

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2016

CORAM:

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

W.P. No.40017 of 2016 & W.M.P. No.34080 of 2016

M. Janagavel

Petitioner

vs.

1 The District Collector
Krishnagiri District

2 The Superintendent of Police
Krishnagiri District

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus forbearing the reaponvents, their man/servants/agents/representatives or anybody claiming under them from interfering with the petitioner's place of profession and practice at Bettapanur Village, Sennachantiram Post, Krishnagiri District, without following due process of law.

For petitioner Mr. N. Alagappan

For respondents Mr. V. Jayaprakash Narayanan
Special Government Pleader

ORDER

This writ petition has been filed seeking a writ of mandamus forbearing the reaponvents, their man/servants/agents/representatives or anybody claiming under them from interfering with the petitioner's place of profession and practice at Bettapanur Village, Sennachantiram Post, Krishnagiri District, without following due process of law.

2 According to the petitioner, he has obtained diploma from the Indian Board of Alternative Medicines registered by the Government of West Bengal for practising in Allopathic system of medicine and he is being harassed by the second respondent police. Hence, the present writ petition seeking the aforestated relief.

3 At the threshold, it is pertinent to point out that the petitioner has not even made the concerned police as a respondent in this writ petition. That apart, the very genuineness of the certificate enclosed by the petitioner in the typed set of papers has to be verified.

4 Under such circumstances, no blanket order of injunction as prayed for by the petitioner, can be granted, in the light of the recent judgment dated 20.10.2016 rendered by this Court in *Private Medical Practitioners Association of India, Central Office, represented by its President, C.S. Agarwal, No.6600 Bahadurkar Road, New Delhi 100 006 vs. The State of Tamil Nadu represented by the Commissioner and Secretary to Government, Health and Family Welfare Department, Fort St. George, Chennai 600 009 and 2 others (W.P. No.9691 of 2006 and Crl.O.P. Nos.5790 to 5793 of 2013)*, which was rendered following the unreported judgment dated 23.01.2007 of the Supreme Court in Civil Appeal No.336 of 2007 (*Private Medical Practitioners Association vs. The State of Tamil Nadu*

and others), whereby and whereunder, the Supreme Court 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/-."

5 In view of the above, this writ petition stands dismissed. It is made clear that as and when the petitioner is called for enquiry by the police, he shall appear for enquiry and satisfy the authorities that the

certificate produced by him is genuine. If it is found that he is having a bogus certificate, it is open to the police to take appropriate action against the petitioner in accordance with law. No costs. Connected W.M.P. is closed.

14.12.2016

cad

To

- 1 The District Collector
Krishnagiri District
- 2 The Superintendent of Police
Krishnagiri District

P.N. PRAKASH, J.

cad

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