

HIGH COURT OF CHHATTISGARH, BILASPURJudgment reserved on 18-06-2021Judgment delivered on 23-07-2021WA No. 152 of 2021

1. Sundara Multispecialty Hospital CDCRI Dental College Campus Village Sundara N.H.06, Rajnandgaon District Rajnandgaon Chhattisgarh Through Shri Nemichand Parekh Chairman, S/o Late S.K. Parekh, A/o 60 Years R/o G.E. Road, Sundara Village Rajnandgaon District Rajnandgaon Chhattisgarh

---- Appellant

Versus

1. State Of Chhattisgarh Through Secretary, Medical And Family Welfare Department, Indrawati Bhawan, Atal Nagar Naya Raipur District Raipur Chhattisgarh
2. Directorate Of Health Services, 3rd Floor, Indrawati Bhawan, Atal Nagar Naya Raipur District Raipur Chhattisgarh
3. Chief Medical And Health Officer (CMHO) District Rajnandgaon Chhattisgarh
4. Collector Rajnandgaon District Rajnandgaon Chhattisgarh

---- Respondents

---

For AppellantShri Kishore Bhaduri, Sr. Advocate  
with Shri Saurabh Dangi, Advocate

For Respondents

Shri Vivek Ranjan Tiwari, Addl. Adv.  
General with Shri Vikram Sharma, Dy.  
Govt. Adv. for the State

---

Hon'ble Shri Prashant Kumar Mishra, Ag. CJHon'ble Shri Parth Prateem Sahu. J.C A V JudgmentByPrashant Kumar Mishra, Ag. CJ

1. This writ appeal would call in question the order passed by the learned Single Judge dismissing the appellant's (henceforth 'the petitioner') writ petition seeking quashment of the orders dated 04-05-2021 and 05-05-2021 (Annexure P-1), as is marked in the writ petition.
2. By the orders under challenge in the writ petition, the registration granted to the petitioner hospital has been suspended for one month and has been restrained to admit new COVID patients for treatment for one month from the date of order, which was operated from the discharge of last COVID patient under treatment in/with the hospital.
3. The petitioner is a super specialty hospital registered under the provisions of the Chhattisgarh State Upcharyagriha Tatha Rogopchar Sambandhi Anugyapan Adhiniyam, 2010 {commonly known as 'the Nursing Home Act, 2010'} [henceforth 'the Act, 2010']. On 19-09-2020, the hospital was allowed permission for treating 100 patients, out of which 60 beds were reserved for COVID patients and 40 beds were reserved for suspected COVID patients. By order dated 05-04-2021 passed by the Chief Medical and Health Officer (henceforth 'the CMHO') the hospital was made a dedicated COVID-19 hospital. It was further instructed that out of 60 reserved beds for COVID patients, 41 beds should be oxygenated beds and 2 should be ventilator beds.
4. On receipt of some complaint about commission of irregularities by the hospital in treating the COVID patients, an inspection was carried out on 27-04-2021 finding the following short comings :

- In violation of permission to have 60 COVID beds, the hospital was operating 100 COVID beds and all the patients were treated in the COVID ward.
  - It was found that the hospital is charging separately for pathology test, hematology test, X-ray, USG and serology investigation and is also charging for Remdesivir injection at a rate higher than the rate fixed by the State government.
  - Account for sale and purchase of Remdesivir injection has not been maintained as per the rules and the stock of medicines were found NIL.
  - Batch No. of injections purchased by the hospital were found discrepant.
5. On the above allegations, the petitioner was directed to submit reply. Pursuant to the same, the petitioner submitted its reply denying the charges levelled against it. In respect of Remdesivir injection, it was stated in the reply that the same was purchased by a medical shop situated in the hospital premises. Finding the reply unsatisfactory, the orders impugned in the writ petition were passed by the concerned authority.
6. It was the stand of the State Government before the writ Court that the petitioner has suppressed the material facts and that the impugned orders are appealable under the Act, 2010 read with the Rule 9 of the Nursing Home Rules, 2013, therefore, the writ petition is not maintainable. It was the further contention of the respondent that the Director, Health Services, Raipur, authorised the CMHO to grant necessary permission to the petitioner to run COVID hospital and the petitioner was authorized to admit 60

COVID patients only and that taking benefit of shortage of Remdesivir injection the petitioner hospital was involved in black marketing of the said injection. The illegalities committed by the petitioner hospital were widely reported in the newspapers, therefore, a Committee was constituted to conduct inspection and as per the report, the illegalities and irregularities, as mentioned in the preceding paragraphs, have been found.

