

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF DECEMBER, 2023

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.23267 OF 2023 (GM - RES)

BETWEEN:

SRI. DR. ANNAIAH. N.,
S/O LATE NAGAPPA,
AGED ABOUT 57 YEARS,
SANGEETHA CLINIC,
R/AT MINI IBRAHIM ROAD,
OORGAUMPET POST,
K.G.F, BANGARPET TALUK,
KOLAR DISTIRCT - 563 121.

... PETITIONER

(BY SRI PRAKASHA M, ADVOCATE)

AND:

- 1 . THE STATE OF KARNATAKA
REPRESENTED BY ITS SECRETARY,
HEALTH DEPARTMENT,
VIKASA SOUDHA,
BENGALURU - 560 001.
- 2 . THE DEPUTY COMMISSIONER
AND CHAIRMAN OF REGISTRATION
COMMITTEE FOR K.P.M.E
KOLAR DISTRICT,
KOLAR - 563 101.

- 3 . THE DISTRICT HEALTH AND
FAMILY WELFARE OFFICER AND MEMBER
SECRETARY OF REGISTRATION,
COMMITTEE OF K.P.M.E
KOLAR DISTRICT,
KOLAR – 563 101.

- 4 . THE DISTRICT AYUSH OFFICER AND
MEMBER SECRETARY
K.P.M.E. COMMITTEE,
KOLAR DISTRICT,
KOLAR – 563 101.

- 5 . THE INDIAN MEDICAL ASSOCIATION
SECRETARY AND MEMBER
K.P.M.E. COMMITTEE,
KOLAR DISTRICT,
KOLAR – 563 101.
REPRESENTED BY SECRETARY
KARNATAKA PRIVATE MEDICAL
ESTABLISHMENT ACT, 2007.

... RESPONDENTS

(BY SMT.NAVYA SHEKHAR, AGA FOR R1-4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO A) TO SET-ASIDE THE ENDORSEMENT IN NO. DATED 25/09/2023 ISSUED BY THE R3, PRODUCED AT ANNEXURE-A; B) DIRECTING THE RESPONDENTS TO CONSIDER THE ONLINE APPLICATION NO. 31717 SUBMITTED ON 21/08/2023 VIDE ANNEXURE-F, OF THE PETITIONER FOR REGISTRATION OF THEIR MEDICAL ESTABLISHMENT WITHIN TIME BOUND PERIOD AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 16.11.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court seeking quashment of an endorsement dated 25-09-2023 issued by the 3rd respondent/ District Health & Family Welfare Officer and Member Secretary of the Committee of Registration under the Karnataka Private Medical Establishments Act 2007 declining to issue registration certificate to the petitioner for his Sangeetha Clinic.

2. Heard Sri M.Prakasha, learned counsel appearing for the petitioner and Smt. Navya Shekhar, learned Additional Government Advocate appearing for respondents 1 to 4.

3. The facts, in brief, adumbrated are as follows:

The petitioner claims to be a medical practitioner practicing in various forms of medicine. He has completed community medical service course – C.M.S. course and has obtained CMS-ED certificate from the Central Paramedical Education Board, Mumbai which the petitioner claims to be under the World Health Organization

directive or guidelines. He further avers in the petition that he has taken training in paramedical course at Delhi and on the strength of the aforesaid certificate that he possesses begins a clinic in the name and style of Sangeetha Clinic at Mini Ibrahim Road, KGF, Bangarpet Taluk and claims to be practicing from several years.

4. Government of Karnataka promulgates Karnataka Private Medical Establishments Act, 2007 ('the Act' for short) which came into effect from 23-01-2008. As required under the Act, a medical practitioner who wants to set up a private practice must apply under the Act and once registration is approved he would be entitled to practice. Accordingly, the petitioner files an application online for registration of his clinic under the Act. This comes to be rejected by the impugned endorsement on the score that the qualification of the petitioner does not permit registration under the Act. The turning down of the application in terms of the endorsement dated 25-09-2023 is what has driven the petitioner to this Court in the subject petition.

5. The learned counsel appearing for the petitioner would submit that the petitioner having the aforesaid qualification is entitled to practice medicine. The Act does not differentiate between medical practitioners but does define only medicine and not any form of medicine and as such private medical establishments can function. He would seek that there are plethora of judgments rendered by co-ordinate Benches of this Court where directions are issued to consider cases of those petitioners who are not in the main stream of medicine.

