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W.P.No.6212 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2024

CORAM

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P.No.6212 of 2020

and

WMP.Nos.7303 & 7306 of 2020

Acupuncture Healers Federation (INDIA) (Regd.),
Rep. by its President Mr.Bose K.Mohamed Meera,
Having its Regd. Office at No.50, 3rd Main Road,
Chellapapu Nagar, Reddiarpalayam,
Pondicherry – 605 010.

...Petitioner

Vs.

1. The State of Tamilnadu,
Rep. by its Secretary,
Health Department,
Fort St. George, Chennai – 600 009.
2. The Director of Medical and Rural Health Services,
DMS Complex, Teynampet, Chennai – 600 006.
3. The State level Advisory Committee,
Constituted under the Tamil Nadu Clinical Establishments
(Regulations) Act, 1997 – Act No.19 of 2018,
Rep. by its Chairperson,
DMS Complex, Teynampet, Chennai – 600 006.

...Respondents



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Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records pertaining to the proceedings dated 21.01.2020 of the 3rd respondent in Ref.No.41224/CEA/2/2018 and quash the same insofar as the acupuncture therapy is concerned.

For Petitioner : Mr.B.Murugavel

For Respondents : Mr.E.Sundaram, GA

ORDER

This Writ petition has been filed seeking quashment of the proceedings of the 3rd respondent dated 21.01.2020 bearing Ref.No.41224/CEA/2/2018 insofar as acupuncture therapy is concerned.

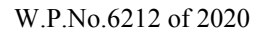
2. It is the case of the petitioner that its association consists of members, experts in acupuncture therapy, which is being practiced worldwide and public at large have also accepted its effectiveness for various ailments. The petitioner submits that qualified persons alone are members of the petitioner association. Act 19 of 2018 came into force on 24.4.2018 in and by which rules were framed under the Tamil Nadu Clinical Establishments (Regulation) Rules, 2018 regulating medical systems under



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Allopathy and AYUSH and for the practitioners to register by issuance of public notice. Following the same, the members of the petitioner association submitted application for registration which did not elicit proper response and in some cases the application was returned with endorsement that acupuncture therapy is not covered under the said Act 19/2018. For relief of recognition, W.P.No.34715 of 2019 was filed before this Court in which direction was issued to dispose of the writ petition. In line with the aforesaid direction, enquiry was conducted and proceedings were drawn by the 3rd respondent dated 21.1.2020 in and by which it was held that Acupuncture is taught as a mode of therapy in Bachelor of Naturopathy and Yogic Sciences (BNYS) course other than registered BNYS graduates no other person is eligible to practice acupuncture. Aggrieved by the aforesaid decision of the 3rd respondent, the present writ petition has been filed.

3. Learned counsel for the petitioner submitted that, the members of the petitioner federation are active members who practice acupuncture therapy are not registered under Tamil Nadu Clinical Establishments (Regulation) Act, 1997 (Act 19 of 2018) inspite of their application for registration. In some of the cases, the expert committee had decided as



4. Per contra, learned Government Advocate appearing on behalf of the respondents, placing reliance on the counter affidavit submitted that in the order of the Government of India issued under Ref.No.R.14015/25/96-U&H(R) (Pt.) dated 25.11.2003 of the Ministry of Health and Family Welfare Government of India have detailed the recommendations of the Committee and the verbatim of the same is as follows.

"The Committee did not recommend recognition to any of these alternative medicines except the already recognized traditional systems of medicines viz., Ayurveda, Siddha, Unani, Homeopathy, and Yoga & Naturopathy which were found to fulfill the essential & desirable criteria developed by the Committee for recognition of a system of Medicine. The Committee has, however, recommended that certain practices as Acupuncture and Hypnotherapy which qualified as modes of therapy could be allowed to be practiced by registered practitioners or appropriately trained personnel. The Committee further suggested that all those Systems of Medicine not recognized as separate systems should not be allowed to continue full time bachelor and Master's Degree courses and the term Doctor should be used only by practitioners of Systems of Medicine recognized by



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Government of India. Those considered as Mode of Therapy can be conducted as Certificate courses for registered medical practitioners to adopt these modes of therapy in their practice, whether modern medicine or Indian Systems of Medicine and Homoeopathy".

