

(2016) 04 MAD CK 0080

In the Madras High Court

Case No : W.P. (MD) No. 7582 of 2014 & M.P. (MD) No. 1 of 2014

Dr. S. Vijai Vikraman

APPELLANT

Vs

Government of Tamil Nadu

RESPONDENT

Date of Decision : 22-04-2016

Acts Referred:

Citation : (2016) 6 MLJ 188

Hon'ble Judges : Mr. V. Ramasubramanian and Ms. V.M. Velumani, JJ.

Bench : Division Bench

Advocate : Mr. G. Prabhu Rajadurai, Advocate, for the Appellant; Mr. K. Chellapandian, AAG Assisted by Mr. M. Govindan, Spl. G.P, Mr. C. Karthik, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. V. Ramasubramanian, J.—A Student of 1st year of the Post Graduate Course in the Government Siddha Medical College and Hospital, Palayamkottai, has come up with the above writ petition in public interest, seeking the issue of a Writ of Mandamus to direct the respondents to establish the proposed University for Indian Medicine in Chettikulam, Tirunelveli and also to provide all infrastructure for the 4th respondent college.

2. Heard Mr. G. Prabhu Rajadurai, learned counsel for the petitioner, Mr. K. Chellapandian, learned Additional Advocate General assisted by Mr. M. Govindan, learned Special Government Pleader appearing for the Respondents 1 and 3 to 7 and Mr. C. Karthik, learned counsel appearing for the second Respondent University.

3. The Government Siddha Medical College at Palayamkottai, is a very unique institution where the Siddha system of Medicine is being taught.

4. The Government of India sanctioned up gradation of two departments in the said college for Post Graduate Training and Research in Siddha. The scheme was accepted by the State Government, by an order in G.O.Ms. No. 2064, Health and

Family Planning Department dated 6.9.1972. Subsequently, Post Graduate Courses in Special Medicine and Paediatric Medicine were started under G.O.Ms. No. 96 Health and Family Welfare dated 19.2.1976. Another Post Graduate Department was started under G.O.Ms.No.211 Health and Family Welfare Department dated 9.5.1977. It is heartening to note that this institution is considered to be a premier institution attracting the students from Sri Lanka, Malaysia and Singapore. Yet another Post Graduate Course was started under G.O.Ms. No. 279 Health and Family Welfare Department dated 5.6.1988.

5. The College was originally functioning at Courtallam and was shifted to Palayamkottai in November 1964 as a temporary measure. The extent of land, in which, the college is located is only about 4 acres. It was only after the college was shifted to Palayamkottai that all the Post Graduate Courses were started. Today, the 4th respondent institution has an annual permitted intake of 100 students per year for the under-graduate courses. Therefore, the number of students undergoing under-graduate courses is 500. The pupil strength in all the 6 Post Graduate Departments is 180. The college also runs two Diploma Courses in Nursing and Pharmacy with total intake of 200 students.

6. Actually, the 4th respondent institution is required, by the norms, to be located in a land of minimum extent of 5 acres. The college is also expected to have the herbal garden in a land of an extent of about 10 acres. But unfortunately, the land available is only 4 acres and hence, there is neither an herbal garden nor even a playground or auditorium for the students. There are also no canteen facilities.

7. In the year 2004, there was a proposal to establish a separate University for Indian Medicine. A land of an extent of about 200 acres was originally allotted for locating the Manonmaniam Sundaranar University near Chettikulam. Since the said University was later established at a different place in a land of an extent of about 800 acres, there is actually no impediment for the Government to utilise the land originally intended for allotment in favour of Manonmaniam Sundaranar University. But, it was not done.

8. In the year 2012, the Central Council for Indian Medicine refused permission to the 4th respondent college on the ground of lack of infrastructure. Though the Government pleaded helplessness, the students approached the Principal Bench of this Court. By a common order passed on 12.3.2012 in two writ petitions, one filed by Dr. T. Arutchelvan and another filed by a set of students, this Court set aside the order of the Central Council of Indian Medicine. The institution, thus, came to be saved by this Court.

9. At that time, the Government passed G.O.Ms.No.38 Health and Family Welfare Department dated 23.1.2012 sanctioning creation of the posts of Special Officer and other staff to enable the creation of a separate University exclusively for Indian Medicine and Homeopathy. It is pertinent to note here that the establishment of such a University was already sanctioned by G.O.Ms. No. 11

Health and Family Welfare Department dated 14.1.2011. But thereafter, nothing had happened towards the establishment of the University.

