

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.02.2020

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.(MD)Nos.20217 to 20246, 20249, 22100, 22103, 22105, 22106, 22108, 22111 to 22123, 22125 to 22130, 22135, 22138, 22140, 22370 to 22379, 22382, 22384, 22385, 22393, 22397, 22399, 22404, 22409, 22414, 22417, 22419, 23782, 23784, 23786 to 23788, 23790, 23792, 23793, 23796, 23798, 23802, 23804, 23812, 23813, 23817, 23824, 23826, 23827, 23830, 23831, 24074 to 24092, 24094, 24095, 24208, 24200 to 24212, 24214 to 24219, 24221 to 24227, 24230, 24241, 24243, 24555, 24559 to 24586, 24742, 24746, 24748, 24822, 24825, 24828, 24836, 24850, 25505, 25550, 25555, 25558, 25569, 25577, 25579, 25583, 25584, 25586, 25587 and 25590 of 2019
and
WMP(MD)Nos.16780, 16782, 16786, 16787, 16788, 16791, 16793, 16794, 16796, 16800, 16801, 16803, 16804, 16807, 16809, 16812, 16813, 16815, 16816, 16820, 16823, 16824, 16825, 16826, 16829, 16830, 16834, 16835, 16836, 16838, 16890, 18883, 18889, 18892, 18896, 18901, 18904, 18907, 18909, 18911, 18913, 18916, 18917, 18919, 18921, 18923, 18925, 18927, 18931, 18933, 18936, 18937, 18939, 18941, 18942, 18943, 18947, 18949, 18951, 23596, 19154, 19159, 19160, 19162, 19165, 19167, 19169, 19171, 19173, 19176, 19179, 19182, 19184, 19188, 19191, 19195, 19197, 19199, 19204, 19207, 19211, 20382, 20388, 20389, 20391, 20393, 20395, 20397, 20399, 20401, 20403, 20405, 20408, 20410, 20422, 20425, 20436, 20444, 20447, 20452, 20454, 20661, 20663, 20665, 20667, 20669, 20671, 20673, 20676, 20678, 20679, 20682, 20683, 20686, 20688, 20689, 20692, 20693, 20695, 20697, 20700, 20701, 20790, 20792, 20794, 20796, 20798, 20801, 20802, 20804, 20806, 20808, 20811, 20813, 20816, 20818, 20820, 20823, 20824, 20826, 20829, 20830, 20832, 20834, 20836, 20838, 20840, 20842, 20844, 20849, 20852, 20857, 21185, 21189, 21192, 21194, 21197, 21201, 21203, 21208, 21209, 21210, 21212, 21215, 21217, 21219, 21221, 21222, 21224, 21226, 21229, 21231, 21232, 21237, 21238, 21239, 21240, 21242, 21244, 21246, 21346, 21408, 21411, 21417, 21429, 21458, 22071,

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22104, 22110, 22112, 22120, 22128, 22142, 22144, 22151, 22152, 22156, 22158, 22163 of 2019

W.P.(MD)No.24555 of 2019 :

K.Sumathi

.. Petitioner

Vs.

1. Union of India
rep. by its Under Secretary to Government of India,
Ministry of Health and Family Welfare,
Department of Health Research,
Nirman Bhawan, New Delhi.
 2. The Government of Tamil Nadu
rep. by its Secretary for Health
and Family Welfare Department,
St. George Fort,
Chennai-600 009.
 3. The Director General of Police,
Rajaji Salai, Chennai.
 4. The Registrar,
Tamil Nadu Homeopathy Medical Council,
Arumbakkam, Chennai-600 106.
 5. The Joint Director,
Rural and Medical Health Science,
Madurai District.
 6. The District Collector,
Madurai District, Madurai.
- .. Respondents

* * *

Prayer in W.P.(MD)No.24555/2019 : Writ Petition filed under
Article 226 of the Constitution of India praying for a Writ of

W.P.(MD)No.20217/2019, etc. batch

Certiorarified Mandamus to call for the records relating to the proceedings in Lr.No.139/TNHMC/19, dated 05.03.2019 passed by the fourth respondent and quash the same as illegal and consequently directing the respondents not to interfere with the petitioner's right to practice Electropathy / Electro Homeopathy in term of the first respondent's letter dated 05.05.2010.

