



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 25<sup>TH</sup> DAY OF MAY, 2023**

**R**

**BEFORE**

**THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

**WRIT PETITION NO. 729 OF 2023 (GM-RES)**

**BETWEEN:**

GURUSHREE HIGH-TECH  
MULTI SPECIALITY HOSPITAL  
NO.1558, OPP. CHANDRA LAYOUT BUS STAND  
CHANDRA LAYOUT, VIJAYANAGAR  
BENGALURU - 560 040.

REPRESENTED BY IT'S PROPRIETOR  
DR.S.B.GANGADHAR  
S/O LATE BHARDRAIAH  
AGED ABOUT 64 YEARS.

...PETITIONER

(BY SRI MANU PRABHAKAR KULKARNI, ADVOCATE A/W  
SMT SHRISTI WIDGE, SRI SHARAN BALAKRISHNA AND  
SRI MANOJ J.RAIKAR, ADVOCATES)

**AND:**

1. COMMISSIONER FOR HEALTH AND  
FAMILY WELFARE AND CHAIRMAN  
APPELLATE AUTHORITY  
OLD TB HOSPITAL CAMPUS  
OLD HOSUR ROAD  
BENGALURU - 560 038.
2. DISTRICT HEALTH AND  
FAMILY WELFARE OFFICER  
BENGALURU URBAN DISTRICT

Digitally signed  
by PADMAVATHI  
B K

Location: HIGH  
COURT OF  
KARNATAKA





OLD T B HOSPITAL CAMPUS  
OLD MADRAS ROAD, INDIRANAGAR  
BENGALURU – 560 038.

3. THE DEPUTY COMMISSIONER AND  
DISTRICT REGISTRATION AUTHORITY  
BENGALURU URBAN DISTRICT  
KANDAYA BHAVAN, K.G.ROAD  
BENGALURU – 560 009.
4. SRI MUNIRATHNA  
HON'BLE MINISTER FOR HORTICULTURE  
AND PLANNING, PROGRAMME MONITORING  
STATISTICS DEPARTMENT  
GOVERNMENT OF KARNATAKA  
VIKASASOUDHA,  
BENGALURU – 560 001.

...RESPONDENTS

(BY SRI MAHESH SHETTY, HCGP FOR R-1 TO R-3;  
SRI H.PAVAN CHANDRA SHETTY, ADVOCATE FOR R-4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226  
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO  
QUASH THE CLOSURE ORDER DATED 19.12.2022 BEARING NO.  
JD(M)/KPME/APPEAL NO. 22/2022-23, PASSED BY THE R1  
CHAIRMAN, APPELLATE AUTHORITY, PRODUCED AT ANNEXURE  
- A.

THIS WRIT PETITION, COMING ON FOR FURTHER  
HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:



**ORDER**

Petitioner is before this Court calling in question an order dated 19.12.2022 passed by the Appellate Authority who is the Chairman and Commissioner of the Health and Family Welfare Department, Bengaluru.

2. *Sans* details, facts in brief are as follows:

Petitioner claims to be a Hi-tech Multi-Speciality Hospital. Alleging that the hospital has been in the habit of collecting money beyond what is prescribed for the treatment of COVID-19 to its patients in the hospital, the representative of the people of the constituency, a Minister then addressed a communication to the Competent Authority to initiate proceedings for cancellation of licence against the petitioner. The communication from the Minister leads the 2<sup>nd</sup> respondent/District Health and Family Welfare Officer to issue a show cause notice on 08.08.2022. Petitioner submits a detailed reply to the show cause notice so issued on 08.08.2022, appending plethora of documents justifying that



they have not collected excess charges and the allegations made in the show cause notice are absolutely baseless.

3. The Deputy Commissioner acting as an original Authority passes an order on 20.08.2022 cancelling the licence of the petitioner on the contents of the show cause notice and claiming to be considering the reply submitted by the petitioner. The petitioner then knocks at the doors of this Court in W.P.No.18556 of 2022 which comes to be disposed by an order dated 21.09.2022 by directing the petitioner to approach the Appellate Authority by way of an appeal against the order referred *supra*. The petitioner then files an appeal before the Chairman and Commissioner, for Health and Family Welfare Services, which comes to be rejected by the impugned order dated 19.12.2022 affirming the order passed by the Deputy Commissioner (*supra*). It is this order that drives the petitioner to this Court in the subject petition, yet again.

