

**IN THE HIGH COURT OF JAMMU & KASHMIR
JAMMU/SRINAGAR**

Misc Petition No.

Revision Petition No.

----- **COA (W) NO : 39/97** -----

Writ Petition No.

Civil Suit No.

Date of decision - 09.09.1998

Robkar

Versus

Principal, P.N. Medical Institute of
Electrotherapy, Chhanni Rama
(By-pass) Jammu.

Coram

The Hon'ble **Mr. Justice O.P. Sharma, Judge.**

The Hon'ble Mr. Justice

The Hon'ble Mr. Justice

Whether approval for reporting ?

For the Petitioner(s) **Shri Amresh Kapoor, Addl. Advocate General.**

For the Respondent(s) **Shri Vijay Gupta, Advocate.**

1. The factual background of the case invoking contempt jurisdiction is recorded in the order dated 08.08.1998 passed by Nazki-J (Now Hon'ble Judge of Andhra Pradesh High Court), the relevant portion of which is extracted below :

"Through a letter addressed to me by one Sh. Ram Krishan my attention has been drawn to an advertisement notice issued in a Magazine "Health by 2000 AD", wherein an advertisement has been issued by P. N. Medical Institute of Electrotherapy (Regd.), Channi Rama, Bye Pass, Jammu, 180011, by which applications have been invited from students to B.E.M.S. (Bachelor of Electropathic Medicine & Surgery).

The advertisement is in contravention of the judgments of the Hon'ble Supreme Court and also in contravention of the orders passed by this Court in High Court Vs. Dr. Khanam's College dated 31.12.1996. This is also in contravention of the judgment passed by this Court in CWP No. 64/97 titled Royal Polytechnic College Vs. State and others, on 14th March, 1997. Register as Contempt Petition.

Issue notice to the Principal who has issued the advertisement notice to show cause as to why contempt proceedings be not initiated against him. By the order dated 31.12.1996 passed in High Court Vs. Dr.

Commissioners to ensure that no Colleges are allowed to function in contravention of the judgment of the Hon'ble Supreme Court in J.P. Unni Krishnan Vs. State of A.P. and others, therefore, issue notice to Divisional Commissioner, Jammu also. Registry shall ensure that respondents are served through Special Messengers.

List immediately after vacations. in the meanwhile, it is directed that said Institute (P.N. Medical Institute of Electropathy) shall not receive any application and shall not make any admission.

In their defence the P. N. Medical Institute of Electropathy has taken the plea that J.P. Unni Krishnan's judgment is not applicable to their Institution. He has produced some documents which have emanated from N.E.H.M. of India and also from the Ministry of Health & Family Welfare, Govt. of India. From these documents, prima facie, it appears, that neither the Govt. of India nor any other Statutory Body has so far decided whether this stream of medical education can be permitted or not.

As such, since the Institutes, which deal with Electropathy, claim that they can treat human beings by Electropathy, these Institutes cannot be allowed to function, unless some Expert certifies that these Institutes and the method evolved by such Institutes, are safe for human beings.

From the letter dated 17.06.1991, written by the Deputy Minister of Health & Family Welfare, New Delhi, to some Ex - Member of Parliament, it appears, that a Committee had been appointed, but it is not known as to what was the report of said Committee and what decision Government of India had taken.

In these circumstances, it become necessary to know the stand of the State Government as well as the Central Government. Therefore, I direct that the Ministry of Health & Family Welfare, Govt. of India, New Delhi, be made a party and Secretary of the Ministry be sent a copy of this order and he be directed to file his affidavit within four weeks, in the light of what has been stated in this order."

1. The Court also held that prima facie the respondent Institute was operating in violation of the scheme formulated in Unni Krishnan J.P.'s case and therefore a restraint order was also passed.
2. The question involved for consideration is whether the scheme formulated by the Apex Court in Unni Krishnan J.P.'s case is applicable to a case when the Institute neither seeks recognition nor affiliation by the University or permission from the Government including the Central Government for establishing the same.
3. Mr. Gupta appearing for the Institute was at pains to explain that the

Institute has neither sought permission from the Government nor affiliation from the University or recognition of the degree, in the absence of which the question of violation of judgment of the Apex Court does not arise. There is much substance in the contention of Mr. Gupta as shall be presently noticed. The Expert Committee on Electro-Homoeopathy/ Electropathy System of Medicine, as referred above, submitted its report to the Govt. of India on 04.11. 1991, para-4 of which reads as under :-

"Whether it can be taught in a recognised Institution" :

The Committee carefully examined this issue and felt that there are no recognised institutions in the country and the degrees and diplomas awarded by many Electro-homoeopathy or Electropathy Inst./Colleges have nor legal or statutory authority.

