



\$~8

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 23rd October, 2024**

+ **CONT.CAS(C) 561/2016**

SUBHASH GARG

.....Petitioner

Through: **Mr. S. C. Singhal and Mr. Saideep Kaushik, Advs.**

versus

S K SRIVASTAVA

.....Respondent

Through: **Ms. Niharika Jauhari, Adv.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. The petitioner is seeking initiation of the contempt proceedings against the respondent, under Sections 10 and 12 of the Contempt of Courts Act, 1971, for the wilful disobedience of the directions of this Court contained in the order dated 04.12.2015 in W.P.(CRL.) No.2796/2015.

2. The case of the petitioner was that there were four persons who did not possess the requisite rehabilitation qualifications and have not registered themselves under the Rehabilitation Council of India Act, 1992 [**“RCI Act”**], yet they are being allowed to practice as Orthotic and Prosthesis professionals. It appears that the petitioner lodged several complaints in this regard but in vain, and therefore, on filing of the aforesaid writ, *vide* order dated 04.12.2015, it was directed that the representation of the petitioner be considered and be decided in



accordance with the law within a period of six weeks. It is the grievance of the petitioner that no action has since been taken and his representation has not been decided.

3. The respondent in its affidavit dated 10.03.2016 filed by Mr. S.K. Srivastava, Member Secretary, Rehabilitation Council of India [“RCI”], *inter alia*, confirmed that the four persons, namely S/Sh. Sham Lal Garg, R. K. Gupta, Vishwas Garg and Krishan Kumar Gupta are not registered as “professional” with the RCI. It was deposed that the RCI *vide* its letter dated 30.07.2015 has made a request to the Secretary, Department of Social Welfare, Government of Punjab to enquire into the matter and to ascertain the allegations against Sh. Sham Lal Garg as well as Mr. Vishwas Garg. It is also deposed that a similar request letter dated 30.07.2015 has also been addressed to the Secretary, Department of Development of Persons with Disability, Government of Uttar Pradesh, for conducting an inquiry against Mr. R.K. Gupta and Mr. Krishan Kumar Gupta. It is further stated that it is the Chief Commissioner for Persons with Disabilities, who, under Section 59 of the Persons with Disabilities (Equal Opportunities, Protection Of Rights And Full Participation) Act, 1995, has the mandate to look into the complaints *inter alia*, with respect to matters relating to deprivation of rights of persons with disabilities and non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Government and the local authorities for the welfare and protection of the rights of persons with disabilities and take up the matter with the appropriate authorities. It is thus stated that



there is no contempt committed by the answering respondent.

4. At this juncture, it may be recorded that during the proceedings on 13.05.2019, it was submitted by the learned counsel for the respondent that pursuant to the direction of this Court dated 04.12.2015, a response was received from the Government of Punjab and it was directed that such responses be placed on the record.

5. It appears that a further direction was given by this Court *vide* order dated 18.12.2023, consequent to which a short affidavit-cum-compliance report dated 18.03.2024 was filed by the respondent through Dr. Sandeep Padmakar Tambe, Deputy Director, RCI, wherein *inter alia* it is deposed that since the four alleged persons were never registered with the respondent, the respondent could not/cannot take any action against the said persons. It is further deposed that a reminder has been sent to the concerned authorities in the States of Punjab and Uttar Pradesh *vide* letter dated 29.12.2023 and again 05.02.2024 and only a response dated 04.03.2024 has been received from the Secretary, Department of Development of Persons with Disability, Government of Uttar Pradesh. It is also pointed out that a letter dated 29.02.2024 has been issued by Mr. Vishwas Garg, who is one of the four alleged practitioners and stated to be the brother of the petitioner, wherein Mr. Vishwas Garg has levelled several allegations against the petitioner demonstrating his animosity towards him.

6. Suffice it to point out that *vide* response received from the State of Uttar Pradesh as regards Mr. R.K. Gupta, the alleged practitioner, it is submitted that there is no voluntary organization being run by the



name of 'Helping Hand Education Society' registered with the Directorate, Department of Empowerment of Persons with Disabilities, Uttar Pradesh, nor is any such organization getting any financial grant from the State Government. It is informed that appropriate directions have been issued to the Director, Department of Empowerment of Persons with Disabilities, Uttar Pradesh to take strict action against Mr. R.K. Gupta. Likewise, as regards Mr. Krishan Kumar, same facts are disclosed in the letter dated 04.03.2024 from the State of Uttar Pradesh.

ANALYSIS & DECISION:

7. Having heard the learned counsels for the parties and on perusal of the record, this Court finds that it is difficult to discern that there is any wilful, deliberate or contumacious non-compliance or disobedience on the part of the respondent in complying with the directions of this Court dated 04.12.2015.

