

(2013) 11 CAL CK 0001

In the Calcutta High Court

Case No : G.A. No. 3584 of 2008, G.A. No. 1619 of 2010 and W.P. No. 1229 of 2008

Sanjib Das

APPELLANT

Vs

State of W.B. and Others

RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Citation : AIR 2014 Cal 5 : (2014) 1 CHN 427

Hon'ble Judges : Ashim Kumar Banerjee, Acting C.J.;Debangsu Basak, J

Bench : Division Bench

Advocate : Sakya Sen and Mr. Subrata Goswami, Saugata Bhattacharya and Mr. Sunit Kumar Roy, for the Appellant; Tapan Kumar Mukherjee, Advocate and Ms. Debjani Roy, Advocate for State, Mr. Srijib Chakraborty, Advocate for Respondent No. 10 and Mr. Ashoke Banerjee for Respondent Nos. 14 and 15, for the Respondent

Judgement

Debangsu Basak, J.—Whether a person having obtained a degree/certificate/diploma to practice alternative medicines can prefix "Dr." or "Doctor" or any other such prefix to their names, falls for consideration in this writ petition. Petitioner alleges that the respondent Nos. 14 and 15 are representing themselves as doctors/medical practitioners by using a prefix "Dr." before their names. Petitioner has relied upon various prescriptions issued by the respondent Nos. 14 and 15. Petitioner says that neither respondent Nos. 14 nor 15 possess an M.B.B.S. degree or the basic minimum degree for them to describe themselves as doctors. Petitioner has made a representation to the Indian Medical Association on 3rd November, 2007. The Indian Medical Association forwarded the petitioner's complaint to the Commissioner of Police Kolkata to take necessary action. According to the petitioner, another body of medical practitioners namely I.M.A. academy of medical specialties also requested the Commissioner of Police Kolkata to take action. Petitioner claims that the Police Authorities did not take any action. Petitioner made representations to various authorities which did not evoke a favourable reply. In such circumstances, the

petitioner has approached this Hon"ble Court for seeking direction on the State respondents to initiate enquiry on the basis of Memo No HAD/6 R-37-2001/Pt-1/A 1573/1 dated 14th March, 2008 and a further order seeking the State respondent to ensure that the respondent Nos. 14 and 15 are restrained from representing themselves as doctors and/or from practicing as medical practitioners without possessing requisite qualification.

2. By an order dated 21st November, 2008, the Indian Board of Alternative Medicines was added as respondent No. 16. By an order dated 12th March, 2010 leave was granted to prosecute the petition in a representative capacity against the respondent Nos. 14 and 15 as representing all the persons who have been conferred the degrees/diplomas/certificates of registration by the Indian Board of Alternative Medicines Kolkata. Direction for affidavits has been issued from time to time. Affidavits have been filed by the respondent Nos. 11,15 and 16. Advertisements have been published pursuant to the order dated 12th March, 2010. Affidavits have been filed by a member of the public seeking to support the system of alternative medicines and seeking to support the use of prefix Dr. before the name of practitioner on alternative medicine. Suman Motilal Shah claims to be a registered practitioner having diploma in magnet therapy under the Indian Board of Alternative Medicines has filed an affidavit opposing the grant of reliefs. Mr. Partha Mukherjee has filed a similar affidavit. An application for addition of party has been made on behalf of Suresh Chandra Majumder who states that several institutions enumerated in paragraph 6 to his application are issuing degrees/diplomas/certificates and that candidates of such institutions are using the prefix doctor or Dr. and that they are not entitled to. Suresh Chandra Majumder seeks to support the petitioner. The institutions named in paragraph 6 to the application of Suresh Chandra Majumder who are added as respondents to the Writ Petition as respondent Nos. 17 to 21. The respondent No. 21 has used an affidavit opposing the writ petition.

3. The Indian Board of Alternative Medicines through its president has affirmed an affidavit stating that although the system of alternative medicines have not been recognized by any Central law or State law no law prohibiting its user is there in West Bengal. Although Dr. is used as prefix the term alternative medicines is used after the name of the practitioner in their letter heads which clarifies the position entirely, and that, therefore, there is no scope for misrepresentation if a prefix Dr. is used. It is also contended that Dr. is used to denote that the practitioner of alternative medicines are distinguished from quacks.

4. The writ petition received the consideration of the Division Bench from time to time. By an order dated 12th March, 2010 the respondent Nos. 14 and 15 and similarly situate persons were restrained from using the title Doctor or Dr, in abbreviated forms with their names.

5. Counsel for the petitioner contends that the respondent No. 14 and 15 and for that matter any person similarly situate as that of the respondent Nos. 14 and 15

are not entitled to use the prefix Doctor or Dr. to their names. He contends that none of the respondent Nos. 16 to 21 are recognized institutes within the meaning of the Indian Medical Council Act, 1956. Certificates issued by the respondent Nos. 16 to 21 are not recognized in any of the schedules to the Indian Medical Council Act, 1956. The petitioner relies on section 6 of the Indian Medical Degrees Act, 1916 to contend that user of doctor or Dr. without requisite permission, is a punishable offence. Counsel for the respondent Nos. 14 and 15 contends that they obtained valid certificates from the respondent No. 16. Having obtained such valid certificates they are entitled to practice alternative medicines. No law prohibits them from practicing alternative medicines. The respondent Nos. 14 and 15 contends that they have treated various patients as also obtained patent in respect of a particular medicine. They also contend that the members of the public are satisfied with the quality of medical relief given by them.

