

(2020) 01 CHH CK 0098

In the Chhattisgarh High Court

Case No : Writ Petition (C) No. 1149 Of 2017

Dr. Than Singh Sahu

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 21-01-2020

Acts Referred:

Madhya Pradesh Ayurvedic, Unani Tatha Prakritik Chikitsa Vyavasayi Rules, 1973 — Rule 31, 34

Madhya Pradesh Ayurvedic, Unani Tatha Prakritik Chikitsa Vyavasayi Adhiniyam, 1970 — Section 2(a), 2(c), 2(h), 3, 4, 28

Chhattisgarh State Upcharyagriha Tatha Rogopchar Sambandhi Sthapanaye Anugyapan Niyam, 2013 — Rule 2(c), 3, 11, 11(2), 11(2)(c)

Chhattisgarh State Upcharyagriha Tatha Rogopchar Sambandhi Sthpanaye Anugyapan Adhiniyam, 2010 — Section 2(n), 2(i), 3, 4, 6, 12, 12(B)

Citation : (2020) 01 CHH CK 0098

Hon'ble Judges : P.R. Ramachandra Menon, J; Parth Prateem Sahu, J

Bench : Division Bench

Advocate : B.P. Singh, Vikram Sharma

Final Decision : Dismissed

Judgement

Parth Prateem Sahu, J

1. The petitioner, claiming himself to be a Doctor, has filed this petition challenging the action on the part of State authorities whereby they have sealed lock clinic run by the appellant.

2. The facts of the case, in nutshell are that, the petitioner after obtaining a Registration Certificate No.98150 on 28.03.1992 from Rajkiya Ayurvedic and Unani Chikitsa Parishad, Bihar has opened a clinic at Salhegaon, Tahsil Bhanupratapur, District Kanker, Chhattisgarh and running since then. The State authorities have locked the clinic of the petitioner, which made him to approach this Court by way of filing writ petition with following reliefs :

"10.1 That, the Hon'ble Court may kindly be pleased to direct the respondents

authority not to seal the clinic of the petitioner, without providing any opportunity of hearing and without verifying the document.

10.2 That, this Hon'ble Court may kindly be pleased to direct the respondent to call for the entire records relating to the matter of petitioner and verifying the documents relating to the degree/diploma and certificate.

10.3 Any other relief/relief's which may deem fit and proper in the facts and circumstances of the case may also be allowed."

3. Shri B.P. Singh, learned counsel appearing for the petitioner submitted that petitioner has obtained qualification of 'Vaidya Visharad' from Hindi Sahitya Sammelan, Prayag and he has been awarded a certificate of 'Ayurved Ratna' from the said Institution. On the basis of aforementioned qualification and certificate issued to him from Hindi Sahitya Sammelan Prayag, he got himself registered with Rajkiya Ayurvedic and Unani Chikitsa Parishad, Bihar on 28.03.1992 and since then, he is practising in giving treatment under Ayurvedic Unani and Prakritik Chikitsa to the patients in his clinic at Salhegaon, Tahsil Bhanupratappur, District Kanker. He further submitted that the petitioner after formation of new State of Chhattisgarh has deposited fees of registration with the office of Registrar, Unani and Prakritik Chikitsa Parishad, Raipur. He further submitted that earlier in the year 2002, the petitioner has filed the writ petition seeking direction for issuing registration form, but till date, registration form has not been issued; the persons like the petitioner who obtained a degree from Hindi Sahitya Sammelan are entitled to get themselves registered and practice in Ayurvedic, Unani system of medicine. Chhattisgarh State Upcharyagriha Tatha Rogopchar Sambandhi Sthapanaye Anugyapan Niyam, 2013 (hereinafter referred to as 'Niyam, 2013') is not applicable to the petitioner as he is not practising in Allopathy medicine, but giving treatment by using Ayurvedic, Unani systems of medicine or Naturopathy. The petitioner is having qualification of Ayurved Ratna and also registered with Rajkiya Ayurvedic and Unani Chikitsa Parishad, Bihar and practising since 1992, therefore, he cannot be pointed as quack. He also submitted that non-issuing of registration form to the petitioner for getting himself registered with Ayurvedic or Unani systems of medicine or Naturopathy is arbitrary and further locking the clinic of the petitioner is illegal and bad in law.

