

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:37418-DB

Reserved

Court No. - 9

Case :- WRIT - C No. - 6856 of 2009

Petitioner :- Rajesh Kumar S/O Ram Khelawan Singh And Anr.

Respondent :- Union Of India Thru Secy. Ministry Of Health And Family Welfare

Counsel for Petitioner :- Vikas Singh

Counsel for Respondent :- C.S.C.,A.S.G.,Murli Manohar Srivastava, Raj Kumar Singh

Hon'ble Vivek Chaudhary, J.

Hon'ble Om Prakash Shukla, J.

(Per Om Prakash Shukla, J.)

- (1) The petitioners claiming to have obtained Certificate from the respondent no.5-Count Mattei Association to practice Electro Homeopathy System of Medicines, has approached this Court by way of the present writ, praying *inter-alia* for quashing the order/circular dated 25.11.2003 (Annexure-1) issued by the Union of India and Government Order dated 01.06.2004 (Annexure-41) issued by the State of Uttar Pradesh. A direction for non-interference by the respondents and consequential relief of permitting them to practice Electro Homoeopathy system of alternate Medicine in the State of Uttar Pradesh, till the rules in that regard are framed by the competent authority, has also been sought by them. Reliance is placed upon a judgment of the Delhi High Court (Annexure-14 and 15), which according to them, stands affirmed by the Supreme Court (Annexure-16 & 17).

- (2) Heard Shri Vikas Singh, learned Counsel representing the petitioners, Shri Raj Kumar Singh, learned Counsel representing the respondent no.1/Union of India, learned Standing Counsel for the State/respondents no. 2 to 4 and Shri Murli Manohar Srivastava, learned Counsel representing the respondent no.5.
- (3) During the course of arguments, inviting our attention to the order dated 05.05.2010 issued by the Ministry of Health and Family Welfare, Government of Health Research, Government of India, New Delhi, learned Counsel for the petitioners has submitted that as the order dated 05.05.2010 (supra) clarified the position that the order dated 25.11.2003 does not bar the development and research of Electro Homeopathy and there was no proposal to stop the practice or imparting of education in the field of Electro Homeopathy as long as same was done within the parameters of order dated 25.11.2003 till such time a legislation was enacted, the petitioners do not wish to press for reliefs relating to quashing of Order/Circular dated 25.11.2003 (supra) and Government Order Dated 01.06.2004 (supra) and they have confined their prayer to the other reliefs as mentioned in this writ petition.
- (4) Shorn off elaborate factual details of the present case, it would be apt to mention that the petitioners claiming to be resident of

District Hardoi and Faizabad, respectively, have obtained Certificate from the respondent no.5-Count Mattei Association to practice Electro Homeopathy System of medicines. According to them, by virtue by the said certificate, the petitioners can practice Electro Homeopathy System of medicine in State of Punjab, State of Delhi, State of Maharashtra, State of West Bengal, State of Kerala and other States. However, the petitioners with the said certificate were not permitted to practice in Electro Homeopathy System of Medicine in the State of U.P. as till date State of U.P. has not made any law in this regard. In this background, they pray for the limited prayer of non-interference by the State/respondents and permitting petitioners to practice Electro Homoeopathy system of Medicine in the State of Uttar Pradesh.

(5) The learned Counsel for the petitioners elaborating their arguments have submitted that

(I) In compliance of the order dated 11.10.2010 passed by this Court in Writ Petition No. 3992 of 2004, the Ministry of Health and Family Welfare (Department of Health Research), Government of India, has issued an order dated 21.06.2011, clarifying that the order dated 25.11.2003 and order dated 05.05.2010 would be treated as instructions of the Government of India, relating to practice, education and research with regard to alternative system of medicine like Electropathy, Electro Homeopathy etc. According to the learned Counsel, a bare perusal of the order dated 21.06.2011 reveals that there

was no legal impediment in imparting education as long as no degree/ diploma is awarded/issued for that course and that the practitioners of Electro Homeopathy are not allowed to pre-fix 'doctor' before their name.

