

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6975 OF 2014

Shri Vidyasagar Educational and
Cultural Society Chunchale,
Tq. Chopda, Dist. Jalgaon
Through its Chairman
Shri Tukaram Pandurang Kshirsagar
Age : 83 years, Occ : Business/Social Work,
R/o Chunchale, Tq. Chopda,
Jalgaon.

..PETITIONER

-VERSUS-

1. The Union of India
Through its Principal Secretary,
Ministry of Health and Family Welfare,
Department of Health Research,
Nirman Bhavan, New Delhi.
 2. The Medical Council of India,
Through its Chairman,
Secretariat-14, New Delhi.
 3. Naturo-Electro Homeopathy
Medicos of India,
(NEHM of India), C-2-C/123,
Janakpuri, New Delhi
 4. The State of Maharashtra
Ministry of Medical Education
and Drugs Department,
9th Floor, New Mantralaya,
Gokul Tejpal Rugnalaya Building,
Mumbai.
 5. The Principal Secretary,
Home Department, Mantralaya, Mumbai.
- ..RESPONDENTS

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Advocate for Petitioner : Mr. A.B. Chalak
holding for Mr. S.B. Talekar
ASG for Respondent No.1 : Mr. B.B. Kulkarni
AGP for Respondent No.2 : Mr. S.K. Kadam
Advocate for Respondent nos.4 & 5 : Mr. S.B.
Yawalkar

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**CORAM : S.S. SHINDE &
SANGITRAO S. PATIL, JJ.**

DATE : 10.08.2016

JUDGMENT (S.S. SHINDE,J) :-

Rule. Rule made returnable
forthwith. Heard finally with the consent of
the learned counsel appearing for the
parties.

2. This Petition is filed challenging
the impugned communication dated 27th June,
2014 issued by Respondent No.4 rejecting the
proposal sent by the petitioner seeking
permission to start Electro-Homeopathy
diploma course. The direction is also sought
to the Respondents to allow the petitioner to

conduct the course of Electropathy – Electro-homeopathy. The petitioner is also seeking directions to Respondent no.1 to introduce the draft legislation titled as “The Recognition of New System of Medical Bill” in the ensuing session of the Parliament.

3. The learned counsel appearing for the petitioner submits that since several foreign systems of medicines, such as allopathy, homeopathy, acupuncture are recognized, it is necessary to recognize Electropathy and Electro-homeopathy, as alternative systems of medicines, which are otherwise prevalent in India. The petitioner conducted four years diploma courses and was imparting education in Electropathy and Electro-homeopathy till the year 2003. However, by communication dated 7th January, 2003 issued by the Under Secretary to the Government of Medical Education and Drugs

Department, Mantralaya, Mumbai, the petitioner was asked to close down its college. It is submitted that in view of the order dated 3rd August, 2009 passed by the High Court of Allahabad in Misc. Civil Writ Petition No. 31904/1991, Respondent No.1 passed the order dated 5th May, 2010. The copy of the said order is circulated throughout India including Respondent No.4, but no steps to that effect are taken by Respondent no.4 for implementation of the said order. It is submitted that in view of the aforesaid order dated 5th May, 2010, the petitioner wants to restart its college, which is affiliated with NEHM, but due to the Government circular dated 7th January, 2013, the petitioner cannot start its college. It is submitted that the Government of India passed one more order on 5th May, 2010 in pursuance of the directions issued by the High Court of Allahabad. The Naturo Electro Homeo Medicos of India through

Dr. N.K. Awasthi filed a representation dated 28th September, 2009 before the Secretary, Ministry of Health and Family Welfare raising an issue that Electropathy is a medical system based on herbal, and its medicines are prepared from medical plants with the help of distilled water. According to Dr. N.K. Awasthi not a single complaint or case was reported or registered with the Government regarding death of any patient.

4. It is submitted that the Ministry of Health and Family Welfare made it clear that there was no proposal to stop persons from practising "Electropathy" or imparting education in "Electropathy", as long as the same was done within the purview of the order dated 25th November, 2003 passed by the Government of India. The Committee based on essential and desirable criteria did not find electropathy to qualify as a system of

medicine. Since electropathy is not recognized as a system of medicine, there is no system for recognition of any course run by the body such as NEHM. However, the Committee concluded that there was no bar on the development and research. It is submitted that the Under Secretary of Ministry, Health and Family Welfare, Government of India issued a letter on 26th May, 2014 along with brief history and status note, clarifying that Government of India has decided to pass a law and as such has formulated draft legislation titled as "The Recognition of New System of Medicine Bill" with a view to providing a procedure for recognition of new system of medicine.

