

(2015) 04 RAJ CK 0093

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 1149 of 2013

Mahaveer Hospital

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Medical Termination of Pregnancy Act, 1971 — Section 6

Citation : (2016) AIR (Raj) 38 : (2015) 2 CDR 937 : (2015) 3 RLW 2163

Hon'ble Judges : Govind Mathur, J; Jaishree Thakur, J

Bench : Division Bench

Advocate : R.S. Mankad, for the Appellant; P.R. Singh, Additional Advocate General and Dinesh Ojha, Advocates for the Respondent

Final Decision : Allowed

Judgement

Govind Mathur, J.—By an order dated 7.8.2006 the Chief Medical and Health Officer, Udaipur consequent to an inspection made by the team constituted by the Directorate of Medical and Health Services cancelled the certificate of approval for place to undertake medical termination of pregnancy. A petition seeking review of the order aforesaid also came to be rejected by the State Government vide order dated 12.8.2012. The petition for writ giving challenge to the orders aforesaid also came to be rejected by learned Single Bench on 17.9.2013, hence this appeal is before us.

2. The case of the appellant petitioner is that the certificate issued to it as per provisions of Rule 5 of the Medical Termination of Pregnancy Rules, 2003 (hereinafter referred to as "the Rules of 2003") has been cancelled by the Chief Medical Officer, Udaipur without adhering the procedure specified under Rule 7(1) of the Rules aforesaid. Learned Single Bench while rejecting the argument raised on behalf of the petitioner held as under:-

"4. The contention relating to natural justice also does not entitle the petitioner to seek any relief from this Court since admittedly in the appeal filed against the

impugned order dtd.7.1.2008, the Appellate Committee gave full opportunity of hearing to the petitioner on 22.1.2013 and after giving an opportunity of hearing only, the appeal came to be dismissed vide Annex.24 dtd.12.4.2013. The original order thus stood merged in the appellate order. Moreover, as held by the Apex Court, the principles of natural justice is not an unruly horse or cure all judicial weapon so as to upset all public authorities" orders on that ground. It is not to unravel everything. It depends upon the facts of each case. The relevant extract of Hon"ble Supreme Court decision in the case of The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee, AIR 1977 SC 965 : (1977) 34 FLR 381 : (1977) 2 SCC 256 : (1977) 2 SCR 904 : (1977) 9 UJ 184 is quoted hereinunder for ready reference:-

"13. The last violation regarded as a lethal objection is that the Board did not enquire of the respondent. Independently of the one done by the Regional Inspector. Assuming it to be necessary, here the respondent has in the form of an appeal against the report of the Regional Inspector, sent his explanation to the Chairman of the Board. He has thus been heard and compliance with Regulation 26. In the circumstances, is complete. Natural justice is no unruly horse, nor lucking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the from, features and fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt that is the conscience of the matter."

5. The fact remains in the present case that the petitioner had an opportunity and was given such opportunity by the appellate Committee. The offences prima facie made out against the petitioner are of grave nature and indicate such malpractices by such hospitals. However, this Court does not want to make any further observations in this regard lest they are taken as findings against the petitioner and his hospital and it is for the competent Court to dispose of the case in accordance with law. This Court does not find any sufficient ground to quash the impugned order in writ jurisdiction of this Court."

3. In appeal, the argument advanced on behalf of the appellant petitioner is that as per sub-rule (1) of Rule 7, the Chief Medical Officer could have cancelled the certificate only after satisfying himself that the facilities specified in Rule 5 were not properly maintained and the termination of pregnancy were not being done under a safe and hygienic conditions at the petitioner hospital. In the instant matter the certificate has been cancelled without arriving at such satisfaction. As per the appellant petitioner, the Chief Medical Officer is not empowered to cancel a certificate as the authority in this regard is given to a "committee" i.e. to be established in accordance with the Rules of 2003. The cancellation even by a committee can be made after giving an opportunity of making representation to

the owner of the hospital.

4. Per contra, as per Shri P.R. Singh, learned Additional Advocate General, the Chief Medical and Health Officer, Udaipur cancelled the certificate after having an inspection done by a team constituted by the Directorate of Medical and Health Services and only after satisfying himself about non-availability of necessary infrastructure at the appellant premises to conduct medical termination of pregnancy. According to learned Additional Advocate General learned Single Bench dismissed the writ petition by arriving at a conclusion that the wrong of the petitioner disentitles him to have an opportunity of making representation as provided under Rule 7(1) of the Rules of 2003. It is asserted that the reviewing authority while considering the review petition provided an opportunity of hearing to the petitioner, therefore, the complaint made by the petitioner for violation of principles of natural justice is ill-founded.

5. Heard learned counsels.

6. The Central Government while exercising powers conferred by Section 6 of the Medical Termination of Pregnancy Act, 1971 framed the Rules of 2003 to carry out the provisions of the Act, particularly to settle the experience or training or both which a registered Medical Practitioner should have, if he intends to terminate any pregnancy and for such other matters as are required for regulating approved medical termination of pregnancy.

7. As per Rule 5 of the Rules of 2003 no place can be approved for medical termination of pregnancy (1)until the Government is satisfied that the termination of pregnancy may be done therein under safe and hygienic conditions; and (2) unless that is having certain facilities given under the Rules. Rule 6 of the Rules of 2003 empowers Chief Medical Officer to inspect the approved place for medical termination of pregnancy in certain eventualities. The Chief Medical Officer as per Rule 7(1) of the Rules of 2003 has authority to have inspection of the place having certificate as per Rule 5 and to make a report of inspection to a committee constituted under the Rules of 2003. The committee may cancel the certificate of approval of the place to undertake medical termination of pregnancy if satisfied that the facilities specified are not being properly maintained and the termination of pregnancy at such place cannot be made under safe and hygienic conditions. Under Rule 8 of the Rules of 2003, the owner of a place having a certificate of approval may make an application to the Government for reviewing order of cancellation passed by the Chief Medical Officer. The Government while exercising powers under Rule 8 *ibid* may after giving the owner an opportunity of being heard confirm, modify or reverse the order.

