

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P. Nos. 33497, 33498 and 33499 of 2016

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M. Somasundar
carrying on his profession
in the name and style of
Aynkooru Herbal Formula Research Centre
1/245, Veppalampatti, Santhur Post
Poochampalli Taluk
Krishnagiri District - 635 206 ... Petitioner in WP 33497

V. Balamurugan
carrying on his profession
in the name and style of
Surya Natural Health Care
18/37, LIG Colony, Old TNHB
Bangalore Road
Krishnagiri - 635 001 ... Petitioner in WP 33498

S. Aravindh
carrying on his profession
in the name and style of
Agasthya Health Acuhome
No.40, 2nd Cross Co-operative Colony
Krishnagiri ... Petitioner in WP 33499

Versus

1. The State of Tamil Nadu
rep. by its Secretary to Government
Home Department
Fort St. George
Chennai - 600 009

2. The State of Tamil Nadu
rep. by its Commissioner
and Secretary to Government
Health and Family Welfare Department
Fort St. George, Chennai - 600 009

3. The Director General of Police
Kamarajar Road
Mylapore, Chennai - 600 009 ... Respondents 1 to 3 in
all the Writ Petitions

4. The Registrar
Tamil Nadu Board of Indian Medicine
Arignar Anna Government Hospital of
Indian Medicine Campus ..4th Respondent
Arumbakkam, Chennai - 600 009 in WP 33497/2016
5. The Registrar Tamil Nadu
Siddha Medical Council
Arignar Anna Government Hospital
of Indian Medicine Campus,
Arumbakkam, Chennai ..4th Respondent in
WP.No.33498 & 33499/16
6. The Inspector of Police
Pochampalli Police Station .. 5th respondent in
Krishnagiri District WP No. 33497/2016
7. The Inspector of Police
Krishnagiri Town Police Station .. 5th respondent in
Krishnagiri District WP Nos. 33498
and 33499 of 2016

WP No. 33497 of 2016:- Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus forbearing the Director General of Police, Kamarajar Road, Mylapore, Chennai - 600 004 namely the third respondent herein from initiating any police action by labelling the petitioner as unqualified as the petitioner is a registered Indian Medical Practitioner and thus ensure the safety of his profession in the field of Indian System of Medicine in Siddha run in the name and style of Aynkooru Herbal Formula Research Centre, 1/245, Veppalampatti, Santhur Post, Poochampalli Taluk, Krishnagiri District - 635 206.

WP No. 33498 of 2016:- Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus forbearing the Director General of Police, Kamarajar Road, Mylapore, Chennai - 600 004 namely the third respondent herein from initiating any police action by labelling the petitioner as unqualified as the petitioner is a registered Indian Medical Practitioner and thus ensure the safety of his profession in the field of Indian System of Medicine in Siddha run in the name and style of Surya Natural Health Care, 18/37, LIG Colony, Old TNHB, Bangalore Road, Krishnagiri District - 635 206

WP No. 33499 of 2016:- Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus forbearing the Director General of Police, Kamarajar Road, Mylapore, Chennai - 600 004 namely the third respondent herein from initiating any police action by labelling the petitioner as

unqualified as the petitioner is a registered Indian Medical Practitioner and thus ensure the safety of his profession in the field of Indian System of Medicine in Siddha run in the name and style of Agasthya Health Acuhome, No.46, 2nd Cross, Cooperative Colony, Krishnagiri District - 635 206

For Petitioners : Mr. C.D. Johnson
in all the Writ Petitions

For Respondent : Mr. A.N. Thambidurai
Special Government Pleader
in all the Writ Petitions

COMMON ORDER

In all these writ petitions, the petitioners seek for a Writ of Mandamus to forbear the third respondent from initiating police against the respective petitioners by branding them as unqualified inasmuch as the petitioners claim to have been a registered Indian Medical Practitioner. The petitioners also seek for a direction to ensure their safety in carrying on their profession in the field of Indian System of Medicine in Siddha run by them at the respective places of business.

2. I heard the learned counsel for the petitioners as well as the learned Special Government Pleader appearing for the respondents. The issue involved in this writ petition is no longer res integra. In identical circumstances, this Court considered similar submission made on behalf of the persons similarly placed like the petitioners in the case of (Tamil Nadu Siddha Medical Graduates Association vs. Indian Medical Association) reported in (2011) (2) CTC 203 wherein, this Court, after referring to the various orders passed by the Honourable Supreme Court, held in Para No.39 as follows:-

"39. A reference was made to a latest judgment of the Supreme Court in Rajasthan Pradesh V.S. Sardarshahar and another Vs. Union of India and others reported in 2010 (6) MLJ 82 (SC), wherein the Supreme Court in paragraph 42 had observed as follows:

"42. In view of the above, it is evident that right to practice under Article 19(1)(g) of the Constitution is not absolute. By virtue of the provisions of Clause (6) to Article 19 reasonable restrictions can be imposed. The Court has a duty to strike a balance between the right of a Vaidya to practice, particularly, when he does not possess the requisite qualification and the right of a "little Indian" guaranteed under Article 21 of the Constitution

which includes the protection and safeguarding the health and life of a public at large from mal-medical treatment. An unqualified, unregistered and unauthorized medical practitioner possessing no valid qualification, degree or diploma cannot be permitted to exploit the poor Indians on the basis of a certificate granted by an institution without any enrolment of students or imparting any education or having any affiliation or recognition and that too without knowing the basic qualification of the candidates.