5. It is submitted that in the light of the aforesaid developments, the petitioner approached the State of Maharashtra and sought permission to run the diploma course

pursuant to the order dated 5th May, 2010 issued by the Ministry of Health and Family Welfare, Department of Health Research, New Delhi. However, the Government of Maharashtra, Medical Education and Drugs Department turned down the request/proposal sent by the petitioner. It is submitted that the State Government without calling the petitioner and without affording an opportunity of being heard passed the order rejecting its proposal vide letter dated 27th June, 2014 on the ground that conjoint reading of the letters/circulars/orders dated 25th November, 2003, 5th May, 2010 and 21st June, 2011 issued by the Union of India shows that it was possible to allow/run only such of the traditional systems of medicine, which were recognized by the Central Government or the competent authorities in the field of medical education. It is submitted that about 6 persons practising medicine in electropathy

approached the Bombay High Court challenging the circular dated 17th February, 2014 holding that the Government of India had directed to stop imparting education in electropathy and submit action report issued by the District Civil Surgeon vide communication dated 25th November, 2003. Therefore, relying upon the pleadings in the Petition, annexures thereto and also the order dated 21st January, 2015 passed by the Hon'ble Supreme Court in S.L.P. (C) No. 23572 of 2009 (G.G.S. MED.INST.OF & HOSP. OF ELECT. & ANR V/s UNION OF INDIA AND Ors.), and in particular, the stand taken by the Union of India to the effect that there is no ban on the Medical Practice of Electro-Homeopathy, the petitioner's request to allow it to run the said courses and impart education in electropathy and electro-homeopathy deserves to be considered by the Respondents.

6. On the other hand, the learned counsel appearing for Respondent no.1 invites our attention to the averments made in the counter affidavit filed by Dr. D.T. Mourya, Scientist 'G' and Director, National Institute of Virology and submits that the modern system of medicine is regulated through the Indian Medical Council Act, 1956; the Homeopathic system of medicine is regulated through the Homeopathy Central Council Act, 1973 and four Indian Systems of Medicine, namely Ayurveda, Siddha, Sowa Rigpa and Unani are regulated through the Indian Medicine Central Council Act, 1970. For other systems of medicine such as Electropathy, Electro-Homeopathy, Naturo-Electro Homeopathy etc., the Ministry of Health & Family Welfare, Government of India has issued an order No.R-14015/25/96-U & H(R) (Pt.) dated 25th November, 2003 (Admn.I) wherein, it is clearly stated that the Government does not

recognize any of the alternate systems of medicines like Electropathy, Electro-Homeopathy, Naturo-electro Homeopathy. It is submitted that the matter regarding research, development, teaching and practice of Electropathy, Electro-Homeopathy, Naturo-Electro-Homeopathy has been decided by the Hon'ble Supreme Court of India, while it upheld the decision of the High Court of Allahabad, vide judgment and order dated 28th May, 2004 and in ***Special Appeal No. 624 of 2004 Electro Homoeopathic Practitioners' Association of India and anr. Vs. A.P. Verma, Chief Secretary, Govt. of U.P. and others, 2004 (2) ESC (All.) 1241.*** The said order was upheld by the Hon'ble Apex Court in ***Special Leave to Appeal (Civil) No. 16312 of 2004, Electro Homoeopathic Practitioners' association of India and anr. Vs. A.P. Verma, Chief Secretary, Govt. of U.P. & others,*** which was dismissed, vide order dated 27th

August, 2004. Relying upon the aforesaid decision of the Hon'ble Apex Court, the High Court of Allahabad was pleased to dismiss the another ***Writ Petition-C No. 7698 of 2012, Indian Electro Homeopathy Medical Council and another Vs. State of U.P. and another***, vide order dated 21st February, 2012.

7. It is submitted that the Government of India has not recognized any clinical practice by any person/institution anywhere in the country. The Naturo Electro Homeopathy Medicos of India (NEHM) is neither concerned with nor recognized by the Department of Health Research. The Government of India has not recognized Electropathy, Electro-Homeopathy, Naturo-Electro Homeopathy etc., therefore, the Government does not allow any practice of Electropathy, Electro-Homeopathy, Naturo-Electro Homeopathy etc., and no person can prefix 'Doctor' to his or her name.

