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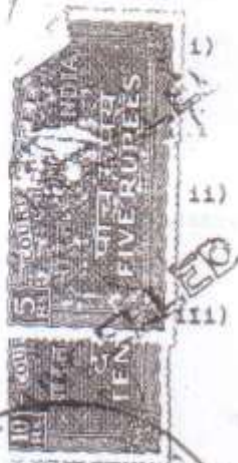
39462



THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

M.P. NO. 2018 OF 1991 92

DB civil



M.P.H.N. College
D. Agarwal Complexes
3, Gulli Chauraha
Damoh, MP
Through: its Principal
Dr. Rajesh Kumar Sikka

Electro-Homeopathic
Medical College Association of M.P.
Through: its Secretary
Dr. K.K. Patil

.....PETITIONER

V E R G U S

A N D

1. The State of Madhya Pradesh Through: The Secretary (Home) Police Department (M.P.) State of M.P. AMBAL.
2. The Collector, District Damoh,
3. The Supdt. of Police, District Damoh, M.P.
4. The Chief Secretary, The Government of M.P., Vallabh Shahn, AMBAL (M.P.)
5. The Secretary, The Govt. of Madhya Pradesh, Health Department, AMBAL (M.P.)
6. The Collector, Jabalpur (M.P.)

(Attached)

under the Societies Registration Act of 1860.

Registered Society by the Registrar of Society.



CO. dt 19/9/96
Sd/- Illeg
Counsel for
petitioner
20/9/96.

HIGH COURT OF JUDICATURE AT Jabalpur : Madhy Pradesh.

W.P.No.502/99

Dr.Mukesh Shrivastava

v.

The State of M.P.

For the petitioner : Shri K.C.Shrivastava.

For the respondents : None.

W.P.No.1633/98

Jagdish Chandra Ray & ors
Raigarh.

v.

Commissioner Bilaspur Div.
and ors

For the petitioner : Shri Prashant Mishra, Adv.

For the respondents : Shri R.S.Jha.

W.P.No.3108/98

Pawardan Tirkey & ors.

v.

Commissioner Bilaspur and ors.

For the petitioners : Shri Prashant Mishra, A.

For the respondents : Shri Vivek Awasthy, Adv.

W.P.No.4622/98

Dr.Shambhu Sarkar & ors.

v.

State of M.P. & ors.

For the petitioners : Shri Prashant Mishra, A

For the respondents : Advocate General.

(93)

- 2 -

W.P.No.2410/98

Kajal Kumar Sikdar

v.

State of M.P. & ors.

For the petitioner : Shri P.R. Bhawe, Adv.

For the respondents : Shri A.S. Garharwar, Adv.

W.P.No.5553/98

Binay Krishna Biswas

v.

Commissioner Bilaspur Division
and ors.

For the petitioner : Shrimati Indira Tripathi,

For the respondents : Advocates General.

W.P.No.2018/92

National Dev. Society of
Elec-Homeo & ors.

v.

State of M.P. & ors.

For the petitioners : Shri N. Nagrath, Adv.

For the respondents : Shri R.K. Thakur.

W.P.No.1244/94

The Institute of Ec. Research

v.

The State of M.P. & ors.

For the petitioner : Shri N. Nagrath, Adv.

For the respondents : Shri R.K. Thakur, Adv.



- : 3 : -

W.P.No.2957/94

Council of Alternative System

v.

State of M.P. & anor

For the petitioner : Shri B.N.Mishra, Adv.

For the respondents : Shri V. Anasathy, Adv.

W.P.No.3661/98

Ganpati Sarkar & ors.

v.

The Commissioner Bilaspur
& ors.

For the petitioners : Shri Prashant Mishra, Adv.
Shri H.S.Patel, Adv.

For the respondents : Shri P.Singh, Adv.

W.P.No.4470/98

Coal India E.L.Medical College

v.

Collector Sidhi & ors.

For the petitioner : Shri S.P.Tripathi, Adv.

For the respondents : Shri Vinay Shukla, Adv.

W.P.No.3979/95

Medical Board of Bio Chemi-
cal system

v.

State of M.P. & ors.

For the petitioner : Sr.S.C.Chaturvedi, Adv.

For the respondents : Shri Abhay Gohil, Adv.

95

- 141 -

W.P.No.4931/96

Ajay Chaturvedi

v.

The State of M.P. & ors.

