

17-4/2003

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.RAJEEV GUPTA

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN

THURSDAY, THE 23RD JUNE 2005 / 2ND ASHADHA 1927

OP.No. 2875 of 2003(S)

PETITIONERS:

- 1. KERALA HOMOEO MEDICAL GRADUATES
 ASSOCIATION, (REGN.NO.154/87) REPRESENTED BY
 THE GENERAL SECRETARY, DR. HARINDRANATHAN,
 VADAKKEDATH HOUSE, MENHANNIUM AMSOM, MENHANNIUM
 VILLAGE, KOYILANDY TALUK, KOZHIKODE DISTRICT.
- 2. DR.MURALIDHARAN VELLAIKKAL, VELLAIKKAL HOUSE, 'LEKSHMI SADAN', KIZHAKKUMPATTUKARA, THRISSUR DISTRICT-680 005.

BY ADV. DR. SEBASTIAN CHAMPAPPILLY SRI. ANTONY M. AMBAT

RESPONDENTS:

- 1. STATE OF KERALA REPRESENTED BY THE SECRETARY, HEALTH & FAMILY WELFARE DEPARTMENT GOVT.SECRETARIAT, THIRUVANANTHAPURAM.
- THE REGISTRAR, TRAVANCORE-COCHIN MEDICAL COUNCIL, RED CROSS ROAD, THIRUVANANTHAPURAM -37.
- 3. THE REGISTRAR, CENTRAL COUNCIL OF HOMOEOPATHY, JAWAHARLAL NEHRU BHARATIYA CHITKSA-EVAM HOMOEOPATHY, ANUSANTHAN BHAVAN, OPPOSITE D BLOCK, 5TH AND 6H FLOOR, INSTITUTIONAL AREA, JANAKAPURI, NEW DELHI-110 058.
- 4. UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF HEALTH & FAMILY WELFARE NIRMAN BHAVAN, MAULANA AZAD ROAD, NEW DELHI-110 011

ADDITIONAL RESPONDENTS IMPLEADED:

- ADDL. 5. HAHNEMANIA MEDICAL ASSOCIATION, KERALA (REG.NO.180/87)
 NIRMALA HOMOEO STORES, POST OFFICE ROAD, THRISSUR,
 REPRESENTED BY ITS PRESIDENT DR.V.RAVUNNI NAIR,
 II/86, MANALARKKARU ROAD, VIYYOOR, THRISSUR.
 - 6. DR.VIJAYAN KUTTIKATTU, RAMAVARMAPURAM, STATE SECRETARY OF HAHNEMANNIA MEDICAL ASSOCIATION, KERALA, (REG.NO.180/87), NIRMALA HOMOEO STORES, POST OFFICE ROAD, THRISSUR.







- 7. MALABAR HOMOEO FEDERATION, REPRESENTED BY ITS SECRETARY K.K.GOVINDAN, PREMA SADAN, KAICHERY, MANANTHERA AMSOM, CHITTARIPARAMBA DESOM, P.O.CHITTARIPARAMBA.
- 8. V.RAMANKUTTY, SURESH NIVAS, ENGAKAD P.O., WADAKANCHERRY, THRISSUR DISTRICT.
- K.S.SADANANDAN, SECRETARY, ALL KERALA HOMEOPATHIC ASSOCIATION, REG.NO.13/68, AVALUKUNNU, ALLEPPEY.

ADDL.R5, R6 AND R7 ARE IMPLEADED AS PER COMMON ORDER DATED 7.8.2003 IN CMP.NOS.21909 & 22401 OF 2003.

ADDL.R8 IS IMPLEADED AS PER ORDER DATED 5.1.2004 IN I.A.NO.12566 OF 2003.

ADDL.R9 IS IMPLEADED AS PER ORDER DATED 17.9.2004 IN I.A.NO.12385 OF 2004.

R4 BY ADV. SRI.C.N.RADHAKRISHNAN, CGSC R2 BY ADV. SRI.N.RAGHURAJ, SC, TCMC & KNMC ADDL.R5 & R6 BY ADV. SRI.P.K.ASHOKAN SRI.M.R.VENUGOPAL

ADDL.R7 BY ADV. SRI.R.PARTHASARATHY SRI.JAYAPRADEEP. V., ADDL.CGSC

GOVERNMENT PLEADER SRI.ROY CHACKO SRI.M.V.RAMACHANDRAN THAMPI, ADDL.CGSC SRI.P.K.SURESH KUMAR

ADDL.R9 BY ADV. SRI.T.R.RAMACHANDRAN NAIR SRI.JOHN VARGHESE, SCGSC ADDL.R8 BY ADV. SRI.D.SREEKUMAR.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/06/2005, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RAJEEV GUPTA, C.J. & K.S.RADHAKRISHNAN, J.

