

Madras High Court

All India Association Of vs State Of Tamil Nadu on 12 November, 2002

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12/11/2002

Coram

The Hon'ble Mr.B.SUBHASHAN REDDY, CHIEF JUSTICE

And

The Hon'ble Mr.JUSTICE K.GOVINDARAJAN

W.A.NO.1951 OF 2002

All India Association of
Private Medical Practitioners,
Regd.No.206/92, rep.by its
President, Dr.A.M.Vadivelu
3/134 Balaji Nagar,
G.N.T.Road, Puzhal Post,
Chennai.600 066.

..... Appellant

-VS-

1.State of Tamil Nadu
Rep. by the Secretary to
Government, Health Department
Fort St.George, Chennai.9

2.State of Tamil Nadu,
Rep.by the Secretary to
Government, Home Department
Fort St.George, Chennai.9

3.The Director General of Police,
Chennai.4.

..... Respondents.

Writ Appeal under Clause 15 of the Letters Patent, against the order dated 31.10.2001, passed in W.P.No.19418/2001 on the file of this court.

!For Appellant : Mr.M.Muthappan

^For Respondents : Mr.V.Raghupathi ,
Govtment Pleader

: JUDGEMENT

K.GOVINDARAJAN,J., The above Writ Appeal is directed against the order of the learned Judge passed in W.P.No.19418/2001, dated 31.10.2001, under which the learned Judge has dismissed the writ petition filed by the appellant, seeking to issue a Writ of Mandamus the State of Tamil Nadu to issue necessary certificate on complying with the conditions imposed by the learned Judge in the order dated 8.6.1998 in W.P.No.7402 /1998 etc., on the basis of the data furnished already by the members of the petitioner-association and acknowledged by the respective Collectors of the Districts.

2. The appellant claiming that it is an association registered under the Societies Registration Act, filed the above writ petition on the basis that its members are practising in modern medicine in the respective clinics for more than 15 years. Though they have not secured any Decree or Diploma prescribed by various Universities for qualifying them as Registered Medical Practitioners in various disciplines, relying on the circular issued by the Government of India dated 8.7.1986, directing the State Governments and the Union Territories to enlist the unqualified medical practitioners and to introduce suitable legislation for recognising those practising in modern medicine without acquiring prescribed Degree or Diploma, the petitioner-Association approached the High Court by filing writ petition in W.P.No.16878/1993 for issue of a Writ of Mandamus against the respondents therein forbearing them from interfering with their practice in modern medicine. Due to non filing of the counter by the respondents the said writ petition was allowed. Subsequently, the petitioner-association approached the High Court by filing another writ petition in W.P.No.7402/1998 etc., seeking to issue a Writ of Mandamus to the State of Tamil Nadu to regularise the practice of unqualified medical practitioners in modern medicine as per the circular issued by the Central Government dated 8.7.1986. The learned Judge in the order dated 8.3.1992 disposed of the writ petitions permitting them to practise in modern medicine in the field in which they have been rendering services to the public, on their compliance of the conditions mentioned in paragraph 8 of the said order.

3. Stating that though they have complied with such conditions, the Government is not issuing any certificates so as to enable them to continue their practice in modern medicine without any disturbance from the officials, the petitioner-association filed the present writ petition in W.P.No.19418/2001.

4. The learned Judge relying on the provisions of various Acts relating to the subject and also the earlier judgements of this court and the Apex Court, observed that in the earlier proceedings, this court has held that the said circulars are unenforceable in the face of the statutory provisions and so the writ petition filed by the appellant herein cannot be sustained, as there are no merits in the writ petition. Hence this Writ Appeal.

5. We heard both the learned counsel for the appellant and Mr.V. Raghupathi, learned Government Pleader appearing for the respondents.

6. Before dealing with the facts, we are inclined to deal with the relevant provisions of law on the subject. The Indian Medical Council Act, 1956 (hereinafter referred to as 'the Act') was enacted to provide for the reconstitution of the Medical Council of India, and the maintenance of a Medical Register for India and for matters connected therewith. In view of definition under Section 2(f), modern scientific medicine in all its branches shall mean as "medicine". Under Section 2(h) "recognised medical qualification" has been defined as any of the medical qualification included in the Schedules. "State Medical Register" has been defined under section 2(k) as a register maintained under any law for the time being in force in any State regulating the registration of practitioners of medicine. Section-11 of the Act deals with the recognition of Medical Qualifications granted by Universities or Medical Institutions in India for the purposes of the Act. As contemplated under Section-15 of the Act, only the persons who are having sufficient qualification which has been included in the Schedules to the Act can enrol themselves on any State Medical Register. Under Section-21, Medical Council shall cause to be maintained in the prescribed manner a register of medical practitioners to be known as the Indian Medical Register, which shall contain the names of all the persons who are for the time being enrolled on any State Medical Register and who possess any of the recognised medical qualifications.

7. From the above said provisions it is clear that the persons who are possessing recognised medical qualification alone can register their names as contemplated under the Act and they alone can practise " medicines".