For the petitioner : Shri P. Rasia, Adv.

For the respondents : Shri R.K.Thakur, Adv.

W.P.No.5094/96

Gyanendra Singh

v.

S.D.O.Mudwara, Katni & ors

For the petitioners : Shri M.N.Nagrath, Advocate

For the respondents : Shri R.K.Thakur, Adv.

W.P.No.3007/98

Pratha Biswas & ors.

v

State of M.P.& ors

For the petitioners : Shri Prashant Mishra, Adv

For the respondents : Shri Vivek Awasthy, Adv.

W.P.No.3136/93

Indore Research Institute
and ors

v.

The State of M.P. and ors.

For the petitioners : Shri R. Nagrath, Adv.

For the respondents : Shri R.K.Thakur, Adv.





961

- : 5 : -

W.P.No. 4169/98

Arbinda Biswas and ors.

v.

Commissioner Bilaspur and ors.

For the petitioners : Shri Awadh Tripathi, A.

For the respondents : Adv. General.

W.P.No. 861/99

Dr. Rajan Bhattacharya

v.

State of M.P. & ors.

For the petitioner : Shri S.D.Khan, Adv.

For the respondents : Advocate General.

W.P.No. 2011/98

Dr. Santosh Kumar Chouhan & ors.

v.

Commissioner Bilaspur & ors.

For the petitioners : Shri Awadh Tripathi,

For the respondents : Shri P.D.Gupta, Adv.

(97)

- : 6 : -

ORDER

1. In this bunch of writ petitions, petitioners are either individuals or institutions. Individuals contend that they have the right to practice in the alternative system of medicines whereas the grievance of the institutions are that action of the respondents, not permitting them to impart education in alternative system of medicines is illegal. Individual petitioners are registered either with the Indian Council of Alternative System of Medicines, Alternative Medical Council, Subhash Alternative Academic Council or Council of Electro Homeopathy Society which are societies registered under the Societies Registration Act. Individual petitioners claim that they have right to practice in alternative system of medicine namely Indo Electropathy, Electro Homeopathy whereas institutions contend that they have the right to impart education on the alternative system of medicine and action of the respondents in interfering with right to practice or impart education is in the teeth of their fundamental right guaranteed under Article 19(1)(g) of the Constitution of India.

2. It is conceded by the individual petitioner that degree / diploma obtained by them are not recognised under any law. They contend that practice in the alternative system of medicine is not regulated by any of the statutes and hence in the absence of regulation / prohibition they cannot be asked to stop practice has been done by the Magistrate under section 133 of the Code of Criminal Procedure.



3. Similarly the stand of the institution is that imparting education in the alternative system of medicine is not governed by any statute and the same being not covered either under Allopathy, Ayurvedic, Naturopathy, Homeo and Unani system of medicine which are governed and regulated by various statute, they cannot be prohibited from imparting education in the alternative system of medicine.

4. It is common ground that allopathy, Homeopathy, Ayurvedic, Unani and Naturopathy systems of medicine are governed by various statutes enacted by the Union and the State. There is further no ~~dispute~~ dispute that no legislation governing practice or teaching in alternate system of medicine has been enacted either by the Union or the State. However, it is the stand of the respondents that in view of Section 21 of the M.P. Ayurvigya Parishad Adhiniyam, 1987, no person shall practice in any branch of medicine which will obviously include alternate system of medicine xx xxxxxx xxxxxxxx

5. Section 21 of the Madhya Pradesh Ayurvedigyan Parishad Adhiniyam, 1990 (Act No.11/90) which is relevant for the purpose reads as under:-

"21. Prohibition from practice except as provided in this Act or Central Act No.102 of 1956.-Save as provided in this Act or the Indian Medical Council Act, 1956 (No.102 of 1956) no person shall practice or hold himself out, whether directly or indirectly as practising medicine within the State".

6. It is the stand of Shri Shukla, appearing on behalf of the State that the aforesaid provision prohibits practice in medicine and the same will not include only Allopathic System of medicine, but any kind of medicine which claims to treat a patient. However, counsels for the petitioners have taken the stand that Sec.21 of the aforesaid Act operates in the field of Allopathic system of medicine, but not other systems of treatment. Further stand of the petitioners is that in alternate system of medicine, no medicine is used.