Anybody/Institution imparting education leading to award of degrees or diplomas in Electropathy, Electro-Homeopathy, Naturo-Electro Homeopathy etc., is not permitted. The current stand of the Government shall be as per the Ministry of Health and Family Welfare, Government of India order No. R-14015/25/96-U & H(R) (Pt.) (Admn.I) dated 25th November, 2003. Therefore, relying upon the averments in the counter affidavit and the annexures thereto, the learned counsel appearing for Respondent No.4 submits that the Petition deserves to be dismissed.

8. The learned A.G.P. appearing for the Respondent/State submits that in adherence to the circulars/orders issued by the Government of India, the Respondent/State declined to grant permission to start the courses of Electropathy and Electro-homeopathy.

9. We have given careful consideration to the submissions advanced by the learned counsel appearing for the petitioners, the learned A.G.P. appearing for the Respondent/State and the learned counsel appearing for Respondent Nos. 4 and 5. With their able assistance, we have perused the pleadings in the Petition, annexures thereto, reply filed by Respondent No.1 and also the order passed by the Hon'ble Supreme Court of India in S.L.P. (C) No.23572 of 2009 dated 22nd January, 2015. Upon careful perusal of the order passed by the Government of India dated 25th November, 2003, it is abundantly clear that the Government of India constituted a committee of Experts' under the Chairmanship of Director General, Indian Council of Medical Research and members were drawn from various fields of medicine to consider and give its recommendations to the Government on the efficacy/merits of various

streams of alternative medicine and also examine feasibility of making legislation as suggested by the Hon'ble Court. The Committee developed essential and desirable criteria for grant of recognition to a new stream of medicine and analysed the different streams of `Alternative Medicine viz. Ayurveda, Siddha, Unani, Homeopathy, Yoga & Naturopathy, Electropathy/electro-homeopathy, Acupuncture, magneto therapy, Reiki, Reflexology, Urine Therapy/Autourine Therapy, Hypnotherapy, Aromatherapy Colour Therapy, Pranic Healing, Gems & Stone Therapy and Music Therapy. The Committee did not recommend recognition to any of these alternative medicines except the already recognized traditional systems of medicines, viz; Ayurveda, Sidha, Unani, Homeopathy and Yoga & Naturopathy which were found to fulfill the essential and desirable criteria developed by the Committee for recognition of

a system of medicine. The committee has, however, recommended that certain practices as Acupuncture and Hypnotherapy which are qualified as modes of therapy, could be allowed to be practiced by registered practitioners or appropriately trained personnel. As seen from the order dated 25th November, 2003 issued by the Government of India, Ministry of Health and Family Welfare, the Committee further suggested that all those Systems of medicine not recognized as separate Systems should not be allowed to continue full time Bachelor and Master's degree courses and the term "Doctor" should be used only by practitioners of Systems of Medicine recognized by the Government of India. Those considered as Mode of Therapy can be conducted as Certificate courses for registered medical practitioners to adopt these modes of therapy in their practice, whether modern medicine or Indian Systems of

Medicine and Homeopathy.

10. Accordingly after examining the recommendations of the committee, the Government accepted the the recommendations of the Committee and it was requested to the State/UT Government to give wide publicity to the decision of the Government of India. It was also instructed that the State Governments shall ensure that the institutions under the State/UT should not grant any degree/diploma in the stream of medicine which have not been recommended for recognition and the term "Doctor" should be used by practitioners of recognized system of medicine. There is further order passed by the Government of India and the Ministry of Health and Family Welfare Department of Health Research on 5th May, 2010. In the said order also, it is stated thus :-

"In accordance with Orders of the High Court & Supreme Court quoted here, there is no proposal to stop the petitioners from practicing in electropathy or imparting education, as long as this is done within the provisions of the Order No. R 14015/25/96-U & H (R) (Pt) dated 25th November, 2003."

11. There is 3rd order issued by the Government of India, Ministry of Health and Family Welfare, Department of Health Research dated 21st June, 2011, wherein in clause (3) it is stated thus :-

"3. As per the directions of the Hon. Lucknow bench of the High Court of Judicature at Allahabad, the representation has been considered. It is clarified that the MH & FW Order No.R.14015/25/96-U & H (R) (Pt.) dated 25.11.2013 and No.V.25011/276/2009-HR dated 05.05.2010 would be treated as instructions of the Government of India related to practice, education

and research with regard to alternative systems of medicine like electropathy, electro-homeopathy, etc."