4. Heard, Sri Manu Prabhakar Kulkarni along with Smt. Shristi Widge, Sri. Sharan Balakrishna and Sri. Manoj J Raikar, learned counsel appearing for petitioner, and Sri Mahesh Shetty, learned High Court Government Pleader



appearing for respondents 1 to 3 and Sri.H. Pavan Chandra Shetty, learned counsel appearing for respondent No.4.

5. The learned counsel appearing for petitioner Sri.Manu.P.Kulkarni would submit that original order passed by the Deputy Commissioner is one without jurisdiction as it is not the Committee that can consider the grievances of any person. It is the Committee which is constituted under the Chairmanship of the Commissioner, BBMP, that ought to have taken note of the grievances and not the one that has taken note of, as the hospital comes within the jurisdiction of the BBMP. Therefore, the learned counsel would submit that if the original order is without jurisdiction, the petitioner filing an appeal before the Appellate Authority will not cure the jurisdiction that the original Authority did not have while passing the order.

6. Learned counsel Sri Pavan Chandra Shetty representing the respondent No.4 would vehemently refute the submission to contend that the petitioner has chosen to file an appeal before the Appellate Authority, and cannot now come before the Court and contend that the Authority before whom



he had filed an appeal did not have a jurisdiction to do so, he would seek dismissal of the petition.

7. I have given my anxious consideration to the submissions made by the learned counsel for respective parties and have perused the material on record.

8. The afore-narrated facts are not in dispute. The issue in the *lis* lies in a narrow compass. What necessitates consideration is, as to who, is the Competent Committee to consider the grievances so made and institute proceedings *qua* the facts in the case at hand. It is not in dispute that the parties to the *lis* are governed by the Karnataka Private Medical Establishments Act, 2007 ("Act" for short). The Act puts in place grievance redressal mechanism. Section 4 of the Act deals with Registration and Grievance Redressal Authority. Section 4 runs as follows:

**"[4. Registration and Grievance Redressal Authority:- There shall be a Registration and Grievance Redressal Authority in each district consisting of the following members nominated in such manner with such qualification as may be prescribed, namely:**



(a)	<i>The Deputy Commissioner of the District</i>	<i>Chairman</i>
(b)	<i>District Health and Family Welfare Officer</i>	<i>Member Secretary</i>
(c)	<i>District AYUSH Officer</i>	<i>Member</i>
(d)	<i>One member each from Indian Medical Association and one more association</i>	<i>Members</i>
(e)	<i>One women representative when the Authority is dealing with a grievance redressal</i>	<i>Member.]</i>

*(Emphasis supplied)*

On the onset of COVID-19, the State Government amends Section 4 by insertion of a proviso to Section 4 by constituting a different Committee for the medical establishments coming within the precincts of the BBMP. The proviso runs as follows:

***[Provided that, in respect of the Bruhat Bengaluru Mahanagara Palike area, the Registration and Grievance Redressal Authority shall consist of the following, namely:-***

<b><i>(a)</i></b>	<b><i>The Commissioner, BBMP</i></b>	<b><i>Chairman</i></b>
<b><i>(b)</i></b>	<b><i>The Chief Health Officer (Public Health)</i></b>	<b><i>Member</i></b>
<b><i>(c)</i></b>	<b><i>The President or Secretary of Indian Medical association, State Head quarters</i></b>	<b><i>Member</i></b>
<b><i>(d)</i></b>	<b><i>The Joint Director, AYUSH</i></b>	<b><i>Member</i></b>
<b><i>(e)</i></b>	<b><i>One woman representative when the authority deals with grievance redressal</i></b>	<b><i>Member</i></b>

*Provided further that, on and from the date of commencement of the Karnataka Private Medical*



