



WEB COPY

W.P.No.20958 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

**W.P.No.20958 of 2021 &
W.M.P.No.22225 of 2021**

Dr.M.Govindharaj

... Petitioner

VS.

1.The District Collector,
Dharmapuri District,
Dharmapuri.

2.The Joint Director,
Medical and Rural Health Services,
Dharmapuri,
Dharmapuri District.

3.The Tahsildar,
Marandhahalli,
Dharmapuri District.

4.The Medical Officer,
Government Hospital,
Palacode,
Dharmapuri District.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the fourth respondent vide his proceedings



ந.க.எண்.1190A/ந/2021 dated 13.09.2021 and quash the same as illegal nad consequently to direct the respondents to remove the lock and seal at Sri Venkateshwara Ayush Poly Clinic situated at 304/1, Sathiram Street, Four Road, Marandhahalli, Dharmapuri District within the period that may be stipulated by this Court.

For Petitioner : Mr.V.Ragavachari,
for Mr.K.Shankar

For Respondents : Mr.B.Vijay
Additional Government Pleader

ORDER

This writ petition has been filed challenging the order dated 13.09.2021 passed by the fourth respondent under which the petitioner's Homeopathy Clinic in the name of Sri Venkateshwara Ayush Poly Clinic situated at 304/1, Sathiram Street, Four Road, Marandhahalli, Dharmapuri District has been sealed. The petitioner's clinic has been sealed on the ground that a patient who had come to the clinic died due to the negligence of the petitioner in administering allopathic drugs.

2. The petitioner has challenged the impugned order on the ground that without jurisdiction and without any statutory provisions, the impugned



order has been passed sealing the petitioner's clinic. It is also contended by the petitioner that he has been running the clinic for the past 17 years without any blemish and the respondents have sealed the petitioner's clinic, for no fault of his and without any evidence.

3. A counter affidavit has been filed by the second respondent stating that the petitioner has administered the allopathic medicines without any license and his clinic is also not registered under the provisions of the Tamil Nadu Clinical Establishment Act. Due to the petitioner's negligence, a victim died and an FIR has also been registered against the petitioner which is still pending.

4. Heard Mr.V.Ragavachari, learned Senior Counsel representing Mr.K.Shankar, learned counsel for the petitioner and Mr.B.Vijay, learned Additional Government Pleader appearing for the respondents.

5. At the outset, learned counsel for the petitioner would submit that the petitioner is having a valid licence to practice in the homeopathy system of medicine under the Tamil Nadu Homeopathy System of Medicine and



Practitioners of Homeopathy Act, 1971. The said licence is also produced before this court and is valid till date. According to him, a patient came to the hospital on 11.09.2021 at 8.30 am and he died on 12.30 pm on the very same day within four hours. Therefore, it cannot be inferred that the death of the victim has happened due to the negligence of the petitioner.

6. However, learned Additional Government Pleader appearing for the respondents relying upon the counter affidavit stated that the post-mortem report for the victim reveals that he died due to the complications of Pulmonary Oedema as a result of Drug induced Type-I Hypersensitive Anaphylactic Reaction (IGE Mediated). Therefore, according to him only due to the sheer negligence of the petitioner, the victim died and therefore, the impugned order has been rightly passed sealing the premises of the petitioner's clinic. He would also submit that the petitioner's clinic is not registered under the provisions of Tamil Nadu Clinic Establishment (Regulation) Act. However, the same is disputed by the learned counsel for the petitioner and would categorically contend that in the year 2019 itself the petitioner had applied for registration under the Tamil Nadu Clinic Establishment Regulation Act. Learned counsel for the



petitioner would further submit that since the application is still kept pending, the petitioner cannot be found fault with.

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7. Learned counsel for the petitioner on instruction has undertaken that the petitioner shall not operate his homeopathic clinic till his request for reconsideration of the impugned order is considered on merits and in accordance with law after affording a fair hearing to the petitioner.

8. As seen from the impugned order, the contentions raised by the petitioner in this writ petition have not been considered. The petitioner has also not been heard in the impugned proceedings. The petitioner has also produced his licence for running a homeopathic clinic which has been issued as per the provisions of the Tamil Nadu Homeopathy system of Medicine and Practitioners of Homeopathy Act, 1971.

9. Since the contentions of the petitioner as raised in this writ petition have not been considered in the impugned order, this Court is of the considered view that being a non speaking order and being an order which has been passed by violating the principles of natural justice without hearing



the petitioner, the impugned order will have to be necessarily quashed and the matter will have to be remanded back to the fourth respondent for fresh consideration on merits and in accordance with law after affording a fair hearing to the petitioner including granting him the right of personal hearing.

10. Learned counsel for the petitioner in the presence of his client (petitioner) has submitted that the petitioner undertakes that until final orders are passed within a time frame to be passed by this Court, the petitioner shall not practice Homeopathic or any other form of medicine in the subject clinic. However, learned counsel for the petitioner requests this Court to direct the respondents to immediately remove the seal of the petitioner's clinic to enable the petitioner to have free access to his residence. The request made by the learned counsel for the petitioner is reasonable.

10. For the foregoing reasons, the impugned order dated 13.09.2021 is hereby quashed and the matter is remanded back to the fourth respondent for fresh consideration and the fourth respondent shall consider the matter



afresh on merits and in accordance with law and pass final orders after affording a fair hearing to the petitioner including granting him the right of personal hearing, within a period of four weeks from the date of receipt of a copy of this Order. Till final orders are passed, the petitioner shall not use the premises for practicing the homeopathic or any other form of medicine and shall use the same only for his residential purposes. The seal of the petitioner's premises shall be immediately removed by the respondents.

11. With the aforesaid directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

11.07.2022

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Index:Yes/No

Internet:Yes/No

Speaking/Non-speaking orders



ABDUL QUDDHOSE, J.
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