



CGHC010421732022



2026:CGHC:41184

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 5701 of 2022

Dr. Shyama Agrawal W/o Dr. S.K. Agrawal Aged About 59 Years R/o
Shankar Nagar Durg, District : Durg, Chhattisgarh

... Petitioner(s)

versus

1 - State Of Chhattisgarh Through The Secretary, Department Of Urban
Administration And Development, Mantralaya, Mahanadi Bhawan, Nava
Raipur Atal Nagar, Raipur, District : Raipur, Chhattisgarh

2 - Municipal Corporation, Durg Through The Commissioner, Municipal
Corporation, Durg, District : Durg, Chhattisgarh

3 - Mr. Laxman Tiwari Commissioner, Municipal Corporation, Durg,
District : Durg, Chhattisgarh

... Respondent(s)

(Cause Title downloaded from CIS Periphery)

For Petitioner(s) : Dr. Sudeep Agrawal, Advocate

For Respondent/ : Mr. Anway Tiwari, Panel Lawyer

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For Respondent/ : Mr. Sandeep Dubey, Advocate
Municipal
Corporation

SB: Hon'ble Mr. Justice Amitendra Kishore Prasad
Order on Board

22/09/2026

1. By way of this petition, the petitioner challenges the validity and propriety of the notice dated 15.12.2022 issued by the Commissioner, Municipal Corporation, Durg. By the said notice, the Nursing Home run by the petitioner in the name and style of 'Agrawal Nursing Home' was sealed on the grounds of alleged irregularities, non-compliance with the provisions of the Nursing Home Act and failure to comply with the Rules and Regulations prescribed by the National Green Tribunal regarding Bio-Medical Waste management. It was further mentioned in the said notice that in the event of any unauthorized unsealing or tampering with the seal, necessary legal action would be initiated against the nursing home concerned.
2. The petitioner has prayed for the following reliefs :

10.1 That, this Hon'ble Court may kindly be pleased to declare that the sealing of the Nursing Home of the petitioner on 15.12.2022 as being illegal and without jurisdiction.

10.2 That, this Hon'ble Court may kindly be pleased to impose cost upon the respondent 3 for the illegal act committed by him as it is without jurisdiction and with mala fide intention.

10.3 That this Hon'ble Court may kindly be pleased to call for the records of the present case with respect to sealing being carried out by the respondent no. 2 and 3.

10.4 Any other reliefs which this Hon'ble Court may deem fit in the facts and circumstance of the case.

3. Learned counsel for the petitioner submits that the impugned notice and the act of sealing are completely without jurisdiction as the concerned Commissioner, Municipal Corporation, Durg, lacks the authority to take such action. He submits that the license in question was granted under Section 6 of the *Chhattisgarh State Upcharyagriha Tatha Rogopchar Sambandhi Sthapanaye Anugyapan Adhiniyam*, 2010 (in short, 'the Adhiniyam, 2010'). Furthermore, while Section 9 provides for the cancellation or suspension of a license, neither this provision nor any other section of the Act empowers the authorities to seal a nursing home. Learned counsel submits that even assuming proceedings for cancellation are initiated, the concerned Commissioner possesses no statutory authority to seal the subject premises. Therefore, the impugned action and notice of sealing dated 15.12.2022 issued by Respondent Nos. 2 and 3 are ex-facie illegal and without jurisdiction. He further submits that the issue regarding the lack of statutory power of the Municipal Commissioner possesses to seal premises is squarely covered and affirmed by this Court in ***W.P.(C) No. 2248/2021 (E.S. Beena and others v. State of Chhattisgarh and others)*** vide order

dated 16.08.2022. The Nursing Home of the petitioner is duly registered and fully compliant with all requisite safety norms and Bio-Medical Waste management protocols. He further submits that by failing to appreciate the material records and proceeding to seal the premises without the authority of law, the respondents have violated the fundamental right of the petitioner to carry on trade and business under Article 19(1)(g) of the Constitution of India, rendering the impugned action null and void.

4. On the other hand, learned counsel for the Municipal Corporation submits that the Nursing Home of the petitioner is not being operated in accordance with the relevant provisions of law and lacks the requisite permissions from the competent authorities. The primary allegation against the petitioner's nursing home is that bio-medical waste was not being managed in compliance with the prescribed rules, but was instead being disposed of in open areas and dumped into regular waste collection vehicles of the Municipal Corporation. He submits after complaints were received from sanitation workers, the Municipal Corporation obtained due permission from the District Collector, who serves as the President of the District Committee under the Nursing Home Act and subsequently sealed the premises of the petitioner. Furthermore, pursuant to this Court's order dated 19.12.2022 directing the petitioner to submit a reply along with the relevant documents to the notice issued by the Municipal Corporation, the petitioner filed a reply. However, upon verification, the Municipal Corporation found that the documents submitted had expired.

