

(2010) 08 MP CK 0077

In the Madhya Pradesh High Court

Case No : Writ Petition No. 14517 of 2007

Private Homeopathy Doctors Association and Others

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 17-08-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19(1)
Indian Medical Council Act, 1956 — Section 15(3), 27
Madhya Pradesh Ayurvedigyan Parishad Adhiniyam, 1987 — Section 11, 12, 13, 24, 2A
Madhya Pradesh Homoeopathic Perishad Adhiniyam, 1976 — Section 2, 3

Citation : (2010) 5 MPHT 178

Hon'ble Judges : Sushma Shrivastava, J;A.K. Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Arun Mishra, J.—This petition has been preferred by the Petitioners claiming relief to declare Section 24 of M.P. Ayurvedigyan Parishad Adhiniyam, 1987 as ultra vires. A prayer has also been made to direct the Respondents to allow the doctors registered under Homoeopathic System of Medicines to impart life saving drugs in emergency in the same manner as it has allowed to the Ayurvedic Doctors with Modern Medicine and Surgery.

2. It is averred by the Petitioners that the Petitioner No. 1 is a duly registered society under the M.P. Society Registration Adhiniyam, 1973. In Madhya Pradesh Homoeopathic Doctors are not permitted to use life saving Allopathic Drugs in emergency situation, while Xth Class pass workers are allowed to use these drugs. The action of the Respondents in prohibiting the Petitioners to use life saving drugs is totally unjust. The holders of DHMS qualification are not permitted to impart the aforesaid life saving Allopathic Drugs, though they have obtained instructions in practical course and introduction of Allopathic subjects, to deal with emergency situations.

3. It is further averred in the petition that they have also been given training for

the use of life saving drugs. Thus, there is no rhyme or reason to deprive them of permission to prescribe life saving Allopathic Drugs in emergency situations. Instructions have been given to the Petitioners, whereas on the other hand, Ayurvedic Doctors are permitted to impart Allopathic life saving drugs in emergency situations. Section 24 of M.P. Ayurvigyan Parishad Adhiniyam, 1987, which permits only Ayurvedic Doctors to impart the aforesaid medicines, be declared ultra vires as the same is arbitrary and discriminatory to the Homoeopathic Doctors. Homoeopathic System is recognized by the State and is controlled by the Central Act, i.e., Homoeopathic Central Council Act, 1973. Violation of Article 19(1)(g), 14 and Article 16 of the Constitution is alleged.

4. The Respondents have filed their reply contending that the holders of diploma in Homoeopathic Medicines cannot be permitted to practice on Allopathic side. The subject matter of "medicine" is within the Legislative competence of the State Legislature and is dealt with by the entry Nos. 25 and 26 of Lists III to VII Schedule of the Constitution. There is no violation of fundamental rights of the Petitioner and Section 24 of the M.P. Ayurvigyan Parishad Adhiniyam, 1987 cannot be said to be discriminatory or arbitrary. The decision has been taken on the basis of the guidance given by the experts, to allow Ayurvedic doctors to prescribe life saving drugs in emergency situations as provided in Section 24 of the Adhiniyam, 1987. Since the decision is taken by expert's body, this Court cannot substitute the expert opinion.

5. It is further contended in the return that paramedical persons are only entitled to distribute the medicine under the strict supervision of a competent medical practitioner, but these persons are not entitled to prescribe any Allopathic Drugs or impart the medicines without the supervision of competent doctor. They cannot prescribe any medicines which is prohibited by the law. Considering the expertise of Homoeopathic System of Medicines, it cannot be said that they have expertise to impart the medicines of Allopathic System. Homoeopathic System has been defined in Section 2(e) of M.P. Homoeopathic Parishad Adhiniyam, 1976. The right and privilege available to Homoeopathic Doctors are on the basis of qualification recognized under Medical Council of India Act, 1956. The provisions of M.P. Chikitsa Adhiniyam, 1961 have also been made applicable for grant of degree in Homoeopathic System of Medicines. The decision of the Apex Court in Poonam Verma Vs. Ashwin Patel and others, has been relied upon, in which it has been held that a person who does not have the knowledge of a particular system of medicine but practices in that system is a quack. The same question was raised in the Vidhan Sabha, which has been replied by it on 2.8.07 wherein the relief prayed has been declined.