- (II) The Government of Uttar Pradesh had issued an Office Memorandum dated 15.12.2011 in compliance of the order dated 18.03.2011 passed in Writ Petition No. 11691 of 2004 and the order dated 21.04.2011 passed in Civil Misc. Amendment Application No. 101585 of 2011, wherein also it reiterated the order dated 05.05.2010. Thus, it has been argued that even the Government of Uttar Pradesh has also accepted the order dated 05.05.2010 vide Office Memorandum dated 04.01.2012 and has also clarified and taken the same position.
- (III) Relying on paras 5 to 8 of the supplementary counter affidavit dated 19.02.2024 filed by the State of Uttar Pradesh, it has been submitted that in para-5 of the said affidavit, the State of Uttar Pradesh by heavily relying on the order dated 05.05.2010 has admitted that there was no proposal to stop the petitioners from practising in Electropathy or imparting education as long as this is done within the parameters as mentioned in the order dated 25.11.2003 and have further stated that once the legislation to recognize new system of medicine is enacted, any practice or education would be regulated in accordance with it. Similarly in para-6 of the said affidavit, it has been mentioned that the order dated 21.06.2011 issued by the Government of India, Office Memorandum dated 15.12.2011 issued by the Government of Uttar Pradesh and the Office Memorandum dated 04.01.2012 reiterated the order dated 05.05.2010. Further, in para-7 of the said affidavit, it has

been stated that in absence of any statutory power, the Government of India is not prohibiting anybody from practising Electropathy in spite of the system not having been recognized by the Government. Similarly, in para-8 of the said affidavit, State Government has clarified its stand and relied upon the office memorandum dated 13.04.2023, which says that the right to make rules and regulations for Electropathy is vested in the Central Government and if the Central Government makes rules/regulations regarding the aforesaid, the State Government will follow the same and further the State Government is not authorized to make/enforce rules/regulations regarding the practice, education, development and promotion of electro-homeopathy. In this backdrop, submission of the learned Counsel is that the State Government is bound by the orders passed by the Government of India qua the practice, education and development and that the State Government ought to abide by the orders issued by the Government of India qua Electro Homeopathy.

(IV) Reliance has also been placed on Annexure No. SA-17 of the supplementary affidavit, to submit that Ministry of Health and Family Welfare, Government of India, while replying to RTI application dated 01.08.2017 received by the department on 03.08.2017 vide their reply dated 14.08.2017, has reiterated the stand that the institutions cannot grant degree/diploma in the stream of medicine which have not been recognized and the term 'doctor' can only be used by the practioners of the recognized system of medicine.

(6) The learned Counsel for the petitioners after referring to the aforesaid documents has articulated his further argument on a

judgment passed by the Delhi High Court in Writ Petition No. 4015 of 1996 (PIL), which was filed in the nature of Public Interest Litigation with a prayer to command the respondents to forthwith ban the institutions imparting education in Electro Homeopathy System of Medicines and a probe was also sought into their functioning and also to frame a policy, so that these institution may be prosecuted as per law. According to him, the said writ petition was clubbed with FAO No. 205 of 1992 and was disposed of vide order dated 18.11.1998, wherein the following directions were issued:-

“Considering the nature of the problem as is evident from the aforesaid discussion, we issue the following directions:-

1. The Central/State Governments shall consider making legislation prescribing :

(a) grant of licences to the existing and new institutes conducting courses in Electropathy and other Alternative systems of medicine.

(b) minimum standards of education and check on the functioning of such institutes on the lines set out in Sections 17, 18, 19 & 19A of the Medical Council Act.

(c) minimum qualification for getting admission in such institutes;

(d) conditions entitling these institutes to issue diplomas and certificates; and

(e) right to use the prefix 'Doctor' and to issue medical certificates to the patients by diploma/certificate holders from such institutes.

