

(1994) 09 KAR CK 0024

In the Karnataka High Court

Case No : W.As. No's. 1777 to 1779 of 1994

Khalsa Medical and Educational Trust

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 30-09-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1898 (CrPC) — Section 173, 210
Karnataka Ayurvedic Naturopathy, Siddha, Unani and Yoga Practitioners Registration and Medical Practitioners Miscellaneous Provisions Act, 1961 — Section 34, 37, 38
Penal Code, 1860 (IPC) — Section 419, 420

Citation : (1994) ILR (Kar) 3211 : (1994) 5 KarLJ 204 : (1995) 1 RCR(Criminal) 247

Hon'ble Judges : M. Ramakrishna, Acting C.J.; Tirath S. Thakur, J

Bench : Division Bench

Advocate : D.S. Ramachandra Reddy, for the Appellant; Central Government Stdg counsel for R-1, Government Advocate for R-2, 3 and 6 and N. Devdas, for R-4, for the Respondent

Final Decision : Dismissed

Judgement

Tirath S. Thakur, J

1. In these Writ Appeals the Appellants call in question the correctness of an order passed by a learned Single Judge of this Court vacating an interim order of stay granted in favour of the Appellants and allowing the Statutory Bodies under law to perform their Statutory functions in terms of the Mysore Ayurvedic Practitioners Miscellaneous Provisions Act, 1961 hereinafter referred to as the Act.

2. A few facts necessary for the disposal of these Appeals may be stated first:

Appellant No. 1 is a Medical and Educational Trust, which claims to have established an Institute of Medical Science at Madiwala, Bangalore. Appellant No. 3 is the President of the Trust and the Chairman of the Institute Appellant No. 2.

The Appellants claim that Electro Homeopathy system of medicine is a proper

medical science which even though not recognised as such, is in the process of being so recognised and legislative Bills for that purpose have been presented to the Parliament from time to time. They contend that the system is basically Plant-Oriented meant to treat the illness of a patient only by Medicines based on Herbs and Plants, and is a safe system of medicine being practised in India since the beginning of 19th Century. They further submit that the appellants wanted to propagate and develop the said system and for this purpose they have established certain Institutions for the purpose of Research, Development and Training in the said system. Since, however, the system is not yet recognised, Respondent No. 4 namely the Karnataka Ayurvedic and Unani Practitioners Board, has been issuing Press Statements, stating that the system is not recognised and therefore no institution can legally teach the same. On the basis of the information provided by the 4th Respondent, Respondent No. 6 has registered a case against the appellants for the alleged violation of Sections 34, 37 and 38 of the Act. In connection with the said case, Appellant No. 3 was arrested though subsequently released on bail.

3. Aggrieved by the interference allegedly caused by the Respondent-Board, and the investigation being conducted by the Police, the petitioner's filed Writ Petition No. 3092/1994 inter alia seeking a direction against the Respondents not to interfere with the affairs of the petitioner-Appellants, herein and also sought an interim order restraining the Respondents from issuing any statements through the Press, media or other means denigrating the Electro Homeopathy system of medicine. They further sought an order to restrain Respondents from taking any action against the petitioners and the holders of certificates from the petitioner's Institutions.

4. The prayer for an interim order in the terms mentioned above, was considered by a learned Single Judge of this Court, who by a reasoned order dated: 9th of March 1994 declined to issue any Interim Order holding that Electropathy/Electro-Homeopathy, not being a recognised system of medicine and none of the holders of certificates issued by the petitioners or Electropathy Medical Central Board of India having been registered u/s 34 of the Act aforesaid, the question of allowing the appellants to propagate the system or the certificate holders to practise the same contrary to the provisions of the Act, did not arise. The learned Single Judge also found that in the absence of recognition and registration of the system and the Institution in accordance with law under any Central or State Act, it was not possible for the Court to restrain the Statutory Bodies, entrusted with statutory functions under the said enactments from taking appropriate legal action in order to safeguard the public interest.

