

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

WP(C).No. 19553 of 2007 (C)

PETITIONER :

K.K.SIVADASAN PILLAI, S/O.KUMARA PILLAI,
AGED 57, KIZHAKKEKODUVELIL, AROOR P.O.
CHERTHALA TALUK, ALAPPUZHA DISTRICT.

BY ADVS.DR.V.N.SANKARJEE
SRI.VN.MADHUSUDANAN

RESPONDENTS :

1. STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.
2. THE DIRECTOR OF HOMOEOPATHY, KERALA,
THIRUVANANTHAPURAM.
3. THE REGISTRAR, TRAVANCORE COCHIN
HOMOEOPATHIC MEDICAL COUNCIL, RED CROSS ROAD
THIRUVANANTHAPURAM - 37.
4. THE REGISTRAR, CENTRAL COUNCIL OF
HOMOEOPATHY, JAWAHARLAL NEHRU BARATIYA CHIKITSA AVUM
HOMOEOPATHY, ANUSANDHAN BHAVAN, NO-61-65
INSTITUTIONAL AREA, OPP. D-BLOCK, JANAKAPURI
NEW DELHI - 110 058.

R.4 BY ADVS. SRI.D.SOMASUNDARAM, ADDL.CGSC
SRI.M.V.RAMACHANDRAN THAMPI
SRI.CHERIAN VARGHESE
SRI.C.S.AJITH PRAKASH, CGC

R3 BY ADV. SRI.N.RAGHURAJ, SC, TCMC & KNMC
R BY SRI.P.PARAMESWARAN NAIR, ASST.SOLICITOR
R BY SRI.N.NAGARESH, ASGI
R BY GOVERNMENT PLEADER SRI.K.K.SAIDALAVI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 19553 of 2007 (C)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE CERTIFICATE DATED 20.11.2004 ISSUED BY THE TAHSILDAR, CHERTHALA TO THE PETITIONER

EXT.P2 : COPY OF THE APPLICATIONS FILED BY THE PETITIONER DATED 27.5.1985, 14.11.1993, 4.3.1998, 19.5.1998, 6.10.1998, 15.12.2004, 21.3.2005, 15.4.2005 AND 17.5.2006 TO THE 4TH RESPONDENT (9 IN NOS.)

EXT.P3 SERIES : COPY OF THE REPLY NO.13-2/85-CCH DATED 3.7.85 AND 9.12.93 TO THE PETITIONER (2 NOS.)

EXT.P4 : COPY OF THE LETTER NO.13-12/97-CCH(PT.9) 13736 DATED 1.1.1999 TO THE PETITIONER, BY THE 4TH RESPONDENT

EXT.P5 : COPY OF THE LETTER NO.13-12/97-CCH(PT.9)6462 DATED 18.8.2006 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER

EXT.P6 : COPY OF THE REQUEST DATED 27.12.2006 SEND BY THE PETITIONER TO THE 4TH RESPONDENT

EXT.P7 : COPY OF THE LETTER DTD.7.2.2007 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER

RESPONDENTS' EXHIBITS & ANNEXURES :

ANNEXURE - 2 : COPY OF THE LETTER DATED 30.8.1999 SENT BY CENTRAL COUNCIL TO THE GOVT.OF KERALA

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.19553 of 2007

Dated this the 23rd day of February, 2015

J U D G M E N T

The petitioner is a Homeopathic practitioner. He has been practicing Homoeopathy and treating patients since 06.04.1969. It is his case that, he has acquired sound practical experience and theoretical knowledge in the practice of Homoeopathic system of Medicine. He has cured innumerable chronic illnesses. As on 01.01.1976, he had seven years of experience. Ext.P1 certificate is relied upon to support the above contention. However, the petitioner has no formal Degree or Diploma in Homoeopathy or in the Homeopathic system of treatment.

2. The case of the petitioner is that, in view of Section 15(3)(c) of the Homoeopathy Central Council Act, 1973, he is entitled to practice Homoeopathy in the State. Though he has submitted numerous representations to the 4th respondent, there has been no response. The petitioner therefore seeks the issue of appropriate directions permitting him to practice.

