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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. No.31908 of 2019

- 1.Dr.V.Munusamy
- 2.Dr.Agnes
- 3.Dr.A.Suresh Babu
- 4.Dr.M.Uma
- 5.Dr.M.Mani
- 6.Dr.Vimala
- 7.Dr.R.Aravind Kumar
- 8.Dr.K.Kumudha
- 9.Dr.V.Selva Sekar

... Petitioners

Versus

- 1.Union of India Rep.by Secretary,
Government of India,
Ministry of Healthy and Family Welfare,
Nirman Bhawan, New Delhi
2. Neturo Electro Homoeopathy Medicos of India (NEHM),
Rep.by Secretary Dr.N.K.Awasthy,
New Delhi - 110 058.
3. Government of Tamil Nadu,
Rep.by Secretary,
Health & Family Welfare,
Fort St.George, Chennai - 600 009.
4. The Registrar,
Tamil Nadu Board of Indian Medicine/
Tamil Nadu Siddha Medical Council/
Tamil Nadu Homoeopathy Medical Council,
Arumbakkam, Chennai- 600 106.
5. The Joint Director of
Medical & Rural Health Service & Family Welfare,
Dharmapuri District, Dharmapuri.



6. The Joint Director of
Medical & Rural Health Service & Family Welfare,
Kanchipuram District,
Kanchipuram.

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7. The Joint Director of
Medical & Rural Health Service & Family Welfare,
Thiruvallur District,
Thiruvallur.

8. The Joint Director of
Medical & Rural Health Service & Family Welfare,
Vellore District,
Vellore.

9. The Joint Director of
Medical & Rural Health Service & Family Welfare,
Salem District,
Salem.

10. The Joint Director of
Medical & Rural Health Service & Family Welfare,
Villupuram District,
Villupuram.

... Respondents

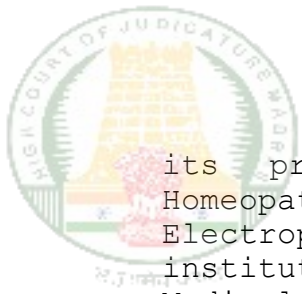
Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to forbear the respondents No.3 to 10 from insisting the petitioners to register their profession as per the Tamil Nadu Clinical Establishment (Regulations) Rules 2018 based on his representation dated 26.08.2019.

For Petitioners	:	Mr. K. Arunraj
For Respondents	:	Mr.G.Baskaran, (for R1 & R2) CGSC.

ORDER

This Writ petition has been filed seeking to forbear the respondents No.3 to 10 from insisting the petitioners to register their profession as per the Tamil Nadu Clinical Establishments (Regulations) Rules 2018 based on their representations dated 26.08.2019.

2.The case of the petitioners is that the petitioners completed their B.E.M.S (Bachelor of Electropathy Medicine and Surgery) a four and half year's duration course, undergone with the recognized college, which is affiliated with the second respondent/Naturo Electro Homeopathy Medicos of India (NEHM). The second respondent is an ISO 9001:2000 certified organization and established under the Societies Registration Act, 1860 and



its primary functions are conducting Electropathy/Electro Homeopathy courses in India and register and regularize Electropathy practitioners in India with the affiliating institutions. The petitioners also completed CMS & ED (Community Medical Service & Essential Drugs) through a recognized para medical institutions, as per the guidelines of World Health Organization. Though Rule 2(1)(i) of the Tamil Nadu Clinical Establishments (Regulations) Rules 2018 contemplates that "Doctor" means and includes a registered medical practitioner offer consultations or treatment under Allopathy or Ayush, the respondents No.3 to 10 are insisting the petitioners to submit their application for registration of their profession. Therefore, the petitioners made their representations on 26.08.2019 through registered post with acknowledgment to the third and fourth respondents to consider their claim and requested them not to insist for registration of their profession. However, till date, their representation has not been considered, in such circumstances, the petitioners are constrained to file this present writ petition.

3. Heard both sides and perused the materials available on record.

4. It is the main contention of the learned counsel for the petitioners that various State High Courts and Apex Court orders recognized the practice of Electropathy/Electro Homeopathy, besides, the Electropathy/Electro Homeopathy practice is duly recognized and protected by the policy decision of the first respondent vide its order dated 05.05.2010. It is also contended that the State Government enacted Tamil Nadu Clinical Establishments (Regulations) Rules 2018, wherein Rule 2(1)(i) defines "Doctor" which means and includes a Registered Medical Practitioner offering consultations or treatment under Allopathy or Ayush and hence, it is clear that Rule 2 (1) does not include the petitioner's profession, i.e. Electropathy/Electro Homeopathy and CMS & ED. However, after enactment of the Rules, the State Government Authorities insisted Electropathy/Electro Homeopathy practitioners to submit their applications for registration, which is contrary to law. It is also their contention that even in the event of the petitioners submitting their applications for registration, the competent authority would certainly reject the applications as there is no enabling provision in the Rules in regard to registration of Electropathy/Electro Homeopathy practice and CMS & ED.