4. Per contra, Shri Vikram Sharma, Deputy Government Advocate appearing for the State submitted that the petitioner is not having any recognized degree or qualification to practice in Ayurvedic, Unani and Prakritik Chikitsa. He further submitted that copy of certificates claiming by the petitioner to be recognized degree or valid registration certificate is not correct and there is no such Institute authorized and registered in the name of Hindi Sahitya Sammelan to grant degree or certificate in Ayurvedic or Unani systems of medicine or Naturopathy. He further submitted that the petitioner is not registered in the register of State for practising in Ayurvedic, Unani systems of medicine or Naturopathy as he does not have any valid qualification for the recognized Institute in the field of Ayurvedic or Unani systems of medicine or Naturopathy. One PIL was filed before

this Court being Writ Petition (PIL) No.19 of 2017 raising an issue of medical treatment being given by persons in all over the State of Chhattisgarh without their being any qualification or registration with the competent Board or Council to practice under different branches of medicine and due to which, several persons have lost their lives; in that PIL, there was direction to the officers of higher level to make survey and to take appropriate steps against the quack/so-called Doctors practising without registration/licence. It is the outcome of that order passed by Division Bench of this Court, issuing directions to the authorities that all the unauthorized clinics/nursing homes running have been sealed to protect the life of public at large, who even do not have the knowledge whether the Doctors treating them are qualified and whether the said Doctors are registered with the register maintained by the State for practising as Doctors on different branches of medicine. He also submitted that the petitioner is not registered with the authority of the State, action taken by the respondent authorities is within the four corners of law, the petition is merit-less and is liable to be dismissed.

5. We have heard learned counsel appearing for the respective parties.

6. To appreciate the submission made by learned counsel for the petitioner that the petitioner is practising in Ayurvedic, Unani systems of medicine or Naturopathy, after obtaining required qualification and getting himself registered, it will be necessary to analyze the relevant Acts and Rules notified by the State.

7. In the erstwhile State of Madhya Pradesh to register the practitioner of Ayurvedic and Unani systems of medicine and to regulate the practice in Naturopathy, earlier an Act has been promulgated in the name of Madhya Pradesh Ayurvedic, Unani tatha Prakritic Chikitsa Vyavasayi Adhiniyam, 1970 (hereinafter referred to as 'Adhiniyam, 1970'). Section 2(a) defines the "approved institutions", in which, hospital, health centre or other such institutions are included where a person may undergo training, if any, required by his course of study before the award of any medical qualification in respect of Ayurvedic or Unani systems of medicine or Naturopathy. Section 2(c) defines "Board" established under Sections 3 and 4 of Adhiniyam, 1970. Section 2(h) deals with "Recognized qualification" means a qualification in Ayurvedic or Unani systems of medicine or Naturopathy specified in the schedule. The Adhiniyam, 1970 also provides that the practitioner is to be enlisted practitioner, name of whom is entered in the list maintained under Section 28 of the Adhiniyam, 1970. Section 28 talks about maintenance of list of persons in practice other than those eligible for registration or deemed to be enrolled on practitioners, which is to be prepared by the Board constituted under Section 4 of the Adhiniyam, 1970. The Schedule appended to Adhiniyam, 1970 is in two parts i.e. Part-'A' and Part-'B'. Part-'A' deals with recognized qualifications in Ayurvedic Unani systems of medicine and Naturopathy granted by the Universities or Institutions in the State and Part-'B' deals with recognized qualifications in Ayurvedic, Unani systems of medicine and Naturopathy granted by the Universities or Institutions outside the

State/Country. In the list of Schedule in Part-'B', Universities or Institutions providing recognized courses and issuing degrees in Uttar Pradesh have also been mentioned, but there is no mention of the Institution or University like Hindi Sahitya Sammelan, copies/certificates of which, the petitioner has filed.

