

03.01.2024
Item No.12
RP/KC
Ct. No.1

MAT 2249 OF 2023
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IA NO.CAN 1 of 2023
Mandalkuli Health Point Hospital Pvt. Ltd.
Vs.
The State of West Bengal & Ors.

Mr. Srijit Chakraborty
Mr. Pankaj Agarwal
Mr. Debaki Nandal Maity
Ms. Akshita Singh
.....for the Appellant

Mr. Tapan Mukherjee
Mr. Somnath Naskar
Mr. Sabyasachi Bhattacharjee
.....for the State

1. This intra-Court appeal is directed against the order dated 02.11.2023 passed in WPA 25782 of 2023. In the said writ petition the appellant had challenged the order dated 17.10.2023 passed by the respondent authority holding that the functioning of the appellant clinical establishment has to be stopped with effect from 17.10.2023. It has been stated in the said order which is a notice for “temporary closure of clinical establishment” that the application for “Renewal of Registration of License” submitted by the appellant for the period from 14.07.2023 to 13.07.2023 under the West Bengal Clinical Establishments (Registration, Regulation and Transparency) Rules, 2017 (in short “2017 Rules”) could not be considered owing to

violation of Sub-section 4 of Section 12 of the West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017 (in short “2017 Act”).

2. The contention of the learned advocate for the appellant is that the notice of temporary closure is in total violation of provisions of Sections 13 and 14 of the 2017 Act, more particularly, the appellant is entitled for the benefit of deemed renewal since if an application renewal was not disposed of within the period of 90 days, the licence deemed to have been renewed as per Rule 29(8) of the 2017 Rules. It is further submitted that there has also been gross violation of principles of natural justice before issuing the notice of temporary closure.
3. The learned advocate appearing for the government would contend that the reasons for ordering temporary closure is clearly set out in the order dated 17.10.2023 inasmuch as the appellant had obtained license by means of misrepresentation of facts, practised fraud, falsifying documents etc.
4. After elaborately hearing the learned advocates for the appellant, the first issue which we need to consider is to whether in terms of Rule 29(8) of the 2017 Rules licence of a clinical establishment can plead that the licence automatically stands extended if the authority does not pass order on his/her

application for renewal within the period of 90 days from the date of receipt of such application. There are other statues and rules, which contain such deemed renewal clause. Very often we have come across various statutes governing Municipal trade licence and building licence containing such deeming provision. In most of such statutory licences, the applications are made online and licences are issued based on the various details furnished by the appellant, but that goes without saying that the licensing authority is entitled to inspect the premises in order ensure that such license conditions have been complied with and whether there has been full and true disclosure of all information called for in the application.

5. There cannot be an indefeasible right for a person who has been granted a license. A licence is non-transferable and there is no automatic renewal of licence. Every renewal is deemed to be a fresh grant. In this background the purpose for which 2017 Rules was framed assumes importance more particularly when the 2017 Act was enacted by the government to provide for registration, regulation and transparency of clinical establishments of the State and for matters connected therewith and incidental thereto. It has been stated in the preamble of the Act that whereas it is expedient, in

the public interest, to provide for registration, regulation and transparency in functioning and activities of clinical establishment license under the Act and to prescribe the minimum standards of facilities and services to be provided by them to the recipients. Thus, the Act has been enacted with the above object to provide for registration, regulation and transparency of clinical establishment. Section 12 of the 2017 Act deals with application for Registration and Licensing which would be applicable for renewal of Registration and Licence as well. Section 13 deals with grant or rejection of application. Rule 35 of the 2017 Rules deals with processing of application and in terms of Sub Rule 1 licencing authority shall supervise the processing of application and conducting inspection or enquiry and to pass the order either grant or refusing such application within 90 days of receiving such application. Sub Rule 5 to 11 provides for various time limits for processing the application and taking note of the Sub Rule 9 which provides for the applicant to carry out the required steps, changes or alterations and intimidating the supervisory authority within 30 days or such period as may be allowed by the supervising authority would go to show that approximately four and a half months time is granted if the time granted under Sub Rule 9

