

STATE OF ORISSA AND ANR.

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v.

RADHEYSHYAM MEHER AND ORS.

DECEMBER 14, 1994

[S.C AGRAWAL AND FAIZAN UDDIN, JJ.]

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Constitution of India, 1950: Article 19(1)(g).

State—Decision to open 24 hours medical store within Hospital premises—Challenge by persons having medical store in front of Hospital—Direction by High Court not to settle opening of medical store within Hospital premises subject to undertaking by Medical Store owners that they will open shop for twenty four hours—Direction held not justified—Held State's decision is in public interest—Exercise of power by State to advance larger public good cannot be abridged on the ground that it affects individual interest of certain traders.

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With a view to helping the patients in getting medicines day and night without any difficulty, the appellant-State decided to open 24 hours medical store within the campus of the hospitals. Pursuant to the said policy decision the Superintendent - CMDO, Bolangir invited applications from the intending shop owners for opening 24 hours medical store inside Sub-Divisional Hospital, Patnagarh. The respondents, having their medical stores in front of the hospital, filed a writ petition in the Orissa High Court challenging the advertisement on the ground that it would affect their business interest. The High Court directed the State not to settle the opening of the proposed medical store subject to the respondents giving an undertaking that each one of them shall keep the shop open day and night and shall make the medicines available to patients. The State preferred an appeal in this Court contending that the High Court erred in interfering with the State's decision which was taken in public interest.

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Allowing the appeal and setting aside the order of the High Court, this Court

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HELD: 1. The intention of the appellants to open a medical store within the hospital campus is to salvage the difficulties of the patients admitted in the hospital and this object of the appellants has direct nexus with the Public Interest particularly that of the patients and,

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A therefore, the High Court should not have interfered with the decision of the State Government to settle the holding of a medical store in the Hospital premises. [595 A]

B 2. It can hardly be disputed that the consideration of availability of the medicines to the patients should be the uppermost consideration as compared to the right of a person to derive income and make profits for his sustenance by running a medical store for the reason that the medical stores are primarily meant for the patients and not the patients for the medical stores or those who run the same. Therefore, the submission of the respondents that if a medical store is opened within the campus of the hospital, the same will jeopardise their interest adversely affecting their business and that they will not be able to sustain themselves, could not be a valid ground to disallow the appellants to open a shop within the hospital campus. [594 E to F]

C CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9277 of 1994.

D From the Judgment and Order dated 27.9.93 of the Orissa High Court in O.J.C. No. 5435 of 1993.

A.K. Panda for the Appellants.

E B. Parthasarthy for the Respondents.

The Judgment of the Court was delivered by

FAIZAN, UDDIN, J. 1. Leave granted.

F 2. The short question that arises for our consideration in this appeal is whether the impugned order of the High Court of Orissa dated 27.9.93 passed in O.J.C. No. 5435/93 directing the appellants not to take any decision on the advertisement dated 27.7.93 issued by the Superintendent C.D.M.O., Bolangir to settle the shop with any one to hold a medical store inside the hospital premises, Patnagarh could be sustained in the absence of any material to show that the said decision of the Government is arbitrary or opposed to any rule or regulations in that behalf.

G 3. The brief facts leading to this appeal under Article 136 of the Constitution are, that the State Government of Orissa with a view to streamline the existing procedure for opening of 24 hours medical stores in the college, Hospitals, etc. and in supersession of previous instructions took