8. There was also a Rule in the name of Madhya Pradesh Ayurvedic, Unani tatha Prakritik Chikitsa Vyavasayi Rules, 1973 (hereinafter referred to as 'Rules, 1973'). Rule 31 of the Rules, 1973 provides for application for registration of a person practising under the Adhiniyam, 1970 and Rule 34 provides for publication of the State register of practitioner.

9. From perusal of Schedule appended to Section 2(h) of the Adhiniyam, 1970, it is apparent that the name of Institution from which the petitioner is claiming to have obtained his qualification in Ayurveda has not been enlisted and probably for that reason, the petitioner could not be registered with the Board constituted under Section 4 of the Adhiniyam, 1970.

10. After carving out of new State of Chhattisgarh, the State of Chhattisgarh has enacted the Chhattisgarh State Upcharyagriha tatha Rogopchar Sambandhi Sthapanaye Anugyapan Adhiniyam, 2010 (hereinafter referred to as 'Adhiniyam, 2010') for providing licence to nursing homes, clinical establishments for ensuring standardization and for betterment of health care services. Section 2(c) defines "clinic" as a premise having facilities for treatment of sick and used for their reception and not stay. Subsequently, under the Adhiniyam, 2010, Rules have also been framed known as Chhattisgarh State Upcharyagriha tatha Rogopchar Sambandhi Sthapanaye Anugyapan Niyam, 2013. Rule 2(c) defines "AYUSH" means Ayurveda, Yoga, Unani, Siddha and Homeopathy systems of medicine.

11. One Madhukar Dwivedi filed a writ petition bearing Writ Petition (PIL) No.19 of 2017 before this Court for issuing a direction to the State of Chhattisgarh and officers of Health Services, Health and Family Welfare Department to prevent illegal medical practice in the State of Chhattisgarh and to close all illegal nursing homes, clinics and patholabs and further to take action against officials permitting the illegal nursing homes, clinics and patholabs. The Division Bench of this Court has considered the issue projected in the PIL seriously and issued directions to the respondent authorities of concerned Departments including Director of Health Services, Government of Chhattisgarh on 23.03.2017. Some of the paragraphs of the order dated 23.03.2017 passed by Division Bench in Writ Petition (PIL) No.19 of 2017 are reproduced herein-below to understand the issue therein and also the directions issued by the Court :

"1. This writ petition is filed in public interest. The fundamental issue which has now to gain attention following earlier orders is the requirement to prevent the people from being put to a situation of peril in terms of right to life and health as a result of unauthorized and illegal involvement of the persons who are incompetent and unqualified to administer any form of medication under due

certification of the competent authority in terms of the Central and the State laws. The unauthorized establishment and running of clinics, nursing homes and other institutions and establishments including those intended for medical examination and diagnosis cannot be carried except with due sanction being granted by the authority competent. Such sanction could be granted only to those persons who hold eligible qualifications in terms of the governing laws.

2. Following different orders running from the year 2013, today we have before us an affidavit sworn-in by Shri R. Prasanna, Director of Health Services, Govt. of Chhattisgarh, Raipur. For the present, we do not proceed to reiterate everything that he has said therein. Suffice it would be for us to refer to Annexure-III, a tabular statement which is a self-serving testimony of the gross deficiencies in the management of the issue by the State authorities, except to some extent in some of the districts including the District of Bilaspur. This does not by itself mean that we are satisfied with the action taken even by those district administrations which have shown some element of pursuit to the objects sought to be achieved by different statutory provisions and the larger public requirement to ensure that the right to life, the most precious element in the Constitution of India as guaranteed, is secured to the people of this part of the State.

