

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.01.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.20423 of 2020

and

W.M.P.Nos.25202 & 25203 of 2020

(Heard through VC)

1.S.Vasanth Kumar

2.D.Karthik

.. Petitioners

-vs-

1. The State of Tamilnadu,
Represented by the Principal Secretary to Government,
Health and Family Welfare Department (N2),
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Director,
Public Health and Preventive Medicine,
DMS Compound,
Teynampet,
Chennai - 600 018.
3. The Pharmacy Council of India,
Combined Council Building,
Aiwan-E-Ghalib Marg,
New Delhi - 110 002.
4. The Tamilnadu State Pharmacy Council,
Block-E, First Floor, 100 Feet,
Jawaharlal Nehru Road,
Vadapalani,
Chennai - 600 026.

.. Respondents

Prayer: Petition filed under Article 226 of Constitution of India to issue a Writ of Mandamus directing the first and second respondents herein to include/create the post of Pharmacist for the 2000 Mini Clinics established in the State of Tamilnadu pursuant to the Government Order in G.O.Ms.No.530, Health and Family Welfare (N2) Department dated 05.12.2020 and thereby considering the petitioners and other eligible persons for the post of Pharmacist by recruiting them as Pharmacist either on temporary/time scale basis by suitably modifying the Government

order in G.O.Ms.No.530, Health and Family Welfare (N2) Department dated 05.12.2020.

For Petitioners:Mr.J.Selvarajan

For Respondents:Mr.Vijay Narayan, Advocate General
Assisted by
Mr.V.Jayaprakash Narayanan
Government Pleader

O R D E R

The petitioners have come forward with this writ petition, seeking a direction to the first and second respondents herein to include/create the post of Pharmacist for the 2000 Mini Clinics established in the State of Tamil Nadu pursuant to the Government Order in G.O.Ms.No.530, Health and Family Welfare (N2) Department dated 05.12.2020 and thereby considering the petitioners and other eligible persons for the post of Pharmacist by recruiting them as Pharmacist either on temporary/time scale basis by suitably modifying the Government order in G.O.Ms.No.530, Health and Family Welfare (N2) Department dated 05.12.2020.

2. The case of the petitioners is that they are Bachelor Degree holders in Pharmacy and also registered with the Pharmacy Council and also registered their names with the employment exchange. While being so, the first and second respondents established 2000 mini clinics in the State by issuing G.O.Ms.No.530, Health and Family Welfare (N2) Department, dated 05.12.2020. However, no post of Pharmacist has been created for dispensing medicines to the patients. It is further case of the petitioners that no person other than a registered pharmacist is authorized to dispense any medicine on a prescription of a medical practitioner. Thus, it is argued that the Government Notification without calling for the post of Pharmacist is against the provisions of the Pharmacy Act, 1948.

3. The main plea of the petitioners is that there should be a post of Pharmacist in a clinic and in terms of the decision of the High Court of Kerala in W.P.(C) No.37156 of 2016 dated 23.08.2017, disbursement of medicines by persons other than registered pharmacist is bad in law. According to them, the Health Minister has made a statement that there is going to be recruitment of Pharmacists and also produced a paper cutting to that effect.

4. The learned counsel for the petitioners submitted that the Government has decided to have Mini Clinic set up in various places in a phased manner to overcome the present pandemic

situation on temporary basis for a period of one year, which may be extended beyond the stipulated period, depending upon the situation that may warrant. He also drew the attention of this Court to G.O.Ms.No.530, Health and Family Welfare (N2) Department, dated 05.12.2020 stating that the total area of the Mini Clinic is 200 square feet either in own building or rented building with a separate waiting area, as could be seen from Clause 5(i)(e) of the Government Order. It also refers to Mini Pharmacy to store medicines, which could be seen from Clause 5(i)(f) of the Government Order.

"5.(i)(e) Clinic Area would comprise of a well illuminated room with a minimum 200 square feet either in own/rented building with a separate waiting area / examination room along with necessary furniture and basic equipment.

(f) Mini Pharmacy: Space to store medicines, minor surgical equipment and basic lab reagents etc., will be made available in the mini clinics."

5. Learned counsel for the petitioners drew the attention of the Court to Section 42 of the Pharmacy Act, 1948, which is extracted below:

"42. Dispensing by unregistered persons. -

(1) On or after such date as the State Government may by notification in the Official Gazette appoint in this behalf, no person other than a registered pharmacist shall compound, prepare, mix or dispense any medicine on the prescription of a medical practitioner. Provided that this sub-section shall not apply to the dispensing by a medical practitioner of medicine for his own patients or with the general or special sanction of the State Government, for the patients of another medical practitioner.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one thousand rupees or with both.

(3) Cognizance of an offence punishable under this section shall not be taken except upon complaint made by order of the State Government or any officer authorised in this behalf by the State Government, or by order of the Executive Committee of the State Council."

