



AMENDED VIDE COURT ORDER DATED 19.9.96, S.C. & AMURVEDI

COUNSEL FOR THE PETITIONERS

Respondent No. 4.

The Chief Secretary,
The Government of M.P.,
Mallabh Bhawan,
BHOPAL (M.P.).

Respondent No. 5.

The Secretary,
The Govt. of Madhya Pradesh,
Health Department,
BHOPAL (M.P.).

Respondent No. 1.

The Collector,
Jabalpur (M.P.).

*Amendment
Case No. 191 of 96
26-11-96
D. No. 115
Comp. No. 90*

[Handwritten signatures and initials]



THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

M.P. NO. 2018 OF 1961

92

08 Civil

Appellantes Shukla



1) *8/6/63*
National Development Society of Electro-Homeopathic System of Medicines,
A-1/181, Uttam Nagar, New Delhi,
Through: its Secretary,
Dr. V. Kumar

11) Indian Electro-Homeopathic Medical Council
Through: its Secretary D. V. Kumar
A-1/181, Uttam Nagar,
NEW DELHI.

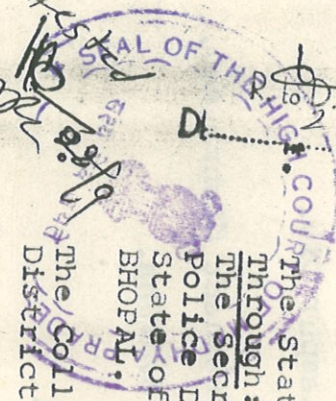
111) N. S. H. M. College
D. Agarwal Complexes
3, Gulli Chauraha
Damoh, MP
Through: its Principal
Dr. Rajesh Kumar Sikka

1v) Electro-Homeopathic
Medical Coll^l Association of M.P.
Through: its Secretary
Dr. K.K. Patil

V E R S U S

.....PETITIONERS

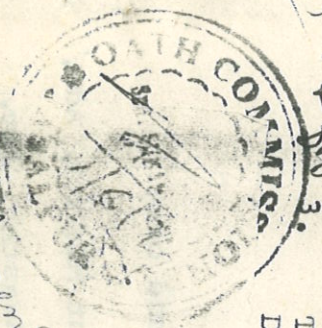
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subject referred
D.P.R. 6/9



The State of Madhya Pradesh
Through:
The Secretary (Home)
Police Department (M.P.)
State of M.P.
BHOPAL.

The Collector,
District Damoh,

The Supdt of Police,
District Damoh, M.P.



MISCELLANEOUS PETITION : IN THE
NATURE OF WRIT OF CERTIORARY
& MANDAMUS CHALLENGING THE VIRES
OF THE GOVERNMENT MEMO.

(Under Article 226 of Constitution of India)

Petitioners aforesaid submit as hereunder:-

Registered Society duly

Plaintiff
Defendant
Amendment
Case No. 92
It is
copied



92



HIGH COURT OF JUDICATURE AT Jabalpur : Madhy Pradesh.

W.P.No.502/99

Dr.Mukesh Shrivastava

v.

The State of M.P.

For the petitioner : Shri K.C.Shrivastava.

For the respondents : None.

W.P.No.1633/98

Jagdish Chandra Ray & ors
Ralgarrh.

v.

Commissioner Bilaspur Div.
and ors

For the petitioner : Shri Prashant Mishra, Adv.

For the respondents : Shri R.S.Jha.

W.P.No.3108/98

Pawardan Turkey & ors.

v.

Commissioner Bilaspur and ors.

For the petitioners : Shri Prashant Mishra, Adv.

For the respondents : Shri Vivek Awasthy, Adv.

W.P.No.4622/98

Dr.Shambhu Sarkar & ors.

v.

State of M.P. & ors.

For the petitioners : Shri Prashant Mishra, Adv.

For the respondents : Advocate General.

- : 2 : -

W.P.No.2410/98

Kajal Kumar Sikdar

v.

State of M.P. & ors.

For the petitioner : Shri P.R. Bhawe, Adv.

For the respondents : Shri A.S. Garharwar, Adv.

W.P.No.5553/98

Binay Krishna Biswas

v.

Commissioner Bilaspur Division
and ors.

For the petitioner : Shrimat Indira Tripathi, Adv.

For the respondents : Advocate General.

W.P.No.2018/92National Dev. Society of
Elec-Homeo & ors.

v.

State of M.P. & ors.

For the petitioners : Shri N. Nagrath, Adv.

For the respondents : Shri R.K. Thakur.

W.P.No.1244/94

The Institute of Edu. Research

v.

The State of M.P. & ors.

For the petitioner : Shri N. Nagrath, Advocate

For the respondents : Shri R.K. Thakur, Adv.





(94)

- : 3 : -

W.P.No. 2957/94

Council of Alternative System

v.

State of M.P. & anor

For the petitioner : Shri B.N.Mishra, Adv.

For the respondents : Shri V. Anashty, Adv.

W.P.No. 3661/98

Ganpati Sarkar & ors.

v.

The Commissioner Bilaspur
& ORS.

For the petitioners : Shri Prashant Mishra, Adv.

Shri H.S.Patel, Adv.

For the respondents : Shri P.Singh, Adv.

W.P.No. 4470/98

Coal Indla E.L.Medicl College

v.

Collector Sidhi & ors.

For the petitioner : Shri S.P.Tripathi, Adv.

For the respondents : Shri Vinay Shukla, Adv.

W.P.No. 3979/95

Medical Board of Blo Chemic
system

v.

State of M.P. & ors.

For the petitioner : Sr.S.C.Chaturvedi, Adv.

For the respondents : Shri Abhay Gohil, Adv.

- : 4 : -

W.P.No.4931/96

Ajay Chaturvedi

v.

The State of M.P. & ors.

For the petitioner : Shri P. Rusia, Adv.

For the respondents : Shri R.K.Thakur, Adv.

W.P.No.5094/96

Gyanendra Singh

v.

S.D.O.Mudwara, Katni & ors

For the petitioners : Shri N.N.Nagrath, Advocate.

For the respondents : Shri R.K.Thakur, Adv.

W.P.No.3007/98

Pratha Biswas & ors.

v

State of M.P.& ors

For the petitioners : Shri Prashant Mishra, Adv.

For the respondents : Shri Vivek Awasthy, Adv.

W.P.No.3136/93

Indore Research Institute
and ors

v.

The State of M.P. and ors.

For the petitioners : Shri N.N.Nagrath, Adv.

For the respondents : Shri R.K.Thakur, Adv.





96

- : 5 : -

W.P.No. 4169/98

Arbinda Biswas and ors.

v.

Commissioner Bilaspur and ors.

For the petitioners : Shri Awadh Tripathi, Adv.

For the respondents : Adv. General.

W.P.No. 861/99

Dr. Rajan Bhattacharya

v.

State of M.P. & ors.

For the petitioner : Shri S.D.Khan, Adv.

For the respondents : Advocate General.

W.P.No. 2011/98

Dr. Santosh Kumar Chouhan & ors.

v.

Commissioner Bilaspur & ors.

For the petitioners : Shri Awadh Tripathi, Adv.

For the respondents : Shri P.D. Gupta, Adv.

97

- : 6 : -

ORDER

1. In this bunch of writ petitions, petitioners are either individuals or institutions. Individuals contend that they have the right to practice in the alternative system of medicines whereas the grievance of the institutions are that action of the respondents, not permitting them to impart education in alternative system of medicines is illegal. Individual petitioners are registered either with the Indian Council of Alternative System of Medicines, Alternative Medical Council, Subhash Alternative Academic Council or Council of Electro Homeopathy Society which are societies registered under the Societies Registration Act. Individual petitioners claim that they have right to practice in alternative system of medicine namely Indo Electropathy, Electro Homeopathy whereas institutions contend that they have the right to impart education on the alternative system of medicine and action of the respondents in interfering with right to practice or impart education is in the teeth of their fundamental right guaranteed under Article 19(1) (g) of the Constitution of India.

2. It is conceded by the individual petitioners that degree / diploma obtained by them are not recognised under any law. They contend that practice in the alternative system of medicine is not regulated by any of the statute and hence in the absence of regulation / prohibition they cannot be asked to stop practice, has been done by the Magistrate under section 133 of the Code of Criminal Procedure.



