

W.P(MD)No.4094 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.06.2024

Delivered on : 18.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No.4094 of 2021

K.Amirthalal

: Petitioner

Vs.

- 1.The Director of Public Health and Preventive Medicine,
64/75, Main Road, Chockalingam Nagar,
Teynampet, Chennai 600 086.
- 2.The Director of Medical and Rural Health Services,
DMS Complex, No.356 Anna Salai,
Chennai 600 006.
- 3.The District Collector,
Tenkasi District, Tenkasi.
- 4.The Deputy Director of Health Service,
O/o.The Deputy Director of Health Service,
Sankarankovil, Tenkasi Taluk and District.
- 5.Dr.I.Mohamed Ibrahim,
Block Medical Officer,
Government Primary Health Centre,
Vadakarai Kilpidagai Block,
Tenkasi District.



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6. Dr. V. Pandidurai,
Assistant Surgeon,
Government Primary Health Centre,
Vallam, Tenkasi District.

7. T. Velu,
Block Health Supervisor,
Government Primary Health Centre,
Vadakarai Kilpidagai Block,
Tenkasi District.

8. B. Karthik,
Health Inspector Grade- I,
Government Primary Health Centre,
Ilanji, Tenkasi District.

9. P. Kuthalingam,
Health Inspector Grade- I,
Government Primary Health Centre,
Vadakarai Kilpidagai,
Tenkasi District.

10. P. Karuppasamy,
Health Inspector Grade – I,
Government Primary Health Centre,
Vadakarai Kilpidagai Block,
Tenkasi District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of certiorarified Mandamus, to call for the records on the file of the first respondent in connection with the impugned order of rejection passed by him vide his proceedings in R.No. 2245/EPI/S1/2021, dated 27.01.2021 and quash the same as illegal and



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arbitrary and consequently, direct the first respondent to conduct an enquiry and take disciplinary action against the respondents 5 to 10 for the atrocities committed by them in “Surya Nursing Home” and “AMK Medical Shop” situated at Thirumalaikovil Road, Panpoli Town, Tenkasi District and to refund the fine amount of Rs.5,000/- imposed vide receipt No.S.No.TNK/2020/10080, dated 22.09.2020 within the time limit that may be stipulated by this Court.

For Petitioner : Mr.G.Thalaimutharasu

For Respondents : Mr.A.K.Manikkam,
Special Government Pleader, for R1 to R4.

:No Appearance, for R5 to R10.

ORDER

This Writ Petition is directed against the order, dated 27.01.2021 passed by the first respondent and for direction to the first respondent to conduct an enquiry and take disciplinary action against the respondents 5 to 10 for the alleged atrocities committed by them in “Surya Nursing Home” and “AMK Medical Shop” situated at Thirumalaikovil Road, Panpoli Town, Tenkasi District and for refund the fine amount of Rs.5,000/- imposed vide receipt dated 22.09.2020 within the time limit stipulated by this Court.



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WEB COPY 2. It is not in dispute that the petitioner has earlier filed a petition in W.P.(MD)No.13788 of 2020, seeking a writ of mandamus, directing the respondents 1 to 4 herein to take disciplinary action against the respondents 5 to 10 for the alleged atrocity committed by them in “Surya Nursing Home” and “AMK Medical Shop” situated at Thirumalaikovil Road, Panpoli Town, Tenkasi District and for refund the fine amount of Rs.5,000/- imposed vide receipt, dated 22.09.2020, based on the petitioner's representation, dated 07.09.2020 and 25.09.2020 within the time limit stipulated by this Court.

3. When the above matter was taken up for admission, considering the submission made by the learned Special Government Pleader appearing for the official respondents, disputing the allegations that the official respondents have entered into premises of the petitioner unauthorizedly and took away the keys of the premises after locking the same, this Court, as an interim measure permitted the petitioner to break open the premises of the petitioner's Nursing Home in the presence of the official respondents at 10.00 am on 08.10.2020.



