
(2014) 08 AP CK 0051

In the Andhra Pradesh High Court

Case No : Writ Petition No. 19663 of 2014

Suraksha Hospital

APPELLANT

Vs

State of Telangana

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Citation : (2014) 6 ALD 163

Hon'ble Judges : P. Naveen Rao, J

Bench : Single Bench

Advocate : J. Sreenivasa Rao, Advocate for the Appellant

Judgement

P. Naveen Rao, J.—Petitioner is a nursing home, having granted certificate of establishment by order dated 31.10.2013. Certificate once granted is valid for a period of three years. While so, on 20.6.2014 the District Medical and Health Officer (3rd respondent) lodged a complaint with the Station House Officer (4th respondent) alleging violations of the certificate of registration and committing certain irregularities. Crime No. 199 of 2014 was registered and investigation is in progress. While so, on the same day, Mandal Revenue Inspector seized the entire premises by recording panchanama of seizure. This writ petition is instituted challenging the said order of seizure. Learned Counsel for petitioner contends that Mandal Revenue Inspector is wholly incompetent to seize the premises. He further contends that issuance of certificate, to start a medical care establishment and carry on activities is governed by "A.P. Allopathic Private Medical Care Establishments (Registration and Regulation) Act, 2002" (for short the Act, 2002). Section 7 of the Act, 2002 provides power to grant recognition; Section 8 provides for inspection or enquiry; Section 9 vests power in District Medical and Health Officer for cancellation or suspension of registration. On any such orders passed by the authority, an appeal shall lie in accordance with provision contained in Section 10 of the Act, 2002. Learned Counsel for petitioner submits that scheme of the Act, 2002 do not envisage any role to Mandal Revenue Inspector and therefore he has no competency to seize the premises.

He further submits that seizure of the equipment can be only for the purpose of examination, analysis, investigation or evidence. Thus, seizure has limited scope, whereas the entire premises is now seized by the impugned action of the respondents.

2. Counter-affidavit is silent on the specific allegation that the Mandal Revenue Inspector is not competent and that entire premises cannot be seized and that so far the power vested in Section 9 of the Act, 2002 is not exercised and unless the certificate of registration is suspended, no authority can prevent functioning of the medical care establishment. Learned Government Pleader submits that against any decision an appeal shall lie under Section 10 of the Act, 2002 and without exhausting the remedy of appeal, the writ petition is not maintainable. Though, learned Government Pleader sought to justify the action, but he is not able to point out any specific provision in the Act, 2002 which enable the Mandal Revenue Inspector to seize the entire premises.

3. As seen from the provision contained in Section 8, power is vested in the authority to cause inspection or enquiry by a team of at least two officers duly authorized by the competent authority for specific purpose. Such team, on receipt of the complaint or information examine and inspect any equipment, articles or documents and seize and take out therefrom and retain the same as long as may be necessary for the purposes of examination, analysis, investigation or evidence. The authority should communicate to the Private Medical Care its views with reference to the results of such inspection or enquiry and direct the establishment to take steps within such period as it may deem necessary to comply with the said directions. Section 9 vests powers in the authority for cancellation or suspension of registration. According to second proviso to Section 9(1) of the Act, 2002, even in case of suspension by the competent authority, it must assign reasons in writing in support of the decision to suspend.

4. Admittedly, in the instant case, the power under Section 9 of the Act, 2002 is not exercised so far and no order of suspension is passed. Even the power as contemplated by Section 8 is not exercised so far. Seizure of the entire premises impugned in this writ petition is not envisaged by the Act, 2002. Act does not envisage any role to Mandal Revenue Inspector. The authority competent to exercise power vested under Sections 8 and 9 of the Act, 2002 is District Medical and Health Officer. Since no orders are passed in exercise of powers vested by the Act by the competent authority, the writ petition cannot be thrown out on the ground that petitioner has not availed the remedy of appeal. As the order impugned is ex facie illegal, is without jurisdiction and competency, the same is set aside. The writ petition is allowed. However, it is made clear that it is open for the competent authority to take appropriate action as warranted under Act, 2002. No costs. Sequel to the same, W.P.M.P. No. 24620 of 2014 is closed.