5. It is further submitted that acupuncture has been included as a part in the curriculum of the UG degree viz., Bachelor in Naturopathy and Yogic Science (BNYS) offered by the Tamil Nadu Dr. MGR Medical University. With regard to the PG, three Courses are conducted at the Government Yoga and Naturopathy Medical College, Chennai viz., M.D.(Yoga); M.D.(Naturopathy); and M.D. (Acupuncture and energy medicine) and the above said PG Courses are offered by the Government Yoga & Naturopathy Medical College, Chennai as Doctor of Medicine in Yoga & Naturopathy with specialization in Yoga/Naturopathy/Acupuncture and Energy medicine. Further, the institutionally qualified doctors i.e., holders of the degree in BNYS or equivalent degree and registered with the Tamil Nadu Board of Indian Medicine to practice are alone eligible for admission into the said PG Courses in Y&N with specialization in anyone of the branches. It is submitted that the Tamil Nadu Clinical Establishments Act 1997 and the Tamil Nadu Clinical Establishments (Regulation) Rules 2018 are riot



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applicable to the duly qualifies acupuncture therapist like the members of the petitioner association. Since, the system of acceptance has not been covered under Tamil Nadu Clinical Establishment Rules, 2018, it was instructed that uncovered treatment and other thereby, under Clinical Establishment Rules 2018 may be treated as illegal. It is submitted that the Petitioner and similar other members are not entitled to practice Acupuncture as they have not qualified in recognized medical institutions and hold a recognized medical degree issued by any medical university / university as the case may be and they are simply personnel trained in Acupuncture techniques and can tender para-medical services under the supervision of qualified medical practitioners, and moreover one must be qualified himself as a medical doctor before touching the patient and treating. It is submitted that 3rd State Level Advisory Committee has been conducted on 21.01.2020 in the Office of Director of Medical and rural Health Services. It has been discussed as acupuncture is not approved as an independent system of Medicine by the State/Central Government. The member representing the Tamil Nadu Board Indian Medicine stated that Acupuncture is taught as a mode of therapy in the Bachelor of Naturopathy and Yogic Sciences (BNYS) course and the BNYS graduates registered in



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the TNBIM are eligible to practice Acupuncture as a mode of therapy.

However, other than Registered BNYS graduates, no other person is eligible to practice Acupuncture. The Committee accepted the same. Learned counsel further submitted that approved systems of medicine in Tamil Nadu is Allopathy and AYUSH. Hence Acupuncture should be practiced under recognized and qualified doctors from AYUSH system of medicine. Since it is the mode of therapy there is no acupuncture council. Government has no objections in practicing acupuncture therapy under by AYUSH doctors. No person can handle the patient directly except the recognized doctors. It is submitted that Health comes under State subject. Hence the State Government does not bind to Central government. Acupuncture therapy comes a part of the subject under AYUSH system of medicine. The Act extends to the whole of the State of Tamil Nadu. All types of Clinical Establishments are covered, irrespective of ownership, diagnostic/therapeutic services and belonging to all approved systems of medicine. Therefore, no relief as sought for could be granted to the petitioner and, accordingly, prays for dismissal of the writ petition.

6. Heard learned counsel on either side and perused the material



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documents placed on record.

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7. Admittedly, challenging the circular dated 25.09.2020 bearing Na.Ka.No.4047/A3/2019 a writ petition was filed before this court in W.P.No.14751 of 2020 in and by which reference to acupuncture therapy contained in the said circular was sought to be quashed, after consideration, the said writ petition was dismissed by this Court on 4.1.22.

8. In the present case, practice of acupuncture by the members/petitioner federation, the petitioner seeks for the relief of a direction to register the petitioner under the Tamil Nadu Clinical Establishments (Regulation) Act. Though such a prayer is made, it is to be pointed that acupuncture is not an approved form of clinical therapy either by the Medical council of India or AYUSH or by the State/Central Government. It is further evidenced that the experts in the field are yet to accept acupuncture practice as a recognised therapy and, therefore, the said therapy is not recognised either by the State or by the Central Government. When the State and the Central Government have taken a policy decision relying on the views and suggestions of experts, this Court, sitting under Article 226 of the Constitution cannot substitute its views to that of the expert to



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grant any relief to the petitioner. When experts have opined on a particular point in a particular manner, this Court, not being an expert, cannot substitute its views to that of the experts in the field. The said ratio has been consistently followed irrespective of the cases filed before the court and, therefore, this Court cannot take a different route to accede to the request of the petitioner.

9. For the reasons aforesaid, this Writ petition stands dismissed. No costs. Consequently, the connected Miscellaneous petitions are closed.

30.10.2024

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NCC : Yes/ No
Speaking Order : Yes/ No
Index : Yes/ No

To

1. The State of Tamilnadu,
Rep. by its Secretary,
Health Department,
Fort St. George, Chennai – 600 009.
2. The Director of Medical and Rural Health Services,

9/11



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DMS Complex, Teynampet, Chennai – 600 006.

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3. The State level Advisory Committee,
Constituted under the Tamil Nadu Clinical Establishments
(Regulations) Act, 1997 – Act No.19 of 2018,
Rep. by its Chairperson,
DMS Complex, Teynampet, Chennai – 600 006.

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