

(2013) 09 MP CK 0022

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5366 of 2013

Dr. Vinod Kumar Khator

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 12-09-2013

Acts Referred:

Citation : (2013) 5 MPHT 417

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : R.B.S. Tomar and Mr. D.S. Raghuvanshi, for the Appellant; Nidhi Patankar, Govt. Advocate for the State, for the Respondent

Judgement

Sujoy Paul, J.—By filing this petition under Article 226 of the Constitution of India, the petitioner has prayed for a direction to produce the entire proceedings of seizure and locking of the clinic/premises of the petitioner by respondent No. 3 on 30-7-2013. It is further prayed that it be declared that respondent Nos. 2 and 3 had no jurisdiction and authority to lock the premises of the petitioner and the same be directed to be unlocked forthwith. The petitioner has also prayed for compensation for the aforesaid unauthorised and illegal act of locking the premises/clinic of the petitioner. The petitioner is a Radiologist and working as Medical Officer in District Hospital, Morar. It is contended that the petitioner is not receiving Non-Practicing Allowance (NPA) and, therefore, is entitled to do private practice in the capacity of Medical Officer. The petitioner has built up a house in Char Sahar Ka Naka Road, Hazira, Gwalior. In the part of the above house the petitioner is running a medical consultancy chamber. It is contended that the petitioner used to sit in the said chamber after working hours from his employment and give advice to his patients. It is contended that the petitioner was on leave between 23-7-2013 to 7-8-2013. On 30-7-2013 the respondent No. 3 (Naib Tehsildar) along with Dr. A.P. Shrivastava and police personnel visited his clinic, conducted videography inside his consultancy chamber and then the said chamber was locked. It is contended that the petitioner was not afforded any

opportunity, nor the team which conducted the said inspection showed any authority letter to the petitioner.

2. Shri R.B.S. Tomar, learned Counsel for the petitioner, submits that as per the return filed by the respondents, the power to inspect the clinic or hospital etc., are flowing from M.P. Upcharyagriha Tatha Rujopchar Sambandhi Sthapanaye (Registrikaran Tatha Anugyapan) Adhiniyam, 1973 (hereinafter called as "the Adhiniyam"). By placing reliance on the relevant provisions of the said Adhiniyam, Shri Tomar submits that the State Government has given power to make inspection of nursing home and clinical establishment to certain officers authorised by the State Government by way of rules made under the Adhiniyam. He relied on the notification dated 23-7-1997 whereby the M.P. Upcharyagriha Tatha Rujopchar Sambandhi Sthapanaye (Registrikaran Tatha Anugyapan) Rules, 1997 (Rules) were brought into force. By placing reliance on the relevant portion of the rule, Shri Tomar submits that certain officers by designation are authorised for the purpose of exercising powers u/s 7(1) of the Adhiniyam. The Naib Tehsildar and the persons who have actually conducted the inspection are not competent to conduct the said inspection. By drawing the attention of this Court to Annexure R-4 (enquiry report), it is contended that it is clear that Dr. A.P. Shrivastava, RMO and respondent No. 3 conducted the said inspection and search, which is without authority of law.

3. Per contra, Mrs. Nidhi Patankar, learned Govt. Advocate, supported the action. She placed heavy reliance on Paras 11 and 12 of the return. It is contended that the petitioner being a Government employee was obliged to see patients during working hours in the Government hospital, whereas he was absent and during working hours was giving consultancy in his private chamber. Petitioner is already charge sheeted for this misconduct. She submits that it is a serious misconduct and, therefore, the department is not precluded from taking action against the petitioner. It is submitted that the action was taken in good faith with a view to ensure that the Government doctor provides treatment to the patients during working hours in Government hospital. She placed reliance on Section 13 of the Adhiniyam to submit that no suit or review proceedings will lie against the Government for any action which is conducted in good faith. In addition, a preliminary objection was taken that the petitioner can prefer an appeal under Rule 20 of the said Rules. It is also contended that the petitioner was running a commercial activity from the said clinic, which was seized and, therefore, no fault can be found in the action of the respondents.

4. I have bestowed my anxious consideration on the rival contentions advanced by the parties and perused the record.

5. So far the disciplinary proceedings and question of misconduct is concerned, Shri Tomar fairly submitted that, this is not the subject-matter of this petition and, therefore, this cannot be gone into whether the said act is a misconduct. In view of aforesaid statement, it is clear that the validity of charge-sheet and the action of respondents regarding misconduct of the petitioner is not the subject-

matter of judicial review in the present Writ petition. Accordingly, I am not inclined to enter into the said aspect. It will be open for the respondents to proceed with the said disciplinary proceedings in accordance with law.