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WEB COPY 4. When the matter was taken up for final disposal, though the learned counsel appearing for the petitioner has admitted that they have taken possession of their Nursing Home, pursuant to the interim order of this Court, they have represented that the petitioner may not be in a position to withdraw the writ petition unless and until the fine amount of Rs.5,000/- is refunded to the petitioner. The learned Judge of this Court, considering the above submission on the petitioner's side, directed the first respondent to consider the petitioner's representations, dated 07.09.2020 and 25.09.2020, seeking for refund of Rs.5,000/-, which was collected by way of fine for the alleged unhygienic condition in the Hospital and Medical Shop and pass final orders on merits and in accordance with law within a period of eight weeks from the date of receipt of copy of that order.

5. In pursuance of the said order of this Court, dated 08.12.2020, the impugned order, dated 27.01.2021 came to be passed by the first respondent rejecting the claim of the petitioner. Aggrieved by the impugned order rejecting his representation, the petitioner has filed the present petition seeking a writ of certiorarified mandamus for quashing the impugned order



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and for direction to the first respondent to conduct an enquiry and take disciplinary action against the respondents 5 to 10 and for refund of Rs.5,000/-.

6. Except the orders seeking quashment of the impugned order, the petitioner has reiterated the very same reliefs claimed in the earlier writ petition.

7. The first respondent has filed a counter affidavit taking a specific stand that the Government of Tamil Nadu notified Regulations to prevent the outbreak of Corona Virus Disease (Covid-19) under the provisions of the Epidemic Disease Act, 1897 vide G.O(Ms) No.97, dated 15.03.2020 (Health Family Welfare Department) ; that the Government in the exercise of their power conferred under Section 138 of Tamil Nadu Public Health Act, 1939 has declared the certain offences as compoundable for the amount specified in G.O(Ms)No.326, Health and Family Welfare, dated 04.09.2020; that the Government has also nominated the officials to implement the above said Government Orders and that in pursuance of the same, the fifth respondent along with officials had inspected Surya Nursing Home and



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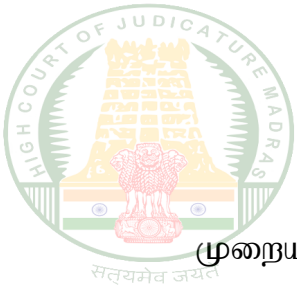
AMK Medical Shop situated at Thirumalaikovil Road, Panpoli Town,

Tenkasi and levied the fine of Rs.5,000/- on 22.09.2020 for not obliging the guidelines issued by the Government of Tamil Nadu for the purpose of controlling and preventing the spread of Covid -19.

8. When the matter is taken up for hearing, this Court has directed the official respondents to produce the inspection report and the basis on which, the fine was imposed.

9. The learned Special Government Pleader has produced the copies of the letter sent by the Health Inspector to the Block Medical Officer; letter sent by the fifth respondent to the fourth respondent and the letter sent by the sixth respondent to the fifth respondent along with some copies of photographs taken at the petitioner's Hospital.

10. The fifth respondent in his letter sent to the fourth respondent has stated that “ ... ஆய்வு செய்ததில் அந்த பகுதியில் உள்ள சூர்யா நர்சிங் ஹோம் என்ற தனியார் கிளினிக்கில் வெளிநாட்டில் மருத்துவம் படித்துவிட்டு, இந்தியாவில் மருத்துவப்பதிவு செய்யாமல், மருத்துவப் பதிவெண் இல்லாமல் மருத்துவம் செய்து கொண்டிருந்தது கண்டறியப்பட்டது. உயிர் வேதிக்கழிவு