7. It was stated by the State that the petitioner filed reply to the show cause notice without seeking copy of the enquiry report and, as such, it cannot be said that there is violation of principles of natural justice or that any prejudice has been caused to the petitioner. After the order was passed on 04-05-2021, the petitioner submitted a representation before the District Collector but in this representation also, the issue of non supply of enquiry report was not raised.
8. Reply filed by the petitioner was considered by the Committee, who submitted a report to the District Collector on 03-05-2021 and thereafter, the order was passed by the District Collector on the note sheet. In compliance of the said order of the Collector, the impugned order in the writ petition was issued by the CMHO. Thus, the respondent/State submitted that the contention to the contrary, that the District Collector has not applied its mind, is not tenable.
9. Considering the rival submissions, the learned Single Judge has dismissed the writ petition on the ground that the petitioner has alternative remedy of preferring an appeal, therefore, the writ petition is not maintainable.

10. Learned counsel for the petitioner has argued on merits of the matter by referring to the violation of principles of natural justice and lack of jurisdiction in the authority to pass the orders impugned.
11. To this submission, learned Single Judge has rightly found that the petitioner having not raised any objection before the authority about non supply of enquiry report and instead chose to file reply to the show cause notice, therefore, no prejudice has been caused to the petitioner.
12. It is the settled law that jurisdiction under Article 226 of the Constitution of India is discretionary and it should not be exercised merely because it is lawful to do so. The rule of alternative remedy is a self imposed restriction and in appropriate cases, writ Court may entertain the petition when available remedy is not efficacious. The rule of alternative remedy can be overlooked or by passed in extraordinary exceptional circumstances where the remedy is ill-suited to meet the demands of extraordinary situation. (See: *Thansingh Nathmal & others Vs. The Superintendent of Taxes, Dhubri & others*<sup>1</sup>, *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. & others*<sup>2</sup> and *Commissioner of Income Tax & others Vs. Chhabil Dass Agrawal*<sup>3</sup>).
13. In the case at hand, we are dealing with an unprecedented pandemic situation where the hospitals providing treatment facility to COVID patients are required to maintain highest ethical norms by following the rules, regulations, procedures, etc. put into effect by the State Government for proper

---

<sup>1</sup> AIR 1964 SC 1419

<sup>2</sup> (1985) 1 SCC 260

<sup>3</sup> (2014) 1 SCC 603

management of treatment of COVID patients. We can take judicial notice of the situation which prevailed in the entire country and more particularly in the State of Chhattisgarh during second wave of COVID 19. During such critical medical and health situation, it was the bounden duty to the petitioner to have maintained highest ethical standards by not indulging in violating the Government orders in respect of treatment of COVID patients.

14. It is matter of common knowledge that there was acute shortage of Remdesivir injections, therefore, the Government stepped into control and regulate supply of Remdesivir injections. If during such emergent situation, the petitioner was allegedly involved in black marketing of Remdesivir injections, the said fact itself is sufficient to reject the petitioner's prayer for bypassing the rule of alternative remedy and entertain the writ petition.
15. In the peculiar facts and circumstances of the case, we are not in a position to take any different view than what has been taken by the learned Single Judge relegating the petitioner to avail the alternative remedy. The order passed by the learned Single Judge is just and proper warranting no interference.
16. As a sequel, the writ appeal is deserves to be and hereby dismissed.

Sd/-  
(Prashant Kumar Mishra)  
Acting Chief Justice

Sd/-  
(Parth Prateem Sahu)  
Judge

Gowri