5. The total number of quacks in the streets even after the combing and pruning operations by the executive is voluminous as is reflected by the chart which is Annexure-III along with the affidavit of the Director, Health Services. When humans act without authority and proper eligibility, they would be potentially dangerous instruments of injustice and violators of human rights. They are to be handled by the State with due vigour as warranted by the facts and circumstances, in accordance with the laws, to curb the menace of unlawful encroachment into the health management sector, which is a matter of prime importance in governance. People are entitled to be protected from the quacks and unauthorized persons in the realm of the health management.

7. We are assured by the Principal Secretary to the Government in the Department of Health and the Director of Health Services that needful will be done for immediate result in the light of what is stated above. The Health Department, the Social Welfare Department, the Panchayat & Rural Development Department and the Tribal Welfare Department have necessarily to work hand-in-hand to demystify quackery. The Secretary to the Government in the Department of Health tells us that there are different programmes carried forward from time to time for intermittent training of Asha Workers, Gram Panchayat Mitans and service providers in the public sectors at the grass root level.

9. The Chhattisgarh State Legal Services Authority can spearhead appropriate programmes if the State authorities and requisite NGOs join hands and formulate an appropriate procedure whereby the different district legal service authorities, taluka legal services committees, the para-legal volunteers and NGOs can be involved in dissemination of information attendant to the right to life which is a matter that will amount to a legal literacy programme linked with a health

promotion programme. The National Legal Services Authority has also certain Schemes in force. We therefore direct that the Secretaries to the Government of Chhattisgarh in the Department of Health, Department of Tribal Welfare, Department of Panchayat & Rural Development and Department of Family Welfare will ascertain an appropriate time and date from the Member Secretary, CG State Legal Services Authority for a meeting with the Executive Chairman of the CG State Legal Services Authority and discuss to formulate suggestions which may come therein and thereafter such programme will be operated throughout the State in obedience to this judicial order and in terms of the instructions that may be issued by the Executive Chairman, SALSA. This, we are sure, will help in dissemination of information which would be an admixture of those relating to legal rights and entitlement to right to life being carried to the people at the grass root level. The socio-economically challenged sectors and those who suffer from challenges of language and illiteracy have also to be appropriately instructed in the matter. Let such meeting be held at the earliest, preferably within a period of ten days from today.

10. With the aforesaid, we also direct that vigorous action shall be forthwith pursued by all the District Collectors concerned to ensure that the earlier directions of this Court are obeyed to the benchmarks required and Action Taken Reports are placed on record without fail within a period of two months from today. The Chief Secretary to the Government of Chhattisgarh shall be responsible for ensuring the correctness of such reports, which shall be placed before this Court with his approval."

12. Looking to the strict view taken by this Court in its order dated 23.03.2017, the State machinery came in action and started closing/sealing of all unauthorized nursing homes/clinics. It is in the resultant action taken by the State authorities pursuant to the order dated 23.03.2017 passed in Writ Petition (PIL) No.19 of 2017, clinic of the petitioner appears to have been sealed.

13. Ongoing through the documents annexed with the writ petition by learned counsel for the petitioner showing his qualification and his registration, we prima facie do not find that the course and qualification is said to have been undergone by the petitioner is from recognized Institution. The name of the Institution as mentioned in Annexures P/1 and P/2, which is said to be degree obtained by the petitioner does not find place in Schedule appended to Section 2(h) of the Adhinyam, 1970 and even, the petitioner could not be able to point out under which provision of any Act or Rule, the qualification obtained by the petitioner is recognized. The petitioner has further not submitted any material or document to show the status of Council at Bihar by which, the certificate annexed as Annexure P/1 was issued. Even the registration certificate within the State of Madhya Pradesh or State of Chhattisgarh has not been filed by the petitioner which shows that the petitioner is not a registered practitioner under the Adhinyam, 1970, Rules, 1973 and further the Adhinyam, 2010 and Niyam, 2013. Any person practising in Ayurvedic or Unani systems of medicine or

Naturopathy has to get himself registered in the register maintained by the State Government. Section 2(n) of the Adhiniyam, 2010 defines 'register' which is a register maintained under Adhiniyam, 2010 and the expression "registered" and "registration" shall be construed accordingly. Section 3 deals with 'licence', Sections 4 deals with penalty for failure to obtain licence and Section 12 provides for penalties and fines and Section 12(B) also provides for conviction for offence under this Act.

