

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

WP(C).No. 30798 of 2015 (Y)

PETITIONER(S) :

**SHADHAN KUMAR BISWAS, AGED 34 YEARS,
S/O.AMARSH BISWAS, PRIYANKA CLINIC, THAYINERI,
NEAR B.K.M., HOSPITAL P.O., PAYYANNUR, KANNUR DISTRICT.**

**BY ADVS.SRI.G.HARIHARAN
SRI.PRAVEEN.H.**

RESPONDENT(S) :

- 1. THE DISTRICT MEDICAL OFFICER OF HEALTH,
PAYYANNUR, KANNUR DISTRICT.**
- 2. THE HEALTH INSPECTOR,
PAYYANNUR MUNICIPALITY, KANNUR DISTRICT.**
- 3. THE TRAVANCORE COCHIN MEDICAL COUNCIL,
REPRESENTED BY THE REGISTRAR,
PALAYAM KUNNUKUZHI ROAD, KUNNUKUZHI P.O.,
THIRUVANANTHAPURAM.**
- 4. THE SECRETARY,
PAYYANNUR MUNICIPALITY, KANNUR DISTRICT.**

**R1 & R2 BY GOVERNMENT PLEADER SRI.BIJU MEENATTOOR
R3 BY ADV. SRI.N.RAGHURAJ, S.C**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 09-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXHIBIT P1: TRUE COPY OF THE BASIC TAX RECEIPT OF THE PROPERTY OWNED BY THE PETITIONER.**
- EXHIBIT P2: TRUE COPY OF THE OWNERSHIP CERTIFICATE CERTIFYING THAT BUILDING BEARING NUMBER 745 IN WARD NUMBER 19 IS OWNED BY THE PETITIONER AS PER THE ASSESSMENT REGISTER MAINTAINED BY THE PAYYANUR MUNICIPALITY.**
- EXHIBIT P3: TRUE COPY OF THE REGISTRATION CERTIFICATE APPLICABLE TO PRIVATE HOSPITALS/PRIVATE PARAMEDICAL INSTITUTIONS DATED 09.04.2015 ISSUED BY THE MUNICIPAL COUNCIL, PAYYANUR MUNICIPALITY.**
- EXHIBIT P4: TRUE COPY OF THE RECEIPT EVIDENCING PAYMENT OF REGISTRATION FEE FOR OBTAINING EXHIBIT P3 CERTIFICATE.**
- EXHIBIT P5: TRUE COPY OF THE RECEIPT EVIDENCING PAYMENT OF TRADE LICENSE FEE TO THE PAYYANUR MUNICIPALITY BY THE PETITIONER.**
- EXHIBIT P6: TRUE COPY OF THE CERTIFICATE ISSUED BY THE VILLAGE OFFICER, PAYYANUR DATED 19.02.2014.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.MUHAMED MUSTAQUE, J.

W.P(C).No. 30798 of 2015

Dated this the 9th October, 2015

JUDGMENT

The petitioner is a native of West Bengal and is a traditional practitioner of indigenous medicines and is proficient in the treatment of 'piles' and 'fistula'.

2. The petitioner approaches this Court seeking a direction to permit the petitioner to continue his practice as 'Parambharya Vaidya' and further restraining the respondents from interfering with the practice. Admittedly, the petitioner has no registration either under the Medical Practitioners Act, 1953 (T.C) or Madras Medical Registration Act, 1914. In similar matter a Division Bench of this Court in **Vanchiyoor Madhom Dhanwanthari** (2003(1) KLT 520) has held as follows:

“A perusal of the above provision shows that only a person whose name is entered in the register is entitled to practise medicine. By the first proviso, the Government has been given the power to direct that the provision shall not apply to any person or class of persons. It is a power to grant exemption. The power, in the very nature of things, can be exercised for a good reason. Not

arbitrarily. The 1953 Act was enacted to ensure that only competent and qualified persons practise medicine. Those who were not qualified were ineligible and as such were liable to be punished under S.39. Still further similar provisions were made in the Madras Medical Registration Act, 1914 for the erstwhile Malabar area in the State of Kerala. On a cumulative consideration of the provisions of the two statutes it is clear that persons who have not been registered as medical practitioners are not entitled to administer any medicine. The obvious object of the statutes is to check quackery. The provision does not confer an indefeasible right to the citizen to claim exemption. It only embodies an enabling provision. A person who does not fulfil the qualifications cannot claim, as of right, the grant of exemption. Equally, it cannot be said that the mere fact that exemption has been granted to some persons and not to others, the action is per se discriminatory."

In the above circumstances, this Court is of the view that the petitioner cannot claim right to practise unless he has registration either under the Medical Practitioners Act, 1953 (T.C) or under the Madras Medical Registration Act, 1914. In that view of the matter, the Writ Petition is liable to be dismissed. Accordingly, the Writ Petition is dismissed.

**A.MUHAMED MUSTAQUE
JUDGE**