



W.A. No.2733 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2025

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CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

W.A. No.2733 of 2024
and C.M.P. No.20002 of 2024

1. The Director of Medical and Rural Health Services,
258, DMS Complex, Anna Salai,
Teynampet, Chennai-600 018.

2. The Joint Director of Health Services,
Chengalpattu District,
3rd Floor, D Block,
New District Collectorate, Vembakkam,
Chengalpattu District - 603 111.

.... Appellants

Vs.

1. B.P. Jain Hospital
Unit of Sankara Health Education and Charitable Trust,
No.6, Anna Salai, Pammal,
Chennai - 600 007.
represented by the Secretary S. Viswanathan.

2. D. Selvanathan S/o. Durai Kannan
[Impleaded as per the order made in C.M.P. No.
23191 of 2024 dated 15.10.2024]

... Respondents

PRAYER: The Writ appeal is filed under Clause 15 of Letters Patent praying
to set aside the order dated 24.05.2024 made in W.P. No.13972 of 2023.

For Appellant : Ms. M. Sneha,
Special Counsel for



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Health and Family Welfare

Department

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For Respondents

For R1

For R2

:

: Mr. Purujit Narayanan

: Mr. V. Prakash, Senior Counsel

for Mr. K. Krishnamoorthy

JUDGMENT

(Judgment of the Court was made by P.DHANABAL,J.)

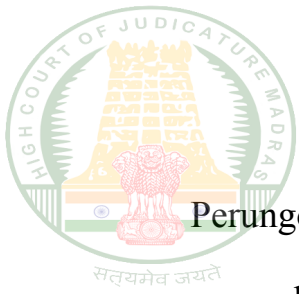
This Writ Appeal has been preferred as against the order passed by the Writ Court in W.P. No.13972 of 2023 dated 24.05.2024, wherein the 1st respondent herein has filed a Writ petition challenging the order passed by the 2nd appellant in Proceedings in Na. Ka No./1032/Ka2/2024 dated 04.05.2024 stating that a surprise inspection was made by the 2nd appellant / Joint Director of Health Services, Chengalpattu District along with others in the 1st respondent hospital on 03.05.2024 in respect of death of one S. Hemachandran S/o. Selvanathan, T.V. Nagar, Pudhupalayam Street, Pondicherry, who was admitted on 21.04.2024 at B.P. Jain Hospital as in patient and declared as dead on 21.04.2024 at 9.05 p.m. at Dr. Rela Hospital, Chrompet for some deficiencies found in the impugned order by invoking Rule 5 of the Tamil Nadu Clinial Establishment (Regulations) Act, 1997. The certificate was issued to the 1st respondent was temporarily suspended and also instructed to shift the inpatient to other hospital before 06.05.2024 and the hospital should not admit any new patient as outpatient and inpatient from today onwards i.e.,



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on 04.05.2024 until further orders. The said order was under challenge before the Writ Court. The Writ Court quashed the said order on the ground that the order passed was not in consonance with Section 5(2) of the Act. Aggrieved by the said order, the present Writ appeal has been preferred by the appellant.

2. The learned counsel appearing for the appellants would submit that one Dr. T. Perungo, working as a Senior Consultant, Department of SGE, Bariatric and Metabolic Surgery at Dr. Rela Hospital, Chrompet and a visiting consultant to the hospital, referred one S. Hemachandran, a patient with Morbid Obesity and with other medical co-morbidities such as uncontrolled type 2 Diabetes Mellitus for admission as inpatient for undergoing Laproscopic Gastric By-pass Surgery on 21.04.2024. The said Hemachandran underwent preoperative work up and evaluation and the Doctors at Dr. Rela Hospital have given cardiac and pulmonary clearance to undergo Laparoscopic Gastric By-pass Surgery. The said Hemachandran decided to have the surgery performed at the 1st respondent's hospital and the hospital admitted him and the surgery commenced on 22.04.2024 and the patient suffered with cardiac arrest as they commenced the surgery procedure and the surgery was aborted and sent to Dr. Rela Hospital ICU, and Dr. Perungo also consented to it, the patient was referred to Dr. Rela Hospital. The patient was admitted to Rela Hospital ICU and the patient was under care of Dr. T.



