

Court No. - 39

Case :- WRIT - C No. - 37004 of 2024

Petitioner :- Anaya Health Centre And Another

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Ajay Kumar Singh, Ashish Kumar Singh

Counsel for Respondent :- C.S.C., Chetan Chatterjee

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Donadi Ramesh, J.

1. Heard Sri Ashish Kumar Singh, learned counsel for the petitioner, Ms Kritika Singh, learned Additional Chief Standing Counsel for the State respondents and Sri Chetan Chatterjee, learned counsel for the private respondent.

2. Affidavits have been exchanged between the petitioner and the State. Rejoinder Affidavit filed today, is taken on record. Private respondent has also filed Counter Affidavit. To that, Rejoinder Affidavit has not been filed.

3. Present writ petition has been filed for following relief:

"(a) Issue a writ, order or direction in the nature of certiorari to call for the record quash and set aside order dated 14/17.06.2024 (Annexure No. 1) passed by Respondent No.4 the Chief Medical Officer, Saharanpur.

(b) Issue a writ, order or direction in the nature of mandamus commanding the respondent authorities / Chief Medical Officer, Saharanpur to renew the registration of the hospital being run under the name and style of Anaya Health Centre, Saharanpur."

4. Briefly, we may take note of the facts giving rise to this petition. Earlier, the husband of respondent-5 namely, Arun Kumar Jain, executed a rent-deed in favour of the petitioner no.2, to run a medical establishment/nursing home at Bajoria Road, Saharanpur, U.P. (hereinafter referred to as the 'disputed premises'). That rent-deed was valid from 01.04.2023 to 29.02.2024 i.e. for the period of 11 months, against monthly rent Rs. 1 Lac. Undoubtedly, the petitioner has continued in

possession over the said premises, even after expiry of that rent-deed. Against that rent-deed executed by the husband of the private respondent, petitioner no. 2 obtained registration of his medical establishment Anaya Health Centre (petitioner no.1), at the 'disputed premises'. That registration was granted by the Chief Medical Officer, Saharanpur on 16.05.2023. It was valid for one year, upto 30.04.2024.

5. The rent-deed executed in favour of petitioner no. 2, with respect to the 'disputed premises', has not been renewed. In fact, private respondent-5 is seeking to evict the petitioner from the 'disputed premises'. She has filed Eviction Application No. 2296 of 2024 (Usha Gupta Vs. Dr. Anshul Gupta). It is further admitted between the parties, arising from such dispute, petitioner no.2 has approached the Civil Judge (Senior Division), Saharanpur in O.S. No. 307 of 2024 (Anshul Gupta Vs. Smt. Usha Gupta). Therein temporary injunction has been granted vide order dated 23.02.2024. It has been confirmed by order dated 10.10.2024 passed by the said Court. The operative portion of the said order, reads as below:

"वादी की ओर से प्रस्तुत प्रार्थनापत्र 6 ग अंतर्गत आदेश 39 नियम 1 व 2 व धारा 151 जाब्ता दीवानी स्वीकार किया जाता है। प्रतिवादनी को दौरान वाद जरिये अस्थायी व्यादेश निषेधित किया जाता है कि वह उक्त विवर्णित सम्पत्ति बैसमेंट में स्थिति दो बड़े कमरे, दो छोटे कमरे, तीन मीडियम कमरे, मय रास्ता गैलरी, भूतल पर एक बड़ा कमरा व एक मीडियम कमरा मय रास्ता गैलरी, मय लिफ्ट भवन संख्या 3/5903 जनकपुरी, मंजुलिके गार्डन बाजोरिया रोड, सहारनपुर में बिना कोई विधिक प्रक्रिया अपनाये वादी को बेदखल न करें, तथा वादी के शांतिपूर्ण अध्यासन में कोई व्यवधान उत्पन्न न करें। यहाँ यह भी उल्लेखित किया जाता है कि वादी हर माह की पाँच तारीख को अकन 1,00,000/- रुपये महावार किराया में 10 प्रतिशत की वृद्धि कर एडवांस किराया हर माह की पाँच तारीख को अदा करता रहेगा। भविष्य में वादी द्वारा प्रतिवादनी को देय किराया न देने की स्थिति में यह न्यायालय उक्त आदेश को समाप्त करने को बाध्य होगा। तदनुसार आपत्ति 19 ग निस्तारित की जाती है। पत्रावली वास्ते अग्रिम कार्यवाही दिनांक 30/10/2024 को पेश हो।"

6. It is also undisputed that the above order has not been set aside or stayed or vacated, till date. Sri Chetan Chatterjee, learned counsel for the private respondent informs that the limitation to file appeal against the order dated 10.10.2024 survives. At the same time, he admits that such appeal has not yet been filed.

