

(2010) 03 MAD CK 0297

In the Madras High Court

Case No : Writ Petition No. 2722 of 2010 and M.P. No. 1 of 2010

Tiruvannamalai District Indian Medicine and Homeopathic
Practitioners Welfare Association, (Formerly known as Private
Medical Practitioners Welfare Association)

APPELLANT

Vs

The State of Tamil Nadu and Union of India (UOI)

RESPONDENT

Date of Decision : 30-03-2010

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 21
Indian Medical Council Act, 1956 — Section 11, 15, 15(2), 2, 21
Medical Degrees Act, 1916 — Section 3, 5, 6A
Tamil Nadu Medical Registration Act, 1914 — Section 10, 11, 13, 5

Citation : (2010) WritLR 345

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : S. Kumaradevan, for the Appellant; R. Neelakandan, Government
Advocate for Respondents 1, 2 and 4, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—The prayer in the writ petition is to issue a writ of mandamus forbearing the respondents from enforcing the penal provisions of the Indian Medical Council Act, 1956 and the Drugs and Cosmetics Act, 1940, against the members of the petitioner's association and also to direct the 4th respondent to issue identity cards to the members of the petitioner association based on their representation dated 2.11.2009 in terms of the order made in W.P. Nos. 7402 of 1998 batch cases dated 15.6.1998.

2. The case of the petitioner is that the petitioner Thiruvannamalai District Indian Medicine and Homeopathic Practitioners Welfare Association was formed in the year 2007 and registered under the Tamil Nadu Societies Registration Act, 1975 with Registration No. 21 of 2007. According to the petitioner, its members are doing medical practice by following the rules and regulations issued by the Government of India as well as the Government of Tamil Nadu. Its members are

helping the village and down trodden people by giving treatment, for which they are maintaining registers containing details of the patients, the treatments given to them, the drugs and medicines prescribed to them, etc. It is stated in the affidavit that like-minded associations and individuals earlier approached this Court by filing W.P. No. 7402 of 1998 etc., and prayed for regularisation of the practice of the unqualified Medical Practitioners in Modern Medicine and not to interfere with their right to practice Modern Medicine. This Court passed orders on 15.6.1998 and issued certain directions and the said directions are not implemented for more than ten years. Therefore the petitioner association submitted a representation on 2.11.2009 requesting the 4th respondent to issue identity cards to its members, but till date no action is taken by the 4th respondent. It is also alleged in the affidavit that Private Medical Practitioners Association filed writ petition in W.P. No. 9691 of 2006 and prayed for issuing mandamus forbearing the respondents from taking penal action against its members and interim injunction was granted on 6.4.2006 and the said writ petition is pending. Some of the individual members of the association also filed W.P. Nos. 17482 and 24181 of 2008 and obtained similar interim orders and the said orders are not obeyed. Hence the present writ petition is filed with the above said prayer.

3. When the writ petition was posted for admission on 12.2.2010, this Court directed the learned Counsel for the petitioner to produce the list of members of the petitioner association, however, the list of members was not produced in spite of granting adjournments on 22.2.2010, 25.2.2010, 4.3.2010, 11.3.2010, 15.3.2010 and 17.3.2010.

4. This case was posted before me on 11.3.2010. The learned Government Advocate was directed to get instructions from the respondents. On 15.3.2010, the learned Government Advocate submitted that All India Association of Private Medical Practitioners filed similar writ petition in W.P. No. 19418 of 2001 to implement the order passed by this Court in W.P. No. 7402 of 1998 etc., batch dated 15.6.1998 and this Court dismissed the writ petition by order dated 31.10.2001. The said order was challenged in W.A. No. 1951 of 2002 and the said writ appeal was dismissed by the Division Bench of this Court in the decision reported in 2002 (4) CTC 577 (All India Association of Private Medical Practitioners v. State of Tamil Nadu), which upheld the order of the learned single Judge taking note of the decisions of the Supreme Court reported in Poonam Verma Vs. Ashwin Patel and others, , Dr. Mukhtiar Chand and Others Vs. The State of Punjab and Others, , Dr Preeti Srivastava and Another Vs. State of M.P. and Others, and decisions of this Court in various writ petitions and writ appeals. In paragraphs 16 to 19, the Division Bench of this Court held as follows:

16. ...similar writ petitions were filed in this Court in W.P. No. 18186 of 1991 etc., batch were dismissed on 31.12.1996. In another W.P. No. 14042 of 1991, the Private Medical Practitioners Association of India, Tamil Nadu Branch sought to issue a writ of mandamus directing the State of Tamil Nadu to forthwith

implement the directions of the Government of India issued in the proceedings dated 8.7.1986 which is also the subject matter in this writ petition. The said writ petition was dismissed on 6.11.1995 and the same was confirmed by the Division Bench in W.A. No. 1384 of 1995 in the order dated 21.8.1998. For the same relief 17 individuals filed another writ petition in W.P. No. 522 of 2000 and the same learned Judge dismissed the said writ petitions in an elaborate order dated 21.1.2000. The Modern Medical Practitioners Association of India initiated another writ petition in W.P. No. 2572 of 2000 seeking to issue a writ of mandamus directing the State Government to register the names of the members of the petitioner association in the State Medical Register maintained by the State as per the provisions of the Drugs and Cosmetics Rules, 1945. The learned Judge rejected the said contention.

17. We are not able to understand in spite of specific statutory provisions, as to how the Union of India had issued such directions contrary to the statutory provisions and the judgments of the Apex Court. No provision is pointed out to show that the Government is empowered to issue such circular and so it is not open to the Government to supplement the provisions of the Act and Rules made thereunder by executive orders which has the effect of nullifying or modifying the statutory provisions. So far as circulars issued by the Government are concerned, they represent merely their understanding of the statutory provisions and they are not binding upon the courts as such circulars cannot compete with statutory provisions.

18. The circular which is sought to be implemented cannot have any legal force and this Court is not inclined to direct the Government to implement such circulars as it is unenforceable in law. But for the said circular, the members of the association cannot insist the State Government to issue certificate to enable them to practise "Medicine". Though the appellant had relied on the judgment of the learned single Judge made in W.P. No. 7402 of 1998 etc., batch dated 15.6.98 the said order was passed by the learned single Judge without even going into the question regarding the power of the Union Government to issue such a circular contrary to law on the issue and so the appellant cannot take advantage of the said judgment to claim that the State Government should permit the members of the appellant association to practise in medicine though they are not having any qualification to do so.

19. In view of the above discussion, we do not find any reason to interfere with the order of the learned single Judge. Hence, the writ appeal is dismissed.

5. In the light of the above Division Bench decision, the prayer as sought for by the petitioner insofar as directing the 4th respondent to issue identity cards to the members of the petitioner association by virtue of the order passed by this Court in W.P. No. 7402 of 1998 etc., batch, dated 15.6.1998 cannot be countenanced as the said order is virtually overruled (impliedly) in the Division Bench Judgment.

6. Insofar as the prayer for forbearing the respondents from enforcing the penal provisions of the Indian Medical Council Act, 1956 and the Drugs and Cosmetics Act, 1940 against the members of the petitioner association is concerned, no such blanket order can be granted as it will act contrary to the provisions of the Indian Medical Council Act, 1956 and Drugs and Cosmetics Act, 1940.

7. The Indian Medical Council Act, 1956 was enacted to regulate the Medical Practitioners and to prevent the persons, not having prescribed qualification for enrollment in any medical register. In case if anyone is found practising without the prescribed qualification, he is liable to be proceeded u/s 15(2) of the Act.

8. In the above cited decision reported in 2002 (4) CTC 577 (All India Association of Private Medical Practitioners v. State of Tamil Nadu) the Division Bench in paragraphs 6 to 12 held as follows:

6. ...The Indian Medical Council Act, 1956 (hereinafter referred to as "the Act") was enacted to provide for the reconstitution of the Medical Council of India, and the maintenance of a Medical Register for India and for matters connected therewith. In view of definition u/s 2(f), modern scientific medicine in all its branches shall mean as "medicine". u/s 2(h) "recognised medical qualification" has been defined as any of the medical qualification included in the Schedules. "State Medical Register" has been defined u/s 2(k) as a register maintained under any law for the time being in force in any State regulating the registration of practitioners of medicine. Section 11 of the Act deals with the recognition of Medical Qualifications granted by Universities or Medical Institutions in India for the purposes of the Act. As contemplated u/s 15 of the Act, only the persons who are having sufficient qualification which has been included in the Schedules to the Act can enrol themselves on any State Medical Register. u/s 21, Medical Council shall cause to be maintained in the prescribed manner a register of medical practitioners to be known as the Indian Medical Register, which shall contain the names of all the persons who are for the time being enrolled on any State Medical Register and who possess any of the recognised medical qualifications.