(2) Respondents 10 to 16 and the like institutes shall not award and degree for the courses conducted by them.

(3) Respondent No. 10 shall forthwith delete the misleading statements printed on pages 47 and 50 of the prospectus issued by it.

(4) Respondent No.12 shall not make misleading claim in regard to its having been recognised by the Medical Council of India/re-spondent No.5 in the advertisements.

(5) Adequate publicity through the media shall be given by the Government(s) informing general public about respondents 10 to 16 and similar other institutes not being recognised and affiliated with any of the Councils under aforesaid Acts of 1956, 1970 and 1973.

The operation of the order dated January 30,1997 as modified by the order dated March 12, 1997 is extended further for a period of six months from today.

Copy of this order be sent by the Registry to the Health Secretary, Govt. of India and the Chief Secretaries of all the States and Union Territories for doing the needful in the matter.

Petition is disposed of in terms of the aforesaid directions.”

- (7)** It has been submitted by the learned Counsel for the petitioners that against the aforesaid judgment/order dated 18.11.1998, the Union of India preferred Special Leave Petition No. 11262 of 2000, which was dismissed by the Hon’ble Supreme Court of India vide judgment/order dated 24.11.2000. According to the learned Counsel, the aforesaid judgment/order dated 18.11.1998 was thereafter circulated to all the State Governments by the Registrar of the Hon’ble Delhi High Court.
- (8)** Though opportunity has been provided to the learned Counsel representing the Union of India for filing counter affidavit but no counter affidavit has been filed on behalf of the Union of India.. However, learned Counsel representing the Union of India has argued that the system of Electro Homeopathy is to be

strictly conducted in terms of the order dated 25.11.2003, 05.05.2010 and 21.06.2011. According to the learned Counsel, the institutions imparting Electro Homeopathy like the respondent no.5, can issue a certificate but cannot issue any degree/diploma while imparting education in the said field of medicine i.e. Electro Homeopathy.

(9) Learned Standing Counsel representing the State has submitted that vide Office Memorandum dated 13.04.2023, State of Uttar Pradesh has clearly stated that the right to make Rules and Regulations for Electropathy is vested in the Central Government and if the Central Government makes Rules/Regulations regarding the aforesaid, then, the State Government will follow the same and, therefore, the State government is not authorized to make/enforce rules/regulations regarding the practice, education, development and promotion of Electro Homeopathy.

(10) Having regard to the submissions advanced by the learned Counsel for the parties and going through the record, this Court finds that the right to make Rules and Regulations for practice for Electropathy including Electro Homeopathy is vested with the Central Government. The Central Government has not established any council for recognising the Electro Homeopathy system of medicine in the country. From time to time, various orders have been issued by the Central Government in this

regard. Pertinently, the Ministry of Health and Family Welfare (Research Desk) had issued order No. R.14015/25/96-U&H (R) (Pt.) dated 25.11.2003, by which the matter regarding grant of recognition to the various streams of alternative medicine including Electropathy/Electro-Homeopathy was considered. A perusal of this order dated 25.11.2003 reveals that for the aforesaid purpose, the Central Government had constituted a Standing Committee of Experts to consider the aforesaid aspect of the matter. The relevant portion of the order dated 25.11.2003 is reproduced as under :-

“The Committee did not recommended recognition to any of these alternative medicines except the already recognized traditional systems of medicines, viz. Ayurveda, Siddha, Unani, Homeopathy and Yoga and Naturopathy, which were found to fulfill the essential and desirable criteria developed by the Committee for recognition of a system of medicine. The Committee has, however, recommended that certain practices as Acupuncture and Hypno therapy which qualified as modes of therapy, could be allowed to be practiced by registered practioners or appropriately trained personnel. The Committee further suggested that all those systems of Medicine not recognized as separate systems should not be allowed to continue full time Bachelor and Master’s degree courses and term ‘Doctor’ should be used only by practitioners of systems of medicine recognized by the Government of India. Those considered as Mode of Therapy can be conducted as Certificate courses for registered medical practioners to adopt these modes of therapy in their practice, whether modern medicine or Indian Systems of Medicine and Homeopathy.