6. Shri S.S. Tripathi, learned Counsel for the Petitioners has submitted that Section 24 of M.P. Ayurvigyan Parishad Adhiniyam, 1987 is ultra vires, the same is discriminatory when Ayurvedic Doctors and even Xth pass health workers have been allowed to impart Allopathic Medicines in emergency situations. There is no rhyme or reason to deprive the same right to the Petitioners when they have also

completed the course of instructions in certain branches of Allopathic System of Medicines. Thus, no harm is going to be caused in case Homoeopathic Doctors having DHMS qualification are permitted to impart life saving drugs of Allopathic System of Medicines in emergency situation. Therefore, they should have been permitted to impart these medicines by virtue of making a provision u/s 24 of the Adhiniyam as made with respect to holders of degree in Ayurved. Prayer has also been made to refer the matter to the committee of experts.

7. Shri P.K. Kaurav, Dy. Advocate General has relied upon the decision in the case of Poonam Verma (supra). It is submitted that Homoeopathic System of Medicine is totally different from Ayurvedic System of Medicines. On the basis of recommendation made by experts committee, the provision was made u/s 24 to the limited extent with respect to the Ayurvedic Doctors. Petitioners cannot claim any comparison with different class of Ayurvedic Doctors. There is no question of discrimination, as they belong to a different class. This Court cannot act as an expert in the field of medicines.

8. Vires of Section 24 of M.P. Ayurvigyan Parishad Adhiniyam, 1987 has been assailed. The Adhiniyam provides for constitution of M.P. Ayurvedic Parishad u/s 3, i.e., to be treated as Council as defined in Section 2-A of the Adhiniyam. It is obligatory upon the Council to prepare and maintain the State Medical Register. Section 11 deals with preparation of register, Section 12 deals the maintenance of register, Section 13 deals with registration of additional qualifications. The other provisions of Chapter III deals with respect to the privileges of registered practitioner, Chapter IV deals with the Council fund, Chapter v. deals with Misc. provisions. In Section 24 of the Adhiniyam, which is alleged to be ultra vires, if any person whose name is not enrolled on the State Medical Register practices as a registered Medical Practitioner, he shall be punishable with Rigorous Imprisonment for a term which may extend to three years and with fine which may extend to five thousand rupees. However, it has been provided that the person possessing Bachelor in Ayurved with Modern Medicine and Surgery Degree and registered with the Madhya Pradesh Board of Ayurvedic and Unani Systems of Medicine and Naturopathy shall not be punishable under this Section for prescribing Allopathic medicines or practicing surgery if his Registration Certificate authorizes him to do so. Section 24 is quoted below :-

Section 24. Penalty.-- If any person, whose name is not enrolled on the State Medical Register, practices as a registered Medical Practitioner, he shall be punishable with Rigorous Imprisonment for a term which may extend to three years and with fine which may extend to five thousand rupees:

Provided that,--

(i) the person possessing Bachelor in Ayurvedic with Modern Medicine and Surgery Degree and registered with the Madhya Pradesh Board of Ayurvedic and Unani Systems of Medicine and Naturopathy shall not be punishable under this Section for prescribing Allopathic medicines or practicing surgery if his

Registration Certificate authorizes him to do so;

(ii) the Medical Practitioner entitled to the privileges of Section 27 of the Indian Medical Council Act, 1956 (No. 102 of 1956) shall not be punishable under this section for his non-registration in Madhya Pradesh.

It is apparent from a perusal of first proviso to Section 24 of the Adhiniyam that the persons possessing Bachelor Degree in Ayurvedic with Modern Medicine and Surgery are only permitted to impart or prescribe Allopathic medicines or practicing surgery with a rider that his certificate authorizes him to do so. The diploma holders of Homoeopathic System of Medicines cannot at all compare their case with holders of degree of Bachelor in Ayurvedic with Modern Medicine and Surgery. The holders of Bachelor Degree in Ayurvedic with Modern Medicine and Surgery are having the knowledge of advanced courses of Modern Medicines and Surgery, which is envisaged by the first proviso. Based on the experts committee's report, the Medical Practitioner holding Degree in Ayurvedic Course with Modern Medicines and Surgery Course is permitted to impart Allopathic Medicines, in emergency situations and not in general. Ayurvedic System of Medicine stands on different footings as compared to the Homoeopathic System of Medicine. Thus, no equality can be claimed by the Petitioners being of different class. The plea of discrimination, which is raised, is thus baseless. There cannot be any comparison of the Petitioners holding the diploma in Homoeopathic System of Medicines with the holders of degree of Bachelor in Ayurvedic with Modern Medicine and Surgery. Thus, Articles 14, 16 and 19(1)(g) are not at all violated.