5. Having thus failed to secure an Interim Order in the said Writ Petition the Appellants made a second attempt and filed Writ Petitions Nos. 17435-17536/1994, once again seeking the reliefs prayed for by them earlier besides questioning the Constitutional validity of Sections 34, 37 and 38 of the Act. In the said Petitions also a prayer for interim relief was made which was

initially granted but upon an application moved for vacation of the same has been vacated by the learned Single Judge by virtue of the order impugned in these Appeals. Aggrieved by the aforesaid order of vacation of interim directions, the Appellants have filed the present Appeals as already indicated earlier.

6. We have heard the learned Counsel for parties at length and carefully perused the documents enclosed with the Memo of Appeal.

7. Mr. Ramachandra Reddy, learned Counsel appearing for the Appellants argued that the learned Single Judge was in error in having vacated the Interim Order on the basis of the earlier Order of this Court in Writ Petition No. 3092/1994. He argued that the learned Single Judge failed to notice the difference between the scope of challenge as stated in the Writ Petition No. 3092/1994 and the subsequent Petitions filed by the appellants, inasmuch as the earlier Writ Petition, did not challenge the Constitutional validity of the provisions of Sections 34, 37 and 38 of the Act, while the later did. This, contended the learned Counsel, was a significant and material distinction between the two cases with the result that the analogy drawn by the learned Single Judge between the earlier case and the fresh Petitions filed by the Appellants was misplaced. In the alternative, the learned Counsel argued that the investigation being conducted by the Police into the First Information Report lodged by the Board alleging violation of the provisions of Sections 34, 37 and 38 of the Act, was incompetent and an abuse of the process of law. He, therefore urged that the Police investigation should be stayed pending the final disposal of the Writ Petition by the learned Single Judge, for otherwise, the appellants would be subjected to an undue harassment and hardship by reason of the conduct of any such investigation. Learned Counsel, further pointed out that besides the complaint which the Board has lodged and is being investigated by the Police, the Board has also filed a private complaint before the Metropolitan Magistrate in which the Magistrate has already issued process against the accused persons. He contended that simultaneous investigation of the offences which are alleged to have been committed by the Appellants through the Police agency, would amount to double jeopardy and unnecessary harassment and therefore this Court must prevent any such investigation.

8. Mr Devadas, learned Counsel appearing for the Respondents however, urged that the alleged system of medicine being propagated, taught and practised by the Appellants and their students is unrecognised Relying upon the provisions of Section 38 of the Act, the learned Counsel contended that no person could add to his name any title, description, letters or abbreviations which may imply that he holds a Degree, Diploma, Licence or Certificate as his qualification to practise any system of medicine unless (a) he actually holds such Degree, Diploma, Licence or Certificate- (i) is recognised by any law for time being in force in India or in any part thereof; (ii) has been conferred, granted or issued by a body or institution referred to in Sub-section (1) of Section 37, or (iii) in cases not falling under sub-clause (i) or (ii), has been conferred, granted or issued by an

authority empowered or recognised as competent by the State Government to confer, grant or issue such Degree, Diploma, Licence or Certificate. He contended that the system of medicine which the Appellants profess to propagate and teach is not a recognised system either under the provisions of the Karnataka Act or any other enactment for the time being in force in India nor is the appellant Institute recognised or authorised to award any Degree, Diploma or Certificate. The Appellants, according to the learned Counsel were therefore clearly violating the provisions of the aforesaid Act, which violation was punishable as an offence.

9. Mr. Devadas, further contended that the very fact that a private complaint has been filed before the competent Judicial Magistrate First Class, against the Appellants is no reason why the investigation being conducted by the Police, on the basis of the First Information Report, lodged with it should be quashed. He also attempted to show that the scope of the private complaint and the investigation being conducted by the Police was different and that the pendency of both these actions will not amount to duplicity [SIC:duplication] in any way.