However, the petitioner did not produce valid mandatory permissions and documents and continued to operate the hospital without regulatory compliance.

5. Heard learned counsel for the parties and also perused the record with utmost circumspection.
6. Evidently, the Municipal Corporation, Durg, issued the impugned notice dated 15.12.2022 and subsequently sealed the Nursing Home without statutory competency and jurisdiction. The Nursing Home is being lawfully operated pursuant to a valid license granted under Section 6 of the Adhiniyam, 2010, which reads as under:

6. Grant of License or otherwise- On the basis of the examination of the application for license, the supervisory authority, shall grant license to the applicant or reject the application if it is found :-

(a) That the applicant, or any person employed by him at the nursing home or the clinical establishment, is not a fit person, whether by reason of expertise qualification or otherwise to carry on or to be employed at the nursing home or the clinical establishments of such a description as the nursing home or clinical establishment named in the application; or

(b) That the applicant or the nursing home or the clinical establishment does not fulfill the conditions which have been prescribed under this Act or any rule made thereunder; or

(c) That the real object of the applicant is to use, or allow the nursing home or clinical establishment to be used, for anti-social/unlawful or immoral purposes or for both; or

(d) In the case of a nursing home other than a maternity home, that the nursing home is not or will not be under the charge of a qualified medical practitioner resident therein

and that the nursing of persons received and accommodated therein is not or will not be under the superintendence of a qualified nurse resident therein; or

(e) In the case of a maternity home that such maternity home is not or will not be under the charge of a qualified midwife and that the attendance on every woman before, at or after child birth or on any child born is not or will not be under superintendence of a qualified midwife resident therein; or

(f) That for reasons connected with the situation, constructions, accommodation, staffing or equipment, the nursing home or clinical establishment is not fit to be used for a nursing home or clinical establishment of such a description as the nursing home or the clinical establishment mentioned in the application, and shall in every case, where the application is rejected, record the grounds of rejection.

7. Furthermore, Section 9 of the Adhiniyam, 2010 exclusively governs the cancellation or suspension of a Nursing Home license, which reads as under:

9. Cancellation or suspension of license.—*If at any time, it is found by the supervisory authority that,*

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(1) A licensed nursing home or clinical establishment has contravened or not complied with any provision of this Act or any rule made thereunder or any condition specified at the time of licensing; or

(2) A licensed nursing home or clinical establishment has been convicted of an offence punishable under this Act, he may after giving, the nursing home or a clinical establishment, a reasonable opportunity of being heard, cancel or suspend the licence.

(3) Notice to be given before cancellation of licence.-Notwithstanding anything contained in this Act, the supervisory authority shall give a 30 days' notice to the nursing home or a clinical establishment whose licence is sought to be cancelled or suspended. The notice shall contain the reason and ground on the basis of which the licence is sought to be cancelled or suspended. If the notice so requests, a personal hearing may also be granted to hear the defence of the notice.

If after following the above mentioned procedure and hearing the case of the noticee, the supervisory authority decide to cancel or suspend the licence, he shall pass a speaking order to this effect which shall contain the reasons for such cancellation or suspension of licence.

8. A plain reading of Section 9(3) of the Adhiniyam, 2010 manifests that the power to initiate action for cancellation or suspension is exclusively vested in the 'Supervisory Authority'. Furthermore, the statute mandates a strict statutory prerequisite of issuing a mandatory 30 days' advance notice containing specific grounds, affording a personal hearing and passing a reasoned speaking order before taking any coercive action.
9. Furthermore, under Rule 3 of the *Chhattisgarh State Upcharyagriha Tatha Rogopchar Sambandhi Sthapanaye Anugyapan Niyam*, 2013 (for short, "the Rules/Niyam 2013"), the District Collector is designated as the Supervisory Authority. Rule 3 reads as under:

3. Supervisory Authority.-(1) *The District Collector of the concerned district shall be the Supervisory Authority under these Rules and shall be assisted by a District Committee in discharge of the functions assigned to it under the Act.*

(2) *The Supervisory Authority shall consider the recommendations made by the District Committee in all matters and will make decisions relating to registration and/or grant of licenses to a Clinical Establishment.*

10. A perusal of the statutory provisions leaves no room for doubt that under the statutory framework of the Adhiniyam 2010 and the Rules 2013, the sole regulatory and supervisory jurisdiction over Clinical Establishments is vested in the Supervisory Authority (District Collector), which shall be assisted by a District Committee in discharge of the functions assigned to it under the Act. The Municipal Corporation, Durg, has neither been conferred with any power to grant, regulate or revoke licenses nor does it possess any statutory power under the Act or Rules to seal a Nursing Home. Therefore, the Municipal Commissioner, having no statutory competence in this domain, committed a manifest error of law in issuing the notice dated 15.12.2022 and sealing the nursing home.

