
(1999) 09 BOM CK 0029

In the Bombay High Court

Case No : Criminal Writ Petition No. 69 of 1999

Dr. Prakash Motiram Khobragade and Others

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 02-09-1999

Acts Referred:

Maharashtra Medical Practitioners Act, 1961 — Section 33, 35

Citation : AIR 2000 Bom 137 : (2000) 1 BOMLR 109

Hon'ble Judges : S.D. Gundewar, J;J.N. Patel, J

Bench : Division Bench

Advocate : Shailesh Narnaware, for the Appellant; A.S. Sonare, Assistant Public Prosecutor, for the Respondent

Judgement

J.N. Patel, J.—This petition is filed by a group of 84 doctors who are practising medicine at various places in rural Maharashtra. It is the contention of the petitioners that they have obtained the required degree and diploma in the faculty of Ayurveda, Unani, Homoeopathy, Electro-Homoeopathy, Biochemical, etc. and are rendering health services to the masses in rural areas, i.e. villages where there is no provision for medical facilities provided by the State.

2. It is the contention of the petitioners that the respondent/State is preventing them from practising medicine in their respective area of operation by invoking general provisions incorporated in Chapter VI of the Maharashtra Medical Practitioners Act, 1961 and particularly circulars issued under Sections 33 & 35 of the Act. It is, therefore, submitted that the said provisions are violative of Arts. 14, 19(I)(a) and 21 of the Constitution of India as they impose unnecessary restrictions on the fundamental right of the petitioners to carry on medical profession. It is, therefore, prayed that the notification dated 13-3-1994 issued by the respondent/State which is addressed to the Police "Commissioner and Superintendent of Police to proceed against the persons like the petitioners under Sections 33 & 35 of the Maharashtra Medical Practitioners Act, 1961 deserves to be quashed and set aside. The petitioners further seek directions that the

respondents should be asked to give a fixed programme for rehabilitation of the petitioners to practise any medicine like others and, in the meantime, should be allowed to continue with their practice.

3. On behalf of the State, it is submitted that the petitioners are not entitled to continue with their practice in view of the fact that they do not hold the requisite qualification and are not registered as Medical Practitioners under the Maharashtra Medical Practitioners Act, 1961 and, therefore, they have no right to claim such a protection from the Court which would permit them to continue the practice in medicine which is prohibited under the Act.

4. It is submitted by the learned counsel for the petitioners that most of the petitioners before this Court have commenced practice prior to the year 1972 and in this view of the matter, they are entitled for the protection extended to such practitioners under a circular issued by the respondent State u/s 37 of the Maharashtra Medical Practitioners Act, 1961.

5. This Court had already examined the case of persons like the petitioners in Writ Petitions No. 497/92, 503/92, 1845/92, 1847/92, 1848/92, 1852/92, 1853/92, 1856/92, 1858/92, 1860/92, 1861/92 and 1867/92 where similar questions were raised and by its judgment dated 3-12-1998 has rejected the contention of the petitioners which relates to the authority of the State in preventing persons who are not registered under the Maharashtra Medical Practitioners Act, 1961 from practising medicine. The Court has clearly held that such persons who are practicing medicine can get benefit of the circulars issued u/s 37 of the Act and in paragraph 4 of the judgment has observed as under :--

"37. Notwithstanding anything contained in this Chapter, a person may practise medicine in any rural area,--

(i) if he had commenced practice in any village in the said area prior to a date on which a practitioner registered under the Bombay Medical Act, 1912, or under the Bombay Medical Practitioners" Act, 1938 (or any law corresponding thereto) or under the Bombay Homeopathic Act, 1951 (or other law in relation to the qualifications and registration of Homoeopathic or Biochemical Practitioners) for the time being in force, has commenced, and is in regular practice of medicine in that village, and

(ii) so long as he continues to practise in that village as his principal place of practice."

The opening line itself is starting with non obstante clause. Obviously, therefore, the exclusion is complete."

The Court found that the only relief which . could be granted to persons like the petitioners is in paragraph 6 of the judgment which reads as under :--

"Only direction that can, therefore, be issued is that before initiating any action under the provisions of the said Maharashtra Act against any Practitioner, the

authorities shall keep in mind the provisions of the said Section 37 as also the said circular and first establish whether he falls under the category covered by Section 37 and then alone if circumstances so warrant, initiate proceedings. The petition are disposed of in this direction."

6. The point raised by the petitioners in this petition also fell for consideration by Supreme Court in the case of Dr. Mukhtiar Chand and Others Vs. The State of Punjab and Others, and in relation to persons who are eligible to be registered on the State Medical Register in Maharashtra, the Court has made a reference in respect to the prohibition to practise Allopathic medicine under the Act but this prohibition did not apply provided the person had commenced practice in rural area prior to 1912. The Apex Court has ultimately found that persons who are otherwise not qualified for registration under the Medical Practitioners Act, under the Indian Medical Council Act and the State Act such as Maharashtra Medical Practitioners Act are not entitled to claim any right to practise medicine.

7. In view of this, we find that the only relief which can be granted to the petitioners is in terms of the order passed by this Court in group of Writ Petitions disposed of on 3rd December, 1998., This writ petition stands disposed of accordingly.