10. The Mysore Ayurvedic and Unani Practitioner's Registration And Medical Practitioner's Miscellaneous Provisions Act, 1961 was enacted to regulate the recognition and provide for registration of practitioners of Ayurvedic, Unani and integrated systems of medicines in the State of Karnataka. The Act envisages the establishment of a Board and makes provisions for recognition of Institutions and Registration of Medical Practitioners for purposes of giving instructions in any system of medicines or practising any such system within the State of Karnataka. Section 22 prescribes the procedure for recognition of the Institutions whereas Section 34 prohibits any person from practising as a medical practitioner in any system of medicine in the absence of a registration under the aforesaid Act, or other enactments referred to therein. By virtue of Section 38 of the Act, no person can add to his name any title, description, letter or abbreviation which may imply that he holds a Degree, Diploma, Licence or Certificate to practice any system of medicine unless he actually holds such degree, Diploma or Certificate and such Degree or Certificate is recognised under any law for the time being in India or any part thereof or has been conferred, granted or issued by a Body or an Institution referred to in Sub-section (2) of Section 37 of the Act. Section 37 in turn provides that no person other than the Body or an Institution authorised u/s 22 of the Act, or under Central Act or State Act, for the time being in force shall confer, grant or issue or holds himself conferred, grant or issue any Degree, Diploma, Certificate or Licence, which is identical with or is a colourable imitation of any Degree, Diploma, Certificate or Licence granted by a Body or Institution authorised under this Act or under any Central Act or State Act, for the time being in force, Sub-section (2) of Section 38 makes contravention of the provisions of Sub-section (1) thereof an offence punishable with fine.

11. A conjoint reading of the provisions of the Act, makes it fairly manifest that the same are intended to prohibit Institutions from either giving instructions in any system of medicine and practitioners from practising any such system unless

of course the Institution is duly recognised and the practitioner is duly registered under the Act to so practise. The purpose behind the provisions of the Act clearly is to prevent Institutions and individuals from propagating any system of medicine which is not recognised and practising any such system without being duly registered under the Act to do so. The provisions, in our opinion, are clearly regulatory in character and are meant to prevent prejudice to unsuspecting and innocent members of the public from falling prey to quacks and such other unregistered medical practitioners professing to teach or practise systems of medicines which have not been recognised. We do not therefore see any apparent illegality or unconstitutionality in the provisions of Sections 34, 37 and 38 of the Act, so as to warrant the issue of any Interim Order rendering the said provisions ineffective or nugatory. On the contrary, there is a presumption about the Constitutionality of the said provisions which has not been displaced even prima facie by the Appellants before us in order to justify the grant of any interim relief in their favour. That being so, the very fact that in the subsequent Petitions out of which these Appeals arise an additional ground namely the challenge to vires of Sections 34, 37 and 38 was raised did not in our opinion warrant a view different than the one which was earlier taken by the learned Single Judge, while disposing of a similar prayer for interim relief in Writ Petition No. 3092/1994. The learned Single Judge, was therefore, perfectly justified in following the order passed in the earlier Petition notwithstanding the fact that in the subsequent Petitions an additional ground touching upon the Constitutional validity of Sections 34, 37 and 38, had been urged.

12. That apart the system of medicine taught by the appellants' Institute and alleged being practised by its students, not being a recognised system, the question of preventing the Statutory Authorities under the Act, from taking any action in terms of the Act, does not arise. So long as the provisions of the Act are on the Statute Book, and carry with them the presumption of Constitutional validity, the Authorities concerned will be fully justified in relying upon the same and taking such action as may be warranted under law. The very fact that the Appellants have challenged the vires of the provisions in this Court, is in our opinion no reason muchless a compelling one for us to prevent the Statutory Authorities from taking suitable action under the provisions of the Act.

13. Besides, the order passed by learned Single Judge, is a discretionary order; interference with which in Appeal would be warranted only if it is found that the exercise of discretion of the learned Judge is patently improper or injudicious. Merely because, a second opinion is also possible on an issue invoking grant of an interim relief is no ground to interfere with the discretion, exercised by the learned Single Judge. This is all the more so in the instant case, where we find that by preventing action at the hands of the Statutory Bodies under the Act, we are likely to license something which might expose to danger the lives of innocent and unsuspecting members of the public at large, besides, creating a wrong impression that the practise and propagation of the system of medicine being patronised by the appellants is legally permissible. We do not see any

merit in the submission of the learned Counsel for the appellants that we should issue an Interim Order in favour of the appellants, simply because, certain private members Bill for recognising the Electro Homeopathy system is pending before the Parliament. Indeed, it is for the Parliament or those concerned with the question of recognising that system, to refuse or grant recognition; but till such time the system remains unrecognised, no order favouring the appellants can be justified merely because there is according to the appellants a bright possibility of the system getting recognised. In matters of this nature where besides the parties before the Court, the orders that the Court may issue have the potential of affecting the lives and career of other people, who are not represented before the Court, the Court would do well to tread carefully rather than act on the basis of the imponderables.