7. In such facts, petitioner no.2 applied for renewal of registration of his medical establishment, by the Chief Medical Officer, Saharanpur, for further one year. At the same time, the private respondent no.5 approached the Divisional Commissioner, Saharanpur against renewal, proposed. On that application, the Divisional Commissioner, Saharanpur made the following note for the District Magistrate, Saharanpur on 13.06.2024:

"DM सहारनपुर

किरायेनामा की अवधि खत्म हो गयी है। CMO का रजिस्ट्रेशन खत्म हो गया है। CMO cannot renew without valid rent agreement. Pl. examine and instruct accordingly.

Sd/-

Illegible

13.6.2024"

8. Acting on the said note made by the Divisional Commissioner, Saharanpur, the District Magistrate, Saharanpur issued further instructions to the Chief Medical Officer, Saharanpur on 18.6.2024. Those read as below:

"श्रीमती उषा गुप्ता पत्नी स्व० डा० अरुण कुमार जैन, 2-डाक्टर्स लेन, मंजुलिके गार्डन, बाजोरिया रोड, सहारनपुर के प्रार्थना पत्र द्वारा अपने पत्र में उल्लिखित किया गया है कि उनके द्वारा अपने नर्सिंग होम के कुछ हिस्सा डा० अंशुल गुप्ता को किरायेनामे के आधार पर दिनांक 01.04.2023 से 29.02.2024 तक 11 माह तक किराये पर दिया गया था। पति के देहान्त दिनांक 22.06.2023 को गया था, परन्तु डा० अंशुल गुप्ता द्वारा किरायेनामे की अवधि समाप्त होने के बाद भी आज तक नर्सिंग होम का भाग खाली नहीं किया गया है तथा उनका पंजीकरण भी दिनांक 30.04.2024 को समाप्त होने के उपरान्त भी अवैध रूप से नर्सिंग होम चलाया जा रहा है। इस संबंध में उचित कार्यवाही करने का अनुरोध किया गया है। इस संबंध में आयुक्त महोदय, सहारनपुर मण्डल, सहारनपुर द्वारा अपने पृष्ठांकित आदेशों में जाँच किये जाने हेतु निर्देशित किया गया है।

अतः श्रीमती उषा गुप्ता के उपरोक्त सन्दर्भित प्रार्थना पत्र पर आयुक्त महोदय के पृष्ठांकित उपरोक्त आदेशों के अनुपालन कराना सुनिश्चित कराते हुए कृत कार्यवाही से अधोहस्ताक्षरी को भी अवगत कराये।"

9. Being thus instructed, directed and dictated, the Chief Medical Officer, Saharanpur passed an order dated 22.06.2024. Thus, the rejection has arisen since the petitioner did not have and he did not file copy of any subsisting rent-deed in his favour, with respect to the 'disputed premises'.

10. That order became subject matter of challenge in **Anaya Health Centre and Another Vs. State of U.P. and 4 Others, Neutral Citation No. - 2024:AHC:115413-DB**. For ready reference, that order dated 19.07.2024, reads as below:

"1. Having heard Sri Ashish Kumar Singh, learned counsel for the petitioners and Dr. D.K. Tiwari, learned Additional Chief Standing Counsel for the State-respondents, facts are not in dispute that the petitioner no.2 was granted registration with respect to his medical establishment - Anaya Health Centre, vide order dated 16.05.2023, initially for a period of one year. Presently, renewal of that registration has been declined for reason of lease deed not extended.

2. Renewal of lease deed may have consequences on the petitioner's right to continue in occupation over the premises. However, that dispute would remain confined to the rights of occupancy and use being claimed by the petitioner viz-a-viz property at Bajoria Road, Saharanpur where such medical establishment has been set up.

3. Those rights could be resisted by the owner with whom petitioner no.2 is involved in civil suit proceeding. Subject to the adjudication of rights of petitioner no.2 and the private respondent no.5 with respect to the property (above described), petitioner no.2 may however remain entitled to seek continuation of the registration of the medical establishment.

