

Faridabad Ct. Scan Centre

Vs

D.G.Health Services & Ors.

(CJI J.S. Verma, Sujata V.Manohar, B.N.Kirpal JJ)

15.09.1997

ORDER

1. This petition for special leave was originally dismissed by an order dated 16.12.96 passed by a Bench of two Judges - Verma, J. (as he then was) and Kirpal, J. In view, however, of a judgment of another Bench of two Judges (K.Ramaswamy and G.B. Pattanaik, JJ.), in a similar matter Mediwell Hospital & Health Care Pvt. Ltd. Vs. Union of India & Ors. (1997 (1) SCC 759) the order of 16.12.96 was recalled by the order of 8.8.97. The reasons for recall as set out in the order of 8.8.97 are:-

"After we had dismissed S.L.P. (C) No. 23.9.64 of 1996 on 16.12.1996, another 2-Judge Bench appears to have granted relief in a similar matter which may give impression that the view taken therein is different. It is, therefore, appropriate that the possible ambiguity or uncertainty on the question of law should be removed by judgment of a 3- Judge Bench. We, therefore, recall our order dated 16.12.1996 dismissing the special leave petition and direct that the special leave petition be listed for hearing before a 3-Judge Bench. The papers be placed before the Hon'ble C.J.I. for constituting the Bench." Accordingly, we have heard the parties. In the case of Mediwell Hospital & Health Care Pvt. Ltd. Vs. Union of India & Ors. (supra), this Court on the merits of the case has not taken a view different from the view taken by the Bench in this case while passing the order of dismissal. In para 10 of that judgment it is recorded as follows:-

"Thus a diagnostic centre run by a private individual purely on commercial basis may not be entitled to the exemption under the notification issued by the Central Government. The conclusion of the Central Government as well as that of the High Court on this score, therefore, may not be held to be incorrect".

2. The Court, however, granted relief to the appellant in that case on the ground that several other individual diagnostic centres not attached to any hospital had been granted the exemption under the notification in question and hence there should not be any discrimination against the appellant under Article 14. The relief was granted entirely on the basis of Article 14.

3. We fail to see how Article 14 can be attracted in cases where wrong orders are issued in favour of others. Wrong orders cannot be perpetuated with the help of Article 14 on the basis that such wrong orders were earlier passed in favour of some other person and, therefore, there will be discrimination against others if correct orders are passed against them. In fact, in the case of Union of India [Railway Board] & Ors. Vs. J.V. Subhaiah and Ors. (1996 (2) SCC 258), the same Learned

Judge in his judgment has observed in para 21 that the principle of equality enshrined under Article 14 does not apply when the order relied upon is unsustainable in law and is illegal. Such an order cannot form the basis for holding that other employees are discriminated against under Article 14. The benefit of the exemption notification, in the present case, cannot, therefore, be extended to the petitioner on the ground that such benefit has been wrongly extended to others. With respect, the decision in *Mediwell Hospital (supra)* does not lay down the correct law on this point.

4. In the premises, the special leave petition is dismissed.