14. That takes us to the other limb of Mr. Reddy's case namely: Whether the criminal investigations being conducted by the Police on the basis of the complaint lodged by the Respondent-Board should be prevented by this Court. The argument of Mr. Reddy was that the investigation being conducted by the police was wholly incompetent. This was so according to Mr. Reddy because of the fact that in terms of Section 40 of the Act, no Court other than a Magistrate of the First Class was empowered to take cognizance of any offence under the Act, except on a complaint in writing of an officer empowered by the State Government in that behalf. Mr. Reddy, urged that since the competent Court could take cognizance only on the basis of a private complaint by the Authorised Officer, the question of any Police Report being submitted for purposes of setting into motion the machinery under law against the appellants did not arise. He further urged that no complaint had been received by the Police from any person alleged to have been cheated and therefore the question of the Police investigating into any offence punishable under Sections 419, 420 of the I.P.C., also did not arise.

15. A perusal of the Complaint dated: 31st January, 1994 made by the Board to the Police shows that the same makes a specific allegation against the Appellants that they are issuing false and fabricated Certificates and Diplomas after receiving Rs. 1,000/- to Rs. 10,000/- depending upon the qualification for which the Certificate is required from innocent public and thereby cheating the public even when the appellants know that the system they are propagating and the Institution they have established is not recognised under law. On receipt of this complaint, the Police have registered a case under Sections 419 and 420 of I.P.C. read with Sections 34, 37 and 38 of the Act aforesaid. The investigation is admittedly in progress.

16. The powers of this Court under Article 226 of the Constitution to quash any investigation being conducted by the Police is not in dispute. There are however, certain well recognised situations in which the said power is exercised. One of them is where a complaint received by the Police does not on the face of it make out any offence against the accused person. In any such case, the Court may be

justified in interfering with the on going investigation by the Police and quashing the proceedings. The other situation in which the interference by the Court may be warranted are cases where there is some legal defect or lack of competence, on the part of the investigating agency in conducting any such investigation.

17. In the case before us none of these two situations exist. The complaint made by the Board to the Police on the face of it does make out an offence against the appellants for if all that is stated in the complaint is taken to be correct, (as indeed it has to be taken at this stage) it is not possible to say that no offence is made out against the appellants so as to warrant any interference with the on going investigation by the Police. In so far as the second situation is concerned, it is not Mr. Reddy's case that there is a legal bar to the conduct of investigation by the Police or the officers who were doing so. His argument on the contrary is that one of the offences being investigated by the Police namely offence under the provisions of the Act aforesaid could not be taken cognizance of by the Court on the basis of any Police Report that may be filed before the Magistrate and therefore the question of conducting any investigation by the Police into said offence does not arise.

18. We are not impressed by this line of reasoning advanced by Mr. Reddy. The complaint received by the Police makes out a specific case that the appellants are cheating innocent public by issuing to them bogus and false Certificates and Diplomas even when the system of medicine being propagated by them is known to them to be unrecognised. The very fact that a mention has been made of violation of the provisions of Sections 34, 37 and 38 of the Act, does not in our opinion mean that the Court may necessarily take cognizance of the offences under the said provision on the Police Report that may be eventually submitted to it. All that it means is that even when in terms of the provisions of the Act, no Certificate can be conferred, no instructions given and no Institution established or run in respect of any system of medicine unless recognised under the provisions of the Act, yet for monetary considerations the appellants are conferring Degrees and Diplomas upon innocent students, and are thereby committing an offence of cheating. It is this part which Police is investigating. The question of any such investigation into the offence of cheating by the Police being violative of the provisions of Section 40 of the Act. therefore does not arise.

