
(2013) 10 MP CK 0238
In the Madhya Pradesh High Court
Case No : W.A. No. 473 of 2013

State of M.P.

APPELLANT

Vs

Dr. Vinod Kumar Khatar

RESPONDENT

Date of Decision : 11-10-2013

Acts Referred:

Citation : (2013) 4 MPLJ 715

Hon'ble Judges : S.K. Gangele, J;G.D. Saxena, J

Bench : Division Bench

Advocate : Nidhi Patankar, Govt, for the Appellant; R.B.S. Tomar and Shri Ajay Bhargava, for the Respondent

Final Decision : Disposed Off

Judgement

1. This appeal is listed for admission, however, the counsel for the respondent appeared on advance notice, hence with the consent of the parties, the appeal is heard and disposed of finally. The appellants/State has filed this appeal against the order dt. 12.9.2013 passed by the learned Single Judge in W.P. No. 5366/2013(S).

2. The respondent challenged the seizure and inspection of the premises of the respondent on the ground that the authorities, who conducted inspection and locked the premises of the respondent, were not competent to conduct the inspection and seizure of premises.

3. The respondent has been working as Radiologist at District Hospital Morar, District Gwalior. The Collector District Gwalior conducted an inspection on 29.7.1993 of District Hospital Morar, District Gwalior. He found that the respondent, who is posted as Radiologist in the District Hospital Morar, was absent from duty. On enquiry, the Collector was informed further found that the respondent was the only Radiologist posted at District Hospital Morar. Civil Surgeon informed the Collector that the respondent was absent from duty since 25.7.2013 after submitting an application for earned leave. The Collector

cancelled the leave of the respondent and he was directed to report on duty, however, the respondent did not turn up on duty. Various complaints were received by the Collector against the respondent. It was complained informed that the respondent had been running a clinic at his own home which is near Hajira Chouraha, Gwalior, then the Collector Gwalior constituted a committee under the administrative and supervisory power headed by Naib Tahsildar, who is also Executive Magistrate alongwith Dr. A.P. Shrivastava and other 2-3 persons as members of the Committee.

4. The Committee inspected the premises situated at 24-25 Tansen Nagar, Gwalior. It was found that the respondent had been running a clinic at his residence and he had installed an X-ray machine. The whole episode was videographed. Since it was found that the respondent had been running a medical establishment without any permission and registration or against the instruction of the government, respondent No. 3 had taken action in the matter in accordance with the direction issued by the Collector. The premises was seized and a lock was put on the door of the premises. Because the clinical activities without registration were not permitted under the law, hence, the activities have been stopped by the competent authority.

5. Learned Single Judge has allowed the petition on the ground that the committee headed by Naib Tahsildar was not competent to conduct any inspection of the premises of the respondent in accordance with the provisions of M.P. Upcharyagriha Tatha Rujopchar Sambandhi Sthapanaye (Registration Tatha Anugyapan) Adhiniyam, 1973 (hereinafter referred to Act of 1973) and the rules made thereunder neither the same could be sealed.

6. The State has enacted the act named as M.P. Upcharyagriha Tatha Rujopchar Sambandhi Sthapanaye (Registration Tatha Anugyapan) Adhiniyam, 1973 (hereinafter referred to Act of 1973) It was amended by the amending Act namely M.P. Act No. 16 of 2008. Section 2(aa) of the aforesaid Act defines "clinical establishment", which is as under:-

Clinical establishment" means a medical laboratory a physiotherapy establishment, a clinic, or an establishment analogous to any of them, by whatever name called;

7. Section 3 of Chapter II of the aforesaid Act prescribes that Nursing Home or Clinical Establishment not to open, kept or carried on without registration and licence. The aforesaid section is as under:-

3. Nursing home or clinical establishment not to be opened, kept or carried on without registration and license. No person shall open, keep or carry on a nursing home or a clinical establishment without being registered in respect thereof and except under and in accordance with the terms of a licence granted therefor.

8. Section 8 of the Chapter III prescribes penalty for offences under the Act, which is as under:-

8. Penalties for offences under the Act,-Any person,-

(a) who contravenes the provisions of Section 3; or

(b) who contravenes the provisions of subsection (2) of Section 7; or

(c) who, being the holder of a licence granted under this Act in respect of any nursing home or clinical establishment to be used for unsocial or immoral purposes of both;

shall be guilty of an offence and shall-

(i) on conviction for a first offence be punishable with fine which may extend to [fifty thousand rupees]; and

(ii) on conviction for a second or subsequent offence be punishable with rigorous imprisonment for a term which may extend to three months and shall in addition be liable to fine which may extend to [one thousand rupees] for every day for which the offence continues after conviction.

[8A. Penalty for deficiencies - Any person who contravenes any provision of this Act or rule made thereunder resulting in deficiencies that do pose any imminent danger to the health and safety of any patient which can be rectified within a reasonable time, shall be punishable with fine which may extend to ten thousand rupees.]

9. From the perusal of the aforesaid provisions of the Act, it is clear that no person is authorised to open, keep or carry on a nursing home or clinical establishment without being registered in respect thereof and without a licence granted thereof and contravention of the aforesaid provision is an offence and it is punishable with fine which may extend to fifty thousand rupees and subsequent offence is punishable with rigorous imprisonment which may be extended to three months and fine, which may extend to one thousand rupees for every day.

10. Learned counsel for the respondent has admitted the fact that respondent had no registration of the clinical establishment which was inspected by the team. From the findings recorded by the team, it is clear that the respondent installed an X-ray machine and had been running the clinic and he was also examining the patient and he had been doing x-ray at the place.