98


- : 7 : -

3. Similarly the stand of the institution is that imparting education in the alternative system of medicine is not governed by any statute and the same being not covered either under Allopathy, Ayurvedic, Naturopathy, Homeopathy or Unani system of medicine which are governed and regulated by various statute, they cannot be prohibited from imparting education in the alternative system of medicine.

4. It is common ground that allopathy, Homeopathy, Ayurvedic, Unani and Naturopathy systems of medicine are governed by various statutes enacted by the Union and the State. There is further no ~~dispute~~ dispute that no legislation governing practice or teaching in alternate system of medicine has been enacted either by the Union or the State. However, it is the stand of the respondents that in view of Section 21 of the M.P. Ayurvedic Parishad Adhiniyam, 1987, no person shall practice in any branch of medicine which will obviously include alternate system of medicine xx xxxxxx xxxxxxxxx

... 8/-





5. Section 21 of the Madhya Pradesh Ayurvedigyan Parishad Adhiniyam, 1990 (Act No.11/90) which is relevant for the purpose reads as under:-

"21. Prohibition from practice except as provided in this Act or Central Act No.102 of 1956.-Save as provided in this Act or the Indian Medical Council Act, 1956 (No.102 of 1956) no person shall practice or hold himself out, whether directly or indirectly as practising medicine within the State".

6. It is the stand of Shri Shukla, appearing on behalf of the State that the aforesaid provision prohibits practice in medicine and the same will not include only Allopathic System of medicine, but any kind of medicine which claims to treat a patient. However, counsels for the petitioners have taken the stand that Sec.21 of the aforesaid Act operates in the field of Allopathic system of medicine, but not other systems of treatment. Further stand of the petitioners is that in alternate system of medicine, no medicine is used.

7. Having appreciated the rival submissions I am of the opinion that the provisions of the Madhya Pradesh Ayurvedigyan Parishad Adhiniyam, 1976 does operate in the field of Allopathic system of medicine and in not alternate system of medicine. Expression medicine has been defined under section 2(c) of the Act which reads as under:-

"2.(c) 'Medicine' means modern scientific medicine in all its branches and includes

150

surgery and obstetrics, but does not include veterinary medicine and surgery;"

-9-

(8) It is relevant here to state that Shri Shukla has taken me to various dictionaries to contend that wider meaning of the aforesaid expression be given.

I am of the opinion that when an expression used in a statute, is defined under the statute itself, reference to the meaning of the said word by reference to various dictionaries is uncalled for. When the legislature has given the meaning of a particular expression, which legislative device is adopted either to expand or curtail the meaning of a particular word, reference to dictionaries to understand the meaning of the said expression is hazardous and not permissible. Accordingly I am of the considered opinion that while construing section 21 of the Act which prohibits practice in the medicine shall mean practice in modern scientific medicine which will include surgery, but does not include veterinary medicine and surgery. It may be stated that Mr. Shukla has taken a stand that modern scientific medicine does not mean Allopathic System of medicine. From the decision of the Supreme Court in case of Dr. A. K. Sabhapathy -v- State of Kerala & ors., AIR 1992 S.C. 1310. I do not have the slightest hesitation in rejecting the submission of Shri Shukla. In the said case the Supreme Court has held that the modern scientific medicine refers to the Allopathic system of medicine, which would be evident from paragraph 14 of the said judgment which reads as follows:





"The High Court, in our opinion, has rightly held that the expression 'modern scientific medicine' in Section 2(1) of the Central Act refers to the Allopathic system of medicine and that the provisions of the Central Act have been made in relation to medical practitioners practising the said system. This view finds support from the fact that after the enactment of the Central Act, Parliament has enacted the Indian Medicine Central Council Act, 1970 in relation to the system of Indian medicine commonly known as Ayurveda, Siddha and Unani and the Homeopathy Central Council Act, 1973 in relation to Homeopathic system of medicine wherein provisions similar to those contained in the Central Act have been made in relation to the said ~~system~~ system of medicine."

9. Thus, the only statutory provision which has been invoked to prohibit practice in alternative system of medicine ~~under~~ Section 21 of the Act, which in my opinion being confined to the Allopathic system of medicine, I am of the opinion that respondents cannot take recourse to the aforesaid provision to stop practice in the alternative system of medicine. It is the stand of both sets of petitioner that they are practising and imparting education in alternative system of medicine which is not regulated by any of the statute and hence, they cannot be stopped from carrying out the practice in alternative system and teaching in the said system in view of Article 19(1)(g) of the Constitution of India. True it is that Article 19(1)(g) of the Constitution of India gives right to all citizens to practice any profession or to carry on any ~~business~~ occupation trade or business, but in view of Art.19(6), ~~same~~

does not prevent the State from making any law relating to the professionals or technical qualification necessary for practising any profession or carrying on any occupation, trade or business. However, in the present case no law excepting the provisions of section 21 of the Act has been brought to my notice to show that any law has been enacted either by the Union or the State governing teaching or practice in the alternative system of medicine. As held earlier section 21 of the Act does not operate in the field of alternative system of medicine and in the garb of the same respondents cannot stop the petitioners from practice and teaching in alternative system of medicine, so long valid law is not made regulating this branch. Accordingly I am of the opinion that the action of the respondents in stopping the petitioners from practising in alternative system of medicine or imparting education in the same is illegal. In view of the aforesaid all the consequential actions taken by the respondents are also illegal and ultra-vires.

10. BY way of abundant caution I may state that, in case, the petitioners practice/in the branches of Allopathy, Homeopathy, Ayurvedic, Unani or Naturopathy ~~or any other system of medicine~~ which are regulated by various enactments, their action shall be totally illegal and the respondents ~~shall~~ are free to take action against them in accordance with law.



SEAL OF THE
MADHYA PRADESH

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In the result, all the writ petitions succeed and it is held that the petitioners have right to practice and impart education in alternative system of medicine, in case, same is not one of the systems regulated by the Statute, i.e. Allopathy, Homeopathy, Ayurvedic, Naturopathy and Unani and the action of the respondents in prohibiting them from the aforesaid acts are illegal and are set aside. In the facts and circumstances of the case, there shall be no order as to cost.

[Signature]
J U D G E
19.3.1999

C.C.K. Prasad (J)

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High Court of Madhya Pradesh
JABALPUR

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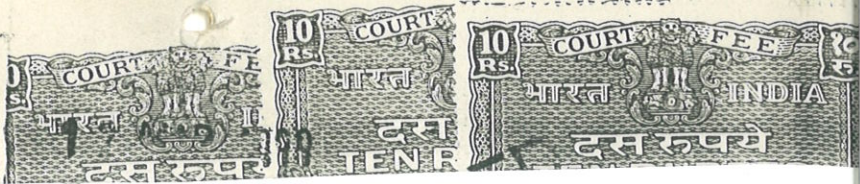
1	Application received on	11. 2009	
2	Applicant told to appear on	16. 2009	
3	Applicant appeared on	26-2009	
4	Application (with or without further or correct particulars) sent to record-room	/	
5	Application received from record-room with record or without record for further or correct particulars on		
6	Applicant given notice for further or correct particulars on		
7	Applicant given notice for further funds on		
8	Notice in column (6) or (7) complied with on		
9	Copy ready on		
10	Copy delivered or sent on		
11	Court-fee realised		52

Copyist

Comparer

Head Copyist

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Handwritten signature and date '21/11/51'.

No. 2
DR. Anil Kumar Gajpal,
Son of Shri Arjun Singh Gajpal,
Aged about 42 years,
Principal,
Dhamtari Electro-Homeopathic Medical
Institution & Hospital, Gokulpur,
Padri Road, District : DHAMTARI (MP).





copy of order sheet (1)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

(In the nature of Writs of Certiorari/Prohibition/Mandamus Under article 226/227 of the Constitution of India)

W.P. NO. 1307 OF 1999

CPJ 8692

Dhamtari Electro-Homeopathic Medical Institute & Hospital, Gokulpur, Radri Road, Distt. DHAMTARI

.....PETITIONER

V E R S U S

The State of Madhya Pradesh and Six others.

