

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.22891 of 2021
and
W.M.P.No.24096 of 2021

M/s.Kumarasamy Hospital

...Petitioner

Vs.

1. State Competent Authority
Tamil Nadu Clinical Establishment (Regulation) Act, 1997/
Director of Medical and Rural Health Services,
Chennai 600 006.
2. The District Competent Authority,
Tamil Nadu Clinical Establishment (Regulation) Act, 1997,
Erode. ...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling upon the records of the entire proceedings in Proc. No. 7868 / CEA / 2021 on the file of the 2nd respondent and quash the order dated 18.10.2021 passed by the 2nd respondent.

For Petitioner : Mr.A.L.Somayaji
Senior Counsel for M/s.AAV Partners

For Respondents: Mr.B.Vijay
Additional Government Pleader

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari calling upon the records of the entire proceedings in Proc. No. 7868 / CEA / 2021 on the file of the 2nd respondent and quash the order dated 18.10.2021 passed by the 2nd respondent.

2.The case of the petitioner is that the petitioner Hospital was established in the year 1985 and the said Hospital is offering excellent patient care for the past 35 years with well

qualified doctors and it offers a number of medical services and have an unblemished record of service for the past 35 years. The allegation against the petitioner is that one patient named Kiruthika aged 23 years was brought to the Kumarasamy Hospital on 18.07.2020 and she was 39 weeks and 2 days pregnant . The doctor named Sangeetha examined her and found that her vitals were stable. At about 4 pm, due to non progress of labour, Dr.Sangeetha decided for a Caesarean Surgery and the patient was shifted to the operation theatre, where she delivered a live girl baby at 8.48 p.m and the baby girl was healthy and there was no sign of abnormality to the patient. When the said Doctor treating another pregnant patient, it was informed to her that the patient Kiruthika went in for sudden cardiac arrest. After first aid treatment, she was shifted to another hospital for intense cardiac monitoring, which is about 2 kms from the petitioner hospital in a fully equipped ambulance. In spite of the doctors effort, the patient went in for cardiac arrest and declared dead at 4.30 am on 19.07.2020. After the death of the patient Kiruthika, the new born girl baby was brought to the petitioner Hospital and kept under observation on the same day. While being so, the relatives of the patient wanted an explanation regarding the death of the patient and the doctors also gave a satisfactory explanation. After six months, suddenly on 04.02.2021, the husband of the patient, wrote a letter to the District Secretary, Erode District Consumer Protection Centre, alleging that his wife died due to medical negligence of the doctors and requested to take action, for which the said Dr.Sangeetha wrote a detailed reply denying the allegations and as the said reply was satisfactory, the husband of the deceased did not follow up with the complaint.

3.While such being the position, one Mr.Senthilmurugan wrote a complaint to the National Human Rights Commission (NHRC), New Delhi, alleging that the death of the patient Kiruthika was due to the medical negligence of the said Doctor. Upon receiving the complaint, NHRC forwarded the same to the Joint Director of Health Services, Erode and Director of Medical and Rural Health Services, Chennai. The Director of Medical and Rural Health Services, Chennai, vide letter dated 13.10.2021, has requested the Tamil Nadu Medical Council to take action against the persons responsible for the death of the patient and thereby, the Registrar of Tamil Nadu Medical Council issued summons dated 15.10.2021, directing the Doctors who treated the patient, to appear before them on 21.10.2021 at 10 am at the office of the Tamil Nadu Medical Council, Arumbakkam, Chennai. In the meantime, the Competent Authority, under the Tamil Nadu Clinical Establishments (Regulation) Act, 1997, issued a notice to the Kumarasamy Hospital on 15.10.2021, calling upon the said Doctor to appear for enquiry, and pursuant to the said notice, the said Doctor appeared before the District Competent Authority.

However, the District Competent Authority, without giving any adequate time to her explanation and without following the principles of natural justice, passed an order to suspend the registration granted to Kumarasamy Hospital. Aggrieved by the same the present Writ Petition is filed.

4. The learned Senior counsel appearing for the petitioner submitted that though the petitioner Hospital is a multi-speciality Hospital, the 2nd respondent passed order of suspending and closing the entire hospital for the allegations of not following the protocol in one speciality and further the petitioner Hospital was deprived of the opportunity to put forth their stand. Since the impugned order has been passed without giving sufficient opportunity, it has caused irreparable prejudice to the petitioner Hospital and also loss of reputation and therefore, this Court may set aside the order impugned in this Writ Petition and remand the matter back to the 2nd respondent for fresh consideration for compliance of principles of natural justice and to pass orders in accordance with law.

5. The learned Additional Government Pleader appearing for the respondents has drawn the attention of this Court to the counter affidavit of the 2nd respondent and stated that an enquiry was conducted on 16.10.2021 with a team of doctors and statement given by the doctors and staff nurse of M/s. Kumarasamy Hospital and Sudha Hospital were also recorded. From the statement recorded, the enquiry team noticed missed opportunities, while giving treatment to the patient and further it was proved in the enquiry that all investigation report at Sudha Hospital were created to support Kumarasamy Hospital. Therefore, as per the powers delegated under Section 5 of the Tamil Nadu Clinical Establishment Regulation Act, 1997, the 2nd respondent has rightly suspended the registration in public interest. It is further submitted that Proviso to Section 5 of the said Act, clearly stipulate that where the competent authority is of the opinion that it is necessary or expedient so to do in public interest, it may, for reasons to be recorded in writing, suspend the registration of any private clinical establishment without issuing any notice and therefore, the said order does not warrant interference and hence prays for dismissal of this petition.