9. It was next contended on behalf of the Petitioners that Xth pass persons have been permitted to administer such medicines. Thus, there is no rhyme or reason to deprive the diploma holders in Homoeopathic System of Medicines to impart the aforesaid medicines. It has been made clear in the return by the State that such workers have not been permitted to prescribe these medicines. These medicines can only be prescribed by the qualified Medical Practitioner. These medicines can be imparted by the workers only under the strict supervision of Medical Practitioner competent to prescribe. Thus, the submission of discrimination based on the aforesaid ground is also baseless and untenable.

10. The Apex Court in Poonam Verma (supra), has laid down the principle that a person who is registered under Bombay Homoeopathic Practitioner's Act, 1959 can practice Homoeopathic Medicines only. The significance of mutual exclusion is relevant in as much as the right to practice in any particular System of Medicine is dependent upon registration which is permissible only if qualification, and that too, recognized qualification, is possessed by a person in that system.

11. The Apex Court has further laid down in Poonam Verma (supra) that though the study of Physiology and Anatomy is common in all systems of medicine, but so far as the study of drugs is concerned, the Pharmacology of all systems is entirely different. Merely because the Anatomy and Physiology are similar, it does

not mean that a person having studied one System of Medicine can claim to treat the patient by drugs of another system which he might not have studied at any stage. Since the law under which a Homoeopathic Doctor was registered as a Medical Practitioner required him to practise in Homoeopathy only, he was under statutory duty not to enter the field of any other System of Medicines as, admittedly, he was not qualified in the other System, i.e., Allopathy, to be precise. He trespassed into a prohibited field and was liable to be prosecuted u/s 15(3) of the Indian Medical Council Act, 1956. His imparting of Allopathic Medicines was an actionable negligence. The Apex Court in Poonam Verma (supra), has laid down thus :-

36. A combined reading of the aforesaid Acts, namely, the Bombay Homoeopathic Practitioners Act, 1959, the Indian Medical Council Act, 1956 and the Maharashtra Medical Council Act, 1965 indicates that a person who is registered under the Bombay Homoeopathic Practitioners Act, 1959 can practice Homoeopathy only and that he cannot be registered under the Indian Medical Council Act, 1956 or under the State Act, namely, the Maharashtra Medical Council Act, 1965, because of the restriction on registration of persons not possessing the requisite qualification. So also, a person possessing the qualification mentioned in the Schedule appended to the Indian Medical Council Act, 1956 or the Maharashtra Medical Council Act, 1965 cannot be registered as a Medical Practitioner under the Bombay Homoeopathic Practitioners Act, 1959, as he does not possess any qualification in Homoeopathic System of Medicine. The significance of mutual exclusion is relevant inasmuch as the right to practice in any particular System of Medicine is dependent upon registration which is permissible only if qualification, and that too, recognized qualification, is possessed by a person in that System.

37. It is true that in all the aforesaid System of Medicine, the patient is always a human being. It is also true that Anatomy and Physiology of every human being all over the world, irrespective of the country, the habitat and the region to which he may belong, is the same. He has the same faculties and same systems. The Central Nervous System, the Cardio-Vascular System, the Digestive and Reproductive Systems etc. are similar all over the world. Similarly, emotions, namely, anger, sorrow, happiness, pain etc. are naturally possessed by every human being.

38. But merely because the Anatomy and Physiology are similar, it does not mean that a person having studied one System of Medicine can claim to treat the patient by drugs of another System which he might not have studied at any stage. No doubt, study of Physiology and Anatomy is common in all Systems of Medicines and the students belonging to different Systems of Medicines may be taught Physiology and Anatomy together, but so far as the study of drugs is concerned, the Pharmacology of all Systems is entirely different.

12. The certificate of registration of Petitioners does not entitle them to practice in Allopathic System of Medicine as they are not registered for that purpose.

Thus, they cannot violate, by imparting medicines of Allopathic System, the provisions of their own registration and the provision of M.P. Ayurvedigyan Parishad Adhiniyam, 1987.

13. This Court cannot act as an expert in such matters and direct the Respondents to permit the Petitioners/holders of Diploma in Homoeopathic System of Medicines to impart life saving drugs of Allopathic System of Medicine in emergency situations. We do not find availability of any ground so as to make interference in the matter. Section 24 of the M.P. Ayurvedigyan Parishad Adhiniyam, 1987 cannot be said to be ultra vires.

Resultantly, we do not find any merits in the petition. The petition deserves dismissal and is hereby dismissed. The parties to bear their own costs.