



**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 17<sup>th</sup> OF MARCH, 2025**

**WRIT PETITION No. 23764 of 2024**

***SARVOTTAM SUYASH CLINIC AND FERTILITY CENTRE  
THROUGH ITS PROPRIETOR DR. SMITA SURENDRAN***

*Versus*

***THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL  
SECRETARY AND OTHERS***

**Appearance:**

*Shri Aditya Sanghi, learned Senior Advocate along with Shri Kamal Tiwari, Advocate for the petitioner.*

*Shri Kushagra Jain, Govt. Advocate appearing on behalf of Advocate General/ respondent State.*

**ORDER**

1] This petition has been filed by the petitioner under Article 226 of the Constitution of India seeking the following reliefs:-

*“i) This Hon'ble Court be pleased to direct the Respondents to remove their seal from the Petitioner Clinic and Fertility Centre, forthwith, and further allow the Petitioner to run and operate the Petitioner Clinic and Fertility Centre.*

*(ia) This Hon'ble Court be pleased to issue a writ in the nature of certiorari quash the order dated 12.9.2023 (Annexure P-14) whereby, the registration of the petitioner-Fertility Center has been cancelled.”*

2] Initially the petition was filed against the alleged illegal sealing of the petitioner's premises viz., clinic and fertility center. However, when its registration was also cancelled on 12.9.2023, the petition has been amended and the aforesaid order has also been challenged.



3] In brief, the facts of the case are that the petitioner Sarvottam Suyash Clinic and Fertility Center at Shajapur is being run and operated by its proprietor by Dr. Smita Surendran, who is also a qualified doctor being M.B.B.S, DGO, (Gynecologist), and is also working as a Post Graduate Medical Officer, District Hospital, Shajapur since 2010.

4] The case of the petitioner is that it is registered under Section 4(3) of M.P. Upcharyagriha Tatha Rujopchaar Sambandhi Sthapnaye (Registrikaran Tatha Anugyapan), Adhinyam, 1973 (hereinafter referred to as “Adhinyam,1973”) and its registration and licence is valid till 31.3.2027. Since it was operating as fertility center, hence a request was made to the respondent no.3/Chief Medical and Health Officer, District Shajapur vide application dated 24.1.2023, for grant of Medical Termination of Pregnancy (MTP) registration , but the same has still not been decided. However, on 29.5.2024, the respondent no.5/Municipal Corporation, Shajapur, issued a notice to the petitioner to get an audit done in respect of the fire and life safety and submit its report, which was complied with by the petitioner, and accordingly, as per the report, the petitioner's clinic complied with all legal requirements.

5] The petitioner once again filed an application for issuance of MTP registration on 4.6.2024. It is further the case of the petitioner that since the proprietor of the petitioner, Dr. Smita Surendran, who was also working as a Post Graduate Medical Officer, District Hospital, Shajapur submitted an application to the Chief Medical



Officer/Shajapur seeking leave to travel outstation from 6.8.2024 till 7.8.2024, which was allowed and the petitioner also travelled out of station for the said dates, however, in the meantime, on 7.8.2024, the respondents visited the petitioner's clinic on the basis of certain complaints, and conducted a spot inspection, and thereafter sealed the premises without serving any notice and without providing a copy of the *panchnama* of the same to the proprietor of petitioner.

6] The case of the petitioner is that it could not have been sealed in this manner without following the principle of natural justice, and thus, against the aforesaid illegal sealing, the petitioner preferred the present petition on 12.8.2024, and during the pendency of the petition, the respondents also passed the order of cancellation of registration of the petitioner's clinic on 12.9.2023, which has been subsequently challenged by way of amendment.

7] Shri Aditya Sanghi, learned senior counsel for the petitioner has vehemently argued before this Court, and it is submitted that the impugned action of the respondents as also the order of cancellation registration are bad in law and are liable to be quashed.

8] Shri Sanghi has also drawn attention of this Court to the Section 6 of the Adhinyam, 1973, which has been given a complete go by by the respondents. It is also submitted that admittedly, no opportunity of hearing was ever granted to the petitioner before passing the impugned order, and thus, it is submitted that the same be quashed.

