

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

WRIT PETITION No.43872 to 43882 of 2016

P.Manikandan	... Petitioner in W.P.No.43872 of 2016
A.M.Thangamurugan	... Petitioner in W.P.No.43873 of 2016
P.Annadurai	... Petitioner in W.P.No.43874 of 2016
S.Sridharan	... Petitioner in W.P.No.43875 of 2016
M.Abdul Kani	... Petitioner in W.P.No.43876 of 2016
S.K.Thanikachalam	... Petitioner in W.P.No.43877 of 2016
S.David	... Petitioner in W.P.No.43878 of 2016
M.Yasir Arabath	... Petitioner in W.P.No.43879 of 2016
S.B.Jameel Ahamed	... Petitioner in W.P.No.43880 of 2016
A.Karuppiah	... Petitioner in W.P.No.43881 of 2016
T.Ananth	... Petitioner in W.P.No.43882 of 2016

vs.

- 1.Union of India
rep. by its Secretary to Government of India,
Ministry of Health and Family
Welfare Department,
New Delhi.
- 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 Deputy Director of Health Services,
471 & 472, Bharathiyar Commercial Complex,
Avinashi Road,
Tiruppur - 625 014.
- 4.The Director General of Police,
State of Tamil Nadu,
Mylapore,
Chennai 600 004. ... Respondents in all Writ Petitions

Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of writs of mandamus directing the 2nd respondent to regularize the practice of the petitioners as Private Medical Practitioners under the Para Medical Service

as per the Instructions of Government of India, vide Letter No.4-6/78 MPT, dated 24.11.1972.

For Petitioner in all W.Ps. : Mr.C.Yokesh

For Respondents in all W.Ps. : Mr.S.Rajeswaran,
Special Government Pleader

C O M M O N O R D E R

As the issue involved in all the Writ Petitions is one and the same, all the cases are taken up for disposal by a common order.

2. These Writ Petitions are filed for a direction to the 2nd respondent to regularize the practice of the petitioners as Private Medical Practitioners under the Para Medical Service as per the Instructions of Government of India, vide Letter No.4-6/78 MPT, dated 24.11.1972.

3. According to the petitioners, they are practising modern Allopathic system of Medicine for more than 14 years on the basis of practical experience. At the same time, they are qualified to practice Siddha, Unani and Naturopathy. It is their further case that the Government of India advised the State Governments to introduce suitable legislation for amending the State Medical Acts, so as to allow those who have been practising modern medicine for a period of not less than ten years, continue the practise. Thereafter, the Government of India issued instructions to the States vide their letter dated 11.06.1982 and 15.07.1986 that the further entry of unqualified medical practitioners should be stopped and the problems of existing unqualified medical practitioners should be solved by taking urgent actions.

4. The grievance of the petitioners is that some of the members who are practising as private medical practitioners are being harassed by the police authorities and in some places, they were arrested and remanded to judicial custody. Hence, they made a representation to the 2nd respondent to regularise their services as Private Medical Practitioners. Pending consideration of the same, they are before this Court.

5. All these Writ Petitions deserve dismissal at the threshold. At the outset, all the petitioners claim that they are qualified by the Indian Board of Medicine to practise Siddha, Unani and Naturopathy. It is also their claim that they are practising modern Allopathic system for more than 14 years, which they are doing without any prescribed training.

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. In view of the above decision and taking note of the fact that the petitioners are not qualified Allopathic practitioners, this Court finds no merit to consider their case. Hence, these Writ Petitions fail and stand dismissed. No costs. Consequently, connected W.M.P.No.37701 to 37711 of 2016 are closed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To:

- 1.Secretary to Government of India,
Union of India
Ministry of Health and Family
Welfare Department,
New Delhi.
- 2.The Secretary to Government,
State of Tamil Nadu,
Health and Family Welfare Department,
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- 3.The Deputy Director of Health Services,
471 & 472, Bharathiyar Commercial Complex,
Avinashi Road,
Tiruppur - 625 014.
- 4.The Director General of Police,
State of Tamil Nadu,
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Chennai 600 004.

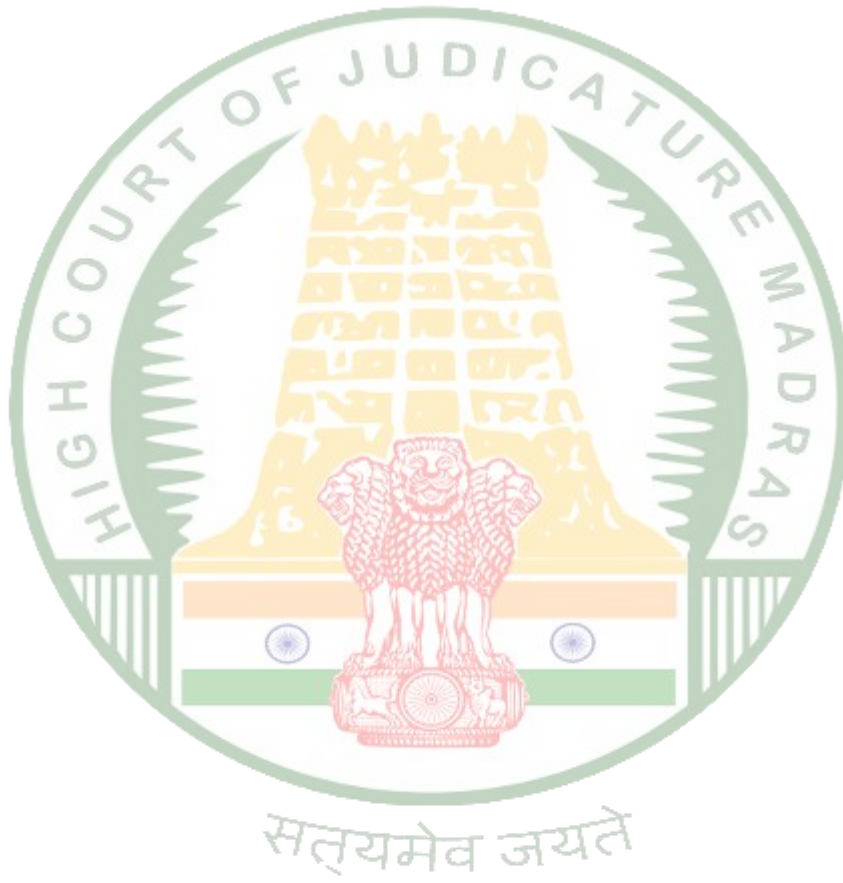
+11cc to Mr.C. Yokessh, Advocate (SR.
318,317,316,315,314,313,312,311,310,319,320)

+1cc to the Government Pleader SR. 758

W.P.Nos.43872 to 43882 of 2016

GJI (CO)
VR(1/03/2017)

03.01.2017



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