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Perungo and his team of Doctors at Dr. Rela Hospital from 22.04.2024 onwards and unfortunately, he died on 23.04.2024. The family members of the deceased Hemachandran refused to give consent for postmortem procedure and to receive the body, thereby, a team organized by the Joint Director, Health Services, Chengalpet District, the 2nd appellant herein, came for a surprise inspection on 03.05.2024 and based on the report, the 2nd appellant issued an order under Section 5(2) of the Tamil Nadu Clinical Establishments (Regulation) Act, 1997, temporarily cancelling the Certificate granted to the hospital.

2.1. Challenging the said order, they filed a Writ petition before the Writ Court. The Writ Court failed to consider that at the time of surgery, there were lacunae in the hospital as well as in the operation theatre. The surgery performed on the deceased is bariatric surgery who weighed 145.5 kgs and the risk cardiac arrest would be very high and without high end equipment like ECMO, such surgery should never be performed. In case of such high risk surgeries, physical presence of General Physician / Cardiologist is a must. As per the Regulations under the Clinical Establishment Act, one Doctor on duty is mandatory, if the hospital is having ICU. In the present case, as per the Register of Doctors maintained in the hospitals, all Doctors are only on call basis and visiting basis. The Writ Court without considering all the above



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aspects and without giving any opportunity to the appellants to file counter, passed the impugned order. Therefore, the order passed by the Writ Court is liable to be set aside.

3. The learned Senior Counsel appearing for the 2nd respondent would submit that the deceased Hemachandran was admitted in the 1st respondent hospital and after following all the procedures, he was admitted in the hospital for surgery. Prior to the surgery, the hospital authorities have obtained his consent with all of his family members and the surgery started on 22.04.2024 after following due formalities. Since the patient suffered with cardiac arrest, the surgery was aborted and he was sent to Dr. Rela Institute ICU, where a proper treatment was given, but unfortunately, on the next day i.e., on 23.04.2024, the patient passed away. Thereafter, the 2nd appellant passed the impugned order without giving opportunity to the 1st respondent and without recording reasons for invoking Proviso to Section 5(2) of the Tamil Nadu Clinical Establishments (Regulation) Act, 1997. Therefore, the 1st respondent challenged the impugned order passed by the 2nd appellant through Writ petition and the Writ Court, after considering the arguments and records produced by both the parties, has correctly set aside the order on the ground that no opportunity was given and no reasons were recorded to invoke Proviso to Section 5(2) of the Tamil Nadu Clinical Establishments (Regulation) Act,

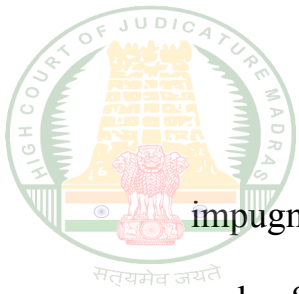


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1997. Therefore, the Writ Court has passed a reasoned order and there are no grounds to interfere with the order passed by the Writ Court and the present Writ appeal is liable to be dismissed.

4. Heard both sides and perused the entire materials available on record.

5. In this case, there is no dispute that the patient was admitted in the 1st respondent-hospital for surgery and one Dr. T. Perungo, working as a Senior Consultant, Department of SGE, Bariatric and Metabolic Surgery at Dr. Rela Hospital, Chrompet and a visiting consultant to the 1st respondent hospital, referred one S. Hemachandran, a patient with Morbid Obesity and with other medical co-morbidities such as uncontrolled type 2 Diabetes Mellitus for admission as inpatient for undergoing Laproscopic Gastric Bypass Surgery and the patient also decided to have the surgery performed at the 1st respondent's hospital. Thereafter, due to cardiac problem, the surgery was aborted and he was sent to Dr. Rela Hospital, Chromepet ICU and thereafter he died in the said hospital on the next day. In the meantime, the relatives of the deceased agitated as against the death of the patient and thereafter, the 2nd appellant made a surprise inspection in the 1st respondent's hospital, where, he detected some discrepancies. Therefore, the 2nd appellant passed the



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impugned order by temporarily cancelling the Certificate of Registration under Section 5(2) of the Tamil Nadu Clinical Establishment (Regulations) Act, 1997.