4. Grant/renewal of such registration can never confer title over the property or right to continue to occupy the property. As noted, those rights would have to be separately tested.

5. Seen in that light, the impugned order has been passed on extraneous consideration. In any case, the same is not reasoned.

6. Accordingly, the present writ petition is disposed of as below :

(i) The impugned order dated 22.06.2024 is set aside.

(ii) The matter is remitted to the CMO, Saharanpur to pass a fresh order after hearing all necessary parties, keeping in mind the prima facie observations made above.

(iii) Such exercise may be concluded, as expeditiously as possible, preferably within a period of one month from today."

11. In that fact background, the present impugned order has been passed on 14/17th October, 2024. After making note of the earlier proceedings culminating in disposal of the first writ petition filed by the petitioner, only this much has been recorded in the impugned order, by way of reason:

"बैठक में उपस्थित दोनों पक्षों को सुना गया, दोनों पक्षों के मध्य मतभेद यथावत् है। प्रतिवादी पक्ष श्रीमती उषा गुप्ता किरायानामा/लीज को आगे नहीं बढ़ाना चाहती है।

निष्कर्ष:-

उपरोक्त दोनों पक्षों को सुनने एवं प्रकरण में सम्यक विचारोपरान्त निष्कर्ष निकलता है कि-

डा० अंशुल गुप्ता द्वारा "अनाया हैल्थ सेन्टर, बाजोरिया रोड, सहारनपुर" के पंजीकरण की अवधि 30.4.2024 को समाप्त होने पर नवीनीकरण हेतु दिनांक 28.4.2024 को ऑनलाइन आवेदन (Application No. MEE0171779) के माध्यम से किया गया, ऑनलाइन पोर्टल पर अपलोड किये गये एवं भौतिक पत्रावली में उपलब्ध कराये गये किरायेनामा की अवधि 01.03.2023 से दिनांक 31.01.2024 तक 11 माह के लिए थी, जिसके उपरान्त किरायेनामा बढ़ाया नहीं गया। पंजीकरण/नवीनीकरण हेतु चिकित्सा स्वास्थ्य एवं परिवार कल्याण विभाग, उत्तर प्रदेश के मैडिकल इस्टेब्लिशमेंट हेतु पोर्टल up-health.in पर पहले ही भाग में Details of Medical Establishment में Place of Establishment वाले भाग में Rental option का चयन करने पर स्वतः ही Rent Agreement Upload किये जाने का ऑप्शन सामने आता है, जो कि Red Marked अर्थात् Mandatory Field है, सुलभता हेतु Screenshot निम्नवत है:-

किराये के भवन में पंजीकरण/नवीनीकरण लेने पर Rent Agreement/Lease इत्यादि अत्यन्त आवश्यक है, जिसमें कि अधुनान्त Rent Agreement/Lease को ही प्राथमिकता दी जाती है। पोर्टल में उक्त प्रविष्टि पर बिना वैध प्रपत्र आगे बढ़ना सम्भव नहीं है, क्योंकि यह पोर्टल का प्राविधान है।

अतः अधुनान्त किरायानामा/लीज इत्यादि के अभाव में अनाया हैल्थ सेन्टर के नवीनीकरण पर विचार किया जाना सम्भव नहीं है।

निर्देश:-

डा० अंशुल गुप्ता-अनाया हैल्थ सेन्टर, सहारनपुर को निर्देशित किया जाता है कि चिकित्सा संस्थान का नवीनीकरण होने तक संस्थान को पूर्ण रूप से बंद रखें। यदि बिना नवीनीकरण के उपरोक्त चिकित्सा संस्थान का संचालन किया जाता है तो उनके विरुद्ध विधिक कार्यवाही की जायेगी, जिसका सम्पूर्ण उत्तरदायित्व उनका स्वयं का होगा।

मुख्य चिकित्सा अधिकारी

सहारनपुर।”

12. In such circumstances, learned counsel for the petitioner has submitted that the respondent has overreached the earlier order of the Court. Instead of making compliance of the order dated 19.07.2024, the CMO has practically reiterated his earlier reasoning - that the registration cannot be renewed in favour of the petitioner for reason of rent-deed not subsisting/not uploaded on the web-portal. No other reason has been recorded, either with respect to infringement of any law, alleged or found against the petitioner, or for other reason.

