

THE HON'BLE JUSTICE MRS SUREPALLI NANDA

W.P. No. 19150 of 2020

ORDER:

Heard the Learned counsel for the Petitioner and the Government Pleader for Medical and Health.

2. This Writ Petition is filed praying to issue a Writ of Mandamus declaring the actions of 2nd respondent in issuing the impugned cancellation orders bearing Rc.No. 53160/MAK/Liver/2017 dated 22.10.2020 unilaterally cancelling the Petitioner's Hospital's License bearing No.21106/MA-K(Liver)/2017 dated 01.08.2017 and 28.12.2018 for performing Liver Donor Transplantation, with immediate effect and duly intimating that the Petitioner shall not admit any liver transplant cases beyond the impugned cancellation order date, as being arbitrary, illegal and violative of Articles 14 and 19 of the Constitution of India and also violative of the provisions of the Andhra Pradesh Transplantation of Human Organs Act, 1995 and consequently set aside the same.

3. The case of the petitioner, in brief, is as follows:

a) The petitioner company is engaged as health group and is incorporated under the Companies Act, 1956, providing quality health care services and is mainly focused in liver transplants, cardiac and gastro surgeries.

b) A Patient named one Late Ms. Rapolu Rajani aged 40 years was admitted in one of the petitioner's hospitals (i.e. Gleneagles Global Hospitals) which is at Hyderabad on 05.10.2017 on the account of suffering from Liver failure and drug induced liver injury and upon initial evaluation and medical assessment, patient fulfilled the criteria for liver transplantation.

c) On 06.10.2017 the patient was registered with Jeevandan Cadaver Transplantation Programme for cadaver transplantation. As there were no suitable donor in the 1st degree relative category, the patient's family had brought one person claiming to be paternal cousin/relative of the patient. After thorough medical examination, the transplant coordinators of the hospital had informed the patients family that it is mandatory to get approval of 3rd respondent for performing the liver transplantation.

d) On 09.10.2017, on the account of worsening situation of the patient, the staff and representatives of the petitioner's hospital the relatives of the petitioner had approached the 3rd respondent for getting the mandatory approval for performing the liver transplantation on the patient.

e) On 10.10.2017, the relatives of the donor had produced documents of the proposed donor which reflected that the proposed donor was incompatible with the patient for transplant as only 4 out of 10 criteria's matched as against the required minimum of 5/6 out of 10 criteria as mandated statutorily.

f) The 3rd respondent however, had rejected the approval. On 11.10.2017 due to worsening medical situation, the patient expired on 11.10.2017 due to cardiac arrest. A relative of the patient had complained to the 2nd and National Human Rights Commission (NHRC) alleging that the patient had expired on account of negligence of petitioner's hospital bearing case no. 711/36/2/2017.

g) The 2nd respondent issued a Show Cause Notice vide Rc.No.53160/MAK (Liver)/2017 dated 18.09.2019 to the

petitioner's hospital seeking an explanation. Petitioner's hospital submitted a detailed explanation on 23.01.2019 to the 2nd respondent.

h) After seeking the explanation from the 2nd Respondent and the petitioner, National Human Rights Commission (NHRC) had issued an order dated 07.05.2019 observing that there was a lack of co-ordination and promptness on part of concerned authorities i.e., 2nd and 3rd respondents. National Human Rights Commission (NHRC) did not assign any guilt or wrongdoing on part of the petitioner's hospital.

i) National Human Rights Commission (NHRC) vide its order dated 07.05.2019 had referred the matter to the Telangana State Medical Council (TSMC) to conduct an enquiry and report the matter. Subsequently, Telangana State Medical Council (TSMC) had issued notices to Medical superintendent and other concerned doctors of the petitioner's hospital.

j) Telangana State Medical Council (TSMC) vide its order TSMC/59/Ethics/Case No.01/2019 dated 13.12.2019 observed

no negligence or deficiency on part of the treating doctors engaged by the petitioner's Hospital.

k) Contrary to the orders of Telangana State Medical Council (TSMC), the 2nd respondent issued a 2nd Show Cause Notice vide Rc.No.53160/MAK/(Liver)/2017 dated 23.09.2020 directing the petitioner's hospital to submit an explanation and reasons for not canceling the recognition issued under the Andhra Pradesh Transplantation of Human Organs Act, 1955.

