



WA No. 100292 of 2021
C/W WA No. 100293 of 2021

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 23RD DAY OF MAY, 2022

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S.DIXIT

AND

THE HON'BLE MR JUSTICE P.KRISHNA BHAT

WRIT APPEAL NO. 100292 OF 2021 (GM-RES)

C/W

WRIT APPEAL NO. 100293 OF 2021 (GM-RES)

WA NO. 100292/2021

BETWEEN:

SRI. DR YASIN KHAN
S/O. AHAMED KHAN PATHAN,
AGED ABOUT 45 YEARS, JANATHA CLINIC, RESIDING
AT NO.4 BHUSAPPA CHOWK, RAVANAKPUR ONI,
BEHIND MASJID, HOYSALAPURA ROAD,
DHARWAD-580001

...APPELLANT

(BY SRI. PRAKASHA M, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS SECRETARY, HEALTH
DEPARTMENT, VIKASA SOUDHA,
BENGALURU- 560 001.





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2. THE DEPUTY COMMISSIONER
AND CHAIRMAN OF REGISTRATION COMMITTEE, FOR
K.P.M.E. DHARWAD - DISTRICT DHARWAD-580001.
3. THE COMMISSIONER
COMMISSIONERATE HEALTH AND FAMILY WELFARE
SERVICES, 5TH FLOOR, AROGYA SOUDHA, 1ST
CROSS, MAGADI ROAD, BENGALURU- 560023
4. THE DISTRICT HEALTH AND FAMILY WELFARE
OFFICER
AND MEMBER SECRETARY OF REGISTRATION
COMMITTEE OF K.P.M.E. DHARWAD- DISTRICT
DHARWAD - 580001.
5. THE DISTRICT AYUSH OFFICE AND MEMBER
SECRETARY, K.P.M.E. COMMITTEE, DHARWAD -
DISTRICT DHARWAD-580001.
6. THE INDIAN MEDICAL ASSOCIATION SECRETARY
AND MEMBER, K.P.M.E. COMMITTEE DHARWAD
DISTRICT, DHARWAD-580001.

...RESPONDENTS

(BY SRI.G.K. HIREGOUDAR, GOVT. ADVOCATE)

THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING THIS HON BLE COURT TO SET ASIDE THE ORDER DATED 25.10.2021 PASSED BY THE LEARNED SINGLE JUDGE IN WP.NO.104000/2021 C/W. WP NO.103240/2021 (GM-RES) AND ALLOW THIS APPEAL, IN THE INTEREST OF JUSTICE.

IN WA NO. 100293/2021

BETWEEN:

SRI. DR. MALLIKARJUNA KUNDGOL
S/O. SRI. FAKKIRAPPA KUNDGOL,



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AGED ABOUT 52 YEARS,
DHARWAD-580001

...APPELLANT

(BY SRI. PRAKASHA M, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS SECRETARY, HEALTH
DEPARTMENT, VIKASA SOUDHA,
BENGALURU- 560 001.
2. THE COMMISSIONER
COMMISSIONERATE HEALTH AND FAMILY WELFARE
SERVICES, 5TH FLOOR, AROGYA SOUDHA,
1ST CROSS, MAGADI ROAD, BENGALURU-560023.
3. THE DEPUTY COMMISSIONER
AND CHAIRMAN OF REGISTRATION COMMITTEE FOR
KPME, DHARWAD DISTRICT-580001.
4. THE DISTRICT HEALTH AND FAMILY WELFARE
OFFICER
AND MEMBER SECRETARY OF REGISTRATION
COMMITTEE OF K.P.M.E. DHARWAD- DISTRICT
DHARWAD - 580001.
5. THE DISTRICT AYUSH OFFICE AND MEMBER
SECRETARY, K.P.M.E. COMMITTEE, DHARWAD -
DISTRICT DHARWAD-580001.
6. THE INDIAN MEDICAL ASSOCIATION SECRETARY
AND MEMBER, K.P.M.E. COMMITTEE DHARWAD
DISTRICT, DHARWAD-580001.

...RESPONDENTS

(BY SRI.G.K. HIREGOUDAR, GOVT. ADVOCATE)



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THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING THIS HON BLE COURT TO SET ASIDE THE ORDER DATED 25.10.2021 PASSED BY THE LEARNED SINGLE JUDGE IN WP.NO.104003/2021 C/W. WP NO.103678/2021 (GM-RES) AND ALLOW THIS APPEAL, IN THE INTEREST OF JUSTICE.

THESE APPEALS COMING ON FOR *PRELIMINARY HEARING*, THIS DAY, **KRISHNA S DIXIT J.**, DELIVERED THE FOLLOWING:

JUDGMENT

Both these appeals arise from the orders of the learned Single Judge, whereby substantive relief was denied to the appellants on the sole ground of suppressi veri, in limine. In fact, the impugned orders do not reflect that there was any consideration of the contentions of the writ petitioners on merits.

2. After service of notice, learned Government Advocate appearing for the respondents, vehemently opposes appeals making submission in justification of the impugned orders. He contends that writ jurisdiction is more equitable in nature, and therefore, persons knocking at the doors of the writ Court have to come with "clean



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hands, clean heads and clean hearts.” Thus, having not happened, indulgence of the appellate Court is not warranted, contends the counsel placing reliance on the decision of the Apex Court in ***Udayami Rvam Khadi Gramodyog Welfare Samsthe Vs. State of Uttar Pradesh, 2008 (1) SCC 560*** wherein paragraph-16 has been profitably reproduced below:

“a writ remedy is an equitable one. A person approaching a superior court must come with a pair of clean hands. It not only should not suppress any material fact, but also should not take recourse to legal proceedings over and over again which amounts to abuse of process of law.”

3. Having heard the learned counsel for the parties and having perused the appeal papers, we are inclined to limit the indulgence in the matter, as under and for the following reasons:

a) Relief that was sought for in the said writ petitions, was on the basis of Section 5 of the Karnataka Private Medical Establishment Act, 2007 (hereinafter, ‘Act’); ordinarily, requests



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for consideration of the claim under this provision are favourably considered by the writ Court since prayer is for "an order to pass orders" on the subject applications and nothing more than that.

b) Learned Single Judge at para-6 of the impugned orders has observed, as under:-

"In W.P.No.103240/2021, an emergent notice had been issued by the aforesaid order dated 7.9.2021. It is suppressing the said petition as also the emergent notice that W.P.No.10400/2021 has been filed. This is a sharp practice resorted to by the petitioner by suppressing the earlier petition and the orders passed therein, more so, when one of the orders under challenge in W.P.No.103240/2021 is also under challenge in W.P.No.10400/2021."

The above observations are arguably may be true. However, they cannot constitute a sufficient ground for denying the innocuous relief sought for in the petitions.

c) It has been settled position of law that '*Doctrine of proportionality*' now is a part of our legal



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system vide ***Coimbatore District Central Co-operative Bank Vs. Comibatore District Central Co-operative Bank Employees Association & Another, (2007) 4 SCC 669;***

Constitutional Courts cannot be harsh disproportionately to the arguable guilt of the litigants, thus, there is an error apparent on the face of the record warranting indulgence of the appellate Court for setting the injustice at naught.

In the above circumstances, these appeals succeed in part; the impugned orders of the learned Single Judge are set at naught; both the writ petitions are remanded for consideration afresh on merits, all contentions having been kept open.

However, the levy of costs by the learned Single Judge being justified and the said costs having already been remitted, no interference in that regard is called for;



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however, that shall not reflect on the merits of matter in remand.

All pending applications pale into insignificance in view of disposal of the main matter itself.

Costs made easy.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

JTR