*Establishments (Amendment) Act, 2020 all applications pertaining to Bruhat Bengaluru Mahanagara Palike area, pending before the Registration and Grievance Redressal Authority specified in Section 4, shall be transferred to the Registration and Grievance Redressal Authority specified in the first proviso and it shall dispose of them as if they were filed before it.]”*

*(Emphasis supplied)*

Section 4 has twin Committees, one in the section; the other in the proviso and have twin jurisdiction clearly demarcated. The Committee under Section 4 has its jurisdiction on every medical establishment in the State except the BBMP; the proviso renders jurisdiction to the Committee created in the proviso to the establishments coming within the precincts of the BBMP and nothing about the State.

9. Likewise, Section 16 of the Act also undergoes an amendment at the time when the proviso was inserted to Section 4. The amended Section 16 created an Appellate Authority for considering appeals filed against orders passed by the Committee created in the proviso. Section 16 insofar as it is germane, runs as follows:

“.... ....”



(a)	<i>The Additional Chief Secretary or Principal Secretary or Secretary to Government, Health and Family Welfare Department</i>	<i>Chairman</i>
(b)	<i>The Director, Health and Family Welfare Services</i>	<i>Member</i>
(c)	<i>The Director, AYUSH</i>	<i>Member</i>
(d)	<i>The Director of Medical Education</i>	<i>Member</i>
(e)	<i>One Clinician with post graduation in General Medicine nominate by the State Government</i>	<i>Member"</i>

Therefore, the Original Authority and the Appellate Authority are clearly depicted under the statute, they are as afore-quoted.

10. The case at hand requires consideration on the bedrock of the aforesaid mandate of the statute. The genesis of the problem is a tippani from the 4<sup>th</sup> respondent, the then Minister. The tippani is in the form of a direction to cancel the licence of the petitioner. The tippani reads as follows:



“ಟಿಪ್ಪಣಿ

ನಾನು ಪ್ರತಿನಿಧಿಸುವ ರಾಜರಾಜೇಶ್ವರಿನಗರ ವಿಧಾನಸಭಾ ಕ್ಷೇತ್ರ ವ್ಯಾಪ್ತಿಗೆ ಹೊಂದಿಕೊಂಡಂತೆ #1558, ಚಂದ್ರಲೇಟಿಕ್ ಬಸ್ ನಿಲ್ದಾಣದ ಹತ್ತಿರದಲ್ಲಿಯೇ ಶ್ರೀ ಗುರುಶ್ರೀ ಹೈಟೆಕ್ ಮಲ್ಟಿ ಸ್ಪೆಷಾಲಿಟಿ ಆಸ್ಪತ್ರೆ, ಎಂಬ ಖಾಸಗಿ ಆಸ್ಪತ್ರೆಯಿದೆ. ಸದರಿ ಆಸ್ಪತ್ರೆಗೆ ರಾಜರಾಜೇಶ್ವರಿನಗರ ಮತಕ್ಷೇತ್ರದ ಮತದಾರರು ಇಲ್ಲಿ ಚಿಕಿತ್ಸೆಯನ್ನು ಪಡೆಯಲು ಆಗಾಗ ಭೇಟಿ ನೀಡುತ್ತಾ ಇರುತ್ತಾರೆ. ಆದರೆ ಸದರಿ ಆಸ್ಪತ್ರೆಯ ಆಡಳಿತ ಮಂಡಳಿ ಮತ್ತು ಸಿಬ್ಬಂದಿಗಳು ಉತ್ತಮವಾದ ಚಿಕಿತ್ಸೆಯನ್ನು ನೀಡದೇ ಹಾಗೂ ಅಧಿಕ ಮೊತ್ತದ ಬಿಲ್‌ನ್ನು ರೋಗಿಗಳಿಂದ ಸುಲಿಗೆ ಮಾಡಿ ಪಡೆಯುತ್ತಿರುವುದಾಗಿ ತಿಳಿಸುತ್ತಾ, ಸದರಿ ಸಂಸ್ಥೆಗೆ ಆರೋಗ್ಯ ಇಲಾಖೆಯಿಂದ ನೀಡಿರುವ ಲೈಸೆನ್ಸ್‌ನ್ನು (ಕೆ.ಪಿ.ಎಂ.ಇ) ಕಾನೂನಾತ್ಮಕವಾಗಿ ರದ್ದು ಪಡಿಸಿಕೊಡುವಂತೆ ಕೋರಿ ದೂರನ್ನು ಸಲ್ಲಿಸಿರುತ್ತಾರೆ. ಆದುದರಿಂದ ಸಾರ್ವಜನಿಕರ ಕೋರಿಕೆಯಂತೆ ಶ್ರೀ ಗುರುಶ್ರೀ ಹೈಟೆಕ್ ಮಲ್ಟಿ ಸ್ಪೆಷಾಲಿಟಿ ಆಸ್ಪತ್ರೆಗೆ ನೀಡಿರುವ ಅನುಮತಿಯನ್ನು ಕೂಡಲೇ ರದ್ದು ಪಡಿಸಿ ಹಾಗೂ ಶಿಸ್ತು ಕ್ರಮ ಜರುಗಿಸುವಂತೆ ಸೂಚಿಸಿದೆ.”