l) The Petitioner's hospital submitted an explanation vide letter dated 06.10.2020 narrating the facts and requesting to withdraw the 2nd show cause notice. The 2nd respondent without any application of mind had issued the cancellation orders vide File No.Rc.No.53160/MAK/Liver/2017 canceling the recognition/license and the subsequent renewal certificate granted to the petitioner's hospital.

m) The 2nd respondent without application of mind, overlooking the order of TSMC and without considering the detailed report of the petitioner's hospital had issued the impugned cancellation order dated 22.10.2022 cancelling the

recognition/license granted to the petitioner's hospital vide no.21106/MAK(Liver)/2017 dated 01.08.2017 and 28.12.2018 without giving reasonable opportunity of being heard to the petitioner, which clearly establishes the fact that the 2nd respondent is prejudiced against the petitioner.

n) The fact that the impugned cancellation order had been passed on 23.10.2020 when courts in Telangana are on vacation till 1st week of November 2020 and amidst the Dussera festival would clearly reflect the prejudiced mindset of the 2nd respondent.

o) Despite the Liver Transplantation Surgeries scheduled in Petitioner's Hospital, 2nd respondent had not renewed the Certificate of Registration causing great inconvenience and prejudice to those patients. If the said scheduled Liver Transplantation Surgeries are not performed as per the said dates, Petitioner may face the legal action due to the Surgeries scheduled for the patients at the petitioner's hospital. Hence, this Writ Petition.

4. The case of the respondents, in brief, is as follows:

a) The petitioner's hospital has made an application for Live Liver Transplantation on 09.10.2017 without certain important documents i.e., Donor relation certificate from the concerned authority (Revenue/Police) and HLA matching/DNA reports of the donor.

b) But, on Humanitarian grounds and taking into consideration the critical condition of the patient, the Authorization Committee met late at night and interviewed the individuals as per protocol and issued permission.

c) Show Cause Notices were issued by the National Human Rights Commission (NHRC) to the petitioner's Hospital vide bearing no.711/36/2/2017 for which the Petitioner's hospital had apologized for submission of improper documents, which was reported to the Government.

d) National Human Rights Commission (NHRC) vide its report dated 07.05.2020 had directed that an apology would not tender the purpose and directed to take appropriate remedial action and hence, the 2nd respondent had issued the 2nd show cause notice vide Rc.No.53160/MAK/ (Liver)/2017 dated 23.09.2020 against the Petitioner's Hospital.

e) The Petitioner's hospital submitted an explanation vide letter dated 06.10.2020 which was not satisfactory.

f) In view of the above stated circumstances, the license granted to the petitioner for Liver Transplantation was cancelled. Hence, there are no merits in Writ Petition and is liable to be dismissed.

PERUSED THE RECORD

5. The operative part of the order in W.P (SR) No. 24609 of 2020 passed by the Learned Single Judge dated 25.10.2020 is extracted hereunder:

"Though an explanation has been called from the petitioner, apparently no opportunity has been granted, as seen from the impugned order.

In view of the same and taking into account that two to three surgeries are slated in the next week, besides other surgeries subsequently in the coming weeks, the ends of justice would be met if the impugned order is suspended for a period of ten days from today, and the petitioner is permitted to conduct the surgeries scheduled next week.

Accordingly, the impugned order is suspended for a period of ten days from today.

Post on 02.11.2020"

6. The order dated 02.11.2020 passed in I.A. 1 of 2020 in W.P.No.19150 of 2020 is as follows:

"Order

No Counter affidavit is filed.

Interim order granted on 25.10.2020 is extended until further orders with liberty to the respondents to move a vacate petition and make a mention if there is an urgency."

7. The order dated 27.04.2019 of the National Human Rights Commission (NHRC) issued vide Case No.711/36/2/2017 to The Principal Secretary, Department of Health, Govt. of Telangana, Hyderabad is extracted hereunder:

"With reference to your Letter No dated I am directed to say that the matter was considered by the Commission on 22/04/2019 and the Commission has directed as follows:

The complainant alleged that his daughter has lost her life due to shown medical negligence of Gleneagles Global Hospital, Lakdikapul, Hyderabad on 11.10.2017.