* * *

For Petitioners : Mr.T.Ramar
for Mr.T.Lenin Kumar
For Respondents : Mr.R.Nandakumar, CGSC for R1
in WP(MD)Nos.22555, 22558,
22569, 22577, 22579, 22583,
22584, 22586, 22587 & 22590/19
Mr.K.Prabhu, CGSC
Mr.D.Saravanan, CGSC for R1
in WP(MD)Nos.24828, 24822,
24834, 24839, 24840, 24845 &
16899/2019
Mr.S.Jeyasingh, CGSC for R1 in
WP(MD)Nos.24578 & 24586/19
Mr.H.Lakshmi Shankar, CGSC for
R1 in WP(MD)Nos.24075-24092/19
Mr.B.Rajesh Saravanan, CGSC for
R1 in WP(MD)Nos.24208, 24200-
24227, 24230 & 24241/19
Mr.S.Sampath Kumar, CGSC for
R1 in WP(MD)Nos.24555, 24559,
24560, 24561, 24562-24565,
2474, 24575, 24577, 24580-
24585/19

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Mr.R.Senthilkumar, CGSC for R1
in WP(MD)Nos.24564-24573/19

Mr.P.Murugesan, CGSC for R1 in
WP(MD)No.24742/19

Ms.J.Padmavathi Devi,
Special Government Pleader
for RR 2, 3, 5 and 6

Mr.V.Vijay Shankar, for
Mr.V.Karthikeyan
Standing Counsel for R4

COMMON ORDER

This is a classic example of students undergoing an unrecognized course and even after completing the course successfully had to linger around the Court at the cost of their time, money and risk, for which they are not responsible.

2. The right of every Indian citizen to health and the right to receive proper medical care by qualified medical personnel is violated not only by the existence of quacks, but also by the practitioners with unrecognized medical degree/diploma. Eventually, the life of the patient is at risk. The people, especially, patients worship a Doctor as the second God, who lives on earth. But the faith reposed on the

second God is tarnished, when they happened to be quacks. The quality / faith in the medical education would come down significantly, if the existence of these unrecognized medical certificates are permitted to be issued or granted. This is not only the concern/problem of a common man, who gets affected, but the talented Doctors also are put to jeopardy.

3. The most important feature of any educational institution is the recognition of degree/diploma it provides, as only a recognized degree would facilitate a person trained in the institution to pursue either higher studies or qualify for a job / practice. Especially, when a medical diploma remains unrecognized by a statutory body, the functioning of the system itself is likely to be erroneous. This problem is prevalent not only in Tamil Nadu, but in many States across the country.

4. When there are strict regulations for Doctors, who obtain degrees from other countries to practice in India, it seems the regulations to have a check on the institutions, which offer unrecognized courses, within India toothless. It is also not out of place to mention that the plight of the students undergoing training in these

institutions is at stake, hoping that it would be recognized before they complete the course.

5. The State / Central Governments should take the responsibility to check that these medical institutions do not admit students and foster them a medical diploma, which, at the end of the course, goes invalid / unrecognized.

6. The institution and also the students should realize the consequences of possessing such unrecognised degree/diploma, if the same remains unrecognized forever. Albeit, the students do not have any power / role in this regard, they should also be cautious before choosing an institution. It is the responsibility of the State / Central Governments. As stated supra, the ramifications of possessing an unrecognized diploma would include : (i) denial of right to practice ; (ii) denial of recognition of the degree / diploma by the State / Central Government and its statutory bodies ; (iii) humiliation for holding unrecognized degree ; (iv) no right to suffix the unrecognized degree / diploma to their names ; (v) threat to face civil / criminal cases ; and above all (vi) lives of patients at risk.

7. The petitioners in these batch of writ petitions are the practitioners in Electropathy / Electro Homeopathy system of medicine and they questioned the action of the fourth respondent in forbearing them from doing practice without registering their Diploma certificates in their council and sought for a direction to the respondents not to interfere with their right to practice in terms of the first respondent's letter dated 05.05.2010.

