitioner as well as to respondent no.2 and they have been provided one month's time to file a response. In view of the aforesaid statement, this Court had passed the following issued directions for holding a hearing on 27.11.2017. The relevant extract of the said order is set out below:-

6. Mr. Ramesh Singh, learned counsel for respondent no. 1 states that a fresh show cause notice dated 24.10.2017 has been issued, which is addressed both to the petitioner and respondent no.2 and they have been provided one month's time to file their response. The petitioner and respondent no.2 may appear before the concerned authority on 27.11.2017 at 10:30 am for oral hearing. The response(s) filed by the petitioner and respondent no.2, if any, would be considered by the concerned authority and the final order will be passed on

or before 30.11.2017.”

13. Admittedly, a hearing was held on 27.11.2017 as directed. The impugned order indicates that the concerned authority had, pursuant to the hearing, recorded in its order that the details submitted were required to be examined as per the prevailing Act and Rules and, if required, physical inspection may also be conducted.

14. It is stated that, thereafter, a committee of officers was constituted by respondent no.1 for conducting a surprise inspection on the premises located at E-82A, Greater Kailash, Part-I, New Delhi-110048 and an inspection was conducted. On inspection, it was observed that no doctors or nurses were available. It is also noticed that although certain staff was functioning, the same were on the strength of Spectra Medicare Private Limited and not on the strength of RC Healthcare Private Limited.

15. Thereafter, respondent no.1 issued another show cause notice dated 14.12.2017, which was addressed both to the petitioner as well as Dr Suraj Munjal. The said persons were called upon to resolve their disputes and to submit a compliance report within a period of one calendar month from the date of receipt of the said notice.

16. Concededly the said notice was, thereafter, withdrawn.

17. It is also relevant to note that a letter dated 23.10.2018 was issued to the petitioner as well as Dr Suraj Munjal directing them to appear before the concerned authority to 30.10.2018. The said hearing was attended only by Dr Suraj Munjal and not by the petitioner. The petitioner had informed the concerned authority telephonically that he had not

received the letter dated 23.10.2018 and, therefore, could not appear on the said date. Consequently, the said hearing was re-scheduled to 01.11.2018. The same was again re-scheduled to 16.11.2018, at the request of the petitioner. On that date both the petitioner and Dr Suraj Munjal were present but the said meeting could not take place and was, accordingly, postponed to 28.11.2018.

18. There is no dispute that on 28.11.2018 a hearing was held and both the petitioner and Dr Suraj Munjal were duly heard.

19. The impugned order indicates that, thereafter, a surprise inspection was also conducted on 03.12.2018 and it was found that basement and ground floor of the premises were closed and no activities pertaining to the nursing home were being carried out.

20. Thereafter, respondent no.1 issued another show cause notice dated 13.12.2018 in accordance with Section 8(1) of the Act.

21. The petitioner has founded his case on the basis that the said notice was received by him on 24.01.2019. He had subsequently sent a letter dated 28.01.2019, stating that he would reply to the said show cause notice within one calendar month from 24.01.2019. It is stated that the petitioner had also replied to the show cause notice by a letter dated 22.02.2019. However, prior to that, respondent no.1 passed an impugned order cancelling the registration.

22. A perusal of the reply to the show cause notice indicates that the petitioner had, essentially, made allegations against Dr Suraj Munjal and had highlighted the disputes between the petitioner and Dr Suraj Munjal. The fact that the Hospital was not functioning does not appear to have been disputed by the petitioner. On the contrary, his explanation was that

non availability of employees and showing the premises as closed was a “tactful deceit that has been orchestrated by Dr Suraj Munjal.”

23. It is also the petitioner’s case that Dr Suraj Munjal had commenced a parallel business under the name and style of ‘Spectra R. C. Medicare Private Limited’ and was attempting to usurp the business of the company.

24. It is apparent from the above that sufficient notice had been issued to the petitioner before issuing the impugned order. Although the show cause notice dated 14.12.2017 had been withdrawn, the earlier show cause notice dated 24.10.2017 had not been withdrawn and concededly, both the petitioner and Dr Suraj Munjal had been given sufficient opportunity of being heard.

25. In the aforesaid view, the contention that the impugned order is invalid as having been passed without giving one month’s prior notice is unsustainable.

26. The petitioner had premised his case on the basis that the show cause notice dated 13.12.2018 was received by him on 24.01.2019. It is contended that since one month’s prior notice was not given to the petitioner the impugned order is invalid. As noticed above, the one month’s prior notice is required to be issued to the person in whose favour the registration certificate is granted. The petitioner is admittedly, not the holder of the registration certificate. Thus, there was no requirement to issue specific notice to the petitioner under Section 8 of the Act. Having stated above, it is also relevant to note that the petitioner was, in fact, issued a notice on 24.10.2017 and was also heard.

27. The notice issued on 13.12.2018 was in addition to the earlier

notice. Mr Ramesh Singh had handed over a copy of the proof of dispatch which indicates that the same was dispatched on 15.12.2018. Although the petitioner claims that the said notice was received on 24.01.2019, there is no material on record (apart from a self serving letter dated 28.01.2019) to establish that the said notice was, in fact, received on 24.01.2019.

28. Further, the petitioner has also not established any ground in his response dated 20.02.2017, that would persuade any authority to not proceed to cancel the registration. As noticed above in this case, surprise inspection had revealed that the unit was not functioning. It is admitted that there are disputes between the petitioner and his brother, who are principal Directors of respondent no.2, and the petitioner's brother is clearly not inclined to continue with the undertaking.

29. The petition is unmerited and is, accordingly, dismissed with costs quantified at ₹10,000/-. The same would be deposited with the Advocates' Welfare Fund within a period of one week from today.

30. The pending application also stands disposed of.

VIBHU BAKHRU, J

APRIL 22, 2019
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