.....RESPONDENTS

DETAILS FOR PETITION :

1. Particulars of the petitioner :

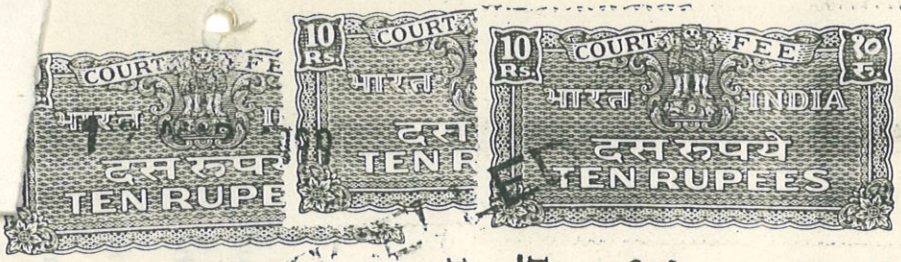
Dhamtari Electro-Homeopathic Medical Institute & Hospital, Gokulpur, Radri Road, Distt. DHAMTARI

Through :

Dr. Anil Kumar Gajpal
Son of Shri Arjun Singh Gajpal
Aged about 42 years,
Principal,
Dhamtari Electro-Homeopathic Medical Institute & Hospital, Gokulpur, Radri Road, District : DHAMTARI (M.P.)

2. Particulars of the Respondents :

1. The State of Madhya Pradesh
Through :
The Chief Secretary,
Government of Madhya Pradesh
BHOPAL (M.P.)
2. The Secretary,
Department of Home,
Government of Madhya Pradesh,
BHOPAL (M.P.)
3. The Secretary,
Medical Education Department
Government of Madhya Pradesh
BHOPAL (M.P.)
4. The Collector
Distt. DHAMTARI (M.P.)



HIGH COURT OF MADHYA PRADESH AT JABALPUR

W.P.No.1307/99

Dhamtari Electro Homeopathy Medical Institute
& Hospital, Gokulpur

Vs.

State of Madhya Pradesh and Six Others.

Present: Hon.Mr.Justice Dipak Misra,

Mr.Mr.S.C.Chaturvedi Adv. for the petitioner
Mr.Narendra Chouhan, Learned P.L. for the State.

W.P.No.3686/99

Educational and Medical Council of India
and another

Vs.

State of Madhya Pradesh and another

Mr.Prashant Mishra, Advocate for the petitioners.
Mr.Sanjay Agrawal, Panel Lawyer for the State.

ORDER

(16/3/2000)

The six letter word 'HEALTH' is the Summum Bonum of life. It is the elan vital of human spirit. The charismatic laughter pales into abysmal dent in absence of proper health. The universe darkens and the thought of both death and deathlessness corrode the inner soul and create restless/ melancholy. Life without ~~melancholy~~ sound health is a balloon with air. In the case of Mahendra Pratap Singh Vs. State of Orissa,

AIR 1997 Orissa, 37 it has been expressed thus:

"Life is a glorious gift from God.
It is the perfection of nature, a
master-piece of creation. Human
being is the epitome of the infinite
prowess of the divine designer.
Great achievements and

Prasad

H.F.P.
Prasad
(23)

accomplishments in life are possible if one is permitted to lead an acceptably healthy life. Health is life's grace and efforts are to be made to sustain the same."

2. It has been said, in a Welfare State the essential concern of the government is the primary health of its citizen. None on earth would like to barter his good health for all the pearls of the seas or all the teas in China. Man has been in search of good health. From time immemorial various methods have been introduced to cure the incurable, to soothe the pain, to assuage the mental agony and to bring in harmony. Some have given a cry for back to nature, some have propagated for natural medicine, some have canvassed magnetic therapy, some have introduced treatment by colour and yet some by 'pranic' methods. The essence behind the purpose is the singular one to achieve health and to cure the disease. In this context I may profitably quote a passage from Goomsann Legger who had propounded 'Foot Massage Therapy'. To

quote :
 "Specialist literature often attempts to establish a polarity between generally accepted western medicine and the alternative aspects of health care and the prevention of ill health. We consider that it is important to recognize the true value of any method that has proved itself



to be effective, and not to reject any form of medicine out of hand.

Even if methods of treatment have no rational explanation, it is wrong to deny their existence unless they have been shown to involve deceit, injury or to be worthless.

Experience has shown that in the last case the method simply ceases to be used. Furthermore, there is no single method that can be the right one. A method which might be of great benefit to one person may not have the same results for another person.

To insist blindly on a single method of health care is very reprehensible and indicates a lack of ability to evaluate the relative worth of different possibilities.

Thus health care should not be the exclusive domain of the medical profession.

On the other hand, sickness is a medical matter and should be dealt with by doctors, though the question may still arise whether a medical doctor should be the only person responsible for the patient's cure. Foot reflex massage is both a method of treatment and a form of



85

therapy; it is used mainly by people who are not doctors. It should certainly never be used by anyone who is playing at being a doctor."

3. Man has invented aroma therapy, water therapy, touch therapy, Acupressure, Acupuncture, Alexander Technique, Hypnotism, Herbal therapy, Magnetic therapy, faith healing, auto suggestion, biochemic, Colour therapy, spirit healing and also electro homeopathy.

4. The aforesaid prefatory note was necessary in the present cases as the factual back drop is quite interesting as there is a clash between individual endeavour to get cured by any means and the State regulatory system.

5. As both the writ petitions have been filed on common grounds they were heard analogously and, are disposed of by this common order. However, facts in both the cases are narrated for better appreciation.

6. In W.P.No.3686/99 the petitioner No.1 is a registered Public Trust, registered under the Bombay Public Trust Act, 1950 and is also registered under Societies Registration Act, 1860, as is required for a Public Trust in the State of Maharashtra. The petitioner No.2 is a Society registered under the M.P. Societies Registrakaran Adhiniyam, 1973. The Head Office of the petitioner No.2 is at Balaghat. The



THE HIGH COURT

LPUR HSA

26

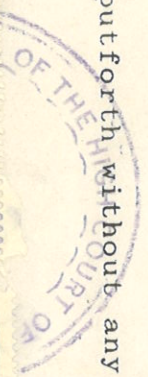
petitioner No.2 is affiliated with the petitioner No.1 by the order of the Deputy Commissioner of Charities, the name of the petitioner No.1 has now been changed to Educational & Medical Council of India, Nagpur. Earlier it was known as Electropathy Medical Council of India. The petitioner No.1 is instrumental in spreading the teachings of Electropathy system of Medicines through out the country. It has colleges of Electropathy courses in Maharashtra, Madhya Pradesh, Gujrat, Rajasthan and some other states. The petitioner No.1 has granted permission to the petitioner No.2, institute for opening and running Electropathy courses in the institute at Hata, Distt. Balaghat.

7. It is averred in the petition that Electropathy is a developing branch of medical science which is based on the principles of 'Complexis Complexa Curantur', which means complex body requires complex medicines to cure i.e. contrast by contrast incorporating the principle of similibus. It is averred that this is a harmless, unique and natural system of medicine and was invented by Dr. Count Ceasor Mattel of Italy in 1865. It is set forth in the petition, in this system of medicines complex remedies are selected on the basis of the Law of Similarity and application of these remedies is according to the Law of Polarity. Electropathy remedies are prepared from fresh plants by a specific process. It is put forth in the writ petition that there are about 60 medicines in this system and 114 kind of plants are used in the


preparation of the medicines and injections. It is claimed that this purifies the lymph and blood and can cure radically even those diseases which have been hitherto considered incurable. The petitioner No.1, society has introduced a syllabus to impart education and training and the syllabus covers medical education like Anatomy, Physiology, Elementary Examination of the Body, Hygiene, Public Health & Nutrine, Materia Medica and Pharmacy, Pathology and Clinical Science, Biochemic System of Medicine, Elementary knowledge of modern medicines, Ophthalmology, Minor Surgery, Medical Jurisprudence and Toxicology. In the State of Madhya Pradesh the institutes are established at places like Raipur, Bilaspur, Durg, Ujjain, Balaghat, Hatta and Ambikapur. Thus, it is averred that Electropathy is a branch of alternative system of medicines which itself is known as it is a recognised system of medicines and alternative to Allopathy, Homeopathy, Ayurveda, Unani system of Medicines.