8. The case of the petitioners is that they studied three years Diploma Course in Electro Homeopathy / Electropathy and have been practising in the said system of medicine, viz., Electro homeopathy treatment and administering medicines to the poor and downtrodden patients. According to them, the MSME recognized them to practise so. The Government of India so far not established any council for recognising the Electro Homeopathy system of medicine in the country, so also the State Government. However, the Department of Health Research, Ministry of Health and Family Welfare, Government of India, vide the order dated 05.05.2010 made in No.V25011/26/2009-HR unequivocally held that there is no proposal to stop the persons like the petitioners from practising in electropathy or imparting education. Placing reliance on the judgments of the Hon'ble

Apex Court and various High Courts, the petitioners claim that the police personnel have been making frequent enquiries and inspections in their clinics without any authority, which causes serious prejudice in their practice and concern among their patients. Hence, they approached the fourth respondent seeking recognition, who, in turn, turned down their requests. Hence, they are before this Court laying challenge to the said action and for a consequential direction.

9. Refuting the prayer of the petitioners, the first respondent filed a counter-affidavit dated 04.12.2019, wherein, *inter alia*, it is stated that unlike Indian Medical Council Act, 1956, which governs modern system of medicine ; the homeopathy Central Council Act, 1973, which governs Homeopathic system of medicine ; and the Indian Medicine Central Council Act, 1970, which takes care of the four Indian systems of Medicine, such as, Ayurveda, Siddha, Sowa Rigpa and Unani, there is no act to recognise and regulate the new systems of medicine, which includes Electropathy / Electrohomeopathy. It is also stated that though Experts Committee was constituted in the year 1999 to consider and recommend the efficacy of other systems of alternative medicines, it did not recommend recognition to any of those alternative systems of medicine. It also suggested not to allow

full time bachelor and master's degree courses and based on the recommendations of the Committee, the Government issued order dated 25.11.2003 in No.R 14015/25/96 U & H(R)(Pt.), directing the State/Union Territories to ensure that institutions under them do not grant any degree / diploma in such stream of medicine. The first respondent also unambiguously claimed that in the order dated 05.05.2010 they had not given permission for practice or imparting education in Electropathy, but only stated that there was no proposal to stop the petitioners therein from practising, if the same was done in terms of the order dated 25.11.2003.

10. While adopting the contents of the counter-affidavit of the first respondent in their counter-affidavit dated 16.12.2019, the fourth respondent also claimed the following :

(i) The Ministry of Micro, Small and Medium Enterprises (MSME), with which the petitioners claimed to have registered themselves for practice, has nothing to do with medical practitioners and it is not the competent authority to have a say in this field.

(ii) A Division Bench of the Punjab and Haryana High Court upheld the order dated 25.11.2003, which was reiterated in the order dated 05.05.2010 and thus, it is clear that the Electropathy and Electro

Homeopathy are not recognised and no one can practice on those streams.

(iii) The State Government enacted the Tamil Nadu homeopathy System of Medicine and Practitioners of homeopathy Act, 1971, Sections 26 to 29 of which, debar any person other than one registered under the said Act from practising homeopathy and also conferring of degrees or other Diploma, licence or certificates are equally held to be invalid and punishable.

(iv) The Government of Tamil Nadu also enacted the Tamil Nadu Clinical Establishments (Regulation) Act, 1997, which was amended in the year 2018. As the petitioners are not registered medical practitioners, they are disentitled to have clinics and practice, as per the provisions of the said Act.

11. Learned counsel for the petitioners, heavily relying upon the order of the first respondent dated 05.05.2010, judgment of the Hon'ble Apex Court dated 22.01.2015 in SLP No.23572 of 2009 and other documents attached in the typed-set of papers, submits that the petitioners are entitled to practice and the impugned cryptic and non-speaking orders are liable to be quashed.

12. On the other hand, learned Central Government Standing Counsel, Special Government Pleader and the learned Standing Counsel for the fourth respondent Council vehemently oppose the prayer of the petitioners, relying upon the very same order of the first respondent and the judgments of the Apex Court and other High Courts and submit that the petitioners are not entitled to practice and sought for dismissal of these petitions.

