

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 28.09.2016

PRONOUNCED ON: 20.10.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

W.P. No.9691 of 2006 & W.P.M.P. No.10792 of 2006
Crl.O.P. Nos.5790 to 5793 of 2013

Private Medical Practitioners Association of India
Tamilnadu,
represented by its President
C.S. Agarwal
No.6600 Bahadurkar Road
New Delhi 100 006

Petitioner in W.P. No.9691 of 2006

Dr. M. Thiyagarajan, P.M.P. Petitioner in Crl.O.P. No.5790/2013

Dr. K. Venkatesan, P.M.P. Petitioner in Crl.O.P. No.5791/2013

Dr. C. Gunganathan, P.M.P. Petitioner in Crl.O.P. No.5792/2013

Dr. S. Ramesh, P.M.P. Petitioner in Crl.O.P. No.5793/2013

vs.

1 The State of Tamil Nadu
represented by the Commissioner and
Secretary to Government
Health and Family Welfare Department
Fort St. George
Chennai 600 009

2 The Director General of Police
Tamil Nadu
Mylapore
Chennai

3 Union of India
represented by Secretary to Government of India
Ministry of Health
New Delhi

Respondents in W.P. No.9691 of 2006

State represented by
the Inspector of Police
Paradarami Police Station
Paradarami
Vellore District

Respondent in Crl.O.P. No.5790 of 2013

State represented by
the Inspector of Police
Sangarapuram Police Station
Sangarapuram
Villupuram District

Respondent in Crl.O.P. No.5791 of 2013

State represented by
the Inspector of Police
Kelamangalam Police Station
Kelamangalam
Krishnagiri District

Respondent in Crl.O.P. No.5792 of 2013

State represented by
the Inspector of Police
Veepankuppam Police Station
Veepankuppam
Vellore District

Respondent in Crl.O.P. No.5793 of 2013

Prayer in WP:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus forbearing the respondents from enforcing the penal provisions of the Indian Medical Counsel (sic) Council Act, 1956 and the Drugs and Cosmetics Act, 1940 in the case of unqualified medical practitioners who are members of the petitioner association in the State of Tamil Nadu.

Common Prayer in OP:

Criminal Original Petitions filed under Section 482, Cr.P.C., seeking to direct the respondent not to harass the petitioners without following any due process of law.

For petitioner in writ petition Mr. R. Marudhachalamurthy

For R2 in

writ petition

and respondent in
all Crl.O.Ps.

For R3 in

writ petition

For petitioners in
all Crl.O.Ps

For intervener

Mr. C. Emalias

Addl. Public Prosecutor

Mr. N. Sivabharathi

Central Government Counsel

Mr. D. Vengadesh

Mr. T.T. Ravichandran

for M/s. Sathish Kumar

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COMMON ORDER

While the writ petition has been filed seeking a writ of mandamus forbearing the respondents from enforcing the penal provisions of the Indian Medical Council Act, 1956 and the Drugs and Cosmetics Act, 1940, in the case of unqualified medical practitioners, who are members of the petitioner association in the State of Tamil Nadu, the Criminal Original Petitions have been filed seeking to direct the respondent not to harass the petitioners, without following the due process of law.

"Cur'd yesterday of my disease,
I died last night of my physician"

-PRIOR, The Remedy Worse Than the Disease"

2 Persons claiming to have practical experience in modern scientific system of medicine ganged up to form an association titled "Private Medical Practitioners' Association of India" which appears to have been registered as a society under the Societies Registration Act, 1860, in the office of the Registrar of Societies, Delhi and have filed this writ petition claiming the aforesaid relief.

3 In W.P.M.P. No.10792 of 2006 filed along with this writ petition, they prayed for an order of interim injunction restraining the State of Tamil Nadu and Union of India from enforcing the penal provisions of the Indian Medical Council Act and the Drugs and Cosmetics Act, against unqualified Medical Practitioners' Association in the State of Tamil Nadu, pending disposal of the main writ petition.