6. Per-contra, the learned Additional Government Advocate Smt. Navya Shekhar would vehemently refute the submissions to contend that these doctors are practicing allopathy without there being any qualification to so practice. Every judgment produced by the petitioner are all cases in which this Court has directed consideration of the cases of the petitioners who have submitted their applications online and no endorsement was issued upon the said applications. It is her submission that those cases would not be applicable to the fact situation, as endorsement is already issued stating that the petitioner is not entitled to registration of

practice under the Act. She would place reliance upon the judgment rendered by the Division Bench of this Court in **DR. M.R. MOHAN BHATTA v. STATE OF KARNATAKA AND OTHERS**¹ to buttress her submissions.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts are not in dispute. Since the entire issue has now sprung from the impugned endorsement and the impugned endorsement is based upon the Act, I deem it appropriate to notice certain provisions of the Act. Section 2 deals with definitions. Section 2(k) defines who is a Medical Practitioner and reads as follows:

"(k) 'Medical Practitioner' means a medical practitioner registered under the Homeopathic Practitioners Act, 1961 (Karnataka Act 35 of 1961), Ayurvedic, Naturopathy, Sidda, Unani or Yoga Practitioners Registration and Medical Practitioners Miscellaneous Provisions Act, 1961 (Karnataka Act 9 of 1962), Medical Registration Act, 1961 (Karnataka Act 34

¹ W.A.No..478 of 2023 decided on 21-09-2023

of 1961), Indian Medicine Central Council Act, 1970 (Central Act 48 of 1970), Homeopathy Central Council Act, 1978 (Central Act 59 of 1973) and Medical Council Act, 1956 (Central Act 102 of 1956) to practice the system of medicine which he has studied, qualified and registered and includes a Dentist registered under the Dentists Act, 1948 (Central Act 16 of 1948)."

Section 2(l) defines Medical treatment and reads as follows:

"(l) "Medical treatment" means systematic diagnosis and treatment for prevention or cure of any disease, or to improve the condition of health of any person through allopathic or any other recognised systems of medicine such as Ayurveda, Unani, Homeopathy, Yoga, Naturopathy and Siddha; and includes Acupuncture and Acupressure treatments."

Section 2(m) defines Nursing Home and reads as follows:

"(m) "Nursing Home" means an establishment where persons suffering from illness, injury or infirmity (whether of body or mind) are usually received or accommodated or both for the purpose of treatment of diseases or infirmity or for improvement of health or for the purposes of relaxation or for any other purpose whatsoever, whether or not analogous to the purposes mentioned in clause (1) of this section."

Section 2(n) defines a Private Medical Establishment and reads as follows:

"(n) "Private Medical Establishment" means a hospital or dispensary with beds or without beds, a Nursing Home, Clinical Laboratory, Diagnostic Centre, Maternity Home, Blood Bank, Radiological Centre, Scanning Centre, Physiotherapy Centre, Clinic, Polyclinic, Consultation Centre and such other establishments by whatever name called where investigation, diagnosis and preventive or curative or rehabilitative medical treatment

facilities are provided to the public and includes Voluntary or Private Establishments but does not include Medical Establishments run or maintained or sponsored by,-

- (i) *the State Government or a Local Authority or other Statutory body;*
- (ii) *the Public Sector undertakings owned or controlled by the State or Central Government;*
- (iii) *autonomous institutions owned or controlled by the State or Central Government;*
- (iv) *a Co-operative Society registered under the Karnataka Co-operative Societies Act, 1959 in which more than fifty per cent of shares are held by the State or Central Government or both;*
- (v) *a Society registered under the Karnataka Societies Registration Act, 1960 and which is owned or controlled by the State or Central Government;*
- (vi) *a trust owned or managed by the State or Central Government or any Local Authority."*

(Emphasis supplied)

The aforesaid definitions are germane to be considered in the case at hand. Medical Practitioner would mean a medical practitioner registered under the Homeopathic Practitioners Act, Ayurvedic, Naturopathy, Sidda, Unani or Yoga Practitioners registered and persons registered under the Medical Registration Act, Indian Medicine Central Council Act, Homeopathy Central Council Act and Medical Council Act, 1956 to practice the system of medicine which

they have studied, qualified and registered and includes Dentists under the Dentists Act. Private medical establishments would mean a hospital or dispensary with beds or without beds, a Nursing Home, Clinical Laboratory, Diagnostic Centre, Maternity Home, Blood Bank, Physiotherapy Centre but does not include medical establishments run or maintained or sponsored by the State Government or local authority *inter alia*. Medical treatment under Section 2(l) would mean that the treatment involving those qualifications found in Section 2(k). Section 3 deals with registration of Private Medical Establishments. It reads as follows:

"3. Registration of Private Medical Establishments.-
On and after the appointed day, no Private Medical Establishment shall be established, run or maintained in the State except under and in accordance with the terms and conditions of registration granted under this Act:

Provided that a Private Medical Establishment in existence immediately prior to the appointed day shall apply for such registration within ninety days from the appointed day and pending orders thereon may continue to run or maintain till the disposal of the application."

