



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.06.2020

CORAM:

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

W.P. No.6547 of 2020
and W.M.P.No.7771 of 2020

Dr. K.M. Senthamizhselvan,
State President,
Ayush Medical Welfare Association,
No.75, Vaithiyar Street,
Cheyyaru-60407
Thiruvannamalai District.

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Represented by its Principal Secretary,
Department of Health and Family Welfare
Fort St.George
Chennai-600 009

2. The Director Indian Medicine and Homeopathy
Arignar Anna Government Hospital Campus
Arumbakkam
Chennai-600106

3. Director of Medical and Rural Health Services
Government of Tamil Nadu
D.M.S. Campus, Teynampet
Chennai

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus or Writ or order or direction or any other nature of writ to direct the 3rd Respondent herein to dispose of the representation dated 12.09.2018 and consequently direct the 3rd Respondent by bringing and including the association for necessary amendments relating to the Ayush system of medicine and surgery in the rules framed in G.O. Ms. No.206 Health and Family Welfare (Z2) dated 01.06.2018 and pass such other suitable orders and thus render justice.



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For Petitioner : Mr.T.V.G. Kartheeban
For Respondents : Mr. Jayaprakash Narayanan,
State Government Pleader

O R D E R

SENTHILKUMAR RAMAMOORTHY, J.

The Petitioner is the State President of the Ayush Medical Welfare Association (the Association). The acronym, Ayush, represents ayurveda, yoga, unani, siddha and homeopathy. On 1 June 2018, the Health and Family Welfare Department, Government of Tamil Nadu, issued G.O.Ms. No.206, Health and Family Welfare (Z2), whereby rules were framed under section 14 (1) of the Tamil Nadu Clinical Establishments (Regulation) Act, 1997 (the TN Clinical Establishments Act/Rules, as the case may be). The TN Clinical Establishments Rules provide for the registration of clinical establishments. Rule 6 stipulates that every clinical establishment should fulfil the requirements specified in Annexure 1. Annexure 1 specifies the requisite facilities for allopathic clinical establishments under Part A and for clinical establishments that practice the Indian system of medicine or homeopathy under Part B.

2.The case of the Petitioner is that the members of the Association are qualified to practice different systems of medicine such as ayurveda, yoga, unani, siddha and homeopathy under various legislations such as the Indian Medicine Central Council Act, 1970, the Homeopathy Central Council Act, 1973, the Tamil Nadu Registration of Practitioners of Integrated Medicine Act, 1956, the Tamil Nadu Homeopathy System of Medicine and Practitioners of Homeopathy Act, 1971 and the Tamil Nadu Siddha System of Medicine (Development and Registration of Practitioners) Act, 1997. By virtue of their qualifications, they are also qualified to practice integrated medicine, i.e. by combining one of the systems of Indian medicine with allopathy.

3.According to the Petitioner, the TN Clinical Establishment Rules are contrary to the aforesaid legislations in as much as the members of the Association are unable to register their clinical establishments for the purpose of practising integrated medicine. It is contended that the parent legislations permit duly qualified practitioners to practice integrated medicine along with the specific system of Indian medicine in which such person is qualified. Therefore, a mandamus is prayed for in order to amend the TN Clinical Establishment Rules.



4. We heard the learned counsel for the Petitioner and the learned AGP on behalf of the Respondents. The learned counsel for the Petitioner reiterated the statements in the affidavit and contended that the members of the Association are duly qualified under relevant legislation to practice not only the systems of Indian medicine but also integrated medicine. The statutory right of the members of the Petitioner Association is infringed by the TN Clinical Establishment Rules, which do not provide for the registration of a clinical establishment for the purpose of practising integrated medicine. The Petitioner submitted a representation, in this regard, on 12.09.2018 and the rejection thereof is, therefore, unlawful and, consequently, the Petitioner is entitled to a direction to amend the rules. The learned counsel also pointed out that this Court ordered a status quo in another writ petition seeking similar relief.

