

A.F.R

Court No. - 39

Reserved on 19.11.2013

Delivered on 16.12.2013

Case :- WRIT - C No. - 64481 of 2012

Petitioner :- Praveen Kumar

Respondent :- State Of U.P.

Counsel for Petitioner :- Hira Lal Singh Kushwaha, Pankaj Dube

Counsel for Respondent :- C.S.C.

Hon'ble V.K. Shukla, J.

Hon'ble Suneet Kumar, J.

Praveen Kumar has approached this Court praying therein for following reliefs:

(i) *a writ, order or direction in the nature of mandamus commanding and directing the respondent to permit the petitioner to practice as Modern Medicines (Allopathic Medicines) alongwith Aurvedic Medicines in the wake and light of the judgment of Hon'ble Supreme Court in the case of State of Haryana Vs. Phool Singh decided on July, 20, 1998.*

(ii) *a writ, order or direction in the nature of mandamus commanding and directing the respondent not to disturb the petitioner's career in any way even alleging him as Jhola Chhap Doctor."*

Petitioner claims that he has got to his credit B.A.M.S. Degree from Rajiv Gandhi University of Health Science Karnataka and is registered with registration No. 57099 with Board of Aurvedic and Unani Tibbi Systems of Medicine, U.P.. Petitioner claims that he has also done specialization course in Child Health (Paediatric) C.C.H and is having certificate no. IHSM/7903/11. Petitioner further claims that students of MBBS, BUMS, BAMS and BHMS are equally eligible for CCH Course. Petitioner submits that he is a competent B.A.M.S Doctor having knowledge and training of both modern and aurvedic medicines, as the course of B.A.M.S. comprises not only the syllabus and curriculum of Aurvedic medicines but also to great extent the syllabus and curriculum of modern medicines, in such a situation and in this background, petitioner claims that he is entitled to and deserves to practice modern medicines also alongwith Aurvedic medicines and in the said practice no obstructions should be caused by the respondents.

Petitioner has proceeded to mention that as there is dearth of

doctors, in view of the same petitioner should be permitted to practice in modern medicines (Allopathy medicines) alongwith Aurvedic medicines and any impediment sought to be created to his practice be stopped.

To the said writ petition counter affidavit has been filed and therein stand has been taken that request as has been made by the petitioner cannot be accepted as petitioner does not fulfil requisite minimum eligibility criteria provided for under Indian Medical Council Act, 1956 and petitioner is not at all qualified to practice in the said field and petitioner cannot claim as a matter of right to practice in Modern Medicines and petitioner can practice in the branch of "Indian Medicine" only.

To the said counter affidavit, rejoinder affidavit has been filed disputing the averments mentioned therein and the judgment in the case of ***State of Haryana Vs. Phool Singh*** decided on 20.07.1998 has been appended and has been relied upon.

After pleadings mentioned above have been exchanged present writ petition has been taken up for final hearing and disposal.

Sri Hira Lal Singh Kushwaha, learned counsel for the petitioner submitted with vehemence that in the present case petitioner is fully entitled to practice even "Modern medicines" as he has knowledge and training of general use of allopathic medicine which is included in the course of B.A.M.S. Degree and there being dearth of Doctors in the State of U.P., such permission should be accorded specially keeping in view the provision of Rule 2 (ee) of the Drugs and Cosmetics Rules, 1945 as well as the provisions of Section 17 (3) (b) of the Indian Medicine Central Council Act, 1970 which gives privilege to the practitioners of Indian System of Medicine to practice alongwith "Indian medicine" any system of medicine and accordingly writ petition deserves to be allowed.

Countering the said submission Sri J.K.Tiwari, learned Standing counsel submitted that petitioner is entitled to practice in the Indian System of Medicine Branch comprising of Ashtang Ayurveda, Sidha the qualification recognized under the Indian Medicine Central Council Act, 1970 and is not at all entitled to practice in Allopathy medicine which is provided for under the Indian Medical Council Act, 1956, as such writ petition deserves to be dismissed.

In order to examine the issue as has been sought to be raised by the petitioner before this Court, this Court proceeds to take note of statutory provision which governs the field of "Modern Medicines" as well as "Indian Medicines", as well as the relevant provisions of Drugs and Cosmetics Rules , 1945.