After carefully examining the various recommendations of the Committee, the Government accepted these recommendations of the Committee. Accordingly, it is requested that the State/UT Govt. may give wide publicity to the decision of the Govt. They may also ensure that

institutions under the State/UT 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.”

- (11) A bare reading of the aforesaid order dated 25.11.2003 reveals that Electropathy/Electro Homeopathy System of medicines was not recommended as an alternative system of medicines and all the State/Union territory Governments were directed to give wide publicity to the said decision of the Government of India and would also ensure that the institutions under the State/ Union Territories do not grant any degree/diploma in the various unrecognized streams of alternative medicines including Electro Homeopathy System of medicines, which have not been recommended for recognition and the term 'Doctor' can be used by the practitioners of the recognized system of medicines. They, however, did not put any restriction on practicing the said alternate method of treatment.
- (12) In the meantime, an order dated 03.08.2009 was passed in Miscellaneous Writ Petition No. 31904 of 1991 by this Court at Allahabad, wherein it directed to consider the representation with regard to recognition of the course of Electropathy. The Ministry of Health and Family Welfare, Department of Health Research, Government of India, keeping in view the said order as well as various orders of the High Courts and Supreme Court, issued order No. V25011/276/2009-HR dated

05.05.2010 and clarified that there is no proposal to stop persons like the petitioners from practising in Electropathy or imparting education in the following terms:

“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. representation of the petitioner dated 28.10.2009 is disposed of accordingly.”

- (13) In the intervening period, pursuant to an order dated 11.10.2010 passed by this Court in Writ Petition No. 3992 of 2004 : *Electro Homeo Medical Association of India Vs. State of U.P. & others*, the Central Government also considered the representation submitted by the Secretary of Electro Homeo Medical Association of India, Lucknow dated 03.11.2010 and after due consideration, the Ministry of Health & Family Welfare (Department of Health Research) had issued order No. C.30011/22/2010-HR dated 21.06.2011, clarifying that Ministry of Health and Family Welfare order dated 25.11.2003 and the order dated 05.05.2010 would be treated as instructions of the Government of India, related to practice of education and research with regard to alternative systems of medicine like Electropathy, Electro Homeopathy, etc. The relevant portion of the order dated 21.06.2011 reads as under :-

“3. As per the directions of the Hon. Lucknow Bench of the High Court of Judicature at Allahabad, the representation has been considered. It is clarified that the MH & FW Order No. R.14015/25/96-U&H (R) (Pt.) dated 25.11.2003 and No. V.25011/276/ 2009-HR dated 05.05.2010 would be treated as instructions of the Government of India related to practice, education and research with regard to alternative systems of medicine like electropathy, electro homoeopathy etc.

4. A copy of each of the said two orders viz. MH & FW Order No. R.14015/25/96-U&H (R) (Pt.) dated 25.11.2003 and No. V.25011/276/ 2009-HR dated 05.05.2010 is being forwarded herewith to each of the State Government/Uts for information and necessary action. With this your representation is disposed off.”

(14) After the aforesaid clarification by the Central Government, even the State Government, in pursuance of the order dated 18.03.2011 passed by this Court in Writ Petition No. 11691 of 2004 and order dated 22.04.2011 passed in Civil Misc. Revision Application No. 101585 of 20211, while considering the representation of one Dr. Kalsar Ahmad Sheikh issued Office Memorandum dated 15.12.2011, which reads as under :-

“Till the time, there is no proposal to stop the petitioners from practicing in electropathy or imparting education, as long as this is done within the provision of the Order No. R.14015/25/96-U 85 H (R) (Pt) dated 25th November, 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.”

