

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.693/2023

Mr Anthony Joseph Savio Furtado, son
of late Mr Diogo Menino Inacio
Furtado, age 51 years, Advocate, R/o.
H.No.364, Gabriel Cruz West, Utorda,
Salcete-Goa 403713.

... PETITIONER

Versus

1. State Of Goa through its Chief
Secretary, having office at Secretariat,
Porvorim, Goa.

2. The District Collector, Chairman,
The District Registering Authority,
South Goa District, 4th Floor, Mathany
Saldhana Administrative Complex,
Margao, Goa.

3. The District Registering Authority,
through the Member Secretary, The
Medical Superintendent, South Goa
District Hospital, Margao, Goa.

4. Dr. Suyog Samuel Arawattigi,
C/o. Dr. Nagzarkar Hospital and
Clinic, 1st Palvem, Chinchinim, Salcete
Goa.

... RESPONDENTS

Mr Abhay Nachinolkar with Mr Siddhant Dhakankar, Advocate
for the Petitioner.

Mr D. Pangam, Advocate General with Mr Deep Shirodkar,
Additional Government Advocate for the State.

Mr Parag Wagle, Advocate for Respondent No.4.

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

DATED: 18th OCTOBER 2023

ORAL JUDGMENT: (Per M. S. Sonak, J.)

1. Heard Mr Abhay Nachinolkar for the petitioner, Mr D. Pangam, learned Advocate General, appears with Mr P. Arolkar, learned Additional Government Advocate for the State and Mr Parag Wagle for respondent no.4.
2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.
3. Petitioner's complaint in this petition is that the 4th respondent is operating a full-fledged clinical establishment under the name and style of "Nagzarkar Hospital & Clinic" at Chinchinim, Salcete, Goa without any provisional or final registration under the Goa Clinical Establishments (Registration And Regulation) Act, 2019 (said Act). The Petitioner contends that this is a flagrant breach of Section 8 of the said Act, and the Authorities, despite complaints, are taking no action.

4. The said Act entered into force on 23.09.2019, and it extends to the whole of the State of Goa.

5. The expression “clinical establishment” is defined under Section 2(c) of the said Act and reads as follows: -

“2(c) “clinical establishment” means, -

(i) a hospital, maternity home, nursing home, dispensary, clinic, sanatorium or an institution, by whatever name called, that offers services, facilities requiring diagnosis, treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicine established and administered or maintained by any person or body of persons, whether incorporated or not; or

(ii) a place established as an independent entity or part of an establishment referred to in sub-clause (i), in connection with the diagnosis or treatment of diseases where pathological, bacteriological, genetic, radiological, chemical, biological investigations or other diagnostic or investigative services with the aid of laboratory or other medical equipment, are usually carried on, established and administered or maintained by any person or body of persons, whether incorporated or not and shall include a clinical establishment owned, controlled or managed by -

(a) the Government or a Department of the Government;

(b) a trust, whether public or private;

(c) a corporation (including a society) registered under a Central, Provincial or State Act, whether or not owned by the Government;

(d) a local authority; and

(e) a single doctor/group of doctors, but does not include the clinical establishments owned, controlled or managed by the Armed Forces.

Explanation. - For the purpose of this clause, "Armed Forces" means the forces constituted under the Army Act, 1950 (Central Act 46 of 1950), the Air Force Act, 1950 (Central Act 45 of 1950) and the Navy Act, 1957 (Central Act 62 of 1957);"

6. Section 8 of the said Act provides that no person shall run a clinical establishment unless it has been duly registered in accordance with the provisions of the said Act. Section 9 provides for the conditions for registration.

7. Sections 11 to 20 of the said Act deal with provisional registration. Sections 21 to 28 are concerned with permanent registration. Section 29 deals with the cancellation of registration. Under Section 34 of the said Act, the authority, as defined under Section 2(a) of the said Act, is required to maintain a register of clinical establishments.

8. Chapter V of the said Act deals with penalties. Section 38(1) of the said Act provides that whoever carries on a clinical establishment without registration and in contravention of Section 8 shall be punishable with summary closure of the facility and a fine, which may extend to Fifty Thousand Rupees for first

contravention, Two Lakhs Rupees for second contravention and Five Lakhs Rupees for any subsequent contravention.

9. Besides, Section 38(2) provides that whoever carries on a clinical establishment or appoints any person therein or carries on a Clinical practice without the required medical qualifications shall be punishable with a fine of Rupees One Lakh, and the registration of such clinical establishment shall be cancelled.