10. Now, the Government of Tamil Nadu has sanctioned a sum of Rs. 8 Crores for the development of infrastructure on the ground that the year 2014 happens to be the Golden Jubilee Year for the college. There is also a proposal to construct a Golden Jubilee Building. But, there is no space for such construction. Therefore, it appears that the Government has proposed to construct a Golden Jubilee Hall by demolishing the old Administrative Block. However, it was found by the 5th respondent, on inspection, that the Administrative Block is a heritage building and that therefore, it cannot be demolished. Hence, the respondents have now decided to demolish Paediatric Ward, Green House, Car Shed etc. In pursuance of the said decision, tenders have also been called for. Therefore, after giving representations to the respondents, the petitioner has come up with the above writ petition seeking the reliefs indicated as above.

11. On 29.4.2014, when the writ petition came up for orders as to admission for the first time, we have passed the following order:-

"Notice of motion returnable by 3.6.2014.

Private notice is also permitted.

2. In the meantime, the first respondent - Secretary to Government is directed to do the following:-

i) Examine the feasibility of relocating the Palayamkottai Siddha Medical College and Hospital, in a land of a larger extent where the institution can be developed into an institution of State of the art with a possibility for elevating it into the status of a University.

ii) The respondents shall not carry out anything that will make the Central Council of India Medicine, pass any order adverse to the interest of the institution.

iii) The first respondent shall file a report into Court on 3.6.2014, when the writ petition will be taken up for further hearing, so as to ensure that one of the prestigious institutions in this part of the country, is preserved intact and also developed into an institution of higher learning and research."

12. Thereafter, the Secretary to Government, Health and Family Welfare Department, filed a Report-cum-Affidavit. The contents of the said Report-cum-Affidavit filed by the Government would be summarised as follows:-

(i) The space available in the campus is very limited and hence, there is no scope for expansion. Consequently, the norms laid down by the Central Council of Indian Medicine cannot be fulfilled.

(ii) There is acute water problem in the campus.

(iii) The members of the faculty as well as students represented to the

Commissioner of Indian Medicine-cum-Homeopathy that the Post Graduate Courses may be shifted to Courtallam, so that a separate institution on the lines of National Institute of Siddha could be founded there.

(iv) The students association appear to have demanded development of tissue culture for protecting and preserving the herbs necessary to manufacture Siddha Medicine, by entering upon a Memorandum of Understanding with the Tamil Nadu Agricultural University, the Forest Department and the Horticulture Department.

(v) The District Collector assured to allocate 50 acres of land for the college.

(vi) The Government originally sanctioned Rs. 5.00 Crores under G.O. 4(D) No.15 Health and Family Welfare Department dated 30.10.2012 for improving the infrastructure. But, an additional amount of Rs. 5.00 Crores is sought for so as to enable the location of the Post Graduate Courses at Courtalam.

(vii) The Commissioner of Indian Medicine-cum-Homeopathy is working at a detailed proposal in consultation with the District Administration and the Principal of the college has written a letter to allocate 5 acres of land at Idaikaal Village in Tankasi for locating Post Graduate Courses.

13. Apart from what is contained in the Report-cum-Affidavit of the Government, Mr. K. Chellapandian, learned Additional Advocate General submitted that the Government is inclined and interested in doing whatever is necessary for preserving the 4th respondent institution, which has a pride of place. The learned Additional Advocate General also submitted that the Government is willing to keep all options open for the development of this institution.

14. We have carefully considered the averments and the submissions made.

15. Before proceeding further, it may be necessary to take note of certain historic details about the Indigenous System of Medicine of India, so that the importance of this public interest litigation could be better appreciated. One of us (V.R.S.J) had an occasion to record these facts in the decision rendered on 12.3.2012 in Dr .T. Arulselvam v. B. Santhi [W.P. Nos. 3589 and 4452 of 2012]. Therefore, it is extracted as follows.-

"Significance Of Indigenous Systems

53. The history of Ayurveda and Siddha dates back to several centuries. Literally meaning the "science of life", Ayurveda is often used in a narrow sense as a "system of medicine", which considerably dilutes and distorts its real scope and objective. Health, according to Ayurveda is not only freedom from disease. According to Susruta, one of the great early practitioners, it is a state of the individual where, in addition to harmony among the functional units (dosas), digestive and metabolic mechanisms (agnis), structural elements (dhatus), and waste products (malas), a person should also be in an excellent state (prasanna) of the spirit (atman), senses (indriyas), and mind (manas). The Encyclopedia Britannica states that Ayurvedic practitioners work in rural areas, providing

health-care to at least 5 million people in India. Pointing out that the golden age of Indian medicine from 800 B.C., till 1000 A.D., was marked by the production of the medical treatises known as "carakasamhita" and "susruta-samhita", the Britannica records in page 776 of Volume-23 (15th Edition) as follows.-

