



W.P.(MD)No.23009 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.09.2022

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THE HONOURABLE Mrs. JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition (MD) No.23009 of 2021

Selvi, W/o.Kumaresan

.. Petitioner

Versus

1.The Tahsildar,
Guzilamparai,
MDR 650, Guzilamparai,
Dindigul District – 624 703.

2.The Secretary,
Tamil Nadu Medical Council,
No.914, Poonamallee High Road,
Amaravathi Nagar, Arumbakkam,
Chennai – 600 106.

3.The State,
Rep. by Inspector of Police,
Guzilamparai Police Station,
Dindigul District.
(Crime No.523 / 2021)

.. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the respondents to break open the seal of the petitioner's Pharmacy, situated at No.54/190B, Main Road, Guzilamparai Post, Vedasandur Taluk, under the name of KPS Medical, so as to enable the petitioner to run the Pharmacy.

For Petitioner : Mr.N.Anandakumar

For 1st Respondent : Mr.D.Sadiq Raja
Additional Government Pleader



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For 2nd Respondent : Mr.C.Karthick
For 3rd Respondent : Mr.B.Thanga Aravindh
Government Advocate
(Crl. side)

ORDER

The petitioner has prayed for issuance of a Writ of Mandamus, directing the respondents to break open the seal of her Pharmacy, namely, K.P.S. Medical, situated at No.54/190B, Main Road, Guzilamparai Post, Vedasandur Taluk, so as to enable her to run the Pharmacy.

2.The learned counsel for the petitioner submits that the petitioner was running a Pharmacy under the name and style of "K.P.S. Medical" since 2005, for nearly about 16 years at Door No.54/190B, Main Road, Guzilamparai Post, Vedasandur Taluk. The petitioner's husband namely, Kumaresan died on 05.04.2020 due to jaundice, leaving the petitioner and her two minor children. The learned counsel further submits that one Dr.Chokkaiyyan was running a clinic under the name and style of "Kumar Clinic" adjacent to the petitioner's Medical Shop. Due to COVID-19 Pandemic, the said Doctor used to treat the patients in the said premises and the petitioner used to open the Pharmacy premises alone irrespective of the Clinic being opened or closed, so as to dispense the medicines as per the prescription issued by the Doctors. This being so, on 29.06.2021 at 12.00 pm., Mr.P.Elango, M.B.B.S., Block Medical



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Officer, Primary Health Centre, Guzilamparai, along with officials made inspection at Kumar Clinic, claiming that the petitioner is running the said Clinic and seized medicines from the Pharmacy and based on the complaint given by him, an F.I.R. in Crime No.523 of 2021, on the file of Guziliamparai Police Station was registered as against the petitioner and one Kaliyammal, who was working under the petitioner under Section 420 of I.P.C. read with Section 15(3) of the Indian Medical Council Act, 1956.

3.The learned counsel for the petitioner further submits that the charges levelled against the petitioner are false and she has obtained licence for running the Pharmacy from the appropriate authorities. Further, the petitioner is not prescribing any medicine in the field of Allopathy. The petitioner has also got an order of anticipatory bail from this Court in respect of the aforesaid crime number on 14.09.2021 in CrI.O.P.(MD)No.11867 of 2021 after furnishing an affidavit of undertaking that at no point of time, she practiced Allopathy medicine as well as in future also, she will not indulge in any such practice of Allopathy medicine apart from running the Pharmacy. Pursuant to the registration of the F.I.R., the petitioner's medical shop has been sealed by the first respondent on 29.06.2021 itself and for the past one year, the said shop has been closed, without any fruitful income. The petitioner, who is a widow and having two children, is a registered Pharmacist and running the



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Medical Shop for their livelihood without any blemish for the past 16 years and therefore, she seeks the indulgence of this Court to direct the respondents to break open the seal of her Pharmacy.

4.The learned counsel for the petitioner further submits that the petitioner is willing to abide by any of the conditions, being imposed by this Court.

5.The learned Additional Government Pleader appearing for the first respondent has produced a copy of the communication of Dr.P.Elango, M.B.B.S., Block Medical Officer, Primary Health Centre, Guziliamparai, who gave the complaint against the petitioner, addressed to the Government Pleader, dated 03.01.2022, wherein, it has been stated the petitioner has studied D.Pharm and the case registered against her is pending and there is no impediment for her to run the medical shop and he would make periodical inspections in the medical shop confirming that there is no such incidence takes place.

6.The second respondent filed a counter affidavit stating that the Tamil Nadu Medical Council caters the registrations of registered Medical Practitioners, practicing or completing their study in the State of Tamil Nadu,



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Pondicherry and Andaman and Nicobar Islands. The Indian Medical Council Act, 1956 empowers the Medical Council of India (MCI) to make regulations for the professional conduct of Doctors. The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, notified by the MCI in the year 2002, govern the regulation of professional conduct, ethics and etiquette for registered medical professionals. The Tamil Nadu Medical Council adopted the above Regulations as "The Tamil Nadu Medical Council Code of Medical Ethics (Professional Conduct, Etiquette and Ethics) Regulations, 2003". As per Regulation 1.1.3 of the said Regulations, no person other than a Doctor having qualification recognized by the Medical Council of India and registered with Medical Council of India/State Medical Council is allowed to practice modern system of Medicine or Surgery. During the surprise inspection, it is found that the petitioner was practicing Allopathy medicine without qualification recognized by the Medical Council of India and the materials seized from the premises would show that she was practicing Allopathy medicine and therefore, her Medical shop was sealed as per the Rules and Regulations and prayed for dismissal of the Writ Petition.

7.Today, when the matter is taken up for hearing, the petitioner has filed an affidavit, dated 12.09.2022, undertaking that in future, she will sell only medicines with prescriptions and she will not practice any Allopathy medicine



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and run the K.P.S. Medical Shop beyond any controversy. The aforesaid undertaking of the petitioner is recorded.

8.In view of the above, this Court directs the respondents to break open the seal of the petitioner's pharmacy forthwith. The petitioner is permitted to sell Allopathy medicines in her Medical shop and she will not practice any Allopathy medicines. The petitioner is directed to remove the name board "Kumar Clinic". The Block Medical Officer, Primary Health Centre, Guziliamparai, shall make periodical inspections in the petitioner's Medical shop, without giving any earlier intimation to anybody and file his report to the Police Department in case of violation. It is made clear that if the petitioner violates any of the conditions, her licence should be cancelled by the authorities concerned.

9.This Writ Petition stands disposed of with the above directions. No costs.

Index : Yes/No
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V.BHAVANI SUBBAROYAN, J.

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