4 When the writ petition came up for admission on 06.04.2006, a learned Single Judge of this Court granted interim injunction as prayed for and thereafter, the case never saw the light of the day, until it was resurrected from the labyrinth of the Record Room, thanks to the orders of the Hon'ble Chief Justice and posted for disposal before this Court as a "Specially Ordered matter" this year.

5 During this period of ten years, members of this association and certain others, claiming themselves to be doctors, successfully thwarted all attempts by the police to check their illegal practice of modern medicine sans qualification by taking umbrage under the order of interim injunction passed by this Court way back on 06.04.2006.

6 Heard Mr. Marudhachalamurthy, learned counsel for the petitioner in the writ petition, Mr. T. Vengadesh, learned counsel for the petitioners in the Criminal Original Petitions, Mr. C. Emalias, learned Additional Public Prosecutor appearing

for the respondent State, both in the writ petition and in the Criminal Original Petitions, Mr. N. Sivabharathi, learned Central Government Counsel for the third respondent in the writ petition and Mr.T.T. Ravichandran, learned counsel representing M/s. S. Sathish Kumar, learned advocate for the intervener and perused the materials available on record.

7 The sum and substance of the submission of the learned counsel for the writ petitioner association is that the members of the petitioner association have rich experience in curing diseases and some of them also do have the requisite qualification in alternative systems of medicine and therefore, the police cannot prosecute them under Section 15(2) of the Indian Medical Council Act and other provisions of the Indian Penal Code.

8 In support of this contention, the learned counsel for the writ petitioner placed reliance upon some of the letters/circulars issued by the Government of India and the judgments of the Supreme Court. The relevant portions of the said circulars and judgments are extracted hereunder:

I Circulars

- Letter No.F/32/9/64 MPT dated 05.05.1966 from Smt. P. Jonri, Deputy Secretary to Shri. Uma Shankar, Secretary, Health Department, Government of Uttar Pradesh, Lucknow:

"In view of the position stated above, it is suggested that you may kindly consider issuing of instructions to keep enforcement of the penal provisions referred to in para 1 above, in abeyance until a final decision has been taken in this regard. This will afford necessary relief to the existing unqualified medical practitioners who are agitated over the issue."

- Circular No.4-6/79 MPT dated 24.11.1972 of Bharat Sarkar, New Delhi:

"4. Those who have been practising modern medicine for a period of not less than ten years immediately before the appointed date may be allowed to continue to practise modern medicine. They should however not be entitled to practise surgery, obsterics or radiation therapy in any form and prescribe any

medicine included in Schedule G, H and L of the Drugs and Cosmetics Rules, 1945 and other dangerous drugs. Since this class of persons practitioners will constitute a separate category, it will be desirable to keep their records separate from those who are qualified medical practitioners. If the State Governments are willing to settle this longstanding problems in the above lines, they may initiate suitable legislation for amending their State Medical Acts for this purpose. The procedure suggested will not only control practice of modern medicine by unqualified medical practitioners but also ensure that no further unqualified practitioners will be drawn into these ranks as within a stipulated time such practitioners will be required to register themselves. "

- Circular No.V.11016/4/77 MPT [ME (P)] dated 15.01.1979 from the Ministry of Health and Family Welfare, Department of Health, New Delhi:

"2. In view of the position stated above, it is suggested that State Governments may consider issuing instructions to keep the enforcement of the penal provisions of the I.C.A. Act, 1956 in abeyance until a decision is taken by the State Governments in this regard, as already requested in the letter dt. 4th March 1978."

II Judgments

- All India Association of Private Medical Practitioners & 36 others vs. The State of Tamil Nadu, represented by its Secretary to Government, Home Department, Chennai - 9 and 5 others [1999 WLR 590];
- Dr. Mukhtiar Chand and others vs. State of Punjab and others [(1998) 7 SCC 579];
- Subhasis Bakshi and others vs. West Bengal Medical Council and others [(2003) 9SCC 269 ; and
- unreported decision of the Madurai Bench of this Court dated 14.02.2011 in CrI.O.P. (MD) No.1464 of 2011 (C.

Sivakumar vs. State represented by the Inspector of Police, Pasupathipalayam C-1 Police Station, Karur District).