(Emphasis added)

The Minister, in the aforesaid tippani, quotes that there have been grievances by the general public that the petitioner has been charging exorbitant rates for treatment of patients without giving appropriate treatment and therefore, he directs cancellation of the licence and initiation of proceedings. The tippani leads to issuance of a show cause notice dated 08.08.2022. The show cause notice so issued, reads as follows:

“ದಿನಾಂಕ:08.08.2022

ಸಭಾ ಸೂಚನಾ ಪತ್ರ

ವಿಷಯ: ಕೆ.ಪಿ.ಎಂ.ಇ ಅಡಿಯಲ್ಲಿ ಕುಂದು ಕೊರತೆ ಸಭೆ ನಡೆಸುವ ಕುರಿತು.

- ಉಲ್ಲೇಖ: 1) ಸನ್ಮಾನ್ಯ ಮುನಿರತ್ನರವರು, ಮಾನ್ಯ ಸಚಿವರು ಇವರ ಟಿಪ್ಪಣಿ ತೋರೋಕಾ&ಸಾಂಸ/74/2021, ದಿನಾಂಕ:26.04.2022.  
2) ಅಪರ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳು, ಬೆಂಗಳೂರು ನಗರ ಜಿಲ್ಲೆ ರವರ ಪತ್ರ ಸಂಖ್ಯೆ:ಎಡಿಎಂ/ಸಿಆರ್/12/2022-23, ದಿನಾಂಕ:05.05.2022.



3) ಸದರಿ ಕಛೇರಿಯ ಅಧಿಕೃತ ಜ್ಞಾಪನಾ ಪತ್ರ ಸಮ ಪತ್ರ  
ದಿನಾಂಕ:05.05.2022.