A private medical establishment is permitted to be registered which is run by a private medical practitioner as defined under Section

2(k). Section 6 deals with pre-requisites for registration of private medical establishments. It reads as follows:

"6. Pre-requisites for Registration of Private Medical Establishments.- *The Registration Authority shall before granting the registration consider whether the following prerequisites for registration of a Private Medical Establishment are satisfied, namely:-*

- (i) that the premises housing the Private Medical Establishment is located in hygienic surroundings and otherwise suitable for the purpose for which it is established or sought to be established;*
- (ii) that the Private Medical Establishment is adequately staffed with qualified doctors, qualified and trained para medical personnel;*
- (iii) that the Private Medical Establishment has the necessary buildings with adequate space for performing its various functions, equipments and other infrastructure facilities;*
- (iv) that the Private Medical Establishment conforms to the standards referred to in section 9;*
- (v) such other factors as may be prescribed.*

Provided that no new Private Clinical Laboratory shall be permitted within a radius of 200 meters from the Government Hospital or from the Hospital promoted or managed by a society or trust or autonomous organization owned or controlled by the State Government or Central Government or Local Bodies with effect from the date of commencement of the Karnataka Private Medical Establishments (Amendment) Act, 2017."

There are several conditions stipulated for getting a private medical establishment registered which includes several standards to be maintained in terms of Section 9 or 9A of the Act.