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முறையும் சரியாக பின்பற்றப்படவில்லை. இந்த மருத்துவமனையில் முழு நேரமும் அங்கீகரிக்கப்பட்ட மருத்துவர்கள் இருப்பதில்லை. வாரத்தில் ஒன்றிரண்டு நாட்கள் மட்டுமே அங்கீகரிக்கப்பட்ட மருத்துவர் வந்து செல்கிறார். அவரது பெயரில் முழு நேரமும் பயிற்சி பெறாத நபர்களால் தினசரி ஆங்கில மருத்துவமுறையில் உள்நோயாளிகளுக்கு ஊசி போடுவது, மருந்துகள் சீட்டு இன்றி மருந்து மாத்திரை கொடுப்பது போன்ற செயலாக்கம் நடைபெற்று வருகிறது. பொதுமக்கள் கைகழுவிவிட்டு உள்ளே வரும் வகையில் சோப்பு திரவம் எதுவும் வைக்கப்படவில்லை. சமூக இடைவேளி கடைபிடிக்காமல் விதிமுறைகள் எதுவும் பின்பற்றப்படவில்லை.

... முகக்கவசம், தனிநபர் இடைவேளி குறித்த எந்த அறிவுப்பும் இம்மருத்துவமனைக்கு வெளியே இல்லை. எனவே மருத்துவம் (ம) சுகாதார விதிமுறைகளைப் பின்பற்றாமல் சிகிச்சை அளித்த மேற்கண்ட தனியார் கிளினிக்கிற்கு ரூ.5000/- அபாரதம் விதிக்கப்பட்டது. மேலும் இந்திய மருத்துவக் கவுன்சில் (ம) தமிழ்நாடு மருத்துவக் கவுன்சில் விதிமுறைகளின்படி, மருத்துப்பதிவெண் உள்ள மருத்துவர்தான் நோயாளிகளுக்கு சிகிச்சை அளிக்க வேண்டும் என எச்சரிக்கை செய்து சிகிச்சை மையம் மூடப்பட்டது.”

11. No doubt, the petitioner has raised an allegation that on 24.09.2020, the 9th respondent contacted him through his mobile phone and demanded a sum of Rs.1 lakh to hand over the keys of Nursing Home and Medical Shop and that he came to know that the respondents 5 to 10 came



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to their hospital in the name of inspection and demonstrated a drama in order to grab money from him, illegally. Even in the affidavit filed by the petitioner in support of the writ petition, has specifically stated that he did not disclose the said illegal demand of the ninth respondent in his representation addressed to the respondents 1 to 4; that he did not mention the above demand in the affidavit filed in support of the earlier writ petition and that he has raised those allegations in the reply affidavit filed in the earlier writ petition in response to the counter affidavit of the official respondents.

12. It is pertinent to note that as rightly contended by the learned Special Government Pleader appearing for the official respondents, since the official respondents have raised so many allegations and complaints against the petitioner's Nursing Home, the petitioner in order to sustain his petition has filed a reply affidavit raising the false allegation of demanding sum of Rs.1 lakh by the ninth respondent as an after thought. The petitioner himself has given a reason for non disclosing the said allegation earlier as “in the interest of the family members of respondents 5 to 10”, but such a reason is very hard to believe.



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WEB COPY 13. It is evident from the records that a team led by the sixth respondent had visited the petitioner's Hospital and Medical Shop and after noticing the lapses and their failure to follow the requirements issued by the Government with regard to the control of spread of Covid-19, they have imposed a fine of Rs.5,000/- as per G.O.Ms.No.326, Health and Family Welfare Department, dated 04.09.2020.

14. The learned Special Government Pleader appearing for the official respondents would submit that the Government Officials, nominated to implement the above said Government Order, has found out 14,73,808 violations and collected a sum of Rs.14,59,21,000/- ; that consideration of refund of the collected fine amount to the individual is detrimental to the efforts taken by the Public Health and Frontline staffs, who have involved themselves in combating the Covid pandemic risking their own life and that the prayer of the petitioner to refund the fine amount, which is levied for non-complying to the standard operating procedures issued by the Government is illegal and injustice to the sacrifice rendered by the Health care workers and frontline workers.