Vide last proceedings dated 07.12.2018, the Commission had observed the response of Principal Secretary, Department of Health, Govt. of Telangana and held that due to negligence of hospital authority's one life get wasted which could have been saved, if proper measure/action has been taken. Merely saying sorry by the hospital authorities will not bring the life of young baby, as the onus is always on them to be more responsible and remain ready for handling such emergent situations. Hence, Principal Secretary, Department of Health, Govt. of Telangana was directed to submit the action taken report against the guilty hospital/staff within four weeks positively.

In response, Principal Secretary, Department of Health, Govt. of Telangana, has inform the Commission vide report dated 23.01.2019, wherein instead of sending the action taken report against the Management & Staff

of Gleneagles Global Hospitals, the same earlier report has been send wherein it is stated that an apology was tendered by the hospital authorities for not acting promptly and giving false hope to the relatives of the patient, despite the fact that patient condition is critical and no suitable first degree relatives are available for living donor transplantation option. Further, Authorization Committee should have also take the humanitarian approach and issued permission within 2 hours of submitting the application for liver transplantation through an extended family donor.

1. The Commission has considered the material placed on record. As the case relates to the lack of coordination and promptness on part of concerned authority & hospital management, hence merely tendering an apology would not serve the purpose. Somebody responsibility needs to be fixed and an appropriate remedial action needs to be taken in the matter. Principal Secretary, Department of Health, Govt. of Telangana is again directed to submit the action taken report which may also include the monetary compensation paid to the NOK of the victim by the concerned Hospital within four weeks positively.

2. It is therefore, requested that the additional/complete report is directed by the Commission in the matter be sent letter by 04.06.2019, for further consideration by the Commission."

8. Section 16(1) and (2) of the Telangana Transplantation of Human Organs Act, 1995 reads as under:

16. (1) The Appropriate Authority may, suo motu or on complaint issue a notice to any hospital to show cause why its registration under this Act should not be suspended or cancelled for the reasons mentioned in the notice.

(2) If, after giving a reasonable opportunity of being heard to the hospital the appropriate authority is satisfied that there has been a breach of any of the provisions of this Act or the rules made thereunder it may, without prejudice to any criminal action that it may take against such hospital, suspend its registration for such period as it may think fit or cancel its registration:

Provided that where the Appropriate Authority is of the opinion that it is necessary or expedient so to do in the public interest, it may, for reasons to be recorded in writing suspend the registration of any hospital without issuing any notice.

9. The order dated 13.12.2019 of the Telangana State Medical Council reads as under:

"The General Body of Telangana State Medical Council in its meeting held on 13.12.2019 after going through the material on record, complainants complaint, respondent doctor explanation, has noted that since Dr. Dharmesh Kapoor and his team stated that there is no clear and categorical approval by the Olo DME and in the absence of the approval they could not process the case. During this period patient's condition also deteriorated, as evidenced by the manifestation encephalopathy, which is a contra indication for taking up case for surgery.

Further the General Body has noted that Dr. Dharmesh Kapoor and team considered that the patient is not fit for surgery, as her condition became critical and he stated that there was no delay and negligence on their part. Therefore, the General Body after detailed discussion has approved the recommendation of the Ethics Committee as approved by the Executive Committee to close the case as there is no negligence or deficiency on the part of the doctors.

In pursuance of the decision taken by the General Body of the Council held on 13.12.2019 an order is communicated to you.

The complaint 1st cited is disposed of accordingly."

10. The impugned order dated 22.10.2020 in Rc.No.53160/MAK/Liver/2017, reads as under.

In the reference 1" cited, that the Global Hospital, Lakdikapool, Hyderabad was accorded permission to conduct Organ Liver Transplantations Only for a period of 5 years from the date of issue of certificate as per Andhra Pradesh Transplantation of Human Organs Act 1995 by virtue of Telangana Adaptation of Laws Order. 2016 which is *Mutatis mutandis* mode applicable to the state of Telangana.

In the reference 2nd cited, subsequently this office has issued orders for change of name of the Hospital recognition from 01.08.2017 for performing Liver Donor Transplantation as requested by Hospital authorities to Gleneagles Global Hospital. Lakdikapool, Hyderabad from Global Hospital, Lakdikapool, Hyderabad.

The Hon'ble National Human Rights Commission, New Delhi in its order Dated: 117 us 2019 vide in the reference 4" cited directed that "merely tendering an apology would not serve the purpose. Somebody responsibility needs to be fixed and an Appropriate remedial action needs to be taken in the matter: Principal Secretary: Department of Health, Government of Telangana is again directed to submit the Action Taken Report which may also include, the monetary compensation paid to the Nok of the victim by the concerned Hospital within four weeks positively."