6. The singular question in this petition is whether the action of the respondents in inspecting the petitioner's clinic and seizing the same is in accordance with law and whether the petitioner has any alternative remedy or can be relegated to avail the same. It is apt to quote Section 7 of the Adhiniyam, which reads as under:--

Section 7 of the Adhiniyam, 1973:-- Inspection of nursing homes and clinical establishment--

(1) Subject to the provisions of the rules made under this Act, any officer authorised by the State Government in this behalf may:--

(a) Enter at any time by night or by day, with or without notice any place or establishment which he has reason to believe is being used as a nursing home or a clinical establishment.

(b) Make examination of the place or establishment and inspect any equipment, articles or documents found therein.

(c) Make such inquiries, and put such question to any person found in such place or establishment as he deems necessary in order to ascertain whether the place or the establishment is being used as a nursing home or clinical establishment or not.

(2) No person shall obstruct an officer authorised under sub-section (1) in the exercise of any power conferred by that sub-section or make any false or reckless statement in answer to a question put by such officer in exercise of the powers conferred on him under clause (c) of that sub-section.

7. A bare perusal of this provision makes it crystal clear that subject to provisions of the rules, any officer authorised by the State Government may enter the premises/clinic etc., make examination of the place or establishment, inspect equipments and make further enquiries. Under the Adhiniyam, the rules are made and the officers are authorised by designation, which reads as under:--

In exercise of the powers conferred by sub-section (1) of Section 7 of Madhya Pradesh Upcharyagriha Tatha Rujopchar Sambandhi Sthapanaye (Registrikaran Tatha Anugyapan) Adhiniyam, 1973 (No. 47 of 1973), the State Government, hereby authorises the following officers as specified in column (2) to exercise powers within their respective jurisdiction as specified in column (3) of the Table below for the purpose of said Act and the rules made thereunder:--

8. A conjoint reading of Section 7 with the table mentioned under the rule makes it crystal clear that the powers to make inspection and other activities is given to certain officers, who are authorised by the State Government. The intention of the enactment is to conduct inspection and other activity in the manner

prescribed u/s 7 and as per the aforesaid authorisation. This is settled in law that if law permits to do a thing in a particular manner, it has to be done in the same manner or not at all. Thus, I find substantial force in the argument of Shri Tomar that in the teeth of Section 7 along with authorisation it was not open to the respondent Nos. 2 and 3 to conduct inspection on 30-7-2013.

9. The Apex Court in Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, , has taken this view. This Court in Satyanjay Tripathi and Another Vs. Banarsi Devi, , followed the same ratio.

10. In the light of this, it is clear that it was not open for the respondents to conduct, search and examine enquiries through officers who are not authorised by the State Government in this behalf. So far Section 13 of the Adhiniyam is concerned, in the considered opinion of this Court, power of judicial review of this Court under Article 226 of the Constitution is the basic feature of the Constitution. Section 13, in my opinion, does not and cannot exclude such judicial review. See: His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, , Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, and Subhash Sharma and Others and Firdaus Taleyarkhan Vs. Union of India (UOI) and Another, . In Subhash (supra), it was held that judicial review is a part of the basic constitutional structure and one of the basic features of the essential Indian Constitutional Policy.

11. Thus, I am unable to hold that Section 13 of the Adhiniyam excludes the judicial review of the action taken by the respondents. Section 13 of the Adhiniyam is of no assistance to the respondents. So far Rule 20 is concerned, in the considered opinion of this Court, the said provision of appeal is applicable only against an order of Supervising Authority. In the present case, the respondents have not shown any order against which petitioner may prefer appeal. Even otherwise, this is settled in law that even the availability of alternative remedy is not a bar when action under challenge is taken by an authority who does not have jurisdiction. Thus, this argument advanced by the learned Government Advocate is rejected.

12. In the light of aforesaid, in my considered opinion, the petition deserves to succeed. Resultantly, the action of respondents in inspecting and locking his clinic is declared as illegal. The respondents are directed to forthwith open the lock. However, in view of Section 13 of the Adhiniyam, I am not inclined to grant any compensation to the petitioner. The petitioner is only able to show that action was without authority of law and is not able to show that it was not in good faith or malicious.

13. Considering the aforesaid, relief of compensation is rejected. It is made clear that this order will not come in the way of respondents in the matter of disciplinary proceedings initiated against the petitioner. Writ petition is allowed to the extent indicated above. No costs.