40. In the light of the rival pleadings, two questions arise for consideration. The first was whether the first respondent association can be given a carte blanche to find out as to who are all practicing quackery and on that basis, the police can be directed to proceed against those individuals in a criminal court. But, if such a power is given to the practitioners of one system, it will naturally result in witch hunting of others who did not have licence to practice in Allopathic system of medicine. A reading of all the earlier orders did not indicate that if a person is having licence to practice under a particular system of medicine and registered under the respective council, he can be simply proceeded for the alleged transgression of their limits. If a person who did not have any degree under any system and if he practices any form of medicine, they can be easily identified as a quack and can be proceeded on a complaint even under the provisions of IPC. In respect of violation of any professional conduct or ethics under each system for which separate registration under a council is provided. Hence each council will be the only authority to deal with those persons who violate their professional ethics and conduct.....

3. It is evident from the above decision rendered by this Court that if a person, who has duly registered himself as a medical practitioner under a particular system of medicine, he can be proceeded with against for violation of alleged transgression of their rights, if any. However, such medical practitioners cannot be treated as a quack and proceeded on the basis of any complaint under the provisions of the Indian Penal Code. The said decision rendered by this Court is squarely applicable to the facts of this case.

4. In the light of the above decision of this Court, a Mandamus is issued to the effect that so long as the petitioners are practicing in their branch of medicine, viz., Siddha, the respondents are restrained from initiating any action against the petitioners. However, it is open to the respondents or their officials to verify and find out whether the petitioners are practicing in other field, viz., allopathy and if the petitioners are practicing in allopathy field, or they are violating any law, it is open to the respondents to initiate action against the petitioners in accordance with law. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Secretary to Government
The State of Tamil Nadu
Home Department
Fort St. George
Chennai - 600 009
2. The Commissioner
The State of Tamil Nadu
and Secretary to Government
Health and Family Welfare Department
Fort St. George, Chennai - 600 009
3. The Director General of Police
Kamarajar Road
Mylapore, Chennai - 600 004
4. The Registrar
Tamil Nadu Board of Indian Medicine
Arignar Anna Government Hospital of
Indian Medicine Campus
Arumbakkam, Chennai - 600 009

5. The Registrar Tamil Nadu
Siddha Medical Council
Arignar Anna Government Hospital
of indian Medicine Campus,
Arumbakkam, Chennai

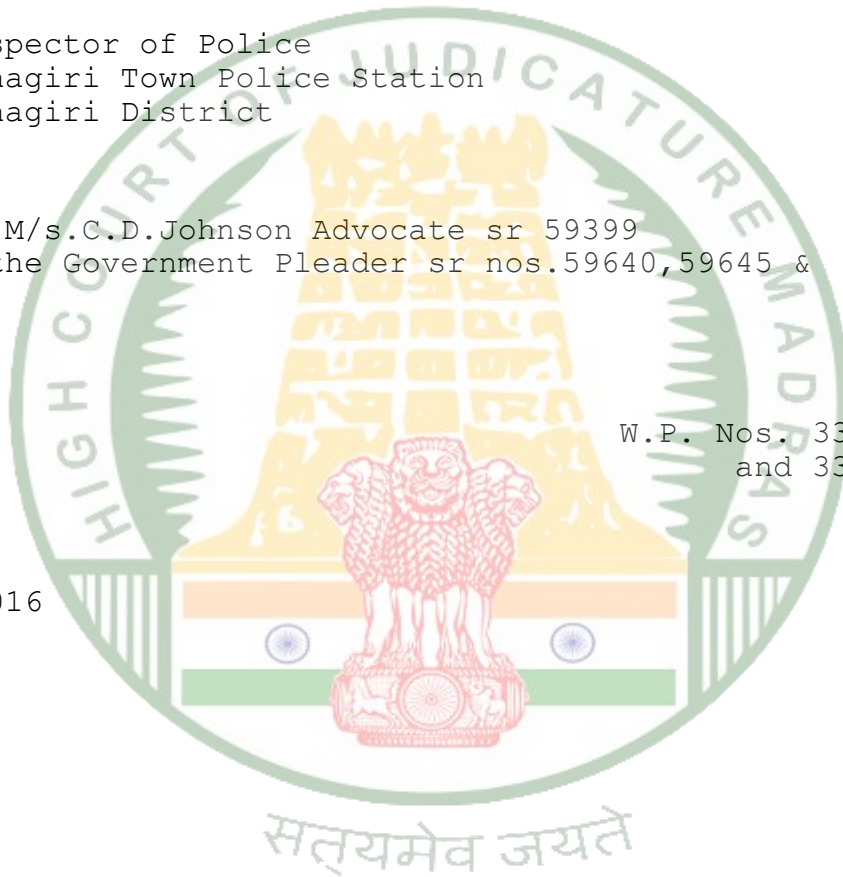
6. The Inspector of Police
Pochampalli Police Station
Krishnagiri District

7. The Inspector of Police
Krishnagiri Town Police Station
Krishnagiri District

+3 ccs to M/s.C.D.Johnson Advocate sr 59399
+1 cc to the Government Pleader sr nos.59640,59645 &
59646

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and 33499 of 2016

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