13. Insofar as, on the earlier occasion, the writ Court had clearly provided that the dispute between the petitioner and respondent no.5 may remain alien to the issue of provisional registration and insofar as the injunction order passed by the trial Court subsists - protecting the petitioner's possession over the 'disputed premises', against payment of charges towards use and occupation and so long as the petitioner is complying with those terms, the respondent - administrative authority was not vested with jurisdiction to enter into that issue of existence/non-existence of rent-deed.

14. On the other hand, learned Additional Chief Standing Counsel would submit, under the Clinical Establishments (Registration and Regulation) Act, 2010 read with the Government Order dated 7.1.2022, two procedures exist to obtain fresh registration and renewal of registration of medical establishments. Insofar as the petitioner's medical establishment has less than 50 beds, the procedure prescribed under the Government Order 26.6.2018, would apply. The Form on which the application for registration/renewal is to be made, is also provided on the designated website of the Department of Medical Health and Family Welfare.

15. Referring to and relying heavily on that, learned Additional Chief Standing Counsel has submitted, the petitioner applied for registration disclosing the 'disputed premises' as a rented property. Since, the petitioner uploaded the rent-deed (as referred to above), at that stage, he was granted registration, for one year. At present, the petitioner has applied for renewal of that registration and again chosen to describe the 'disputed premises' as a rented property. At the same time, it is an admitted case that the petitioner did not upload a valid rent-deed for the period March, 2024 onwards. To the extent, the petitioner continues to rely on the old rent-deed, which no longer subsists, he has not disclosed to the State authorities any right to continue to run his medical establishment, at the 'disputed premises'.

16. It is also her submission, unless a medical establishment strictly complies with the requirement of law and unless rent agreement etc., are shown to exist to the State authorities, the public at large and the State may not be exposed to undue risks in the event of any breach of law etc. committed by a person seeking registration.

17. Similar submissions have been advanced by learned counsel for the private respondent.

18. Having heard learned counsel for the parties and perused the record, in the first place, the reason given in the impugned order, no longer exists. That issue was raised by the petitioner in **Anaya Health Centre (supra)**. It was squarely answered in his favour on the reasoning, existence of a civil dispute between the petitioner and respondent-5, with respect to continuance of tenancy of the petitioner over the 'disputed premises', is extraneous to the issue of registration of medical establishment of the petitioner. That order was never challenged by any party. It has attained finality.

19. Though, the respondent no.5 may continue to complain and clamour and seek eviction of the petitioner, it is fundamental to the rule of law that the injunction order granted by the civil Court must be given full effect. It has to be recognized,

obeyed and abided without any protest, except by seeking legal remedies thereagainst. It is also not in dispute that the petitioner is complying with the terms of that order dated 23.02.2024 as confirmed by the order dated 10.10.2024 passed by the Civil Judge (Senior Division), Saharanpur in O.S. No. 307 of 2024 (Anshul Gupta Vs. Smt. Usha Gupta). He deposited Rs. 1,00,000/- per month earlier, and presently he is depositing Rs. 1,10,000/- per month with the learned Court below, towards use and occupation charges.

20. That done, it neither survives to the private respondent to continue to hold a belief that she may resist the renewal of the registration of the petitioner nor it ever became open to the State respondents to examine that issue any further. The fact that such re-examination has involved overreaching the decision of the Court, is itself alarming. What is inexcusable in the facts of the present case is that the impugned administrative order has been passed not only in defiance to a judicial order (passed by this Court), but in meek compliance to the contrary administrative dictation offered by the Divisional Commissioner, prior to that judicial order. Once, the order of the writ Court had been served on the CMO, Saharanpur, it was his bounden duty to make firm compliance of the same. It was not for him to look the other way or to abide by a wrong administrative command, given by a superior administrative authority.

21. To the extent, he invited the respondent to apprise and tried to resolve the dispute amicably, no mistake was committed. However, once the parties could not agree to renewal of that rent agreement, it did not survive to the CMO to reject the renewal application made by the petitioner, pending civil disputes between the parties and in face of the orders passed by the learned Court below.

