

(1996) 02 AHC CK 0084

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 4931 of 1983 Connected with Writ
Petition Nos. 990 of 1984, 5701 of 1983, 1127, 487, 197, 464, 6439,
6687, 6703, 6318, 6289, 61

V.N.Mittal and Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 05-02-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 47
Uttar Pradesh Government Doctors (Alopathic) Restrictions on Private Practic Rules,
1983 — Rule 3
Uttar Pradesh Rajya Chikitsak Mahavidyalaya Seva Niyamawali, 1990 — Rule 24

Citation : (1996) 02 AHC CK 0084

Hon'ble Judges : U.P.Singh, J;R.A.Sharma, J and M.Katju, J

Final Decision : Dismissed

Judgement

U. P. Singh, A. C. J.

1. In the teeth of the judgment rendered by the Supreme Court in the case of Ram Kishan Datta Roy v. State of West Bengal, (1993) 3 SCC 724, these various petitioner in their overzealous attempt have challenged the validity of the impugned Rules of 1983 and 1990 (contained in AnnexureXIII and AnnexureI to the Amendment application) on the same grounds which were repelled and rejected by the Supreme Court in the above case.

2. These various petitioners in all these petitions are either Professors, Readers or Lecturers and Specialists in the State Medical Colleges, established and maintained by the State of Uttar Pradesh. They are Gazetted Government servants of the State.

3. In all these writ petitions similar contentions have been raised and common ground has been put forward challenging the validity of these Rules, and, therefore, they have been heard together and are being disposed of by this common judgment.

4. The Rules under challenge are Uttar Pradesh Government Doctors (Alopathic) Restrictions on Private Practice Rules, 1983. Subsequently, by an amendment application, the petitioners challenged the validity of Rule 24 of the Rules of 1990, called "Uttar Pradesh Rajya Chikitsak Mahavidyalaya Adhyapakon Ki Sewa Niyamavali, 1990", by which a total ban on the private practice of the petitioners was imposed and it provided that "Members of the service shall not be permitted private practice."

5. A brief history of the facts embodied in various Government Orders and Ruks prior to coming into force of 1983 and 1990 Rules may be noticed. In its communication dated 3rd January, 1973 addressed to the Director, Medical Health and Service, the Commissioner and Secretary of the Government of Uttar Pradesh stated that the Governor has been pleased to order that w.e.f. 1st February, 1973, the teachers of all State Medical Colleges and the State Medical Officers including the officers working on excadre posts shall cease to do the private practice. All posts shall be treated as the nonpracticing post w.e.f. 121973 (Annexure2). According to this letter such doctors were to get nonpracticing pay and pay clinic. Rules were to be established in the State Medical Colleges, District level Hospitals and other Hospitals approved by the State Government and for which, separate orders were to be issued regarding the establishment and scheme of pay clinic. According to the statement made in paragraph 42 of the writ petition, the scheme of pay clinic was to start from 1551973. However, the State Government reconsidered the restrictions imposed on private practice as well as the scheme of pay clinic and by G. O. dated 22nd February, 1974 the Government superseded all the earlier G. Os. by which the private practice were restricted and the pay clinics were sought to be started w.e.f. 111974. By this G. O. dated 22nd February, 1974 (contained m AnnexureVIII) the scheme banning the private practice and discontinued the facility of private practice was again allowed in regard to the post in which it was allowed prior to March, 1973.

6. Subsequently on 2821978 the Government issued another G. O. imposing ban on private practice w.e.f. 131978 and nonpracticing allowance was made payable w.e.f. 131978 with certain conditions. The validity of the aforesaid G. O. of 1978 was challenged in the High Court and several writ petitions were filed (Writ Petition No. 2250 of 1978 etc.). On account of difference of opinion between the two Hon"ble Judges of the Division Bench, the matter was referred to a third Hon"ble Judge. During the pendency of the reference before the third Hon"ble Judge the State Government substituted the aforesaid G. O. by a rule made under Article 309 of the Constitution. These Rules were called Uttar Pradesh Government Doctors (Alopathic) Restrictions on Private Practice Rules, 1978 (AnnexureX). In the amendment application, the validity of the aforesaid Rules of 1978 was also challenged as ultra vires of the Constitution on the ground that the said Rule was outside the legislative competence of the State and was also outside the ambit of Article 309 of the Constitution, inasmuch as, that it did not relate to the conditions of service. The Division Bench by its judgment dated

571979 rejected these additional grounds relating to the validity of the Rules. Thereafter, the judgment of the Division Bench dated 571979 was again sent to third Hon'ble Judge Mr. Justice T. S. Misra for his opinion. The said Hon'ble Judge Sri T. S. Misra held the Rules to be valid. The petition was then placed before the Division Bench and following the decision of Justice T. S. Misra, the petition was rejected on 141982. The said judgment is reported in AIR 1982 Allahabad 437, Dr. Y. P. Singh v. State of U. P.