3. A statement has been filed on behalf of the 4th respondent pointing out that, the provisions of the Homoeopathy Central Council Act, 1973 do not permit persons like the petitioner to practice. The other respondents have not filed any counter affidavit in the matter.

4. The learned counsel for the petitioner places reliance on the judgment of this Court dated 09.03.2006 in Writ Appeal No.804/1998

where this Court has issued a direction to consider representations submitted by similarly situated persons, who were not properly qualified. The said judgment was rendered following the dictum in ***Kerala Homoeo Medical Graduates Association v. State of Kerala [2005 (3) KLT 620]*** where another Division Bench of this Court has issued a similar direction. The petitioner also seeks the issue of appropriate directions for the consideration of his case by respondents 3 and 4, who are the authorities empowered to do so by law.

5. I have heard the learned Government Pleader who appears for respondents 1 to 3.

6. Section 15 of the Homoeopathy Central Council Act, 1973 reads as follows :

“15. Right of persons possessing qualifications includes in Second or the Third Schedule to be enrolled.- (1) *Subject to the other provisions contained in this Act, any medical qualification included in the Second or the Third Schedule shall be sufficient qualification for enrolment on any State Register of Homoeopathy.*

(2) No person, other than a practitioner of Homoeopathy who possesses a recognized medical qualification and is enrolled on a State Register or the Central Register of Homoeopathy,-

(a) shall hold office as Homoeopathic physician or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority;.

- (b) shall practice Homoeopathy in any State;*
- (c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner;*
- (d) shall be entitled to give any evidence at any inquest or any Court of law as an expert under section 45 of the Indian Evidence Act, 1872 on any matter relating to Homeopathy.*
- (3) Nothing contained in sub-section (2) shall affect-*
 - (a) the right of a practitioner of Homoeopathy enrolled on a State Register of Homoeopathy to practise Homoeopathy in any State merely on the ground that, on the commencement of this Act, he does not possess a recognised medical qualification;*
 - (b) the privileges (including the right to practise Homoeopathy) conferred by or under any law relating to registration of practitioners of Homoeopathy for the time being in force in any State, on a practitioner of Homoeopathy enrolled on a State Register of Homoeopathy;*
 - (c) the right of a person to practise Homoeopathy in a State in which on the Commencement of this Act, a State Register of Homoeopathy is not maintained if, on such commencement, he has been practising Homoeopathy for not less than five years;*
 - (d) the rights conferred by or under the Indian Medical Council Act, 1956 (including the right to practise medicine as defined in clause (f) of section 2 of the said Act) or the Indian Medicine Central Council Act, 1970 of persons possessing any qualifications included in the respective Schedules to the said Act.*
- (4) Any person who acts in contravention of any provision of*

sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."

As per Sub Section 3(c), a person has been granted the right to practice Homoeopathy in the State where on the date of commencement of the said Act, a State Register of Homoeopathy is not maintained, provided he has not less than five years of practice. According to the petitioner, he has more than five years of practice on the crucial date. Therefore, his case requires to be considered. Though he had submitted Ext.P2 representations, there has been no response from the authorities.

7. The above being the position, it is only appropriate that the authorities consider the claim of the petitioner in the first instance and takes a decision whether his claim is sustainable or not. For the purpose, it is necessary that the petitioner submits representations to both respondents 3 and 4. If such representations are submitted, the said respondents shall consider the representations and pass appropriate orders thereon in accordance with law.

In view of the above, this writ petition is disposed of with the following directions :

- 1). The petitioner shall submit separate representations to respondents 3 and 4, within a period of two weeks of the date of receipt of a copy of this judgment.

- 2). On receipt of such representations, respondents 3 and 4 shall consider the same in accordance with law and shall pass appropriate orders in the matter as expeditiously as possible and at any rate within a period of three months of the date of the receipt of such representations.
- 3). The status quo shall be maintained in relation to the petitioner until final orders are passed on the representations in accordance with the above directions. It is made clear that, if no representations are submitted by the petitioner as directed above, the petitioner shall forfeit the benefits of the above directions.

Sd/-

K.SURENDRA MOHAN, JUDGE.

AV