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6. At this juncture, it is relevant to extract Section 5 of the Tamil Nadu Clinical Establishment (Regulations) Act, 1997 hereunder:

"5. Suspension or cancellation of registration:- (1) Where the holder of a certificate of registration of a clinical establishment has been convicted under any of the provisions of this Act for three times in the aggregate, the competent Authority shall cancel the Certificate of Registration and the clinical establishment shall not be permitted to apply for fresh registration.

(1-A) The competent authority may, suo motu or on complaint, issue a notice to any [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 [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 or the conditions of registration, it may, without prejudice to any other action that it may take against such [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 in the public interest, it may, for reasons to be recorded in writing, suspend the registration of any [clinical establishment], as may be prescribed".

7. On a careful perusal of the above said provision, the Authorities under the Act have power to suspend or cancel the Certificate of Registration of a Clinical establishment after issuing Show Cause Notice. As per Section 5(2) of the Act, after giving reasonable opportunity of being heard to the clinical establishment, the competent authority is satisfied that there has been



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a breach of any of the provisions of this Act or the rules made thereunder or the conditions of registration, it may, without prejudice to any other action that it may take against such [clinical establishment], suspend its registration for such period as it may think fit or cancel its registration. Therefore, the Authority has to give reasonable opportunity of being heard to the clinical establishment.

8. As per the Proviso to Section 5(2) of the Act, where the competent authority is of the opinion that it is necessary or expedient so to do in the public interest, it may, for reasons to be recorded in writing, suspend the registration of any [clinical establishment], without issuing any notice. Therefore, from the above, it is clear that in order to invoke the proviso to Section 5(2) of the Tamil Nadu Clinical Establishment (Regulations) Act, 1997, a competent Authority has to record the reasons in writing that the competent authority is of the opinion that it is necessary or expedient so to do in the public interest. Here, in the impugned order, the date of the deceased was on 23.04.2024. Thereafter, a surprise inspection was made on 03.05.2024. After such inspection, without following the procedures under Section 5(2) of the Act and without giving reasonable opportunity of being heard, the Authority has passed the order.



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9. In order to invoke proviso to Section 5(2) of the Act, the mandatory procedure is that the reasons are to be recorded in writing where the competent Authority is of the opinion that it is necessary or expedient so to do in the public interest. But unfortunately, in the impugned order in the Writ petition, no any such reasons were recorded in writing to form an opinion by the 2nd appellant. Therefore, the mandatory procedures have not been followed by the 2nd appellant, while passing the impugned order in the Writ petition.

10. The Writ Court also in the order recorded that *of course proviso to Section 5 of the Act enables the authority to suspend the registration of any clinical establishment even without 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 Section 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, thereby after elaborate discussions, the Writ Court passed the reasoned order by quashing the order passed by the 2nd appellant.*

11. As far as the contention raised by the learned counsel appearing for the appellants that without giving opportunity to the appellants, the Writ Court



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passed the order is concerned, the learned single Judge has recorded the appearance of the Government Advocate appeared for the appellants before the Writ Court and also recorded the arguments of the learned counsel appeared for the appellants and then only, passed the order. Therefore, the contention of the learned counsel appearing for the appellants is not acceptable. Since, the order impugned in the Writ petition was passed without following the procedures under Section 5(2) of the Act, the Writ Court has rightly set aside the order passed by the 2nd appellant and it does not warrant any interference by this Court.

12. In view of the above discussions, this Court is of the opinion that this Writ appeal has no merits and deserves to be dismissed.

13. Accordingly, the Writ appeal is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(R.S.K.J.) & (P.D.B.J)

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Index : Yes/No
Speaking order/non-speaking order
mjs



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R. SURESH KUMAR,J
and
P.DHANABAL,J
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