8. To provide for the registration of Medical Practitioners in the State of Tamilnadu, the State Legislature had enacted an Act " Tamilnadu Medical Registration Act, 1914". Under Section-5 of the said Act of 1914, a Medical Council shall be established for the State of Tamilnadu and the said council as contemplated under Section-10 shall contain a Registrar, who shall act as the Secretary of the Council and the said Registrar has an obligation as contemplated under Section-11 of the said Act 1914 should keep a register of medical practitioners and only the persons who have possessed of any of the qualification described in the Schedules shall be entitled to be listed their names so as to enable them to practise Allopathy or any other system of medicine. In the proviso to Section-13 the Legislature has given power to the State Government permitting the registration of any person who shall furnish to the Registrar proof that he is possessed of a medical degree, diploma or certificate of any University, medical college or school approved by the Council, other than those described in the Schedule after consulting the Medical Council.

9. Even under this Act, unless the persons have prescribed qualification, cannot register their names and legally practise medicine.

10. Under the Indian Medical Degrees Act, 1916 enacted to regulate the grant of titles implying qualifications in western medical science, and the assumption and use by unqualified persons of such titles. According to Section-3 of the Act no person in the States shall confer, grant, or issue, or hold himself out as entitled to confer, grant, or issue any degree, diploma, licence, certificate or other document stating or implying that the holder, grantee or recipient is qualified to practise western medical science. According to Section-5, any contravention of the same shall be punishable with a fine. According to Section-6A, no person shall have any title to his name, description, letters

or abbreviations which imply that he holds a degree, diploma, licence or certificate as his qualification to practise any system of medicine unless such a degree, diploma, licence or certificate was issued by an authority and has been recognised by the General Council of Medical Education.

11. As stated above, sufficient enactments have been made to prevent the persons from practising "medicine" without having necessary qualifications and also for registration as contemplated under the above said Act.

12. In the present case, it is not in dispute that the members of the Association are not having any such qualification. They are trying to get a certificate only on the basis of their experience in practising "medicine" without any such qualification. The right to practise any profession or to carry on any occupation, trade or business is no doubt a fundamental right guaranteed under Article 19(1)(g) of The Constitution of India. But, that right is subject to any law relating to the professional or technical qualifications necessary for practising any profession or carrying on any occupation or trade or business indicated in Clause-6 of Article 19 of the Constitution. The regulatory measures on the exercise of this right both with regard to standard of professional qualification and professional conduct have been applied keeping in view not only the right of medical practitioners, but also the right to life and proper health care of persons who need medical care and treatment. The need of the hour is better doctors than more doctors, better health education than more education, better health care than more health care delivery.

13. In the decision reported in Poonam Verma Vs. Ashwin Patel (1996 (4) SCC 332) it has been held by the Supreme Court as follows while considering the issue whether a person holding Diploma in Homeopathy Medicine and Surgery can administer Allopathic medicine without having any qualification in the same:

"30. The scheme of the Act, therefore, indicates that a person gets the right to practise in Homeopathy on being registered as a medical practitioner. The certificate of registration issued to such practitioner requires him to practise in HOMEOPATHY ONLY as is clear from the words "AND SHALL PRACTISE HOMEOPATHY ONLY" used in sub-section (12)(a) of Section 20. Apart from the right to practice, other rights which become immediately available to a person on registration of his name are indicated in Section 28 which, inter alia, includes right to treat patients according to the Homeopathic system of medicine.

31. Right to practise in Allopathic system of medicine as also the right to practise in Ayurvedic or Unani system of medicine is regulated by separate independent Central and local Acts. Indian Medical Council Act, 1956 deals, inter alia, with the registration of persons possessing requisite qualifications as medical practitioner in Allopathic system as also recognition of medical qualifications and examinations by Universities or Medical Institutions in India.

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38. But merely because the anatomy and Physiology are similar, it does not mean that a person having studied one system of medicine can claim to treat the patient by drugs of another system which he might not have studied at any stage. No doubt, study of Physiology and Anatomy is common in all systems of medicines and the students belonging to different systems of medicines may be taught Physiology and Anatomy together, but so far as the study of drugs is concerned, the Pharmacology of all systems is entirely different.

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41. Since the law, under which respondent-1 was registered as a medical practitioner, required him to practise in HOMEOPATHY ONLY, he was under a statutory duty not to enter the field of any other system of medicines as, admittedly, he was not qualified in the other system, Allopathy, to be precise. He trespassed into a prohibited field and was liable to be prosecuted under Section 15(3) of the Indian Medical Council Act, 1956. His conduct amounted to an actionable negligence particularly as the duty of care indicated by this Court in Dr. Laxman Joshi case WAS BREACHED BY HIM ON ALL THE THREE COUNTS INDICATED THEREIN."