\*\*\*

ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ಮಾನ್ಯ ಸಚಿವರು ಶ್ರೀ ಗುರುಶ್ರೀ ಮಲ್ಲಿ ಸ್ವೇಷಾಲಿಟಿ ಆಸ್ಪತ್ರೆಗೆ ರಾಜರಾಜೇಶ್ವರಿನಗರ ಮತ್ತಕ್ಕೇತ್ರದ ಮತದಾರರು ಇಲ್ಲಿ ಚಿಕಿತ್ಸೆಯನ್ನು ಪಡೆಯಲು ಆಗಾಗ ಭೇಟಿ ನೀಡುತ್ತಾ ಇರುತ್ತಾರೆ. ಆದರೆ ಸದರಿ ಆಸ್ಪತ್ರೆಯ ಆಡಳಿತ ಮಂಡಳಿ ಮತ್ತು ಸಿಬ್ಬಂದಿಗಳು ಉತ್ತಮವಾದ ಚಿಕಿತ್ಸೆಯನ್ನು ನೀಡದೇ ಹಾಗೂ ಅಧಿಕ ಮೊತ್ತದ ಬಿಲ್ಲನ್ನು ರೋಗಿಗಳಿಂದ ಸುಲಿಗೆ ಮಾಡಿ ಪಡೆಯುತ್ತಿರುವುದರಿಂದ ಉಲ್ಲೇಖ (1)ರ ಪತ್ರದಲ್ಲಿ ಸನ್ಮಾನ್ಯ ಮುನಿರತ್ನರವರು ಕೆ.ಪಿ.ಎಂ.ಇ ಪರವಾನಗಿಯನ್ನು ರದ್ದುಪಡಿಸಲು ಅಪರ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳು, ಬೆಂಗಳೂರು ನಗರ ಜಿಲ್ಲೆ ರವರಿಗೆ ಟಿಪ್ಪಣಿ ನೀಡಿದ್ದು, ಉಲ್ಲೇಖ (3)ರ ಪತ್ರದಲ್ಲಿ ಸದರಿ ಕಛೇರಿಯಿಂದ ವಿಚಾರಣಾಧಿಕಾರಿಗಳನ್ನಾಗಿ ಜಿಲ್ಲಾ ಕ್ಷಯರೋಗ ನಿಯಂತ್ರಣಾಧಿಕಾರಿಗಳು, ಜಿಲ್ಲಾ ಕುಟುಂಬ ಕಲ್ಯಾಣ ಅಧಿಕಾರಿಗಳು, ತಾಲ್ಲೂಕು ಆರೋಗ್ಯಾಧಿಕಾರಿಗಳು, ಬೆಂಗಳೂರು ದಕ್ಷಿಣ ತಾಲ್ಲೂಕು, ಬೆಂಗಳೂರು ನಗರ ಜಿಲ್ಲೆ ರವರು ನೇಮಿಸಿದ್ದು, ವಿಚಾರಣಾಧಿಕಾರಿಗಳ ವರದಿಯ ಈ ಕೆಳಕಂಡಂತೆ ಇರುತ್ತದೆ.

1. ಕೆ.ಪಿ.ಎಂ.ಇ ಕಾಯ್ದೆ 17(1), (2)ರ ಅನ್ವಯ ದರಪಟ್ಟಗಳನ್ನು ಆಸ್ಪತ್ರೆಯ ಸೂಚನಾ ಫಲಕದಲ್ಲಿ ಪ್ರದರ್ಶಿಸಿರುವುದಿಲ್ಲ.
2. ಕೋವಿಡ್-19 ರ ಪ್ರಕರಣಗಳಲ್ಲಿ ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಅಧಿಸೂಚನೆ ಸಂಖ್ಯೆ: ಆಹುಕ 138 ಆ.ಮು ಕಾ/2020-21 ದಿನಾಂಕ:06.05.2021 ರಂತೆ ಮಿತಿಗೆ ಒಳಪಡದೆ ಹೆಚ್ಚಿನ ದರವನ್ನು ಪಡೆಯಲಾಗಿರುತ್ತದೆ.
3. ಪಿ.ಸಿ ಮತ್ತು ಪಿ.ಎನ್.ಡಿ.ಟಿ ಕಾಯ್ದೆಯನ್ವಯ ಮೇಲೆ ಸಂಖ್ಯೆ: 06, 07, 08, ಮತ್ತು 09 ರಲ್ಲಿ ತಿಳಿಸಿರುವಂತೆ ಪಿ.ಸಿ ಮತ್ತು ಪಿ.ಎನ್.ಡಿ.ಟಿ ಕಾಯ್ದೆಯನ್ನು ಉಲ್ಲಂಘಿಸಿರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆ.
4. MTP ಕಾಯ್ದೆಯ Regulation 4(5) ಹಾಗೂ Regulation 7ರನ್ನು ಮೇಲೆ ತಿಳಿಸಿರುವ ಸಂಖ್ಯೆ: 08, 09, 10, 11 ಮತ್ತು 12 ರಲ್ಲಿ ತಿಳಿಸಿರುವಂತೆ MTP ಕಾಯ್ದೆಯನ್ನು ಉಲ್ಲಂಘಿಸಿರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆ.
5. ಆಸ್ಪತ್ರೆಯ ನಾಲ್ಕನೇ ಮಹಡಿಯಲ್ಲಿ ಕ್ಯಾಂಟೀನ್ ನಡೆಸುತ್ತಿದ್ದು FSSAI ನೋಂದಣಿ ಪ್ರಮಾಣ ಪತ್ರ ಕಂಡುಬಂದಿರುವುದಿಲ್ಲ.

