

(1999) 11 KL CK 0029

In the High Court Of Kerala

Case No : O.P. No's. 6529, 6690, 7194, 8462 and 11782 of 1995 and 2273 of 1998

Dr. A.N. Thomas and

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-11-1999

Acts Referred:

Constitution of India, 1950 — Article 14
Drugs and Cosmetics Act, 1940 — Section 18

Citation : AIR 2000 Ker 325 : (2000) KLJ 900

Hon'ble Judges : T.M. Hassan Pillai, J;K. Narayana Kurup, J

Bench : Division Bench

Advocate : M. Ramesh Chander, E. Subramani and S.A. Nagendran, for the Appellant; John Varghese, Govt. Pleader, Grashious Kuriakose, K.P. Dandapani, S. Gopakumaran Nair and V. Santharam, ACGSC, for the Respondent

Final Decision : Dismissed

Judgement

Narayanakurup, J.—The prayer in these writ petitions is to quash the circular of the Drugs Controller directing the petitioners who are running private hospitals, to take out a licence u/s 18 of the Drugs and Cosmetics Act, 1940 (for short "the Act") for sale or storage of drugs and for the issuance of a writ of mandamus restraining the Drugs Controller from insisting on the private hospitals to obtain a drug licence u/s 18 of the Act. The contention advanced by the learned counsel for the petitioner is that since hospitals run by the Government and local bodies are exempted from the purview of the Act as per Clause 5-A of Schedule K of the Act, there is no justification on the part of the Drugs Controller in insisting the petitioners to take out a licence which amounts to hostile discrimination and arbitrary treatment. We do not think that the petitioners are well founded in their submission. Pharmacies which are attached to private hospitals cannot by any stretch of imagination be said to be similar to pharmacies attached to hospitals run by Government or local bodies which are manned by qualified personnel (s) and subject to strict Governmental control. In fact, the drugs stored in hospitals

run by Government and local bodies are subject to periodical inspection by officers of Government who are also the licensing or the controlling authorities under the Act. That apart, hospital's run by Government and local bodies are functioning in authorised premises under the control of qualified registered pharmacists who are accountable to the Government for all the drugs stored and distributed by them. As already noticed, they are also under the supervision and control by the authorities under the Act. On the contrary, the addresses or premises of many private hospitals are not disclosed and they are not accountable to the Government for the drugs stored and distributed by them. Therefore, pharmacies in private hospitals cannot equate themselves with pharmacies in Government hospitals and hospitals run by local bodies in the matter of supervision and control.

2. The petitioners have a further case that the State having exempted registered medical practitioners from the provisions of the Act, they are being discriminated in the matter of taking out a licence. Here again, we are of opinion that the submission is untenable. A private hospital which caters to the prescriptions of several doctors storing huge quantity of drugs, cannot be equated with a registered medical practitioner who administers and supplies drugs for emergency purposes to his own patients only by storing limited quantity of such drugs or "physician's sample for distribution. Further, u/s 18 of the Act, we are of the opinion that even a registered medical practitioner who indulges in sale of drugs across the counter, will certainly be liable to take out a licence under the Act and will not be saved by the exemption engrafted in Clause 5 of Schedule K of the Act. Therefore, we are satisfied that the impugned circular issued by the Drugs Controller directing the petitioners who are running private hospitals to take out a licence u/s 18 of the Act for sale or storage of drugs is one issued in public interest, viz. to safeguard the public from the dangers of spurious, sub-standard and time expired drugs and the same is not liable to be assailed on all or any of the grounds mentioned in these original petitions. If the petitioners are not made accountable to the Controlling Authority under the Act and are permitted to function without a licence, it may not be possible for the Controlling Authorities to check the sale of sub-standard drugs being distributed through unauthorised outlets in private hospitals. The action of the Drugs Controller taken in this regard cannot be said to be arbitrary or unreasonable or violative of any of the legal or constitutional rights of the petitioners. At any rate, they are not entitled to a writ of mandamus restraining the Drugs Controller from insisting on them to obtain a drugs licence u/s 18 of the Act, which in our opinion, is a reasonable restriction imposed in public interest. For the aforesaid reasons we are not inclined to interfere with the circular issued by the Drugs Controller nor are we satisfied that this is a fit case which warrants issuance of a direction to the Drugs Controller restraining him from insisting on the private hospitals to obtain a licence u/s 18 of the Act. For the self-same reasons we are not prepared to accept the challenge made by the petitioners in O.P. No. 8462/95 against the vires of Rule 2(a), (c) and (e) and Rule 4(a) of Part XXI of Ext. P1 Kerala

Pharmacy Council (Amendment) Rules, 1994, since in our considered opinion these rules which confer powers of entry search and inspection, etc. are absolutely essential for carrying out the purpose and object of the Act and are incidental to the exercise of the power under the parent Act. In the aforesaid view, the original petitions are dismissed. However, we make it clear that the drugs stored in emergency/casualty/duty rooms attached to private hospitals will stand exempted from the provisions of the Act relating to obtaining of licence.

The original petitions are dismissed.