

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.NO.1996 OF 2015
& M.P.NO.1 OF 2015

Indian Homeopathic Medical Graduates Association
represented by its Secretary Dr.K.Rajinikanth
(S.L.No.85/2013),
Manju Bhargavi Hospital,
Chinna Thirupathy, Omalur Taluk,
Salem District.

.. Petitioner

Versus

1. The Secretary to Government of Tamil Nadu,
Department of Health & Family Welfare,
Fort St. George, Chennai - 600 009.
2. The Director General of Police,
Kamarajar Road, Mylapore,
Chennai - 600 004.
3. The Registrar,
Tamil Nadu Homoeopathy Medical Council,
Arumbakkam, Chennai - 600 106.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus forbearing the second respondent, its men or subordinates from interfering with the practice of the Homeopathic System of Medicine by the members of the petitioner association by initiating any penal action against the members of the petitioner association.

For Petitioner : Mr.M.Venkatachalapathy, Senior Counsel
for M/s.P.Sathish

For Respondents : Mr.V.Jayaprakash Narayanan,
Special Govt. Pleader for RR 1 and 2

Mr.R.Karthikeyan,
Standing Counsel for R3

O R D E R

Heard Mr.M.Venkatachalapathy, learned Senior Counsel assisted by Mr.P.Sathish, learned counsel appearing for the petitioner, Mr.V.Jayaprakash Narayanan, learned Special Govt. Pleader appearing for the respondents 1 and 2 and Mr.R.Karthikeyan, learned Standing Counsel for the third respondent.

2. The petitioner has filed this writ petition seeking to forbear the second respondent from interfering with the practice of Homeopathic System of Medicine by the members of the petitioner association by initiating penal action against the members of the petitioner association.

3. In the affidavit filed in support of this writ petition, the petitioner narrated about certain instances, where the members of the petitioner association were harassed, in spite of the fact that they are registered medical practitioners. Therefore, it is prayed that appropriate direction should be granted and the second respondent should be directed not to harass the individual members of the petitioner association.

4. The learned Special Government Pleader appearing for the respondent 1 and 2 has submitted that at no point of time harassment is meted out by the members of the petitioner association, but whenever complaints have been received, each case is dealt with separately and if the cognizable offence has been made out, the First Information Report is registered and thereafter, the matter has been enquired into in accordance with law. Therefore, it is submitted that no blanket direction could be granted, as sought for, in this writ petition.

5. The learned counsel for the third respondent submitted that the relief sought for in this writ petition is only against the second respondent and the third respondent is only a registered body, which registers the graduates, who qualified themselves in Homeopathy medicine.

6. After hearing the learned counsel for the parties and perusing the materials placed on record, it has to be pointed out that similar and identical cases were filed before the Madurai Bench of this Court in the cases of Tamil Nadu Siddha Medical Graduates' Association V. Indian Medical Association reported in 2011 (2) CTC 203 and in the said batch of cases, the petitioners, who came before the Court also included the Tamil Nadu Siddha Medical Graduates Association and they sought for a direction to forbear the respondents therein from interfering with the professional practice of the members of the petitioner association, who are practicing their profession as per the Regulations passed by the Central

Government. This Court, after elaborately hearing the parties and taking into consideration various decisions of the Hon'ble Supreme Court, in particular, the decisions in the cases of Dr.Mukhtiar Chand V. State of Punjab, 1998 (7) SCC 579, Poonam Verma V. Ashwin Patel, 1996 (4) SCC 332, Tamil Nadu Siddha Medical Graduates' Association V. Letika Saran, I.P.S., The Director General of Police (Law and Order), 2010 (4) CTC 798, Rajasthan Pradesh V.S.Sardarshahar V. Union of India, 2010 (6) MLJ 82 (SC) and Samira Kohli V. Dr.Prabha Manchanda, 2008 (1) CTC 392 (SC), disposed of the writ petitions by issuing the following directions :

"47. In the light of the above, if it is seen the Supreme Court is of the opinion that medical professionals must be saved from unjust complaints of negligence or malpraxis and safeguards should be made. No blanket permission can be issued to the police to arrest or to prosecute the so-called quacks identified by the respondent Indian Medical Association. If the IMA as a guild association of Allopathic medical practitioners are aggrieved by any misconduct committed by other medical professionals governed by other systems of medicines, they can make complaints to their professional bodies under which those professionals are registered as they have valid licence and can find remedies. It is only in case where they are able to establish that there persons masquerading as Doctors, then the question of pressing into service anti quackery act will come into play. It will enable them to take that person to be prosecuted by legal methods.

7. The learned Special Government Pleader appearing for the respondents 1 and 2 submitted that this Court, in the case of Thirunavannamalai District Indian Medicine and Homeopathic Practitioners Welfare Association (Formerly known as Private Medical Practitioners Welfare Association) rep. by its President Dr.G.Pandurangan @ Parthiban V. The State of Tamil Nadu, rep. by the Commissioner and Secretary to Government, Health and Family Welfare Department, Fort St. George, Chennai - 600 009, in W.P.No.2722 of 2010 dated 30.03.2010, after carefully considering the petition filed by the association, wherein, they sought for a writ of Mandamus to forbear the respondent from enforcing the penal provisions of the Indian Medical Council Act, 1956 and the Drugs and Cosmetics Act, 1940, against the members of the petitioner association, dismissed the writ petition.

8. In the light of the above facts, this Court is of the view that no further direction is required to be given in the instant case except reiterating the observation made by this Court in

paragraph 47 of the decision reported in the case of Tamil Nadu Siddha Medical Graduates' Association V. Indian Medical Association, referred supra.

9. Accordingly, this writ petition stands disposed of in terms of the observation made by this Court in the above referred judgments in paragraph 47. All the other reliefs, sought for in this writ petition, stand rejected. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gg

To

1. The Secretary,
Department of Health & Family Welfare,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.
2. The Director General of Police,
Kamarajar Road, Mylapore,
Chennai - 600 004.
3. The Registrar,
Tamil Nadu Homoeopathy Medical Council,
Arumbakkam, Chennai - 600 106.

1 cc to Government Pleader, Sr.No13286

1 cc to Mr.P.Sathish ,Advocate, SR.No.13311

W.P.NO.1996 OF 2015

rsi(co)

pmk.18.3.2015

WEB COPY