
(1953) 02 CAL CK 0005
In the Calcutta High Court
Case No : Matter No. 136 of 1952

Taracharan Mukherjee

APPELLANT

Vs

B.C. Das Gupta and Another

RESPONDENT

Date of Decision : 18-02-1953

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(6)

Citation : AIR 1954 Cal 138

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : S.K. Mukherjee, for the Appellant; S.M. Bose, General of W. Bengal and A.K. Sen, Jr. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Sinha, J.—This is a rule calling upon the respondents, to show cause why a writ in the nature of Mandamus should not be issued directing them to rescind, cancel or recall the Notification No. PH2209/2A-9/52 and the notice dated October 22, 1952, served upon the petitioner as mentioned in the petition or from forbearing to act thereon or from giving effect thereto.

2. The petitioner is the proprietor of an institution called the "Nature-Cure Clinic", situate at 43/1 Boy/bazar Street, Calcutta. It is stated in the petition that the object of the establishment is

"to treat patients suffering principally from rheumatism and deformity of limbs in Scientific methods by recourse to Bath and massaging and other methods available for Physic-therapeutics including treatment by light, heat, electricity and hydrotherapy and other allied methods."

3. He has another such institution at 5 Dhurumtollah Street, but that is not the subject matter of this application.

4. The institution, being a Physical Therapy Establishment, comes within the

definition "of a "Clinical Establishment" as defined by "The West Bengal Clinical Establishments Act, 1950" (West Bengal Act LVI of 1950) (hereinafter referred to as "the Act") and is governed by its provisions, as well as by the rules framed thereunder. Such institutions have to be registered under the Act and licensed.

On the 15th July 1952, the petitioner made an application in the form prescribed by the rules for registration and the issue of a license. On the 6th day of August 1952 Dr. Haridas Mukherjee, the Assistant Director of Health Services went to inspect the premises and made a report. I will have occasion to refer to his report at a later stage. On the 22nd October 1952, a letter was addressed by respondent No. 2, to the petitioner intimating to him that his application for a license under the Act had been considered and rejected inter alia on the ground that the establishment was not under the direct supervision of a properly qualified expert in the particular kind of treatment given in the establishment. The petitioner was asked to close down his establishment. He has thereupon applied to this Court for relief and has obtained a rule and an ad-interim injunction restraining the respondents from taking any steps under the said Notification or the said letter dated the 22nd October, 1952.

5. Now, before I deal with the facts of this particular case, I shall indicate the law applicable.

6. The Act was published in the Calcutta Gazette on the 23rd November, 1950, but came into operation on February 14, 1952.

7. The Act purports to introduce a system of registration and licensing in respect of clinical establishments in the State of West Bengal. A "clinical establishment," as defined under the Act includes a "Physical therapy establishment" which has been defined as meaning "an establishment where persons are usually treated by physical means such as massage, electrotherapy, hydrotherapy remedial gymnastics or the like."

8. The institution in question is stated to be a "physical therapy establishment." u/s 3 of the Act, no person is allowed to keep or carry on a clinical establishment without being registered in respect thereof and except under and in accordance with the terms of a license granted therefor. u/s 9 of the Act, the State Government has been granted the power to make rules, inter alia for providing the conditions which an applicant and a clinical establishment should fulfil before a license is granted.

At or about the time the Act came into operation, the Rules were published (Vide Notification No. Medl 621/PH-2R-72-50 dated 11th February 1952). Under Rule 11, no license in respect of a "Physical therapy Establishment" can be granted unless the licensing authority was satisfied that the applicant and the establishment fulfilled the following conditions :

"(i) It was under the direct supervision of a properly qualified expert on the particular kind of treatment given in the establishment.

(ii) Save as hereinbefore provided the employees of the establishment and the person or persons giving the actual treatment shall have the proper qualifications from Institutions approved by the State Government for imparting such treatment.

(iii) In the case of employees of the establishment and the person or persons giving the actual treatment (who?) do not possess the proper qualifications from institutions approved by the State Government, separate arrangements shall be made for the treatment of male patients & female patients, in the physical Therapy establishment; male employees shall be maintained in the establishment meant for the treatment of male patients and female employees shall be employed in the establishment meant for the treatment of female patients and in such establishment it shall be prominently displayed whether the establishment is meant for the treatment of male or female patients.

(iv) Examination and treatment of female patients are conducted in the presence of a female agreed to by the patient." In a gazette Extraordinary, dated the 11th August 1952, a series of notifications, dated the 9th August 1952, were published. The first is No. PH 2209/2A-9/52. In this notification the "Institutions approved by the State" as appearing in Sub-rule (ii) above, were specified. They are all foreign Institutions belonging to England, America, Norway, Denmark, Holland, Sweden and Australia. (9) By Notification No. PH2210/2A-9/52, Rule 11 Sub-rule (iii) of the rules set out above was amended. It was laid down inter alia that where the employees of the establishment or the person giving actual treatment did not possess the proper qualifications from institutions approved by the State Government, they shall have proper qualifications as may be determined by regulations made by the State Government.

By notification No. PH2211/2A-9/52, the Government, in exercise of the power conferred by the notification abovenamed, promulgated certain regulations, defining the qualifications which must be possessed by (1) a person giving actual treatment and (2) an employee, who does not possess the proper qualification from an approved institution.