It is averred in the writ petition that the State of Madhya Pradesh issued instructions vide Annexure P-7 to all the District Magistrates for taking action against any medical practitioner who is not registered under the M.P. Ayurvigyan Parishad Adhiniyam, 1987 or under any other law which provides for granting certificates to medical practitioners in the field of Allopathy, Homeopathy, Ayurveda and Unani System of Medicines. On the basis of the said instructions the respondents, as alleged, are harassing the petitioners, practitioners and students.

It is put forth without any law prohibiting this kind



(85)



of practice, the action taken by the respondents smacks of arbitrariness and illegality. With these averments prayer has been made for issuance of a writ in the nature of mandamus commanding the respondents not to interfere in the activities of petitioners-institutes in their way of imparting education in Electropathy System of Medicines and for issuance of other reliefs.

8. In W.P.No.1307/99 the writ petitioner, Dhamtari Electropathy Medical Institute and Hospital, Gokulpur is a registered body having its base at Dhamtari, registered by the Registrar of Firms and Societies Madhya Pradesh and is affiliated to the Medical Board of Alternative System, Jabalpur

9. The objects of the institution are as follows:

- i) To promote and advance the Science of Electro-Homeopathy system of Medicine other than official school of Medicines, and Electro Homeopathy, Boch Flower, remedies, Biochemic, Neuropathyuu, Indo Allopathy, Magnete Therapy etc. and to raise the status of all Alternative Systems of Medicines knowledged with all its aspect.
- ii) To establish the faculty to control examination of teaching and Educational Institution or College etc. and award degrees, diplomas or certificate thereof.
- iii) To establish an Advisory Committee

which consists of its own members or outsiders co-operation for the purpose of both as may decide for any purpose it deems fit.

iv) To certify, permit supervise and maintain register of practitioners possessing degree, diploma or certificates from any college or Institution of Alternative System of Medicine either affiliated to the faculty of any authentic Institute and the Practitioners who have an experience in any branch of Alternative System of Medicines."

10. On 6th of June, 1999 the petitioner no.2 was arrested and the investigation was done, documents were seized on 7 and 8-1-99. The allegation against the petitioner no.2 is that he/^{is}imparting instructions in electro homeopathy which is an alternative system of treatment and therefore, is liable for an offence under Section 420 IPC. It is alleged that he was misleading the people as the said system of medicine is not recognised and had no authority to enrol any doctor or to give any treatment. It is further alleged that the petitioner has violated Section 5 of the Indian Medical Degree Act, 1916, Section 30 of the Medical Act, 1973, Section 15 of the Indian Medical Council Act, 1956 and M.P. Homeopathy Act, 1976.



91

11. It is alleged by the prosecution that the Institution has contravened various provisions of law for which minimum step should be taken against the person who are in charge and accordingly police action was taken. It is pointed out that the said council was not recognised by any statute on the subject and, therefore, it was not able to conduct any medical courses for confer of any diploma, degree, certificate etc to any person. It has been set forth that the petitioner's institution is affiliated to alternative system of Medicine which has been established in 1962. It is put forth that the said body has universal recognition. The aims and object of the said society have been mentioned in the body of the writ petition.

12. In this background it has been urged that the Electro Homeopathy does not fall within the western system of treatment and as such prohibition under the Indian Medical Degrees Act, 1960 or Indian Medical Council Act, 1956 does not apply to the petitioner. It is also pointed out that Electro homeopathy is not homeopathy and as such it is not recognised by the Board constituted by Homeo Parishad Act, 1976. It is stated that electro homeopathy prescribes herbs and organic roots and flowers and leaves which have no adverse effect and, therefore, there is no barrier for practising the same in absence of any prohibition in law.

13. With these averments prayer has been made to quash the impugned order dt.20.1.98 contained in Annexure-C and the circular which has ~~been~~ been issued to ban the Electrohomeopathy system in the State of Madhya Pradesh.

14. A return has been filed by the answering respondents contending, inter alia, that Electro Homeopathy and other system of medicines are neither recognised under the Central Act or State Act and, therefore, these institutions are not entitled to issue degrees or diplomas; to the students. It is also pointed out that similar questions have been decided by the learned Single Judge by this Court in W.P.3979/95 and the matter has been assailed in L.P.A.

15. I have heard Mr.S.C.Chaturvedi and Mr.Prashant Mishra, learned counsel for the petitioners and Mr.Narendra Chouhan, learned P.L. for the State. Though I have stated in detail factual matrix of both the cases, I would specifically deal with the factual scenario of W.P.No.1307/99 as that would be appropriate for disposal of both the cases.

16. On the appreciation of the pleadings it is graphically clear that the institution claims to have the right to impart knowledge and confer degrees. The individual who represents the Institution asseverates that he has the authority in law to practice the saidbranch of medicine. ¹Learned counsel for the state



referred to section 21 of the M.P. Ayur Vidyam Parishad Adhiniyam, 1990 (Act No. 11/90) which reads as under :

"21. Prohibition from practice except as provided in this act or Central Act no. 102 of 1956-Save as provided in this Act or the Indian Medical Council Act, 1956 (No. 102 of 1956) no person shall practice or hold himself out, whether directly or indirectly as practising medicine within the State."

17. On a fair reading of the aforesaid section it is crystal clear that section 21 does not prohibit practice of any other kind of alternative medicine. The learned Single Judge in the case of Jagdish Chandra Ray and others, Raigarh Vs. Commissioner, Bilaspur Division and others, (W.P.No. 1633/98) after referring to various provisions and the decision rendered in the case of Dr. A.K. Sabhapati Vs. State of Kerala and Others, A.I.R. 1992 S. C. 1310 had held as under :-

"Thus, the only statutory provision which has been invoked to prohibit practice in alternative system of medicine is Section 21 of the Act, which in my opinion being confined to the Allopathic system of medicine, I am of the opinion that respondents cannot take recourse to the aforesaid provision to stop practice in the alternative system of medicine. It

is the stand of both sets of petitioner that they are practising and imparting education in alternative system of medicine which is not regulated by any of the statute and hence, they cannot be stopped from carrying out the practice in alternative system and teaching in the said system in view of Article 19(1)(g) of the Constitution of India. True it is that Article 19(1)(g) of the Constitution of India gives right to all citizens to practice any profession or to carry on any occupation trade or business, but in view of Art. 19 (c), same does not prevent the State from making any law relating to the professionals or technical qualification necessary for practising any profession or carrying on any occupation, trade or business. However, in the present case no law excepting the provisions of section 21 of the Act has been brought to my notice to show that any law has been enacted either by the Union or the State governing teaching or practice in the alternative system of medicine. As held earlier section 21 of the Act does not operate in the field of alternative system of medicine and in the garb of the same respondents cannot stop the petitioners from practice and teaching in alternative



95



system of medicine, so long valid law is not made regulating this branch. Accordingly I am of the opinion that the action of the respondents in stopping the petitioners from practising in alternative system of medicine or imparting education in the same is illegal. In view of the aforesaid all the consequential actions taken by the respondents are also illegal and ultravires."

18. I am in respectful agreement with the aforesaid view. The Calcutta High Court in the case of The Council of Alternative System of Medicine and Anr. Vs. State of West Bengal and others, / 1991(2)CLJ.173 has ~~been~~ held as under:

"The alternative system of medicine is a system devoid of medicine made by chemicals. It is a system to get cure by controlling diet, sense, breathing. If any disease is cured by a practise of Yoga, it cannot be said that such system contravened any of the provisions of law and it is an offence to get training in Yoga and to advise the people and to follow the system of Yoga. Yoga is not a recognised system of treatment by the Legislator and or the Palliament but it is a practised and propagated through T.C. by the Government. Similarly, the alternative system of medicine clearly

indicates that it is a system which is contrary to the modern system of medicine based on antibiotics and chemical compound. Thus, imparing training and conferring diploma and certificate as to Alternative System of medicine contravenes no legal provision."