"In surgery, ancient Hindu medicine reached its zenith. Operations performed by Hindu surgeons included excision of tumours, incision and draining of abscesses, punctures to release fluid in the abdomen, extraction of foreign bodies, repair of anal fistulas, splinting of fractures, amputations, cesarean sections, and stitching of wounds.

A broad array of surgical instruments were used. According to Susruta, the surgeon should be equipped with 20 sharp and 101 blunt instruments of various descriptions. The instruments were largely of steel. Alcohol seems to have been used as a narcotic during operations, and bleeding was stopped by hot oils and tar.

Hindu surgeons also operated on cataracts by couching or displacing the lens to improve vision."

54. In a Book titled "Man and Medicine - A History" authored by Farokh Erach Udwadia, an Emeritus Professor of Medicine (Allopathy) and published by Oxford University Press (2001 Edition), an interesting event is reported at page No.43. It is about the documented performance of rhinoplasty (for which Susruta was famous) witnessed and recorded in 1793 in Pune. A Parsee gentleman by the name of Cowasjee, who was serving the English Army at the time of the Mysore War in 1792, was captured by the soldiers of Tipu Sultan. His nose and one hand was cut off. He and 3 of his friends, who had met with the same fate, consulted a person who was only a bricklayer by profession. The bricklayer performed a surgery, which was witnessed by Thomas Cruso and James Findlay, Senior British Surgeons in Bombay Presidency. They described and drew the skin graft procedure and the same was published in the Madras Gazette. It was later reproduced in the October 1794 issue of the Gentleman's Magazine of London. The surgery was described in the following words.-

"A thin plate of wax is fitted to the stump of the nose so as to make a nose of a good appearance, it is then flattened and laid on the forehead. A line is drawn around the wax which is then of no further use and the surgeon then dissects off as much skin as it had covered, leaving undivided a small slip between the eyes. This slip preserves the circulation till a union has taken place between the new and old parts.

The cicatrix of the stumps of the nose is next paired off and immediately behind the new part an incision is made through the skin which passes around both alae, and goes along the upper lip. The skin now brought down from the forehead and being twisted half around, is inserted into this incision, so that a nose is formed with a double hold above and with its alae and septum below fixed in the incision.

A little Terra Japonica (pale catechu) is softened with water and being spread on slips of cloth, five or six of these are placed over each other to secure the joining. No other dressing but this cement is used for four days. It is then removed and clothes dipped in ghee (clarified butter) are applied. The connecting slip of skin is divided about the twentieth day, when a little more dissection is necessary to improve the appearance of the new nose. Four, five or six days after the operation, the patient is made to lie on his back and on the tenth day bits of soft cloth are put into the nostrils to keep them sufficiently open."

55. The learned author of the Book Mr. Udwadia, goes on to say that the above occurrence caught the attention J.C. Carpue, a 30 year old Surgeon in London. He successfully used the same skin graft procedure for nose repair on a patient in 1814. He reported his successful results in 1816, introducing the "Hindu Surgical Technique" and with it, "The Indian Nose" to the West.

56. After pointing out that Susruta recommended the use of a facial skin flap for repair of a cleft lip, the author of the book states that Carl Ferdinand Von Graefe (1747-1840) popularised the Indian Surgical Technique of plastic reconstruction of the nose in Germany and Europe.

57. It is common knowledge that smallpox vaccine was invented by Dr. Edward Jenner, an English Physician in 1798. But on the occasion of the opening ceremony of the King's Institute of Preventive Medicine in February 1905 at Madras, the then Governor of Madras, Lord Amphill, said the following.-

It is also very probable, so Colonel King assures me that the ancient Hindus used animal vaccination secured by transmission of the smallpox virus through the cow, and he bases this interesting theory on a quotation from a writing by Dhanwantari, the greatest of the ancient Hindu physicians, which is so striking and so appropriate to the present occasion that I must take the liberty of reading it to you. It is as follows.

