



WEB COPY



W.P.No.1211 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.1211 of 2020

I.Dorairaj

... Petitioner

Vs.

1.The State of Tamil Nadu

Represented by Chief Secretary to Government
Secretariat,
Fort St.George,
Chennai.

2.The Ministry of Health and Family Welfare

Represented by its Secretary to Government
Namakkal Kavignar Maaligai,
Fort St.George,
Chennai.

3.The Director General of Police,

Office of the Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the first respondent to consider the representation made by the petitioner dated 18.08.2019 for issuing notification / G.O. pertaining to registration of unqualified medical practitioners in the field of Allopathy/ Modern medicines.



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For Petitioner : Mr.C.P.Palanichamy
For Respondents : Mr.M.Alagu Gowtham
Government Advocate

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Mandamus directing the first respondent to consider the representation made by the petitioner dated 18.08.2019 for issuing notification / G.O. pertaining to registration of unqualified medical practitioners in the field of Allopathy/ Modern medicines.

2.The case of the petitioner is that the petitioner is an unqualified medical practitioner and the Government of India, Ministry of Health and Family Welfare Department issued a Circular dated 08.07.1986, directing the State Government to amend the Medical Act and to recognize the unqualified medical practitioners and inorder to avail such benefit, the petitioner made representation dated 18.08.2019 to the respondents, however, the same was not considered. Hence, this writ petition.

3.The learned counsel appearing for the petitioner submitted that without going into the merits of the case, it would suffice, if this Court issue direction to the respondents to consider the petitioner's



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representation dated 18.08.2019 and to pass appropriate orders within a reasonable time frame.

4.The learned Government Advocate submitted that the very same issue was already considered by this Court in W.P.No.9691 of 2006 etc., batch and following the Hon'ble Apex Court judgment dated 23.01.2007 in Civil Appeal No.336 of 2007 (Private Medical Practitioners Association Vs. The State of Tamil Nadu and others), this Court dismissed the said writ petition on 20.10.2016.

5.It is useful to extract hereunder the relevant portion of the order of this Court dated 20.10.2016 made in W.P.No.9691 of 2006 etc., batch [Private Medical Practitioners Association of India Vs. The Commissioner and Secretary to Government]:

"19.Further, the Supreme Court, in the unreported judgment dated 23.01.2007 in Civil Appeal No.336 of 2007 (Private Medical Practitioners Association vs. The State of Tamil Nadu and others), has conclusively sealed such claims in the following emphatic words and dismissed the appeal with costs quantified at Rs.50,000/-:

"Counsel for the parties have been



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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 13 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



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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



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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 3rd 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/-."

20.Ex consequenti, this writ petition has to suffer dismissal and is accordingly dismissed and consequently, the order of interim injunction passed by this Court on 06.04.2006 stands vacated. Costs made easy."

6.Following the decision cited supra, this writ petition is dismissed. No costs.

28.03.2023

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Speaking Order/ Non Speaking Order
Index: Yes/ No Internet: Yes/ No

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To

- 1.The Chief Secretary to Government
Secretariat,
Fort St.George,
Chennai.
- 2.The Ministry of Health and Family Welfare
Represented by its Secretary to Government
Namakkal Kavignar Maaligai,
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M.DHANDAPANI,J.
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