7. From the above said provisions it is clear that the persons who are possessing recognised medical qualification alone can register their names as contemplated under the Act and they alone can practise "medicines".

8. To provide for the registration of Medical Practitioners in the State of Tamilnadu, the State Legislature had enacted an Act "Tamilnadu Medical Registration Act, 1914". u/s 5 of the said Act of 1914, a Medical Council shall be established for the State of Tamilnadu and the said council as contemplated u/s 10 shall contain a Registrar, who shall act as the Secretary of the Council and the said Registrar has an obligation as contemplated u/s 11 of the said Act 1914 should keep a register of medical practitioners and only the persons who have possessed of any of the qualification described in the Schedules shall be entitled to be listed their names so as to enable them to practise Allopathy or any other

system of medicine. In the proviso to Section 13 the Legislature has given power to the State Government permitting the registration of any person who shall furnish to the Registrar proof that he is possessed of a medical degree, diploma or certificate of any University, medical college or school approved by the Council, other than those described in the Schedule after consulting the Medical Council.

9. Even under this Act, unless the persons have prescribed qualification, cannot register their names and legally practise medicine.

10. Under the Indian Medical Degrees Act, 1916 enacted to regulate the grant of titles implying qualifications in western medical science, and the assumption and use by unqualified persons of such titles. According to Section 3 of the Act no person in the States shall confer, grant, or issue, or hold himself out as entitled to confer, grant, or issue any degree, diploma, licence, certificate or other document stating or implying that the holder, grantee or recipient is qualified to practise western medical science. According to Section 5, any contravention of the same shall be punishable with a fine. According to Section 6A, no person shall have any title to his name, description, letters or abbreviations which imply that he holds a degree, diploma, licence or certificate as his qualification to practise any system of medicine unless such a degree, diploma, licence or certificate was issued by an authority and has been recognised by the General Council of Medical Education.

11. As stated above, sufficient enactments have been made to prevent the persons from practising "medicine" without having necessary qualifications and also for registration as contemplated under the above said Act.

12. In the present case, it is not in dispute that the members of the Association are not having any such qualification. They are trying to get a certificate only on the basis of their experience in practising "medicine" without any such qualification. The right to practise any profession or to carry on any occupation, trade or business is no doubt a fundamental right guaranteed under Article 19(1) (g) of the Constitution of India. But, that right is subject to any law relating to the professional or technical qualifications necessary for practising any profession or carrying on any occupation or trade or business indicated in Clause-6 of Article 19 of the Constitution. The regulatory measures on the exercise of this right both with regard to standard of professional qualification and professional conduct have been applied keeping in view not only the right of medical practitioners, but also the right to life and proper health care of persons who need medical care and treatment. The need of the hour is better doctors than more doctors, better health education than more education, better health care than more health care delivery.

9. Similarly, the object of Drugs and Cosmetics Act, 1940 being to prevent the use of sub-standard drugs, presumably for maintaining high standards of medical treatment and also to regulate import, manufacture, distribution and sale of

drugs and cosmetics, the authorities vested with powers to monitor the same cannot be prevented from doing their statutory duties.

10. It is well settled proposition of law that no writ of mandamus could be issued against the statutory provisions. If the members of the petitioner association are fully qualified to practice as Medical Practitioner and they are practising the authorised form of medicine by following professional ethics, the petitioner association need not have any apprehension about the penal provisions contained in the said enactments. The authorities are given power to verify the credentials of the Practitioners and enforce the said provisions of the Acts and if it is established or if the authorities have a reason to believe that any Medical Practitioner is violating the provisions of the respective Act, penal provisions will necessary follow. Hence the respondents cannot at all be prevented by a blanket order as sought for by the petitioner association.

11. If any member of the petitioner association, who is fully qualified to be a Medical Practitioner and practising medicine in a lawful manner by strictly following the provisions of the Indian Medical Council Act, 1956 as well as the Drugs and Cosmetics Act, 1940 and other relevant enactments and without any basis any penal provision is initiated against him, it is open to such member of the petitioner association to individually challenge such action before the competent court at appropriate stage.

