

(2017) 04 BOM CK 0057
In the Bombay High Court
Case No : 1447 of 2016

Sudhakar s/o. Sakahari Tidke & Ors.

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 24-04-2017

Acts Referred:

Constitution of India, Article 21, Article 19(1)(g) - Amendment of the Schedule - Protection of certain rights regarding freedom of speech, etc
Maharashtra Medical Practition

Citation : (2017) 04 BOM CK 0057

Hon'ble Judges : S.S.Shinde, K.K.Sonawane

Bench : DIVISON BENCH

Advocate : P.R.Patil, S.G.Karlekar

Judgement

1. This Petition under Article 226 of the Constitution of India is filed with the following prayers: (A) By writ of mandamus, directions or orders in the nature of mandamus, the respondents be restrained from taking any adverse action for practicing in Electropathy / ElectroHomeopathy. (A1) By writ of certiorari or directions or orders in the nature of certiorari, the order dated 25.01.2016 (ExhibitH, page 65), be quashed and set aside and it be further directed that no adverse action be taken against the petitioners without giving any opportunity of hearing to them.

2. The learned counsel appearing for the petitioners submit that, the petitioners are from rural areas and their family members are involved in agriculture, attending the cows, buffaloes and shegoats. After completing their 12th standard examinations, the petitioners completed Electropathy / Naturopathy course. It is submitted that, Electropathy was not causing any harmful effect to the health, therefore, it was excluded from the definition of "practicing medicine" as per Section 2 (2) of the Maharashtra Medical Practitioners Act, 1961 [for short "Act of 1961"]. However, without taking into consideration this important aspect, the police machinery started arresting indiscriminately the practitioners in

Electropathy. The Division Bench of the Bombay High Court in the case of Nageshwar Basantram Dubey Vs. Union of India & others, 2007 [3] Mh.L.J. 275 gave appropriate directions in respect of Electropathy trained persons. The State Government was pleased to issue directions from time to time for identifying the practitioners who are not legally entitled to practice. It is submitted that, even the State Government has also started course a titled as "Advanced Diploma in ElectroHomeopathy". It is submitted that, in the case of Nageshwar Basantram Dubey [supra] and also in SLP (C) No.23572/2009 [G.G.S. Med.Inst.of & Hosp.of Elect.& Anr. Vs. Union of India & Ors.], the stand taken by the Union of India in the judicial proceedings before the Supreme Court would clearly show that, there is no ban on the Medical Practice of Electro Homoeopathy.

3. It is further submitted that, petitioner no.2 Mr.Taware received notice on 25th January, 2016, issued by the Taluka Health Officer, Panchayat Samiti, Newasa, stating that, as per the order of the Collector dated 2nd January, 2016, he was asked to close down his Dispensary. It is submitted that, such drastic action is without notice and without hearing petitioner no.2, deserves to be quashed and set aside.

4. It is submitted that, petitioner no.2 had submitted his documents to the concerned authorities, however, till date there is no response from the concerned authorities. It is submitted that, choosing any profession and practice the same is fundamental right of the petitioners enshrined under Article 19 (1) (g) and Article 21 of the Constitution of India. Therefore, the learned counsel appearing for the petitioners submits that, the Petition may be allowed.

5. On the other hand, the learned APP appearing for the respondent - State, relying upon the affidavit in reply filed on behalf of respondent no.1, made following submissions:

6. The instant Petition is filed by the petitioners on the apprehension of adverse action against the petitioners, who although holding certificate of Electropathy and Naturopathy are alleged to be practicing Allopathy. Pursuant to the judgment of the Bombay High Court reported in 2007 [3] Mh.L.J. 275 [Nageshwar Basantram Dubey Vs. Union of India and others], the persons holding degree or diploma in Electropathy or HomeoElectropathy are permitted to practice in Electropathy or electrotherapy without requirement of registration as Medical Practitioner in view of the provisions of Section 2 (2) of the Act of 1961. In the light of the said judgment, the persons such as the petitioners holding degree or diploma in electropathy and electrotherapy are not entitled to practice allopathy or claim to be Medical Practitioners, Doctors etc. nor they are entitled to use any title like Dr. or any abbreviation prefixing or suffixing which may indicate that they are Doctors or Medical Practitioners and on such attempt they are liable to be prosecuted for violation of the provisions of the Act of 1961.