13. Heard the learned counsels on either side and perused the materials placed before this Court.

14. At the outset, it is to be stated that the learned counsel for the petitioners placed heavy reliance on the order of the first respondent dated 05.05.2010, the penultimate paragraph of the said order, reads as follows :

"In accordance with Orders of the High Court and Supreme Court quoted here, there is no proposal to stop the petitioners from practising in electropathy or imparting education, as long as this is done within the provision of the Order No.R.14015/25/96-U & H (R) (Pt), dated 25.11.2003. Once the legislation to recognize new systems of medicine is enacted, any practice or education would be regulated in accordance with the said Act. The

representation of the petitioner dated 28.10.2009 is disposed of accordingly."

15. A perusal of the above order of the first respondent makes it crystal clear that there is no proposal to stop the practice of the petitioners in electropathy, if the same is in tune with the order dated 25.11.2003. The said order dated 25.11.2003 clearly states that the first respondent did not recognize Electropathy/Electrohomeopathy and requested the State/Union Territories Governments to ensure that institutions under them do not grant any degree / diploma in the stream of medicine which have not been recommended for recognition and the term "Doctor" is used by practitioners of recognized system of medicine.

16. Further, learned Standing Counsel for the respondents placed before this Court the communications sent by the Government of India, to the fourth respondent, dated 11.05.2016, 10.08.2017 and 12.10.2018 answering the queries of the fourth respondent.

16.1. The first letter dated 11.05.2016 in F.No.R. 13040/25/2015-HD(Tech.), which emanated from the Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy

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(AYUSH), Government of India, informs the fourth respondent – the Registrar, Tamil Nadu Homeopathy Medical Council of the State, that Electro Homeopathy is not recognized by Ministry of AYUSH and the matters concerned with recognition of any new system of medicine are dealt by Department of Health Research, Ministry of Health and Family Welfare.

16.2. Thereafter, the fourth respondent addressed a letter dated 12.07.2017 to the Department of Health Research, Ministry of Health and Family Welfare, Government of India, which was replied via the second letter dated 10.08.2017 in No.V25011/15/2017-HR (Vol.II), informing the fourth respondent as follows :

".... at present, the electropathy system of medicine does not stand recognized by the Central Government, and, therefore, any question of the Government authorising or recognizing any body, in whatsoever form, to impart education / run courses in this system, may not arise. However, with regard to your query as to whether the courses can be registered under the State Homeopathy/Siddha, etc., councils you may like to make a reference to the Ministry of AYUSH, Government of India."

16.3. To the further query of the fourth respondent, the very same authority answered in the letter dated No.U-11018/01/2018-HR, dated 12.10.2018, as follows :

"..... since the electropathy system of medicine itself does not stand recognised by the Central Government at present, the question of the Government authorising or recognizing any body, in whatsoever name or form, to impart education / conduct courses in this system, may not arise. It may also be stated that vide this Ministry's Order dated 25.11.2003 (copy enclosed), States/UTs were advised to ensure that institutions under them did not grant any degree / diploma in the stream of medicine which had not been recommended for recognition and that the term 'Doctor' be used by practitioners of recognized system of medicine. It may, however, be added that in this Ministry's another order, dated 05.05.2010 (copy enclosed), it was stated that there was no proposal to stop the petitioners from practising in electropathy or imparting education, as long as this was done within the provision of the Order, dated 25.11.2003."

From the above letters, it is clear that the claim of the petitioners is liable to be rejected on this sole ground.