ಈ ಮೇಲಿನ ಅಂಶಗಳನ್ನು ಪರಿಗಣಿಸಿ ಕೆ.ಪಿ.ಎಂ.ಇ ಹಾಗೂ ಪಿ.ಸಿ ಮತ್ತು ಪಿ.ಎನ್.ಡಿ.ಟಿ ಕಾಯ್ದೆ ಉಲ್ಲಂಘನೆಯಾಗಿರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆ.

ಆದ್ದರಿಂದ ದಿನಾಂಕ:10.08.2022 ರಂದು ಸಮಯ 2.30 ಘಂಟೆಗೆ ಮಾನ್ಯ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳ ಅಧ್ಯಕ್ಷತೆಯಲ್ಲಿ ಕುಂದು ಕೊರತೆ ಸಭೆಯನ್ನು ಏರ್ಪಡಿಸಲಾಗಿದ್ದು, ಸದರಿ ಸಭೆಗೆ ಆಸ್ಪತ್ರೆಯವರು ಋದ್ಧಾಗಿ ತಪ್ಪದೇ ಹಾಜರಾಗಬೇಕಾಗಿ ಸೂಚಿಸಲಾಗಿದೆ.

Date: 10.08.2022, Wednesday.

Time: 2.30 PM

Venue: DC Office, Behind Kandaya Bhavana, K.G.Road,  
Bengaluru - 560 009.



"ಮಾನ್ಯ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳಿಂದ ಅನುಮೋದಿಸಲ್ಪಟ್ಟಿದೆ".

ಸಹಿ  
ಜಿಲ್ಲಾ ಆರೋಗ್ಯ ಮತ್ತು ಕು.ಕ ಅಧಿಕಾರಿಗಳು,  
ಬೆಂಗಳೂರು ನಗರ ಜಿಲ್ಲೆ."

(Emphasis added)

The illegality springs from the issuance of the show cause notice itself as it is issued by the 2<sup>nd</sup> respondent/District Health and Family Welfare Officer who is not the one who had to even consider the grievance or the direction of the Minister (*supra*). The petitioner does not question the jurisdiction of the officer who had issued the show cause notice, but submits a reply refuting all that was alleged in the notice. The reply leads to passage of an order by the Committee as found in Section 4 of the Act (*supra*) and not the Committee under the proviso. The Committee and its members as obtaining in the order dated 20.08.2022 reads as follows:

"ಕರ್ನಾಟಕ ಖಾಸಗೀ ವೈದ್ಯಕೀಯ ಸಂಸ್ಥೆಗಳ ಅಧಿನಿಯಮದ ಅಡಿಯಲ್ಲಿ ರಚಿತವಾದ ನೋಂದಣಿ ಮತ್ತು ಕುಂದು ಕೊರತೆಗಳ ನಿವಾರಣಾ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು ನಗರ ಜಿಲ್ಲೆ ಇವರ ಸಮಕ್ಷಮದಲ್ಲಿ.

ದಿನಾಂಕ:20.08.2022

ಉಪಸ್ಥಿತಿ:

1. ಜಿಲ್ಲಾಧಿಕಾರಿಗಳು ಮತ್ತು ಜಿಲ್ಲಾ ನೋಂದಣಿ ಪ್ರಾಧಿಕಾರ ಕೆ.ಪಿ.ಎಂ.ಇ
2. ಜಿಲ್ಲಾ ಆರೋಗ್ಯ ಮತ್ತು ಕುಟುಂಬ ಕಲ್ಯಾಣಾಧಿಕಾರಿಗಳು ಮತ್ತು ಸದಸ್ಯ ಕಾರ್ಯದರ್ಶಿಗಳು, ಕೆ.ಪಿ.ಎಂ.ಇ
3. ಜಿಲ್ಲಾ ಕುಟುಂಬ ಕಲ್ಯಾಣಾಧಿಕಾರಿಗಳು, ಬೆಂಗಳೂರು ನಗರ ಜಿಲ್ಲೆ.



