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VERDICTUM.IN



W.P.Nos.9708, 624 & 3991 of 2023, 24686, 24690,
24691, 24693, 24697, 33754 & 33759 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.Nos.9708, 624 & 3991 of 2023, 24686, 24690,
24691, 24693, 24697, 33754 & 33759 of 2022**

And

**W.M.P.Nos.9770, 562 & 4047 of 2023, 23635, 23643,
23641, 23638, 23644, 33274 & 33275 of 2022**

K.Ganesan

... Petitioner in W.P.9708/2023

Vs.

1. Government of Tamil Nadu
represented by its Secretary,
Health and Family Welfare Department,
Fort St.George,
Secretariat,
Chennai – 600 009.
2. The District Collector,
Office of the District Collectorate,
Coimbatore District,
Coimbatore.
3. The Director,
Directorate of Medical Services,
DMS Compound,
Teynampet,
Chennai – 600 018.
4. The Joint Director,
Government Headquarters Hospital,
Coimbatore,
Coimbatore District.

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5. The Inspector of Police,
Pollachi Police Station,
Coimbatore District.

... Respondents in W.P.9708/2023

Prayer in W.P.No.9708 of 2023:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus forbearing the 4th and 5th respondents from interfering with the petitioner's practice in the field of Community Medical Service and Essential Drugs, run in the name and style of Pavithra Balaji Clinic at No.4/132F, Kamatchi Amman Kovil Street, Thondamuthur, Pollachi 642123 and also in the name and style of Rishee Clinic, functioning at No.F2, TVR Complex, SRMS Mills Street, Opp. Fire service, Pollachi 642001 in any manner either by themselves, their workmen, agents, representatives and assigns.

For Petitioners : Mr.D.Ashok Kumar

For Respondents : Mr.U.Baranidharan

Additional Government Pleader

COMMON ORDER

The petitioners have filed these writ petitions seeking to forbear the respondents from interfering with their practice in the field of Community Medical Service and Essential Drugs.



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2.The case of the petitioners is that the petitioners have completed Diploma in Community Medical Service and Essential Drugs which is a two years Course and are entitled to run Primary Health Care Clinic in rural areas. The petitioners never pose themselves as Doctors and are practising only in the filed of Community Medical Service and Essential Drugs and there is no impediment whatsoever in carrying out such practice, however, the respondents are interfering with the petitioners practice. Hence, these petitions.

3.The learned counsel appearing for the petitioners submitted that the petitioners have completed Diploma in Community Medical Service and Essential Drugs and are entitled to run Primary Health Care Clinic in rural areas. Hence, the frequent interference made by the respondents is not sustainable one.

4.Per contra, the learned Additional Government Pleader appearing for the respondents submitted that if the petitioners are entitled to run a clinic, they have to make application under the Tamil Nadu Clinical Establishments (Regulation) Act, 1997 and obtain permission for establishing a clinic. In the absence of any permission,

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the petitioners are not entitled to run a clinic either in the rural areas or anywhere in Tamil Nadu.

5.The learned Additional Government Pleader appearing for the respondents further submitted that as per Rule 2 (o) of the Tamil Nadu Clinical Establishments (Regulations) Rules, 2018, Registered Medical Practitioner means a person who possess any of the Government recognised medical qualification and who has been enrolled in the register of the respective Council viz., Medical, Dental, Siddha, Ayurveda, Unani or Homeopathic Councils or the Board of Indian Medicine or any such Council, Board or any other statutory body recognised by the Government of Tamil Nadu and as per Rule 2 (i) of the Tamil Nadu Clinical Establishments (Regulations) Rules, 2018 Doctor means and includes a Registered Medical Practitioner offering consultations or treatment under Allopathy or AYUSH.

6.The learned Additional Government Pleader appearing for the respondents further submitted that unless the Medical Council of India or the AYUSH Department approve the qualification of the petitioners, they are not entitled to practice and run a clinic. He further submitted

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that when similar issue came up before the Madurai Bench of this Court in W.P.(MD) No.20217 of 2019 etc., batch of cases, this Court categorically observed that '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. Having obtained diplomas from such institutions, 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.'

7.Heard the arguments advanced on either side and perused the materials available on record.

8.Before deciding the issue, it is useful to extract hereunder the relevant provisions of the Tamil Nadu Clinical Establishments (Regulations) Rules, 2018:

"2. Definitions. -

(i) "Doctor" means and includes a Registered Medical Practitioner offering consultations or treatment under Allopathy or AYUSH;



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(o) *"Registered Medical Practitioner"* means a person who possess any of the Government recognised medical qualification and who has been enrolled in the register of the respective Council viz., Medical, Dental, Siddha, Ayurveda, Unani or Homeopathic Councils or the Board of Indian Medicine or any such Council, Board or any other statutory body recognised by the Government of Tamil Nadu;"

9.It is also useful to extract hereunder the relevant portion of the order of the Madurai Bench of this Court made in W.P.Nos.20217 of 2019 etc. batch dated 25.02.2020:

"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

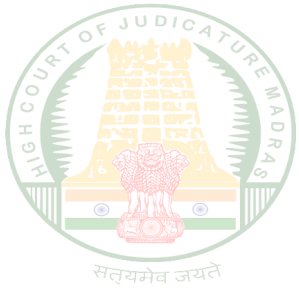


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recognition, status of the institute joined the course, throws serious doubt about the genuineness in their very claim. Having obtained diplomas from such institutes, the petitioners are estopped from claiming any right either to register themselves in the roles of the statutory council or practice in that particular stream of medicine."

10.The petitioners claim that they have completed Diploma in Community Medical Service and Essential Drugs and are entitled to run Primary Health Care Clinic in rural areas. However, the above said provisions makes it clear that Registered Medical Practitioner means a person who possess any of the Government recognised medical qualification and who has been enrolled in the register of the respective Council viz., Medical, Dental, Siddha, Ayurveda, Unani or Homeopathic Councils or the Board of Indian Medicine or any such Council, Board or any other statutory body recognised by the Government of Tamil Nadu and Doctor means and includes a Registered Medical Practitioner offering consultations or treatment under Allopathy or AYUSH. In the absence of any recommendation from the Medical Council of India or from the AYUSH Department the



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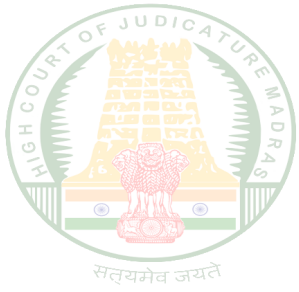
petitioners are not entitled to run a clinic anywhere in Tamil Nadu.
Hence, the claim made in the writ petitions cannot be entertained and
the relief sought for in these petitions cannot be granted.

11.The writ petitions are accordingly dismissed. No costs.
Consequently, the connected miscellaneous petitions are closed.

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No



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To

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