17. The learned Standing Counsel for the fourth respondent also brought to the notice of this Court the judgment of a Division Bench of the Bombay High Court in **Electropathy Medicos of India V. State of Maharashtra, AIR 2002 Bombay 22**, wherein, a direction for closing down of an institute, which offered courses in electropathy/ electro-homeopathy, was ordered as early as in the year 2001. While doing so, the Division Bench observed as hereunder :

"6. At that out set, it is required to be stated that electropathy system which is sought to be espoused by the petitioner-society is not recognised in India nor is it a part of homeopathy system of medicines recognised in India as is conveyed by misleading name "electrohomeopathy." In fact, no Government/University/Authority has recognised the petitioner-society as medical institution entitled to confer degree and diploma or certificate in electropathy or electrohomeopathy. The degrees, diplomas, certificates etc. conferred by the petitioner/ colleges affiliated to it are not recognised in law and would not permit the students to practice as medical practitioners. We may also mention that electropathy is not recognised as a system of medicine in any part of the world including in Italy, where it is alleged to have been discovered in 1865 as is sought to be made out by the petitioner.

18. The learned Standing Counsel for the fourth respondent also placed reliance on the judgment of the Allahabad, Punjab and Haryana High Courts and of this Court to drive home the point that the Electropathy/Electrohomeopathy is not recognised in India and no one is entitled to practice the said stream and impart education on that stream.

19. It is the claim of the learned counsel for the petitioners that the Hon'ble Apex Court in the judgment dated 01.05.2018 passed in SLP (C)No.20134/2017, following the earlier order made in SLP (C)No.

23572 of 2009, permitted the appellant therein to provide an alternative therapy, i.e., Electro Homeopathy, as there is no ban by any competent authority. Even in the said judgment, the Hon'ble Apex Court held that the practice in electropathy or imparting education should be done with the provisions of the order dated 25.11.2003. Since the claim of the petitioners herein is not in tune with the provisions of the order dated 25.11.2003, they are not entitled to lay their hands in the said judgment to seek similar treatment.

20. As stated above, most of the certificates produced by the petitioners in the typed set of papers, in respect of their claim of obtaining Diploma in Electro Homeopathy, are issued by some private institutions without affiliation to anyone of the statutory bodies / universities recognized by the Acts of the Parliament. The petitioners, who claimed to have undergone a diploma course in the so-called alternative stream of medicine, without even verifying the genuineness of the statutory recognition, status of the institute joined the course, throws serious doubt about the genuineness in their very claim. Having obtained diplomas from such institutes, the petitioners are estopped from claiming any right either to register themselves in the roles of the statutory council or practice in that particular stream of medicine.

21. Though the learned counsel for the petitioners submitted that the Central Government is taking steps to enact laws, namely, The Electro Homeopathy System of Medicine (Recognition) Bill, and till such time, the petitioners may be permitted to practice, when this Court posed a specific question as to whether the petitioners can rely upon the provisions contained in the proposed Bill, it is admitted by him that untill the same is passed by both the House of Parliament and received the Presidential assent, they cannot.

22. In the result, these writ petitions are liable to be dismissed as devoid of merits and accordingly, they are dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

23. At this stage, it is to be stated that though all the rules and regulations are in place, there is no action taken by the authorities concerned. The authorities are accountable for not implementing the rules. The common man and aspiring students should be informed and awareness should have been created in them about the unrecognized courses.

24. In the instant case, the first respondent even in the order dated 25.11.2003 directed the State Governments and the Union Territories to ensure that the institutions under them do not grant any degree / diploma in the stream of medicine which have not been recommended for recognition. But the institute, in which, the petitioners claim to have studied is able to run the three years courses for many academic years, without any action being initiated against it by the State Government. The same cannot be weighed lightly, as it caused serious prejudice to the lives of these young petitioners. In such situation, at least, now, the Central / State Governments are directed to take immediate action against such bogus institutes and have a serious check on these issues without any further delay, in accordance with law.

25.02.2020

Index : Yes/No
Internet : Yes
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To

1. The Under Secretary,
Ministry of Health and Family Welfare,
Department of Health Research,
Government of India,
Nirman Bhawan, New Delhi.

2. The Principal Secretary,
Health and Family Welfare Department
Government of Tamil Nadu,
St. George Fort, Chennai-600 009.
3. The Director General of Police,
Rajaji Salai, Chennai.
4. The Registrar,
Tamil Nadu Homeopathy Medical Council,
Arumbakkam, Chennai-600 106.
5. The Joint Director,
Rural and Medical Health Science,
Madurai District.
6. The District Collector,
Madurai District, Madurai.



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