

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2017

CORAM:
THE HONOURABLE MR. JUSTICE B.RAJENDRAN

WRIT PETITION No.203 of 2017

1. Dr.Kent A. Krishnaswamy
 2. C.Venkataraman
 3. A.Kumar
 4. O.M.Rajendran
 5. S.Shajahan
 6. N.K.Dhakshinamurthy
 7. V.Kavitha
 8. L.Valli
 9. S.Ayath Basha
 10. N.Marappan
 11. A.V.Alavudeen
 12. A.Kathija Beevi
 13. S.Periyasamy
 14. S.R.Ananthan
 15. S.Jeganathan
 16. K.Muthusamy
 17. S.M.Subramani
 18. K.Senthilkumar
 19. V.Shanmugam
- ... Petitioners

vs.

1. The State of Tamil Nadu,
rep. 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,
rep. by Secretary to the Government of India,
Ministry of Health,
New Delhi.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus forbearing the respondents concerned from interfering with the petitioners' right to practice on Community Medical Service by using 31 essential drugs mentioned in the CMS Certificate issued by W.R.M.A. (World Rural

Medical Association), New Delhi, in order to promote primary health care awareness in rural areas, under the World Health Organisation (WHO) directive/guidelines and with undergone required amount of training.

For Petitioners : Mr.Karthikeyan Sekar
For Respondents : Mr.S.Rajeswaran,
Special Government Pleader

O R D E R

Petitioners have come up with this Writ Petition seeking to forbear the respondents concerned from interfering with their right to practice Community Medical Service by using 31 essential drugs mentioned in the CMS Certificate issued by W.R.M.A. (World Rural Medical Association), New Delhi, in order to promote primary health care awareness in rural areas, as per the guidelines of the World Health Organisation (WHO).

2. According to the petitioners, they are Community Medical Service practitioners practising in limited forms of Medical Sciences, after successfully completing Community Medical Service, i.e. CMS Course examination. It is their case that Community Medical Services (CMS) is persuaded by WHO on the pattern of approved guidelines 'Essential Drugs Primary (E.D.P) Healthcare', under which a trained Healthcare worker can serve the society in particular rural areas. The period of the said course is 12 months and three months compulsory clinical Training is given by a duly recognised Institution.

3. It is the case of the petitioners that they have been practising for more than ten years as Community Medical Service practitioners among the downtrodden people in the rural areas at remote places. It is their grievance that they are being harassed by the local police for extraneous reasons. In order to continue their service to the people, the petitioners are before this Court with the above direction.

4. Heard the learned counsel on either side and perused the material documents available on record.

5. This Writ Petition deserves dismissal at the threshold. At the outset, all the petitioners claim that they are qualified with Community Medical Service course, which is intended to promote primary health care awareness in rural areas. But, the fact remains that they are not registered medical practitioners.

6. I had an occasion to deal with similar type of cases in W.P. Nos. 33497, 33498 and 33499 of 2016. For better appreciation of the case, relevant portion of the order dated 19.10.2016 passed in the above Writ Petitions, is extracted hereunder:

"2. ... 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 practising 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. "

7. Undoubtedly, police personnel will not interfere with the practice of the registered medical practitioners. It is the unregistered medical practitioners like that of the petitioners, who are being interfered. There are allegations against such unregistered practitioners that they indulge even in termination of pregnancy. Such practice is intolerable in the eye of law.

8. Following the decision cited supra, this Court by an order dated 03.01.2017 in W.P.Nos.43872 to 43882 of 2016, finding no merits in the claim of the petitioners therein, dismissed the said Writ Petitions. In view of the above and taking note of the fact that the petitioners are not qualified Medical practitioners, this Court finds no merit to consider their case. Hence, this Writ Petition fails and stand dismissed. No costs. Consequently, connected W.M.P.No.196 of 2017 is closed.

aeb

Sd/-

Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

To:

1. The Commissioner and Secretary to Government,
State of Tamil Nadu,
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 the Government of India,
Ministry of Health, Union of India,
New Delhi.

+1 CC to Mr.Karthikeyan Sekar Advocate SR.NO.1107

+1 CC to The Govt Pleader SR.NO.1672

Order in

W.P.No.203 of 2017

GMI [CO]

MK:08/03/2017

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