

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

Dated this the 30TH day of November, 2015

-: PRESENT :-

THE HON' BLE MR. SUBHRO KAMAL MUKHERJEE,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE B.V.NAGARATHNA

WRIT PETITION No.24107/2015 (LB-RES-PIL)

BETWEEN:

1. INDIAN MEDICAL ASSOCIATION,
HUBLI BRANCH, BAILAPPANAVAR
NAGAR, HUBBALLI-580 025,
BY ITS PRESIDENT DR. R.B. GHANTI,
KUMBAKONAM PLOTS,
NEAR GUJARAT BHAVAN,
HUBBALLI-580 022.
2. DR. MRUTYUNJAYA C SINDHUR,
AGE 48 YEARS, OCCUPATION
MEDICAL PRACTITIONER,
RESIDING AT VIDYA NAGAR,
HUBBALLI-580 031.
3. THE KARNATAKA PRIVATE MEDICAL
ESTABLISHMENT ASSOCIATION,
BY ITS PRESIDENT K.H. JITURI,
AGE 79 YEARS, OCCUPATION
MEDICAL PRACTITIONER,
RESIDING AT OPP S K ARTS
COLLEGE, VIDYA NAGAR,
HUBBALLI-580 031. ... PETITIONERS

(BY SRI: A. MAHAMMED TAHIR, ADVOCATE)

AND:

1. STATE OF KARNATAKA URBAN DEVELOPMENT DEPARTMENT,
BY ITS SECRETARY,
VIDHANA SOUDHA,
BANGALORE-560 001.

2. HUBLI-DHARWAD MUNICIPAL CORPORATION HUBBALLI,
BY ITS COMMISSIONER,
SIR SIDDAPPA KAMBLI ROAD,
HUBBALLI-580 020. ... RESPONDENTS

(BY SRI : I.G. GACHCHINAMATH, ADVOCATE FOR R2;
SRI. R. DEVADAS, PRINCIPAL GOVERNMENT ADVOCATE FOR R1)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ENHANCED FEES AS PER NOTIFICATION DTD.6.1.2015 PASSED BY R-2 [ANNEX-B] AND ETC.,

THIS PETITION COMING ON FOR PRELIMINARY HEARING,
THIS DAY, **ACTING CHIEF JUSTICE**, MADE THE FOLLOWING:

O R D E R

This is a public interest litigation assailing the decision of the Municipality enhancing the licence fees for running the medical establishments.

2. Learned advocate for the writ petitioners submits that in the absence of fulfilling the requirements of Section 353 of the Karnataka Municipal Corporations Act, 1976 [hereinafter, referred to as 'the Act'], the enhancement of licence fees by the municipal authorities was illegal. It is submitted that the notification was neither published in the official gazette nor in the newspapers.

3. Section 353 of Karnataka Municipal Corporations Act, 1976 provides that no place within limits of the city or within five kilometres thereof to be used for any of the purposes specified in Schedule X without licence obtained from the Commissioner and except in accordance with the conditions specified therein. Provided, however, no such

licence shall take effect unless the sanction of the Government has been obtained and until expiry of 30 days from the date of its publication in the official gazette.

In Schedule X the of the Act descriptions of the premises, which may not be used without a licence under Section 353 of the said Act has been specified.

4. It is not in dispute that when the area was identified and a notification was published in the official gazette and, also, in some local newspapers; sanction of the Government was, also, obtained. We do not find any substance in the argument of the learned counsel for the petitioners that for every enhancement of fees a notification has to be published in the official gazette and, also, in two newspapers. In any event for non-publication of any such notification in the official gazette and in the local newspapers, it shall not make the enhancement infructuous.

5. It is submitted by the learned counsel for the writ petitioners that even the copies of the said resolution were not forwarded to the Government and, therefore, the Government could not exercise its power to cancel the resolution. It is true that the Act reserves power of the Government to cancel such notification under certain situations.

6. Mr.I.G.Gachchinamath, learned advocate appearing for the respondent No.2, submits, on instructions, that a copy of the resolution will be supplied to the Government, if not already supplied.

7. Mr.R.Devdas, learned Principal Government Advocate appearing for the State submits that when the resolution is forwarded, the Government shall consider it in accordance with law.

8. In any event in the writ court we cannot impose our wisdom on the municipal authorities as to what rate

should be prescribed in issuing the licence by the municipalities.

9. Therefore the writ petition stands disposed of without any order as to costs.

Sd/-
ACTING CHIEF JUSTICE

Sd/-
JUDGE

**mvs/sn*