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W.P.No.8650 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

**W.P.No.8650 of 2021**

**and**

**W.M.P.No.9196 of 2021**

Dr.Monika Eswaran

... Petitioner

-Vs-

1.The Superintendent of Police,  
Vellore,  
Vellore District.

2.The Deputy Superintendent of Police,  
Vellore,  
Vellore District.

3.The Assistant Drug Controller,  
Vellore,  
Vellore District.

... Respondents

**Prayer:-** Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Mandamus, forbearing the respondents and their subordinates from in any manner harassing the petitioner and interfering with her medical practice as a registered medical practitioner to keep allopathic medicines and prescribe the same to her patients.

For Petitioner : Mr.P.Mani

For Respondents : Mr.T.Chandrasekaran

Special Government Pleader



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## **ORDER**

This Writ Petition has been filed forbearing the respondents from in any manner harassing the petitioner and interfering with her medical practice as a registered medical practitioner to keep allopathic medicines and prescribe the same to her patients.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The petitioner is a registered medical practitioner in Ayurveda and registered herself in the Tamil Nadu Board of Indian Medicine. Accordingly, she was qualified to practice the Ayurvedic System of Medicine and Surgery valid for life time. In fact, the petitioner's father was also a registered medical practitioner in Ayurveda. She has been practicing in Ayurvedic and Allopathic System of medicines along with her father, who has been practicing for the past twenty five years. In fact, the Government of Tamil Nadu has also issued order in G.O.Ms.No.248, Health and Family Welfare (IM 2-2)



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Department, dated 08.09.2010 declaring that the registered medical practitioners in Ayurveda, Siddha and Unani Tibb as persons practicing modern scientific system of medicine under the Drugs and Cosmetics Act 1940 and the Drugs and Cosmetics Rules 1945. Even then, the respondents are harassing the petitioner not to prescribe allopathic medicines to the patients. Hence, this writ petition.

4. It is relevant to extract the G.O.Ms.No.248, Health and Family Welfare (IM 2-2) dated 08.09.2010, which is hereunder :-

*“No.II(2)/HF/575/2010 – Whereas, the rights of practitioners of Indian System of Medicine are protected under Section 17(3)(b) of the Indian Medicine Central Council Act, 1970 (Central Act 48 of 1970) ;*

*And Whereas, as per Section 2(1)(3) of the Said Act, “Indian Medicine : means the system of Indian Medicine commonly known as Ashtang Ayurveda, Siddha or Unani Tibb whether supplemented or not by such modern advances, as the Central Council of Indian Medicine may declare by notification from time to time ;*

*And Whereas, the Central Council of Indian Medicine in its Notification F.No.28-5/2004-AY (MM), dated the 19<sup>th</sup> May 2004, has clarified that the ward*



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*“Modern Advances” in clause (e) of Section 2(1) of the said Act as advances made in the various branches of modern scientific medicine in all its branches of internal medicine, surgery, gynaechology and obstetrics, anaesthesiology, diagnostic procedures and other technological innovation made from time to time and declare that the courses and curriculum conducted and recognized by the Central Council of Indian Medicine are supplemented with such modern advances ;*

*And Whereas, the Central Council of Indian Medicines has improved and strengthened the syllabus of Indian Medicine by including subjects with regard to National Programmes like National Malaria Eradication Programmes, Tuberculosis, Leprosy, Family Welfare Programme, Reproductive and Child Health Programme, Immunisation Programme, AIDS, Cancer, etc:”*

5. A perusal of the counter filed by the third respondent and the submission made by the learned Special Government Pleader reveals that the petitioner clinic is located just in front of the Government Medical College Hospital, Velore and the said area is not a remote area and the petitioner is taking advantage of the Government order and started to practice allopathic as full time. Therefore, the innocent public



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got affected.

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6. He also relied upon the Judgment reported in **1996 (4) SCC 332** in the case of **Poonam Verma Vs. Ashwin Patel and others**, in which the Hon'ble Supreme Court of India held that merely because the Anatomy and Physiology of human being is similar, a person who studied one system of medicine could not treat the patient by drugs of another system which he might not have studied. Therefore, the medical practitioners must possess valid license from the statutory authorities. In the absence of any such valid license or otherwise, the enforcing authorities are competent to initiate all appropriate actions.

7. In the case on hand, admittedly, the petitioner is a registered medical practitioner in Ayurveda. As per the Government order as stated supra, the petitioner is entitled to keep allopathic medicines and practice modern scientific system of medicine under the Drugs and Cosmetics Act and the Rules. Accordingly, the petitioner is allowed to keep allopathic medicine and practice in modern scientific system of medicine. If the petitioner has violated any provision of law, the respondents can very well take appropriate action as against the



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petitioner.

8. In view of the above, the respondents shall not interfere with the petitioner's medical practice to keep allopathic medicine and prescribe to the same to her patient. It is also made clear that if the petitioner violates any provision of law, the respondents are at liberty to take appropriate action as against the petitioner in the manner known to law.

9. With the above observations, this Writ Petition stands disposed of. Consequently, connected miscellaneous petition is closed.

No costs.

25.04.2024

Internet : Yes

Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No

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To

1.The Superintendent of Police,  
Vellore,  
Vellore District.

2.The Deputy Superintendent of Police,



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Vellore,  
Vellore District.

3.The Assistant Drug Controller,  
Vellore,  
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**G.K.ILANTHIRAIYAN, J.**

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