O.P. No. 2875 of 2003 S, C.M.Appl.NOs.3553 of 2003, 2668 & 7902 of 2004, 1931 of 2005 and I.A.Nos.14354 of 2003 and 40 of 2004.

Dated this the 23rd day of June, 2005

JUDGMENT

Radhakrishnan, J.

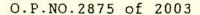
This writ petition has been preferred as a public interest litigation by the Kerala Homoeo Medical Graduates Association and another, seeking a declaration that the first proviso to Section 38 of the Travancore Cochin Medical Practitioners Act, 1953 is repugnant to the provisions of Section 15 read with Sections 21 and 13 of the Homoeopathy Central Council Act, 1973 and is therefore unconstitutional. Petitioners also sought for a declaration that from 1.8.1974 no person is entitled to practice Homoeopathic System of Medicine in the State of Kerala without recognised qualification and registration as registration is mandatory under sub-section 2 of Section 15 of the Homoeopathy Central Council Act, 1973. Petitioners also sought for various other reliefs.

2. Counsel for the petitioners brought to our notice the judgment of this Court in <u>Vanchiyoor Madhom Dhanwanthari Sannidhanam</u> v. <u>State of Kerala</u> (2003 (1) KLT 520) and contended that this Court has prevented persons who do not fulfil the prescribed qualifications from practising Ayurveda. Counsei also submitted that



some criteria to be applied to the case of practitioners in Homoeopathy as well. Examining the provisions of the Travancore Cochin Medical Practitioners Act, 1953 as well as the provisions of the Homoeopathy Central Council Act, 1973, we are not inclined to grant any declaration as prayed for by the petitioners.

Section 15(3) of the Homoeopathy Central 3. Council Act, 1973 stipulates that nothing contained in sub-section (2) shall affect the right of a practitioner on a State Register of Homoeopathy enrolled of Homoeopathy to practice Homoeopathy in any State in which on the commencement of this Act, a State register of Homoeopathy is not maintained if on such commencement, he been practicing Homoeopathy for not less than five years. Section 15(4) of the Homoeopathy Central Council Act, 1973 stipulates that any person who acts in contravention of any provision of sub-section (2) shall be punished with imprisonment for a period of one year, or with fine of Rs.1,000/-, or with both. Proviso to Section 38 of the Travancore Cochin Medical Practitioners Act, 1953 shows that the State Government may, by notification in the Gazette, direct that this section shall not apply to any person or class of persons or to

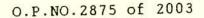


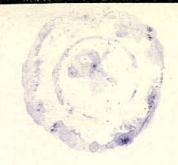


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any specified area in the State where none of the three classes of practitioners mentioned above carries on medical practice.

4. A detailed counter affidavit has been filed on behalf of the first respondent. In paragraph 5 of the counter affidavit it is stated that Section 38 of the Travancore Cochin Medical Practitioners Act, 1953 enables the Government by making notification in the Gazette to direct that the Section shall not apply to any person or classes of persons or to any specified area in the State none of the three classes of practitioners where mentioned in the Section carries of medical practice. It is also stated that there are several genuine traditional medicine especially practicing practitioners in indigenous system of medicine like Ayurveda, Siddha, Unani, etc. and that to protect the interest of such genuine traditional practitioners of medicine, proviso was incorporated in Section 38 of the Travancore Cochin Medical Practitioners Act, 1953, to make certain exemptions in respect of any person or classes of persons or to any specified area where there is non-availability of medical practitioners. Further it is stated that there is sufficient justification for incorporating the





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provision in the Act. It is also pointed out that indigenous system of medicine were prevalent in the country for several centuries and the people have faith in the said system of medicine, however, in most of these systems there are no established institutions available to teach this system, whereby depriving the chance to acquire qualification in a conventional manner in such system of medicine.

Taking into account the entire facts, we the view that there are sufficient justifications for exempting those category of persons. Petitioners have they have in what manner established not discriminated. Further, it is stated by the Government Pleader that the State Government is intending to bring a suitable legislation covering all aspects of medical practice. The Kerala Medical Practitioners Bill, 1996 has been taken with the Central Government for getting prior clearance for introducing the bill in the State legislature. As and when the proposed legislation is enacted the entire scenario in respect of the disputes regarding the medical practitioners will be cleared of all doubts and misconceptions. We are of the view that if petitioners have got a case that anybody is violating O.P.NO.2875 of 2003

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the express provisions of the Central Act as well as the State Act, it is always open to them to point out the same before the Government and in such an event, the Government shall take appropriate action. Counsel however, brought to our notice that Ext.P19 representation has already been filed by the first petitioner before the Government. The Government shall take note of the grievance of the petitioners and take appropriate remedial measures.