9 Per contra, Mr. C. Emalias, learned Additional Public Prosecutor submitted that the two circulars dated 05.05.1966 and 15.01.1979 have been withdrawn by the Central Government by circular dated 11.06.1982. He placed strong reliance upon an unreported decision dated 12.02.2010 passed by this Court in W.P. No.2907 of 2002 (Dr. K. Abdul Muneer and another vs. The State of Tamil Nadu, represented by its Secretary to Government, Health and Family Welfare Department, Fort St. George, Chennai - 9 and 3 others and also an unreported judgment of the Supreme Court in Civil Appeal No.336 of 2007 (Private Medical Practitioners Association vs. The State of Tamil Nadu and others).

10 This Court gave its anxious consideration to the rival submissions.

11 In the State of Tamil Nadu, medical degrees for Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy are given by the Tamil Nadu Dr.M.G.R. Medical University. After obtaining the degree, the intending practitioner should enroll himself in the State register maintained for each of the systems of medicine before commencing his practice. While Allopathy practitioners are covered by the Indian Medical Council Act,, the practitioners in other systems of medicine, as stated above, are covered by the provisions of the Indian Medicine Central Council Act, 1970 (Central Act 48 of 1970) and the qualified persons should register themselves in the councils established by the State Government and thereafter, practise in the respective field of medicine.

12 As long as these practitioners practise in the respective system of medicine in which they are qualified, there is no problem. Only when totally unqualified persons claim themselves as doctors and prescribe medicines in the systems of medicine in which they are not qualified, be it Allopathy or otherwise, on the assumed claim of experience, the problem crops up.

13 Similarly, when those qualified in a particular stream of medicine encroaches into a different domain and prescribe medicines not relating to their domain, the State's intervention becomes imperative.

14 For instance, when an Ayurveda practitioner prescribes Allopathic medicines, the question that arises is whether he has violated the provisions of Section 15(2) of the Indian Medical Council Act.

15 These issues need not detain us any further in the light of the Central Government's circular dated 11.06.1982, which has been relied upon by the petitioner association itself and which finds place in the typed set of papers filed by the petitioner association. The operative portion of the said circular clinches the issue and the same is usefully extracted hereunder:

"7. With an annual out turn of about 13000 medical graduates from 106 recognised medical colleges and a very significant increase in the number of unqualified doctors since 1965 there is no dearth of trained and qualified medical personnel in the country. However, during the past or so, a number of very disturbing reports of gross negligence on the part of unqualified practitioners in various States have come to notice. These reports have also featured in the discussions in the last Session of Parliament in both Houses and a very serious view has been taken of the various incidents leading to serious disabilities and even loss of life. The Government of India, are deeply concerned with the situation and are of the view that there is no longer any justification whatsoever for keeping the penal provisions of the IMC Act in abeyance. Consequently, the instructions contained in this Ministry's letters of 5th May 1966 and 15th Jan. 1979 stand withdrawn.

8 The State Govts./Union Territories are requested to take action on the most immediate basis, to put an end to the problem of unqualified medical practitioners as well as to ensure that there is no fresh addition whatsoever of unqualified persons to the stream of the petitioners.

9 Action taken in the matter may please be intimated to this Ministry most early."

16 The learned counsel for the petitioner association placed strong reliance upon the judgment of this Court in All India Association of Private Medical Practitioners (supra), wherein, this Court had permitted the practitioners of Indian medicine to prescribe certain Allopathic drugs, except medicines included in Schedules G, H and L of the Drugs and Cosmetics Rules, 1945.

17 It is true that the learned Single Judge of this Court, in the aforesaid judgment, had given certain protections to native doctors. Nevertheless, it should not be lost sight of that the learned Single Judge has held that such practitioners

shall register themselves with the District Collector of the place where they practise and shall not use the prefix "Dr." or similar words before their name. In fact, the learned Single Judge has held that such practitioners shall add the expression "Unqualified Medical Practitioners" (UMP) or its translated version in the local language after their name. When this is not followed, police action cannot be questioned.