9. The petitioner claiming to be entitled to get himself registered under the Act for the fact that he has been practicing in the name and style of 'Sangeetha Clinic' for several years submits an application to the competent authority under the Act. The competent authority, on scrutiny of the application, rejects it by the following endorsement:

“ಅಣ್ಣಯ್ಯ ಎನ್., ಸಂಗೀತ ಕ್ಲಿನಿಕ್, ಮಿನಿ ಇಬ್ರಾಹಿಂ ರಸ್ತೆ ಉರಿಗಾಂಪೇಟೆ, ಕೆ.ಜಿ.ಎಫ್, ತಾಲ್ಲೂಕು ಆದ ತಾವು ದಿನಾಂಕ: 06.03.2019 ರಂದು ಕೆ.ಪಿ.ಎಂ.ಇ ನೋಂದಣಿಯನ್ನು ಕೋರಿ ಆನ್‌ಲೈನ್‌ಪೋರ್ಟಲ್‌ನಲ್ಲಿ ವಿವಿಧ ಪ್ರಮಾಣ ಪತ್ರಗಳೊಂದಿಗೆ 02 ಅರ್ಜಿಗಳನ್ನು (i.e., 1. DIAMS Certificate of INDIAN INSTITUTE of ALTERNATIVE MEDICINES, 2. CMSED Certificate, INDIAN COUNCIL OF MEDICO TECHNICALS & HEALTH CARE) ಸಲ್ಲಿಸಲಾಗಿ ತಾವು ಸಲ್ಲಿಸಿರುವ DIAMS ಪ್ರಮಾಣ ಪತ್ರವು ಕರ್ನಾಟಕ ಆಯುಷ್ ಮಂಡಳಿ ಬೆಂಗಳೂರು ಇಲ್ಲಿ ಬಯೋಮೆಟ್ರಿಕ್ ನೋಂದಣಿಯಾಗಿರುವುದಿಲ್ಲ ಹಾಗೂ CMSED ಪ್ರಮಾಣ ಪತ್ರವು ಕರ್ನಾಟಕ ವೈದ್ಯಕೀಯ ಮಂಡಳಿಯಲ್ಲಿ ನೋಂದಣಿ ಪಡೆದಿರುವುದಿಲ್ಲ ಎಂದು ಪತ್ರದ ಸಂಖ್ಯೆ: ಜಿಆಕುಕ/ಕೋ/ಕೆಪಿಎಂಇಎ/13/2018-19 ದಿನಾಂಕ: 08.03.2019 ರಂದು ತಾವು ಸಲ್ಲಿಸಿರುವ ಡಿ.ಡಿ. ಮೊತ್ತವನ್ನು ಹಿಂತಿರುಗಿಸಿ ತಮ್ಮ ಅರ್ಜಿಯನ್ನು ವಿಲೇವಾರಿ ಮಾಡಲಾಗಿರುತ್ತದೆ, ಆದರೆ ತಾವು ದಿನಾಂಕ:24.05.2019 ರಂದು ಅರ್ಜಿ ಸಂಖ್ಯೆ:29670 ರಂತೆ ಪುನಃ ಕೆ.ಪಿ.ಎಂ.ಇ ನೋಂದಣಿ ಕೋರಿ ಅರ್ಜಿ ಸಲ್ಲಿಸಿರುತ್ತೀರಿ ತಾವು ಸಲ್ಲಿಸಿರುವ ವೈದ್ಯಕೀಯ ಪ್ರಮಾಣ ಪತ್ರವು ಕರ್ನಾಟಕ ಆಯುಷ್ ವೈದ್ಯಕೀಯ ಮಂಡಳಿಯಲ್ಲಿ ನೋಂದಣಿ ಮಾಡಿಸಿರುವುದಿಲ್ಲ ಹಾಗೂ ವೈದ್ಯಕೀಯ ವಿಲೇವಾರಿ ತ್ಯಾಜ್ಯವನ್ನು ಸಮರ್ಪಕವಾಗಿ ಮಾಡಿರುವುದಿಲ್ಲವೆಂದು ಮಾನ್ಯ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳ ಅಧ್ಯಕ್ಷತೆಯಲ್ಲಿ ನಡೆದ ಜಿಲ್ಲಾ ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರದ ಸಭೆಯಲ್ಲಿ ತೀರ್ಮಾನಿಸಿ ತಮ್ಮ ಅರ್ಜಿಯನ್ನು ತಿರಸ್ಕರಿಸಿದ್ದು, ದಿನಾಂಕ:30.08.2019 ರಂದು ಜಿಲ್ಲಾ ಆರೋಗ್ಯ ಮತ್ತು ಕುಟುಂಬ ಕಲ್ಯಾಣಾಧಿಕಾರಿಗಳ ಕಾರ್ಯಾಲಯದಿಂದ ಪತ್ರದ ಸಂಖ್ಯೆ: ಜಿಆಕುಕ/ಕೋ/ಕೆಪಿಎಂಇಎ/15/2019-20 ರಲ್ಲಿ ಹಿಂಬರಹ ಪತ್ರವನ್ನು ಸಹ ನೀಡಿ ತಮ್ಮ ಅರ್ಜಿಯನ್ನು ವಿಲೇವಾರಿ ಮಾಡಲಾಗಿರುತ್ತದೆ, ಆದರೂ ಸಹ ತಾವು ಯಾವುದೇ ನೋಂದಣಿ ಇಲ್ಲದೆ ಅಕ್ರಮವಾಗಿ ವೈದ್ಯಕೀಯ ಚಟುವಟಿಕೆಯನ್ನು ನಡೆಸುತ್ತಿರುತ್ತೀರ, ತಾವು

