IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.06.2019

CORAM:

THE HON'BLE MR. JUSTICE P.D.AUDIKESAVALU

W.P. Nos. 2106 and 2112 of 2019
and
W.M.P. Nos. 2362, 2366 and 12688 of 2019

A.M. Thangamurugan ... Petitioner in W.P. No. 2106 of 2019

P. Manikandan ... Petitioner in W.P. No. 2112 of 2019

-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 the Government,
   Health and Family Welfare Department,
   Secretariat,
   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 both WPs)

Common Prayer:- Writ Petition filed under Article 226 of Constitution of India, seeking for a Writ of Mandamus, directing the Respondents to consider the Petitioner's representation dated 05.12.2016.

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For Petitioner : Mr. C. Yokesh (in both W.P.s)

For Respondents: Mr. J. Madanagopal Rao,
Central Government Standing Counsel
(for R1 in both W.P.s)

Mr. R. Venkatesh,
Government Advocate
(for R2 to R4 in both W.P.s)

C O M M O N O R D E R

The Petitioners, who are unqualified medical practitioners claim to have made a common representation dated 05.12.2016 to the Government of Tamil Nadu, represented by its Commissioner and Secretary, Health and Family Welfare Department seeking to grant permission to practice medicine for their livelihood so as to avoid coercive action and arrest by the Police Authorities, which lowers their image before the people of their locality. In support of the said claim, it is portrayed as if the State Government on the directions of the Central Government is contemplating to regularize their practice and till a final decision is taken in this regard their practice should not be interrupted by any of the law enforcing agencies.

2. The First Respondent has filed Counter Affidavit dated 15.04.2019 opposing the Writ Petitions contending inter alia that the provisions under Indian Medical Council Act, 1956, strictly require only persons whose name has been registered in the medical register of the concerned State Medical Council alone could practice medicine, meaning thereby that practice by persons without such registration entails penal consequences including imprisonment and fine, apart from taking measures to prevent such malpractice.

3. Heard Mr. C. Yokesh. Learned Counsel for the Petitioners, Mr. J. Madanagopal Rao, Learned Central Government Standing Counsel appearing on behalf of the First Respondent and Mr. R. Venkatesh, Learned Government Advocate appearing on behalf of the Second to Fourth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

4. This Court in Private Medical Practitioners Association of India -vs- State of Tamil Nadu (Order dated 20.10.2016 in W.P. No. 9691 of 2006 etc., batch) has extracted circular dated 11.06.1982 issued by the Central Government, which clinches the issue and reads as follows:-

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"7. With an annual out turn of about 13000 medical graduates from 106 recognised medical colleges and a very significant increase in the number of unqualified doctors since 1965 there is no dearth of trained and qualified medical personnel in the country. However, during the past or so, a number of very disturbing reports of gross negligence on the part of unqualified practitioners in various States have come to notice. These reports have also featured in the discussions in the last Session of Parliament in both Houses and a very serious view has been taken of the various incidents leading to serious disabilities and even loss of life. The Government of India, are deeply concerned with the situation and are of the view that there is no longer any justification whatsoever for keeping the penal provisions of the IMC Act in abeyance. Consequently, the instructions contained in this Ministry's letters of 5 th May 1966 and 15 th Jan. 1979 stand withdrawn.

8. The State Govts./Union Territories are requested to take action on the most immediate basis, to put an end to the problem of unqualified medical practitioners as well as to ensure that there is no fresh addition whatsoever of unqualified persons to the stream of the petitioners.

9. Action taken in the matter may please be intimated to this Ministry most early."

In the said decision of this Court, an unreported judgment of the Hon'ble Supreme Court of India in Private Medical Practitioners Association of India -vs- State of Tamil Nadu (Judgment dated 22.01.2007 in Civil Appeal No. 336 of 2007) has also been referred, and the same reads as follows:-

"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.

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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 3 rd 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/-."

On the basis of the aforesaid circular of the Central Government and the binding ruling of the Hon'ble Apex Court, that Writ Petition and connected matters seeking similar relief have been rejected.

5. It is evident from the aforesaid extracted portions of the circular of the Central Government and the aforesaid binding decision that the contentions of the Petitioners are baseless and cannot be entertained in the absence of any legal right. As

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such, the question of considering their representations does not even arise for consideration.

6. In that view of the matter, there are no merits in the Writ Petitions and accordingly, the same are dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The Secretary to the Government of India,
Ministry of Health and Family Welfare Department,
New Delhi.

2. The Commissioner and Secretary to
the Government of Tamil Nadu,
Health and Family Welfare Department,
Secretariat,
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.

+1cc to the Government Pleader, S.R.No.46303

W.P. Nos. 2106 and 2112 of 2019

GJ II(CO)

RRS(19/06/2019)

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