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W.P.No.13972 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.05.2024

PRONOUNCED ON : 24.05.2024

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Writ Petition No.13972 of 2024
and W.M.P.No.15170 of 2024

B.P.Jain Hospital,
Unit of Sankara Health Education & Charitable Trust,
No.6, Anna Salai, Pammal,
Chennai – 600 007,
Represented by the Secretary,
S.Viswanathan, No.6, Anna Salai,
Pammal, Chennai – 600 055.

... Petitioner

vs.

1. Director of Medical & Rural Health Services,
258, DMS Complex, Anna Salai,
Teynampet, Chennai – 600 018.
2. Joint Director of Health Services,
Chenglepet District,
3rd Floor, D-Block,
New District Collectorate,
Vembakkam, Chenglepet District – 603 111.

... Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari to call for the records on the file of the 2nd respondent in proceedings in Na.Ka.No./1032/Ka2/2024 dated 04.05.2024 and quash the same.



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For Petitioner : Mr.V.Raghavachari, Senior Counsel
for Mr.R.Narayanan
For Respondents : Mr.K.Tippu Sultan,
Government Advocate

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned counsel appearing for the respondents.

2. The petitioner-hospital challenges the impugned order dated 04.05.2024 passed by the second respondent temporarily cancelling the registration of the petitioner under Hospital and Clinical Establishments (Regulation) Act, 1997.

3. Learned Senior Counsel reiterated all the contentions set out in the affidavit filed in support of the writ petition and took me through the materials enclosed in the typed set of papers.

4. Per contra, the learned Government Counsel submitted that the impugned order does not warrant interference. He pointed out that one S.Hemachandran was admitted in the petitioner-hospital on 21.04.2024 for conducting Bariatric surgery and that on account of the improper rendering of service, he developed complications and later died in Dr.Rela Institute of Medical Sciences Hospital, Chromepet on 23.04.2024.



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The second respondent therefore conducted surprise inspection on 03.05.2024 and noticed quite a few lapses. Taking into account all these aspects, the impugned order came to be passed. He submitted that proviso to Section 5(2) of the Act enables the competent authority to suspend the registration of any clinical establishment without any notice. According to the learned Government Counsel, the petitioner cannot assail the impugned order on the ground of violation of principles of natural justice. He drew my attention to the order dated 05.08.2022 made in W.A.No.1758 and 1759 of 2022, wherein the First Bench reversed the order passed by the learned Single Judge allowing the writ petition filed on similar cause of action. He also added that the impugned order can be questioned before the appellate authority by filing an appeal under Section 7 of the Act. He called upon this Court to dismiss the writ petition.

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

6. It is true that one Hemachandran, a patient with morbid obesity and other issues such as uncontrolled Type II Diabetes was undergoing treatment at Dr.Rela Insitution of Medical Sciences Hospital at Chromepet since 06.04.2024. The doctors at the said hospital advised Bariatric Surgery for the patient. Since the surgery cost at Dr.Rela Institute was comparatively high, the patient was advised to undergo the



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said procedure at the petitioner hospital. Incidentally, Dr.T.Perungo, who was treating the patient at Dr.Rela Institute performed the surgery at the petitioner hospital. The petitioner has placed on record that Dr.T.Perungo was assisted by an experienced surgeon Dr.D.Madhusudhanan and a qualified anaesthetist viz., Dr.A.Nesamani. This team is said to have conducted hundreds of surgeries. The patient however developed complications and therefore he was shifted to Dr.Rela Hospital. Though treatment was given to the patient, he succumbed on the next day at 09.05 p.m. The records indicate that the death of the patient took place 36 hours after he was discharged from the petitioner-hospital. The family of the deceased did not want postmortem and received the body on 24.04.2024. However, the issue became the subject matter of discussion in the media. In this background, surprise inspection was conducted on 03.05.2024 and it was followed by the impugned order of temporary cancellation.

7. The question that arises before me is whether the impugned order is vulnerable and whether it deserves to be set aside.

8. As already noted, the patient was admitted on 22.04.2024. He passed away on 23.04.2024. One of the reasons set out in the impugned order for temporarily cancellation of the petitioner's registration was that no proper informed written consent was taken from the patient. My attention is drawn to the signed



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consent form enclosed at Page No.38 and 40 of the typed set of papers. Consent had been obtained by them for conducting surgery as well as for administering anaesthesia. Complications that may occur have also been set out in the consent form.

9. If only the second respondent had called upon the petitioner to produce the signed consent form, the petitioner would have produced the entire material and satisfied the respondents, that consent was indeed obtained from the patient. Non-issuance of prior notice, has thus seriously prejudiced the interest of the petitioner.

