

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5873 OF 2020

Dr. Ritesh Omprakash Agrawal

.. Petitioner

Versus

The State of Maharashtra,
through its Secretary,
Health Department, Mantralaya,
Mumbai and ors.

.. Respondents

Mr S.S. Kulkarni, Advocate for petitioner
Mr D.R. Kale, G.P. for respondents

**CORAM : RAVINDRA V. GHUGE AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 27th AUGUST, 2020

PER COURT:

1. We have briefly heard the learned Advocate for the petitioner and the learned Government Pleader on behalf of the respondents.

2. In the first session, a pass over was granted to enable the learned G.P. to take instructions as to whether a show-cause notice was issued to the petitioner before issuing the impugned order of closure of his hospital, dated 21st August 2020.

3. After this matter was called out post lunch, the learned G.P. submits on instructions that a string of complaints was received regarding the malpractices in the petitioner's hospital. The COVID-19 Pandemic was spreading its tentacles and there was a public uproar as regards the mismanagement of the petitioner's hospital. It was in these peculiar circumstances that a show-cause notice of hearing before issuing the impugned order of closure, could not be given.

4. This Court has considered an identical situation in Writ Petition No. 4499 of 2018 (Amol Santaji Karpe Vs. The State of Maharashtra and ors). Vide order dated 13th December 2018, this Court has observed as under :

" The petitioner assails the order cancelling the certificate of registration issued in favour of the petitioner U/Sec. 5 of the Bombay Nursing Homes Registration Act, 1949 (for short "Said Act"). The learned counsel for the petitioner states that, the petitioner had filed an appeal U/Sec. 8(4) of the said Act, however, same is not decided since long and the respondents were initiating coercive action. According to the learned counsel, no show cause notice was issued to the petitioner as contemplated U/Sec. 8(1) of the said Act.

2. Affidavit is filed by the Municipal Council, Sangamner stating that the permission was granted to the petitioner for residence and clinic and the municipal council has not granted permission to the petitioner to use the premises as nursing home.

3. Mr. Bajaj, the learned counsel for intervenor submits that, the civil application is filed by the local residents. The petitioner is running his nursing home against the provisions of law. The petitioner had participated in the enquiry which was initiated by the authority. Thereafter order is passed. Nuisance is created due to running of the hospital by the petitioner. Same is not as per the building bye-laws.

4. We have heard the learned Assistant Government Pleader also.

5. The impugned order nowhere suggests that notice was given to the petitioner before cancellation of the registration as required U/Sec. 8(1) of the said Act. When the law requires a particular thing to be done in particular manner, same has to be

done in the same manner only. In absence of any notice being given to the petitioner before passing the impugned order, the same would not be sustainable and is set aside. The impugned order shall be treated as show cause notice to the petitioner. The petitioner shall file reply to the same within a period of fifteen days from today. Upon receipt of reply, the authority shall take decision upon the registration certificate of the petitioner after giving opportunity of hearing to the petitioner within a period of one month from the date of receipt of reply. In view of present order, the appeal filed by the petitioner U/Sec. 8(4) of the said Act shall stand disposed of.

6. In view of the above, the writ petition is disposed of. No costs.

5. Notwithstanding the COVID-19 Pandemic, a hospital cannot be shut down without following the due process of law. If a particular procedure is prescribed for initiating appropriate steps with regard to complaints against a hospital, such procedure has to be necessarily followed and a drastic order of closure of the hospital cannot be passed under the pretext of COVID-19 Pandemic.

6. In view of the above, we deem it appropriate to follow the view taken by this Court in the order dated 13th December 2018 (supra) and we, accordingly, dispose off this petition by recording that the impugned order dated 21st August 2020 shall be treated as a show-cause notice to the petitioner. The petitioner shall file his reply to the said notice, as suggested by the learned Advocate for the petitioner, on or before 5th September 2020. If such a reply is received within such time frame, the competent authority would consider the said reply and take a decision as regards cancellation of the registration certificate of the petitioner's hospital, after giving him an

opportunity of hearing. We expect the said authority to decide the said issue as expeditiously as possible and preferably, on or before 19th September 2020. Any appeal filed by the petitioner under Section 8 (4) of the Bombay Nursing Homes Registration Act, 1949, shall stand disposed off.

7. At this juncture, the learned G.P. submits that the petitioner may be precluded from operating his Arogyam Hospital, Ambad-Mantha Bye-pass road, Jalna since there are serious complaints against him. The learned Advocate for the petitioner submits that presently, there are ten patients already admitted, who are under extensive treatment and such patients cannot be deserted or driven out of the hospital. In this background, to balance the equities, we find it appropriate to direct that the petitioner shall not admit new patients until 19th September 2020 and would cater to the present patients who are under treatment in the said hospital.

(SHRIKANT D. KULKARNI, J.)

(RAVINDRA V. GHUGE, J.)

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