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W.P.(MD)NO.30026 OF 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.11.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.30026 of 2025 AND
W.M.P.(MD)No.23211 of 2025

M/s.Cethar Hospital,
(A Division of Cethar Health Care Service (P) Ltd.,
Rep. By its whole-time Director S.P.Karthick,
7/59, Officers Colony, Puthur,
Tiruchirappalli – 620 017. ... Petitioner

Vs.

1. The Principal Secretary to the Government,
Department of Health and Family Welfare,
Government of Tamil Nadu,
Fore St. George, Chennai.
2. The Director,
Directorate of Medical and Rural Health Services,
DMS Complex, Teynampet,
Chennai, Tamil Nadu – 600 006.
3. The Project Director (Planning and Development),
Tamil Nadu Health Systems Project,
Teynampet, Chennai.
5. The Directorate of Medical Education,
Kilpauk, Chennai – 600 010.
6. The Joint Director,
Medical and Rural Health Services,
4, V.O.C.Road, Cantonment, Tiruchirappalli,
Tamil Nadu 620 001.



7. Member Secretary,
Transplant Authority Tamil Nadu,
Tamil Nadu Super Speciality Hospital,
Omandurar Government Estate,
Chennai – 600 002.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records of the respondents especially the order of the second respondent vide reference in 12829/E7/1/2025 dated 23.07.2025 and 18.08.2025 and quash the same.

For Petitioner : Mr.V.Ramesh,
Senior counsel,
for Mr.D.Srinivasaragavan.

For Respondents : Mr.Ajmal Khan,
Additional Advocate General,
assisted by,
Mr.M.Lingadurai,
Special Government Pleader.

* * *

ORDER

The writ petitioner-hospital was licensed to conduct Liver and Kidney transplantations. Vide order dated 23.07.2025, the petitioner's license was temporarily suspended. Vide order dated



18.08.2025, the license was permanently cancelled. These orders are assailed on the grounds set out in the affidavit filed in support of the writ petition. The learned Senior counsel appearing for the writ petitioner contended that the impugned orders are liable to be quashed since the second respondent did not adhere to the procedure set out in Section 16 of the Transplantation of Human Organs and Tissues Act, 1994 by not issuing show cause notice.

2. On the other hand, the learned Additional Advocate General submitted that this writ petition is not maintainable. This was because the petitioner had already filed appeals before the Government under Section 17 of the Act. Relying on the decision of the Hon'ble Supreme Court reported in **(1997) 1 SCC 1 L. (Chandra Kumar vs Union Of India And Others)**, he pointed out that a litigant cannot be permitted to pursue two parallel remedies in respect of the same matter at the same time. He further pointed out that apart from the petitioner, one Dhanalakshmi Srinivasan Hospital was also penalized likewise. In fact, by a common order, both these hospitals were identically dealt with. Challenging the action taken by the Appropriate Authority, Dhanalakshmi Srinivasan Hospital filed



W.P.No.32231 of 2025 before the Principal Seat. The Hon'ble Judge who heard the case was of the view that since factual aspects were involved, it would be appropriate to relegate the writ petitioner to go before the Government by filing an appeal. The order to be passed by the Government was to be placed before the Court. The learned Additional Advocate General wanted me to adopt the very same approach in this case also.

3. The learned Additional Advocate General emphasised the fact that the issue has rocked the entire state (for Gen Z, the word “rock” means something cool, having a positive impact. But that is not what the dictionary says). The media, particularly, the social media, was abuzz with sensational stories which also acquired political colour. So much so that the Hon'ble Division Bench in W.P. (MD)No.22623 of 2025 vide order dated 25.08.2025 thought it fit to constitute a special investigation team to probe the matter. The learned Additional Advocate General dropped a not so gentle hint that if this Court were to come to the rescue of the writ petitioner by setting aside the impugned orders, the general public would view the development negatively. He called upon this Court to dismiss the



writ petition.

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4. I carefully considered the rival contentions and went through the materials on record.

5. Section 16 of the Transplantation of Human Organs and Tissues Act, 1994 and its relevant provisions read as follows:-

“ 16. Suspension or cancellation of registration.—(1) The Appropriate Authority may, *suo motu* or on complaint, issue a notice to any 4 [hospital or Tissue Bank, as the case may be,] 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 4 [hospital or Tissue Bank, as the case may be,] the Appropriate Authority is satisfied that there has been a breach of any of the provisions of this Act or the rules made thereunder, it may, without prejudice to any criminal action that it may take against such 4 [hospital or Tissue Bank, as the case may be,] suspend its registration for such period as it may think fit or cancel its registration:



Provided that where the Appropriate 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 1 [hospital or Tissue Bank, as the case may be,] without issuing any notice.”

6. A careful reading of the aforesaid provision leads me to the following conclusions:-

a) The appropriate authority which grants license has the power to suspend or cancel the same.

b) Suspension can be of two types. It can be by way of punishment or it can be during the pendency of the proceedings for cancellation.

c) Notice has to be issued before suspension where it is proposed to be a punishment.

d) Notice need not be issued when suspension is likely to be followed by cancellation. In other words, when the authority intends to cancel the registration but is of the opinion that the registrant should not carry on the operations in the meanwhile. When suspension falls under this category, notice need not be issued.