(quoted from the placitum)

It is apposite to add that the Branches of medicine Alopathy, Homeopathy, Ayurvedic, Unani or Naturopathy have been regulated by various enactments and if a practitioner practices them, without necessary qualification he will be liable for the offences as envisaged in law. No institution can impart medicine unless they have the recognition as per the prescribed law. In view of the preceding analysis, I am of the considered opinion that in absence of any law prohibiting alternative medicine like Electro Homeopathy the Institution has the authority and the practitioners are entitled to practice but they are prohibited to practice in the Branches of Alopathy, Homeopathy, Ayurvedic, Naturopathy and Unani. Any action of the respondents prohibiting institution or the practitioners from carrying out their duty in the alternative medicine is illegal and they are accordingly set aside.

19. Before I part with the case, I am persuaded to quote few passages from the Book Called 'Auras' by Mark Smith:





"Modern medicine tends toward specialization of skills and compartmentalization of treatment. Anyone who has had a recent experience in a hospital knows this frustrating truth. Each separate department will want its own samples of blood, urine, et cetera, even though you just gave samples to another department not half an hour previously. Medical techniques may be wonderful for treating specific symptoms, but where is the healing art needed to maintain the health of the whole person? Yes, we can accomplish miracles with modern medicine, but often in a dehumanizing way, with side effects almost as bad as the illness itself. Treatment of the whole systembody and mind- is ultimately the path we must follow.

This combination of new scientific techniques and old healing arts is in fact happening as the medical community gives grudging acknowledgment and acceptance to many natural folk remedies, previously and disdainfully dismissed as superstitions. Science is proving, for example, that certain foods and natural herbs offer a wide range of medicinal benefits, some curative, others preventive in nature."

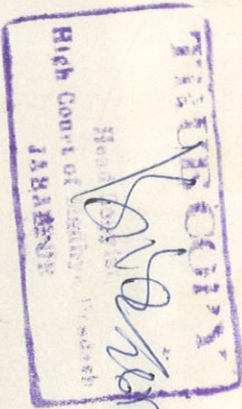
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The purpose of referring to the aforesaid
 sages is only to indicate that possibly the
 alternative remedies are a necessity in the present
 world and they are to continue unless prohibited in
 law. I am conscious sometimes people suffer
 because of quacks but unless the State Government
 makes laws the individuals who have the ability to
 cure also shall be equated with quacks. One may
 only say law should govern and not the whim or
 fancy of the executive. Let the law prevail and
 not the executive fiat.

21. The writ petitions are accordingly allowed.
 However, there shall be no order as to costs.

sell
 J U D G E

(Dipak Misra)



मध्य प्रदेश शासन
लोक स्वस्थ्य एवं परिवार कल्याण विभाग
मंत्रालय, वल्लभ भवन, भोपाल

क्रमांक 10/2017/17/मेडि-2,

भोपाल, दिनांक 14/11/2017

प्रति,

1. समस्त कलेक्टरस,
मध्य प्रदेश।
2. समस्त जिला पुलिस अधीक्षक,
मध्य प्रदेश।

विषय:- फर्जी चिकित्सकों/झोलाछाप डॉक्टरों/मध्य प्रदेश में अवैध रूप से चिकित्सा व्यवसाय कर रहे चिकित्सकों के विरुद्ध कार्यवाही।

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प्रदेश में अपात्र फर्जी चिकित्सकों, अन्य प्रदेश में पंजीकृत किन्तु मध्य प्रदेश में अमान्य चिकित्सा पद्धतियों, झोलाछाप चिकित्सकों द्वारा रोगियों का उपचार किया जा रहा है। अधिकांश ऐसे चिकित्सक एलोपैथी पद्धति की औषधियां रोगियों को दे रहे हैं। बिना उपयुक्त ज्ञान के इस प्रकार का उपचार घातक होता है। ऐसे कई प्रकरण सामने आये हैं जहां अपात्र फर्जी चिकित्सकों द्वारा गलत इंजेक्शन देने से रोगियों को एबसेस, गैंगरीन आदि हो गया है जिससे तथा गलत इंजेक्शन के रिएक्शन से रोगियों की मृत्यु भी हो गई है।

02. उपरोक्त अपात्र व्यक्तियों द्वारा किये जा रहे चिकित्सा व्यवसाय पर अंकुश लगाने के लिये विधि अनुसार निम्न प्रावधान उपलब्ध है :-

(1) मध्य प्रदेश उपचर्यागृह तथा रूजोपचार संबंधी स्थापनाएँ (रजिस्ट्रीकरण तथा अनुज्ञापन) अधिनियम 1973 की धारा-3 के प्रावधान अनुसार निजी क्षेत्र के समस्त उपचर्यागृह या रूजोपचार संबंधी स्थापना (नर्सिंग होम/निजी चिकित्सालय/परामर्श केन्द्र, औषधालय, प्रयोगशाला, एक्स-रे, डेन्टल क्लीनिक सहित सभी इस्टेब्लिशमेन्ट्स) उक्त एक्ट के अंतर्गत रजिस्ट्रीकरण तथा अनुज्ञप्ति के बिना न खोले जा सकते हैं न रखे जा सकते हैं और न चलाये जा सकते हैं।

- उक्त धारा-3 के उल्लंघन करने पर अधिनियम-1973 की धारा-8 (क)(एक) तथा (दो) के अंतर्गत जो जुर्माने तथा 3 माह तक के कठोर कारावास का प्रावधान है।
- मध्य प्रदेश उपचर्यागृह तथा रूजोपचार संबंधी स्थापनाएँ (रजिस्ट्रीकरण तथा अनुज्ञापन) अधिनियम 1973 के अंतर्गत विधि अनुसार केवल निम्न मान्य चिकित्सा पद्धतियों के अंतर्गत कार्यरत क्लीनिकल इस्टेब्लिशमेन्ट्स/नर्सिंग होम आदि के पंजीयन का प्रावधान है।

अ. आधुनिक चिकित्सा पद्धति एलोपैथी :- इसके अंतर्गत चिकित्सा व्यवसाय हेतु मेडिकल काउन्सिल ऑफ इण्डिया एक्ट 1956 की धारा (15)1 के अंतर्गत मान्य अर्हताधारी को मध्य प्रदेश मेडिकल काउन्सिल अधिनियम 1987 के अंतर्गत पंजीयन अनिवार्य है।

ब. भारतीय चिकित्सा पद्धति :- इसके अंतर्गत चिकित्सा व्यवसाय हेतु मध्य प्रदेश आयुर्वेद, यूनानी तथा प्राकृतिक चिकित्सा व्यवसायी अधिनियम 1970 के अंतर्गत शेड्यूल में उल्लेखित मान्य अर्हताधारी का बोर्ड ऑफ आयुर्वेदिक एण्ड यूनानी सिस्टम ऑफ मेडिसिन एण्ड नेचुरोपैथी, मध्य प्रदेश के अंतर्गत पंजीयन अनिवार्य है।

स. होम्योपैथी एण्ड बायोकेमिक सिस्टम ऑफ मेडिसिन :- इसके अंतर्गत चिकित्सा व्यवसाय हेतु होम्योपैथी सेन्ट्रल काउन्सिल एक्ट 1973 की दूसरी/तीसरी अनुसूची में मान्य अर्हताधारी का स्टेट काउन्सिल ऑफ होम्योपैथी, मध्य प्रदेश के अंतर्गत पंजीयन अनिवार्य है।

(2) चिकित्सा शिक्षा संस्था (नियंत्रण) अधिनियम 1973 की धारा 7-ग के अनुसार अभिदान "डॉक्टर" का उपयोग केवल उपरोक्त मान्य चिकित्सा पद्धतियों में रजिस्टर्ड मेडिकल प्रेक्टिशनर्स ही कर सकते हैं। अपात्र व्यक्ति द्वारा उक्त अभिदान का उपयोग चिकित्सा शिक्षा संस्था (नियंत्रण) अधिनियम 1973 की धारा 8(2) के अंतर्गत 3 वर्ष कारावास या रूपये 50,000 जुर्माने या दोनों से दण्डनीय होगा।

(3) एलोपैथी चिकित्सा पद्धति में केवल वे ही चिकित्सा व्यवसाय हेतु पात्र हैं जो मेडिकल काउन्सिल ऑफ इण्डिया एक्ट 1965 की धारा-15(1) में उल्लेखित अर्हताधारी होकर मध्य प्रदेश मेडिकल काउन्सिल एक्ट 1987 के अंतर्गत पंजीकृत हो। अपात्र एवं अपंजीकृत व्यक्तियों द्वारा एलोपैथी चिकित्सा पद्धति में चिकित्सा व्यवसाय करने पर मध्य प्रदेश मेडिकल काउन्सिल एक्ट 1987 की धारा-24 के अंतर्गत 3 वर्ष तक के कठोर कारावास तथा 5000 रूपये तक जुर्माने का प्रावधान है।

