

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2015

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.32308 of 2012

And

M.P.No.1 of 2012

J.Krishnamoorthy ... Petitioner

Vs.

1.Deputy Superintendent of Police,
Vellore Division
Vellore District, Vellore.

2.Inspector of Police,
Vellore North Police Station,
Vellore.

3.Sub Inspector of Police,
Vellore North Police Station,
Vellore.

.... Respondents

Prayer:

Petition filed under section 226 of the Constitution of India to issue a Writ of Mandamus forbearing the respondents from in any way interfering with the petitioner's practice as a registered Homeopathy and Siddha Practitioner under the respective acts in Geetha Clinic situated Ground Floor, 3/1, Old Munsif Court Road, Saidapet, Vellore, Vellore District except in accordance with law after giving opportunity to the petitioner to explain in case of any violation of law brought to the notice of the respondents.

For Petitioner : Mr.N.S.Nandakumar
For Respondents : Mr.M.L.Mahendran
Government Advocate

O R D E R

Heard Mr.N.S.Nandakumar, learned counsel appearing for the petitioner and Mr.M.L.Mahendran, learned Government Advocate appearing for the respondents.

2.The Petitioner has filed this writ petition seeking issuance of Writ of Mandamus forbearing the respondents from in any way interfering with the petitioner's practice as a registered Homeopathy and Siddha Practitioner under the respective acts in Geetha Clinic situated Ground Floor, 3/1, Old Munsif Court Road, Saidapet, Vellore, Vellore District except in accordance with law after giving opportunity to the petitioner to explain in case of any violation of law brought to the notice of the respondents.

3.This Court has considered somewhat an identical issue in W.P.No.1996 of 2015 and has passed an order dated 09.03.2015 which reads as follows:

"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."

4.Accordingly, this writ petition is disposed of in terms of the decision referred supra. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.Deputy Superintendent of Police,
Vellore Division
Vellore District, Vellore.

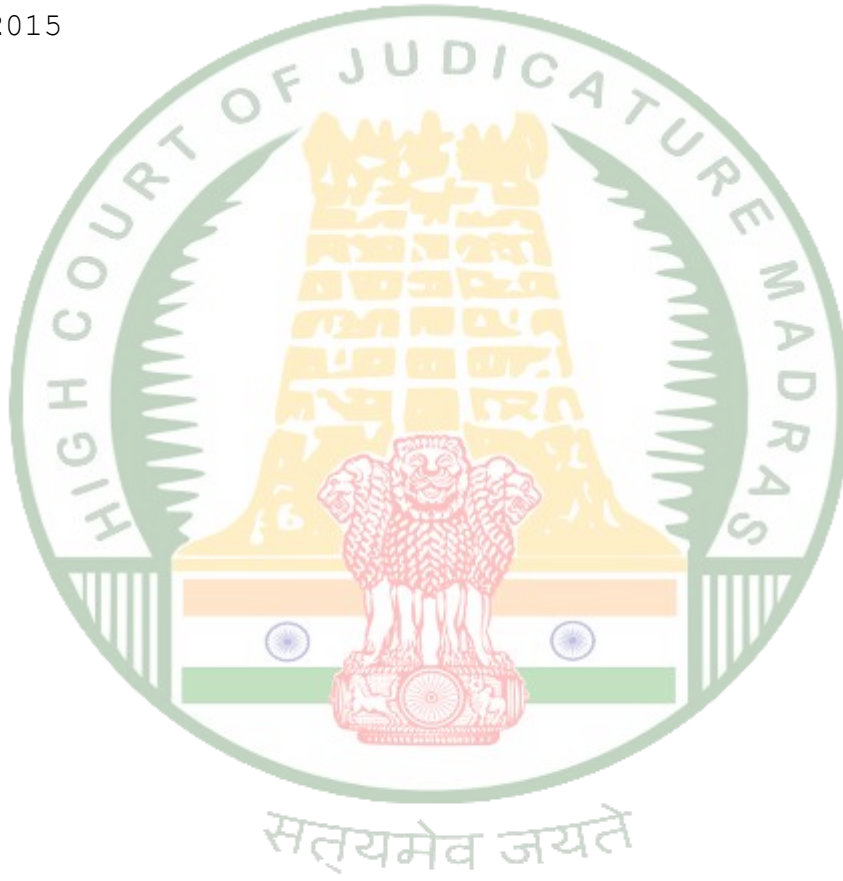
2.Inspector of Police,
Vellore North Police Station,
Vellore.

3.Sub Inspector of Police,
Vellore North Police Station,
Vellore.

1 cc to Mr.N.S.Nandakumar ,Advocate, SR.No.14670

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