"Take the fluid of the pock on the udder of the cow or on the arm between the shoulder and elbow of a human subject on the point of a lancet, and lance with it, the arm between the shoulders and elbows until the blood appears, then mixing the fluid with the blood the fever of the smallpox will be produced. This is vaccination pure and simple. It would seem from it that Jenner's great invention was actually forestalled by the ancient Hindus."

58. As is the case with Ayurveda, the Siddha System of Medicine also has a history which dates back to several centuries. Traditionally believed to have been developed by 18 Siddhas including Sage Agasthiya, the Siddha System of Medicine has its own merits. But unfortunately, due to lack of patronage for the culture of the ancient times, this system of Medicine also suffered to a great extent under the colonial rule. It will be of interest to know that an Allopathy Doctor and Professor by name Dr. C.N. Deivanayagam, who is a Fellow of the Royal College of Physicians (Edinburgh), who retired as the Superintendent of the Government Hospital of Thoracic Medicine, Tambaram, presented a paper titled

"HIV/AIDS and Siddha System of Health-care - an experience of 13 years". He reported in the said paper that after the Government Hospital of Thoracic Medicine at Tambaram adopted an open door policy for HIV/AIDS in 1992, there was an exponential increase in the number of HIV sufferers seeking care and treatment. While the number of patients were only 2 in 1993, it rose upto 365 in 1996 and 6,791 in the year 2000. Since ARV Drugs could not be provided by the Government to all the patients, the Hospital invited 90 Siddha Physicians to a Seminar to identify suitable Siddha formulations to combat the killer disease. All of them agreed on formulations containing processed sulphur and processed Mercury to fight the disease. As a consequence, a formulation known as RAN was born as the child of Tambaram. The acronym RAN stands for Rasagandhi Mezhugu, Amukkira Chooranam and Nellikkai Ilagam. It has become an immunogenic and adaptogenic drug. The said Medical Practitioner demonstrated through laboratory evidence that there was clinical improvement in more than 60% of the patients, who received either RAN alone or in combination with OL controlling drugs (reported in the publication "Evaluation of Siddha Medicare in HIV Disease" - JAPI March 2001, 49.390-1. - an indexed Journal).

59. Keeping the above historical perspective in mind, if we look at what happened in the country during colonial rule, it would be clear that there was a systematic campaign, in a subtle manner, to make the indigenous systems of medicine fade away from the public domain. In a paper submitted by Ms. Padma Srinivasan, a Senior Research Officer at the Indian Institute of Health Management Research in the World Health Forum (Vol. 16-1995), the Author pointed out that during 19th and first half of the 20th Century, the traditional systems of medicine were gradually replaced by modern medicine, under the influence of The British Raj. During the period 1920-1940, Provincial Governments and popular leaders like Mahatma Gandhi, made various efforts to reverse this trend. But unfortunately, the country's first National Health-care Policy outlined in 1946 by Bhole Committee completely ignored the traditional practices. Subsequent Committees attempted to correct this error and in 1961, the Mudaliar Committee made strong recommendations for integrating modern medicine with the traditional medicine. But by that time, the dominance of modern medicine had become irreversible. The learned Author also made an interesting observation in the said article about the role played by the Central Government vis-a-vis the State Governments. The observations read as follows.-

"At present, most of the larger institutions promoting indigenous systems of medicine are controlled and financed by the State Governments and little interest is shown at the Central Level. This is probably because the Central Government depends on support for health-care from international organisations backed by rich Western countries. Extensive promotion of indigenous systems might jeopardise this support and discourage foreign investment in drugs and health-care.

.....

Two World Bank reports (1,2) recommend that the Government should leave tertiary curative health-care to the private sector and concentrate on primary health-care in the rural areas, immunization and disease eradication programmes. This implies that India should go deeper into international debt by borrowing more money for these programmes, thus supporting the propagation of Western medicine on behalf of the multi-national drug and health-care companies. Apart from the questionable economics of this prescription, it completely overlooks the existence of alternative systems of medicine and the possibility of using them to ensure health-care coverage for the rural and urban populations of the nation."

