HC-KAR

NC: 2026:KHC:59891
WP No. 12654 of 2024

CNR: KAHC010233932024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE T.P.VIVEKANANDA

WRIT PETITION NO.12654 OF 2024 (GM-RES)

BETWEEN:

M/S BHARATH DIAGNOSTIC CENTRE
UNREGISTERED PARTNERSHIP FIRM
NO.22/13, K.N.N COMPLEX
DOUBLE ROAD
CHAMARAJNAGAR-571 313
REPRESENTED BY ITS
AUTHORISED SIGNATORY
SMT. B.S. VANITHA
AGED ABOUT 65 YEARS

…PETITIONER

(BY SRI. NISCHAL DEV B.R, ADVOCATE)

AND:

Digitally signed by PREMCHANDRA M R
Location: HIGH COURT OF KARNATAKA

1. STATE OF KARNATAKA
   DEPARTMENT OF HEALTH AND
   FAMILY WELFARE SERVICES
   VIDHANA SOUDHA, DR. AMBEDKAR VEEDHI
   BENGALURU-560 001
   REPRESENTED BY ITS PRINCIPAL SECRETARY

2. THE DISTRICT HEALTH OFFICER
   HEALTH AND FAMILY WELFARE SERVICES
   CHAMARAJNAGAR-571 313

3. THE TALUK HEALTH OFFICE
   CHAMARAJNAGAR TALUK
   CHAMARAJNAGAR-571 313

4. THE COMMISSIONER
HEALTH AND FAMILY WELFARE SERVICES
AROGYA SOUDHA, 1ST CROSS ROAD
MAGADI ROAD
BANGALORE-560 023

…RESPONDENTS

(BY SRI. M. SRINIVAS KUMAR, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE GOVERNMENT ORDER BEARING NO.G.AA.KU.KA/ CHANA/K.P.M.E/11/2023-24 DATED 26.12.2023 (ANNEXURE-A) ISSUED BY THE R2 AND QUASH THE NOTICE BEARING TAAAKA/CHANA/KPMER/09/2023 DATED 29.12.2023 (ANNEXURE-B) ISSUED BY THE R3 AND ETC.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE T.P.VIVEKANANDA

ORAL ORDER

The petitioner is before this Court challenging the closure notice at Annexure-A and the subsequent notices and communications at Annexures-B, C and D. In addition, the petitioner has sought for issue of writ of mandamus directing the respondent No.2 to consider the application dated 21.12.2023 at Annexure-N for renewal of licence under the provisions of the Karnataka Private Medical Establishment Act, 2007 (hereinafter referred to as "the

Act" for short) or to declare that the licence sought for by the petitioner is deemed to have been granted in terms of proviso to Section 7 of the Act.

2. The case of the petitioner is that the petitioner has obtained the certificate of registration on 29.07.2010 for establishment of Diagnostic Centre and Allopathic system in terms of the Act in the year 2010. The certificate of registration and the corresponding licence has been extended from time to time and which was valid till 04.08.2021.

3. It is the submission of the learned counsel for the petitioner that the Diagnostic Centre was in operation till 2021 and thereafter, due to COVID outbreak the petitioner could not continue the activities of the Diagnostic Centre. When the petitioner was contemplating to seek renewal of the licence to continue the operation of the Diagnostic Centre, the notice at Annexure-A came to be issued directing the petitioner to close down the

Diagnostic Centre on the ground that the same is located within the radius of 200 meters from the limits of District Hospital.

4. It is pointed out that in terms of Act No.1 of 2018 the proviso has been inserted to Section 6 of the Act prohibiting the establishment of new private clinical laboratory within the radius of 200 meters from the Government Hospital or from the hospital promoted or managed by the Society or Trust or Autonomous Organization owned or controlled by the State Government or Central Government or Local Bodies with effect from the date of commencement of the Act. The Circular issued by the State at Annexure-D dated 27.02.2024 shows that the Act No.1 of 2018 was given effect to from 04.04.2019.

5. The closure notices and the circular issued by the State are called in question by the petitioner on the ground that the amendment brought into the Act through Act No.1 of 2018 cannot be made applicable to the Clinical

Laboratories, which have been established prior to the commencement of the amendment Act, namely, the proviso to Section 6 and therefore, the respondents have no power to direct the petitioner to close down the activities of the Clinical Laboratory and Diagnostic Centre, which had been established in the year 2010.

6. In support of the said contention, the learned counsel for the petitioner places reliance on the order passed by the Co-ordinate Bench of this Court at Dharwad Bench in WP.No.106793/2024 disposed of on 22.11.2024. Somewhat in similar circumstances, the Co-ordinate Bench taking note of the amendment brought into the Act and the prohibition contained for establishment of the new clinical private laboratories has held that the amended provision can be made applicable only to the diagnostic centres and clinical laboratories established after the commencement of the amended provision and the authorities cannot refuse to renew the licence in respect of

the clinical laboratories and diagnostic centres, which were established much prior to the amended provisions.

7. The learned HCGP, on the other hand, submits that the impugned closure notices are issued in the wake of the amendment brought into the Act and there is no dispute that the petitioner's clinical establishment and diagnostic centre is within the radius of 200 meters from the radius of District Hospital and therefore, the petitioner cannot be allowed to run the diagnostic centre in the location in question. Accordingly, he seeks for dismissal of the writ petition.

8. Having heard the learned counsel for the petitioner and taking note of the date on which the petitioner has established the clinical laboratory and the date on which the amended provisions have been given effect to and also taking note of the order passed by the Co-ordinate Bench of this Court, this Court is of the considered opinion that the impugned closure notice at

Annexure-A and subsequent communications issued by the respondents to the petitioner cannot be sustained. In as much as the petitioner's Diagnostic Centre was established in the year 2010 i.e., is prior to the amended provisions of the Act. Therefore, the respondents are not justified in directing the petitioner to close down the establishment and declining to renew the licence. It is a well established proposition of law that any amendment to the statutory provisions is applicable prospectively unless a different intention is spelt out in the amendment Act. In the present case the proviso to Section 6 of the Act was inserted w.e.f 04.04.2019, therefore, its application is prospective.

9. It is submitted by the learned counsel for the petitioner that pursuant to the interim direction issued by this Court, the petitioner has made an attempt to submit an application for renewal of licence through online. However, the same has been rejected on the ground that

the application is not filed as a new registration and the location of the Diagnostic Centre is within the radius of 200 meters from the District Hospital.

10. In the light of what is observed above, the rejection of the online application for renewal of the licence on the ground that the Diagnostic Centre of the petitioner is located within the radius of 200 meters is wholly unjustified.

11. In the result,

(i) The writ petition is ***allowed***.

(ii) The impugned closure notices at Annexures-A, B and C are quashed.

(iii) The petitioner is permitted to file a fresh application through online to the 2nd respondent seeking renewal/grant of licence for running the Clinical Laboratory and Diagnostic Centre in the very same premises where the petitioner has been running the

establishment, however, without reference to the proviso to Section 6 of the Act and taking note of the observations made above.

(iv) If such an application is filed, the respondent No.2 shall consider the same and pass orders strictly in consonance with the law, which was prevailing prior to the amended provisions of Section 6 of the Act within a period of four months from the date of the submission of the application.

(v) It is needless to observe that the petitioner will have to comply with all other requirements under the Act for renewal/grant of licence.

Sd/-
(T.P.VIVEKANANDA)
JUDGE

PB
List No.: 1 Sl No.: 37