11. The issue in hand is well settled by this Court. In ***E.S. Beena (supra)***, a Coordinate Bench of this Court considered an identical question of law and held that the Municipal Commissioner suffers from an absolute lack of jurisdiction to seal premises or issue regulatory orders under such enactments, holding such

highhanded actions by the Municipal Corporation as arbitrary, unsustainable, and wholly without authority of law.

12. Moreover, this Court, vide interim order dated 11.01.2023, recorded the admission made by learned counsel for the Municipal Corporation that the District Collector is the competent authority under the Nursing Home Act. Satisfied that a strong prima facie case was made out regarding the lack of jurisdiction, this Court accordingly stayed the operation of the impugned notice.
13. In light of the foregoing discussion, this Court has no hesitation in reaching the conclusion that the action on the part of Respondent-Municipal Corporation is per se illegal and without authority of law. The relevant statutory power vests solely in the Supervisory Authority i.e. District Collector under the Adhiniyam, 2010. Since the competent Supervisory Authority has neither cancelled nor suspended the petitioner's license, the impugned act of sealing carried out by the Municipal Corporation lacks statutory authorisation and is accordingly unsustainable in law.
14. So far as compliance with Bio-Medical Waste Management regulations and statutory licensing requirements is concerned, the petitioner remains bound by the relevant statutory provisions and the directions issued by this Court in its earlier order. The competent authority retains full liberty to initiate appropriate proceedings in accordance with law in the event of any violation of the Adhiniyam, 2010 (or the applicable Nursing Home Act and

Rules) or non-compliance with judicial directions. However, any adverse action or order passed by an authority lacking statutory competence or jurisdiction is a nullity in the eyes of law and cannot be sustained.

15. In the matter of **Bilkis Yakub Rasool Vs. Union of India and others** reported in **(2024) 5 SCC 481**, the following was held in paragraphs 115 and 116 :

115. When an authority does not have the jurisdiction to deal with a matter or it is not within the powers of the authority i.e. the State of Gujarat in the instant case, to be the appropriate Government to pass orders of remission under Section 432CrPC, the orders of remission would have no legs to stand. On the aspect of jurisdiction and nullity of orders passed by an authority, the decision of the House of Lords in Anisminic Ltd. v. Foreign Compensation Commission [Anisminic Ltd. v. Foreign Compensation Commission, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)] (“Anisminic”), is of significance and the same can be cited by way of analogy. The House of Lords in the said case held that the Foreign Compensation Commission had committed an error which was a jurisdictional error as its decision was based on a matter which it had no right to take into account and so its decision was a nullity and subject to judicial review. Although in Anisminic [Anisminic Ltd. v. Foreign Compensation Commission, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)] , the scope and ambit of the concept of “jurisdictional error” or “error of jurisdiction” was very much extended, and of a very broad connotation, in the instant case we are primarily dealing with a narrower concept i.e. when an authority, which is the Government of State of Gujarat in the instant case, was lacking jurisdiction to consider the applications for remission. Just as an order passed by a court without jurisdiction is a nullity, in the same

vein, an order passed or action taken by an authority lacking in jurisdiction is a nullity and is non est in the eye of the law.

116. On that short ground alone the orders of remission have to be quashed. This aspect of competency of the Government of the State of Gujarat to pass the impugned orders of remission goes to the root of the matter and the impugned orders of remission are lacking in competency and hence a nullity. The writ petition filed by the victim would have to succeed on this reasoning. But the matter does not rest at that.

16. Considering the facts and circumstances of the present case as well as the nature of the dispute and also in light of the principles laid down in the aforesaid judgment, this Court is of the opinion that the impugned notice dated 15.12.2022 (Annexure P/1) and the consequential action of sealing have been issued and executed by an authority lacking statutory competence. Consequently, the impugned notice cannot be permitted to operate any further and is accordingly quashed.

17. With the aforesaid observations/directions, the Writ Petition is finally disposed of.

Sd/-

(Amitendra Kishore Prasad)
Judge