

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2019

CORAM:

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

W.P. No. 30010 of 2018
and
W.M.P. No. 35023 of 2018

V. Eswaran

... Petitioner

-vs-

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
2. The State of Tamil Nadu,
Rep. by its Commissioner and Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
3. The Director General of Police,
Kamarajar Road,
Chepauk,
Chennai - 600 005.
4. The Registrar,
Tamil Nadu Board of Indian Medicine,
Arignar Anna Government Hospital of
Indian Medicine Campus,
Arumbakkam,
Chennai - 600 106.
5. The Inspector of Police,
Vellore Taluk Police Station,
Kanniyambadi,
Vellore District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India, seeking for a Writ of Mandamus, forbearing the Director General of Police, Kamarajar Road, Chepauk, Chennai - 600 005., namely the Third Respondent herein

from initiating any police action by labeling the Petitioner as unqualified as he is the Registered Indian Medical Practitioner and thus ensure the safety of his profession in the field of Indian System of Medicine in Ayurvedha.

For Petitioner : Mr. R. Suresh Babu

For Respondents: Mr. A. Kumar,
Additional Advocate General,
assisted by Mr. M. Karthikeyan,
Additional Government Pleader.

O R D E R

The Petitioner claims to be a registered Indian Medical Practitioner in the field of Ayurveda with the Fourth Respondent, viz., the Tamil Nadu Board of Indian Medicine, with registration No. BA-22430 with effect from 28.03.1994 and as such, he is authorized to practice in the field of Indian Medicine. Relying on such registration, the Petitioner seeks to ensure his safety to carry on profession in the field of Indian System of Medicine of Ayurveda and has filed this Writ Petition seeking to forbear the Third Respondent, viz., the Director General of Police, Chennai, from initiating any action by labeling him as unqualified.

2. The Second to Fourth Respondents have filed Counter Affidavit dated 04.07.2019 stating that the certificate dated 28.03.1994 produced by the Petitioner that he has been registered with the Tamil Nadu Board of Indian Medicine with registration No. BA-22430, is a fake one, which has no validity and on verification, it has been confirmed that his name does not find place in the register maintained by the Tamil Nadu Board of Indian Medicine and that the signatures and seal found in those certificates are forged for which complaint has been lodged against the Petitioner at the concerned Police Station for taking appropriate criminal action. It is contended that in such circumstances, the Police Authorities are absolutely justified in taking action against unqualified medical practitioners like the Petitioner and the Petitioner cannot claim any immunity from the same and endanger human lives and deceive innocent public. It is explained that certificates for the Siddha, Ayurveda and Unani practitioners have been awarded initially by the Central Board of Indian Medicine during the British era from 1933 onwards, which was issued up to 1982 for the registered siddha medical practitioners with the prescribed qualification of "B" Class Certificate and thereafter, the Tamil Nadu Board of Indian Medicine has been formed during the year 1982 in G.O. (Ms.) No. 1637, Health and Family Welfare Department dated 07.08.1982 issued by the Government of Tamil

Nadu, which issues certificates for Ayurvedic, Siddha and Unani practitioners from then onwards. It is also stated that the said registration No. BA-22430 relates to one Dr. S.N. Manicka Mudaliar, S/o. Nachimuthu Mudaliar of Erode District and not that of the Petitioner.

3. 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:-

"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.

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.

4. It is evident from the aforesaid binding decision coupled with the factual verification of the certificates claimed to be held by the Petitioner that his contentions are false and baseless.

5. In that view of the matter, there are no merits in the Writ Petition and accordingly, the same is dismissed. The Respondents shall proceed further to take appropriate action for prosecution of the Petitioner in accordance with law, apart from taking effective steps to protect the general public from the menace created by deceitful persons like the Petitioner. Consequently, connected Miscellaneous Petition is closed. No costs.

vjt

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to the Government of Tamil Nadu,
Home Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
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 Director General of Police,
Kamarajar Road,
Chepauk,
Chennai - 600 005.

4. The Registrar,
Tamil Nadu Board of Indian Medicine,
Arignar Anna Government Hospital of Indian Medicine Campus,
Arumbakkam,
Chennai - 600 106.
5. The Inspector of Police,
Vellore Taluk Police Station,
Kanniyambadi,
Vellore District.

W.P. No. 30010 of 2018

Kak(12/09/2019)



WEB COPY