

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION NO. 793 OF 2011

BOMBAY NURSING HOME ASSOCIATION & ORS

... PETITIONER

VERSUS

MUNICIPAL CORPORATION OF BRIHANMUMBAI & ORS

... RESPONDENT

To,

The Prothonotary and Senior Master  
Bombay High Court (Original Side)  
Bombay

Madam,

The Petitioners have filed the petition challenging circulars dated 30 November 2009 and 8 October 2010 and also challenging various demand notices issued to the Petitioners by the Respondent No.1. This Hon'ble Court disposed off the captioned Writ Petition by an order dated 14 June 2011 wherein this Hon'ble Court, inter alia, held that

- 1) *Petitioner to make representation to the Municipal Corporation within a period of two weeks from today in relation to the subject matter of the Demand Notices/ Circulars which are referred to in prayer clause (a) of the petition and the Circular dated 07.05.2011 issued by the Corporation, copy of which is taken on record and marked "X" for identification*
- 2) *The Municipal Commissioner or the officer nominated by him shall hear the petitioner and make a speaking order in relation to the Demand Notices/ Circulars which are referred to in prayer clause (a) of the petition and the Circular dated 07.05.2011 issued by the Corporation.*
- 3) *Applications for renewal of the registration of the petitioners maternity and nursing homes shall be considered by the Corporation in accordance with law and if the petitioners are otherwise entitled for renewal, the registration shall be renewed independently of the Demand Notices/Circulars which are referred to in prayer clause (a) of the petition and the Circular dated 07.05.2011 issued by the Corporation. However, said renewal shall be subject to the order that the Commissioner or his nominee may make pursuant to this order.*

- 4) *The Demand Notices/Circulars which are referred to in prayer clause (a) of the petition and the Circular dated 07.05.2011 issued by the Corporation shall remain in abeyance till the Commissioner or his nominee makes an order and for a period of four weeks thereafter if the order is adverse to the petitioners."*

From the perusal of para 3 of the order dated 14 June 2011, it is clear that the Hon'ble Court directed the Corporation to consider application for renewal of registration of the Petitioners independently of the circulars and demand notices challenged by the Petitioners in the Writ Petition. The Order further contemplated that such renewal shall be subject to the order passed by the Municipal Commissioner on the representation to be made on behalf of the Petitioners. Therefore, it was obvious that the corporation was directed to consider application for renewal of the registration without waiting for the order of the Commissioner. In other words, consideration for application for renewal was to precede the Commissioners order.

However, for reasons known to the Corporation, they did not renew the certificate of registration of the Petitioners despite the Petitioners applying for the same. When enquired about the status of the application, the concerned AHO's/MHO's informed the Petitioners that they have no instruction from the Corporation or the Commissioner regarding the order passed by the Hon'ble High Court.

The Petitioners were therefore constrained to issue a letter/notice dated 24 June 2011 calling upon the Commissioner/BMC to issue appropriate directions to the concerned AHO's/MHO's for renewal of registration in terms of the order dated 14 June 2011. Since the Commissioner/BMC did not reply to the said letter/notice and since the letter dated 24 June 2011 did not yield any result, the Petitioners were constrained to issue another notice/letter dated 6 July 2011 calling upon the BMC/Commissioner to comply with the order passed by the Hon'ble Court. However, till date BMC/Corporation has not taken any action for renewal of registration of the nursing homes/clinics of the Petitioners and their applications are still pending.

In the meantime, the Petitioners had already submitted its representation on 24 June 2011 before the Municipal Commissioner in compliance of the order dated 14 June 2011. The Hon'ble Municipal Commissioner had heard the oral arguments of the Petitioners on 25 July 2011. During the course of the arguments, it was further pointed out to the Municipal Commissioner that the application for renewal of registration of the nursing homes/clinics of the Petitioners has to be considered by the Corporation/Commissioner prior to any order being passed and independent of the matter without any further delay. It was further brought to the notice of the Commissioner that the BMC/Commissioner need not wait for passing any order on

representation of the Petitioners' before considering the application for renewal of registration and such a direction is apparent from the order passed by this Hon'ble Court on 14 June 2011.

It appears that the Corporation is not properly interpreting the order dated 14 June 2011 of this Hon'ble Court and for the reason till date, it has not considered a single application for renewal of registration of nursing homes/clinics of the Petitioners inspite of requests and constant reminders.

The Petitioner therefore seeks for speaking to minutes of the order dated 14 June 2011, as follows;

In first sentence of para 2. 3) after the words "*Applications for renewal of the registration of the petitioners maternity and nursing homes shall be considered by the Corporation in accordance with law*", the following words be added; "Prior to the order that the Commissioner or his nominee may make pursuant to this order and".

