

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.4515 of 2020

Tamil Nadu Medical Laboratories Association
Rep. by its President
T.Kannan,
Having Office at
H-11, 2nd Street
Anna Nagar East,
Chennai – 600 102.

... Petitioner

Vs.

1.The Principal Secretary,
Health and Family Welfare Department,
Government of Tamil Nadu,
Secretariat,
Chennai – 600 009.

2.The Secretary,
Ministry of Health and Family Welfare,
Union of India,
Room No.348, 'A' Wing, Nirman Bhavan,
New Delhi – 110 011.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 1st respondent to consider the representation of the petitioner and to constitute Tamil Nadu State

Paramedical Council by an Act to regulate the filed of Paramedicals.

For Petitioner : Mr.K.Aditya Chandramouli
Change of Vakalat

For R1 : Mr.P.Kumaresan
Additional Advocate General
Assited by Mr.G.Krishna Raja
Additional Government Pleader

For R2 : Mr.V.Chandrasekaran
Senior Panel Counsel

ORDER

The writ of mandamus has been instituted to direct the 1st respondent to consider the representation of the writ petitioner to constitute Tamil Nadu State Paramedical Council by an Act to regulate the filed of Paramedicals.

2. The petitioner is the Tamil Nadu Medical Laboratories Association, which is a registered Society. The petitioner would submit that persons without any qualifications are playing with the life of human beings. Therefore, the Government thought fit to bring the legislation in the name of the Clinical Establishments (Registration and Regulation) Act, 2010 Act No.23 of 2010. The Act is enacted in order to register and regulate the Clinical Establishments across the Country with the object of prescribing

minimum standard of facilities and services to be provided as mandated under the Constitution. As per Section 8 of the said Act “Every State Government shall constitute a State Council for clinical establishment”. Accordingly, the Government of Tamil Nadu has to constitute the paramedical council as mandated under Section 8(1) of the Act 23 of 2010. Since the State Council mandated was not constituted within the time limit prescribed under the Act i.e. six months, the present writ petition came to be instituted.

3. The learned counsel for the petitioner states that many unqualified persons are employed in Clinical Establishments causing threat to life of persons, who all are attending such clinical establishments for testing purposes and to avail other medical facilities.

4. Mr.Kumerasan, learned Additional Advocate General appearing on behalf of the 1st respondent would submit that the notification was already published on 15th December, 2023. In exercise of powers conferred under Section 63 of the National Commission for Allied and Healthcare Professions Act, 2021, the Rules were framed constituting State Council and

such council constituted is empowered to initiate all further actions by invoking the powers. The State Council has already been constituted for initiation of further actions under the provisions of the Act.

5. The learned Additional Advocate General would submit that the eligible members are to be identified for the purpose of exercise of the powers of the State council under the Act and Rules. The said exercise will be completed within a period of two months.

6. Section 22 of the National Commission for Allied and Healthcare Professions Act, 2021 stipulates that *“Every State Government shall, by notification, **within six months** from the date of commencement of this Act, constitute a State Council to be called the State Allied and Healthcare Council for exercising such powers and discharging such duties as may be laid down under this Act”*. Therefore, the Act granted six months time to every State Government to constitute a State Council. However, the Government of Tamil Nadu has already taken three years time to frame rules and finally it was published only on 15th December, 2023.

7. When the State of Tamil Nadu claims that they are the champions of the healthcare facilities in the Country, they are expected to effectively monitor and control such paramedical and clinical establishments across the State by enforcing Act scrupulously. Though there is a delay in framing rules, Mr.Kumerasan, learned Additional Advocate General would submit that the Rules have already been framed by issuing a notification dated 15th December, 2023 and the Council will commence its function shortly. Steps are already taken to appoint the Chairman and Members of the Committee.

8. Section 44 of the Act enumerates that “The State Council may take such measures, including issuing warning, imposing fine, reducing intake or stoppage of admissions and recommending to the Commission for withdrawal of recognition, against an allied and healthcare institution for failure to maintain the minimum essential standard specified by the Commission under this Act”. Therefore, the State Council has to initiate all measures to conduct inspections in the clinical establishments across the State of Tamil Nadu and ensure that the clinical establishments are functioning by scrupulously following the provisions of the Act including engagement of qualified employees and machineries in the prescribed

standard etc., in the clinical establishment.

9. Section 55 denotes “No allied and healthcare professional shall discharge any duty or perform any function not authorised by this Act or any treatment not authorised within the scope of practice of the profession”.

10. Section 56 deals with Offences and Penalties. Importantly Section 59 stipulates “Whoever contravenes any of the provisions of this Act or any rules or regulations made thereunder shall be punished with imprisonment which shall not be less than one year but which may extend to three years or with fine which shall not less than one lakh rupees or with both”.

11. The Scheme of the Act would indicate that stringent measures are to be taken against the illegalities and irregularities in establishing clinical establishments and its function. Health being an integral part under Article 21 of the Constitution of India and the Fundamental Right of a Citizen, the State is duty bound to ensure quality medical treatments are provided to the Citizen by all the clinical establishments across the State of Tamil Nadu.

12. The Act being passed and Rules are framed thereunder. The

implementation part must be effectively done by the competent authorities of the Government of Tamil Nadu and in the event of any lapses or negligence or dereliction on the part of the authorities, the State must view seriously, since medical treatment is now being an integral part under Article 21 of the Constitution of India is a Fundamental Right of a Citizen.

13. In the present case, the petitioner / Association has raised several allegations against the Clinical establishments regarding appointment of unqualified paramedical staffs, sub standard suspended machineries and utilisation of contaminated medical equipments etc., all such allegations are to be looked into by the State Council with reference to the provisions of the Act and actions are initiated without causing any delay or otherwise.

14. Rules are already notified by the Government of Tamil Nadu on 15th December, 2023. Thus, the 1st respondent is directed to appoint Chairman and Members of the Committee of the State Council as per the provisions of the Act and Rules within a period of two (2) months from the date of receipt of a copy of this order.

15. The Committee constituted shall with the assistance of the competent authorities conduct periodical inspections in the Clinical Establishments across the State of Tamil Nadu and ensure that the qualified technician and employees are working in such Clinical Establishments and the medical services are provided in accordance with law and in the prescribed standards as contemplated under the Act and Rules.

16. In the event of an illegality, violations, offences, etc., immediate actions are to be initiated by invoking the provisions of the Act and the Rules and by following the procedures as contemplated. All effective measures are to be initiated by the 1st respondent to ensure standard medical facility to all the citizen of our great Nation.

17. With the above said directions, this Writ Petition stands disposed of. No costs.

18. Registry is directed to post this matter on 02.04.2024, under the caption "For Reporting Compliance".

22.01.2024

Jeni

Index : Yes

Neutral Citation : Yes

Speaking order

Note: Registry is directed to post this writ petition on 02.04.2024, under the caption "For Reporting Compliance" before this Court.

To

- 1.The Principal Secretary,
Health and Family Welfare Department,
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S.M.SUBRAMANIAM, J.

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