14. From the aforementioned discussions, it is clear that the petitioner is not having recognized qualification nor he has registered himself under the Adhiniyam, 2010 or with the Board or Authority as defined under Section 3 of the Adhiniyam, 1970 to establish and run a clinic, but as per pleadings of the petitioner himself, he is running a Dispensary at Salhegaon, Tahsil Bhanupratappur, District Kanker since 1992 and providing treatment to the villagers.

15. The petitions bearing identical facts have also been considered by the Division Bench of this Court along with Writ Petition (PIL) No.19 of 2017 i.e. the persons running clinic and engaged in medical practice without obtaining licence and held thus:

"17. Reverting to the question of Clinics, as already noted, none of the Petitioners in WPCs has a case that they have setup or are running Clinics with licence under the Act. None of those Petitioners has a case that the premise utilized by them as Clinic is not a premise with facilities for treatment of sick and is used for reception of sick and for their treatment, though not for stay. All their Establishments therefore fall within the definition of Clinic and therefore within the term 'Clinical Establishment' as defined in the Act. Hence, none of the Petitioners in the WPCs is entitled to run any Clinic as pleaded by them without licence from the Supervisory Authority. Any application for grant of such licence by any of them is not eligible to be considered for grant of licence without reference to all matters that would arise for consideration in terms of the Act and Rules; in particular, Section 6 of the Act. This includes the question whether the applicant or any person employed by him in the Clinical Establishment, which includes a Clinic, is a Qualified Medical Practitioner as defined in Section 2(i) of the Act. The question whether any qualification and registration held out by any such applicant entitles that person to claim to be a Qualified Medical Practitioner under the Act would depend upon the question whether that person is a Medical Practitioner registered in any State in India under any law for the time being in force for registration of the Medical Practitioners. This is an issue which is also to be considered on case to case basis by the Supervisory Authority and such question would arise only when there is an application for licence in terms of the Act and Rules. The eligibility to practice different schools of medicine, health care etc. on the strength of degrees and diplomas are held out by the Petitioners in WPCs except WPC No. 1113 of 2017. Many of those Petitioners have pleaded that they are eligible to practice different schools of medicines and other therapeutic

activities on the strength of such diplomas or certifications by different institutions. The eligibility of each of such person to hold out such qualification, would be a matter in issue when that person's application for licence under the Act is being considered by the Supervisory Authority. Bereft of any decision by the Supervisory Authority on any application for licence, such issues do not arise for decision at this stage, though we are not oblivious of the plea of some of the Petitioners in the WPCs as to non-consideration of applications for licence; which we will deal with as we proceed.

18. As already noted, none of the Petitioners in the WPCs hold licence under the Act and the Rules. That being so, there is no question of their claiming eligibility to pre-decisional hearing before closing down such illegal and unauthorised Clinical Establishments. When the law forbids a particular activity by treating such activity as liable to be visited with penalty prescribed by law, it definitely carries with it the eligibility of the State to enforce prevention and deactivation of such Establishments when they are ex facie in conflict with the law relating to licence. This is all part of the police powers of the State and is the more important when the subject matter of the licence is a premise to provide services relating to health care, intricately connected with right to life of every recipient of each such service.

19. Reverting to the provisions of the Act and the Rules, it can be seen that if the Supervisory Authority refuses, cancels, or suspends a licence, the person aggrieved would have a right of appeal to the State Government, but there is no such right of appeal or right of hearing that can be read in favour of those who have not obtained licence, but have yet started the activity of Clinical Establishments including Clinics without licence. There is no provision in the Act which could be characterized as enabling 'deemed licence' in the form of a default clause operating in favour of the applicant for licence. It would also be an extremely disastrous situation to perceive that there could be any such provision except at the peril of the public at large which will form the recipient group of medical and health services through those who run Clinical Establishments and Nursing Homes.