With the above observations, the Original Petition is disposed of.

C.M.Application Nos.3553/2003, 2668/2004, 7902/2004, 1931/2005 and I.A.No.40/2004 stand allowed and I.A.No.14354/2003 stands dismissed.

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RAJEEV GUPTA Chief Justice

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K.S.RADHAKRISHNAN Judge

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APPENDIX

PETITIONERS' EXHIBITS:

- EXT.P1 TRUE EXTRACT FROM http://www.cchindia.com.
- EXT.P2 TRUE COPY OF THE HOMOEOPATHY CENTRAL COUNCIL ACT, 1973.
- EXT.P3 GAZETTE OF INDIA NOTIFICATION NO.V.27020/1/74(A)-HOMOEO, DATED 30.7.1974.
- EXT.P4 GAZETTE OF INDIA NOTIFICATION NO.V.27021/8/78(A) HOMOEO, DATED 15.9.1978.
- EXT.P5 TRUE COPY OF THE TRAVANCORE COCHIN MEDICAL PRACTITIONERS' ACT, 1953.
- EXT.P6 TRUE EXTRACT FROM THE STATE REGISTER OF HOMOEOPATHY AS ON 30.4.1980.
- EXT.P7 TRUE COPY OF THE JUDGMENT IN O.P.NO.997/1986 DATED 2.11.1987.
- EXT.P8 TRUE COPY OF THE JUDGMENT IN O.P.NO.2845/1986 DATED 2.11.1987.
- EXT.P9 TRUE COPY OF THE JUDGMENT IN O.P.NO.12851/1993 DATED 12.1.1996.
- EXT.P10 TRUE COPY OF THE JUDGMENT IN O.P.NO.2517 OF 1996 DATED 12.1.1996.
- EXT.P11 TRUE COPY OF THE INTERIM ORDER IN CMP.NO.35052/1996 IN O.P.NO.19452/96 DATED 11.12.1996.
- EXT.P12 TRUE COPY OF THE JUDGMENT IN O.P.NO.11040/1990 DATED 21.5.1997.
- EXT.P13 TRUE COPY OF THE JUDGMENT IN O.P.NO.3510/1991 DATED 3.2.1998.
- EXT.P14 TRUE COPY OF THE STATEMENT OF OBJECTS AND REASONS OF THE IMC ACT, 1956.
- EXT.P15 TRUE COPY OF THE STATEMENT OF OBJECTS AND REASONS OF THE IMCC ACT, 1970.
- EXT.P16 TRUE COPY OF THE STATEMENT OF OBJECTS AND REASONS OF THE IMCC ACT, 1970.
- EXT.P17 TRUE EXTRACT OF THE CORRESPONDING PROVISIONS OF IMC ACT & HCC ACT.

- EXT.P18 TRUE COPY OF THE CIRCULAR NO.27133/J2/85/HOME DATED 26.11.1985.
- EXT.P19 TRUE COPY OF THE REPRESENTATION GIVEN BY THE FIRST PETITIONER TO THE FIRST RESPONDENT DATED 2.12.2002.
- EXT.P20 TRUE COPY OF THE REPRESENTATION GIVEN BY THE FIRST PETITIONER TO THE FOURTH RESPONDENT DATED 3.1.2003.

RESPONDENTS' EXHIBITS:

- EXT.R7(a) TRUE COPY OF LETTER DATED 28.6.1980 ISSUED BY THE REGISTRAR, MEDICAL COUNCILS TO THE SECRETARY, UTTARA KERALA HOMOEOPATHIC ASSOCIATION.
- EXT.R8(a) TRUE COPY OF DIPLOMA CERTIFICATE BY INDIAN INSTITUTE OF HOMOEOPATHY AT KUMBAKONAM IN TAMIL NADU IN 1962.
- EXT.R8(b) TRUE COPY OF THE CERTIFICATE ISSUED BY THE RAHNEMANNIAN MEDICAL ASSOCIATION, KERALA.
- EXT.R8(c) TRUE COPY OF IDENTITY CARD ISSUED BY ASSOCIATION TO THE RESPONDENT.
- EXT.R8(d) TRUE COPY OF THE LETTER DATED 8.5.1998 ISSUED BY THE CENTRAL COUNCIL OF HOMOEOPATHY.
- EXT.R8(e) TRUE COPY OF THE REPRESENTATION SUBMITTED TO THE REGISTRAR T.C.MEDICAL COUNCIL.

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p.s. La Judge

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1. The year and number of suit Op 2875/03 1. The year and number of suit Office or other proceedings & HC

2. Name of the foot M. V. Compachant

3. The name of entrant Adv. M. V. Compachant

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