

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2022

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.15682 of 2010
and MP No.1 of 2010

M.Aswathanarayana, RAMP,PMP

...Petitioner

.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 Government
Health and Family Welfare Department
Fort St.George, Chennai 600 009.
3. The Director General of Police
State of Tamil Nadu
Mylapore, Chennai-4.
4. The Medical Council of India
Rep.by its Secretary, Pocket-14, Sector-8
Dwaraka Phsase-1
New Delhi -110 077.

...Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the respondents from taking penal action against the petitioner under the provisions of Medical Council Act, 1956 and Drugs and Cosmetics Act 1940 and direct the 2nd respondent to regularize the practice of the petitioner as a Private Medical Practitioner.

For Petitioner : Mr.K.Rajendra Prasad

For Respondents : Mr.C.Sathish
Government Advocate
for R 2 & R 3

Mrs.Shubharanjani Ananth
Standing Counsel for NMC
for R 4

ORDER

This writ petition has been filed for the issue of a writ of mandamus forbearing the respondents from taking penal action against the petitioner under the provisions of the Medical Council Act, 1956 and Drugs and Cosmetics Act 1940 and to further direct the 2nd respondent to recognize the petitioner as a Private Medical Practitioner.

2. Heard Mr.K.Rajendra Prasad, learned counsel for the petitioner, Mr.C.Sathish, learned Government Advocate for R 2 & R 3 and Mrs.Shubharanjani Ananth, learned Standing Counsel for R 4.

3. The Medical Council of India has filed an affidavit and for proper appreciation, the relevant portions of the affidavit are extracted hereunder:

11. Without prejudice and in addition to the submissions made herein before it is further most respectfully submitted that under the Indian Medical Council Act, 1956 (hereinafter the Act) only person who possess recognised medical qualifications are entitled to practice medicine in any State. The relevant provisions of the Indian Medical Council Act, 1956 are reproduced hereunder for the kind perusal of this Hon'ble Court:-

"2 (f) "medicine" means modern scientific medicine in all its branches and includes surgery and obstetrics, but does not include veterinary medicine and surgery".

(h) "recognised medical qualification: means any of the medical qualification included in the Schedules",

12. It is submitted that the provisions of Section 2(f) defines "medicine" to be modern scientific medicine in all its branches and includes surgery and obstetrics, to the exclusion of all other, Section 2(h) define a "recognised medical qualification" to be one which is recognised and included in any part of the Schedule to the IMC Act which entitles the holder of such a qualification to be entitled to get registered in a State Medical Council or Medical Council of India. In terms of the Act, only those persons who possess recognised medical qualifications entered in the Schedule to the IMC Act, are entitled to practice

allopathic medicine in any State and any contravention to this provision may attract punishment and imprisonment in terms of Section 15(3) of the Act.

13.It is submitted that no provision of any State enactment can have the effect of diluting the privileges of any registered medical practitioner whose name is entered in the Indian Medical Register. It has been held by the Hon'ble Supreme Court in the cases of - MCI Vs. State of Karnataka - (1998) 6 SCC 131 and Dr.Preeti Srivastava .v. State of M.P. - (1999) 7 SCC 120) - that the IMC Act being a Central legislation relatable to entry 66 of list - I of the VIIth Schedule to the Constitution of India, any provision of any State enactment which is contrary to or in conflict with any of the provisions of the Act, shall be repugnant.

4.The learned Standing Counsel appearing on behalf of the 4th respondent also brought to the notice of this Court the judgment of the Hon'ble Supreme Court in Poonam Verma .v. Ashwin Patel reported in AIR 1996 SC 2111 , Dr.Mukhtiar Chand .v. State of Punjab reported in 1998 7 SCC 579 and the Division Bench judgment of this Court in All India Association of Private Medical Practitioners .v. State of Tamil Nadu reported in 2002 4 CTC 577.

5.It is clear from the above judgments and also the counter affidavit filed by the Medical Council of India that only those persons, who possess recognised medical qualifications as provided under the Act, are entitled to practice medicine in any State and any contravention will attract penal action and punishment as provided under the Act. It is also clear from the Division Bench of this Court that no person can be permitted to practice medicine only on the basis of the experience without any qualification. It was also made clear that in the light of the statutory provisions, any guidelines or directions issued by the Government or any other authority which runs contrary to the statutory provisions, is unenforceable in law. It was made sufficiently clear that no one can be permitted to practice medicine without possessing necessary qualification as provided under the relevant Act.

6.In view of the above, this Court does not find any merits in this writ petition and accordingly the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

KP

To

- 1.The Secretary to Government of India
Union of India
Ministry of Health and Family Welfare Department
New Delhi.
- 2.The Commissioner and Secretary to Government
State of Tamil Nadu
Health and Family Welfare Department
Fort St.George, Chennai 600 009.
- 3.The Director General of Police
State of Tamil Nadu
Mylapore, Chennai-4.
- 4.The Secretary
Medical Council of India
Pocket-14, Sector-8
Dwaraka Phsase-1
New Delhi -110 077.

+1cc to Government Pleader SR. No. 39884

W.P.No.15682 of 2010

PL (CO)
PR (25/07/2022)