But the appropriate authority must be of the opinion that it is necessary or expedient in public interest to resort to suspension of the license without issuing any notice. But in the suspension order, reasons must be recorded in writing. Issuance of notice can be dispensed with only by recording the reasons contemplated in the proviso to Section 16(2) of the Act.

e) Registration can be suspended by way of punishment or cancelled only after the licensee / registrant is given reasonable opportunity of being heard. It implies granting personal hearing. It cannot be mere issuance of notice and obtaining response. It connotes holding an enquiry. Since the reputation of the hospital is involved apart from its right to carry on business, proper enquiry must be conducted. The institution must be given full and fair opportunity to rebut the allegations made against them.

f) The appropriate authority must be satisfied that there has been a breach of the statutory provisions.

g) Even though the expression “may” is found in Section 16(1) of the Act, it must be construed as “shall” in view of the provision for reasonable opportunity made in sub-section (2).

h) Where suspension is made as a measure of punishment,



the period of suspension must be specified. Where it is intended to be during the pendency of proceedings for cancellation, period need not be specified.

7. Now that the scope of the provision has been delineated, let me see if the impugned action measures up to the standard set out in Section 16 of the Act.

8. Though the petitioner has challenged the suspension order also, I am spared the labour of considering its validity. This is because the said order has merged with the subsequent cancellation order. I need to find out if the order of cancellation can be said to be in consonance with the statutory provisions.

9. Section 16(2) of the Act clearly states that only after giving reasonable opportunity of being heard to the hospital, the appropriate authority can cancel the registration. The said procedure has been given a complete go by. The respondent authority did not adhere to the principles of natural justice as enshrined in the provision. A mere look at the order of cancellation is enough to



conclude that the statutory procedure has been totally disregarded.

It is a case of rank illegality. When law prescribes adopting a particular and specified procedure, it must be followed. The case may pertain to transplantation. But the authority cannot transplant or supplant their own procedure. No notice was issued. No hearing was given. The materials said to have been gathered by the authority were not furnished to the petitioner. The satisfaction of the authority that there was breach of statutory provisions by the registrant must follow personal hearing. On this sole ground of violation of principles of natural justice and the fact that the procedure contemplated under Section 16 of the Act was not complied with, the order of cancellation is set aside.

10. The learned Senior counsel appearing for the petitioner informed the Court that the petitioner would withdraw the appeal filed before the authority. The Hon'ble Supreme Court in the decision reported in (2004) 7 SCC 166 (S.J.S.Business Enterprises (P) Ltd., Vs. State of Bihar and Others) held as follows:-

“14. Assuming that the explanation given by the appellant that the suit had been filed by one



of the Directors of the Company without the knowledge of the Director who almost simultaneously approached the High Court under Article 226 is unbelievable (*sic*), the question still remains whether the filing of the suit can be said to be a fact material to the disposal of the writ petition on merits. We think not. The existence of an adequate or suitable alternative remedy available to a litigant is merely a factor which a court entertaining an application under Article 226 will consider for exercising the discretion to issue a writ under Article 226 [A.N. Venkateswaran v. Ramchand Sobhraj Wadhwani, AIR 1961 SC 1506] . But the existence of such remedy does not impinge upon the jurisdiction of the High Court to deal with the matter itself if it is in a position to do so on the basis of the affidavits filed. If, however, a party has already availed of the alternative remedy while invoking the jurisdiction under Article 226, it would not be appropriate for the court to entertain the writ petition. The rule is based on public policy but the motivating factor is the existence of a parallel jurisdiction in another court. But this Court has also held in *Chandra Bhan Gosain v. State of Orissa* [(1963) 14 STC 766, 918 : (1964) 2 SCR 879] that even when an alternative



remedy has been availed of by a party but not pursued that the party could prosecute proceedings under Article 226 for the same relief. This Court has also held that when a party has already moved the High Court under Article 226 and failed to obtain relief and then moved an application under Article 32 before this Court for the same relief, normally the Court will not entertain the application under Article 32. But where in the parallel jurisdiction, the order is not a speaking one or the matter has been disposed of on some other ground, this Court has, in a suitable case, entertained the application under Article 32 [*Tilokchand Motichand v. H.B. Munshi*, (1969) 1 SCC 110 : AIR 1970 SC 898] . Instead of dismissing the writ petition on the ground that the alternative remedy had been availed of, the Court may call upon the party to elect whether it will proceed with the alternative remedy or with the application under Article 226 [*K.S. Rashid and Son v. Income Tax Investigation Commission*, AIR 1954 SC 207] . Therefore, the fact that a suit had already been filed by the appellant was not such a fact the suppression of which could have affected the final disposal of the writ petition on merits. "



The above case is an authority for the proposition that while the petitioner cannot ride two horses at the same time, the writ Court can give him the option of dismounting from one and ride on the other. In other words, the petitioner can elect to pursue the writ remedy alone. The said ratio applies to the case on hand. That apart the petitioner has not filed any civil suit. He has only filed a statutory appeal. It is admitted by the respondents that the appeal filed by the other hospital has been rejected. It is unlikely that the petitioner's appeal would have a different fate. I therefore reject the stand of the respondents that the writ petition is not maintainable. In any event, in view of the gross breach of the statutory procedure, I hold that the writ petition is maintainable.

11. I feel compelled to make a remark or two regarding the backlash which the learned Additional Advocate General foresees. Judges have to remain insulated to such probabilities. They have taken oath to uphold the law. They cannot be bothered about the consequences. They cannot worry what the people will think. They are answerable only to their conscience. Justice Abhay S.Oka recently made a remark that “Judges should be prepared to deliver judgments which are not liked by the popular majority. ... The basic rule is that



the Judges should not be swayed by popular opinion, and that is the concept of morality for Judges.” He added that morality for Judges lies in applying one's mind to the law and Constitution, and delivering verdicts with boldness, irrespective of “public opinion or so-called future prospects. In popular perception, the hospital in question might stand condemned. But I won't crucify without following due process.

12. The impugned order of cancellation stands quashed. The order of suspension will not revive as it has merged with the cancellation order. It is needless to mention that appropriate authority is at liberty to act as per law. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

03.11.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN,J.

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