of Rule 35 is taken to be 30 days only. Thus, there prima facie appears to be in consistency in the deeming provisions under Rule 29(8) and Rule 35 under the West Bengal Clinical Establishment Rules, 2003 in Rule 15B provided clinical establishment seeking renewal of one year to correct structural deficiencies if any detected upon inspection. The West Bengal Clinical Establishment Act, 1950 which stands repealed did not provide for any deemed renewal. Some of the other enactments where such deeming provisions finds place are noted. The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act 1994 and Rules 1996 as amended by Rules 2014, under Rule 8.6 states in the event of failure of appropriate authority or to renew the certificate of registration or to communicate rejection of application for renewal of registration within a period of 90 days from the date of receipt of application for renewal, the certificate of registration shall be deemed to have been renewed. Under Rule 28 of the Drugs and Cosmetics Rules, 1945 provides for the existing licence to be deemed to continue in force until orders are passed on the application. Under West Bengal Fire Services Act, 1950, in Section 16 every application for licences are required to be disposed of within 60 days and if not disposed of the

applicant shall not be liable to any penalty under the Act. After a period of 60 days so long as such application is not refused by the Collector. Rule 24A of the Mineral Concessions Rules, 1960 and Clause 59 of the West Bengal Minor Minerals Rules 2016 such mining lease was deemed to have been extended for a further period till the State Government passes the order thereon. Under Section 208 of the West Bengal Municipal Act, 1993 provides for deemed sanctioned but clearly lays down that the deemed sanction is granted as long as the applicant does not contravene the provisions of the Act in executing their work. In the Kerala Clinical Establishment Act, 2019, the Act empowers disciplinary proceedings against the officers responsible for the application if deemed renewed was not according to law. Therefore considering the purpose for which the Clinical Establishment Act and the Rules framed thereunder were enacted in the State of West Bengal, directed that the time lines should be fixed for the authority to take action failing which they will be open for disciplinary proceedings and this will go a long way in making the provisions of the enactments effective. Therefore, we have serious doubt as to whether at all deemed renewal can be provided for under Rule 29(8) of the 2017 Rules considering the purpose

beyond which the 2017 Act was enacted by the State of West Bengal. In our prima facie view the question of deemed renewal may cause serious issues which ultimately will affect the public who come to the concerned clinical establishment for treatment. Therefore, it is high time for the Government of West Bengal to give a serious thought as to whether such deemed renewal provision is to continue in the statute, namely, 2017 Rules. We say nothing more on this aspect or else it will be considered as if this Court assuming the role of legislature in enacting a statute.

6. Reverting back to the facts of the case we find that the appellant's application for renewal of license having been rejected, though beyond the period of 90 days, the appellant is precluded from raising a plea of deemed renewal. Having steered clear of this issue the next issue we need to consider is whether the order of temporary closure dated 17.10.2023 suffers from any illegality. Though it may be true that Section 12(4) of the 2017 Act has been referred to, the appellant has not been informed as to what is the nature of misrepresentation of facts or what is the fraudulent practice adopted by them or what is the nature of falsification of documents done by them or what is unfair means which have been adopted by them. Until and unless the appellant is

made known the exact allegations against it the appellant would not be in a position to put forth its defense. The respondents are bound to disclose full details of the allegations and as to under what circumstances they came to the conclusion that the application of the appellant for renewal of registration cannot be considered for violation of Section 12(4) of 2017 Act. Therefore, while declining to interfere with the order and notice of temporary closure and refusing to quash the said notice/order, we direct the concerned authority, namely, the Chief Medical Officer of Health, Bankura to provide full details based on which the application for renewal of registration was rejected and such information shall be furnished to the appellant within a period of 15 days from the date of receipt of the server copy of this order. On receipt of such information the same shall be treated as a show cause notice by the appellant and appropriate reply along with documents to be submitted by the appellant to the concerned authority who thereafter shall afford an opportunity of personal hearing to the appellant or the authorised representative of the appellant and take a final decision in the matter on merits and in accordance with law.

7. The learned senior government pleader is requested to place a copy of this order before the learned

Advocate General as we have made certain observations as regards the effect of Rule 29(8) of the 2017 Rules.

8. In the result, the appeal and the application are disposed of.

9.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA, J.)