60. Therefore, it is clear that there has been some resistance worldwide, to the Government patronage of indigenous systems of medicine. But, Latin American countries and even China spend millions of dollars for developing indigenous systems of medicine. The National Health Service of the United Kingdom is said to be funding billions of pounds every year on homeopathy, despite opposition. In February 2010, the Science and Technology Committee of the British Parliament submitted a report alleging that there is no evidence to show that homeopathic treatments work better than a placebo. Therefore, the Committee recommended that the National Health Service should cease to provide funds for Homeopathic Hospitals and that doctors in the National Health Service System should not refer patients to homeopaths. The Committee even recommended that the Medicines and Healthcare Products Regulatory Agency (MHPR) should bar homeopathic treatments from displaying medical claims on their labels. The British Medical Association Junior Doctors Committee even went to the extent of terming homeopathy as witchcraft. But, it is reported in the Print and Electronic Media that the campaign initiated by the Orthodox Medical Profession was effectively countered by a campaign called H.MC 21 (Homeopathy. Medicine For the 21st Century) pointing out that more than 100 million European Union citizens, including Prince Charles use Homeopathy for their health care. This has made it difficult for the Science and Technology Committee of the British Parliament to make inroads into State funding of homeopathy.

61. In so far as the State of Tamil Nadu is concerned, the earliest attempt to streamline the system of education relating to medicine, appears to have been started in 1924. The Government Indian Medical School was started by the then Government of Madras in 1924 and all the 3 systems of medicine viz., Siddha, Ayurveda and Unani, were taught to persons who studied any one of these systems for 4 years. They were awarded a Diploma called "LIM", which is an acronym for Licentiate in Indian Medicine.

62. After India attained independence, the name of the institution was changed as Indian Medical College. Any person who completed a 5 years Course of study in this College, after completing Intermediate, was granted a degree known as "GCIM", standing for Graduate of the College of Indian Medicine.

63. The name of the said College was later changed to "College of Indigenous

Medicine" in 1949. However, Allopathy was also taught in the College and hence the name of the College was changed to "College of Integrated Medicine" in the year 1956. It appears that thereafter a College of Indian Systems of Medicine was started in Courtallam. The said College was later transferred to Palayamkottai in November 1964. When the transfer took place, several faculty members employed in the then College of Integrated Medicine (later Kilpauk Medical College) were transferred to Palayamkottai, seen from a Government Order G.O.Ms.No.2372, Health dated 23.11.1964.

64. Subsequently, the Government of India itself sanctioned the upgrading of two Departments in the College of Indian Systems of Medicine, Palayamkottai, for Post Graduate Training and Research in Siddha, as a centrally sponsored scheme. The scheme was accepted by the State Government and an order was issued in G.O. Ms.No.2064, Health and Family Planning Department, dated 6.9.1972. Subsequently, P.G. Courses in Special Medicine (Sirappu Maruthuvam) and Paediatric Medicine (Kuzhanthai Maruthuvam) were started under G.O.Ms. No.96, Health and Family Welfare, dated 19.2.1996. With the creation of Post Graduate Departments in Special Medicine and Paediatric Medicine, the total number of Post Graduate Departments rose to four. The fifth Post Graduate Department in "Noi-Nadal" (perhaps meaning Diagnostic Techniques) was started with the sanction of the State Government under G.O.Ms.No.211, Health and Family Welfare Department, dated 9.5.1997. As a matter of fact, the Post Graduate Courses conducted by the College at Palayamkottai attracted even students from Sri Lanka, Malaysia, Singapore etc., forcing the Government to start one more P.G. Department in Nanju Noolum Maruthuva Noolum (could be translated in layman's language to mean Book on Poisonous Substances and Medical Ethics), in the year 1998 as seen from G.O.Ms.No.279, Health dated 5.6.1998. Thus, the Government Siddha College Palayamkottai had been built brick by brick over a period of several decades, with the Government developing necessary infrastructure before offering admission to the courses of study."

16. Therefore, the importance of Indian Systems of Medicine, needs to be hardly emphasised. If the Government does not provide patronage for the indigenous systems of medicine, then there is every possibility that the oldest system of medicine will die a natural death. Therefore, it is essential that the Government take appropriate steps for the establishment of a University as directed in G.O.Ms.No.38, Health and Family Welfare dated 23.1.2012.

17. It is unfortunate that the proposal for establishing a separate University mooted way back in the year 2004, saw some sign of realisation only when G.O.Ms. No.38 was issued after a period of about 8 years. But now more than four years have passed from the date of the Government Order, but the university is yet to be established.

18. Therefore, the writ petition is disposed of directing the Government to take steps within six months for giving effect to G.O.Ms.No.38, Health and Family Welfare dated 23.2.2012, by considering the allotment of land at Chettikulam

which was originally earmarked for Manonmaniam Sundaranar University but which got shifted later. The writ petition is disposed of to the above effect. There will be no order as to costs. Consequently, M.P.No.1 of 2014 is closed.