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WEB COPY 15. The petitioner has not shown that everything in their hospital was well at the relevant point of time and that they have followed the rules and regulations and guidelines issued by the Government. Considering the above, the impugned order of the first respondent rejecting the petitioner's claim for refund of the fine amount cannot be found fault with. Consequently, this Court concludes that the writ petition is absolutely devoid of merits and the same is liable to be dismissed.

16. Now turning to the main aspect, though the fifth respondent has sent a report to the fourth respondent mentioning the omissions and commissions found in the petitioner's hospital, they have also stated that some persons are giving Allopathy treatment to the patients without having necessary qualifications. When the above aspect was raised before this Court at the time of hearing, the learned Special Government Pleader, on instructions, would submit that the petitioner himself is not a qualified Doctor; that qualified Doctors used to visit only for some days, but the petitioner has been treating the patients as if he is a qualified Doctor.



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WEB COPY 17. The official respondents have also produced the copy of the prescription given by Surya Nursing Home, wherein after referring to MBBS Doctors' name, the petitioner name has been shown as Dr.K.Amrithalal, D.E.H.M.S. When this Court has raised a question about the qualification of the petitioner, the petitioner has produced a Diploma Certificate issued by the Indian Institute of Alternative Medicines, wherein the system of medicine is shown as Electro Homoeopathic Medicine; that the petitioner has completed the course in Electro Homoeopathic Medicine and also produced the registration certificate issued by the Indian Board of Alternative Medicines, wherein also the system of medicines is shown as 'Electro Homoeopathic'. The petitioner has not produced any specific order nor any other Government Order or Circular to show that the person having completed the Electro Homoeopathic Medicine course, can practice Allopathy system of Medicine.

18. Despite a specific report was submitted by the fifth respondent, neither the fourth respondent nor his higher officials have taken note of the same. When a specific question was put to the learned Special Government



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Pleader as to whether any action was taken against the petitioner or the persons practicing Allopathy system in Surya Hospital without having necessary qualifications, the learned Special Government Pleader, on instructions, would submit that the official respondents have not taken any action sofar.

19. It is very unfortunate that the official respondents, even after coming to know about the same, got satisfied with imposing of fine levied by the team led by the sixth respondent and allowed the petitioner and others to continue to practice Allopathy system.

20. Fake Doctors are menace to society. Some persons by calling themselves as Medical Practitioners with the help of Diploma certificate issued under various other Indian Systems of Medicine and practicing Allopathy system of Medicine is a serious issue and such pseudo doctors are playing with the life of innocent people, who are coming to them believing that they are genuine Doctors. The Government through the official respondents are duty bound to deal with such persons with iron hands. But here, the authorities after coming to know about the hospital is



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being run by some fake persons, remained as mute spectators and got themselves satisfied with the imposition of fine of Rs.5,000/-.

21. Considering the above, this Court is constrained to issue necessary directions in this regard.

22. In the result, the Writ Petition is dismissed. The official respondents are directed to ascertain as to whether the petitioner and other persons working in his Surya Nursing Home are having required qualification to practice Allopathy system of Medicine and if not, to take appropriate action in accordance with law within a period of three months from the date of receipt of copy of this order. No costs.

23. Post the matter after three months for reporting compliance.

18.07.2024

NCC :yes/No
Index :yes/No
Internet :yes/No
das

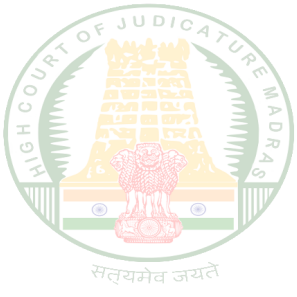


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To

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K.MURALI SHANKAR, J

DAS

Pre-delivery order made in
W.P(MD)No.4094 of 2021

Dated : 18.07.2024