(4) "इलेक्ट्रोहोम्योपैथी/आल्टर्नेटिव मेडिसिन" :- देश के विधान अनुसार स्थापित चिकित्सा पद्धति नहीं है। इन पद्धतियों के व्यवसायों हेतु माननीय उच्च न्यायालय, पश्चिम बंगाल, मध्य प्रदेश तथा नई दिल्ली द्वारा इनके विरुद्ध कोई कार्यवाही न किये जाने संबंधी निर्देश है। किन्तु इन पद्धतियों के चिकित्सा व्यवसायी केवल अपनी पद्धति में ही चिकित्सा व्यवसाय कर सकते हैं। याचिका क्रमांक 502/99 (डॉ. मुकेश श्रीवास्तव विरुद्ध मध्य प्रदेश शासन), 2957/94 (काउन्सिल ऑफ आल्टरनेटिव सिस्टम विरुद्ध मध्य प्रदेश शासन), 2018/92 (नेशनल डेव्हलपमेंट सोसायटी ऑफ इलेक्ट्रोहोम्योपैथी विरुद्ध मध्य प्रदेश शासन) एवं अन्य याचिकाओं में पारित आदेश दिनांक 19.03.1999 के पैरा-10 में माननीय उच्च न्यायालय, जबलपुर द्वारा "इलेक्ट्रोहोम्योपैथी/आल्टर्नेटिव मेडिसिन" अर्हताधारियों के लिये निम्न व्यवस्था जारी की गई है :-

"By way of abundant caution I may state that, in case, practitioners practice or impart education in the branches of Allopathy, Ayurvedic, Unani or Naturopathy which are regulated by various enactments, their action shall be totally illegal and the respondents are free to take actions against them in accordance with law."

क्योंकि "इलेक्ट्रोहोम्योपैथी/आल्टर्नेटिव मेडिसिन" अर्हताधारी मान्य पद्धतियों के अंतर्गत अर्हताधारी नहीं है। माननीय उच्च न्यायालय के उपरोक्त आदेशानुसार इनको यद्यपि इनकी विधा में चिकित्सा व्यवसाय की पात्रता है :-

(i) इनका पंजीयन मध्य प्रदेश उपचर्यागृह तथा रूजोपचार संबंधी स्थापना (रजिस्ट्रीकरण तथा अनुज्ञापन) अधिनियम-1973 के अंतर्गत नहीं किया जाना है। किन्तु उक्त अधिनियम की धारा-8 के अंतर्गत इन पर कार्यवाही भी नहीं की जाएगी।

(ii) "इलेक्ट्रोहोम्योपैथी/आल्टर्नेटिव मेडिसिन" अर्हताधारी अभिधान "डॉक्टर" का उपयोग करने हेतु पात्र नहीं है। यदि यह अर्हताधारी अभिधान "डॉक्टर" का उपयोग करते हैं तो उपरोक्त पैरा 2 में प्रावधानानुसार इनके विरुद्ध दण्डात्मक कार्यवाही की जाए (याचिका क्रमांक 7352/07 में माननीय उच्च न्यायालय, जबलपुर का आदेश दिनांक 22.07.2010)

03. कृपया उक्त प्रावधानों के अंतर्गत जिले में फर्जी चिकित्सकों के विरुद्ध कार्यवाही अपेक्षित है। जिले में कार्यपालिक दण्डाधिकारी/उप पुलिस अधीक्षक तथा मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी अथवा उनके द्वारा नामांकित चिकित्सा अधिकारी का एक दल गठित कर फर्जी चिकित्सक/झोला छाप की पहचान कर उपरोक्त प्रावधानों के अंतर्गत प्रभावी कार्यवाही कर इन अपात्र चिकित्सकों द्वारा किये जा रहे व्यवसाय पर अंकुश लगाने की कार्यवाही करें।

04. कृपया उक्त निर्देशों के अधीन 15 नवम्बर 2017 से 31 दिसम्बर 2017 तक अभियान चलाकर कार्यवाही की जाए तथा की गई कार्यवाही का प्रतिवेदन आयुक्त, स्वास्थ्य सेवायें को संलग्न प्रारूप में भेजा जाना सुनिश्चित करें।

संलग्न:- उपरोक्तानुसार।



(गौरी सिंह)

प्रमुख सचिव

मध्य प्रदेश शासन

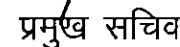
लोक स्वास्थ्य एवं परिवार कल्याण विभाग

पृ. क्रमांक / ~~46.10.10~~ / 2017 / 17 / मेडि-2,

भोपाल, दिनांक 16/11/2017

प्रतिलिपि:- सूचनार्थ एवं आवश्यक कार्यवाही हेतु :-

01. अपर मुख्य सचिव (गृह) की ओर भेज कर निवेदन है कि उपरोक्तानुसार कार्यवाही कारने हेतु संबंधित अधिकारियों को निर्देश प्रदान करने का कष्ट करें।
02. पुलिस महानिदेशक, भोपाल की ओर अग्रिम कार्यवाही हेतु प्रेषित।
03. आयुक्त, स्वास्थ्य सेवायें की ओर प्रेषित कर लेख है कि किसी संयुक्त संचालक स्तर के अधिकारी को अभियान अवधि में की जा रही कार्यवाही की मॉनिटरिंग का कार्य सौंपे तथा समय-समय पर आप भी इसकी समीक्षा करें।
04. समस्त मुख्य चिकित्सा एवं स्वास्थ्य अधिकारियों की ओर भेज कर निर्देश दिये जाते हैं कि वे जिला कलेक्टरों एवं पुलिस अधीक्षकों से सम्पर्क कर फर्जी चिकित्सकों द्वारा चलाये जा रहे व्यवसाय पर अंकुश लगाने हेतु जिला स्तर पर गठित दल के साथ कार्यवाही कर पत्र के साथ संलग्न प्रारूप में कलेक्टर के माध्यम से जानकारी 10 जनवरी 2018 तक भिजवाया जाना सुनिश्चित करें।



प्रमुख सचिव

मध्य प्रदेश शासन

लोक स्वास्थ्य एवं परिवार कल्याण विभाग

फर्जी चिकित्सक / झोला छाप डॉक्टरों एवं अन्य राज्य में पंजीकृत फर्जी चिकित्सकों के विरुद्ध दिनांक 15 नवम्बर 2017 से 31 दिसम्बर 2017 की अवधि में की गई कार्यवाही का विवरण

क्रमांक	संभाग का नाम	जिले का नाम	गठित की गई टीम की संख्या	टीम द्वारा जांच किये फर्जी/झोला छाप चिकित्सकों की संख्या	फर्जी/झोला छाप चिकित्सकों के विरुद्ध की गई कार्यवाही		कितनों को रिमार्क सजा हुई।	
					कितने क्लिनिक बंद किये गये।	कितनों के खिलाफ एफ.आई. न्यायालय में चालान आर. दर्ज कराई दर्ज किया गया। गई।		
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संचालनालय स्वास्थ्य सेवायें
मध्यप्रदेश

क्रमांक/अपशा/सिल-8/एफ-292/2011/1044

भोपाल, दिनांक 26/08/2008

से

- (1) समस्त कलेक्टर,
मध्यप्रदेश
- (2) समस्त जिला पुलिस अधीक्षक,
मध्यप्रदेश

विषय:-फर्जी चिकित्सकों/डोला छाप डॉक्टरों/मध्यप्रदेश में चिकित्सा व्यवसाय कर रहे अन्य राज्य में पंजीकृत फर्जी चिकित्सकों के विरुद्ध कार्यवाही।

