
(2022) 01 GAU CK 0068
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 538 Of 2021

Abul Hussain

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 24-01-2022

Acts Referred:

Clinical Establishment (Registration And Regulation) Act, 2010 — Section 2(c), 14(2), 14(3), 15

Citation : (2022) 01 GAU CK 0068

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : A K Hussain

Final Decision : Disposed Of

Judgement

1. Heard Mr. A.K. Hussain, the learned counsel appearing for the petitioner, Ms. S. Sarma, the learned Standing Counsel appearing on behalf of the

respondent Nos. 1, 2 and 5 and Ms. M. Barman, the learned counsel appearing on behalf of the respondent No. 3 and 4.

2. The case of the petitioner is that the petitioner was running a Dental Clinic namely, M/s Hussain Dental Clinic at Chawk Bazar, Ward No. 12,

P.O.- Bilasipara which has been granted provisional registration under Section 15 of the Clinical Establishment (Registration and Regulation) Act,

2010 (for short the Act of 2010) on 20/11/2017 and thereafter it was extended from time to time and lastly on 24/12/2020 it was extended for another period.

3. Mr. Hussain, the learned counsel appearing on behalf of the petitioner submits that on 19/1/2022 the said provisional registration has been further

extended for a period of 1 year from the date of its issue and in that regard he

places before this Court a certificate of provisional registration dated 19/1/2022 which is kept on record and marked with the Letter X. The further case of the petitioner is that the respondent No. 3 had issued an order dated 24/11/2019 by virtue of which it was alleged that the petitioner is illegally running a fake Dental Clinic with fake registration in the name of M/S Hussain Dental Clinic at Chawk Bazar, Ward No. 12, Bilasipara and accordingly had directed the respondent No. 4 to seize all the documents of the said clinic and seal it and accordingly the said Dental Clinic was sealed on 29/10/2019. It is the case of the petitioner that at that relevant point of time when the impugned order was passed and the Dental Clinic of the petitioner was sealed one Dr. Abhijit Banerjee having a BDS decree was the person Incharge. Subsequent thereto one Dr. Mosaddique Mostafa Alom Ahmed had applied to be the person in charge of the Dental Clinic. It is the further case of the petitioner that the respondent No. 3 had issued the impugned order of seizing the documents and sealing the premises without taking into consideration that the petitioner had a provisional registration and that the petitioner's Dental Clinic was manned by the person Incharge who had the required qualification.

4. The respondent No. 5 who is the Director of Health Services had filed their affidavit in opposition wherein it has been mentioned that the petitioner did not have the approved qualification for opening a Dental Clinic in as much as the petitioner was only a Dental Hygienist and as such the respondent No. 3 has rightly sealed the clinic of the petitioner. The respondent No. 3 had filed his affidavit in opposition wherein it was mentioned that the provisional registration certificate of the clinical establishment found at the time of the raid i.e. on 29/10/2019 have already expired and the petitioner was running the clinic without a valid clinical establishment registration certificate and also without any registered Dentist/Medical Practitioner. It was also mentioned that at the time of raid being made by the Executive Magistrate, Bilasipara on 29/10/2019 it was found that the dentistry setup at the said clinic which was used for performing dental surgery, giving anesthesia, doing mechanical construction etc. but the petitioner was not a registered dentist or authorized medical practitioner who can practice dentistry. It was also mentioned that the certificate which was produced by the petitioner during the time of the raid issued by Delhi Dental

Clinic is a certificate of Dental Hygienist and not a dentist and the Dentist

Act, 1948 clearly defines the Dentist Hygienist as a person not being a dentist or a medical practitioner, who scales, cleans and polishes teeth.

5. To the affidavit in opposition filed by the respondent No. 5, the petitioner had filed an affidavit in reply wherein it is categorically mentioned that the

writ petitioner is only the owner of the Hussain Dental Clinic and as per Section 15 of the Act of 2010 the registration certificate of the clinic

has been issued by the District Registry Authority, Dhubri and after having gone through all the papers and particulars submitted by the petitioner

through online basis as is required under Section 14 (2) and 14 (3) of the said Act. It was also mentioned that the name of the person In-charge of