As regards the first category, the minimum qualification is that a person should be a matriculate and have practical experience for a period of at least five years as a trainee or an assistant to a qualified Physiotherapist in the Physiotherapy Department of a Government Hospital or a Hospital recognised by the State Government. Further, the person must have knowledge of basic anatomy, basic physiology and the mechanism and use of remedial apparatus and electrical equipment.

In category (2), an employee who has been in a Physical therapy establishment continuously for not less than four years, will be considered qualified if amongst other things he passes a test examination within 15th October 1952 in respect of the qualifications mentioned above. This date has subsequently been extended to 15th November 1952.

It appears from the affidavits filed that there are Physiotherapy Departments in the Government Hospitals at Bombay, Madras and Patiala where a student can obtain the requisite training. Further, it appears that in 1952, 74 employees belonging to category No. (2) appeared in the test, of whom 21 have been declared successful (7 males and 14 females).

Under the Constitution, article 19(1)(g), it is quite true that a citizen has been granted the right to practise any profession or to carry on any occupation, but this is not an absolute right. Under Sub-section 6 of that article, the State is empowered to make any law imposing, in the interests of the general public, reasonable restriction on the exercise of a right and is not prevented from making any law relating to "The Professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business."

10. I therefore do not see why the Government cannot prescribe the qualifications necessary for running a Physical therapy establishment or working therein, physical therapeutics is a branch of medical science. To practise it, requires specialised knowledge, technical training and proper equipment. The State cannot allow unqualified or inexperienced men to play with the life and limbs of other citizens in the same way as it must discourage quacks from practising medicine or unqualified men from practising as lawyers. Besides, it must ensure that these institutions are not run under high sounding scientific names but actually for sordid purposes. It is admitted that the petitioner intends to treat persons coming to his institution in such highly technical things like curing deformity of limbs, or hydrotherapy etc., and yet he has not a single scientific or medical qualification. He was a physical instructor in several Colleges and Associations and says that he acquired knowledge in massaging. The knowledge that a man picks up in a college gymnasium cannot be sufficient to permit him to dabble in such highly technical things like physiotherapy or Hydrotherapy.

The doctor attached to the institution is not even a M.B. but a L.M.F., L.M.T. and there is nothing to show that he is qualified to administer Physiotherapy. When the Assistant Director Health Services went for inspection he found that the technical staff consisted of 1 part-time doctor, one male masseur (presumably the petitioner) who was absent during inspection and four ladies stated to have been trained by this part-time doctor who himself possesses no qualifications at all for administering Physical therapy. Apart from a dearth of technical personnel, there was no equipment worth mentioning and the sanitary arrangements were wholly inadequate. It is strange that in an institution imparting hydrotherapy, there was no washing place and even no actual connection of filtered water. The correctness of the report is denied but I find no reason to discard it.

11. Mr. Mukherjee argues that at the time that he made the application and deposited the fees, these technical qualifications had not been prescribed and the result of these rigid rules is that he will have to close the institution.

But that is his misfortune. At the time that he applied, the Government had not prescribed the proper qualifications necessary or approved of the institutions. It does not follow however that because the petitioner was allowed to apply or deposit the fees, there is any kind of estoppel preventing the Government, from prescribing a qualification not possessed by him. It is argued that prescribing only foreign qualifications is an unreasonable restriction. That must depend upon the facts of each case.

Physical therapy is a comparatively modern Innovation in medical science. If there are no institutions in India having the requisite standard, what can the State do but prescribe foreign qualifications only. There was a time when in the City of Calcutta, there was not sufficient scope for training lawyers upto the requisite standard to enable them to practise in the original side of this Court and only barristers having foreign qualifications were allowed to practise. As and when facilities are increasing for such training locally, the rigour of this limitation is being relaxed and promises soon to be extinct. Similarly, when there will be sufficiently trained men in this country in Physical therapeutics and facilities for adequate training, the limitations will doubtlessly be relaxed. There is no excuse however for throwing the public into the hands of self-styled practitioners or self-educated thereapeutists. This is sternly discouraged in all civilized countries and ours should be no exception. It will be observed that the Government has not stopped after prescribing foreign qualifications. Considerable modifications have been made by the notifications that follow.

On the whole, I am unable to come to the conclusion that the Act and the rules have made it impossible for a citizen under any reasonable circumstances to carry, on the occupation of a Physiotherapist. I do not consider the restrictions to be unreasonable simply because they are some-what exacting and I am convinced that they have been imposed in the interest of the general public.

12. The only other point taken is that the letter dated the 22nd October was signed by the second respondent as the "License-issuing Authority" under the Act. It is argued that there is no such authority under the Act. u/s 4 of the Act, an application for registration has to be made to the "prescribed authority" who if satisfied about the matter issues a license. Under the rules, the "prescribed authority" is the Deputy Director of Health services, which office is held by the second respondent. There is therefore nothing in this point. No other point has been argued. I cannot be blind to the fact that the result of my allowing this application would be to compel the Government to allow the petitioner to run a highly technical institution like a "Physical therapy establishment", without qualified personnel and without adequate equipment. This is clearly not in the public interest.

13. The result is that this application fails and the rule must be discharged and the interim order vacated. There will be no order as to costs.