18 The issue under consideration is no more res integra in the light of the decision dated 12.02.2010 rendered by this Court in W.P. No.2907 of 2002 (supra), which has considered the judgment of the Supreme Court in Poonam Verma vs. Ashwin Patel [(1996) 4 SCC 332] and dismissed the claim of the practitioners.

19 Further, the Supreme Court, in the unreported judgment dated 23.01.2007 in Civil Appeal No.336 of 2007 (Private Medical Practitioners Association vs. The State of Tamil Nadu and others), has conclusively sealed such claims in the following emphatic words and dismissed the appeal with costs quantified at Rs.50,000/-:

"Counsel for the parties have been heard."

Counsel for the Appellant Association contends before us that in view of the circular issued by the Ministry of Health and Family Welfare, Department of Health, Government of India, New Delhi, the State Government was bound to permit the appellants to practise in the modern medicines subject to the limitations contained in the letter reference no.Ref.No.V.11016/3/82/ME(P) dated 15.07.1986.

We are in agreement with the view taken by the learned Single Judge in W.P. No.19448/2001 All India Association of Private Medical Practitioners (supra), following which the impugned judgment has been rendered and confirm the same.

For issuance of a writ of mandamus, a legal right has to vest in the person seeking the writ of mandamus. In the absence of any legal right, writ of mandamus cannot be sought for or granted by the Courts. Admittedly, members of the appellant-association are not qualified and registered with the State Medical Council. They cannot be permitted to practise either Modern Medicine or any other System of Medicine.

As per the Indian Medical Council Act, 1956 (Central Act 102 of 1956), no person can practise medicine without requisite qualification and registration with the concerned State Medical Council.

Therefore, members of the Appellant-Association cannot either practise modern medicine or any other Indian System of Medicine.

It is not in doubt that only qualified and properly trained professionals are competent to man the medical treatment of the people. If the unqualified private practitioners like the members of the Appellant Association are allowed to treat the patients even for minor ailments, we are afraid, it may endanger the lives of the people.

On a query put to counsel for the Appellant Association, whether the circular issued by the Central Government was statutory or binding on the State Government, it was fairly conceded by the learned counsel that the circular issued by the Central Government was neither statutory nor was it binding on the State Governments. Otherwise also, the State of Tamil Nadu has shown its inability to enforce the regularisation of unqualified and unregistered medical practitioners in the State, which was duly communicated to the Central Government vide letter (Ms.) No.342, Health dated 3rd March, 1980 for the reasons mentioned therein.

Since successive writ petitions being filed by the appellants on the same cause of action seeking the same relief, which had been rejected earlier, has resulted in sheer wastage of the precious time of the Court, we dismiss the appeal with costs, which is quantified at Rs.50,000/-."

20 Ex consequenti, this writ petition has to suffer dismissal and is accordingly dismissed and consequently, the order of interim injunction passed by this Court on 06.04.2006 stands vacated. Costs made easy.

In view of the dismissal of the writ petition and the order of interim injunction being vacated, Crl.O.P. Nos.5790 to 5793 of 2013 filed seeking to direct the respondent not to harass the petitioners without following any due process of law, stand dismissed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

1 The Commissioner and
Secretary to Government
Health and Family Welfare Department
Fort St. George, Chennai 600 009

2 The Director General of Police
Tamil Nadu, Mylapore, Chennai

3 The Secretary to Government of India
Ministry of Health, New Delhi

4 The Inspector of Police
Paradarami Police Station
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5 The Inspector of Police
Sangarapuram Police Station
Sangarapuram, Villupuram District

6 The Inspector of Police
Kelamangalam Police Station
Kelamangalam, Krishnagiri District

7 The Inspector of Police
Veepankuppam Police Station
Veepankuppam, Vellore District

8 The Public Prosecutor
High Court of Madras, Chennai 600 104

+1 cc to Mr.R.Marudhachalamurthy,advocate,sr.59435

+1 cc to Mr.N.Siva Bharathi,advocate,sr.60067

scd(co)
krd 7/11

सत्यमेव जयते

W.P. No.9691 of 2006

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Crl.O.P. Nos.5790 to 5793 of 2013

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