11. Under various enactment the establishment has been defined and the term "establishment" means some definite and identifiable firm. The Websters International Dictionary defines the establishment as under:-

A more or less fixed and usu. sizable place of business or residence together with all the things that are an essential part of it (as grounds, furniture, fixtures, retinue, employees).

12. Hon"ble Supreme Court in Ram Kumar Misra Vs. State of Bihar and Others, has considered the definition of "establishment" under various acts individually

and held as under:-

6. Now it is clear from the Explanation to the amended Entry 27 that the word "establishment" in that entry has the same meaning which is assigned to it in the Bihar Shops and Establishments Act, 1953 and we must, therefore, look at the definition of "establishment" as given in the Bihar Shops and Establishments Act, 1953 in order to determine as to whether the Bhagalpur and Sultanganj ferries could be said to be establishments within the meaning of the amended Entry 27. The word "establishment" is defined in Section 2(6) of the Bihar Shops and Establishments Act, 1953 to mean an establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary to any business trade or profession. Now it can hardly be disputed that the Bhagalpur and Sultanganj ferries are establishments which carry on business or trade of plying ferries across the Ganges and they are clearly within the meaning of the word "establishment" in Section 2(6) of the Bihar Shops and Establishments Act, 1953 and consequently they would also be establishments within the meaning of that expression as used in the amended Entry 27. The Minimum Wages Act, 1948 would, therefore, clearly be applicable to employment in the Bhagalpur and Sultanganj ferries. Since the notification dated 25th June, 1975 as amended by the Notification dated 20th January 1979 fixes of minimum wages for different categories of employees employed in any establishment, which would cover the Bhagalpur and Sultanganj ferries, there can be no doubt that the workmen employed in these two ferries were entitled to receive minimum wages as laid down in the Notification dated 25th June, 1975 read with the Notification dated 20th January 1979 with effect from the date of latter notification.

13. Under the Industrial Law meaning of "establishment" means in accordance with the case of Mangalore Ganesh Beedi Works and Others Vs. Union of India (UOI) and Others, , in which Hon"ble Supreme Court held as under:-

48. The word "establishment" is defined in Section 2(h) of the Act to mean any place or premises including the precincts in which or in any part of which any manufacturing process connected with the making of beedis or cigars or both is carried on and it includes an industrial premises. Section 2(i) of the Act defines "industrial premises" to mean any place or premises not being a private dwelling house where the industry or manufacturing process of making beedis or cigar is carried on. An Employee is defined in Section 2(f) of the Act to mean any person employed directly or through any agency in any establishment and include any labourer who is given raw materials by an employer or a contractor at home referred to as the home worker and any person employed by an employer or a contractor but working at the premises with the employer or contractor. Therefore, the words "employed in an establishment" to Section 26 of the Act are referable to home workers as well. The second explanation to Section 27 of the Act also speaks of determination of wages payable to home worker during leave period.

14. From the aforesaid judgments and definition of establishment, it is clear that the word "establishment" can signify on the one hand body of persons or organized body and on the other hand premises. In our opinion, the word "clinical establishment" mentioned in Section 2(aa) of the Act of 1973 means a clinic, or an establishment analogous to any of them, by whatever name called. The petitioner had installed an X-ray machine in the premises and he had been doing X-ray from the aforesaid premises. He was also doing consultancy business. Hence, the premises would come within the definition of clinical establishment as defined u/s 2(aa) of the Act of 1973.

15. Admittedly, the respondent had no licence or registration for the aforesaid purpose, hence, the respondent has committed an offence under Chapter III of the Act of 1973. When the respondent had committed an offence, even the premises was sealed by the unauthorized person, it could not be said that the respondent was eligible to get the relief in exercise of powers by the High Court under Article 226 of the Constitution.

16. Hon"ble Supreme Court in RBF Rig Corporation, Mumbai Vs. The Commissioner of Customs (Imports), Mumbai, has held as under in regard to exercise of powers by the High Court under Article 226 of the Constitution:-

19. Article 226 of the Constitution confers powers on the High Court to issue certain writs for the enforcement of fundamental rights conferred by Part III of the Constitution or for any other purpose. The question, whether any particular relief should be granted under Article 226 of the Constitution, depends on the facts of each case. The guiding principle in all cases is promotion of justice and prevention of injustice.

17. The principle is that the High Court can refuse to exercise powers if due to exercise of the aforesaid powers, the illegality be perpetuated.

18. We have no hesitation to affirm the finding recorded by the learned Single Judge that in accordance with the provisions of the Act of 1973, Chief Medical and Health Officer is the authorized officer to conduct inspection in regard to the clinical establishment and he is the authority to take action under the Act of 1973. However, on this ground, the premises of the respondent which was being used for carrying on activity of medical establishment could not be handed over to the respondent but the proper course is that the Chief Medical and Health Officer be directed to take action in accordance with law. Hence, the appeal is disposed of with the following directions:-

(1) That the Chief Medical and Health Officer Gwalior is directed to take action in the matter within a period of two weeks from the date of receipt of copy of the order. The authority shall give an opportunity to the respondent for the proposed action and it should be within the parameters of Act of 1973 and the rules made thereunder.

(2) Up to passing of the order by the authority, the respondent be not permitted

to run the clinical establishment, however, he is permitted to use the residential portion of the premises for the purpose of his residence. Impugned order passed by the writ court is modified accordingly.

No order as to costs.