



W.P(MD)No.17969 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.17969 of 2024

and

W.M.P.(MD)No.15397 of 2024

K.Amirthalal

... Petitioner

Vs.

1.The Director of Medical and Rural Health Services,
DMS Complex, No.356, Anna Salai,
Chennai - 600 006.

2.Competent Authority and Joint Director of Health Service,
O/o.The Deputy Director of Health Service,
Tenkasi District, Tenkasi.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records on the file of the 2nd respondent in connection with the impugned order of cancellation of Registration of the petitioner's Surya Nursing Home, functioning at D.No.22/6, Thirumalaikovil Road, Panpoli, Tenkasi District vide his proceedings in order No.5550/S3/2024 dated 11.07.2024 and quash the same as illegal, arbitrary and clear violation of principles of natural justice.

For Petitioner : Mr.G.Thalaimuthurasu

For Respondents : Mr.K.Balasubramani,
Spl. Government Pleader.



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ORDER

WEB COPY Heard the learned counsel on either side.

2.The second respondent on 11.07.2024 passed the following order:

ORDER FOR CANCELLATION OF REGISTRATION OF THE FACILITY UNDER THE TNCEA ACT, SECTION 5(1)(2)

Order No. 5550/53/2024 Date 07/2024

Subject **TNCEA ACT – Tenkasi District – Regarding Cancellation of Registration –**
Surya Nursing Home, No. 22/6, Thirumalaikovil Road, Panpoli,
Shencottai Taluk – Regarding

Reference FORM II CERTIFICATE OF REGISTRATION TNVLALL20190006710 Dated
24.12.2019 Competent Authority & Joint Director of Health Services,
Tenkasi District.

On Date 10.07.2024 an inspection of the facility of Surya Nursing Home, No. 22/6, Thirumalaikovil Road, Panpoli, Shencottai Taluk as per the provisions of the Tamil Nadu Clinical Establishment Act, 1994, was carried out by Competent Authority & Joint Director of Health Services, Tenkasi.

Following Lapses have been found at the facility
Facts and Narration of the lapses

- 1) Unregistered person was found performing medical treatment to general public – Rule 2 (i)
- 2) Records required by the Act were not maintained – Part III-section 11(a) Form III rule 12

As per Tamil Nadu Clinical Establishment Act, 1994, and Tamil Nadu Clinical Establishment (Regulation) Rules, 2018 on account of public interest for above lapses (especially Unregistered person was found performing medical treatment to general public.) the registration of your facility has been cancelled here afterwards.

P. Parvathi
11/7/2024
Competent Authority
& Joint Director of Health Services, Tenkasi
District

To

Thiru. Amirthalal, Proprieter, Surya Nursing Home, No. 22/6, Thirumalaikovil Road, Panpoli, Tenkasi-627807.

copy to : Dr. Babu Shankar, DO., Casualty Medical Officer, Tirunelveli Medical College Hospital, Tirunelveli.



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3.The learned counsel for the petitioner draws my attention to Section 5 of the Tamil Nadu Private Clinical Establishments (Regulation) Act, 1997. It reads as follows:

“5.Suspension or Cancellation of registration: (1) The competent authority may, suo-motu or on complaint, issue a notice to any private clinical establishment to show cause why its registration under this Act should not be suspended or cancelled for the reasons mentioned in the notice.

(2) If after giving a reasonable opportunity of being heard to the private clinical establishment, the competent authority is satisfied that there has been a breach of any of the provisions of this Act or the rules made thereunder of the conditions of registration, it may, without prejudice to any other action that it may take against such private clinical establishment suspend its registration for such period as it may think fit or cancel its registration:

Provided that where the competent authority is of the opinion that it is necessary or expedient so to do the public interest, it may, for reasons to be recorded in writing, suspend the registration or any private clinical establishment without issuing any notice.”

4.The aforesaid provision was considered by me vide order dated 24.05.2024 in W.P.No.13972 of 2024. I had held as follows:

“12. A mere reading of the aforesaid tabulated information would indicate that, if only the second respondent had put the petitioner on notice, probably the impugned order would not have been



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passed. That is why in case after case, Courts have insisted on compliance of the principles of natural justice. Of course, proviso to Section 5 of the Act enables the authority to suspend the registration of any clinical establishment even without issuing any prior notice. But, recourse to the proviso can be taken only in exceptional cases. The authority must form an opinion that it is necessary or expedient so to do in the public interest. Formation of opinion is a condition precedent for invoking the proviso to Sec.5(2) of the Act. Of course, an independent order need not be passed. But, the formation of opinion must be reflected in the impugned order.”

5. In this case, the impugned order does not appear to be one of suspension. The petitioner's license has been permanently cancelled. For doing so, the petitioner ought to have given an reasonable opportunity of being heard. Such an opportunity was not granted in this case. There is egregious violation of principles of natural justice. On this sole ground, the impugned order is set aside.

6. The learned Special Government Pleader submits that liberty must be granted to the second respondent to proceed as per law. Since the cancellation order has been set aside by me, the *status quo ante* shall be restored. In other words, the clinical establishment shall be permitted to open. It is open to the respondents herein to give notice to the petitioner and take action as per law.



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7.The writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

31.07.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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Issue order copy on 02.08.2024.

To:-

- 1.The Director of Medical and Rural Health Services,
DMS Complex, No.356, Anna Salai,
Chennai - 600 006.
- 2.Competent Authority and Joint Director of Health Service,
O/o.The Deputy Director of Health Service,
Tenkasi District, Tenkasi.



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G.R.SWAMINATHAN, J.

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