5. On the contrary, the contention of the learned AGP is that the members of the Association are not entitled to register a clinical establishment for the purpose of practising anything other than the specific system of Indian medicine in which such members are qualified. The rules provide for minimum facilities for such clinical establishments. If a clinical establishment fulfils the requirements, it can be registered; otherwise not. In addition, the learned AGP contended that a writ of mandamus cannot be issued to amend rules. In this regard, he relied upon the judgments of the Supreme Court in State of Jammu & Kashmir v. A.R. Zakki (State of Jammu & Kashmir) 1992 Supp. (1) SCC 548; Union of India v. Deoki Nandan Aggarwal (Deoki Nandan Aggarwal) 1992 Supp (1) SCC 323; P. Ramachandra Rao v. State of Karnataka (Ramachandra Rao) (2002) 4 SCC 578; and Supreme Court Employees Welfare Association v. Union of India (Supreme Court Employees Welfare Association) (1989) 4 SCC 187.

6. We considered the submissions of the learned counsel for the respective parties and examined the records. The preliminary issue to be considered is whether a mandamus can be issued for the amendment of rules. It is pertinent to note that the Petitioner has not challenged the constitutional validity of the TN Clinical Establishment Rules by praying for a declaration that the rules are ultra vires the controlling parent legislation. The settled legal position is that a writ of mandamus would lie if a public authority declines to perform a public duty in spite of being called upon to perform such duty. In this case, the Petitioner called upon the first Respondent to amend the TN Clinical Establishment Rules so as to enable the members of the Association to practice integrated medicine and also to include the Association as a member of the state and district committee established under the Rules. Thus, it is evident that the writ petition has not been filed in respect of a failure to perform a public or statutory duty. On the other hand, the writ petition is filed so as to force the public authority to amend its rules. In our view, a writ of mandamus cannot be issued for this purpose. In



State of Jammu & Kashmir (cited supra), it was held, in relevant part, as under in paragraph 10:

" A writ of mandamus cannot be issued to the legislature to enact a particular legislation. Same is true as regards the executive when it exercises the power to make rules, which are in the nature of subordinate legislation."

7. In paragraph 18 of the judgment in Deoki Nandan Aggarwal (cited supra), the Supreme Court concluded that the High Court exceeded its jurisdiction and power in amending and altering the provisions of the relevant service rules. In paragraph 29 of the judgement in Ramachandra Rao (cited supra), the Supreme Court concluded that the court could not have prescribed periods of limitation. In the judgment in Supreme Court Employees Welfare Association (cited supra), in the context of the rule making power of the Chief Justice of India under Article 146(2) of the Constitution, the Supreme Court concluded, in paragraph 112, that no court would direct the President of India to grant approval and that a writ of mandamus will not lie to compel a person to exercise a legislative function in a particular fashion. Thus, it is abundantly clear that the present writ petition is not maintainable.

8. In addition, we find that the TN Clinical Establishment Rules deal with the registration of clinical establishments. For this purpose, minimum facilities have been specified in the annexure to the Rules. These minimum facilities are stipulated separately for the practice of allopathy and for the practice of systems of Indian medicine and homeopathy. Needless to say, such minimum facilities are prescribed in public interest and, in particular, in the interest of public health. The grievance of the Petitioner appears to be that the Rules do not enable the registration of a clinical establishment for the practice of integrated medicine. Upon perusal of the legislations that the Petitioner relies upon, we find that these legislations do not deal with the regulation of clinical establishments by specifying the requisite facilities for the registration of such clinical establishments. Instead, they specify the qualifications and registration requirements for the practice of particular systems of medicine, including integrated medicine, by individuals who intend to practice those systems of medicine. On the contrary, on perusal of Annexure-I to the TN Clinical Establishments Rules, it is evident that the infrastructure, staff and equipment requirements for consulting rooms, clinics, hospitals, etc. are stipulated. Therefore, even de hors the conclusion that a writ of mandamus is not maintainable for the purpose of amending the relevant rules, we are of the view that the Petitioner has failed to make out a case of conflict between the extant legislations and the TN Clinical Establishments Rules.



9. In the result, this writ petition is liable to be and is hereby dismissed. Consequently, the connected miscellaneous petition is closed. However, there will be no order as to costs.

s/d-
Assistant Registrar(CS-III)

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Sub-Assistant Registrar

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To

1. The Government of Tamil Nadu
represented by its Principal Secretary
Department of Health and Family Welfare
Fort St. George
Chennai-600 009

2. The Director Indian Medicine and Homeopathy
Arignar Anna Government Hospital Campus
Arumbakkam
Chennai-600106

3. Director of Medical and Rural Health Services
Government of Tamil Nadu
D.M.S. Campus, Teynampet
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RSV(CO)
RMP(14/07/2020)