\*\*\*\*

ಪ್ರಕರಣ ಸಂಖ್ಯೆ: DHFW/KPME/02/2022-2023"

(Emphasis added)

The order that is passed by the Committee is one of cancellation of the licence of the petitioner. The order reads as follows:

ಆದೇಶ

ಗುರುಶ್ರೀ ಮಲ್ಲಿ ಸ್ಟೇಷನಾಲಿಟಿ ಆಸ್ಪತ್ರೆಯ ಕಟ್ಟಡವನ್ನು ವಸತಿ ಉದ್ದೇಶಕ್ಕಾಗಿ ಮಂಜೂರಾತಿ ಪಡೆದಿದ್ದು, ಕಟ್ಟಡವನ್ನು ಪರಿಶೀಲಿಸಲಾಗಿ ಕಟ್ಟಡವನ್ನು ಆಸ್ಪತ್ರೆಯ ಉಪಯೋಗಕ್ಕೆ ಬಳಸುತ್ತಿರುವುದು ಹಾಗೂ ಆಸ್ಪತ್ರೆಯ ಕಟ್ಟಡದ ಎತ್ತರವು 17.85 ಮೀಟರ್ ಗಳಾಗಿದ್ದು ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ ಅಧಿಸೂಚನಾ ಪತ್ರ ಸಂಖ್ಯೆ: HD 33SFB 2011, BANGALORE, DATED: 07.07.2011 ರ ಪ್ರಕಾರ ಅಗ್ನಿಸುರಕ್ಷತಾ ಪ್ರಮಾಣಪತ್ರವನ್ನು ಪಡೆಯದೆ ಕೆ.ಪಿ.ಎಂ.ಇ ಪರವಾನಗಿಯನ್ನು ಪಡೆಯಲು ಸುಳ್ಳು ದಾಖಲಾತಿಗಳನ್ನು ಸಲ್ಲಿಸಿದ್ದು ದೃಢಪಟ್ಟಿದ್ದು ಕೆ.ಪಿ.ಎಂ.ಇ ಕಾಯ್ದೆ 2007ರ ಸೆಕ್ಷನ್ 15 (1)ರ ಪ್ರಕಾರ ಪ್ರತಿವಾಧಿಯ ನೋಂದಣಿ ಪ್ರಮಾಣ ಕೆ.ಪಿ.ಎಂ.ಇ ನೋಂದಣಿ ಸಂಖ್ಯೆ: BL.U01829ALSSH ಪತ್ರವನ್ನು ವಜಾಗೊಳಿಸಲಾಗಿದೆ. ಮತ್ತು ಈ ಕೂಡಲೇ ಗುರುಶ್ರೀ ಮಲ್ಲಿ ಸ್ಟೇಷನಾಲಿಟಿ ಆಸ್ಪತ್ರೆಯನ್ನು ಕೂಡಲೇ ನಿಲ್ಲಿಸುವಂತೆ ಆದೇಶಲಾಗಿದೆ. ಹಾಗೂ ಸೆಕ್ಷನ್ 15(3)(ಎ)ರ ಪ್ರಕಾರ ಸದರಿ ಆದೇಶದ ವಿರುದ್ಧ ಯಾವ ಅಪೀಲು ಸಲ್ಲಿಸದಿದ್ದಾಗ, ಅಂಥ ಅಪೀಲು ಸಲ್ಲಿಸಲು ನಿರ್ದಿಷ್ಟಪಡಿಸಿದ ಅವಧಿಯು ಮುಕ್ತಾಯವಾದ ಕೂಡಲೇ ಮತ್ತು (ಬಿ) ಅಂಥ ಅಪೀಲನ್ನು ಸಲ್ಲಿಸಿದ್ದು ಅದು ವಜಾ ಆಗಿರುವ ಹಾಗೆ ಮಾಡಿದ ಆದೇಶದ ದಿನಾಂಕದಿಂದ ಪರಿಣಾಮಕಾರಿಯಾಗತಕ್ಕದ್ದು.