संदर्भ:-संचालनालय का पत्र क्रमांक/अपशा/सिल-4/08/एफ-292/1044 दिनांक 25.02.2008

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मध्य प्रदेश में अपात्र फर्जी चिकित्सकों, अन्य प्रदेशों में पंजीकृत किन्तु मध्य प्रदेश में अमान्य चिकित्सा पद्धतियों, झोला छाप चिकित्सकों द्वारा रोगियों का उपचार किया जा रहा है। अधिकांश ऐसे चिकित्सक एलोपैथी पद्धति की औषधियां रोगियों को दे रहे हैं। बिना उपचार के इन प्रकार का उपचार घातक होता है। ऐसे कई प्रकरण सामने आये हैं जिनमें फर्जी चिकित्सकों द्वारा मृत्यु ई-केस देने से रोगियों को एक्सरे, मैग्नीट आदि की मदद से बिना सही इन्जेक्शन के सिपान से रोगियों की मृत्यु भी हो गई है।

उपरोक्त तथ्यों एवं समय समय पर माननीय उच्च न्यायालय के आदेशों के अन्तर्गत पत्र क्रमांक 1044 दिनांक 25.02.2008 द्वारा विभिन्न मान्य चिकित्सा पद्धतियों पर कार्य करने वाले फर्जी चिकित्सकों/डोला छाप डॉक्टरों आदि पर विभिन्न चिकित्सा शैक्षिक संस्थानों के अन्तर्गत कार्यवाही हेतु दिशा-निर्देश जारी किये गये थे किन्तु प्रदेश में अवैध चिकित्सा व्यवसाय पर कोई जोर कार्यवाही नहीं की गई है। माननीय मध्यप्रदेश मानव अधिकार आयोग द्वारा भी अवैध चिकित्सा व्यवसाय पर विन्ता व्यक्त करते हुये प्रकरण क्रमांक 486/छिन्दवाड़ा/10 में निम्न अनुशंसा की गई है :-

“निम्नलिखित डॉक्टर पाये जाये, जिनके पास कोई डिग्री नहीं है उनके विरुद्ध कठोरता पूर्वक कार्यवाही की जाये, ताकि व्यक्तियों को उनके द्वारा किये जाये वाले इलाज से कोई क्षति न हो सके।”

उपरोक्त के संदर्भ में अपात्र व्यक्तियों द्वारा किये जा रहे चिकित्सा व्यवसाय पर कठोर लगाने के लिए निम्न अनुसार निम्न प्रावधान उपलब्ध हैं :-

- (1) मध्यप्रदेश उपचर्यागृह तथा रुजोपचार संबंधी स्थापनाएं (रजिस्ट्रीकरण तथा अनुज्ञापना अधिनियम 1973 की धारा-3 के प्रावधान अनुसार निजी क्षेत्र के समस्त उपचर्यागृह का रूजोपचार संबंधी स्थापना (नर्सिंग होम/निजी चिकित्सालय/परागर्श केंद्र, औषधि प्रयोगशाला, एक्सरे, डेन्टल क्लीनिक सहित सभी क्लीनिकल इस्टेब्लिशमेंट्स) के अन्तर्गत रजिस्ट्रीकरण तथा अनुज्ञापन के बिना खोले जा सकते हैं न रहे या तकरीबन खोले जा सकते हैं।

- उक्त धारा-3 के उल्लंघन करने पर अधिनियम-1973 की धारा-8 (क)(ए) तथा (द) के अन्तर्गत जुर्माने तथा 3 माह तक के कठोर कारावास का प्रावधान है।

A.C. Bhandari
Rajesh Kumar

- मध्यप्रदेश उपचर्यागृह तथा रूजोपचार संबंधी स्थापनाएं (रजिस्ट्रीकरण तथा अनुज्ञापन) अधिनियम 1973 के अन्तर्गत विधि अनुरार केवल निम्न मान्य चिकित्सा पद्धतियों के अन्तर्गत कार्यरत क्लीनिकल इस्टेब्लिशमेंट्स/नर्सिंग होम आदि के पंजीयन का प्रावधान है :-
- अ. आधुनिक चिकित्सा पद्धति एलोपैथी :- इसके अन्तर्गत चिकित्सा व्यवसाय हेतु मेडिकल काउन्सिल ऑफ इंडिया एक्ट 1956 की धारा 15(1) के अन्तर्गत मान्य अर्हताधारी का मध्यप्रदेश मेडिकल काउन्सिल अधिनियम 1987 के अन्तर्गत पंजीयन अनिवार्य है।
- ब. भारतीय चिकित्सा पद्धति :- इसके अन्तर्गत चिकित्सा व्यवसाय हेतु मध्यप्रदेश आयुर्वेद, यूनानी तथा प्राकृतिक चिकित्सा व्यवसायी अधिनियम 1970 के अन्तर्गत शैड्यूल में उल्लेखित मान्य अर्हताधारी का बोर्ड ऑफ आयुर्वेदिक एण्ड यूनानी सिस्टम ऑफ मेडिसिन एण्ड नेचुरोपैथी, मध्यप्रदेश के अन्तर्गत पंजीयन अनिवार्य है।
- स. होम्योपैथी एण्ड बायोकेमिक सिस्टम ऑफ मेडिसिन :- इसके अन्तर्गत चिकित्सा व्यवसाय हेतु होम्योपैथी सेन्ट्रल काउन्सिल एक्ट 1973 की दूसरी/तीसरी अनुसूची में मान्य अर्हताधारी का स्टेट काउन्सिल ऑफ होम्योपैथी, मध्यप्रदेश के अन्तर्गत पंजीयन अनिवार्य है।
- (2) "चिकित्सा शिक्षा संस्था (नियंत्रण) अधिनियम-1973" की धारा 7-ग के अनुसार अभिधान "डॉक्टर" का उपयोग केवल उपरोक्त मान्य चिकित्सा पद्धतियों में रजिस्टर्ड मेडिकल प्रैक्टिशनर ही कर सकते हैं। अपात्र व्यक्ति द्वारा उक्त अभिधान का उपयोग चिकित्सा शिक्षा संस्था (नियंत्रण) अधिनियम 1973 की धारा 8(2) के अन्तर्गत 3 वर्ष कारावारा या रूपयें 50,000 जुर्माने या दोनों से दण्डनीय होगा।
- (3) एलोपैथी चिकित्सा पद्धति में केवल वे ही चिकित्सा व्यवसाय हेतु पात्र है जो मेडिकल काउन्सिल आफ इंडिया एक्ट 1956 की धारा-15(1) में उल्लेखित अर्हता धारी होकर मध्यप्रदेश मेडिकल काउन्सिल एक्ट 1987 के अन्तर्गत पंजीकृत हो। अपात्र एवं अपंजीकृत व्यक्तियों द्वारा एलोपैथी चिकित्सा पद्धति में चिकित्सा व्यवसाय करने पर मध्यप्रदेश मेडिकल काउन्सिल एक्ट 1987 धारा-24 के अन्तर्गत 3 वर्ष तक के कठोर कारावारा तथा 5000 रु. तक जुर्माने का प्रावधान है।
- (4) "इलेक्ट्रोहोम्योपैथी/आल्टर्नेटिव मेडिसिन" देश के विधान अनुसार स्थापित चिकित्सा पद्धति नहीं है इन पद्धतियों के व्यावसायिक हेतु माननीय उच्च न्यायालय पश्चिम बंगाल, मध्यप्रदेश तथा दिल्ली द्वारा इनके विरुद्ध कोई कार्यवाही न किये जाने संबंधी निर्देश है किन्तु इन पद्धतियों के चिकित्सा व्यवसायी केवल अपनी पद्धति में ही चिकित्सा व्यवसाय कर सकते हैं। यादिका क्रमांक 502/99 (डॉ. मुकेश श्रीवास्तव विरुद्ध मध्यप्रदेश शासन), 2957/94 (काउन्सिल आफ आल्टर्नेटिव सिस्टम विरुद्ध मध्यप्रदेश शासन), 2018/92 (नेशनल डेव्हलपमेंट सोसायटी आफ इलेक्ट्रोहोम्योपैथी विरुद्ध मध्यप्रदेश शासन) एवं अन्य यादिकाओं में पारित आदेश दिनांक 19.03.1999 के पैरा-10 में माननीय उच्च न्यायालय जबलपुर द्वारा "इलेक्ट्रोहोम्योपैथी/आल्टर्नेटिव मेडिसिन" अर्हताधारियों के लिए निम्न व्यवस्था जारी की गई है :-

"By way of abundant caution I may state that, in case, the practitioners practice or impart education in the branches of Allpathy, Ayurvedic, Unani or Naturopathy which are regulated by various enactments, their action shall be totally illegal and the respondents are free to take actions against them in accordance with law."

