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W.P. No.27670 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.09.2023

Pronounced on : 22.12.2023

CORAM: JUSTICE N.SESHASAYEE

W.P. No.27670 of 2023
and WMP.No.27141 of 2023

A.Shidarthan
Proprietor
Rishi Acupuncture Centre
Door No.4, SKT Complex
Trichy - Palladam National Highway
Panaipalayam
Tiruppur.

... Petitioner

Vs.

1.Government of India
Ministry of Health and Family Welfare
(Department of Health Research)
Nirman Bhavan, New Delhi.

2.The State of Tamil Nadu
Rep by its Secretary to Government
Health Department
Fort St.George, Chennai.

3.The Joint Director
Health and Rural Welfare Services
Tiruppur District.

4.The District Collector
Tiruppur.

... Respondents



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PRAYER: Writ petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus, calling for the records relating to the notice dated 21.07.2023, in Na.Ka.No.4826/TV/2023 of the third respondent herein and quash the same and consequently forbearing the respondents from interfering with petitioner's right of continuing his practice in acupuncture in his clinics in the name of Rishi Acupuncture Centre in Tiruppur District.

For Petitioner : Mrs.A.L.Gandhimathi
Senior Counsel
Assisted by Mr.L.Palanimuthu

For Respondents : Ms.M.E.Saraswathy
Senior Panel Counsel for R1

Mr.G.Ameedius
Government Advocate for R2-R4

ORDER

The petitioner herein seeks a direction to the respondents not to interfere with his right to practice acupuncture and run acupuncture clinics in the name of Rishi Acupuncture Centre in different places of Tiruppur District and Dindigul District.

2.The petitioner claims that he is a B.Com graduate and has also obtained a diploma in acupuncture science in Alagappa University in first class in



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April, 2019. He thereafter established four acupuncture clinics under the name and style of Rishi Acupuncture Centre at three places in Tiruppur District and one at Palani in Dindigul District.

3.The ICMR though has recognized acupuncture as an alternate mode of therapy, its practice has not been monitored by any institutionalized body for supervision and regulation. Even the Ministry of Health and Family Welfare, Government of India has also noticed it Vide its proceedings dated 21.02.2019 and has constituted an Apex Committee on acupuncture for the promotion and regulation of acupuncture as a system of medicine.

The terms of reference of the Apex Committee is as below:

“(i) To frame detailed guidelines for promotion and regulation of acupuncture as a system of Healthcare/Therapy.

(ii)To suggest steps for implementation of the guidelines so framed as well as for reimbursement for Acupuncture;

(iii)To suggest appropriate authority/Department for implementation of the guidelines.

(iv) To submit its final report to the Government within a period of three months from the date of the first meeting of the committee;”

4.While so, on 17.07.2023 few people came to the petitioner's centre and alleged some person who had taken acupuncture therapy in the



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petitioner's centre some months ago had died on 12.07.2023 due to heart attack while getting treatment from M/s.SV Clinic, Palladam and that after his death they had found that the deceased has spoken to the petitioner from his cellphone and when they realized that the deceased had not taken any treatment in the petitioner's acupuncture centre, they left. However, a Tamil daily Dinakaran, in its newspaper dated 18.07.2021 carried a news item that the relatives of the deceased garrowed the petitioner at his centre, which invited the local bodies to interfere in the matter and that it had come to know that the deceased was only consulting with his centre.

5. Acting on the aforesaid news item, the District Committee constituted under Section 2D of the Tamil Nadu Clinical Establishments (Regulation) Act, 1997 inspected the Rishi Acupuncture Centre at Tiruppur and directed the petitioner to close all the four Acupuncture Centres, as running the same contravened G.O.Ms.No.171, Health and Family Welfare Z(2) Department dated 27.06.2016. This is under under challenge.

6. Heard both sides. The learned counsel for the petitioner submitted that



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the Tamil Nadu Clinical Establishments (Regulation) Act, 1997 will not apply to acupuncture and even ICMR and the Government of India in unison are only in the process of framing certain rules for the regulation and practice of acupuncture as a system of healthcare/therapy. Indeed, the Acupuncture Healers Federation (India) had laid W.P.No.34715 of 2019 against the State of Tamilnadu and another for issuance of writ of declaration that the Tamil Nadu Clinical Establishments (Regulation) Act, 1997 and the rules framed thereunder would not be applicable to acupuncture.

