

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15027 of 2016

- =====
1. Dr. Sunil Kumar Jha son of Sri Vinod Jha, resident of Mohalla Gharhara, P.O.-Gharhara, P.S. Suppi, District Sitamarhi, president Indo Alternative Medical Association. At present resident of village Marhan Khurd, P.S. Karja, District Muzaffarpur (Bihar)
 2. Dr. Rajeev Ranjan, son of Sri Shatrughan Prasad Sinha, resident of Mohalla – Susta, P.S. Sadar, District Muzaffarpur, at present resident of village Marhan Khurd, P.S. Karja, District Muzaffarpur (Bihar)

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary-cum-Health Commissioner, Government of Bihar, New Secretariat, Patna

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Mani Bhushan Kumar, Adv.
For the Respondent/s : Mr. Ajay Behari Sinha-GA8

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 07-03-2018

The writ petition has been filed by the two petitioners inter alia for a direction to the State Government to make arrangement for registration of Alternative Medicines Practitioners in similar manner like other Medical Practitioners or to enact a law for regulating the same.

The petitioners claim to be graduate(s) in the filed of alternative medicines from Indian Board of Alternative Medicine, Calcutta. The certificate of the petitioners are enclosed at Annexure-4 series. The petitioners seek recognition of their qualification by the Bihar Medical Council and also claim registration under the Clinical Establishments (Registration and Regulation) Act, 2010 (hereinafter referred to as



‘the Act’).

The petitioners had earlier moved this Court for the self same relief in C.W.J.C. No. 1713 of 2016 which was sought to be withdrawn for making application under Section 10 of ‘the Act’ before the competent authority. The writ petition was permitted to be withdrawn with the liberty so prayed. The petitioner thereafter filed a modification application bearing M.J.C. No. 1299 of 2016 seeking liberty to make application before the Bihar Medical Council under the Bihar Medical Council Act, 1933 as well. The prayer was allowed and the liberty was granted vide order passed on 13.04.2016 which also forms part of Annexure-1.

The application of the petitioner for registration under the Bihar Medical Council Act, 1933 was rejected by the Registrar, Bihar Council of Medical Registration vide order passed on 02.08.2016 enclosed at Annexure 3 inter alia on grounds that it is only such of the system of medicine which finds mention in Schedule II of the Indian Medical Council Act which can be granted registration by the Council and since the Indian Board of Alternative Medicine is not included in the schedule hence the Council is not authorized to grant registration. It is feeling aggrieved by such decision that the two petitioners are before this Court.

A counter affidavit is filed on behalf of the respondent No.2 the



Secretary –cum- Health Commissioner and in which it is stated that the degree possessed by these petitioners under the System of Alternative Medicine has not been given recognition by the Government of India under the provisions of the Clinical Establishments (Registration and Regulation) Act, 2010. It is further mentioned that although such prayer has been refused by the Bihar Council of Medical Registration and communicated vide letter dated 28.7.2016 at Annexure-3 but the same has not been questioned. The respondents in reference to the provisions of ‘the Act’ more particularly in Section 2(h) have stated that the recognized System of Medicine as defined, does not include the System of Alternative Medicine nor the said system has been recognized by the Central Government.

In sum and substance, the opposition to the prayer made by the respondents in the counter affidavit is that the System of Alternative Medicine is neither recognized under ‘the Act’ for grant of registration nor is the System recognized by the Government of India.

I have heard learned counsel for the parties and I have perused the records and it is during the course of hearing that a judgment of the Delhi High Court has been produced arising from C.W. P. No. 4015 of 1996 and C.M. No. 8468 of 1997. The writ petition was filed questioning the mushroom growth of institutions claiming to impart



medical degrees which were in violation of the Indian Medical Council Act, 1956, the Indian Medicine Central Council Act, 1970, the Homeopathic Central Council Act, 1973 and the Indian Medical Degrees Act, 1916. The complaint of the writ petitioner who appeared in person was that these institutions were causing incalculable damage to the Public health and the criticism made by the writ petitioner includes the qualification awarded by the Medical College of Alternative Medicine, Calcutta which according to the said institutions, had the recognition of the Department of Health and Family Welfare, Government of West Bengal.

According to the writ petitioner before the Delhi High Court, the degrees and diplomas being issued by these institutions was unauthorized and not recognized under any of the Acts referred to above and the institutions granting such degrees were unapproved. It is after serving notice on these institutions with no result forthcoming from the Government to curb the menace that the petitioner filed the writ petition in question. The Medical Council of India filed their affidavit and in which it was admitted that the provision contained in the Indian Medical Degree Act, 1916 and the Indian Medical Council Act, 1956 applied only to the field of Allopathy System of Medicine. It was further mentioned that the right to practice in Homeopathy was being regulated by the Homeopathy Central Council Act, 1973 while



the Ayurvedic System of Medicine was regulated by the Indian Medicine Central Council Act, 1970. It was mentioned that the Electropathy/Electrohomeopathy System of Medicine was not covered by any of the enactments in question nor had been granted recognition nor there was any legislation regulating the same. The Medical Council of India also admitted in their affidavit that they had received complaints regarding the Indian Board of Alternative Medicines, which awarded degrees and diploma in Indo Allopathy, a medical system which is unheard in Allopathy Medicine System.