7. The petitioners then preferred an appeal before the Supreme Court but during the pendency of the appeals, the State Government issued another G. O. dated 15111982 (AnnexureXI) lifting the restriction imposed on private practice. Thereafter, the State Government made the Rules of 1982 under Article 309 of the Constitution which was notified on 31101982 called Uttar Pradesh Doctors (Alopathic) Private Practice Rules, 1982 (AnnexureXII). This was followed by 1983 RulesUttar Pradesh Doctors (Alopathic) Restrictions on Private Practice Rules, 1983 (AnnexureXIII). Rule 3 of the Rules again banned the private practice stating that the Government Doctors are not entitled to private practice and provided for nonpracticing allowance. Rule 5 of 1983 Rules, however, enabled the State Government to relax the requirement of the Rule in certain cases. These

1983 Rules were challenged in these writ petitions and since subsequently 1990 Rules were framed by which. Rule 24 placed a total ban of private practice, these 1990 Rules have also been challenged by amendment application and these Rules have been annexed and marked as Annexure1 to the amendment application.

8. The various contentions raised on behalf of Articles 15 and 19 of the Constitution that the impugned Rules violated the fundamental right of the petitioners and is violative of Article 14, inasmuch as, they are arbitrary, have been carefully considered even in the judgment tendered by this Court in the case of Dr. Y. P. Singh v. State of U. P., AIR 1982 All 439, which was approved by the Supreme Court in the case of Ram Kishan Dutta Roy v. State of West Bengal, (1993) 3 SCC 724. In the teeth of the said judgment of the Supreme Court these contentions are to be rejected. The same grounds have been reiterated which are being rejected in view of the said decision of the Supreme Court. In its elaborate discussion the Supreme Court held that those who joined the service are bound to abide by the conditions of Service. The petitioners have become members of the Government service and, they have to abide by all the conditions of service. In paragraph 20 of the said judgment, the Supreme Court held :

"What is further of importance to note is that the right to private practice is not given to the Government Medical Officers in most of the places since it conflicts with the duties of such officers as Government servants. Article 19(1)(g) confers on citizens right to practice any profession, or to carry on any occupation, trade or business for their individual benefit. It does not create any obligation to do so. It is for the citizen to exercise or not of his said right. Further, the Article does not oblige a citizen to practice any particular occupation, business or trade. He is

free to follow any occupation and on such terms and conditions as he chooses. It does not prevent him from accepting its discipline including such rights and obligations as flow from it. As in the present case, those who join the Government service with the full knowledge that they will have no right to practise to profession privately agree, give up their right as private practitioner in consideration of the security, status and privilege as a Government servant. The Government service is also an occupation and those who choose it cannot complain of its discipline or insist upon pursuing it on their terms. Nobody compels them to join it if they want to practice their profession privately. They are free to leave it any time. The restriction imposed is not on the freedom to practise the medical profession but on such practice while one continues to be the member of the State Service. Article 19(1)(g) does not give a citizen a right to carry on any profession irrespective of the fact that he has voluntarily accepted restrictions on his said right in consideration of other rights, as in the present case. In the circumstances, it is not even necessary for the State to invoke the provision of Clause (6) of Article 19 (1) (g) which permits the State to impose reasonable restrictions on the exercise of the right in the interest of the general public. The present act constitutes health services for the State. The State has a right to recruit officers to such services on such terms and conditions as it deems desirable to make the service beneficial to the members of the public. The restriction imposed on the members of such service that they shall not be entitled to private practice so long as they continue in the State service is a reasonable restriction on the officers of the State being in the interest of the general public as explained earlier. Those who join the service are bound to abide by it, being a condition of service voluntarily sought by them."

9 Since the grounds raised in the present petitions are squarely covered by the judgment of the Supreme Court rendered in the aforesaid case of Ram Kishan Dutta Roy, we do not find any reason to reiterate those reasonings since the said decision of the Supreme Court is binding on us and the judgment of this court rendered in the case of Dr. Y. P. Singh v. State of U. P. (supra) has also been affirmed by the Supreme Court.

