



W.P.No.32004 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 13.04.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.32004 of 2017

- 1.S.S.Jothenathan
- 2.M.P.Subramaniyan
- 3.R.Renuga
- 4.P.Rajaraajan
- 5.S.Vasudevan
- 6.A.Ramesh
- 7.D.Krishnakumar
- 8.R.Venkateswaran
- 9.R.Vignesh
- 10.Amm.Sreenivasan
- 11.R.Elango
- 12.S.Thangadurai
- 13.I.Rajasekar
- 14.S.Sivaramakumar
- 15.R.Ravichandran
- 16.S.Bharani
- 17.S.Alagarasan
- 18.K.Shanmugasundaram
- 19.S.Balakrishanan
- 20.C.Sekar
- 21.A.Hariramar
- 22.P.Gokulakrishanan
- 23.S.Elango
- 24.D.Emamali
- 25.A.Murugesan
- 26.B.Prabakaran
- 27.M.Velusamy



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28.T.Lalitha
29.T.M.Manivannan
30.A.Balasubramaniyan
31.E.Palanivel
32.J.Jaba Anandan
33.T.A.R.Ubaitullah
34.K.Udayakumar
35.K.Thirunavukkarasu
36.J.Shakulhameed
37.A.Ramanathan
38.A.Jebakumar
39.N.Ramachandiran
40.R.Senthamilselvam
41.A.M.Thandavamoorthy
42.S.Kamaraj
43.D.Paramanantham
44.R.Gomathi
45.P.Kaliyaperumal
46.S.Palaniammal
47.G.Kathiravan
48.T.Murugesan
49.K.Nagarajan
50.B.Ranganathan

...Petitioners

Vs.

1.The Secretary,
Ministry of Health & Family Welfare
Department,
156, A.Nirman Bhawan,
New Delhi.

2.The Secretary,
Department of Ayurveda, Yoga & Naturopathy,
Unani, Siddha and Homoeopathy (AYUSH)
Indian Red Cross Society Building,
Red Cross Road, New Delhi – 110 001.



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3. The Registrar,
Department of AYUSH Tamil Nadu,
Arumbakkam,
Chennai – 106.

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents herein to recognition the B class medical practitioners of the petitioners based on education, experience and grant further and other reliefs which the petitioners are entitled to and pass appropriate orders in my representation dated 07.7.17, 27.10.17.

For Petitioners	: Mr.K.M.Boopathy
For R1 & R2	: Mr.T.V.Krishnamachari Senior Panel Counsel
For R3	: Mr.T.Arunkumar Additional Government Pleader

ORDER

The writ of mandamus has been filed to direct the respondents to recognize the petitioners as 'B' class Medical Practitioners based on their education, experience by considering the representation dated 07.07.17 and 27.10.17.

2. Fifty petitioners filed the present writ petition, stating that they are Traditional Healers and possess knowledge for treating the patients. The



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knowledge has been transmitted orally from generation to generation and additionally, the petitioners have passed Diploma in alternate medicine. The parents of the petitioners and their ancestors all are traditional healers in their villages and therefore, the petitioners are to be recognized as Medical Practitioners.

3. The respondent council recognize the degree persons, who passed degree as 'A' Class Medical Practitioners and persons, who passed diploma and possessed five years experience in hospital services as 'B' Class Medical Practitioners. On 08.09.2008, the 2nd respondent recognized the said category of persons studied in Travancore Sidha Vaidya Sangam. Illiterate 10 years Medical practitioners are classified as 'C' Class. In view of the fact that the petitioners are also traditional healers and possessing knowledge in medical practice, they are to be recognized as 'B' class medical practitioners as per the provisions.

4. The law relating to registration of medical practitioners underwent several changes and the 2nd respondent filed a counter affidavit, elaborately stating that the petitioners relied on Section 13-B of the Indian Medicine



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Central Council (Amendment) Act, 2002. Section 13-B is a kind of penal provision, which states that in the absence of prior permission of the Central Government, the Medical qualification granted to a student of a new medical college or a college which has started a higher course of study or a college which has increased its admission capacity would not be recognized. Section 13-C stipulates that (a) all existing medical college (b) Colleges which had started higher courses of study and (c) Colleges which had increased admission capacity would have to seek permission from the Central Government within a period of three years from the commencement of the Amendment Act, i.e., by 06.11.2006.