20. We cannot, however, ignore the plea of some of the Petitioners that certain applications made for grant of licence are yet to be considered. It is noted in paragraph 10 above that some of the Petitioners in the WPCs have pleaded that though they had applied for registration under the Act and the Rules, those applications are not being considered. As noted in the immediately preceding paragraph, there is no provision in the Act which confers a 'deemed licence' status to the applicants, even by efflux of time. Having regard to the nature of the Act and the field it relates to, the Supervisory Authority has the public and statutory duty to decide on the applications for grant of licence expeditiously since grant or rejection of the application would depend upon various factors which are statutorily enumerated and also because one who intends to set up a Nursing Home or a Clinical Establishment is forbidden by law from doing so

without obtaining the licence. The Act does not prescribe any time frame within which the Supervisory Authority has to decide on the application for licence. However, there are certain statutory indicators in this regard. Rule 11 of the Rules prescribes the procedure for issue of licence. Sub-rule (2) of Rule 11 lays down the procedure for licensing of new Establishments. That would necessarily apply to those Establishments which were not set up before the coming into force of the Rules. Clause (c) of Sub-rule (2) of Rule 11 provides that the application form must indicate that the date of commencement of the Clinical Establishment which shall not be less than 30 days from the date of the application. Clause (d) of that Sub-rule requires that the Supervisory Authority shall indicate a tentative date for inspection in its acknowledgement letter/receipt. These two provisions in Rule 11(2) are clear indicators of the legislative intendment that a decision on the application for licence is to be issued within a period of 30 days, except in exceptional circumstances. Reasonable situational requirements including the application, inspection, any rectification as may be suggested, any repeated inspection etc; all taken together; should necessarily put an outer limit to be within a period of two months from the date of the application."

16. So far as the submission made by learned counsel for the petitioner that Adhiniyam, 2010 and Niyam, 2013 are not applicable to him is concerned, the purpose of the Adhiniyam, 2010 is to grant licence for running clinical establishment, nursing homes, clinics etc. by qualified medical Practitioner. Qualified medical Practitioner will include the persons qualified and registered in any State in India under law, as defined in Section 2(i) of the Adhiniyam, 2010.

17. Under Adhiniyam, 2010, it does not refer to any particular branch of medicine, but speaks about requirement of having licence to be mandatory to all qualified medical Practitioner. There is no doubt that the clinic for the purpose of providing medical treatment can be opened/run only by the qualified medical Practitioner in any of the branches of medicine. The preamble of the Adhiniyam, 2010, which reads as under:-

"An Act to provide for licensing of Nursing Home and Clinical Establishment and for matters connected therewith to ensure standardization and thereby achieving improvement of health care services."

18. In view of above, it is clear that the Adhiniyam, 2010 is for the purpose of granting licence to nursing home and clinical establishment and as the case of the petitioner himself, he is running the medical clinic since 1992. Provisions of Adhiniyam, 2010 and Rules made thereunder will be applicable to him.

19. From the aforementioned facts and circumstances of the case, particularly considering the fact that the petitioner failed to produce any certificate of its registration with the Board under the Adhiniyam, 1970 within the State of Madhya Pradesh or Chhattisgarh or under any other act, he could not able to produce his licence issued under the Adhiniyam, 2010 and further considering the judgment passed by Division Bench of this Court in Writ Petition (PIL) No.19

of 2017, the petitioner is not entitled for any relief as sought for by him. The writ petition being devoid of substance, is liable to be and is hereby dismissed.

20. However, it will be open for the petitioner to approach the Supervisory Authority under Rule 3 of the Niyam, 2013 and to make an application for grant of licence and if any application is filed by the petitioner before the concerned Supervisory Authority, the same will be decided strictly in accordance with law within an outer limit of two months from the date of submission of the application.