



2008/KER/55287

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MRS. JUSTICE M.C.HARI RANI

WEDNESDAY, THE 17TH DECEMBER 2008 / 26TH AGRAHAYANA 1930

WP(C).No. 19484 of 2008(T)

PETITIONERS:

1. ANIL KUMAR, S/O.GOPALAN.M,
C/O.DR.COUNT MATTIES ELECTRO-HOMOEOPATHY CENTRE,
KOTTAKADAVU ROAD, NEAR RAILWAY GATE, VADAKARA,
KOZHIKODE.
2. RAKESH KRISHNA KANDIYIL,
C/O.DR.COUNT MATTIES ELECTRO-HOMOEOPATHY CENTRE,
KOTTAKADAVU ROAD, NEAR RAILWAY GATE, VADAKARA,
KOZHIKODE.

BY ADV. SRI.GOVIND K.BHARATHAN (SR.)
SRI.S.K.MADHU

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY CHIEF
SECRETARY, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.
2. THE COMMISSIONER OF POLICE, KOZHIKKODE.
3. THE CIRCLE INSPECTOR OF POLICE,
VADAKARA TOWN STATION, VADAKARA, KOZHIKKODE DIST.

ADDL.R4: THE TRAVANCORE- COCHIN MEDICAL COUNCIL
REPRESENTED BY ITS SECRETARY, RED CROSS ROAD, TRIVANDRUM
(IMPLEADED AS ADDL.R4 AS PER ORDER IN I.ANO.8413/2008 DT.2.7.2008)

ADV. SRI.N.RAGHURAJ, SC, TCMC & KNMC FOR ADDL.R4
GOVT.PLEADER, SRI.BENJAMIN PAUL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
17/12/2008, ALONG WITH W.P.(C) NO.16325/2006, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:



W.P.(C) No.19484/2008

APPENDIX

PETITIONER'S EXTS:

- EXT.P1: COPY OF THE CERTIFICATE OF REGISTRATION OF THE 1ST PETITIONER.
- EXT.P2: COPY OF THE MARKS SHEET ISSUED BY THE NATURO ELECTRO HOMOEPATHIC MEDICOS (NEHM) OF INDIA, NEW DELHI.
- EXT.P1-C: COPY OF THE REGISTRATION CERTIFICATE FROM THE BOARD OF ELECTRO HOMOEOPATHIC SYSTEM OF MEDICINE CONFERRED ON THE PETITIONER WITH REG.NO.DEH(R) D02953.
- EXT.P1-D: COPY OF THE DIPLOMA IN ELECTRO HOMOEOPATHY MEDICINE (DEHM) ISSUED BY THE NATURO ELECTRO HOMOEOPATHIC MEDICOS (NEHM) OF INDIA, NEW DELHI DT.14.6.2007.
- EXT.P2A: COPY OF THE REGISTRATION CERTIFICATE ISSUED BY THE NATURO ELECTRO HOMOEPATHIC MEDICOS (NEHM) OF INDIA, NEW DELHI.
- EXT.P2-B: COPY OF THE MARKS SHEET ISSUED BY THE NATURO ELECTRO HOMOEPATHIC MEDICOS (NEHM) OF INDIA, CENTRAL BOARD, NEW DELHI.
- EXT.P2-C: COPY OF THE REGISTRATION CERTIFICATE NO.4747/04, FOR DIPLOMA IN ELECTRO HOMOEOPATHY MEDICINE (DEHM) ISSUED TO THE 2ND PETITIONER BY THE NATURO ELECTRO HOMOEOPATHIC MEDICOS (NEHM) OF INDIA, NEW DELHI.
- EXT.P3: COPY OF THE JUDGMENT OF MR.JUSTICE BHAGABATHI PRASAD BANERJEE DT.7.5.1990 IS (THE COUNSEL FOR ALTERNATIVE SYSTEM OF MEDICINE AND ANOTHER Vs.WEST BENGAL AND OTHERS).
- EXT.P4: COPY OF JUDGMENT IN O.P.NO.30308/2001(G) DT.6.11.2001.
- EXT.P5: COPY OF THE ORDER OF HON'BLE HIGH COURT OF DELHI IN FAO NO.205/1992.
- EXT.P6: COPY OF THE ORDER DT.14.12.2000 OF THE SUPREME COURT OF INDIA.
- EXT.P7: COPY OF THE ORDER DT.20.6.2003 OF THE DIRECTORATES OF HEALTH SERVICES, DELHI.