ತಮ್ಮ ಅರ್ಜಿಯನ್ನು ಜಿಲ್ಲಾ ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರದ ಗಮನಕ್ಕೆ ತರದೆ ತಮ್ಮ ಅರ್ಜಿ ಸಂಖ್ಯೆ: 29670 ದಿನಾಂಕ: 24.05.2019 ನ್ನು ವಿಲೇವಾರಿ ಮಾಡಿರುವುದಿಲ್ಲ ಎಂದು ಮಾಹಿತಿಯನ್ನು ನೀಡಿ ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದಲ್ಲಿ **WP No:11565** ರಂತೆ ನ್ಯಾಯಾಲಯದ ಮೊರೆ ಹೋಗಿರುತ್ತೀರಿ ತದನಂತರ ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯವು ದಿನಾಂಕ: 28.06.2022 ರಂದು ತಮ್ಮ ಅರ್ಜಿಯನ್ನು ಪರಿಗಣಿಸಿ ನಾಲ್ಕು ವಾರಗಳಲ್ಲಿ ಕೆ.ಪಿ.ಎಂ.ಇ ನಿಯಮಾನುಸಾರ ಕ್ರಮವಹಿಸಲು ಆದೇಶಿಸಿರುತ್ತಾರೆ, ಆದರೆ ತಾವು ದಿನಾಂಕ: 24.05.2019 ರಂದು ಸಲ್ಲಿಸಿರುವ ಅರ್ಜಿಯು ದಿನಾಂಕ:30.08.2019 ರಂದು ಪತ್ರದ ಸಂಖ್ಯೆ: ಜಿ.ಆಕುಕ/ಕೋ/ಕೆ.ಪಿ.ಎಂ.ಇ/15/2019-20 ರಲ್ಲಿ ವಿಲೇವಾರಿ ಮಾಡಲಾಗಿರುತ್ತದೆ, ಆದರೆ ತಾವು ಯಾವುದೇ ಹೊಸ ಅರ್ಜಿಯನ್ನು ಸಲ್ಲಿಸಿರುವುದಿಲ್ಲ, ಮುಂದುವರೆದು ದಿನಾಂಕ:13.07.2023 ರಂದು ಮಾನ್ಯ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳು ಹಾಗೂ ಜಿಲ್ಲಾ ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರ ಕೋಲಾರ ರವರ ಅಧ್ಯಕ್ಷತೆಯಲ್ಲಿ ನಡೆದ ಸಭಾ ನಡವಳಿಗಳನ್ವಯ ಕೆ.ಪಿ.ಎಂ.ಇ ನಿಯಮ 3 ರಂತೆ ನೋಂದಣಿ ಪಡೆಯದೆ ಅನಧಿಕೃತವಾಗಿ ವೈದ್ಯಕೀಯ ಚಟುವಟಿಕೆ ನಡೆಸುತ್ತಿರುವ ಆರೋಗ್ಯ ಸಂಸ್ಥೆಗಳನ್ನು ಕೆ.ಪಿ.ಎಂ.ಇ ನಿಯಮ 22 ರಂತೆ ಸೀಜ್ ಮಾಡಲು ಆದೇಶಿಸಿರುತ್ತಾರೆ ಅದರಂತೆ ದಿನಾಂಕ:17.07.2023 ರಂದು ತಾಲ್ಲೂಕು ಪರಿಶೀಲನಾ ತಂಡವು ತಮ್ಮ ಆರೋಗ್ಯ ಸಂಸ್ಥೆಯನ್ನು ಪಂಚರ ಸಮಕ್ಷಮದಲ್ಲಿ ಸೀಜ್ ಮಾಡಲಾಗಿರುತ್ತದೆ ಆದರೆ ದಿನಾಂಕ:30.08.2019 ರಂದು ನೀಡಿರುವ ಹಿಂಬರಹವನ್ನು ಮುಚ್ಚಿಟ್ಟು ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ **WP No:11565/2022** ರ ಆದೇಶವನ್ನು ಪಾಲಿಸಿರುವುದಿಲ್ಲವೆಂದು **Contempt Petition No: 719/2023** ದಿನಾಂಕ:05.08.2023 ರಂದು ನ್ಯಾಯಾಲಯದ ಮೊರೆ ಹೋಗಿದ್ದು ಹಾಗೂ ದಿನಾಂಕ: 19.07.2023 ರಂದು ಪತ್ರದ ಸಂಖ್ಯೆ ಜಿ.ಆಕುಕ/ಕೋ/ಕೆ.ಪಿ.ಎಂ.ಇ/27/2023-24 ರಲ್ಲಿ ತಮಗೆ ಎರಡನೇ ಬಾರಿ ನೀಡಲಾದ ಹಿಂಬರಹವನ್ನು ಪ್ರಶ್ನಿಸಿ **WP No:16918/2023** ರಂತೆ ಮಾನ್ಯ ಉಚ್ಚನ್ಯಾಯಾಲಯದ ಮೊರೆ ಹೋಗಲಾಗಿ ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯವು ದಿನಾಂಕ: 19.08.2023 ರಂದು ಕೆ.