

(2009) 04 KAR CK 0075

In the Karnataka High Court

Case No : Writ Appeal No. 1153 of 2008

Karnataka State Electro Homeopathy Research and
Development Association and Adivappa Lakshman Neginhal

APPELLANT

Vs

Karnataka Ayurvedic and Unani Practitioners Board, State of
Karnataka and Union of India (UOI)

RESPONDENT

Date of Decision : 16-04-2009

Acts Referred:

Citation : (2009) 4 KarLJ 505

Hon'ble Judges : P.D. Dinakaran, C.J.;V.G. Sabhahit, J

Bench : Division Bench

**Advocate : M.S. Purushothama Rao, for the Appellant; Basavaraj Kareddy, GA.,
for the Respondent**

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—This appeal is filed by the petitioner in W. P. No. 34454/2004 being aggrieved by the order dated 28.2.2008 wherein the learned Single Judge has declined to quash the order dated 20.8.2004 passed by the State and dismissed the writ petition.

2. The appellants herein filed W.P. No. 34454/2004 averring that petitioners have studied four years course in Electro Homeopathy system of medicine. There are several institutions imparting studies in Electro homeopathy, an alternate system of medicine. The said system is in vogue and in force for over a century in certain parts of the states in the course of Research and Development and introduction of the same. In the area in which it is not in vogue certain institutions came to be started in various states of India and an institution was started in Karnataka in 1992 out of which Rajiv Gandhi Electro Homeopathy Medical College at Dharwad is one of them. The second petitioner has been a student of the said college and has completed his course in 1994. The petitioner was given Bachelor Degree of Electro Homeopathy Medicine and Surgery (for short "BDEHMS). Similarly, several other persons have undergone the course in

the said college and other colleges, have been given the same type of certificates. There are about 40 colleges through out the State of Karnataka working since 1992 to 1998 granting such certificates. The first petitioner is an Association registered under the Karnataka Societies Registration Act. The second petitioner is the President of the first petitioner-Association. It is further averred that Electro Homeopathy is an alternative system of medicine, which has a history of more than five hundred years. Petitioners were granted certificate and they were also permitted to practice without prefixing the word "Doctor" to their name. However the said certificate issued by the Directorate of Indian Systems of Medicine and Homeopathy, Bangalore has been withdrawn in view of the order of the Central Government dated 25.11.2003, by order of the State Government dated 28.4.2004 and therefore, the writ petition for the above said reliefs contending that certificate issued by the petitioners could not have been withdrawn and the order impugned in the writ petition is capricious and arbitrary and liable to be set aside.

3. The petition was resisted by contending that the course of study in Electro Homeopathy systems was not recognised and it was an unrecognised system of alternative medicine, as declared by the expert committee under the chairmanship of Director General, Indian Council of Medical Research and on the basis of the said committee, Government of India issued an order dated 25.11.2003 not permitting Electro Homeopathy and not recognising the said system as an alternative system of medicine. The averment made in the petition that Electro Homeopathy system of medicine is a history of 500 years is denied. It is further averred that in view of the directions issued by the Government of India dated 25.11.2003 to direct the general public from the petitioner's practitioners of the system were not trained in any valid recognition in the country. The certificate issued by the State Government has been withdrawn and the impugned order does not suffer from any error or illegality and if the petitioners are allowed to practice, the same would be detrimental to the health of the general public. The learned Single Judge after hearing the learned Counsel appearing for the petitioners and the learned Counsel appearing for the respondents held that the impugned order was justified in view of the direction issued by the Central Government dated 25.11.2003. The learned Single Judge observed that the Division Bench of this Court in Khalsa Medical and Educational Trust Vs. Union of India (UOI), has held that the provisions imposing restriction on certain practitioners is a regulatory measure and the same cannot be treated as illegal and unconstitutional and following the said judgment and the order passed by the Central Government which has been complied with for issuing the impugned order, the learned Single Judge held that the impugned order is justified and does not suffer from any error or illegality as to call for interference in exercise of the writ jurisdiction of this Court. However, the learned Single Judge observed that, if there are any other grievances due to the same, at best the petitioners can make an appropriate representation and made it clear that disposal of the writ petition will not come in the way of the petitioners from

vindicating the aspect of the matter to the second respondent by filing an appropriate representation in this regard and if the petitioners file such representation before the second respondent, the same shall be considered by the second respondent and dispose of one way or the other in accordance with law. Accordingly, disposed of the writ petition with the above said observations. Being aggrieved by the said order dated 28.2.2008, the writ petitioners have preferred this appeal.

4. We have heard the learned Counsel appearing for the appellants and the learned Government Advocate appearing for respondents.

5. Learned Counsel appearing for the appellants reiterated the contentions urged before the learned Single Judge and submitted that when certificate has been issued by the State Government, the same could not have been withdrawn as per the direction of the Central Government and writ petition ought to have been allowed.

6. Learned Government Advocate argued in support of the order passed by the learned Single Judge.

7. We have given careful consideration to the contention of the learned Counsel appearing for the parties and scrutinised the material on record.

8. The material on record would clearly show that in Khalsa Medical and Educational Trust Vs. Union of India (UOI), the Division Bench of this Court has upheld the restriction upon medical practitioner as a regulatory and the constitutional validity of the same has been upheld. However, the State Government seems to have proceeded on the basis that the said judgment would only restrict practicing by prefixing the word "Doctor" and under the said misconception certificates were issued with a direction that the word "Doctor" should not be prefixed to the name of the petitioner. However, in view of the direction issued by the Central Government on 25.11.2003, the State Government has withdrawn the certificate issued to the Electro Homeopathy system of medicine. In view of the Division Bench decision of this Court and the direction issued by the Central Government and if impugned order is set aside it would amount to perpetuating illegality, the learned Single Judge has safeguarded the interest of the petitioners by giving them opportunity to make a representation to the appropriate authority and has directed the authority to consider the representation, in accordance with law. Accordingly, we hold that the order passed by the learned Single Judge is justified and does not suffer from any error or illegality as to call for interference in this intra court appeal.

Accordingly, the writ appeal is dismissed.