10. The duties of the teachers has also been enumerated in the said decision it is useful to quote :

"Every teacher-doctor must endeavour to make his institution a brighter Institution a fragment of Heaven on earth, an El Dorado of peace, joy and wisdom. After all, an institution is what its teachers and professors make it even as a nation is what its patriots make it, a religion is what its prophets make it and a home is what its women make it. Without a band of devoted men of medicine who are inspired by a holy zeal, an institution with the paraphernalia of modern conveniences will be like without the spark of life ; without soul. When there are all the advantages, it is no virtue if tolerable work alone is turned out. But it is only when there are handicaps mocking at enterprise should the human spirit triumph and establish that the will is an all conquering force. The greatest

men of medicine of the past and the present who have profoundly influenced men's mind have been indomitable spirits who have struggled against tremendous odds.

Inner strength which is not cowed down by adversities, is what is required. If that noble quality is to be nurtured one must have tremendous faith in one's mission. The practice medicine is not a craft but a calling : not a profession but a vocation.

Sincerity of purpose and earnestness of endeavour are the two wings that will bear one aloft to the tower of success. Given these virtues, other qualifications will follow of their own accord.

It is a cold and irresistible fact of logic that doctors exist for the institution and that the institution does not exist for their convenience and profit. It sustains and nourishes them, and it is upto them to cling to it with steadfast loyalty and to toil to promote its highest interests.

"From good to better, daily selfsurpassed" has to be our motto. The nature of the profession is such that it definitely demands a spirit of service and sacrifice. After all what lends dignity to any person is his attitude to work and not the emoluments of his office."

11. The petitioners contention that after duty hours which is from 8 a. m. to 2 p. m. they will have nothing to do after 2 p.m. has also been considered and repelled by the Supreme Court and it was also pointed out that after duty hours they should study and research and become upto date in their subjects. Their further contention that there was no basis for imposing the ban is again contrary to record. Several reports of the various committees have been placed before us which recommended that the private practice should be banned. There was also a report of the High Power Committee dated 981983 justifying the ban. The reports of the Committees pointed out that private practice has been responsible for negligence of essential part of the duties of these Government doctors and teachers. The Medical Council of India had also to recommend to the State Governments that all posts of teachers of Medicals Colleges should be declared full time and nonpracticing in order to ensure high standard of medical education and research. There was, thus, no reason for the State Government to ignore the recommendations of the Council.

12. In one of the connected petitions filed by a patient, the contention was raised that he has a right to be treated by a doctor of his own choice and, therefore the ban is not in public interest, for various reasons given by the Supreme Court in the said judgment of Ram Kishan Dutta Roy we have to repel these contentions as well. By such restrictions the patient would rather have the liberty to choose the best doctors available in the Hospitals itself and if they find that the best doctors are available doing private practice alone they would as sue have the liberty to avail their services. It may be, that the staff in the Government hospitals and dispensaries may not be sufficient to attend all the patients who

visit the same in large numbers but that would not mean that those poor patients who remain unattended should be driven to private clinics there government doctors to be attended to only on payment of exorbitant fee. A rule prohibiting exploitation of the misery of the people by the privileged doctors is in the preponderant interest of the society.

13. The policy made out in the Rule is manifestly in public porters and in conformity with the directive principles contained in Article 47 of the Constitution. The imposition on total restriction on private practice by Medical Practitioners engaged in government service is reasonable and in the interest of general public. We have no hesitation in holding that it is neither arbitrary nor unfair nor etcassive in nature and as such not violative of Article 19 (1) (c) of the Constitution. The consistent view of all the committee appointed to opinion the subject of private practice by government doctors over the years and All India Medical Council has been of the view that government doctors should not be allowed to do private practice for remuneration. Thus, the impugned Rules, mainly aims in achieving the subject emphatically asserted from time to time by these bodies. It would not be correct to say that if these doctors are restrained from doing private practice, public will be deprived of their services and that would not, therefore, be in public interest. The Government doctors do not give medical advice after office hours without charging fee. Their fee cannot be paid by hungry, indigent persons. They are approached by those who can afford to pay them. So, the majority of these deprived persons are not going to get any benefit from them. They have to depend on the hospital and dispensaries set up by the government for public. The right of the doctors in question to practise the profession of medicine cannot be said to have been violated by the impugned Rules. The Rules dp not prevent the Graduates in Medicines and Surgery from practising in his profession. It in effect only provides that if such graduates has become a government doctor and draws salary from public exchequer, he shall not be entitled to do private practice for pecuniary consideration in cash or kind while remaining in government service. The restriction imposed by the impugned Rules merely prescribed conditions which must be observed if the appointees want to remain in government service. For the maintenance of discipline and for social good the Rule may prohibit them from private practice for pecuniary consideration in cash or kind. The impugned Rule is obviously a prescription to cure the malady. The restriction on private practice by government doctors would benefit the student community and the poor neglected patients and would help in improving the academic standard in Medical Colleges. It u quite plainly in the interest of the general public .

14. In the view taken by us, we dismiss ail the writ petitions.

Writ petition dismissed..