ಪಿ.ಎಂ.ಇ. ನಿಯಮಾನುಸಾರ ಹೊಸ ಅರ್ಜಿಯನ್ನು ಸಲ್ಲಿಸಲು ಹಾಗೂ ತಮ್ಮ ಅರ್ಜಿಯನ್ನು 06 ವಾರಗಳೊಳಗೆ ಇತ್ಯರ್ಥಗೊಳಿಸಲು ಆದೇಶ ನೀಡಿರುವುದು ಸರಿಯಷ್ಟೆ, ಆದರೆ ಜಿಲ್ಲಾ ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರದ ಅನುಮತಿಯನ್ನು ಪಡೆಯದೆ ಅಥವಾ ಇಲಾಖೆಗೆ ಮಾಹಿತಿಯನ್ನು ನೀಡದೆ ದಿನಾಂಕ: 19.08.2023 ರಂದು ಬೀಗ ಮುದ್ರೆಯನ್ನು ಹಾಕಿ ಸೀಜ್ ಮಾಡಿರುವ ಮಳಿಗೆಯನ್ನು ತಾವೇ ಸ್ವತಃ ಬೀಗ ಹೊಡೆದು ತೆರೆದಿರುವುದು ಕಾನೂನು ಬಾಹಿರವಾಗಿರುತ್ತದೆ. ನಂತರ ದಿನಾಂಕ: 23.08.2023 ರಂದು ಕೆ.ಪಿ.ಎಂ.ಇ ಪೋರ್ಟಲ್ ನಲ್ಲಿ ನೋಂದಣಿಯನ್ನು ಕೋರಿ ಮತ್ತೆ ಕೆ.ಪಿ.ಎಂ.ಇ ನಿಯಮ 2(xi) ರಂತೆ ಅರ್ಹತೆ ಇಲ್ಲದೆ ಇರುವ ಪ್ರಮಾಣ ಪತ್ರಗಳನ್ನು ಸಲ್ಲಿಸಿರುತ್ತೀರಿ, ಆದ್ದರಿಂದ ಕೆ.ಪಿ.ಎಂ.ಇ ಕಾಯ್ದೆಯ ನಿಯಮ 07 ರಂತೆ ತಮ್ಮ ಅಹವಾಲನ್ನು ಹೇಳಿಕೊಳ್ಳಲು ದಿನಾಂಕ: 14.09.2023 ರಂದು ಜಿಲ್ಲಾ ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರದ ಮುಂದೆ ಹಾಜರಾಗಲು ಜಿಲ್ಲಾ ಆರೋಗ್ಯ ಮತ್ತು ಕುಟುಂಬ ಕಲ್ಯಾಣಾಧಿಕಾರಿಗಳು ದಿನಾಂಕ: 08.09.2023 ರಂದು ನೋಟೀಸ್ ಪತ್ರದ ಸಂಖ್ಯೆ:ಜಿ.ಆಕುಕ/ಕೋ/ಕೆ.ಪಿ.ಎಂ.ಇ.ಎ/ಡಿ/ನೋ/09/2023-24 ನೀಡಿರುತ್ತಾರೆ ಅದರಂತೆ ದಿನಾಂಕ:14.09.2023 ರಂದು ತಾವು ಜಿಲ್ಲಾ ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರದ ಮುಂದೆ ಹಾಜರಾಗಿ ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ **WP No:16918/2023** ದಿನಾಂಕ 18.08.2023 ರ ಆದೇಶವನ್ನು ಪರಿಗಣಿಸಿ ದಿನಾಂಕ:21.08.2023 ರಂದು ಅರ್ಜಿ ಸಂಖ್ಯೆ:31717 ರಲ್ಲಿ ಸಲ್ಲಿಸಿರುವ ಪ್ರಮಾಣ ಪತ್ರಗಳಾದ **CMSD Certificate, INDIAN COUNCIL OF MEDICO TECHNICALS & HEALTH CARE** ಪರಿಗಣಿಸಿ ವೈದ್ಯ ವೃತ್ತಿಯನ್ನು ಮುಂದುವರೆಸಲು ಅನುಮತಿ ನೀಡುವಂತೆ ಕೋರಿರುತ್ತೀರಿ, ವಿಚಾರಣೆ ವೇಳೆ ಕೆ.ಪಿ.ಎಂ.ಇ ನಿಯಮ 2(xi) ರಂತೆ ವೈದ್ಯಕೀಯ ಚಟುವಟಿಕೆಗಳನ್ನು ನಡೆಸಲು ಅರ್ಹವಿಲ್ಲದ ಪ್ರಮಾಣ ಪತ್ರಗಳನ್ನು ಸಲ್ಲಿಸುವುದು, ನೋಂದಣಿ ಪ್ರಾಧಿಕಾರವು ತಮ್ಮ ಅರ್ಜಿಯನ್ನು ತಿರಸ್ಕರಿಸಿದ್ದಲ್ಲಿ ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ ಮೊರೆ ಹೋಗುವುದು ಈ ರೀತಿ ಇಲ್ಲಿಯವರೆಗೂ ಸುಮಾರು 04 ಭಾರಿ ನ್ಯಾಯಾಲಯದ ಮೊರೆ ಹೋಗಿರುವುದು ಹಾಗೂ ಸ್ಥಳ ಪರಿಶೀಲನೆಗೆ ಬರುವ ಅಧಿಕಾರಿಗಳಿಗೆ ಬೇಜವಾಬ್ದಾರಿ ಉತ್ತರ ನೀಡುತ್ತಿರುತ್ತೀರಿ.