There is no official Pharmacopoeia. Though there are numerous colleges of Electrohomoeopathy imparting education to students in the system, these colleges are probably affiliated to Institutions Registered under Indian Societies Act.

There is also no uniformity in the nomenclature of the degree/diplomas awarded by various institutes imparting such training.

The teachers in many such institutions are either qualified Homoeopaths or practitioners of Indian System of medicine. In some institutions they have part time teachers from modern system. However, the number of such institutions are many and widespread and the number of such practitioners is equally large."

4. In view of the above, the question of recognition or permission does not arise. Moreover the question of recognition of Institute was considered by the Govt. of India, and the Secretary to Government of India, Health Department by his letter dated 19.01.1993 declined the request for the following reasons :

"7. In view of the above analysis, it is evident that the system suffers from basic infirmities and no such institute can be recognised unless the electro-homoeopathy system itself is recognised. The Expert Committee i.e. the Electropathy/Electro-homoeopathy system of medicine Inquiry Committee has also not recommended to accord recognition to electro-homoeopathy as a new system of medicine. The Committee has merely suggested that the Central Council of Homoeopathy may examine the issue as to whether it can be considered as one of the subjects to be taught under homoeopathy. The Council can also examine the issue regarding suitability of the existing institutions of electro-homoeopathy for

imparting course of homoeopathy with electro-homoeopathy as a subject.”

5. Thus the institute is operating or functioning without recognition and affiliation. However the scheme formulated in “Unni Krishnan, J. P. & others vs State of Andhra Pradesh & others” , AIR 1993 SC 2178, has been made applicable only to those institutions which seek permission to establish and/or recognition and/or affiliation from appropriate authority as is evident from the following :

“170. The scheme evolved herewith is in the nature of guidelines which the appropriate Governments and recognising and affiliating authorities shall impose and implement in addition to such other conditions and stipulations as they may think appropriate as conditions for grant of permission, grant of recognition or grant of affiliation, as the case may be. We are confining the scheme - for the present - only to ‘professional college,’

The expression “professional colleges” in this scheme includes :

- (i) medical colleges, dental colleges and other institutions and colleges imparting Nursing, Pharmacy and other courses allied to Medicine, established and/or run by private educational institutions.
- (ii) colleges of engineering and colleges and institutions imparting technical education including electronics, computer sciences, established and/or run by private educational institutions, and
- (iii) such other college to which this scheme is made applicable by the Government, recognising and/or affiliating authority.”

The expression “appropriate authority” means the Government, University or other authority as is competent to grant permission to establish or to grant recognition to a professional college.

The expression ‘competent authority’ in this scheme means the Government/University or other authority, as may be designated by the Government/University or by law, as is competent to allot students for admission to various professional colleges in the given state.

It is made clear that only those institutions which seek permission to establish and/or recognition and/or affiliation from the appropriate authority shall alone be made bound by this scheme. This scheme is not applicable to colleges run by Government or to

University colleges. In short, the scheme hereinafter mentioned shall be made a condition of permission, recognition or affiliation, as the case may be. For each of them Viz. grant of permission, grant of recognition, grant of affiliation, these conditions shall necessarily be imposed, in addition to such other conditions as the appropriate authority may think appropriate. No private educational institution shall be allowed to send its students to appear for an examination held by any Government or other body constituted by it or under any law or to any examination held by any University unless the concerned institution and the relevant course of study is recognised by the appropriate authority and/or is affiliated to the appropriate University, as the case may be."

6. So their Lordships have made it clear that these conditions are to be imposed while granting permission/affiliation or recognition and no private educational institution shall be allowed to send its students to appear for an examination held by any government or any other body constituted by it. The respondent institute has already been declined recognition by the Central Government. It has an affiliation certificate from Naturo Electro Homoeopathic Medicos of India authorised by Ministry of Health and Family Welfare, Government of India. Since the Institute has neither sought permission nor recognition or affiliation from the appropriate authority as defined in the Judgment, the scheme could not be made applicable to it by the appropriate authority.

If that be so as it really is, no one much less the Management of the Institute could be proceeded for contempt because law of contempt cannot be extended to an extent, it has been attempted in this case, Particularly when such proceedings can be initiated only by the Court whose order is violated. Hence these proceedings are dropped. the interim direction shall stand vacated.

JAMMU
09.09.98

Sd/-
(O. P. Sharma)
Hon'ble Judge