
(1994) 07 AHC CK 0027

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 21625 of 1994

Maithili Mohan Tripathi

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 12-07-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g)

Citation : (1994) 07 AHC CK 0027

Hon'ble Judges : U.P.Singh, J and M.Katju, J

Final Decision : Dismissed

Judgement

U. P. Singh, J.—Heard the learned counsel for the petitioner and the respondent State.

2. In this petition the sole point raised on behalf of the petitioner is that the U. P. Government Doctors (Allopathic) Restriction on private practice Rules, 1983 is violative of Articles 14 and 19 (I) (g) of the Constitution imposing restriction or ban on the right of the petitioner to practice their medical profession in the form of private practice outside their regular duty hours and, therefore, the said rule be quashed.

3. We are afraid, we can not accept the above contention in view of the decision of the Supreme Court in the case of Ram Kishan Dutta Roy and others, etc. \. State of West Bengal and another, (1993)3 SCC, 724. In the said case the Supreme Court was considering the same contention in respect of the West Bengal State Health Services Act, 1993 and Section 9 thereof, prohibiting private practice by the members of the West Bengal Medical & Health Services and it was held as not violative of Article 19 (i) (g).

4. It was held that no Government Doctor can claim right to private practice. Even otherwise, it is a reasonable restriction in the interest of the Public. Mr. Justice Sawant speaking for the Court said that :

"The Act is not enacted to regulate practice of the medical practitioners in

general. It is only those medical practitioners who choose to become members of the Services constituted under the Act including the WBMES who are prohibited from practising privately. Those who join the Government service with the full knowledge that they will have no right to practise the profession privately, agree to give up their right as private practitioners in consideration of the security, status and privileges as a government servant. The Government service is also an occupation and those who choose it cannot complain of its discipline or insist upon pursuing it on their terms. Nobody compels them to join it if they want to practise their profession privately. They are free to leave it at any time. The restriction imposed by Section 9 is not on the freedom to practise the medical profession but on such practice while one continues to be the member of the State Service. In the circumstances it is not even necessary for the State to invoke clause (6) of Article 19(1) (g). The Act constitutes health services for the State. The State has a right to recruit officers to such services on such terms and conditions as it deems desirable to make the services beneficial to the members of the public. The restriction imposed on the members of such service that they shall not be entitled to private practice so long as they continue in the State Service is a reasonable restriction on the officers of the State being in the interest of the general public. Those who join the Service are bound to abide by it, being a condition of service voluntarily sought by them.

Moreover, Section 9(2) also makes provision to grant nonpractising allowance in addition to salary, allowances, perks and privileges to the members of the WBMES which is in lieu of the right to private practice. Section 9 thus does not violate Art. 19(1) (g)".

5, The same contention was raised before this Court in the case of Dr. Y. P. Singh and others v. State of U. P. and others, (AIR 1982 Allahabad 439) and it was held that the imposition of total restriction on private practice by medical practitioners engaged in Government Service is reasonable and in the interest of general public. It is neither arbitrary, nor unfair, nor excessive in nature, as such not violative of Article 19(1)(g) of the Constitution, The said Bench decision of this Court was also approved by the Supreme Court in the aforesaid case of Ram Kishan Dutta Roy and others v. State of West Bengal and another (1993)3SCC 724.

6. In this view we find no merit in the contention raised by the petitioner, challenging the vires of the U. P. Government Doctors (Allopathic) Restriction on Private practice Rules, 1978.

7. In the result, the writ petition is dismissed without any orders as to cost.

(Petition dismissed)