**BE PLEASED** to place the above matter on board before His Lordship the Hon'ble Mr. Justice D.K. Deshmukh and His Lordship the Hon'ble Mr. Justice R.G. Ketkar on 3rd August 2011 to enable the Counsel for the Petitioner to seek appropriate speaking to minutes to order/direction/clarification dated 14 June 2011

A copy of the order dated 14 June 2011 is enclosed.

We are giving notice of this to the Respondents.

Dated this 2 day of August 2011

Yours truly,  
For Hariani & Co.

*CS. Manoj*  
Partner  
Advocate for the Petitioners

1920

Cc: Bombay Nursing Home Association,  
Kind Attn: Mr. Manoj Gandhi

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- 1) *Petitioner to make representation to the Municipal Corporation within a period of two weeks from today in relation to the subject matter of the Demand Notices/ Circulars which are referred to in prayer clause (a) of the petition and the Circular dated 07.05.2011 issued by the Corporation, copy of which is taken on record and marked "X" for identification*
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- 4) *The Demand Notices/Circulars which are referred to in prayer clause (a) of the petition and the Circular dated 07.05.2011 issued by the Corporation shall remain in abeyance till the Commissioner or his nominee makes an order and for a period of four weeks thereafter if the order is adverse to the petitioners."*

Therefore from the perusal of the order dated 14 June 2011, it is clear that the Hon'ble Court directed the Corporation to consider application for renewal of registration of the Petitioners independently of the circulars and demand notices challenged by the Petitioners in the Writ Petition. The Order further contemplated that such renewal shall be subject to the order passed by the Municipal Commissioner on the representation to be made on behalf of the Petitioners. Therefore, it was obvious that the corporation was directed to consider application for renewal of the registration without waiting for the order of the commissioner. In other words, consideration for application for renewal was to precede the commissioner's order.

However, for reasons known to the Corporation, they did not renew the certificate of registration of the Petitioners despite the Petitioners applying for the same. When enquired about the status of the application, the concerned AHO's/MHO's informed the Petitioners that they have no instruction from the Corporation or the Commissioner regarding the order passed by the Hon'ble High Court.

Therefore the Petitioners were constrained to issue a letter/notice dated 24 June 2011 calling upon the Commissioner/BMC to issue appropriate directions to the concerned AHO's/MHO's for renewal of registration in terms of the order dated 14 June 2011. Since the Commissioner/BMC did not reply to the said letter/notice and since the letter dated 24 June 2011 did not yield any result, the Petitioners were constrained to issue another notice/letter dated 6 July 2011 calling upon the BMC/Commissioner to comply with the order passed by the Hon'ble Court, failing which the Petitioners warned the BMC/Commissioner that they shall be compelled to initiate appropriate actions for contempt of court. However, till date BMC/Corporation has not taken any action for renewal of registration of the nursing homes/clinics of the Petitioners and their applications are still pending.

In the meantime, the Petitioners had already submitted its representation on 24 June 2011 before the Municipal Commissioner in compliance of the order dated 14 June 2011. The Hon'ble Municipal Commissioner had heard the oral arguments of the Petitioners on 25 July 2011. During the course of the arguments, it was further pointed out to the Municipal Commissioner that the application for renewal of registration of the nursing homes/clinics of the Petitioners has to be considered by the Corporation/Commissioner prior to any order being passed and independent of the matter without any further delay. It was further brought to the

notice of the court that the BMC/Commissioner need not wait for passing any order on the representation of the Petitioners' before considering the application for renewal of registration and such a direction is apparent from the order passed by this Hon'ble Court on 14 June 2011.

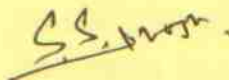
It appears that the Corporation is not properly interpreting the order dated 14 June 2011 of this Hon'ble Court and for the reason till date, it has not considered a single application for renewal of registration of nursing homes/clinics of the Petitioners inspite of requests and constant reminders.

**BE PLEASED** to produce the papers and proceedings in the captioned matter before His Lordship the Hon'ble Mr. Justice D.K. Deshmukh and His Lordship the Hon'ble Mr. Justice R.G. Ketkar on \_\_\_\_ August 2011 to enable the Counsel for the Petitioner to seek appropriate specaking to minutes to order/Directions to order dated 14 June 2011

We are giving notice of this to the Respondents.

Dated this 2 day of August 2011

Yours truly,  
For Hariani & Co.

  
Partner  
Advocate for the Petitioners

Cc: Bombay Nursing Home Association,  
Kind Attn: Mr. Manoj Gandhi

1918