ಮುಂದುವರೆದು ಉಲ್ಲೇಖ 1 **WP No:11565** ರ ಆದೇಶದಂತೆ ತಾವು ಕೆ.ಪಿ.ಎಂ.ಇ.ಎ ನೋಂದಣಿ ಕೋರಿ ಸಲ್ಲಿಸಿರುವ ಅರ್ಜಿ ಸಂಖ್ಯೆ: 29670 ದಿನಾಂಕ: 24.05.2019 ರ ಅರ್ಜಿಯನ್ನು ಕೆ.ಪಿ.ಎಂ.ಇ.ಎ ನಿಯಮಾನುಸಾರ 04 ತಿಂಗಳ ಒಳಗೆ ಪರಿಗಣಿಸಿ ಅರ್ಜಿಯನ್ನು ವಿಲೇವಾರಿ ಮಾಡಲು ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯವು ಆದೇಶಿಸಿರುತ್ತದೆ, ಹಾಗೂ **WP No:16918/2023** ರಂತೆ ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ ಮೊರೆ ಹೋಗಲಾಗಿ ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯವು ದಿನಾಂಕ: 19.08.2023 ರಂದು ಕೆ.ಪಿ.ಎಂ.ಇ.ಎ ನಿಯಮಾನುಸಾರ ಹೊಸ ಅರ್ಜಿಯನ್ನು ಸಲ್ಲಿಸಲು ಹಾಗೂ ತಮ್ಮ ಅರ್ಜಿಯನ್ನು 06 ವಾರಗಳೊಳಗೆ ಇತ್ಯರ್ಥಗೊಳಿಸಲು ಆದೇಶ ನೀಡಿರುತ್ತದೆ ಅದರಂತೆ ಅರ್ಜಿ ಸಂಖ್ಯೆ:31717 ದಿನಾಂಕ: 23.08.2023 ತಾವು ಅರ್ಜಿಯೊಂದಿಗೆ ಲಗತ್ತಿಸಿರುವ ಪ್ರಮಾಣ ಪತ್ರವಾದ **INDIAN COUNCIL OF MEDICO TECHNICALS & HEALTH CARE** ರ **CMSD** ಇದು ಕೆ.ಪಿ.ಎಂ.ಇ.ಎ ನಿಯಮ 2(xi) ರಂತೆ ಅರ್ಹವಿರುವುದಿಲ್ಲ (ಕರ್ನಾಟಕ ವೈದ್ಯಕೀಯ ಮಂಡಳಿಯಲ್ಲಿ ನೋಂದಣಿಯಾಗಿರುವುದಿಲ್ಲ) ಹಾಗೂ ಕೆ.ಪಿ.ಎಂ.ಇ.ಎ ನಿಯಮ 6(ii) ರಂತೆ ತಾವು ವೈದ್ಯಕೀಯ ಚಟುವಟಿಕೆಯನ್ನು ನಡೆಸಲು ಅನರ್ಹರಾದ ಕಾರಣ ತಮ್ಮ ಅಹವಾಲನ್ನು ಹೇಳಿಕೊಳ್ಳಲು ದಿನಾಂಕ: 14.09.2023 ರಂದು ಮಾನ್ಯ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳ ಅಧ್ಯಕ್ಷತೆಯಲ್ಲಿ ನಡೆದ ಸಭೆಯಲ್ಲಿ ಹಾಜರಾಗಿ, ಜಿಲ್ಲಾ ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರದ ಮುಂದೆ ತಾವು ಅರ್ಹವಾದ ಯಾವುದೇ ದಾಖಲೆಗಳನ್ನು ಸಲ್ಲಿಸಿರುವುದಿಲ್ಲ ಹಾಗೂ ಯಾವುದೇ ವೈದ್ಯಕೀಯ ಚಟುವಟಿಕೆಗಳನ್ನು ನಡೆಸಲು ಅರ್ಹ ವಿದ್ಯಾರ್ಹತೆ ಹೊಂದಿರುವುದಿಲ್ಲ ಎಂದು ಸಾಬೀತಾದ ಕಾರಣ ಜಿಲ್ಲಾ ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರವು ಪ್ರಕರಣದ ಸಂಖ್ಯೆ: ಕೆ.ಪಿ.ಎಂ.ಇ.ಎ/09/2023-24 ದಿನಾಂಕ:25.09.2023ರ ಪತ್ರದಂತೆ ತಮ್ಮ ಅಕ್ರಮ ವೈದ್ಯಕೀಯ ಚಟುವಟಿಕೆಗಳನ್ನು ನಿಲ್ಲಿಸಲು ಆದೇಶಿಸುತ್ತಾ ಕೆ.ಪಿ.ಎಂ.ಇ.ಎ ನಿಯಮ 22 ರಂತೆ ಸೀಜ್ ಮಾಡಲು ಹಾಗೂ ನಿಯಮ 19 ರಂತೆ ಪ್ರಕರಣ ದಾಖಲಿಸಲು ಆದೇಶಿಸಿದ್ದು ಅದರಂತೆ ಜಿಲ್ಲಾ ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರದ ಆದೇಶವನ್ನು ಪಾಲಿಸಲು ತಿಳಿಸಿದೆ.