The Chairman, Authorization Committee for Human Organ Transplantation. (DME) Government of

Telangana, Hyderabad issued the Show Cause notice vide reference 5th cited to the management of Gleneagles Global Hospital, Lakdikapool, Hyderabad and directed to comply with the instructions of Hon'ble National Human Rights Commission, New Delhi by paying compensation and also to submit their explanation to Show Cause notice as to why action should not be initiated for cancellation of Recognition issued under the Andhra Pradesh Transplantation of Human Organs Act 1995 adopted by the Telangana State.

In the reference 6 cited, the Management of Gleneagles Global Hospital, Lakdikapool, Hyderabad has submitted explanation and it is not satisfactory and also it is in violation of Transplant roles like submitting application for transplant permission without a basic report like ILA which is mandatory to decide compatibility of Recipient and Donor and they themselves accepting that in this case the Donor who was presented before the Authorization Committee revealed 4/10 match and did not conclusively establish the relationship between Patient & Donor"

In view of the circumstances stated above the recognition to Global Hospital, Lakdikapool, Hyderabad subsequently change of name of Hospital of Recognition w.e.f. 01.08.2017 for performing Liver Donor Transplantation as known as Gleneagles Global Hospital, Lakdikapool, Hyderabad instead of Global Hospital, Lakdikapool, Hyderabad (vide in the reference 1st and 2nd cited) issued by the Chairman, Authorization Committee for Human Organ Transplantation, Government of Telangana as per the Andhra Pradesh Transplantation of Human Organs Act 1995 adopted by Telangana State for Liver Transplantation, is hereby Cancelled with immediate effect. Further, informed that no Liver Transplantation cases shall admit beyond this date. If any found to be noticed, a serious criminal

action will be initiated against the Hospital Authorities as per the Act.

11. Sri Dammalapati Srinivas, learned senior counsel appearing on behalf of the petitioner primarily puts forth the following submissions:

a) The order impugned is in clear violation of Section 16(2) of the Andhra Pradesh Transplantation of Human Organs Act, 1995 which mandates providing of reasonable opportunity of being heard to the petitioner before passing an order of suspension or cancellation of registration.

b) The order impugned only refers to the explanation dated 06.10.2020 of the petitioner and it is observed that it is not satisfactory, the order impugned however, does not even indicate any discussion or consideration of explanation dated 06.10.2020 submitted by the petitioner, to the show cause notice dated 18.01.2019.

c) The order impugned strangely ignores and does not refer to the order dated 13.12.2019 of the Telangana State Medical Council, Sultan Bazar, Hyderabad vide proceedings No.TSMC/59/Ethics/Case No.01/2019, which is clearly in favour of the petitioner.

d) The order impugned clearly indicates that though explanation has been called for from the petitioner, apparently no opportunity of hearing has been granted to the petitioner.

e) The Closure report of the National Human Rights Commission dated 03.01.2021 pertaining to the victim Rapolu Rajani clearly observed that MCI had absolved the Petitioner hospital of any negligence and the same should be considered by the court for granting relief as prayed for by the petitioner.

12. The counter affidavit filed by the respondents, in particular, para 7 reads as under:

"7. It is submitted that Show Cause notice were issued to the Petitioner's Hospital basing on the National Human Rights Commission (NHRC), New Delhi bearing case No. 711/36/2/2017. Accordingly the Hospital has The Hospital was apologised regarding submission of improper Documents the same compilation report submitted to Government.

The National Human Rights Commission (NHRC), New Delhi in its order dated 07.05.2020 directed that merely tendering an apology would not serve the purpose. Somebody responsibility needs to be fixed and an appropriate remedial action needs to be taken in the matter. Principal Secretary, Department of Health, Government of Telangana is again. directed to submit the action taken report which may also include the monetary compensation paid to the NoK of the victim by the concerned Hospital within four weeks positively.

Hence once again the Show Cause notice was issued to the Petitioner's Hospital.