10. Section 3 of the said Act provides for the constitution of the council for clinical establishments, and Section 7 provides for setting up an authority as defined under Section 2(a) to be called the District Registering Authority for each district for registration of clinical establishment.

11. Learned Advocate General submits that the authority as defined under Section 2(a) of the said Act is already constituted and functioning. He states that a notification constituting a Council under Section 7 has also been issued.

12. The allegation in the petition is that the hospital, which the 4th respondent is operating, has neither provisional nor permanent registration under the said Act. Regarding provisional registration, Mr Wagle has produced an Order dated 05.06.2023 and an Addendum dated 30.08.2023 to the said order.

13. On perusing the Order, we find it difficult to accept that this constitutes provisional registration. Firstly, this order is made

only by the Chairperson of the District Registering Authority and not by the authority itself, which is the requirement of the said Act. Secondly, this order was made in the context of certain civil disputes which are not strictly speaking relevant at least for the purpose of the issue raised in this petition.

14. Be that as it may, even if the Order dated 05.06.2023 read with Addendum dated 30.08.2023 is to be regarded as some provisional registration, in terms of Section 20 of the said Act, even the time limit for such provisional registration can be two years from the date of notification of standards in case of clinical establishments which came into existence before the commencement of the said Act.

15. Mr Nachinolkar has pointed out that the standards for clinical establishments were notified on 08.07.2021. Accordingly, the validity of the provisional registration, if at all, would expire by 08.07.2023. As of date, therefore, there is neither provisional registration nor any permanent registration.

16. The learned AG also confirmed the position that the clinical establishment operated by the 4th respondent has neither a valid provisional nor a permanent registration under the said Act. He submitted that such an operation is not legal and would amount to the contravention of the provisions of the said Act.

17. In terms of Section 8 of the said Act, no person shall run a clinical establishment unless it has been duly registered in

accordance with the provisions of the said Act. As noted earlier, the said Act also provides for penalties for operating a clinical establishment without registration in accordance with the provisions of the said Act.

18. Mr Wagle, based on instructions from the fourth respondent, now states that the operations at the hospital would be stopped from this evening itself and, in any case, from tomorrow, i.e. on 19.10.2023. Mr Wagle further states that presently, only eight to ten patients have been admitted to the hospital, and their health situation is such that they can be easily discharged by today or, at the latest by tomorrow. On instructions, he states that such discharge will not interfere with their treatment in any manner. We accept this statement.

19. Otherwise, we were contemplating a direction upon a doctor from the Government District Hospital to visit the fourth respondent's clinical establishment, examine the admitted patients and make all arrangements for their treatment or transfer to Government or private hospitals as per the choice of the said patients and their relatives. However, now that Mr Wagle, on instructions assures us that eight to ten patients who are admitted can be discharged by this evening or, at the latest, by tomorrow without any medical issues, we do not adopt the course of action which we had earlier proposed.

20. Mr Wagle further states that the fourth respondent had on 29.09.2023, applied for provisional registration. However,

considering the provisions of the said Act, it is apparent that the fourth respondent will have to apply for permanent registration.

21. Accordingly, Mr Wagle states that the application for permanent registration will be made as early as possible and, in any case, within ten days from today. He requests that some directions be issued to the District Registering Authority to dispose of the application for registration expeditiously.

22. Accordingly, we direct the District Registering Authority to dispose of the fourth respondent's application for permanent registration as expeditiously as possible and in any case within forty-five days from the receipt of the fourth respondent's application. The fourth respondent must ensure that the application is complete in all respects and must also cooperate in matters of inspection, etc.

23. Learned Advocate General points out that the said Act contemplates inviting objections, and a thirty-day time period is required to be provided for that purpose. Accordingly, we clarify that the fourth respondent's application must be disposed of in accordance with law and not otherwise.

24. At the request of Mr Wagle, we clarify that if and when the fourth respondent obtains permanent registration under the said Act, the fourth respondent would be allowed to re-open and re-commence the clinical establishment. This is subject to compliance with all or any other legislation or rules in force.

25. Further, at the request of Mr Wagle, we clarify that nothing in this order is intended to disturb the fourth respondent's alleged possession or otherwise affect or influence any civil disputes regarding the possession, title, etc., to the premises from which this clinical establishment was being operated. All such matters will abide by the orders that the competent civil courts or other authorities shall make.

26. The statements made by Mr Wagle based on instructions from the fourth respondent are accepted as undertakings to this Court, and the fourth respondent will have to abide by the same.

27. The Rule in the petition is disposed of in the above terms.

28. There shall be no order for costs. All concerned to act on an authenticated copy of this Judgment and Order.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.