(15) After the clarification by the Central Government and the State Government as has been mentioned herein above, this Court finds that almost identical issue came to engage the attention of the Supreme Court, wherein the Supreme Court, vide an order

dated 01.05.2018, passed in Civil Appeal No. 4642 of 2018 arising out of SLP (C) No.20134/2017 : *Sutapa Singh Vs. State of U.P. and others*, following its 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 Supreme Court has held that the practice in electropathy or imparting education should be done within the provisions and parameters of the order dated 25.11.2003 issued by the Central Government. It would be profitable to quote the said order dated 01.05.2018 (supra) in *extenso*, which reads as under :-

“Leave granted.

Heard Mr. Pankaj Bhatia, learned counsel for the appellant and Ms. Aishwarya Bhati, learned Additional Advocate General for the State of U.P. Though many an aspect was urged before the High Court and it has also addressed the same by the impugned order, yet the singular issue that has been canvassed before us pertains to whether there has been ban in practicing Electro Homeopathy as an alternative therapy.

A similar matter had come up before this Court in S.L.P.(C) No.23572 of 2009, wherein a counter affidavit was filed by the Union of India stating that there was no ban on the practice of Electro Homeopathy and on that basis the special leave petition was withdrawn.

Learned counsel for the appellant has also brought to our notice Office Memorandum dated 15th December, 2011 issued by the Uttar Pradesh Government Medicine Section – 6, which states that there is no proposal to stop the appellant from practicing in electropathy or imparting education, as long as the same is done with the provisions of the order No.R.14015/25/96-U 85 H

(R) (Pt) dated 25.1.2003. There is no dispute that the said system of therapy has not yet been recognized for the purpose of conferring any diploma or degree.

In view of the aforesaid, no institution can confer a diploma or degree in Electro Homeopathy. However, as this Court has observed on an earlier occasion that there is no ban, the appellant can always practice Electro Homeopathy as an alternative therapy, but no effort can be made to confer diploma or degrees unless there is a statutory provision permitting the same. We may hasten to clarify that there are alternative therapies like aroma therapy, stone therapy, music therapy, hypnotherapy, touch therapy and colour therapy and they are actually non-invasive and in no way relate to administration of medicine. Therefore, we are disposed to think that the Union of India has not banned them.

In view of the aforesaid analysis, we only modify the order passed by the High Court to the extent that the appellant can provide an alternative therapy so long as it is not banned by any competent authority. Without possessing a degree or diploma recognized by a legislation enacted by the competent legislature, the appellant would not be entitled to practise medicine. We also clarify that no degree or diploma can be conferred otherwise than what is permitted or recognised in law. The undertaking furnished to the High Court shall be complied with.

With the aforesaid modification in the order passed by the High Court, the appeal stands disposed of. There shall be no order as to costs.”

- (16)** Having traced the relevant orders and clarifications issued by the Central Government, State Government as well as the Supreme Court from time to time, this Court arrives at an inescapable conclusion that although no institution can confer a diploma or degree in Electro Homeopathy, however, as there is no ban, the petitioners can always practice Electro Homeopathy as an alternative therapy within the parameters of order dated

25.11.2003. This Court also finds that in the absence of any statutory provisions, there could not be any conferring of diploma or degrees in Electropathy or Electro Homeopathy in India, however, there is no bar in issuance of Certificate for the said study.

(17) In view of the aforesaid, it is held that the petitioners can practice Electro Homeopathy so long as it is not banned by any competent authority. They, however, cannot use the prefix “Doctor” before their name. Accordingly, a direction for non-interference by the respondents/authorities concerned and consequential relief of permitting the petitioners to practice Electro Homeopathy system of medicine in the State of Uttar Pradesh, till the rules in that regard is framed by the competent authority, is also issued.

(18) With the aforesaid directions, the writ petition stands **disposed of**.

(Om Prakash Shukla, J.) (Vivek Chaudhary, J.)

Order Date : 16th May, 2024
Ajit/-