12. This Court is conscious of the fact that nowadays some people are practising medicine without possessing the prescribed qualification and without registering their names in the respective Medical Council and are prescribing medicines to the patients, even though they are not authorised to do so. Likewise, certain persons having dispensaries are storing and selling time barred medicines and selling the same to the patients. Such kind of practice adopted by the unscrupulous persons under the guise of Medical Practitioner has to be put an end to by the competent authorities, who are vested with power to inspect and initiate penal action to protect the health of the citizens which is a guaranteed fundamental right under Article 21 of the Constitution of India. Most of the patients getting treatments from Medical Practitioners are illiterates, who are ignorant to verify the fact of time expired drugs and tablets. Such being the factual scenario, it is imperative and all the more required for the authorities to inspect and proceed against the so called Medical Practitioner, who is violating the laws. In fact the State is duty bound to protect the public health. In the decision reported in *Dr. Mukhtiar Chand and Others Vs. The State of Punjab and Others*, the Supreme Court considered the rights of the Medical Practitioners and in paragraph 35 held thus,

35. ...The right to practise any profession or to carry on any occupation, trade or business is no doubt a fundamental right guaranteed under Article 19(1)(g) of the Constitution of India. But that right is subject to any law relating to the professional or technical qualifications necessary for practising any profession or carrying on any occupation or trade or business enacted under Clause (6) of

Article 19. The regulatory measures on the exercise of this right both with regard to the standard of professional qualifications and professional conduct have been applied keeping in view not only the right of the medical practitioners but also the right to life and proper health care of persons who need medical care and treatment. There can, therefore, be no compromise on the professional standards of medical practitioners....

13. In W.P.(MD) No. 2267 of 2009 one of the Medical Practitioner approached the Madurai Bench of this Court and prayed for issuing a writ of mandamus forbearing the police officials from in any manner preventing the petitioner therein from giving First Aid to the patients and direct the police not to arrest him while rendering First Aid as a measure of immediate relief to the patients. This Court by order dated 24.8.2009 (T.S. Sivagnanam, J.) dismissed the said writ petition by following the judgments of the Supreme Court and Division Bench of this Court referred above. Another writ petition in W.P. No. 1598 of 2001 was filed before this Court by one Anubava Allopathy Maruthuvargal Sangam of India, Madurai, having its office at Madurai praying for a writ of mandamus directing the Union of India and Government of Tamil Nadu to take appropriate steps to regularise the practice insofar as its members, unqualified Medical Practitioners, practising in Modern Medicine. This Court (M.Jaichandren, J.) dismissed the said writ petition by order dated 19.8.2008, by observing as follows:

6. ...the members of the petitioner Association have no right to practice in modern medicine or any other system of medicine. Further, as per Section 15(2) (b) of the Indian Medical Council Act, 1956, no person other than a medical practitioner enrolled in a State Medical Register shall practice medicine in any State.

7. It is also seen that the Government of Tamil Nadu had taken a policy decision not to regularise the practice of unqualified medical practitioners, considering the public welfare and in view of the fact that adequate number of registered medical practitioners in Modern Medicine, Indian Medicine, Homeopathy, etc., are available to cater to the needs of the public. Regulating the practice of unqualified medical practitioners would result in the loss of precious human lives and it will also pose various health hazards. Unless the members of the petitioner Association are possessing the required qualifications, as prescribed by the recognised University and unless they are registered in their respective Medical Councils they cannot be permitted to practice.

8. It is also noted that the Government of Tamil Nadu had informed the Government of India, vide its Letter (Ms). 342 Health, dated 3.3.80, sent to the Secretary, Ministry of Health & Family Welfare (Department of Health), Government of India, New Delhi, that it is not in favour of enacting a legislation to regularise the practice of unqualified Medical Practitioners. In such view of the matter, the writ petition is liable to be dismissed....

14. In the light of the above cited decisions and for the reasons stated above, I am of the firm view that no case is made out to entertain the writ petition and the writ petition is liable to be dismissed and accordingly the same is dismissed. No costs. M.P. No. 1 of 2010 is also dismissed.