6. By relying upon the said provision, it is contended on the side of the petitioners that in terms of the said provision,

the medicines will have to be disbursed only by duly authorised pharmacist and staff Nurse cannot disburse medicines. The learned counsel for the petitioners further contended that the patient, who is going to see the Doctor, may not be the patient of the Doctor and hence in terms of the G.O.Ms.No.530, Health and Family Welfare (N2) Department, dated 05.12.2020 and Section 42 of the Act, unless the Mini Clinic has a Pharmacist to disburse the medicines, the action of the Government in setting up the clinics without Pharmacists is bad in the eye of law. Hence, a direction may be issued to appoint Pharmacists in all the Mini Clinics by modifying G.O.Ms.No.530, Health and Family Welfare (N2) Department, dated 05.12.2020.

7. When the matter came up yesterday, this Court directed the petitioners to serve notice on the Government and made a specific order that Mr.Vijay Narayan, learned Advocate General or Mr.Arvind Pandian, learned Additional Advocate General shall appear in this matter. When the matter is taken up today, Mr.Vijay Narayan, learned Advocate General appeared and submitted that the petitioners are under a wrong notion that staff Nurse is going to distribute medicines and that there should be a Pharmacist, appears to be illusory in nature. Doctor is empowered to disburse medicines in terms of proviso to Section 42 of the Act. The total area, in which the mini clinic is going to occupy is only 200 square feet and the space is sufficient only for accommodating one Doctor, one Nurse for nursing and helping the Doctor and one attender for cleaning the clinic. The sick patient is a patient of the Doctor and the Doctor is going to independently examine the patient, prescribe and disburse medicines. The Government is also going to issue a clarification to the effect that Doctor alone can disburse medicines and the question of exclusive appointment of a Pharmacist may not be required and in order to meet the needy situation, the present clinics are started for a period of one year and the period may be extended depending upon the situation that may warrant. He further submitted that G.O.Ms.No.530, Health and Family Welfare (N2) Department, dated 05.12.2020 is perfectly in order and if the contention of the learned counsel for the petitioners is accepted, all the mini clinics should have a Pharmacy and a Pharmacist.

8. Heard the learned counsel on either side and perused the material documents available on record.

9. The petitioners have come forward with this writ petition presuming that there is a lacuna in the Government Order to the extent that medicines, prescribed by a Medical Practitioner, would be disbursed by the Staff Nurse. A plain reading of Section 42 in its entirety would make it very clear that even though it speaks about registered pharmacist, the

Doctor is empowered to disburse medicines to patients. The pharmacists will have to depend on the Doctor and there is no need for a Doctor to depend on the Pharmacist. The Government, with a vast vision to eradicate the Corona Virus and to meet out the emergent situation, have decided to set up Mini Clinics, in order to tide over the situation and to restore the situation to normalcy. In the considered opinion of this Court, it is not necessary that all clinics should have a Pharmacist and it cannot also be said that no person, including the Doctor is authorized to dispense medicines, as a Doctor, who ultimately examines patients and prescribe pills, is empowered to distribute medicines also to his/her patients.

10. When a small area of 200 square feet is earmarked for the purpose of Mini Clinics, it is equally mandatory to keep social distancing and if the small space is occupied by staff members themselves, Mini Clinics, which are started for the welfare of patients, lose its significance and the patients, who rush to hospitals for treatment may not find place in the Clinic. The main challenge before the Government is to prevent the spread of diseases, much less the deadly one Covid-19, which has taken away the lives of several persons, it is imperative for all citizens of this State to support the welcoming steps that are being taken by the Government and there should not be any hurdle for each and every steps taken by the Government, as prevention is better than cure.

11. It was stated that there is a statement made by the Minister in a Press Meeting that there will be a Pharmacist and in order to bring the situation to normalcy, such statement would have been made. Any how, the Newspaper report cannot be taken as gospel truth and there may be a typographical error or the actual statement would not have been reflected or published. The Court will have to decide based on the documents placed before it and the contents therein, namely, the Government Order and come to a conclusion taking note of the submissions made by both the parties.

12. Considering the totality of the circumstances, this Court is of the view that the Government Order does not suffer from any infirmity. More so, the statement made across the bar by Mr. Vijay Narayan, learned Advocate General that the Government is going to categorically inform the Doctors, who are going to treat patients of the Mini Clinics that medicines should be disbursed only by them. Hence, I find no reason to entertain this Writ Petition.

13. In view of the above, the writ petition fails and is dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rsi/ar

To:

- 1.The Principal Secretary to Government,
State of Tamilnadu,
Health and Family Welfare Department (N2),
Secretariat, Fort St.George,
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+1 CC to The Government Pleader sr 542.

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RV(CO)
SP(08/01/2021)

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