8. In the case in hand before cancelling the certificate of approval an inspection was made but admittedly no report of that was given to the petitioner. The Chief Medical Officer by order dated 7.8.2006 just by giving a reference of the inspection cancelled the certificate of approval for place to undertake medical

termination of pregnancy. The order passed by the Chief Medical Officer reads as under:-

"An inspection team constituted by the Directorate, Medical and Health Services, Rajasthan Jaipur inspected Mahaveer Hospital, Udaipur as per MTP Act (Medical termination of Pregnancy Act, 1971) on 7.8.2006. Its MTP registration is hereby cancelled with immediate effect till further orders as a consequent to deficiencies found during inspection."

9. The order dated 7.8.2006 though refers to deficiencies noticed during the course of inspection but does not detail those deficiencies. It is also apparent that the Chief Medical Officer in the order aforesaid has not recorded his satisfaction to arrive at a conclusion that the petitioner was not properly maintaining the facilities specified in Rule 5 of the Rules of 2003 and the termination of pregnancy at the approved place was not done in safe and hygienic conditions. The respondents during the course of hearing too failed to point out any record wherein such satisfaction would have been recorded by the Chief Medical Officer. Learned Single Bench affirmed the impugned action on the count that the appellate authority provided an opportunity of hearing to the petitioner and looking to the fact that the original order merged with the order of appellate authority, no complaint with regard to violation of principles of natural justice is sustainable and further that in light of the judgment of Hon'ble Supreme Court in *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee*, AIR 1977 SC 965 : (1977) 34 FLR 381 : (1977) 2 SCC 256 : (1977) 2 SCR 904 : (1977) 9 UJ 184 , no unnatural expansion to the principles of natural justice could have been given without reference to the administrative realities.

10. So far as the merger of the original order with the order of the appellate authority is concerned, suffice to mention that under the Rules of 2003 no remedy of appeal is prescribed. Under Rule 8 of the Rules of 2003 it is only a remedy of review. Be that as it may, the power available to the Government under Rule 8 of the Rules of 2003 is to modify, confirm or reverse the order passed by the Chief Medical Officer. The authority competent while exercising powers under Rule 8 of the Rules of 2003 could not have rectified the lacuna existing with the original order. It is well settled that if an original order is suffering from a fundamental lacuna then that cannot be cured even in appeal, even if the appeal is in continuation of the original proceedings.

11. Looking to this position of law, we are of considered opinion that the opportunity of hearing provided by the reviewing authority in no manner satisfies the default in adhering the procedure given under Rule 7(1) of the Rules of 2003, which is necessary for cancellation of a certificate for approval of place to undertake medical termination of pregnancy.

12. As already stated, as per Rule 7(1) of the Rules of 2003 the Chief Medical Officer on being satisfied that the facilities specified in Rule 5 are not being

properly maintained and termination of pregnancy at the approved place cannot be made under safe and hygienic conditions, may make a report of inspection to the committee giving the details of deficiencies or defects found at the place and the committee may, on being satisfied suspend or cancel the approval after providing an opportunity of making representation to the owner of the approved place. In the case in hand, no inspection report is available on record. The Chief Medical Officer at his own cancelled the certificate of approval for the place to undertake medical termination of pregnancy. True it is, as per the law laid down in the case of the Chairman, Board of Mining Examination and Chief Inspector of Mines and Anr. v. Ramjee (supra) and in several other cases the requirement of adhering to principles of natural justice may be dispensed with, but this mode cannot be applied ipse dixit. The need of adhering to principles of natural justice before taking an action effecting civil rights of a person may be dispensed with by the competent authority on being satisfied that no amount of explanation would effect the ultimate result and adherence of such principles shall be nothing but an empty formality. This mode should be adopted sparingly being an exception to normal rule. In the case in hand the order impugned dated 7.8.2006 nowhere discloses as to what were the deficiencies noticed and how those were resulting into only one conclusion i.e. cancellation of certificate of approval. In absence of such satisfaction in our considered opinion the theory of useless formalities could have not been made applicable. It is pertinent to notice that as per sub-rule (1) of Rule 7 of the Rules of 2003 it is the "committee" that could have cancelled the certificate of approval for place to have termination of pregnancy. In the instant case as per the respondents no committee as per the Rules of 2003 was constituted by the Government of Rajasthan, therefore, the Chief Medical Officer exercised the powers under sub-rule (1) of Rule 7. The justification given by the respondents is not at all tenable. If the committee was not existing, then there was no occasion for the Chief Medical Officer to usurp the powers of the committee. The Rules of 2003 nowhere empowers him to do so. The order impugned as such is without jurisdiction.

13. The appeal, for the reasons given above, deserves acceptance. Accordingly, the same is allowed. The judgment impugned dated 17.9.2013 passed by learned Single Bench is set aside. The writ petition preferred by the petitioner appellant is allowed. The order dated 7.8.2006 passed by the Chief Medical Officer, Udaipur and the order dated 12.8.2012 passed by the reviewing authority are quashed. The authorities competent are at liberty to proceed against the appellant petitioner in accordance with the Rules of 2003 after providing an opportunity of making representation to him.

14. No order to costs.