5. On the other hand Mr. G. Baskaran, learned Central Government Standing Counsel would refer to the relevant provisions contained in The Tamil Nadu Clinical Establishments (Regulation) Act, 1997, viz., Rule 2(a)(i)(ii)(iii)(c) and particularly, Rule 2(i)(c) of the said Act, which envisages



"recognized system of medicine" means Allopathy, Yoga, Naturopathy, Ayurveda, Homeopathy, Siddha or Unani system of medicine or any other system of medicine recognized by the Central Government or State Government. Therefore, he submit that in the present case, the petitioners are requested to get their profession registered since the petitioners are admittedly practicing Electropathy/Electro Homeopathy, which is a recognized practice. According to the learned standing counsel, the petitioners' practice would fall under "any other system of medicine" recognized by the Central Government or State Government and hence, it is necessary to register their profession as required under Section 4 of the Tamil Nadu Clinical Establishments (Regulation) Act, 1997 and as such, they were rightly directed by the respondents to submit their application for registration of their profession in terms of Rule 7 of the Tamil Nadu Clinical Establishments (Regulation) Act, 2018. Therefore, the learned Standing counsel sought for dismissal of the Writ Petition.

6. Having heard the learned counsel on either and on going through the entire records as well as the relevant Rules and the provisions of the Act, I find considerable force in the contentions raised on behalf of the respondents. It is not in dispute that even by opening private clinics, petitioners are practicing Electropathy/Electro Homeopathy, which is a recognized system of medical practice as contemplated under The Tamil Nadu Clinical Establishments (Regulation) Act, 1997. Electropathy is a new system of medicine by which balance is maintained between lymph and blood of a diseased person and by regulating the lymph and blood in the body, the patient gets cured. This can be termed as "alternative system of medicine". It is relevant to extract Section 2(c) of the Act, which reads as under:

"2(c) "recognized system of medicine" means Allopathy, Yoga, Naturopathy, Ayurveda, Homeopathy, Sidha or Unani System of medicine or any other system of medicine recognized by the Central Government or State Government."

7. A perusal of the above, it is explicit that recognized system of medicine means, any system of medicine recognized by the Central Government or State Government. Even according to the petitioners, it is admitted fact that by virtue of the dictum of the Hon'ble Apex Court and various High Courts, the practice of Electropathy/Electro Homeopathy has been notified as a recognized practice and it has been recognized and protected by the policy decision of the first respondent vide proceedings No.250011/276/2009 H.R. Dated 05.05.2010. The petitioners, having obtained diploma/certificate course in Electropathy/Electro Homeopathy, themselves added prefix to



their name with "Dr." as could be seen from the cause title mentioned in the affidavit filed in support of the writ petition and thereby, they are making publicity in the minds of the patients as Doctors and medical practitioners. Even by opening private clinics, the petitioners are treating patients, though they are not practicing in medicine. In such circumstances, they cannot seek a Mandamus to restrain the respondents from calling upon them to register their profession. In order to regulate their profession, it appears that the respondents started insisting for registration of their profession so that there should be regular checks by the authorities. Even as per B.E.M.S.Registration Certificate, it has been clearly mentioned that the registration certificate is valid for five years from the date of issue and that the petitioners were declared as qualified persons to practice Electropathy and medicines prepared only by NEHM of India provided by Rules and Regulations.

8.The only apprehension expressed by the learned counsel appearing for the petitioners that in the absence of enabling provision or Rule in the Act, even if they submit their applications for registration of their profession, the authority would certainly reject the same. This apprehension is wholly a misconceived one since it is only based on their presumption. In order to practice Electropathy/Electro Homeopathy, it is incumbent upon the petitioners to register their name by submitting application for registration either in person or by registered post with acknowledgment due as required under Rule 7 of the Tamil Nadu Clinical Establishments (Regulations) Rules, 2018 to the competent authority in Form(I) with necessary fees of Rs.5,000/- by way of DD in favour of Joint Director of Medical and Rural Health Services as such with prescribed application. Thereafter, on receipt of such application for registration, under Rule 8, the competent authority, shall after satisfying itself that the applicant fulfills all the requirements of the Act and Rules, grant a registration Certificate in Form-II within 180 days from the date of receipt of the application. In case the petitioners' claim is rejected as apprehended by them, they are having appeal remedy under Rule 14 of the Rules before the competent authority. Therefore, even before subjecting themselves to the above contemplated procedure, it is not appropriate on the part of the petitioners to presume that their application would be rejected and they could not freely conduct their practice.



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9. For the foregoing reasons, this Court does not find any merit to entertain the Writ Petition. Accordingly, the Writ Petition fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar (CS-III)

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Sub Assistant Registrar

klt

To

1. The Secretary,
Union of India,
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi.
2. The Secretary,
Neturo Electro Homoeopathy Medicos of India (NEHM),
New Delhi - 110 058.
3. The Secretary,
Health & Family Welfare,
Fort St. George, Chennai - 600 009.
4. The Registrar,
Tamil Nadu Board of Indian Medicine/
Tamil Nadu Siddha Medical Council/
Tamil Nadu Homoeopathy Medical Council,
Arumbakkam, Chennai- 600 106.
5. The Joint Director of
Medical & Rural Health Service & Family Welfare,
Dharmapuri District, Dharmapuri.
6. The Joint Director of
Medical & Rural Health Service & Family Welfare,
Kanchipuram District, Kanchipuram.
7. The Joint Director of
Medical & Rural Health Service & Family Welfare,
Thiruvallur District, Thiruvallur.



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Vellore District, Vellore.

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9. The Joint Director of
Medical & Rural Health Service & Family Welfare,
Salem District, Salem.

10. The Joint Director of
Medical & Rural Health Service & Family Welfare,
Villupuram District, Villupuram.

+1cc to Mr.K.Arunraj, Advocate, SR.No.97331.

+1cc to Mr.G.Basjkaran, Advocate, SR.No.97023.

+1cc to Government Pleader, SR.No.97620.

W.P.No.31908 of 2019

PP (CO)
CSR(02/01/2019)