

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(C.) No.4594 of 2021

1. Omkar Shobha Hospital Through It's Director Sushobhita Tiwari, Village Semra, Collectorate Road Semra, District Gourela-Pendra-Marwahi Chhattisgarh.
2. Sushobhita Tiwari, W/o Akhilesh Tiwari, Aged About 34 Years R/o Omkar Shobha Hospital Campus, Village Semra, Block And Tehsil Gaurela, Collectorate Road Semra, District Gourela-Pendra-Marwahi Chhattisgarh.

---- Petitioners

Versus

1. State Of Chhattisgarh Through Secretary, Health And Family Welfare Department, Capital Complex, Mahanadi Bhawan, Atal Nagar, Nava Raipur, District Raipur Chhattisgarh.
2. Director Medical & Health Services, Atal Nagar, Nava Raipur, District Raipur Chhattisgarh.
3. Collector Cum Supervisory Authority District Gaurela - Pendra-Marwahi Chhattisgarh.
4. Chief Medical And Health Officer, Gaurela, District Gaurela-Pendra-Marwahi Chhattisgarh.
5. Namrta Gandhi, Aged About 33 Years Posted As Collector, District Gourela - Pendra-Marwahi Chhattisgarh.

---- Respondents

For Petitioners	– Mr. Bhaskar Payashi, Advocate.
For State-Respondent	– Mr. S.C. Verma, A.G. with Mr. Chandresh Shrivastava, Dy. A.G.

S.B.- Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

16-11-2021

1. Heard.

2. It is submitted by learned counsel for petitioners that the petitioner No.2 is the person concerned with the management of the petitioner No.1, i.e. the hospital. The respondent No.3 passed the impugned order dated 25.09.2021 holding the petitioner guilty and penalising the petitioner under Section 12 (A) of the Chhattisgarh State Upcharyagriha Tatha Rogopchar Sambandhi Sthapanaye Anugyapan Adhiniyam, 2010 (in short 'the Act, 2010'). Submissions have been made regarding the non-compliance of the provisions in the Act, 2010 and the Chhattisgarh State Upcharyagriha Tatha Rogopchar Sambandhi Sthapanaye Anugyapan Niyam, 2013 (in short 'the Rule, 2013') and it is submitted that the impugned order is totally unsustainable. Hence, interim relief be granted to the petitioner by staying the effect and operation of the impugned order.
3. Learned State counsel opposes the submissions and the first objection raised is this that the respondent No.5 has been arrayed as a party in personal capacity, who is collector of District- Gourela-Pendra-Marwahi, C.G. The Section 17 of the Act, 2010 gives protection to the authority or any officer, who has taken action in good faith and further there is specifically no relief claimed against respondent No.5.
4. It is submitted that respondent No.3 is the supervisory authority as defined under Section 2 (o) of the Act, 2010 and Rule 4 of the Rules, 2013 provide for the functions of supervisory authority. In the impugned order, it is mentioned that the petitioner was operating the hospital without obtaining any license as required under the Act. It is also submitted that against the order passed by the supervisory authority, there is a provision to file appeal under Section 10 of the Act, 2010, therefore, the petition filed is not maintainable. Apart from that, the petitioner has availed the remedy of filing appeal, which is pending and

before the conclusion of the proceeding in the appeal, this writ petition has been filed, which is not at all maintainable. Hence, the petition may be dismissed at the motion stage.

5. In reply, it is submitted that the impugned order makes incorrect mention that the petitioner hospital was being operated without license, there is license granted to the petitioner hospital on 02.08.2019 and the period of that license was 02.08.2019 to 01.08.2024. It is also submitted that the relief sought by the petitioners cannot be granted by the appellate Court. Hence, the present petition is maintainable and interim relief may be granted.
6. Considered on the submissions, the impugned order dated 25.09.2021 passed by respondent No.3 is final order, which is subject to challenge before the appellate authority. According to the Section 10 of the Act, 2010, the grievance of the petitioner regarding non-compliance of the provisions in the statute before passing of the impugned order can be addressed by the appellate authority itself. Therefore, there being a statutory remedy available to the petitioner, this petition should not be entertained. Hence, for these reasons this petition is disposed off at the motion stage.
7. As it is informed that the appeal has been preferred by the petitioner before respondent No.2, therefore, the respondent No.2 is directed to expeditiously take up the proceedings in the appeal and decide the same preferably within a period of 45 days from today.
8. With these observations, this petition is disposed off.

Monika

Sd/-
(Rajendra Chandra Singh Samant)
Judge