8. First things first, it is evidently shown that appropriate request letters and reminders were sent to the concerned State authorities for conducting an inquiry and initiating appropriate action against the alleged practitioners, but the respondent, being the Central Authority, perhaps cannot do much except regularly correspond with the State authorities either urging or issuing D.O. letters to them, to take appropriate action against the said individuals, since Health¹, Law and Order² are State subjects which form part of List II of the Seventh

¹ Entry 6- Public health and sanitation; hospitals and dispensaries.

² Entry 1- Public order (but not including ³[the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof] in aid of the civil power).



Schedule of the Constitution of India, 1950.

9. Having said that, the plea of the respondent that it is powerless in such matters is not legally sustainable. The Scheme of the RCI Act is to regulate the training of rehabilitation professionals and maintenance of Central Rehabilitation Register and for Matters connected therewith or incidental thereto.

10. Chapter-II of the RCI Act constitutes the Rehabilitation Council of India and Section 3 of the said Act provides that it shall be a body corporate having perpetual succession and a common seal, and it further goes on to enumerating the constitution of the Council, qualification of the Members as also the disqualification of the Members. Chapter-III of the RCI Act provides for functions of the Council and Section 13 of the RCI Act provides as under:-

“13. Rights of persons possessing qualifications included in the Schedule to be enrolled.

(1) Subject to the other provisions contained in this Act, any qualification included in the Schedule shall be sufficient qualification for enrolment on the Register.

(2) No person, other than the rehabilitation professional who possesses a recognised rehabilitation qualification and is enrolled on the Register,

(a) shall hold office as rehabilitation professional or any such office (by whatever designation called) in Government or in any institution maintained by a local or other authority;

(b) shall practice as rehabilitation professional anywhere in India;

(c) shall be entitled to sign or authenticate any certificate required by any law to be signed or authenticated by a rehabilitation professional;

(d) shall be entitled to give any evidence in any court as an expert under section 45 of the Indian Evidence Act, 1872 (1 of 1872) on any matter relating to the handicapped:

Provided that if a person possesses the recognised rehabilitation professional qualifications on the date of commencement of this Act, he shall be deemed to be an enrolled



rehabilitation professional for a period of six months from such commencement, and if he has made an application for enrolment on the Register within said period of six months, till such application is disposed of.

[(2A) Notwithstanding anything contained in sub-section (2), any person being a doctor or a paramedic in the field of physical medicine and rehabilitation, orthopaedics, ear, nose or throat (ENT), ophthalmology or psychiatry, employed or working in any hospital or establishment owned or controlled by the Central Government or a State Government or any other body funded by the Central or a State Government and notified by the Central Government, may discharge the functions referred to in clauses (a) to (d) of that sub-section.

(3) Any person who acts in contravention of any provision of sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

11. Further, the Council is empowered to appoint such number of Inspectors, as it may deem fit, to conduct inspection with regard to any training programme/curriculum or examination, as also standards of education including staff, equipments, accommodation besides regulating the functioning of 'rehabilitation professionals' as defined under Section 2(n) of the RCI Act.

12. Section 25 of the RCI Act further provides as under:

“25. Cognizance of offences.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no court shall take cognizance of an offence punishable under this Act except upon a complaint, in writing, made by any person authorised in this behalf by the Council.”

13. In view of the aforesaid provisions, it is clear that no person other than a rehabilitation professional, who does not possess the requisite qualifications and a certificate of registration from the Rehabilitation Council, can practice in such capacity anywhere in India. Sub-Section (3) to Section 13 of the RCI Act clearly provides



that the contravention of any provision of the said Act invites criminal action, and Section 25 of the said Act provides the mechanism whereby it is clear that a complaint can be filed through the Competent Authority for initiation of criminal prosecution for non-compliance of the provisions of the RCI Act. At the same time, since the alleged violations are apparently happening in outside states, and all crimes being local, there indeed arise jurisdictional issues.

14. Having said that, given the *bonafide* misconception regarding the interpretation of the relevant provisions of RCI Act, besides the apparent overlap of the powers of the Competent Authority under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, this Court is not inclined to take any action in contempt against the respondent.

15. Before parting with this petition, it is, however, provided that while this Court is not inclined to take any action against the respondent for the lapse of considerable time, it shall not preclude the concerned State Authorities from taking appropriate action against the four individuals concerned or anybody else if they are found to be working as ‘rehabilitation professionals’ in contravention of the RCI Act. The respondent is directed to send another request to the concerned quarters to take appropriate action in accordance with law.

16. The present Contempt Petition is accordingly dismissed.

DHARMESH SHARMA, J.

OCTOBER 23, 2024

Sadiq