
(2013) 05 AHC CK 0167

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 32023 of 2013

Dr. Gauri Shankar Gupta and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 31-05-2013

Acts Referred:

Indian Medical Council Act, 1956 — Section 15(2)(b), 2(k)

Indian Medicine Central Council Act, 1970 — Section 2(3), 2(e)

Citation : (2013) 6 ADJ 454 : (2013) 6 ALJ 533 : (2013) 100 ALR 24 : (2013) 3 UPLBEC 2575

Hon'ble Judges : Sunil Ambwani, J;Anjani Kumar Mishra, J

Bench : Division Bench

Advocate : Vijaya Prakash, for the Appellant; J.K. Tiwari and Praveen Shukla, for the Respondent

Final Decision : Dismissed

Judgement

1. We have heard Shri Vijay Prakash, learned counsel appearing for the petitioners. Shri J.K. Tiwari, Standing Counsel appears for the State respondents. Shri Praveen Shukla has accepted notice on behalf of Union of India-respondent No. 6. By this writ petition, the petitioners have prayed for following reliefs:

(i) issue a writ, order or direction in the nature of certiorari quashing the impugned Government Order dated 8.6.2012 in pursuance whereof Chief Medical Officer, Amroha has issued the order dated 10.5.2013 as contained in Annexure 1 to this writ petition.

(ii) issue a writ, order or direction in the nature of mandamus commanding the opposite parties not to interfere in the practicing of the petitioners as medical practitioners in modern medicine (Allopathic Medicine including the surgery) in any manner whatsoever and further the opposite parties may be restrained from taking any coercive steps against the petitioners in pursuance to the Government Order dated 8.6.2012 or for any other reason whatsoever may be.

(iii) issue a writ, order or direction in the nature mandamus commanding the opposite parties particularly opposite party No. 7 to enter the name of the petitioners in the State Medical Register maintained by the opposite party No. 7 as defined u/s 2(k) of the Act No. 102 of 1956.

(iv) issue any other writ, order or direction, which this Hon"ble Court may deem think fit and proper under the facts and circumstances of the case.

(v) cost of the writ petition may be awarded in favour of the petitioners.

2. The petitioners claim to be qualified practitioners in Indian Medicine and have obtained B.A.M.S. degrees, which authorise them to practice Ayurveda, a branch of Indian Medicine. They are enrolled with the Indian Medicine Council, U.P. which authorises them to practice Indian Medicine in the State of U.P. Their right to practice Indian medicines is recognised by the Indian Medicine Central Council Act, 1970.

3. The petitioners have relied upon the syllabus of the BAMS examination compiled by Central Council of Indian Medicine to authorise them to treat patients and prescribe Indian medicine including modern medicine in accordance with the advances made by the Indian medicines and to perform surgical operations. It is stated that the petitioners have studied the advances made in the modern medicine, which also includes the Allopathic Medicine and that having acquired the knowledge in its use and thus they are entitled to practice and prescribe Allopathic Medicines as well.

4. The petitioners are aggrieved by the orders passed by the Principal Secretary, Government of UP dated 8.6.2012 in which while issuing directions to take action against unqualified and unauthorised medical practitioners the State Government has also directed that where the medical practitioners in Ayurveda, Homeopathy, Unani, Siddha and Tibbi are found prescribing Allopathic and Modern Medicines, a first information report should be lodged against them. They should also be restrained from running any diagnostic centres, which are connected with tests for sex determination.

5. The petitioners are also aggrieved by the orders passed by the Chief Medical Officer, Amroha dated 10.5.2013 by which the petitioners have been prohibited to prescribe Allopathic Medicines in compliance with the Government Orders dated 8.6.2012.

6. Learned counsel for the petitioners submits that the petitioners have acquired the knowledge by studying the modern medicine in their discipline, on the strength of which they are entitled to prescribe the Allopathic Medicines. They have relied upon the notification issued by the Indian Medicine Central Council dated 8.4.2002, by which they have been authorised to prescribe modern medicine on the advances made in their branch of medicine.

7. The petitioners have studied Ayurveda which is a special branch of medicine, practiced in India for ages. They have been awarded degrees in Ayurveda branch

of Indian Medicine (BAMS) which authorises them to practice Ayurveda. Their syllabus did not include Allopathic medicines nor they have studied the Pharmacology, which is the science of Allopathic Medicines. The medicines made out of organic substances and inorganic chemicals used in Allopathy require special knowledge both in preparation and administering such medicines as well as their reactions on the human body, in its use for treatment. The composition of the organic compounds of Allopathic Medicines and its effect on human body is neither taught nor practiced in any branch of Indian medicine.

8. The question of inter-disciplinary interference between different branches of medicines has been subject-matter of consideration of Supreme Court and of this Court. The judicial pronouncements have repeatedly prohibited and discouraged the practice of prescribing medicines by persons, who have not acquired the knowledge and skills in preparation and prescription of such medicines and its affects on human body.

9. In National Integrated Medical Association and another v. State of Kerala, WA No. 1260 of 2006 (A) decided on 12.12.2006 the High Court of Kerala at Ernakulam held that the modern advances mentioned in Section 2(e) of the Act of 1970 can only be advanced in Ayurveda, Siddha and Unani and not Allopathic medicine. By virtue of Section 15(2)(b) of the Indian Medical Council Act, 1956 the persons having the prescribed qualifications included in the schedules alone are eligible to practice modern medicine. The words "modern medicine" would be referable to the modern advances made in the respective fields of Ayurveda, Siddha and Unani. The Kerala High Court followed Dr. Mukhtiar Chand and Others Vs. The State of Punjab and Others, . In support of the observations made by it and reiterated that modern advances mentioned in Section 2(3) of the Act of 1970 cannot be interpreted to mean Allopathic Medicines.

10. In D.K. Joshi Vs. State of U.P. and Others, ; Dr. Ravindra Kumar Goel and Others Vs. State of U.P. and Another, ; Provincial Medical Services Association and Others Vs. State of U.P. and Others, ; Dr. Behboob Alam v. State of U.P. and others, 2001 (2) JIC 744 (All); Poonam Verma Vs. Ashwin Patel and others, and in Bhanwar Kanwar Vs. R.K. Gupta and Another, , the Supreme Court and High Courts including this Court have held that the doctors enrolled in their branch of medicines should not be allowed to practice in any other branch. Such practice would amount to quackery and for which they can be prosecuted and their registration is liable to be cancelled. A doctor qualified in one branch of medicine cannot be allowed to practice the other branch of medicine of which he has not acquired knowledge.

11. It is difficult for us to believe that the petitioners, who have obtained degrees in Ayurveda medicine in the years 1982-1983, have acquired knowledge of Allopathic Medicine. It will be extremely dangerous to allow them to prescribe and to treat human beings with Allopathic medicines. They have a right to practice in their own branch of medicine. The transgression into other branches of medicine proposed by petitioners is not permissible to them, in law. The writ

petition is dismissed.