7. It is further submitted that, the Writ Petition is filed seeking blanket protection without any cause of action but in anticipation, and therefore, the claim in the

petition does not merit consideration. It is submitted that, it is true that, the notice is issued to petitioner no.2, which is challenged in the Petition by way of amendment. It is submitted that, in the entire Ahmednagar District, many complaints were received from various villagers, alleging therein that, the persons like the petitioners although possessing degree / diploma in Electropathy, Electrotherapy were practicing allopathy and also using title as Dr. and who, for such acts, are treated as bogus Doctors. It is submitted that, although notice, which is under challenge in the present petition, is bereft of any details as regards illegal acts of the petitioners, but during inquiry by the medical authority, documents in the nature of communications, affidavit etc. presented by few of the petitioners and more particularly petitioner nos.1, 2 and 7 are traced, wherein, the said petitioners have on their own accord titled themselves as Doctors and as such there is violation of the provisions of the Act of 1961, and which may result in prosecution of such petitioners and others who indulged in such violation. Considering the various complaints received in the Ahmednagar District, a team from Health Department has been taking search of such persons who are attempting to practice allopathy and are styling themselves as Doctors which as per the reported judgment referred herein above, is violation of the provisions of the Act of 1961. Considering the allegations of violation of provisions of the Act of 1961, as regards practice of allopathy and posing as medical practitioners/Doctors; a raid was conducted against one A.R.Wabale from Kukana, Taluka Newasa and on the basis of the said panchanama, the First Information Report is registered against the said person Anil Abasaheb Wabale being FIR No. I293/ 2016 registered against Ganesh Clinic at Kukana, Taluka Newasa, District Ahmednagar on 27.10.2016 under Section 420 of the IPC and under Section 33 [1] of the Maharashtra Medical Practitioners Act, 1961.

8. It is further submitted that, the petitioners, who are indulged in such illegal acts on getting knowledge of lodgment of the FIR against the said person A.R. Wabale, have with a mala fide intention approached this Court for seeking blanket protection in their bid to continue such illegal acts under the garb and protection of orders of this Court. Immediately on lodgment of FIR against A.R.Wabale, the practitioners as like the petitioners have downed their shutters for which reason the Officers of the Health Department could not conduct search for initiating prosecution against them. It is submitted that, the authorities of the Health Department have never taken action against any person claiming to hold degree or diploma of electropathy or electrotherapy and who are practicing in that field and who are not titling them as Doctors nor making any efforts to pose as Medical Practitioners, Doctors, etc. Therefore, the learned APP submits that, the Petition is devoid of any merits, and the same may be dismissed.

9. We have heard the learned counsel appearing for the petitioners and the learned APP appearing for the respondent - State at length. With their able assistance, perused the pleadings and the grounds taken in the Petition, annexures thereto, and the affidavit in reply filed by respondent no.1. It appears that, petitioner no.2 herein addressed a letter to the Taluka Health Officer, Health

Department, Panchayat Samiti, Newasa. Upon careful perusal of the said letter, the same is signed by the petitioner no.2. He has mentioned his name as "Dr.Sanjay Sampatrao Taware". Therefore, it is abundantly clear that, the petitioner no.2 though not entitled to prefix the word "Dr." to his name, he is using the same, and therefore, the action was taken against him. In the case of Nageshwar Basantram Dubey [supra] in para 31 it is held thus: 31. For the aforesaid reasons, we find no merit in the present petitions. Therefore, all the petitions stand dismissed. However, it is made clear that as far as the petitioners, who claim to hold degree or diploma in Electropathy or HomeoElectropathy, may practice in Electropathy or Electrotherapy without registration as medical practitioners in view of proviso to subsection (2) section 2 of the Maharashtra Medical Practitioners Act. At the same time it is also made clear that they will not be entitled to practice as or claim to be medical practitioners, doctors etc. nor they are entitled to use any title, like Dr. or any abbreviations prefixing or suffixing their names which may indicate that they are Doctors or Medical Practitioners. If they violate the provisions of law, necessary action including prosecution may follow as per the provisions of Maharashtra Medical Practitioners Act, 1961.

10. In that view of the matter, we do not see any reason to entertain the Petition so far as petitioner no.2 is concerned. So far as other petitioners are concerned, at present, there is no any cause of action for filing the petition. The contention of the counsel appearing for the petitioners that, before initiating any action or taking drastic action, the petitioners should be afforded reasonable opportunity of filing their reply/hearing is a matter which can be considered and would fall within the domain of the State Government for consideration. In that respect, the petitioners are free to approach the State Government. In case the petitioners wish to approach for redressal of their abovementioned grievance, in that case we grant liberty to the petitioners to file the representation within four weeks from today. In case such representation is filed within aforesaid period, the concerned Department or the Competent Authority to consider and decide the same within twelve weeks from filing such representation.

11. With above observations, the Writ Petition stands disposed of.