7.While considering this petition, the First Court has noted that a certain member of the petitioner association before it had applied for registering his acupuncture clinic under the Tamil Nadu Clinical Establishments (Regulation) Act, 1997 and the same came to be rejected by the Authorities on the ground that acupuncture is not covered under the Tamil Nadu Clinical Establishments (Regulation) Act, 1997 and reiterating the same, the Court has found that there is no cause of action for the petitioner. Another learned Judge of this Court has also accepted acupuncture as a system of therapy, provided the practitioner is properly trained Vide his order dated 14.10.2022 in W.P.No.24857 of 2015.



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8.The learned counsel would further submit that the District Committee constituted under the Tamil Nadu Clinical Establishments (Regulation) Act, 1997 do not have any statutory authority to interfere with the practice of acupuncture by a duly qualified therapist and, inasmuch as the petitioner herein has passed a diploma course in acupuncture in first class from a recognized University, the proceedings of the third respondent to interfere with his practice is illegal.

9.The learned counsel for the respondents relied on a Judgment of this Court in WP(MD)No.10311 of 2016 between All Tamil Nadu Acupuncture and Alternative Medical Association Trust Vs. the State of Tamil Nadu and others, wherein a learned Judge of this Court has directed that the respondents shall ensure that acupuncture as a mode of therapy is practised only by registered medical practitioners and not as an independent system of medicine and added that inasmuch as the petitioner is practising acupuncture as an independent branch, in terms of the settled order passed in WP.No.10311 of 2016, the impugned proceedings of the third respondent is justified.



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10.The rival submissions are carefully weighed. What is not in controversy is that acupuncture as a mode of therapy is yet to be regulated statutorily. Therefore, on the face of it, the Tamil Nadu Clinical Establishments (Regulation) Act, 1997 cannot apply. However, if anyone who is not adequately qualified to practice acupuncture as a mode of therapy practices the same, then it would expose him or her to certain penal consequence but, still the treatment cannot be interfered under the provisions of the Tamil Nadu Clinical Establishments (Regulation) Act, 1997. When courses in acupuncture are conducted by recognized Universities, it necessarily follows that those who are qualified after undergoing the course successfully are entitled to practice the same, as it would fall within the fundamental right of the individuals concerned under Article 19(1)(g) of the Constitution.

11.Therefore, there is no doubt in the mind of this Court that the petitioner is entitled to practice acupuncture and if at all, any Law Enforcement Agency intends to interfere, it can only subject to its satisfaction whether the qualification of the petitioner is genuine or not and once, it is established to be genuine, the Law Enforcement Agency cannot interfere with the right of the petitioner to practice a



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profession/avocation within the meaning of Article 19(1)(g) of the Constitution.

12.If the circumstances that led to the inspection of the petitioner's acupuncture centre is considered, it was triggered by a news paper report. The newspaper report cannot be conclusive proof of what it actually states. Merely because somebody consulted the petitioner cannot be the reason for directing closure of his centre, especially when the death had occasioned due to heart attack. If this logic is extended, then anyone who dies by taking treatment in any known medical institution or alternative medicine may have to close their business and go. The response of the respondents appears to be a response in jittery owing to the newspaper report.

13.This takes this Court to the last leg of this case. In W.P.No.10311 of 2016, a learned Single Judge of this Court has directed that only those who practice other forms of medicine alone can practice acupuncture but, not independently. With due respect, it may have to be held that it does not appear to be consistent with the legal position which has already been explained above.



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14.To conclude, this Court allows this Writ Petition and sets aside the proceedings of the third respondent dated 21.07.2023. No costs. Consequently, the connected miscellaneous petition is closed.

22.12.2023

Index : Yes / No
Speaking order / Non-speaking order
tsg

To:

- 1.The Ministry of Health and Family Welfare
(Department of Health Research)
Nirman Bhavan, New Delhi.
- 2.The Secretary to Government
Health Department
Fort St.George, Chennai.
- 3.The Joint Director
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N.SESHASAYEE.J.,

ds

Pre-delivery order in
W.P.No.27670 of 2023

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