

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

W.P.(C).No.13543 of 2015 (P)

PETITIONER(S):-

1. AYAURVEDA MNEDICAL ASSOCIATION OF INDIA KERALA STATE COMMITTEE,
AYURVEDA BHAVAN, PB NO 93, ANGAMALY,
ERNAKULAM-683572, REPRESENTED BY ITS PRESIDENT, DR.VOND KUMAR
2. DR.SADATH DR, AGED 44 YEARS, S/O. R DINAKARAN,
D3, CHAITHRA APARTMENTS,
THRIPTI LANE, MARADU PO, ERNAKULAM

BY ADVS.SRI.A.JAYASANKAR
SRI.C.V.MANUVILSAN
SRI.MANOJ B.MENON
SRI.MANU GOVIND
SMT.INDULEKHA JOSEPH.

RESPONDENT(S):-

1. THE GOVERNMENT OF KERALA, REPRESENTED BY SECRETARY,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
SECRETARIAT, THIRUVANANTHAPURAM 695 001.
2. THE DIRECTOR, DIRECTORATE OF AYURVEDA MEDICAL EDUCATION,
AROGHYA BHAVAN, THIRUVANANTHAPURAM, PIN 695 001.
3. THE DIRECTOR OF HEALTH SERVICES,
DIRECTORATE OF HEALTH SERVICES,
GENERAL HOSPITAL JUNCTION, THIRUVANANTHAPURAM, PIN - 695 035.
4. THE REGISTRAR CUM SECRETARY,
CENTRAL COUNCIL OF INDIAN MEDICINE, 61-65
INSTITUTIONAL AREA, JANAKPURI, NEW DELHI, INDIA, PIN-110058.

5. UNION OF INDIA,
REPRESENTED BY SECRETARY, MINISTRY OF AYUSH,
AYUSH BHAVAN, B BLOCK, GPO COMPLEX,
INA, NEW DELHI, PIN 110023

6. INDIAN MEDICAL ASSOCIATION,
KERALA STATE BRANCH , IMA STATE HEADQUARTERS,
ANAYARAP.O., THIRUVANANTHAPURAM-695 029,
REPRESENTED BY SECRETARY

* ADDITIONAL RESPONDENTS 7 AND 8 IMPEADED

ADDL.7. MEDICAL COUNCIL OF INDIA,
POCKET-14, SECTOR-8, DWARAKA PHASE-I,
NEW DELHI - 110 077, REPRESENTED BY ITS PRESIDENT.

ADDL.8. TRAVANCORE COCHIN MEDICAL COUNCIL,
COMBINED COUNCIL BUILDING, RED CROSS ROAD,
THIRUVANANTHAPURAM - 695 035, REPRESENTED BY ITS PRESIDENT.

* ADDITIONAL RESPONDENTS 7 AND 8 ARE IMPEADED AS PER ORDER
ON I.A.NO.6418 OF 2015 DATED 03.06.2015.

R1 TO R3 BY GOVERNMENT PLEADER SMT.C.K.SHERIN.
R4 & R5 BY ASSISTANT SOLICITOR GENERAL OF INDIA SRI.N.NAGARESH.
R4 & R5 BY CENTRAL GOVERNMENT COUNSEL SRI.PAUL JACOB.
R6 BY ADVS. DR.S.GOPAKUMARAN NAIR (SENIOR ADVOCATE)
SRI.P.CHANDRASEKHAR
SRI.S.PRASANTH
SRI.SOORAJ T.ELENJICKAL
SMT.P.M.MAZNA MANSOOR.
ADDL.R7 BY STANDING COUNSEL SRI.TITUS MANI VETOM.
ADDL.R8 BY STANDING COUNSEL SRI.N.RAGHURAJ.
R4 & R5 BY ADV. SRI.S.BIJU, CGC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
03-06-2015, ALONG WITH WPC. 13544/2015-P & WPC. 13545/2015-P, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXHIBIT P1 A TRUE PHTOOCOPY RELEVANT PAGES OF THE GAZETTE OF INDIA NOTIFICATION DATED 25-04-2012.
- EXHIBIT P2 A TRUE PHOTOCOPY OF THE GO(MS) NO 350/2014H & FWD DATED 11-12-2014 ALONG WITH ITS RETYPED COPY.
- EXHIBIT P3 A TRUE PHTOOCOPY OF THE GO(MS) NO 60/2015/H&FWD DATED 25-3-2015.
- EXHIBIT P4 A TRUE PHOTOCOPY OF THE REPRESENTATION PREFERRED BY GENERAL SECRETARY OF AYURVEDA MEDICAL ASSOCIATION OF INDIA.
- EXHIBIT P5 A TRUE PHOTOCOPY OF THE COMMUNICATION ADDRESSED TO THE STATE SECRETARY, INDIAN MEDICAL ASSOCIATION BY THE MEDICAL COUNCIL OF INDIA DATED 22.05.2007.
- EXHIBIT P6 A TRUE PHOTOCOPY OF THE COMMUNICATION ADDRESSED TO THE SECRETARY OF HEALTH AND FAMILY WELFARE DEPARTMENT, SECRETARIAT BY THE REGISTRAR, TRAVANCORE COCHIN MEDICAL COUNCILS DATED 22.08.2008.