9] Counsel for the petitioner has also relied upon various



judgments passed by the supreme Court in the case of *Harbanslal Sahnia and another Vs. Indian Oil Corpn. Ltd and others reported as (2003) 2 SCC 107, Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer -cum-Assessing Authory and others reported as 2023 SCC Online SC 95*, by the Bombay High Court in the case of *Dr. Shivraj Chhotulal Pataria Vs. Brihanmumbai Municipal Corporation and others reported as 2023 SCC OnLine Bom 1384* and the orders passed by the Madhya Pradesh High Court at Principal Seat , Jabalpur in the case of *Dr. Sanjay Jain Vs. State of M.P. And others passed in\_MCRC.No.5465/2020 dated 13.6.2022* and in the case of *Jash Hospital Research Center Vs. Deen Dayal Swasthya Suraksha Parishad passed in W.P.No.6430/2021 order dated 7/11/2023.*

10] A reply to the petition has also been filed by the respondents. It is submitted by the respondents that the petitioner is carrying out the medical termination of pregnancy without any registration, which has led the respondents to pass the aforesaid order, and thus, no case for interference is made out.

11] Counsel for the respondents has also relied upon a decision rendered by the Chattisgarh High Court in the case of *Madhukar Dwivedi Vs. State of Chattisgarh and others reported as 2017SCC online Chh 1561.*

12] Heard learned counsel for the parties and perused the record.

13] From the record it is apparent that the petitioner's grievance is the alleged illegal sealing of it, as also the impugned order dated



12/9/2023 (Annexure P-14) whereby, the petitioner's registration of the private clinic namely Sarvottam Suyash Fertility Center, has been cancelled. A perusal of the aforesaid order would reveal that it has purportedly been passed under Section 6(1) of the Adhiniyam 1973.

S.6(1) reads as under:-

*“6(1) Before making an order refusing an application for registration and license in respect of a nursing home or a clinical establishment or an order canceling any registration and license in respect thereof, the supervising authority shall give to the applicant or to the person registered and licensed not less than one calendar month's notice of its intention to make such an order and every such notice shall state the grounds on which the supervising authority intends to make the order and shall contain in(sic) intimation to the effect that if within a calendar month of the receipt of the notice the applicant or the person registered informs the authority in writing that he desires so to do, the supervising authority shall, before making the order, give him an opportunity of showing cause (in person or by representative) which the order should not be made.”*

14] Although, s.6(1) is not happily worded, but it is apparent from the aforesaid that before cancelling the Registration of any person under the Adhiniyam, 1973, it is mandatory for the authority to give not less than one calendar month's notice of its intention to make such an order, and it is also the requirement of law that every such notice shall state the grounds on which the supervising authority intends to make the order.



15] Although the impugned order dated 12/9/2023, but it appears to be a typographical mistake, as it must have been passed on 12/9/2024 as prior to passing of the same, two notices dated 9/8/2024 and 14/8/2024 were also issued to the petitioner, which are also referred in the said order.

16] On perusal of both the notices dated 9/8/2024 and 14/8/2024, it is found that it is in respect of various short comings/deficiencies found during the inspection of the petitioner's premises. In the notices dated 9/8/2024, the petitioner has also been informed that the clinic is being sealed in larger public interest, and the petitioner has been given three days' time to respond to the said notice. Whereas, so far as the subsequent notice dated 14.8.2024 is concerned, it also refers to the earlier notice dated 9/8/2024. In this notice dated 14.08.2024, it is found in it the petitioner is directed to appear on 14.8.2024 itself, at around 6.00 o'clock and submit its reply also. Thus, apparently in both the notices, the respondents did not inform the petitioner that they intend to cancel its registration, and an intimation that they would be held responsible for any action taken against them. Both these notices clearly reveal that the respondents have not complied with any of the conditions as prescribed under Section 6(1) of the Adhiniyam, 1973 namely, that the notice has not been given of one calendar month, and secondly, its intention to pass an order of cancellation of registration of the private clinic.

17] Apart from that, so far as the sealing of the petitioner's premises is concerned which was also sealed on 14.8.2024, it is also vitiated on



account of the same infirmity, i.e., no prior notice was given to the petitioner, and no opportunity of hearing was given to the petitioner, the respondents have also not stated in their reply as to under which provision of law, the clinic has been sealed.

18] So far as the alternative remedy of appeal is concerned, this Court finds that admittedly, the respondent has passed the order in a haphazard manner without properly complying with the mandatory provisions of Adhiniyam,1973, which is apparent on the face of record, and the principles of natural justice have also been clearly and flagrantly violated, in such circumstances, the remedy of appeal cannot be said to be an efficacious remedy and no purpose would be served to relegate the petitioner to file an appeal.

19] In such circumstances, the impugned order dated 12/9/2023 (12/9/2024) of cancellation of registration of the petitioner's clinic is hereby quashed, and the respondents are also directed to unseal the petitioner's premises immediately. However, with liberty reserved to the respondents to proceed against the petitioner in accordance with section 6 of the Adhiniyam, 1973 and after serving a proper notice and after giving due opportunity of hearing to the petitioner.

20] Accordingly, the petition stands **allowed and disposed of.**

**(SUBODH ABHYANKAR)**  
**JUDGE**