
(2008) 04 P&H CK 0067
In the Punjab And Haryana At Chandigarh

Satish Kumar Gupta (Dr.) etc.

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 04-04-2008

Acts Referred:

Punjab Shops and Commercial Establishments Act, 1958 — Section 2(1)(iv)

Citation : (2009) 1 LLJ 585 : (2008) 3 PLR 207 : (2008) 3 RCR(Civil) 645

Hon'ble Judges : Sabina, J;M.M. Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The petitioners who are medical practitioners and are running Homes are aggrieved by the notification dated 28.2.1997 (Annexure P.1) whereby the Nursing Homes have been included under the head "Type of Establishments" without declaring them as "commercial Establishment" u/s 2(1) (iv) of the Punjab Shops and Commercial Establishment Act, 1958 (for brevity "the Act") and the rules framed thereunder. A consequential prayer for quashing order dated 20/23.4.2007 (Annexure P. 8) passed by respondent No. 1 has also been made. A further prayer for quashing proceedings concerning prosecution of the petitioners initiated by respondent No. 3 in terms of notices dated 15.3.2008 (Annexures P.10 and P.11) issued by the Sub Divisional Magistrate, Ambala City has also been made.

2. Brief facts of the case necessary for the disposal of the instant petition are that the petitioners who are qualified doctors are running their clinics/Nursing Homes in District Ambala. It is claimed that the Nursing Homes are not commercial establishments and they are only performing professional activities by using their personal skill and intelligence being doctors. Their grievance is that the respondent-State government by notification dated 28.2.1997 (Annexure P.1) has substituted Rule 13(1) of the Punjab Shops and Commercial Establishment, Rules 1958 (for brevity "the rules") and "Nursing Homes" have been included under the head "Type of Establishment" without declaring them as "commercial

establishments" in terms of Section 2(1)(iv) of the Act. The petitioners have been called upon to deposit the requisite fee of Rs. 10,000/- in terms of provision 13(1) of the Rules. The petitioners had earlier approached this Court where notification dated 28.2.1997 (Annexure P.1) was challenged. The writ "petition was disposed of on 4.2.2000 on the basis of the statement made by the petitioner therein that they would make a detailed representation and the concerned authority was to consider the same (Annexure P.3). The petitioners are stated to have filed a detailed representation which has been rejected vide order dated 3.10.2000 (Annexure P.4) holding that in addition to using their own skill, the doctors are employing staff to assist them in their profession and rendering services to the public in return for profit/remuneration charges. It was further held that the Nursing Homes have been organising their activities in the same manner in which any trade or business is generally organised. The test of habitual and systematic activities has been found to be applicable to them as the doctors with their skill, capital equipment and building, renders service in lieu of fee like any other service profit earning organisation. They are found to be profit earning commercial establishments. Even prosecution has been launched by respondent No. 3 by filing a complaint before the Chief Judicial Magistrate, Ambala in terms of provisions of Section 33A of the Act and the petitioners have been summoned. The order summoning the petitioners have been subject matter of challenge in C.W.P. Nos. 3450 of 2002 and 1026 of 2004 which were ultimately disposed of on 8.2.2006 on the ground that the government itself has to reconsider the matter as it thought it proper to withdraw the amendment with regard to certain categories of establishments. The penultimate para of the order of the Division Bench reads thus:

We are informed that in the meanwhile, notification, Annexure P.2 with respect to privately managed educational institutions and privately managed colleges has been withdrawn. On 21.12.2005, when the matter came up before this Court, the learned Additional Advocate General, Haryana, had prayed for an adjournment on the ground that the Government was reconsidering the matter and the case was adjourned to January 25, 2006. Today, we are told that no final decision has been taken by the Government on the issue involved. We are, therefore, of the opinion that as the Government itself had thought it proper to withdraw the amendments with regard to certain categories of establishments and that the Government is reconsidering the matter *denovo*, as would be clear from the statement made by the learned Additional Advocate General, Haryana on 21.12.2005, it is appropriate that the matter should for the moment be left to the State Government. We accordingly direct the State Government to take a final decision either way within a period of four months from the date that a certified copy of this order is supplied to the Advocate General. In the meanwhile, we direct that the interim orders, granted by this Court from time to time in various writ petitions shall continue to operate.

3. In pursuance to the afore mentioned order the government has now passed the order rejecting the representation of the petitioners holding that their

activities are purely commercial and such establishments squarely falls within the definition of "commercial establishment" as defined in Clause (iv) of Sub-section 1 of Section 2 of the 1958 Act, paragraph 4 of the order dealing with the Nursing Homes reads thus:

Pursuant to the above said directions of the Hon'ble High Court, the Government has considered the representation made by the Indian Medical Association, Haryana State educational institutions are quite different or compared to the activities of doctors, maternity homes, clinics, nursing homes, financial companies, banks etc. etc. The activities of the latter are purely commercial and such establishments squarely fall within the definition of commercial establishments as defined in Clause (iv) of Sub-section (1) of Section 2 of the Punjab Shops and Commercial Establishments Act, 1958, and therefore, there is no justification for taking these establishments out of the purview of the aforesaid Act.

4. We have heard learned Counsel for the petitioner at a considerable length who has argued that the amendment made in Rule 13 of the Rules by including "Nursing Homes" requiring them to be registered by paying Rs. 10,000/- is liable to be declared unconstitutional illegal because the activities of the petitioners cannot be regarded as commercial activities. It is mandate to mention that on 28.2.1997 the respondent state has incorporated amendment in Rule 13(1) of the Rules which reads thus:

1. A statement required u/s 13 of the Act for registration of an establishment or its renewal shall be submitted by the employer to the Inspector of the area within whose jurisdiction the establishment is situated in triplicate in Form F, alongwith requisite registration/renewal fee prescribed hereunder for different categories of establishments.

S. Type of Establishment Registration fee Renewal fee for each block No. for first three years of three years 1 2 3 4 1 Started Hotels, Nursing Homes, Cinema Houses Rs. 10,000/- Rs. 10,000/-

5. A perusal of the afore-mentioned rules show "that a Nursing Home is required to make payment of Rs. 10,000/- for the first three years as registration fee and equivalent amount of renewal fee for each block of three years. It may be true that medical professional might be using their personal skill, knowledge and opinion for rendering service to the general public yet they charge their fee. Their activities can no longer be regarded as charitable or based on no profit no loss principle. Additionally, the Nursing Homes have various other facilities like lab test which includes, blood test, Lipid profile etc., Xray M.R.I. Machines. They indulge in profit earning commercial activities and cannot be regarded as the simple professional rendering service with meager fee on the motto of "no profit no Loss". Therefore, the impugned order passed by the respondents does not suffer from any legal infirmity warranting interference of this Court. We also do not find any extra ordinary element in the amendment carried in Rule 13(1) of

the Rules requiring Nursing Homes to pay fee as specified. The petitioner not advanced any argument which may lead us to conclude that charging fee suffers from any illegality. Therefore, the writ petition wholly without any substance and is liable to be dismissed in limine. For the reasons afore-mentioned this petition fails and the same is dismissed.