ಆದೇಶದ ಪ್ರತಿಯನ್ನು ಕೂಡಲೇ ಪ್ರತಿವಾಧಿಗೆ ಜಾರಿಗೊಳಿಸಲು ಸದಸ್ಯ ಕಾರ್ಯದರ್ಶಿಯವರಿಗೆ ಸೂಚಿಸಿದೆ."

(Emphasis added)

On the passage of the order, the petitioner knocks at the doors of this Court calling the aforesaid order in question. This Court, by an order dated 21.9.2022 disposes the petition, by the following order:

**"4. Having heard the learned counsel for the parties and having perused the petition papers, this**



***Court is not inclined to grant a full indulgence in the matter but is of the considered opinion that the petitioner should be permitted to avail the remedy of appeal and that till that remedy is availed, the hospital should work as before for a reasonable period of time. Such grant of interim relief is recognized by the Apex Court in the decision of Director Defence R & D Laboratories vs. C. Panda, AIR 1977 AP 7.***

*In the above circumstances, this Writ Petition is disposed off; petitioner is directed to file the appeal within a period of thirty days to be computed from this date and till such time, he files the appeal or, till the expiry of thirty days whichever is earlier. It is made clear that till such time the hospital services of the petitioner shall not be disturbed."*

*(Emphasis supplied)*

This Court directs the petitioner to file an appeal before the Appellate Authority/Competent Authority within 30 days. The petitioner then files an appeal before the Chairman, Appellate Authority and Commissioner of the Health and Family Welfare Services, which was the Appropriate Authority constituted under Section 16 of the Act (*supra*). The Appellate Authority rejects the appeal. It is this order that is called in question in the subject petition.

11. If the order that is passed by the Committee i.e., the original order is considered *qua* the proviso to Section 4 *supra*, it would unmistakably indicate that it is an order passed by the Committee which had no jurisdiction to do so. Therefore, the



order that is passed by the Committee is ***coram non-judice***. Therefore, an original order which was without jurisdiction is appealed by the petitioner before an Appellate Authority who had jurisdiction to consider the said appeal. The Appellate Authority considers the appeal on its merits and rejects it. The issue now would be, whether the defect of jurisdiction of the original Authority can be cured by the Appellate Authority who had jurisdiction to consider the appeal? The answer is, an unequivocal and an emphatic "no".

12. Merely because the petitioner files an appeal to the appropriate Authority against an order of the original Authority which was without jurisdiction and the Appellate Authority considering the appeal on its merit would not cure the want of jurisdiction of the original Authority. If the foundation is faulty, the super-structure of any amount of strength cannot cure the defect. If the original Authority is *corum non-judice*, the competent Appellate Authority, by considering the appeal cannot breath life into such original order and make it *corum judice*. It is by now an hackneyed principle of law that if a statute prescribes performance of duties upon certain Authorities, those duties shall be performed only by those



Authorities and none else, as error or jurisdiction always cuts at the root of the matter.

13. Though the challenge is only to the order passed by the Appellate Authority, since the Appellate Authority has considered the appeal on its merits, the original order has merged with the appellate order and since the original order was without jurisdiction, for the reasons indicated hereinabove, the appellate order is rendered unsustainable. For the aforesaid reasons, the following:

**ORDER**

- (i) Writ Petition is allowed.
- (ii) The impugned order passed by the 1<sup>st</sup> respondent/Appellate Authority dated 19.12.2022 stands quashed.



- (iii) The quashment of the order would not tie the hands of the 1<sup>st</sup> respondent i.e., Appellate Authority to initiate proceedings, in accordance with law; if available in law; if necessary.

**Sd/-  
JUDGE**

BKP  
List No.: 1 Sl No.: 121