14. While deciding the correctness of the Act of the State Government prescribing different admission criteria by contemplating different minimum qualifying marks for special category candidates seeking admission under the reserved category in medical courses, the Constitutional Bench of the Apex Court in Dr. Preeti Srivastava VS. State of M. P. (1999 (7) SCC

120) observed that for proper education it would necessarily have in its fold

(i) the taught, (ii) the teacher, (iii) the text and also (iv) training as practical training is required to be imparted to students pursuing the course of postgraduate medical education. The qualification of the teachers is determined by the Medical Council of India by prescribing the basic qualifications for admission of the students. While considering the importance of training, it is further observed that training to be imparted to the students has a direct nexus with the infrastructural facilities like the number of beds of patients to be attended to by postgraduate medical students, providing appropriate infrastructure for surgical training etc., also would form part of education and such facilities for giving such practical training to the taught also would be an important part of medical education. It is of course true that not only the eligibility of students for admission to medical courses but also the quality of students seeking to get medical education especially postgraduate medical education with a view to turning out efficient medical practitioners for serving the suffering humanity would all be covered by the term "education".

15. The Government of Punjab State issued notifications under Clause (iii) of Rule 2(ee) of the Drugs and Cosmetics Rules, 1945 which defines "registered medical practitioner". Under such notification notified vaid/hakims claim right to prescribe allopathic drugs covered by the Indian Drugs and Cosmetics Act, 1940. A Division Bench of Punjab & Haryana High Court held that such a notification was ultra vires of the said provisions. While considering the said issue, in the decisions reported in

Dr.Mukhtiar Chand Vs.State of Punjab (1998(7) SCC 579) the Apex Court held as follows:

"47. A harmonious reading of Section 15 of the 1956 Act and Section 17 of the 1970 Act leads to the conclusion that there is no scope for a person enrolled on the State Register of Indian Medicine or the Central Register of Indian Medicine to practise modern scientific medicine in any of its branches unless that person is also enrolled on a State Medical Register within the meaning of the 1956 Act.

48. The right to practise modern or Indian system of medicine cannot be based on the provisions of the Drugs Rules and declaration made thereunder by State Governments. Indeed, Ms.Indira Jaising has also submitted that the right to practise a system of medicine is derived from the Act under which a medical practitioner is registered. But she has strenuously argued that the right which the holders of a degree in integrated courses of Indian medicine are claiming is to have their prescription of allopathic medicine honoured by a pharmacist or a chemist under the Pharmacy Act and the Drugs Act. This argument is too technical to be acceded to because prescribing a drug is a concomitant of the right to practise a system of medicine. Therefore, in a broader sense, the right to prescribe drugs of a system of medicine would be synonymous with the right to practise that system of medicine. In that sense, the right to prescribe an allopathic drug cannot be wholly divorced from the claim to practise allopathic medicine."

16. Moreover, similar writ petitions were filed in this court in W. P.No.18186 of 1991 etc., batch were dismissed on 31.12.1996. In another W.P.No.14042/91, the Private Medical Practitioners Association of India, Tamil Nadu Branch sought to issue a Writ of Mandamus directing the State of Tamil Nadu to forthwith implement the directions of the Government of India issued in the proceedings dated 8.7.1986 which is also the subject matter in this writ petition. The said Writ Petition was dismissed on 6.11.1995 and the same was confirmed by the Division Bench in W.A.No.1384/1995 in the order dated 21.8.1998. For the same relief 17 individuals filed another Writ Petition in W.P.No.522/2000 and the same learned Judge dismissed the said writ petitions in an elaborate order dated 21.01.2000. The Modern Medical Practitioners Association of India initiated another Writ Petition in W.P.No.2572/2000 seeking to issue a writ of Mandamus directing the State Government to register the names of the members of the petitioner association in the State Medical Register maintained by the State as per the provisions of the Drugs and Cosmetics Rules, 1945. The learned Judge rejected the said contention.

17. We are not able to understand in spite of specific statutory provisions, as to how the Union of India had issued such directions contrary to the statutory provisions and the judgements of the Apex Court. No provision is pointed out to show that the Government is empowered to issue such circular and so it is not open to the Government to supplement the provisions of the Act and Rules made thereunder by executive orders which has the effect of nullifying or modifying the statutory provisions. So far as circulars issued by the Government are concerned, they represent merely their understanding of the statutory provisions and they are not binding upon the courts as such circulars cannot compete with statutory provisions.

18. The circular which is sought to be implemented cannot have any legal force and this court is not inclined to direct the Government to implement such circulars as it is unenforceable in law. But for

the said circular, the members of the association cannot insist the State Government to issue certificate to enable them to practise " Medicine". Though the appellant had relied on the judgement of the learned single Judge made in W.P.No.7402/98 etc., batch dated 15.6.98 the said order was passed by the learned single Judge without even going into the question regarding the power of the Union Government to issue such a circular contrary to law on the issue and so the appellant cannot take advantage of the said judgement to claim that the State Government should permit the members of the appellant association to practise in medicine though they are not having any qualification to do so.

19. In view of the above discussion, we do not find any reason to interfere with the order of the learned single Judge. Hence, the Writ Appeal is dismissed. No costs.

Index:Yes.

Internet:Yes.

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To

1.The Secretary to Government, Health Department Government of Tamilnadu Fort St.George, Chennai.9

2.The Secretary to Government, Home Department Government of Tamilnadu Fort St.George, Chennai.9

3.The Director General of Police, Chennai.4.