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a decision that 24 hours medical stores shall be opened in the campus of the hospitals which shall remain open for all the 24 hours with a view to make the medicines available to the patients at competitive price. Consequently, a memo dated 13.5.93 was issued to all the D.M.E.T./D.H.S./D.C and all Superintendents of Medical Colleges of the State of Orissa as well as to all C.D.M.O's and C.M.O's in the capital hospital, Bhubaneshwar to assess the need for having 24 hours medical stores in the campus of the respective hospitals and if the need is found to be imperative they shall make an order to that effect and issue advertisement inviting applications from eligible persons. According to the instruction, the said applications have to be sent to the authorities mentioned in the aforesaid memo who in turn have to forward the same to the Government alongwith their views/comments for a final decision at the Government level. It was in pursuance of this memo that the Superintendent/C.D.M.O., Bolangir issued an advertisement inviting applications from the intending shop owners to open a medical store inside the premises of the Sub-Divisional Hospital, Patnagarh which shall be kept open day and night for the purposes of helping the patients in getting medicines without any difficulty. The respondents No. 1 to 7 who are having their medical stores across the road in front of the main gate No. 2 of the hospital filed the writ Petition in the High Court of Orissa challenging the said advertisement issued by the Superintendent/C.D.M.O. on the ground that if a medical store is opened inside the premises of the Sub-Divisional Hospital, which is a small hospital having a provision for only 30 beds, there will hardly be any business to sustain them. The respondents also came forward with an offer that the petitioners No. 1, 4 to 7 (who are respondents No. 1, 4 to 7 herein) whose medical stores are near the gate of the hospital shall keep their medical stores open day and night and that they are willing to give an undertaking to that effect to the Superintendent/CDMO, Bolangir. The said petition was contested by stating that the said advertisement was issued in view of the Government Policy to open the medical shop within the campus of the hospital in Public interest and specially to make the medicines available to the patients even at odd hours.

4. It appears that during the course of arguments in the petition before the High Court the Superintendent/CDMO, Bolangir was personally present in the Court who in response to certain questions put by the learned Judges stated that the whole purpose of the advertisement is to make available medicines to the patients day and night. However, the High Court allowed the petition of the respondents and directed that no decision shall be taken on the advertisement to settle the shop with anyone to hold a medical store inside the premises of the Sub-Divisional Hospital, Patnagarh if the

- A petitioners (Respondents No. 1, 4 to 7 herein) give an undertaking to the C.D.M.O., Bolangir within 10 days stating that each one of them shall keep his shop open day and night and shall make the medicines available to the patients. The High Court further directed that in the event of any violation of this condition and if the C.D.M.O. comes to know that the ailing patients of the Sub-Divisional Hospital, Patnagarh are not getting medicines because of the closure of the shops it would be open to him to re-advertise the settlement of medical store. The appellants being aggrieved by the said order have preferred this appeal.

- C 5. Learned counsel appearing for the appellants vehemently urged before us that the said advertisement inviting applications for settling the shop to have a medical store inside the hospital premises was issued in pursuance of the Government policy and with the sole object to make the medicines available to the patients even at odd hours and, therefore, the High Court should not have interfered with the administrative decision of the Government taken in the public interest. We find considerable force and much substance in these submissions.

- D 6. In the aforesaid background the question arises whether, in the absence of any rule or regulation to the contrary, can the power of the State be abridged on the basis of an individual interest of certain trader, even to the extent of restricting the State's capacity to advance larger public good. It can hardly be disputed that the consideration of availability of the medicines to the patients should be the uppermost consideration as compared to the right of a person to derive income and make profits for his sustenance by running a medical store for the reason that the medical stores are primarily meant for the patients and not the patients for the medical stores or those who run the same. The submission of the respondents that if a medical store is opened within the campus of the hospital, the same will jeopardise their interest adversely affecting their business and that they will not be able to sustain themselves could not be a valid ground to disallow the appellants to open a shop within the hospital campus. Undoubtedly, the opening of a medical store within the hospital campus will provide a great facility to the patients who may not be having any attendant of their own in the hospital for their assistance at odd hours in the event of an emergency to go out to purchase the medicines. There may be patients having an attendant who may not find it convenient or safe to go out of the campus to purchase the medicines in the night hours. In these facts and circumstances the paramount consideration should be the convenience of the patients and protection of their interest and not the hardship that may be caused to the medical store keepers who may be having their shops outside the hospital

campus. Thus the intention of the appellants to open a medical store within the hospital campus is to salvage the difficulties of the patients admitted in the hospital and this object of the appellants has direct nexus with the Public Interest particularly that of the patients and, therefore, the High Court should not have interfered with the decision of the State Government to settle the holding of a medical store in the Hospital premises. However, if the respondents so choose, they may keep their medical stores also open day and night. Consequently the impugned order could not be sustained. A B

7. In the result the appeal succeeds and is hereby allowed. The impugned order of the High Court dated 27.9.93 is set aside and the writ petition filed by the respondents is dismissed. We, however, make no order as to costs. C

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Appeal allowed.