12. Therefore, there is no departure by the Government of India from the order passed on 25th November, 2003. Therefore, the petitioner's request to allow it to start Electropathy and Electro-homeopathy diploma courses has rightly been turned down by the Government of Maharashtra.

13. The Division bench of Allahabad High Court in the case of **Indian Electro Homeopathy medical Council and Another V/s State of U.P. and another in Writ -C No.7698 of 2012** has considered the similar fact-situation and also the orders issued by the Union of India on 25th November, 2003. In para 6, there is reference to the Petition filed by **Electro Homeopathic Practitioners'**

Association of India and Anr. vs. A.P. Verma, Chief Secretary, Govt. of U.P. and others, 2004(2) ESC (All.) 1241 and also the Division Bench has reproduced paras 13 to 36 from the said judgment of the Division bench affirming the order passed by the learned Single Judge in the aforementioned case. It appears that the petitioner therein assailed the order by filing the Special Leave to Appeal (Civil) No.16312 of 2004 against the judgment in Special Appeal No.624 of 2004 decided on 28th May, 2004 by the Division Bench of Allahabad High Court. However, the Hon'ble the Supreme Court dismissed the said S.L.P. Therefore, the Division Bench in detail has discussed about the orders issued by the Government of India from time to time. There is reference to the order dated 5th May, 2010 issued by the Department of Health, Research, Ministry of Health and Family Welfare, Government of India in para 13, and after considering the

order passed by the Union of India on 25th November, 2003 and subsequent order dated 5th May, 2010 ultimate conclusion is reached in para 15. Paras 15 to 18 of the judgment of the Division Bench of Allahabad High Court read thus :-

"15. The order of the Ministry of Health and Family Welfare, Government of India dated 5th March, 2010 can in no way be interpreted to allow the electrohomeopaths to teach, confer Degrees, Diplomas or Certificates or to practice Electrohomeopathy. The Electrohomeopathy has not been found by the Committee of Experts to qualify as system of medicine. No recognition has been given to the Electrohomeopathy as a system of medicine nor any system, for recognition of any course in Electrohomeopathy has been recognised by the Ministry of health, Government of India. The permission of development and research of Electrohomeopathy cannot be treated as

permission of the Central Government to teach, confer Degrees, Diplomas or certificates, practice Electrohomeopathy as a system of medicine.

16. This Court has repeatedly held that the Electrohomeopathy is not recognised system of medicine and cannot be practiced for curing the diseases or for any purpose. It is also well known principle of law of Human Rights that the medical research cannot be permitted on human beings, unless it is done under strict supervision of the experts and with permission by Indian Council of Medical Research. There is no such permission given to Electrohomeopathy. On the contrary the representative of ICMR present in the committee constituted by the Central Government, had not accepted Electrohomeopathy as system of medicine.

17. We strongly deprecate the efforts made by the Electro homeopaths, who have been warned time and again not to

approach this Court for continuing with the practice of un-recognised system of medicine, which is nothing but quackery.

18. We once again remind all the respondent authorities that the right to health recognised by Art. 21 enjoins the State to protect the general public from the practitioners of the unrecognised systems of medicine, which have no known methods of medical practice nor their systems have been recognised by the Ministry of Health, Government of India, or are regulated by any legislation."

14. In the light of discussion in the foregoing paragraphs, we are of the considered view that the prayer of the petitioner to allow the petitioner to conduct the course of Electropathy and Electro-homeopathy cannot be considered. Merely because the affidavit-in-reply filed by the Union of India before the Hon'ble the Supreme

Court in **S.L.P. (C) No. 23572 of 2009 (G.G.S. Med. Inst. of & Hosp. of Elect. & Anr. V/s Union of India and others)** complains that there is no ban on the medical Practice of Electro Homeopathy, it cannot be a ground to entertain the prayer of the petitioner to allow the petitioner to conduct the course of electropathy/ Electro-homeopathy. There are elaborate reasons given by the Division Bench of Allahabad High Court in the case of **Indian Electro Homeopathy Medical Council and another (supra)**. We do not see any reason to take a different view than that has been taken by the Division Bench of Allahabad High Court. So far prayer clause 'A' of the Petition is concerned, this Court cannot issue directions to the Legislature stipulating the time limit to introduce the draft legislation titled as "The Recognition of New System of Medical Bill" in the ensuing session of the Parliament.

15. The Writ Petition is devoid of any merits and the same stands rejected. Rule stands discharged accordingly. No costs.

(SANGITRAO S. PATIL, J.) (S.S. SHINDE, J.)