6. The respondent No. 16 has used an elaborate affidavit. In such affidavit the respondent No. 16 has highlighted the various accolades that it received in its field from various institutions and personalities. It also relies on international practice.

7. In the second affidavit filed on behalf of the respondent No. 16 it has been admitted that the system of alternative medicines has not been recognized by any Central law or State law. The respondent No. 16 however, contends that there is no law in West Bengal prohibiting the user of prefix doctor or dr. prior to the names. Respondent No. 16 claims to be registered under the West Bengal Societies Registration Act, 1961. It has also relied upon its rules and bye laws.

8. Respondent No. 21 a similarly situate as that of the respondent No. 16 has used an affidavit. In such affidavit the respondent No. 21 claims itself to be an affiliated institution under Act XXVI of 1961. It claims that since persons practicing Homeopathy, Ayurvedic, Unani and Siddha systems of medicines are entitled to use the prefix doctor it would be discriminatory if practitioners of alternative medicines are not allowed to use the same. Submissions have been made on behalf of the respondent Nos. 16 and 21 in line with their affidavit before us.

9. We have heard the rival contentions of the parties and have perused the records. The Indian Medical Council Act, 1956 has come into effect from 30th December, 1956. The statement of objects and reasons of the 1956 Act postulate that the 1956 Act would provide for the maintenance of an all India register by the Medical Council of India which will contain the names of all Medical practitioners possessing recognized medical qualification.

10. Section 2(d) of the 1956 Act defines Indian Medical Register to mean the medical register maintained by the Council. Section 21 of the 1956 Act requires the Council to maintain in the prescribed manner a register of medical practitioners. Such register is deemed to be a public document within the

meaning of the Indian Evidence Act, 1872. Council is defined in section 2(b) of the 1956 Act to mean Medical Council of India constituted under the 1956 Act. A recognized medical qualification is defined by section 2(h) of the 1956 Act to mean any of the medical qualifications included in the schedules of the 1956 Act.

11. It is an admitted position that none of the respondent Nos. 16 to 21 and the diplomas, degrees, certificates and licenses issued by them are recognized under the Indian Medical Council Act, 1956. Section 15 of the 1956 Act gives right to persons possessing qualifications in the schedule to the Act of 1956 to be enrolled on any State Medical Register. State Medical Register is defined in Section 2(k) of the 1956 Act to mean a register maintained under any law for the time being in force in any State regulating the registration of practitioners of medicines.

12. The Scheme of the 1956 as appearing in sections 10A and 10B shows that no medical qualification granted by a medical college except with the previous permission of the Central Government in accordance with section 10A shall be a recognized medical qualification for the purpose of the 1956 Act.

13. Section 11 of the 1956 Act deals with recognition with medical qualification granted by universities or medical institutions in India. The medical qualifications granted by any university or medical institution in India which are included in the first schedule to the said Act is to be recognized medical qualification for the purposes of the 1956 Act. Our attention has also been drawn to section 6 of the Indian Medical Degrees Act, 1916. The scheme of the two Acts leads us to hold, only a person holding a recognized medical qualification and having his name in Medical Register, is entitled to use "doctor" or "dr." as a prefix.

14. Admittedly, the respondent Nos. 15 to 21 are not included to the first schedule of the said Act. Section 12 of the 1956 Act speaks of recognition of medical qualifications granted by medical institutions in countries with which there is a scheme of reciprocity. The second schedule specifies the medical qualifications granted by medical institutions outside India. Section 13 of the 1956 Act speaks of recognition of medical qualifications granted by medical institutions whose qualifications are not included in the first of the second schedule but recognized as medical qualifications for the purposes of the 1956 Act.

15. The respondent Nos. 16 to 21 do not fall within the second of the third schedule of the 1956 Act.

16. Our attention has also been drawn to section 6 of the Indian Medical Degrees Act, 1916. The alternative medicines practiced by persons to whom diplomas, degrees, certificates or licenses have been given by the respondent Nos. 16 to 21 may receive favourable acceptance by institutions and personalities. Such acceptance does not in any manner confer a right on such persons to use the prefix doctor or dr. to their name. A person who has obtained a medical qualification in terms of the Indian Medical Council Act, 1956 and whose name

appears in the register of medical practitioners as contemplated under the said Act of 1956, is entitled to use the prefix doctor or dr. To allow any other person to use such prefix and to practice medicines would be against the scheme of the Indian Medical Council Act, 1956 and the Indian Medical Degrees Act, 1916.

17. In such circumstances we allow writ petition directing the State Authorities to take appropriate action on the memo dated 14th March, 2008 as expeditiously as possible and restrain the respondent Nos. 14 and 15 and all other persons similarly situated, from using the prefix doctor or dr. in any manner whatsoever with their names. With the aforesaid directions this writ petition is disposed of. There would be however no order as to costs.

Ashim Kumar Banerjee, Actg. C.J.

I agree