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EXT.P8A: COPY OF THE ORDER DT.05.01.2000 IN C.M.P.NO.627/2000 IN O.P.NO.332/2000.

EXT.P8B: COPY OF THE ORDER DT.6.4.2000 IN C.M.P.NO.18468/2000 IN O.P.NO.11123/2000.

EXT.P8(C): COPY OF THE ORDER IN W.P.(C) NO.10128/2005 DT.29.3.2005.

EXT.P9: COPY OF THE REPLY FROM THE GOVERNMENT OF INDIA, MINISTRY OF FAMILY HEALTH AND CARE, NEW DELHI DT.15.4.2008.

//TRUE COPY//

PA TO JUDGE



K. BALAKRISHNAN NAIR & M.C.HARI RANI, JJ.

W.P.(C) Nos.19484 OF 2008 & 16325 OF 2006

Dated this the 17th day of December, 2008

J U D G M E N T

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Balakrishnan Nair, J.

The petitioners are practising Electropathy/Electro-Homeopathy. They say, they have the necessary qualifications for the same. The practitioners of Modern Medicine and Homeopathy are moving the police and the police are unnecessarily threatening and harassing them, it is submitted. They are being frequently summoned to the police station. Threats are also held out to raid their places of practice and close down their establishments. In the above background, this writ petition is filed, seeking the following reliefs:

- i) declare that the petitioners are entitled to practice Electropathy/Electro-Homeopathy and that neither the respondents nor any other person or persons have any manner of (sic-or) authority to interfere with the petitioners' practice of the aforesaid system of medicine.
- ii) issue a writ of mandamus or any other appropriate writ order or direction directing the respondents not to interfere with



Electropathy/Electro-Homeopathy practice of the petitioners;

iii) issue a writ of mandamus or any other appropriate writ order or direction directing the third respondent and the officers under him not to harass or to intimidate the petitioners or to obstruct them in the course of their practice or (sic-of) Electropathy/Electro-Homeopathy.

2. The learned senior counsel, Mr.Govindh.K.Bharathan, who appeared for the writ petitioners, submitted that practice of Electropathy/Electro-Homeopathy is not prohibited by any statute in force in India or in Kerala. They are not practising modern medicine or Homeopathy or any Indian System of Medicine, like Ayurveda or Unani. For practicing those systems of medicine, registration under the Travancore – Cochin Medical Council Act is mandatory. For getting such registration, the applicants should possess the prescribed qualifications also. But, Electropathy/ Electro-Homeopathy is an entirely different system of medicine. Its practice is not controlled by any statute in India. It is not prohibited by any law also. Therefore, the petitioners have a fundamental right under Article 19(1)(g) of the Constitution of India to proceed with the practice of the above



said system of medicine, it is submitted.

3. Though the State of Kerala as also the Travancore – Cochin Medical Council are parties to this writ petition, they have chosen not to file any counter affidavit. We heard the learned Government Pleader for the official respondents.

4. It is one of the fundamental principles of rule of law that a citizen is free to do anything not prohibited by law. Every State action must be supported by a statutory provision. If a citizen challenges a State action, the State must be able to show the strict legal pedigree of its action. Otherwise, the courts will invalidate that action. In this case, the respondents have not brought to our notice any law, which prohibits the practice of Electropathy/Electro-Homeopathy. So, the State or its agents shall not interfere with the same. But, the petitioners shall not use designations like 'Doctor' etc. They shall not practice Modern Medicine, Homeopathy or any of the Indian Systems of Medicine. They shall not act in violation of the provisions of the Kerala Abkari Act or Drugs and Cosmetics Act or other relevant Acts or Rules. If the petitioners continue their Electropathy/



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Electro-Homeopathy practice, without infringing any other provisions of law, the police shall not interfere with the same. Unless the petitioners commit some cognizable offence by practising Electorpathy / Electro-Homeopathy, the police have no power or authority to interfere with their practice or summon them to the police station with a view to prevent their practice of Electropathy / Electro-Homeopathy.

4. It is clarified that this judgment will not affect the powers of the State or its agents to proceed in accordance with law, if the petitioners are found to act in violation of any statutory provision.

The writ petition is disposed of as above.

**W.P.(C) No.16325/2006**

The point raised by the petitioner is covered by our judgment in W.P.(C) No.19484/2008 . It is ordered that the directions in that case will govern this case also.

**(K.BALAKRISHNAN NAIR, JUDGE)**

**(M.C.HARI RANI, JUDGE)**

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