ಇವರಿಗೆ,

ಅಣ್ಣಯ್ಯ, ಸಂಗೀತ ಕ್ಲಿನಿಕ್
ಮಿನಿ ಇಬ್ರಾಹಿಂ ರಸ್ತೆ, ಉರಿಗಾಂಪೇಟೆ
ಕೆ.ಬಿ.ಎಫ್.

ಸಹಿ/-

ಜಿಲ್ಲಾ ಆರೋಗ್ಯ ಮತ್ತು ಕುಟುಂಬ
ಕಲ್ಯಾಣಾಧಿಕಾರಿಗಳು ಕೋಲಾರ."

(Emphasis added)

The endorsement narrates several orders passed by this Court, as the petitioner has been knocking at the doors of this Court time and again seeking consideration of his application. This Court has twice directed consideration of his application as the application cannot

be kept pending for long under the Act. After the orders were passed by this Court, a notice comes to be issued to the petitioner on 08-09-2023 seeking production of all records and scrutiny of records leads to the endorsement *supra*.

10. In all these jugglery, what is necessary to be noticed is the qualification of the petitioner. The petitioner has Diploma in Community Medical Services with Essential Drugs. This is a Diploma conferred by the Indian Council of Medico Technicals and Health Care, a society registered under the Societies Registration Adhiniyam, Kanpur. This is termed as CMS-ED certificate which is a Diploma in Community Medicine Services with essential drugs and the subject that the petitioner studied is Paramedical course. If the nature of the course that the petitioner has undergone is considered on the bedrock of the provisions noted hereinabove, it would become unmistakably clear that the qualification possessed by the petitioner does not make him a 'Private Medical Practitioner' as found in Section 2(k) of the Act, as paramedical study that the petitioner has undergone is not the one that is found in Section 2(k). Section 2(k) itself is exhaustive and elaborate in bringing

within its sweep even physiotherapy as they are all Degrees or Diplomas obtained by those medical practitioners. The petitioner is not a medical practitioner. He is a para medical practitioner. Being a para medical practitioner, he is not entitled to any registration under the Act, which is *sine qua non* for continuation of practice as a medical practitioner. He is not a doctor as defined under the Act. He is also not one of those practitioners as defined under the Act. Without being so, he claims to have practiced for ages now at Kolar and would obviously be even prescribing medicine. His practice as averred in the petition is allopathy as well and calls himself a doctor.

11. In the circumstances, reference being made to the judgment rendered by the Division Bench of this Court in the case of **Dr. M.R. MOHAN BHATTA** (*supra*) becomes apposite. The Division Bench has held as follows:

"3. Having heard the learned counsel for the parties and having perused the Appeal papers, we decline indulgence in the matter broadly agreeing with the views of the learned Single Judge. At paragraph No.6 of the impugned order specifically discusses about the requirement of Certificate of Registration issued by the State Medical Council as being a sine qua non under the provisions of Section 6 of the 2007 Act and Rule 5 (IX) (b) of the KPME Rules.

4. On our repeatedly asking, learned counsel for the Appellant is not in a position to tell us as to which regulatory body, his client is subject to in the matter of his profession as a Doctor. For the medical practitioners which fall under Alopahy Branch of Science, there is a regulatory body namely the Medical Council of India; similarly, there are statutory regulatory bodies for practitioners of AYUSH namely, Ayurveda, Yoga, Unani, Siddha & Homeopathy. The protection of the Public includes not only matters relating to the health, safety and wellbeing of the public but also the maintenance of public confidence in the medical profession and the maintenance of proper professional standards & conduct, as observed by the Queen's Bench in PSA FOR HEALTH AND SOCIAL CARE vs HEALTH AND CARE PROFESSIONS COUNCIL, 2021 4 WLR 31. Professionals in general and the Medical Practitioners in particular do aspire to an ideal defining a standard of good conduct, virtuous character and a commitment to excel beyond the norm of morality ordinarily governing relations among ordinary persons. **It needs no research to know the possible ill-consequences on public health, should persons who profess medical avocation be not disciplined by a Regulatory Body, whatever be its nomenclature. The impugned order inarticulately is animated with this view and therefore, does not call for our interference.**

In the above circumstances, the Writ Appeal being devoid of merits is liable to be and accordingly dismissed. However, nothing hereinabove observed shall come in the way of Appellant seeking registration after complying all the requisites of law, afresh."

(Emphasis supplied)

In the light of the aforesaid facts and the mandate of the statute, no fault can be found with the endorsement issued to the petitioner rejecting his application for registration under the Act. The

endorsement also notices that the clinic of the petitioner would be seized and the seizure would be axiomatic, as it is a consequence of non-registration of the clinic by a doctor who has no qualification. It is rather strange as to how the petitioner addresses himself as a practicing doctor for all these years. ***Time has come to pull the curtain down on such people who are practicing medicine without qualification and hoodwinking poor people in rural areas.***

12. Finding no merit in the petition, the petition stands rejected.

**Sd/-
JUDGE**

bkp
CT: MJ