RESPONDENT(S)' EXHIBITS:-

- EXHIBIT R6(a) TRUE COPY OF COMMUNICATION NO.MC1-34(1) 2007 - MED/5159 DATED 22.05.2007.
- EXHIBIT R6(b) TRUE COPY OF COMMUNICATION NO.E-5370/05/MC DATED 22.08.2008 OF THE TRAVANCORE COCHIN MEDICAL COUNCIL.
- EXHIBIT R6(c) TRUE COPY OF REGULATIONS VIDE LETTER NO.V 12013/22/2011 - EP(IM-2) DATED 05.03.2012.
- EXHIBIT R6(d) TRUE COPY OF THE COMMUNICATION NO.G.O.(MS) NO.350/2014/H&FWD DATED 11.12.14.

- * EXHIBIT R6(e) TRUE COPY OF THE REPRESENTATION
DATED 18.02.2015 OF IMA, KERALA STATE BRANCH;
- *[REPRESENTATION DATED 04.03.2015
ADDRESSED TO THE SECRETARYT, HEALTH AND FAMILY
WELFARE DEPARTMENT- **SUBSTITUTED**
* EXHIBIT RODUCED ALONG WITH
I.A.NO.6905 OF 2015 ACCEPTED AND THE EXHIBIT
PRODUCED ALONG WITH THE COUNTER AFFIDAVIT
REPLACED, AS PER ORDER IN I.DA.6905/2015 DATED 03.06.2015)]
- EXHIBIT R6(f) TRUE COPY OF THE ORDER NO.G.O.(MS)NO.60/2015/H&FWD
DATED 25.03.2015.
- EXHIBIT R6(g) TRUE COPY OF THE ORDER ISSUED BY THE STATE
GOVERNMENT OF TELANGANA.

VKU/-

[TRUE COPY]

K. Vinod Chandran, J

W.P.(C).Nos.13543, 13544 & 13545 of 2015-P

Dated this the 03rd day of June, 2015

JUDGMENT

The writ petitions project the grievance of the Ayurveda Medical Association of India and the Ayurveda students, insofar as interdicting their training in Government hospitals, which had been permitted over the years by the Government of Kerala. By Exhibit P3; G.O.(MS) No.60/2015/H&FWD dated 25.03.2015, the practise was abruptly discontinued, is the grievance. The petitioners contend that by Exhibit P1, the Central Council of Indian Medicine requires that the Ayurveda doctors should be given training in Gynaecology, which are available only in those hospitals in which Allopathy doctors are practising, argues learned counsel Sri.C.V.Manuvilsan.

2. Dr.S.Gopakumaran Nair, learned Senior Counsel appearing for the 6th respondent, the Indian Medical Association, however, refute the contention on the basis of Exhibit P1 itself, which grants absolute power to the State Government to decide whether training should be carried on in the hospitals dispensing

modern medicine. The learned Senior Counsel also relies on Exhibits R6(a) and R6(b).

3. The Government's specific contention is that there was an accepted practise of giving training to Ayurveda students in Government hospitals/dispensaries of modern medicine as indicated by the various Government Orders. The learned Senior Counsel would object, pointing out that many a time the Indian Medical Association raised objections, which were taken into account by the Government. In any event, a Government Order issued permitting such training was kept in abeyance by Exhibit P3, which reads as under:

“In the circumstances reported by the State Secretary, Indian Medical Association, Kerala State Branch in the letter read above, Govt. hereby keep the Government Order read above in abeyance until further orders”.

4. There is absolutely no application of mind and the Government had acted merely on the basis of the letter issued by the State Secretary of the Indian Medical Association, keeping in abeyance an order which had been issued as per the discretion, conferred on the basis of Exhibit P1 itself, on the State

Government. The State Government also ought to have heard the Central Council of Indian Medicine, Medical Council of India, Travancore Cochin Medical Council and other stake holders being the Ayurveda Medical Association of India as also the Indian Medical Association. All the parties referred to herein are parties in the writ petition. The Medical Council of India and the Travancore Cochin Medical Council are impleaded today. Sri.Titus Mani Vettom and Sri.N.Reghuraj, learned Standing Counsels for the respective parties, are directed to take notice for the said additional respondents. None of these parties were heard by the Government and, as is evident from Exhibit P3, the Government had acted based on a letter issued by the State Secretary of the Indian Medical Association.

5. In the above circumstance, for reason of violation of principles of natural justice and total non-application of mind, Exhibit P3 [G.O.(MS) No.60/2015/H&FWD dated 25.03.2015] would stand set aside. The Government is directed to consider the issue afresh after hearing the stake holders, as noticed above. The Central Council of Indian Medicine, the Medical Council of

India, the Indian Medical Association and the representatives of the Ayurveda Medical Association of India and the Travancore Cochin Medical Council shall appear before the 1st respondent on 30.06.2015. The parties shall be permitted to place written submissions and materials on record before the Government and a decision shall be taken after affording an opportunity for hearing to all the parties within a period of two months from the date noticed for appearance, i.e., within two months from 30.06.2015.

The writ petitions would stand allowed, making it clear that this Court has not spoken on the merits of the matter. No costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]