22. The objection being raised by the learned Additional Chief Standing Counsel on the strength of the guidelines issued by the State Government with respect to registration of medical establishments, does not impress us. The objection is wholly misconceived. In **Narendra Kumar Maheshwari Vs. Union of India, 1990 Supp SCC 440**, it was recognized that guidelines are "not statutory in character". They

are "intended to clarify or implement the conditions and requirements precedent to the exercise of certain rights conferred in favour of citizens or persons and a deviation therefrom directly affects the rights so vested". They "have only an advisory role to play and non-adherence to or deviation from them is necessarily and implicitly permissible if the circumstances of any particular fact or law situation warrants the same. Judicial control takes over only where the deviation either involves arbitrariness or discrimination or is so fundamental as to undermine the basic public purpose which the guidelines and the statute which they are intended to achieve."

(emphasis supplied)

23. Therefore, if the web portal put in place by the respondent State authorities did not *per se* enable the petitioner to apply under one of the three categories of ownership/occupation rights (that petitioner no. 2 may have held) vis-a-vis, the property in dispute, it did not create any ineligibility in the petitioner to seek renewal of registration of his medical establishment. Primarily, that registration has to be granted and renewed *qua* the professional qualification of the petitioner no.2. About that, there is no doubt. Also, there is no doubt that at present the present petitioner no.2 is enjoying protection of his occupancy rights over the 'disputed premises', under order passed by the competent Court of civil jurisdiction. Hence, the respondent ought to have provided for provisional/conditional renewal of registration to arise in his favour by requiring the petitioner to file such documents (through offline mode), as may have substantially fulfilled the requirement regarding disclosure of place of practice etc.

24. No statutory law has been shown to us as may mandate that a medical establishment may not be provisionally/conditionally registered on the strength of a Court order, as to tenancy rights. In face of the order passed by the learned Court below, it was clearly in the knowledge of the CMO (for the limited purposes of renewal of rent-deed), that the petitioner's occupancy rights had been protected by a judicial order. He had to provisionally/conditionally treat the petitioner at parity

with a person claiming registration against a valid rent-deed. Merely because the electronic portal provided by the State functionaries did not provide a procedurally convenient resolution for such eventuality i.e. it did not provide an option whereby the petitioner may have uploaded the correct status of the 'disputed premises', it did not and it could not have led to rejection of the renewal application, filed by the petitioner.

25. The action taken by the CMO smacks of legal malafides. It is wholly unsustainable. It requires corrective action to be taken. In that, we find that the petitioner has needlessly been made run to this Court twice, solely for reason rule of law knowingly violated by the CMO, Saharanpur.

26. Accordingly, the writ petition is allowed. The impugned order dated 14/17.06.2024 (Annexure No. 1) is quashed. The Chief Medical Officer, Saharanpur is directed to forthwith renew the registration of the petitioner, subject to outcome/further orders in the pending civil litigation being O.S. No. 307 of 2024 (Anshul Gupta Vs. Smt. Usha Gupta), pending in the Court of Civil Judge (Senior Division), Saharanpur and/or Eviction Application No. 2296 of 2024 (Usha Gupta Vs. Dr. Anshul Gupta), pending before the prescribed authority under the rent law. It is made clear, subject to any order of eviction being executed against the petitioner by a Court/authority, the provisional/conditional registration provided to him may be exposed to proceedings for cancellation.

27. For the aforesaid conduct offered by the Chief Medical Officer, Saharanpur, cost of Rs. 1 Lac is imposed on the said officer to be recovered personally.

28. On query made, Sri Anubhav Chandra, learned Standing Counsel, on instructions, informed that at District Saharanpur, there are old recoveries pending towards maintenance allowances payable to most needy senior citizens. Since, the persons liable for recovery are avoiding those proceedings, amounts have remained to be paid to such needy senior citizens, despite final orders existing in their favour providing for maintenance allowance. Upon further query being made, he has

informed that the following bank account, operated by the DM, Saharanpur, exists in which costs may be deposited for utilization for payments to needy senior citizens.

State of Bank of India,

SWIFT Account No. 10841284048

IFSC Code : SBIN0000710

29. In view of such statement made, we provide, let the amount of cost recovered from the CMO, Saharanpur, be initially utilized to pay minimal maintenance allowances to the most needy senior citizens in the opinion of the Tribunal with approval of the District Magistrate, Saharanpur.

30. Upon recovery (from whom it may be due), the amount may be restored and may be re-utilized for the same purpose in the same manner, time and again. For the above purpose any proposal made by the Tribunal may be first approved by the District Magistrate and upon adequate recovery made, the same may also be informed to the District, from time to time.

Order Date :- 5.12.2024

Noman

(Donadi Ramesh, J.) (S.D. Singh, J.)