The Division of the Delhi High Court taking note of the seriousness of the issue raised by the public spirited person, examined the issue whether or not the institutions imparting degrees in Alternative Medicines were debarred under any law from running any medical course against which complaint had been made. On examination of the various provisions of the Indian Medical Council Act, 1956, the Indian Medicine Central Council Act, 1970, the Homeopathy Central Council Act, 1973, the Indian Medical Degrees Act, 1916, the University Grants Commission Act, 1956, the Division Bench of the Delhi High Court observed as follows:

“

.....
On a conspectus of the provisions extracted above it may be seen that the persons possessing medical qualifications granted by universities or medical institutions included in Schedules I, II & III of aforesaid 1956 Act and enrolled on State Medical Register or Indian Medical Register alone can



practice Allopathy system of medicine. Persons holding any medical qualification from a University, Board or Medical Institution included in Schedules II, III & IV of the said Act of 1970 and enrolled on State Register or Central Register only are eligible to practice Ayurveda, Sidha and Unani systems of medicine. Similarly persons having medical qualifications granted by Universities, Boards or Medical Institutions included in Schedules II & III of 1973 Act and enrolled on State Register or Central Register alone are entitled to practice Homoeopathy.....

.....

At the same time, as the law stands there seems to be no legal prohibition in granting diplomas and certificates for the courses conducted by respondents 10 to 16. Our country has a large number of unemployed youths and it is not difficult to lure them by the institutes like respondents 10 to 16 as the issue of certificates/diplomas for practicing the systems other than the recognized one, is almost guaranteed by them. Judicial notice can be taken of the fact that such institutes do not possess proper infrastructure for teaching and training the students and they make misleading claims. These are run purely on commercial considerations and the efficacy of their systems in treating the patients is yet to be established scientifically. Therefore, in public interest functioning of the institutes like respondents 10 to 16 deserves to be checked and regulated by making legislation by the Central/State Governments. On the aspect of prescribing minimum standards for medical education etc. we may notice the provisions made in the aforesaid Acts of 1956, 1970 & 1973.

.....

Turning to the advertisement appearing in Hindustan Times dated July 17, 1996, respondent No.12 claims that Council of Alternative System of medicine is recognized by the Department of Health & Family Welfare, Government of West Bengal and Accepted by the Medical Council of India respondent No.5. In the reply affidavit filed on behalf of respondent no. 5, it is denied that such an acceptance was accorded by it to respondent no.12. Claim as made in the said issue of the newspaper is thus not only false but also misleading. The right to carry on trade, occupation and profession does not carry with it any right to misrepresent.



Considering the nature of the problem as is evident from the aforesaid discussion, we issue the following directions:-

1. The Central/State Governments shall consider making legislation prescribing:

- (a) grant of licences to the existing and new institutes conducting courses in Electropathy and other alternative systems of medicine.**
- (b) Minimum standards of education and checked on the functioning of such institutes on the lines set out in Sections 17, 18, 19 and 19A of the Medical Council Act, 1956:**
- (c) Minimum qualification for getting admission in such institutes:**
- (d) Conditions entitling these institutes to issue diplomas and certificates: and**
- (e) Right to use the prefix 'Doctor' and to issue medical certificates to the patients by diploma/certificate holders from such institutes.**
- (f) Respondent No. 10 shall forthwith delete the misleading statements printed on pages 47 and 50 of the prospectus issued by it.**
- (g) Respondent no. 12 shall not make misleading claim in regard to its having been recognized by the Medical Council of India/respondent No.5 in the advertisements.**
- (h) Adequate publicity through the media shall be given by the Government(s) informing general public about respondents 10 to 10 and similar other institutes not being recognized and affiliated with any of the Councils under aforesaid Acts of 1956, 1970 & 1973**

The operation of the order dated January 30, 1997 as modified by the order dated March 12, 1997 is extended further for a period of six months from today.

Copy of this order be sent by the Registry to the Health Secretary, Government of India and the Chief Secretaries of All the States and Union Territories for doing the needful in the matter

Petition is disposed of in terms of the aforesaid directions.”



The judgment of the Delhi High Court referred to above was appealed against by the Union of India in S.L.P.(Civil) No. 11262 of 2000 but was dismissed vide judgment and order passed by the Supreme Court on 24.11.2000.

It is rather surprising that the issue having been already addressed upon by the Delhi High Court and directions issued to the Union as well as the Chief Secretary of all States, for taking necessary steps in this regard for enacting legislation for regulating such courses and for curbing the menace, yet, as the records reflect, no steps have been taken by the respondents to address themselves on the issue in the light of the directions so present.

Be that as it may, in the nature of the circumstances accompanying the dispute raised, the refusal by the Bihar Council of Medical Registration to grant registration to the petitioners under ‘the Act’ suffers no infirmity requiring indulgence.

The writ petition is dismissed.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	14.03.2018
Transmission Date	NA

