

**IN THE HIGH COURT OF ORISSA AT CUTTACK**  
**W.P.(C) No.10103 of 2022**

***M/S Apollo Clinic Specimens Holdings Ltd.*** .... ***Petitioner(s)***

Mr.B.Panigrahi,  
Advocate

-versus-

***State of Odisha & Ors.*** .... ***Opposite Party(s)***  
Mr.R.P.Mohapatra,  
AGA

**CORAM:**  
**JUSTICE BISWANATH RATH**

**ORDER**  
**26.04.2022**

**Order No.**

02.     1.     On consent of the parties including the State Counsel for the case is to be decided on principle based on the law prevailing on land, the matter is taken up for final hearing.
2.     Heard learned counsel appearing for the parties.
3.     This Writ Petition involving the following prayer:-  
              “The Petitioner therefore humbly prays that this Hon’ble Court may graciously be pleased to allow this petition and be pleased to direct the following:-
- a) To set aside/ quash the order dtd.05.04.2022 under Annexure-12.
  - b) To grant the renewal of registration certificate of Apollo Clinic situated at Bhabanagar, Berhampur;
  - c) To allow the functioning of the clinic whilst the pending renewal under deemed renewal clause until the same is granted or revoked by the authorities;
  - d) and further be pleased to pass any other order/orders as may be deemed fit and proper.

And for this act of kindness, the petitioner shall as in duty bound ever pray”.

4. At the outset Mr.Panigrahi, learned counsel for the Petitioner has the submission that the order at Annexure-12 instead of being passed by the Supervising Authority has been passed by the concerned Chief District Medical Officer Referring to Rule-3 and Sub-Rule of Odisha Clinical Establishments (Control and Regulation) Rules, 2018 more particularly reading through the Sub- Rules-5, 6 and 7 therein, Mr. Panigrahi, learned counsel for the petitioner has attempted to demonstrate that for the provisions in the Odisha Clinical Establishment ( Control and Regulation) Rules, 2018 (for short “the Rule 2018”) the Supervising Authority is the only Competent Authority to take a final call in the matter of registration and or renewal of the establishment concerned.

5. Taking this Court to the manner of disposal of the renewal application involving the petitioner vide Annexure-12 and the Authority passing such order, Mr. Panigrahi, learned counsel contended that the impugned order must fail for not been in terms of the provision of Rules 2018 and further also being passed by the incompetent authority.

6. Mr. Mohapatra, learned Additional Government Advocate though attempted to bring the issue of provision of appeal involving the impugned order in reference to Section 9 of the Act 1990, however has no dispute on the question of Supervising Authority being the Competent Authority to take up the application for renewal involved herein.

7. Reading through the provision at Section 9 of Odisha Clinical Establishment (Control & Regulation) Act 1990, herein after called as Act 1990, this Court finds, Section 9 of Act 1990 has prescription of

appeal but however if the impugned order involves passed by the Competent Authority the Supervising Authority. For the order impugned passed by the Chief District Medical Officer, this Court finds Section 9 has no application to the case at hand. Thus this Court proceeds for final hearing of the writ application on the ground agitated and indicated hereinabove.

8. Considering the rival contentions, adverting to the question as to whether the Chief District Medical Officer, Ganjam, Berhampur is competent to take a decision in the matter of renewal of application involved herein under the provisions of Rule 18 herein above? Reading through to the Provision in the rule, there is no dispute that the case at hand is governed under the Odisha Clinical Establishment (Control and Regulation) Rules, 2018. Reading through the rules, this Court finds Rule 3 particularly Sub-Rule 5,6 and 7 therein reads as follows:-

***“3. Application for Registration:-***

**XXX XXX XXX**

(5) The Supervising Authority, on receipt of an application for grant of certificate of registration or renewal thereof, shall transmit the same to the Inspecting Authority within the period of seven working days from the date of receipt of the application for scrutiny to ascertain if the application is in conformity with the provisions of the Act and the rules and also conduct physical inspection of the premises where the clinical establishment is proposed to be established.

(6) The Inspecting Authority shall ascertain the availability of the minimum standard of requirements and whether other parameters as specified in different Schedules have been complied and shall send the report of inspection in Form ‘B’ to the Supervising Authority who shall consider the same keeping in view the conditions stipulated in Section 5 and after being satisfied that there is no objection to grant certificate of

registration, he shall issue such certificate in Form 'C' within a period of forty five days from the date of receipt of such application.

(7) In case of refusal of grant of Certificate of Registration or renewal, the Supervising Authority, shall inform the applicant in writing indicating clearly the deficiencies or causes of rejections, with a direction to comply the deficiencies within a period of one month for consideration”.

Reading through the above provision there cannot be any doubt that it is only on the Supervising Authority has the scope of dealing with an application either for registration or renewal submitted by the Clinical Establishment. It is at this stage of the matter, taking into consideration the rival contentions of the parties, the grounds involved in the writ application and the impugned order at Annexure-12, this Court finds when the aforesaid provision provides power with the Supervising Authority the application for renewal at the instance of the petitioner involved herein has been considered and decided by the Chief District Medical and Public Health Officer, Ganjam, Berhampur. The consideration process by the Authority appears to be without jurisdiction and by an incompetent person under Rule, 2018. Such order must fail. Law is also fairly settled holding that if a thing is required to be done in a particular manner it has to be done in that manner or not at all.

9. In the process this Court interfering in the order at Annexure-12 sets aside the same. However, since there is requirement of consideration of the renewal application by the Supervising Authority in terms of Rule 3 of the Rule 2018, the matter is remitted back to the Opposite Party No.2 to give a fresh consideration to the renewal application and pass order strictly in terms of the Rule 2018 by completing the entire exercise within a period of one months from the

date of communication of certified copy of this order by the petitioner at least within a period of one week hence.

**10.** The writ petition succeeds but with an order of remand and with the direction made hereinabove.

***(Biswanath Rath)***  
***Judge***

*S.P. Dash*