5. Therefore, the persons, who acquired qualification from the recognized medical institutions alone are entitled to practise as Medical Practitioners under the provisions of the Act. The respondents relied on the judgment of the Hon'ble Supreme Court of India in respect of such medical practitioners and Paragraph No.16 of the counter affidavit states as under:

“16. That the issue of medical practitioners utilizing AYUSH disciplines being subjected to the requirements of statutes pertaining to 'medicine' was before the Hon'ble Supreme Court in



***Kerala Ayurveda Paramparya Vaidya Forum Vs. State of Kerala
and Ors. (2018) 6 SCC 648:***

“4. The sole point for consideration before this Court is as to whether the persons who do not fulfil the prescribed qualification and are not duly registered under the relevant statute, be permitted to practise as “Paramparya Vaidyas”?

5. Learned Senior Counsel for the appellants contended before this Court that in the State of Kerala, a large number of persons are practising in Siddha/Unani/Ayurveda system of medicines known as “Paramparya Vaidyas”, which are in vogue for a long time. They have acquired knowledge and experience from their gurus and parents and by continued practice over a long period of time they have acquired the requisite expertise. After the enactment of the Act, Section 38 empowered the State Government to regulate the qualifications and to provide for the registration of practitioners of modern medicine. It took within its ambit the homoeopathic and indigenous systems of medicine as well. The learned Senior Counsel further contended that due to the promulgation of the Act, the appellants, who were not registered under the Act, were prevented from practising as “Paramparya Vaidyas”. The learned Senior



Counsel further contended that unlike modern systems, medicines for each patient is being prepared after diagnosing the patient according to his requirement considering his age, place, etc. and there is no side effect in the treatment by these systems of medicines.

Finally, it was stressed upon by the learned Senior Counsel for the appellants that it is the custom that was developed in the community that the “Vaidyas” practising in these systems must pass their knowledge and heredity to another in the family. So as a custom of the community, the existing vaidyas have to preserve their old and indigenous systems to retain their heredity and custom. It was also contended that so many vaidyas practising Ayurveda, Siddha, Unani-Tibbi had applied to the Government for licence in compliance with the provisions of the Act but the State Government did not take any positive steps with regard to the same instead the police and other authorities have been harassing them for practising in respective system of medicines without obtaining licence or exemption as per the proviso to Section 38 of the Act.

7. Per contra, the learned counsel for the State contended that there are several persons in the State of



Kerala practising Indian System of Medicine without any qualification or registration which is in flagrant violation of Section 38 of the Act and Section 17 of the Indian Medicine Central Council Act, 1970 (in short “the IMCC Act”). It was further stressed upon that this unauthorised practice is a great threat to the health and life of the people of the State as the practitioners are producing alcoholic preparations and such preparations are being misused without any licence or registration in the guise of prescribing Indian System of Medicines

.....

Traditional or indigenous systems of medicine like Ayurveda/Sidhha/Unani-Tibbi have largely evolved out of sporadic and random processes of research and discovery attributable to various self-styled practitioners of these systems of medicines. With a view to bring about an organised development of these systems and standardise the mode of treatment by the practitioners of these systems, legislations have been framed by both the State Governments as well as the Central Government.

11. As per the Statement of Objects and Reasons of the IMCC Act, the Central Council was to evolve uniform standards of education and registration of practitioners of the indigenous systems of medicine and for that



purpose a Register was to be maintained under the IMCC Act in order to ensure that medicine is not to be practised by those who are not qualified. The IMCC Act does not contemplate any exemption from the provisions in the Act regarding qualification or registration of practitioners in the various branches of indigenous medicine, viz. Ayurveda, Siddha, Unani, etc.

13. The capacity to diagnose the disease would depend upon the fact as to whether the practitioner had the necessary professional skill to do so. Acquisition of professional skill is again a regulated subject and the measure thereof is the possession of a prescribed diploma or degree awarded by a recognised institution. What one might enquire with regard to the right to practise medicine in the light of the above is as to whether the appellants are equipped with such a professional qualification. The answer is, obviously, in the negative, as admittedly, the appellants do not possess any prescribed diploma or degree from a recognised institution for that purpose. Even a person who has acquired the prescribed diploma or degree from a recognised institution would not be entitled to practise medicine unless he is so registered under the provisions of the IMCC Act.