Dr. Bhanu Verma
Bajesh

क्योंकि "इलेक्ट्रोहोम्योपैथी/आल्टर्नेटिव मेडिसिन" अर्हताधारी मान्य पदवीय के अन्तर्गत अर्हताधारी नहीं है मानीय उच्च न्यायालय के उपरोक्त आदेशानुसार इनका यद्यपि इनकी विधा में चिकित्सा व्यवसाय की पात्रता है :-

- (i) इनका पंजीयन मध्यप्रदेश उपचर्यागृह तथा रुजोधचार संघी स्थापनाएं (रजिस्ट्रीकरण तथा अनुज्ञापन) अधिनियम-1973 के अन्तर्गत नहीं किया जाता है किन्तु उक्त अधिनियम की धारा-8 के अन्तर्गत इन पर कोई कार्यवाही भी नहीं की जाएगी।
- (ii) "इलेक्ट्रोहोम्योपैथी/आल्टर्नेटिव मेडिसिन" अर्हताधारी अभिधान "डॉक्टर" का उपयोग करने हेतु पात्र नहीं है यदि यह अर्हताधारी अभिधान "डॉक्टर" का उपयोग करते हैं तो उपरोक्त पैरा-2 में प्रावधानानुसार इनके विरुद्ध आवश्यक कार्यवाही की जाए (याचिका क्रमांक 7352/07 में माननीय उच्च न्यायालय जबलपुर का आदेश दिनांक 22.07.2010)

कृपया आपके नेतृत्व में जिले में डिप्टी कलेक्टर, उम पुलिस अधीक्षक तथा मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी पर आधारित एक दल का गठन कर, अभियान चलाकर फंजी चिकित्सकों/डोला छाप डॉक्टरों की पहचान कर उपरोक्त प्रावधान अनुसार प्रभावी कार्यवाही कर इन अपात्र व्यक्तियों द्वारा किये जा रहे चिकित्सा व्यवसाय पर अंकुश लगाने की कार्यवाही करें। कृपया प्रकरण में आवश्यक कार्यवाही कर 30 दिवस की अवधि में पालन प्रतिवेदन भेजना सुनिश्चित करें।

(जि.सू.नं. कंसाटिया) 24/8/11

आयुक्त स्वास्थ्य
मध्यप्रदेश

भोपाल, दिनांक 26/8/2011

पृ.क्रमांक/अप्रशा./सेल-6/एफ-292/2011/1085
प्रतिलिपि:-

1. अपर मुख्य सचिव, गृह विभाग, मध्यप्रदेश शासन, मंत्रालय, वस्त्र भवन की ओर भेजकर निर्देशन है कि कृपया गृह विभाग से भी आवश्यक दिशा-निर्देश जारी करना चाहेंगे।
2. प्रमुख सचिव, मध्यप्रदेश मानव अधिकार आयोग, पर्यावास भवन, खण्ड-1, भोपाल की ओर उनके क्रमांक 821/नाअआ/अनु./446/छिन्दवाड़ा/2011 दिनांक 18.04.2011 के संदर्भ में सूचनाएं।
3. प्रमुख सचिव, मध्यप्रदेश शासन, लोक स्वास्थ्य एवं परिवार कल्याण विभाग की ओर क्रमांक 842/672/2011/मेडि-2/17 दिनांक 05.07.2011 के संदर्भ में सूचनाएं।
4. पुलिस महानिदेशक, पुलिस मुख्यालय, जहांगीबाद भोपाल की ओर सूचनाएं एवं आवश्यक कार्यवाही हेतु।
5. अपर संचालक (प्रशासन), स्थानीय कार्यालय की ओर क्रमांक 4/शिका/स्पेसेल /2011/1577 दिनांक 21.07.2011 के संदर्भ में सूचनाएं।
6. संभागीय संयुक्त संचालक, स्वास्थ्य सेवाएं, भोपाल, इन्दौर, उज्जैन, खालियर, जबलपुर, सागर तथा सीवा की ओर सूचनाएं एवं आवश्यक कार्यवाही हेतु।
7. अमरत मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी, मध्यप्रदेश की ओर भेजकर निर्देश दिये जाते हैं कि जिला कलेक्टर एवं पुलिस अधीक्षक से सम्पर्क कर फंजी चिकित्सकों द्वारा चलाये जा रहे चिकित्सा व्यवसाय पर अंकुश लगाने हेतु उपरोक्तानुसार कार्यवाही एक मिशन के रूप में करें।
8. श्री थामस, कम्प्यूटर कक्षा, स्थानीय कार्यालय की ओर भेजकर-इसको विभागीय वेब साइट पर प्रदर्शित करें।
9. आदेश फाइल।

आयुक्त स्वास्थ्य 26/8/11
मध्यप्रदेश

Poojesh Verma JSP

Please observe
through RAJ
Sponsored. and
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128 JUN 2011
ISSUED
MINISTRY OF HEALTH & FAMILY WELFARE

89904 (S)
No.C.30011/22/2010-HR
Government of India
Ministry of Health & Family Welfare
(Department of Health Research)

30

Nirman Bhawan, New Delhi;
Dated: 21.06.2011.

ORDER

Subject:- Regarding practice, education and research in alternative system of medicine

An order was passed on 11.10.2010 by the Lucknow Bench of the Hon. High Court of Judicature at Allahabad in the WP No.3992/2004 filed before the Hon. High Court of Judicature at Allahabad at Lucknow Bench. In Electro Homeo Medical Association of India vs. State of UP & 4 Ors. as under:

" Heard Learned counsel for the parties and perused the record.

With regard to its grievance, the petitioner may make a representation within a month from today in the light of the Government Order dated 5.5.2010 (No.V.25011/276/2009-HR) issued by the Government of India, Ministry of Health & Family Welfare Department of Health Research.

If the representation made by the petitioner within the aforesaid period, the same shall be decided by the Government of India within three months from the date of its filing.

With above observation, the writ petition is finally disposed of."

2. Consequently, in accordance with the said order, Sh. Taj All, Secretary, Electro Homeo Medical Association of India, Lucknow has filed a representation in the matter vide his letter dated 03.11.2010 in which he has made the following submissions and prayer:-

" That the order dated 25.11.2003 addressed to different officials and copies sent, however, to all their subordinates was mis-interpreted as if the Government of India has altogether prohibited the development and research of Electropathy, however the order dated 05.05.2010 has clarified that there is no proposal to stop the petitioner from practicing in electropathy or imparting education as long as this is done within the parameters of the order dated 25.11.2003 and once the legislation to recognize new system of medicine is enacted any practice or education would be regulated in accordance with the said Act.

On the basis of the order dated 25.11.2003 different authorities issued preventive orders as if there can be no teaching or practice in Electropathy/Electro Homoeopathy at all and that forced the applicant to file the above noted writ petition in the Hon'ble High Court Allahabad, Lucknow Bench, Lucknow. However in the meantime the order dated 05.05.2010 has clarified the position and the Hon'ble Division Bench in the light thereof has opined that now no detailed order is required to be passed and the petitioner may make the representation to the Government of India and Government of India may pass the order in the light of the order dated 05.05.2010.

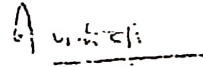
It is, therefore, respectfully prayed that the authorities to whom the order No.R.14015/25/96-U&H(R)(Pt.) dated 25.11.2003 was issued, may kindly be communi-

cated to read the order in the light of the Government of India later order dated 05.05.2010 and act only in accordance with the same and may not cause any interference in contravention of the same"

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 Governments/UTs for information and necessary action. With this your representation is disposed off.

5. This issues with the approval of Secretary (Department of Health Research), Ministry of Health & Family Welfare, New Delhi.


(J. P. Mehta)
Director (HR)

To,

All Health Secretaries of State Governments/Union Territory Administrations.

Copy to:

1. Sh. Taj Ali, Secretary, Electro Homeo Medical Association of India, 8 - Lal Bagh, Lucknow - 226001 (Uttar Pradesh).
2. The Registrar, High Court, Lucknow Bench, Lucknow.