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W.P.(MD).No.8982 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.8982 of 2021

Muthusamy

... Petitioner

Vs.

1.The District Collector,
Dindigul District.

2.The Joint Director of Health Services,
Dindigul District.

3.The Regional Medical Officer,
Government Community Welfare Centre,
Vadamadurai, Dindigul.

4.The Thasildhar,
Vedachandur Taluk,
Dindigul District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Mandamus***, to direct the respondents more particularly the respondents 2 to 4 to de-seal the clinic namely, Muthu clinic at



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Sri muthammal complex, R.S.Road, Vadamadurai, sealed on 13.10.2020 by the 4th respondent based on the instructions of the respondents 2 and 3 forthwith by considering the representation dated 23.11.2020 within the stipulated time.

For Petitioner : Mr.D.Venkatesh
For Respondents : Mr.A.K.Manikkam
Special Government Pleader

ORDER

This writ petition is filed for writ of Mandamus, to direct the respondents more particularly the respondents 2 to 4 to de-seal the clinic namely, Muthu clinic at Sri Muthammal Complex, R.S. Road, Vadamadurai, which sealed on 13.10.2020 by the 4th respondent based on the instructions of the respondents 2 and 3 forthwith by considering the representation dated 23.11.2020 within the stipulated time.

2. The petitioner is qualified Diploma in Homeopathic Medicine and Surgery and has obtained the said Diploma from the competent Tamil Nadu Homeopathy Medical Council and he has a valid Medical Registration



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Certificate in Registration No.305, dated 18.11.1986. The petitioner's son is a MBBS Doctor and he is a Registered Medical Practitioner under the Tamil Nadu Medical Council and he is separately having a valid registration certificate in Registration No.TNMC:116223, dated 13.04.2016.

3. The contention of the petitioner is that the petitioner and the petitioner's son are having a clinic in Vadamadurai. The petitioner even though being a Homeopathy Medical Practitioner, has used certain medicines which is prescribed under the Allopathy stream and the petitioner is permitted to prescribe the said medicines for basic necessities for which the petitioner is relying on the circular issued by the respondents in Rc.No.147472/Cr.IV(2)/2010, Office of the Director General of Police, Chennai-600 004, dated 19.06.2010. The relevant portion of the circular is extracted hereunder:

*"Rc.No.147472/Cr.IV(2)/2010, Office of the Director General of Police,
Chennai-600 004, dated: 19.06.2010*

CIRCULAR MEMORANDUM



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Sub: Indian System of Medicine Police action against qualified Indian Medicine Doctors - Instructions issued - Regarding.

Ref: Govt.Lr.No.22715/Lmll(2)/Health Family Welfare Department, dated 15.06.2010 & 16.06.2010.

In the reference cited, the Government have stated that the Police Department in the course of their action against the Quacks has inspected the clinics run by the registered medical practitioners in Siddha, Ayurveda, Homeopathy and Unani and arrested some of them as if they had practiced Allopathy System of Medicine. The Government have informed that as per Section 17(3)-B of the Indian Medicine Central Council Act, 1970 the institutionally qualified practitioners of Siddha, Ayurveda and Unani Tibb Homeopathy are eligible to practice respective systems with modern scientific medicine including Surgery and Gynecology Obstetrics, Anesthesiology, ENT, Ophthalmology, etc. based on the training and teaching.

(2) Hence all Commissioners of Police/Inspectors General of Police, Deputy Inspector General of Police and Superintendents of Police are requested to instruct the Police Officers in the Cities and Districts not to intervene with the practice of registered practitioners of Siddha, Ayurveda, Unani, Homeopathy and Naturopathy who are registered in the Tamil Nadu Siddha Medical Council, Tamil Nadu Board of Indian Medicine and Tamil Nadu Homeopathy Medical Council. If any cases of the Doctors who are already under arrest may be reviewed with reference to the above clarification.

*(3) The letter from the Health & Family Welfare Department at 15.06.2010 is enclosed for perusal. *



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(4) The instructions should be scrupulously followed.

(5) Receipt of this Circular Memo may be acknowledged.

Sd/- K.Radhakrishnan

ADGP(Law & Order)

To:

All Commissioners of Police in the Cities.

All Inspectors General of Police in Zones.

All Deputy Inspectors General of Police in Range.

All Superintendents of Police in the Districts."

/True Copy/Forwarded/By Order/

Personal Assistant (Admn)"

A similar issue was considered by another Learned Single Judge of this Court in the case of Tamil Nadu Siddha Medical Graduates' Association Vs. Letika Saran, IPS, reported in 2010 (4) CTC 798 wherein this Court has held as under:



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“4. In the light of the said Circular, it is imperative that no proceedings can be initiated against any of those registered practitioners in Siddha, Ayurveda, Homeopathy and Unani, who are eligible to practice irrespective of the respective system also with Modern Scientific Medicine including Surgery and Gynecology Obstetrics, Anesthesiology, ENT, Ophthalmology, etc. Such registration of the medical practitioners with Tamil Nadu Siddha Medical Council, Tamil Nadu Board of Indian Medicine and Tamil Nadu Homeopathy Medical Council as well as such of those qualified doctors who were recognised as such by the Madurai Kamaraj University and Tamil Nadu Dr. MGR Medical University who have been qualified respectively in the system of bachelor of Siddha Medicine and Surgery. If any action had been taken against such of those medical practitioners referred to above, it is needless to state that, such action should be dropped forthwith pending further orders in the Writ Petition.”

4. But the learned Counsel appearing for the respondents submitted that there are subsequent circulars which banned the practice. This Court is not inclined to accept the said contention. The respondents are not having any power to ban the practice of a **registered** medical practitioner under the



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alternative medicine stream. When the government vide Govt.Lr.No.22715/Lmll(2)/Health Family Welfare Department, dated 15.06.2010 & 16.06.2010 has stated that the Siddha, Ayurveda, Unani, Homeopathy and Naturopathy are eligible to practice respective systems “with modern scientific medicine including Surgery and Gynecology Obstetrics, Anesthesiology, ENT, Ophthalmology, etc. based on the training and teaching”, then the impugned action of sealing the clinic is against the said circular.

5. The learned Counsel for the petitioner relied on the order of the Hon'ble Division Bench of this Court passed in W.P.(MD)No.6042 of 2006, dated 01.09.2006, wherein it is stated that the Tahsildar is not empowered to seal any premises. Even though the said order is regarding Pollution Control Board and Geology Department, the dictum laid down in the order of the Hon'ble Division Bench of this Court is applicable to the present case. The Tahsildar is not empowered to seal the premises, since the issue ought to be addressed by the health department. Therefore, the respondents cannot seal the



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petitioner's premises. Moreover, the health department has power to regulate and they cannot ban the practice.

6. As stated supra, when there is a circular regulating the practice of the Siddha, Ayurveda, Unani, Homeopathy and Naturopathy etc., therefore, the sealing of the premises is illegal. Therefore, the 4th respondent is directed to remove the seal forthwith.

7. With the above said observation, the writ petition is allowed.

No costs.

27.09.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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Note: Issue order copy on 27.09.2023.



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S.SRIMATHY, J.

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