

(2002) 02 KL CK 0033
In the High Court Of Kerala
Case No : O.P. No. 9568 of 1995

Holy Cross Hospital

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 25-02-2002

Acts Referred:

Drugs and Cosmetics (IXth Amendment) Rules, 1994 — Rule 3
Drugs and Cosmetics Act, 1940 — Section 18

Citation : (2002) 3 RCR(Criminal) 210

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : Jose J. Mathaikal, for the Appellant; Viju Thomas, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M. Ramachandran, J.—Petitioners have filed this Original Petition challenging the direction issued by the second respondent, Drugs Controller to introduce and enforce the system of Drugs Licence to the petitioner's hospital. Inter alia it is also prayed that Rule 3 of the Drugs and Cosmetics (IXth Amendment) Rules, 1994 is liable to be struck down.

2. The petitioners have given in detail the manner and circumstances under which Drugs had been kept in the hospitals. It is submitted that there is no external dispensation, but the drugs purchased by the hospitals from manufacturers are checked in the hospitals before internal consumption. It is pointed out that u/s 18 of the Drugs and Cosmetics Act, 1940, only sellers, stockists and persons similarly situated are obliged to secure a licence and it was never envisaged that hospitals having in their possession such drugs are also obliged to get such licence, placing them along with such establishments.

3. It is also submitted that no profit is derived from the sale of medicines. By way of amendment in the Drugs and Cosmetics Rules, exemption granted to charitable institutions under schedule "K" had been lifted. Petitioners submit that

such steps amount to violation of fundamental rights under Article 14 of the Constitution.

4. Challenging the steps for licencing in 1991, a batch of Writ Petitions had been filed, and by judgment dated 8.8.1991 in O.P. No. 2179/91 and connected cases, this Court had directed the Government to look into the objections fielded. Subsequently, orders have been passed duly taking notice of G.S.R. 812(6) dated 14.11.94, issued by Government of India, rejecting the request for exemption of the ground now represented by the petitioners.

5. The Act and Rules requires possession of licence for stocking for sale, selling and distribution of drugs by any person. Exemption of course had been provided in certain cases, in favour of registered medical practitioners, and hospitals/ dispensaries maintained or supported by Government or local bodies. The Central Government had withdrawn exemptions given to hospitals and dispensaries run by Charitable/ Voluntary organisations. The private hospitals were also obliged to obtain licence.

6. The broad classification as above is intelligible and the petitioners have not been able to point out that the above is discriminating treatment. The objection appears more for reason of heart as the procedure or fee does not appear to be cumbersome or heavy. An exemption cannot be demanded as of right, and I am of the opinion that the present insistence will ultimately be in public interest.

7. The Government Pleader further submits that the petitioners have no plea that the Legislature is incompetent to introduce the amendment or to enforce it. Petitioners might have inconvenience because of the enforcement of the Rule, but it cannot be equated to the invalidity of the rule and there cannot be any differentiation between the hospitals which are charitable in their outlook and which runs on commercial lines. In such matters of dealing with drugs, for ensuring accountability, rigorous approach is contemplated. It is also pointed out that the petitioners have not shown any real difficulties the above situation might bring on to their activities.

8. In the light of facts highlighted, I do not think that the petitioners have succeeded in pointing out that the amendment as presently brought about is in any way illegal, arbitrary or unconstitutional, or a colourable exercise of power. The power that has been vested in the Government has been properly exercised and exemption provision have been confined to a defined group. The Original Petition is therefore dismissed.