18. *In our country, the qualified practitioners are much less than the required number. Earlier, there were very few institutions imparting teaching and training to the doctors, vaidyas and hakims but the situation has changed and there are quite a good number of institutions imparting education in indigenous medicines. Even after 70 years of Independence, the persons having little knowledge or having no recognised or approved qualification are practising medicine and playing with the lives of thousands and millions of people. The right to practise any profession or to carry on any occupation, trade or business is no doubt a fundamental right guaranteed under the Constitution. But that right is subject to any law relating to the professional or technical qualification necessary for practising any profession or carrying on any occupation or trade or business. The regulatory measures on the exercise of this right both with regard to the standard of professional qualifications and professional conduct have been applied keeping in view not only the right of the medical practitioners but also the right to life and proper health care of persons who need medical care and treatment.*

19.....*The persons having no recognised and*



approved qualifications, having little knowledge about the indigenous medicines, are becoming medical practitioners and playing with the lives of thousands and millions of people. Sometimes such quacks commit blunders and precious lives are lost.

Thus, the Hon'ble Supreme Court has laid down that medical practitioners engaged in AYUSH disciplines are in no manner exempt from requirements under the Indian Medical Central Council Act 1970. The law that has been propounded by the Hon'ble Supreme Court in the aforementioned case is that even AYUSH practitioners are at par with other medical practitioners in so far as their role is concerned, thus they have to be subject to the same requirements and criteria.

6. In the present case, the petitioners have not established that they possess a valid degree from the recognized medical institutions as per the Medical Council Act, Rules and Regulations. Such diploma or degrees obtained from an unrecognised institutions cannot be a ground to claim recognition. In the event of possessing a valid medical qualification, the petitioners are entitled to submit appropriate application before the Council for registration of their names.



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7. Thus, the relief as such sought for in the present writ petition cannot be granted. If at all the petitioners continue to practice medicine without any registration or recognition, they are liable to be prosecuted under the penal provisions of the Act and also under the general law.

8. In this regard, the State authorities are bound to conduct periodical inspections and identify all such medical practitioners, who do not possess valid degree or recognition or permission from the Medical Council and prosecute them in the manner known to law.

9. The Director General of Police, Mylapore, Chennai, and the Director of Public Health and Preventive Medicine, DMS Compound, Chennai are directed to conduct periodical inspections through their subordinates and to identify and prosecute the persons, who all are illegally practising medicine without registration and recognition from the Medical Council.

10. The Right to Life as enshrined under Article 21 of the Constitution of India includes decent medical facilities to be provided. It is



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the duty of the 'State' to ensure quality medical facility to the citizen, which is an integral part of Article 21 of the Constitution of India. Therefore, such inspections are imminent and the authorities are bound to be vigilant in the matter of identifying fake medical practitioners in the interest of public.

11. With these directions, the writ petition stands dismissed. No costs.

13.04.2023

Index : Yes
Speaking order
Neutral Citation: Yes
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Note: Registry is directed to communicate the copy of this order to the Director General of Police, Dr.Radhakrishnan Salai, Mylapore, Chennai – 600 004 and to the Director of Public Health and Preventive Medicine, 359, Anna Salai, DMS Complex, Teynampet, Chennai – 600 006.

To

- 1.The Secretary,
Ministry of Health & Family Welfare
Department, 156, A.Nirman Bhawan,
New Delhi.
- 2.The Secretary,
Department of Ayurveda, Yoga & Naturopathy,
Unani, Siddha and Homoeopathy (AYUSH)

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Indian Red Cross Society Building,
Red Cross Road,
New Delhi – 110 001.

3.The Registrar,
Department of AYUSH Tamil Nadu,
Arumbakkam,
Chennai – 106.

Copy to:

1.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai – 600 004.

2.The Director of Public Health and
Preventive Medicine,
359, Anna Salai, DMS Complex,
Teynampet,
Chennai – 600 006.



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S.M.SUBRAMANIAM, J.

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