10. In the typed set of papers, the letter, the letter dated 25.04.2024 written by Dr.T.Perungo, Surgeon who carried out the surgery and another letter dated 25.04.2024 written by one Shakila have been enclosed. It is not the case of the respondents that these letters were not received. But, in the impugned order, there is no reference to the same.

11. After the impugned order was passed, the petitioner had written to the second respondent setting out point by point clarification. The tabulated information is as follows:



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S.No	Points	Clarification
1	No proper informed written consent mentioning the complications of the surgery	Surgery and Anaesthesia consent attached. Annexure 1
2	Unqualified Nurses working in the operation Theatre and assisted the surgery on that day	The Nurse who assisted the case was Ms B.Jeevitha (RNM No. 142071) Annexure 2
3	No General Physician / Cardiology on the day of surgery (22/04/2024)	Dr.Sabitha, MD (Geriatric) and Dr.Balaji, MD (Gen. Medicine) are consultants at the Hospital. At the time of surgery Dr.Sabitha was available in the Hospital for any need. Dr.Saravanan MD., DM., Cardiologist is a regular OPD Consultant and available on call basis
4	No ICU Team of Doctors available on the day of surgery	Since Dr.Nesamani (Anaesthetist) was present intra operatively for this surgery, so he hadled the patient
5	Delay in referring the patient to the tertiary Hospital for more than one hour (Golden Hour)	At 9.55 am patient was reverted and the condition discussed with attenders who wanted to transfer the patient to higher centre. Rela team arrived and patient shifted to Rela Hospital at 10.45 am. Patient was stabilized when he was transferred.
6	High end equipment like ECMO not available	This Hospital is accredited with NABH (Entry level). ECMO is not Mandatory.

General Lapses

- 1 No regular OG Doctor available in the Hospital We have 3 OG Doctors on all days on call basis / Regular Opd basis and we have on OG doctor within 1 km of distance so she can reach the



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hospital within a few minutes.

Note: As per CEA Act the labour should be attended by qualified Doctors, Staff Nurse and ANM. A Doctor shall be on call duty for any emergency. Deliveries are taking place regularly and a duty Doctor is available 24x7

- 2 No regular ICU Team of Doctors available in the Hospital We have 2 Anaesthetists Dr.Vijayapathy, Dr.Amit on call basis. Dr.Saravanan Cardiologist is also available for regular OPD/IP on call basis
- 3 Unqualified Anm giving injection to the patient in the casualty during the time of inspection The injection was administered by ANM having more than 5 years of experience, under the supervision of a qualified staff Nurse, Ms.Sharmila (RNM 207404) (Annexure 3). However, we will ensure this does not recur
- 4 CCTV not functioning from 04/04/2024 to till date. Hospital administration did not take any action to restore it. This has been rectified on 04/05/2024 itself. Report enclosed (Annexure 4)

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 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



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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.

13. From a reading of the impugned order, I am not able to discern the formation of such opinion. That apart, an order of this nature should be issued only if public interest really demands. The petitioner institution has been in existence for 23 years since 2001. It appears that so far 2 million out patients have been attended to, there have been 45,000 in-patients and as many as 8500 surgeries have been carried out successfully. Patients residing in Pammal, Pallavaram, Pozhichalur, Anakaputhur and Thiruneermalai and other regions are directly benefitted. The hospital receives around 250 out-patients everyday. The out-patient charge is only Rs.100/-. Therefore, the authority must balance the competing considerations. That is why an administrative order is tested among others on the ground of proportionality. It is true that an unfortunate occurrence had taken place. For such a solitary occurrence, recourse to suspension or temporary cancellation of registration was an extreme measure. I come to the conclusion that the response of the second respondent has been a knee jerk reaction and grossly disproportionate.



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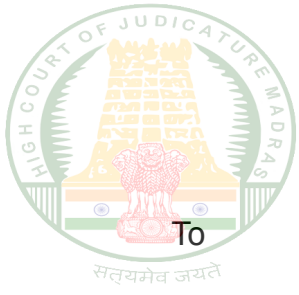
14. As a result of the impugned order, the sufferers will be the patients. We are witnessing an era of corporatisation of medical care. In such a situation, the existence of Government hospitals, Primary Health Centres and Hospitals which do not charge much are highly necessary. Therefore, the role played by such institutions will have to be recognized.

13. In this view of the matter, the order impugned in the writ petition is set aside and the writ petition is allowed. The petitioner is permitted to function forthwith. No costs. Consequently, connected miscellaneous petition is closed.

24.05.2024

Index : Yes/No
Internet : Yes/No
KST

Note : Order copy to be uploaded by today (25.05.2024)



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To

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G.R.SWAMINATHAN, J.

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Pre-delivery order in

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