19. That apart, the Police has yet to file a chargesheet before the Court. As and when any such chargesheet is filed and the prosecution asks for cognizance of the Court in respect of offences under the Act, based on any such Report, it may be open to the Appellants to urge on the basis of Section 40 that no such cognizance is permissible except on a private complaint. The holding of an investigation by itself will not in any manner prejudice the appellants or takeaway the protection which Section 40 of the Act, gives to them so long as cognizance is not taken by the Magistrate on any such report. The fact that the Appellants can rely upon and seek protection of Section 40 of the Act, before the Magistrate, dissuades us from interfering with the investigation at this stage.

20. Mr Reddy, then urged that since the Appellant No. 3 had been arrested by the Police, and enlarged on bail and since a copy of the First Information Report received by the Police, has been forwarded to the Magistrate, the Magistrate must be deemed to have taken cognizance of the offences alleged against the Appellants under Sections 34, 37 and 38 of the Act. This, contends the learned Counsel, has been done contrary to the provisions of Section 40 of the Act, which prohibits the Magistrate from taking cognizance except on a private complaint. We find no substance in this submission of the learned Counsel either. The very fact that a copy of the First Information Report is forwarded to the Magistrate does not imply taking of cognizance by the Magistrate concerned, Nor does the arrest and the detention of the accused during the course of investigation or his enlargement on bail tantamount to taking cognizance. The term "taking cognizance of an offence" even though not defined under the provisions of the Criminal Procedure Code, implies the application of mind by the Magistrate to the facts brought to his notice either by way of private complaint or Police Report or otherwise, which in his opinion constitute the commission of an offence. Cognizance, it is well settled, is taken of the offence and not the offender. Section 190 of the Code of Criminal Procedure, clearly provides that a Magistrate may take cognizance of an offence either on a private complaint filed before him or on a Police Report or on the basis of facts which may otherwise come to his knowledge. Admittedly, the Police has not so far presented any Report in terms of Section 173 of Criminal Procedure Code, before the Magistrate, on the basis of which the Magistrate could be said to have taken cognizance. So long as this is not done, it is not possible to say that a Magistrate has taken cognizance of the offence merely because a copy of the First Information Report, as required under the provisions" of the Cr.P.C., has been forwarded to him or merely because one or more of the accused have been enlarged on bail whether regular or anticipatory. There is therefore, no question of violation of the provisions of Section 40 of the Act. In any event, the Appellants do not seek any relief in connection with the proceedings before the Magistrate either in the Writ Petition or in the present proceedings. Their primary grievance is that the Police should not be allowed to investigate into the offences alleged against them under the Act, which is totally different from saying that the Magistrate should not have taken cognizance or the basis of any such Police Report.

21. Mr. Reddy, lastly argued that since the private complaint has already been filed against the appellants before the competent Magistrate and the Magistrate has taken cognizance of the" offence under the Act, simultaneous investigation by the Police into the said offences is tantamount to double jeopardy and grave hardship to them. We are not impressed even by this submission of the learned Counsel. The very fact that a private complaint has been filed in respect of an offence which is being investigated into by the Police, is no reason for us to quash the investigation. Even though Mr. Devadas, urged that the offences being investigated by the Police are different from those being tried by the Magistrate in the private complaint, yet we feel that even if the complaint and the

investigation are in respect of the same offence, the pendency of the complaint before the Magistrate is no reason why the investigation should be stopped or quashed. As a matter of fact Section 210 of the Code of Criminal Procedure, clearly provides for such a contingency and leaves it open to any party to the proceedings to point out to the Magistrate that the proceedings in the criminal complaint should be stayed pending submission of a report by the Police concerned as to the result of the investigation conducted by it. Upon the submission of a Report by the Investigating Officer u/s 173 of Cr.P.C., if the Magistrate takes cognizance of any offence on the basis of the said Report, the Magistrate is required to try the complaint and the case arising out of the Police Report together. Section 210 of Cr.P.C., therefore is a complete answer to the submission made by the learned Counsel for the appellant. In any case, the pendency of the complaint and the investigation by the Police Officer in respect of the same offence, is no reason for us to interfere at this stage,

22. In the result, we find no merit in these Appeals, which are hereby dismissed, but without any order as to costs.