

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7424 OF 2025

Sameer Shyam Kulkarni

.....Petitioner

Vs.

The State of Maharashtra

.....Respondent

Ms. Gargi Warunjikar, for the Petitioner.

Mr. B. V. Samant, Additional Government Pleader & Mrs. Tanu Bhatia, AGP for Respondent-State

CORAM : REVATI MOHITE DERE &

DR. NEELA GOKHALE, JJ.

DATE : 20th JUNE 2025.

P.C.:-

1. By the present petition, the Petitioner seeks quashing of the communication dated 6th May 2025 issued by the Respondent along with interim relief in terms of the same. By the impugned letter, the Respondent State through its Industrial Health and Safety Directorate, terminated the license issued to the Petitioner appointing him as 'certifying surgeon' under the Factories Act 1948.

2. It is the case of the Petitioner that he is a highly qualified medical practitioner and is associated with many hospitals in the State of Maharashtra. He was appointed as a 'Certifying Surgeon' under the

Factories Act for the period between 15th September 2023 and 14th September 2025. His duties were as per Section 10(4)(a)(b)(c) of the Factories Act read with Rule 18 of the rules made thereunder.

3. In February 2024, the Respondent issued a Resolution introducing Online Mobile Application which was to be used by the certifying surgeons to upload the data regarding employees examined by them in each factory, the time taken, Health camps conducted etc. According to the Petitioner there was some defect in the working of the said application and hence the data including photographs etc uploaded by the Petitioner on the said application appeared distorted, giving an impression that he had checked 34 employees within 40 minutes. There were certain other anomalies as well. He received a show cause notice dated 17th January 2025 from the Respondent Directorate pertaining to uploading of details of examination of 25 workers employed in **M/s Kumbha Chemical Private Limited**. The Petitioner replied the said notice on 5th May 2025. However, much to his surprise, he received the impugned letter communicating the cancellation of his license as ‘certifying surgeon’ in Sujalam Chemicals, M/s Shiv Shakti Oxalate Pvt Ltd, Lavender Laboratories Pvt Ltd and

Clean Fino Chem, Daund, Dist-Pune under the Factories Act. It is this communication that is assailed in the present petition.

4. Ms. Gargi Warunjikar, learned couns under the Factories Act. It is this communication that is assailed in the present petition. appeared for the Petitioner and Mr. B.V Samant, learned AGP represented the State.

5. Ms. Gargi contended that there was a glitch in the working of the mobile application itself and it was because of this that incorrect and distorted data appeared in the application regarding details of the employees checked by him. She states that the Petitioner is a highly qualified medical practitioner and cancellation of his license at a time when the duration of the license itself was to expire in September 2025 is likely to adversely affect his career and reputation as a surgeon. She also brought to our notice that the Show cause notice dated 17th January 2025 was in respect of another company, while the impugned letter contained details of his alleged infraction related to other companies. She thus argued that there was no Show Cause Notice issued to him for his alleged infraction in examination of employees in the Companies stated in the impugned letter. Thus, she

states that principles of natural justice are violated by the Respondent by failing to afford the Petitioner an opportunity of giving his clarification/explanation in respect of allegations against him in the termination letter, impugned herein. On this basic ground, among others, she urged us to quash the letter impugned and allow the Petition.

6. Mr. Samant, on the other hand defended the action of the Respondent by stating that the duties to be discharged by the Petitioner involved huge responsibilities and there could be no room for neglect or error while discharging the same. The Petitioner, according to him could not have examined so many employees in such a short time. He further submitted that this was not the only time, when the Petitioner was found to be derelict in carrying out his duties. He also vouched for the proper working of the mobile application stating that the Respondent directorate had examined its working and had found no defect. When faced with the argument of Ms Warunjikar regarding the Show cause notice ('SCN') dated 17th January not indicating any infraction in examination of employees of the Companies mentioned in the letter impugned, he could not but admit

the lacunae in the procedure that was required to be followed before terminating the Petitioners license. He however, brought to our notice that there were as many as 25 or more such ‘certifying surgeons’ whose licenses were terminated/suspended by the Respondent and if despite the deficiency in service of the Petitioner, the court were to allow the Petitioner to continue discharging his duties in the Factories, it would nigh be a dangerous precedent and would adversely affect the object of the provisions of the Factories Act in this regard. He thus urged us to dismiss the petition.

7. We heard the counsels of both the parties and perused the papers. A plain reading of the Show Cause Notice dated 17th January 2025 issued by the Respondent, the reply dated 5th May 2025 given by the Petitioner and the Impugned letter dated 6th May 2025 clearly reveals that the SCN of 17th January required the Petitioner to reply to the allegations of neglect in the context of M/s Kumbha Chemicals Pvt Ltd, but the Impugned letter mentions infraction in so far as other Companies such as Sujalam Chemicals, M/s Shiv Shakti Oxalate Pvt Ltd, Lavender Laboratories Pvt Ltd and Clean Fino Chem, Daund are concerned. Even Mr. Samant fairly admits that there was no SCN

issued to the Petitioner pertaining to his conduct in the aforesaid four companies. Thus, although we are not shown any statutory provision in the Factories Act, mandating the procedure to be followed while terminating/Suspending the license as 'certifying surgeons', the principles of natural justice are to be strictly followed prior to taking any action adversely affecting any person. In the facts of the present case, admittedly, adherence to these principles appears to be lacking. Hence, we have no hesitation in holding that the Impugned letter must go. The impugned letter dated 6th May 2025 is thus quashed and set aside.

8. At this stage, Mr. Samant sought leave to issue a fresh Show Cause Notice to the Petitioner, strictly in accordance with the provisions of law. We find no reason to refuse this liberty as sought. However, considering that the terms of the Petitioner itself expires in September 2025, we deem it appropriate to direct that a fresh SCN be issued to the Petitioner by Tuesday, i.e., on or before 24th June 2025. The Petitioner shall respond to the said notice within one week thereafter and the Respondent will take necessary decision and communicate the same to the Petitioner within one week, immediately

after. The Respondent shall also allow personal hearing to the Petitioner, if he so desires and requests and is contemplated. Ms. Warunjikar, on instructions states that the Petitioner will not conduct medical examinations of employees in the companies assigned to him, during the intervening period, till such decision is taken by the Respondent pursuant to the fresh SCN as permitted above. Statement is accepted.

9. Accordingly, the Petition is disposed off in terms of the aforesaid directions.

10. Needless to state, that the Petitioner is at liberty to assail the decision taken by the Respondents, in the event the decision is adverse to him and he is aggrieved by the same, by initiating appropriate proceedings before an appropriate forum.

11. All parties to act on the authenticated copy of this order.

(DR. NEELA GOKHALE, J.)

(REVATI MOHITE DERE, J.)