6. This Court has carefully considered the rival submissions and also perused the materials available on record.

7. The facts are not in dispute. Though the patient died on 19.7.20, complaint was filed by the husband of the deceased before the Erode District Consumer Protection Centre alleging medical negligence and to the said complaint, the doctor, who attended on the deceased, had filed a detailed reply and

pursuant to the said reply, no follow up action was made. However, after a passage of about six months, one Senthilmurugan had made a complaint before the National Human Rights Commission (NHRC) alleging that the death of the deceased was due to medical negligence. Upon forwarding of the complaint by NHRC, Director of Medical & Rural Services had requested to take action against the persons responsible for the death of the deceased, which resulted in the summoning of the Tamil Nadu Medical Council summoning the doctors, who treated the patient vide an undated communication, which was received by the doctor at 9.00 p.m. on 15.10.2021 to appear on 16.10.2021. The above sequence of events are also not disputed by the parties.

8.The whole genesis of the issue pertains to the order that is alleged to have been passed on 18.10.2021. First of all, it is the stand of the petitioner that the impugned order has been passed in a hasty manner on 18.10.2021 without complying with the principles of natural justice. It is the pointed submission of the learned senior counsel for the petitioner that the summons was served on the doctor only at 9.00 p.m. on 15.10.2021 for an enquiry to be held on 16.10.2021. No time was granted to the petitioner to submit the relevant particulars to absolve itself from the imputations. It is the further stand of the petitioner that without giving reasonable time to the petitioner, the order has been passed on 18.10.2021.

9. The notings on the summons reveal that the summons was served on the doctor, who treated the deceased on 15.10.2021 at 9.00 p.m. The summons reveal that enquiry has been fixed at 11.00 a.m., on 16.10.2021. The summons is undated. From the above, it is amply clear that even the mandatory compliance of principles of natural justice has not been adhered to by the respondents. The respondents ought to have granted time to the petitioner to put forth their submissions and to place the requisite documentary evidence in support of their stand. However, the summons having been issued on 15.10.2021 at 9.00 p.m. and the enquiry having been fixed on 16.10.2021 at 11.00 a.m., clearly reveals that there has been total violation of principles of natural justice. In that the petitioner has not been given even the basic time to collate the materials and place the same before the enquiry.

10.Further, a perusal of the impugned order, it is evident that a finding has been recorded that the enquiry reveals that all the investigation reports in Sudha Hospital were created to support Kumarasamy Hospital. However, it is to be pointed out that no summons have been issued to Sudha Hospital to submit itself to enquiry. In the absence of the said hospital being submitted to enquiry, the finding recorded that the reports were created in Sudha Hospital for supporting Kumaraswamy Hospital is not borne out by record. Even the impugned order does not show

that Sudha Hospital had partaken in the enquiry. Further, the enquiry with the petitioner was conducted on 16.10.2021 and the impugned order has been passed on 18.10.2021. No material is available on record to show about the enquiry conducted with Sudha Hospital. The records of Sudha Hospital would be available only with the said hospital and in the absence of Sudha Hospital being subjected to enquiry, the recording of finding that the investigation reports in Sudha Hospital were created for supporting Kumarasamy Hospital does not merit acceptance.

11.It has been time and again held by the Courts that adhering to principles of natural justice is the hallmark of an unbiased mind and conduct of proper enquiry. Further, Clause 5 of the Tamil Nadu Private Clinical Establishments (Regulation) Act, 1997 mandates giving reasonable opportunity of being heard to the private clinical establishment before the competent authority could pass any orders for breach of any of the provisions of the Act and the Rules made thereunder. Further, the proviso to the said clause also prescribes that licence should stand suspended with immediate effect, in public interest, on the death of a person, who is alleged to have died due to medical negligence. However, in the case on hand, the complaint itself has been lodged after a delay of six months.

12.The above materials clearly establish that the order has not only been passed in haste, but the petitioner has not been provided with an opportunity in a manner known to law to put forth its case and in the absence of the same, the impugned order suffers the vice of illegality and definitely it warrants interference at the hands of this Court.

13.For the reasons aforesaid, this writ petition is liable to be allowed. Accordingly, the writ petition is allowed and the impugned order passed by the 2nd respondent dated 18.10.2021 is set aside and the matter is remanded to the 2nd respondent for fresh consideration and the 2nd respondent shall pass orders on merits and in accordance with law after affording an opportunity of hearing to the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. State Competent Authority
Tamil Nadu Clinical Establishment (Regulation) Act, 1997/
Director of Medical and Rural Health Services,
Chennai 600 006.
2. The District Competent Authority,
Tamil Nadu Clinical Establishment (Regulation) Act, 1997,
Erode.

+1cc to M/s.AAV Partners, Advocate, S.R.No.63922

+1cc to the Government Pleader, S.R.No.63511

W.P.No.22891 of 2021

SMI (CO)
RGA(24/01/2022)