Hussain Dental Clinic is Dr. Mosaddique Mostafa Alom Ahmed, BDS, whose name is also registered under the Assam State Dental Council

which is clearly mentioned in the registration certificate process and as such the stand of the Director of Health Services, Assam in the affidavit in

opposition that the petitioner does not have a qualification for opening a dental clinic is absolutely incorrect and contrary to the provisions of law. To

the affidavit in opposition filed by the respondent No. 3, the petitioner in his affidavit in reply stated that on 29/10/2019 at the time of evening when the

respondent No. 3 raided the clinic, the petitioner showed the registration certificate dated 20/11/2017 and though the said certificate expired on the day

of raid but the extension of the said certificate was applied and it was extended from time to time so the expiry of the said certificate on a particular

day does not mean that the petitioner is running the clinic without a valid clinical establishment registration certificate. It was also mentioned that the

petitioner never claimed to be the person in charge. The person in charge at that relevant point of time was one Dr. Abhijit Banerjee who had the

requisite qualification. Subsequent thereto Dr. Mosaddique Mostafa Alom Ahmed had applied to be the person in charge of the petitioner's Dental

Clinic and as such as per the Act and Rules framed by the State Government, the petitioner's running and managing the Dental Clinic could not

have been sealed.

6. I have heard the learned counsel for the parties.

7. The counsel for the petitioner, Mr. A.K. Hussain submits that what is required under the Act of 2010 and the rules framed therein under by the

State Government is that the petitioner should have a valid registration certificate and the person in charge who is to run the dental setup of the Dental Clinic owned by the petitioner has to be qualified as per law and as per the contentions of the counsel for the petitioner, the provisional registration certificate is valid at present till 18/1/2023. Ms. S. Sharma, the learned counsel appearing on behalf of the respondent Nos. 1, 2 and 5 submits that an additional affidavit has been filed in pursuance to the order passed by this Court wherein it has been mentioned that Section 2 (c) of the Act of 2010 is applicable to all clinical establishment including dental clinic. A "person in charge" of a clinical establishment in respect to Allopathy Dental Clinic has to be qualified from a recognized University as laid down in the operational guidelines framed under the Clinic Establishment (Registration and Regulation) Act, 2010. The said operational guidelines have been enclosed as Annexure -1 to the said affidavit in opposition wherein the list of recognized qualification of the "person in charge" of clinical establishment have been mentioned. In the said operation guidelines it has been shown that for the purpose of Allopathy Dental Degree the person has to be graduate in Bachelor of Dental Surgery (BDS.) She also draws the attention of this Court to the application form for provisional registration of a clinical establishment which is Form -1 to the Assam Clinic Establishment (Registration and Regulation) Rules, 2016 and shows that not only the name of the owner of the clinical establishment has to be mentioned but also the name as well as other details of the "person in charge" has to be mentioned as could be seen from Sl. No. 3 of the said form. In short the submission of Ms. Sarma the learned counsel is that in terms with the provision of the Act of 2010 a clinical establishment can be setup by any person but it has to be manned by a person in charge who has to have the qualification as per the operational guidelines. Ms. M. Barman, the learned counsel appearing on behalf of the respondent Nos. 3 and 4 submits that the date on which the raid was conducted the petitioner did not have a valid registration certificate and further to that the petitioner was running the said dental clinic without the person in charge who had the requisite qualification.

8. From the materials on record and the submissions made by the learned counsel for the parties, it is apparent that the issue involved in the instant

case is within a short compass to the effect as to whether the action of the respondent No. 3 in passing the impugned order on the ground that the petitioner did not have a valid registration at the time of a raid and the running of the petitioner's Dental Clinic without the person in charge qualified to operate the petitioner's Dental Clinic was justified. The facts above mentioned shows that as on date the petitioner has a provisional registration certificate which is valid till 18/1/2023. The petitioner also submits that the petitioner is not operating the said Dental Clinic. The dentistry set up is being operated by a person in charge namely Dr. Mosaddique Mostafa Alom Ahmed who is duly qualified and has a degree in Dental Science. Under such circumstances, taking into consideration the stand taken by the Director of Health Services in the additional affidavit wherein it has been mentioned that the dental clinic will fall within the ambit of the Act of 2010 and the person has to have the requisite qualification and the petitioner dental clinic is admittedly registered under the provisions of the Act of 2010 and the person in charge has the requisite qualification, this Court is of the opinion that it would be in the interest of justice, that the impugned order dated 29/10/2019 is interfered with and set aside thereby permitting the petitioner to open his dental clinic, however, with the observation that there should be a person in charge who should be responsible and operate the affairs of the dental clinic of the petitioner i.e. performing dental surgery, giving anesthesia, doing mechanical construction etc. The administration and the managing of the said dental clinic can be done by the petitioner.

9. With the above observations, the instant writ petition stands disposed of.