7. Having appreciated the rival submissions I am of the opinion that the provisions of the Madhya Pradesh Ayurvedigyan Parishad Adhiniyam, 1976 does operate in the field of Allopathic system of medicine and in not alternate system of medicine. Expression medicine has been defined under section 2(c) of the Act which reads as under:-

"2.(c) 'Medicine' means modern scientific medicine in all its branches and includes

surgery and obstetrics, but does not include veterinary medicine and surgery;"

(8) It is relevant here to state that Shri Shukla has taken me to various dictionaries to contend that wider meaning of the aforesaid expression be given. I am of the opinion that when an expression used in a statute, is defined under the statute itself, reference to the meaning of the said word by reference to various dictionaries is uncalled for. When the legislature has given the meaning of a particular expression which legislative device is adopted either to expand or curtail the meaning of a particular word, reference to dictionaries to understand the meaning of the said expression is hazardous and not permissible. Accordingly I am of the considered opinion that while construing section 21 of the Act which prohibits practice in the medicine shall mean practice in modern scientific medicine which will include surgery, but does not include veterinary medicine and surgery. It may be stated that Mr. Shukla has taken a stand that modern scientific medicine does not mean Allopathic System of medicine. From the decision of the Supreme Court in case of Dr. A.K. Sabhapathy -v- State of Kerala & Ors AIR 1992 S.C. 1310. I do not have the slightest hesitation in rejecting the submission of Shri Shukla. In the said case the Supreme Court has held that the modern scientific medicine refers to the Allopathic system of medicine, which would be evident from paragraph 14 of the said judgment which reads as follows

101

- : 10 : -

"The High Court, in our opinion, has rightly held that the expression 'modern scientific medicine' in Section 2(1) of the Central Act refers to the Allopathic system of medicine and that the provisions of the Central Act have been made in relation to medical practitioners practising the said system. This view finds support from the fact that after the enactment of the Central Act, Parliament has enacted the Indian Medicine Central Council Act, 1970 in relation to the system of Indian medicine commonly known as Ayurveda, Siddha and Unani and the Homeopathy Central Council Act, 1973 in relation to Homeopathic system of medicine wherein provisions similar to those contained in the Central Act have been made in relation to the said system of medicine."

9. Thus, the only statutory provision which has been invoked to prohibit practice in alternative system of medicine under Section 21 of the Act, which in my opinion being confined to the Allopathic system of medicine, I am of the opinion that respondents cannot take recourse to the aforesaid provisions to stop practice in the alternative system of medicine. It is the stand of both sets of petitioner that they are practising and imparting education in alternative system of medicine which is not regulated by any of the statute and hence, they cannot be stopped from carrying out the practice in alternative system and teaching in the said system in view of Article 19(1)(g) of the Constitution of India. It is that Article 19(1)(g) of the Constitution of India gives right to all citizens to practice any profession or to carry on any ~~business~~ occupation trade or business, but in view of Art.19(5), same



(102)

- : 11 : -

does not prevent the State from making any law relating to the professionals or technical qualification necessary for practising any profession or carrying on any occupation, trade or business. However, in the present case no law excepting the provisions of section 21 of the Act has been brought to my notice to show that any law has been enacted either by the Union or the State governing teaching or practice in the alternative system of medicine. As held earlier section 21 of the Act does not operate in the field of alternative system of medicine and in the garb of the same respondents cannot stop the petitioners from practice and teaching in alternative system of medicine. So long valid law is not made regulating the branch. Accordingly I am of the opinion that the action of the respondents in stopping the petitioners from practising in alternative system of medicine or imparting education in the same is illegal. In view of the aforesaid all the consequential actions taken by the respondents are also illegal and ultra-vires.

10. By way of abundant caution I may state that, in case, the petitioners practice/in the branch of Allopathy, Homeopathy, Ayurvedic, Unani or Neuropathy ~~or any other system of medicine~~ which are regulated by various enactments, their action shall be totally illegal and the respondents ~~shall~~ are free to take action against them in accordance with law.

(103)

- : 12 : -

On In the result, all the writ petitions succeed and it is held that the petitioners have right to practice and impart education in alternative system of medicine, in case, same is not one of the systems regulated by the Statute, i.e. Allopathy, Homeopathy, Ayurvedic, Naturopathy and Unani and the action of the respondents in prohibiting them from the aforesaid acts are illegal and are set aside. In the facts and circumstances of the case, there shall be no order as to cost.

sl/ C.K. Prasad

JUDGE
19.3.1999