The Hospital has subsisted the explanation has not satisfied and also it is in violation of Transplantation of Rules like submitting application for transplant permission without a basic report like HLA which is mandatory to decide compatibility of Recipient and Donor and they themselves accepting that in this case the Donor who was presented before the Authorization Committee "revealed 4/10 match and did not conclusively establish the relationship between Patient and Donor

In view of the circumstances stated above, the Chairman, Authorization Committee for Human Organ Transplantation, Government of Telangana as per the Andhra Pradesh Transplantation of Human Organs Act 1995 adopted by Telangana State has cancelled the permission for Liver Transplantation of Gleneagles Global Hospital, Lakdikapool, Hyderabad.

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DISCUSSION AND CONCLUSION

13. This court opines that the petitioner is entitled for the relief as prayed for in the present Writ Petition for the following reasons:

I. A bare perusal of the impugned proceedings vide Rc.No.53160/MAK/Liver/2017, dated 22.10.2020 clearly indicates, as borne on record, that no opportunity of hearing had been provided to the petitioner as mandated under Section 16(1) and (2) of

the Telangana Transplantation of Human Organs Act, 1995 and the impugned order, had been passed hastily and unilaterally.

II. A bare perusal of the order passed by the Telangana State Medical Council dated 13.12.2019 clearly indicates the fact that the case against the petitioner had been closed clearly observing that there is no negligence or deficiency on the part of the doctors, this Court opines that it is only in pursuance to the letter written by the National Human Rights Commission dated 27.04.2019 issued on 07.05.2019, that the 2nd respondent proceeded in issuing the impugned cancellation orders bearing Rc.No.53160/MAK/Liver/2017, dated 22.10.2020, unilaterally cancelling the petitioner's hospital license bearing File No.21106/MA-K(Liver)/2017, dated 01.08.2017 and 28.12.2018 for performing liver donor transplantation with immediate effect. The said order dated 13.12.2019, however, had been totally ignored by the 2nd respondent while passing the impugned order dated 22.10.2022.

III) This Court opines that the order impugned dated 22.10.2022 of the 2nd respondent had been passed in clear violation of principles of natural justice without even considering the explanation dated 06.10.2020, submitted by the petitioner herein to the show cause notice dated 18.01.2019 and further the same is passed totally ignoring the proceedings dated 13.12.2019 of the Telangana State Medical Council, Sultan Bazar, Hyderabad which in fact took into consideration not only the recommendations and observations of the Ethics Committee, but also the explanation submitted by the concerned doctors in response to the complaint made to the National Human Rights Commission, New Delhi in the treatment of the case of Mrs Rapolu Rajini and observed that the General Body in its decision, in its meeting held on 13.12.2019 after detailed discussion had approved the recommendations of the Ethics Committee as approved by the Executive Committee to close the case as there is no negligence or deficiency on the part of the concerned doctors.

IV) This Court opines that the very basis for issuing the order impugned dated 22.10.2020 is the order of Human Rights Commission dated 27.04.2019 and issued on 07.05.2019, but in view of the fact, as borne on record that the National Human Rights Commission subsequently in its closure report dated 03.12.2021 pertaining to the victim Rapolu Rajini vide Case/ File No. 711/36/2/2017 absolved the petitioner herein i.e., Gleneagles Global Hospital, Lakdikapool, Hyderabad of any negligence and therefore, this Court opines that the order dated 27.04.2019 issued on 07.05.2019 has no relevance or significance at all, at this stage.

V) Taking into consideration, the above referred facts and circumstances and also the contents of the closure report dated 03.12.2021 in case NO. 711/36/2/2017 of the National Human Rights Commission and also contents of the order dated 13.12.2019 passed by the Telangana State Medical Council in file No.TSMC/59/Ethics/Case No.1/2019, this Court opines that the fundamentals of fair play require that petitioner herein ought to have been

provided with a reasonable opportunity of being heard and to represent its case before passing the order impugned dated 22.10.2020 vide proceeding Rc.No.53160/MAK/Liver/2017 adverse to the interest of the petitioner unilaterally, arbitrarily contrary to the mandate and procedure laid down in Section 16(2) of the A.P. Transplantation of Human Organs Act, the writ petition is allowed as prayed for and the impugned cancellation order bearing Rc.No.53160/MAK/LIVER/2017 dated 22.10.2020, unilaterally canceling the petitioner's hospital's license bearing No.21106/MA-K(Liver)/2017 dated 01.08.2017 and 28.12.2018 for performing Liver Donor Transplantation with immediate effect are set aside. However, there shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

MRS JUSTICE SUREPALLI NANDA

Dated: 10.03.2023

Note: L.R. copy to be marked
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