To start with the provision as contained under the Drugs and Cosmetics Rules, 1945, Section 2(ee) being relevant is reproduced below:

2[(ee) "Registered medical practitioner" means a person__
(i)holding a qualification granted by an authority specified or notified under Section 3 of the Indian Medical Degrees Act, 1916 (7 of 1916), or specified In the Schedules to the Indian Medical Council Act, 1956 (102 of 1956); or
(ii) registered or eligible for registration in a medical register of a State meant for the registration of persons practicing the modern scientific system of medicine 3 [excluding the Homoeopathic system of medicine]
; or
(iii) registered in a medical register, 3 other than a register for the registration of Homoeopathic practitioner, of a State, who although not falling within sub-clause (i) or sub-clause (ii) declared by a general or special order made by the State Government in this behalf as a person practising the modern scientific system of medicine for the purposes of this Act; or
(iv) registered or eligible for registration in the register of dentists for a State under the Dentists Act, 1948 (16 of 1948); or
who is engaged in the practice of veterinary medicine and who possesses qualification approved by the State Government] "

The Indian Medical Council Act, 1956 holding the field Modern medicine (Allopathic) has been promulgated with an object for reconstitution of Medical Council of India and the maintenance of Medical Register of India. Section 2 of the Act deals with definition and Sub-Sections (d), (f), (h) and (k) being relevant are being reproduced below:

"(d) "Indian Medical Register" means the medical register maintained by the Council.

(f) "medicine" means modern scientific medicine in all its branches and includes surgery and obstetrics, but does not include veterinary medicine and surgery .

(h) recognised medical qualification" means any of the medical

qualifications included in the Schedules.

(k) "State Medical Register" means a register maintained under any law for the time being in force in any state regulating the registration of practitioners of medicine."

Section 11 of this Act provides that the medical qualifications granted by any University or Medical Institution in India which are included in the First Schedule shall be recognised medical qualifications for the purposes of this Act. The First Schedule enumerates the recognised medical qualifications granted by Universities or Medical institutions in India. Section 15(1) provides that subject to the other provisions contained in this Act, the medical qualifications included in the Schedule shall be sufficient qualification for enrolment on any State Medical Register. Section 15(2)(b) provides that save as provided in Section 25 no person other than a medical practitioner enrolled on a State Medical Register, shall practise medicine in any State. Section 15(3) lays down that any person who acts in contravention of any provision of Sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

The Indian Medicine Central Council Act. 1970 was enacted by the Parliament and was published on 21-12-1970. Its preamble shows that it is an Act to provide for the Constitution of a Central Council of Indian Medicine and the maintenance of a Central Register of Indian Medicine and for matters connected therewith. Section 2(1) of this Act gives the definition clause and Clauses (b), (c), (d), (e), (j) and (h) of Section 2(1) read as follows:

"(b) "Board" means a Board, Council, Examining Body or Faculty of Indian Medicine (by whatever name called) constituted by the State Government under any law for the time being in force regulating the award of medical qualifications in, and registration of practitioners of, Indian medicine;

(c) "Central Council" means the Central Council of Indian Medicine constituted under section 3;

(d) "Central Register of Indian Medicine" means the register maintained by the Central Council under this Act.

(e) "Indian Medicine" means the system of Indian medicine commonly known as Ashtang Ayurveda, Siddha or Unani Tibb whether supplemented or not by such modern advances as the Central Council may declare by notification from time to time.

'(ea) "medical college" means a college of Indian medicine, whether known as such or by any other name, in which a person may undergo a

course of study or training including any post-graduate course of study or training which will qualify him for the award of a recognized medical qualification;'

(f) "medical institution" means any institution within or without India, which grants degrees, diploma or licenses in Indian medicine.

(g) "prescribed" means prescribed by regulation;

(h) "recognised medical qualification" means any of the medical qualifications, including Post-graduate medical qualification, of Indian medicine included in the Second, Third or Fourth Schedule;

(i) "regulation" means a regulation made under section 36;

(j) "State Register of Indian Medicine" means a register or registers maintained under any law for the time being in force in any State regulating the registration of practitioners of Indian Medicine;"

Section 2(1)(e) shows that "Indian Medicine" means the system of Indian medicine commonly known as Ashtang Ayurveda, Siddha or Unani Tibb. Allopathic system of medicine is not at all included in the aforesaid definition. Chapter III of this Act deals with recognition of medical qualifications and Section 14 thereof provides that the medical qualifications granted by any University, Board or other medical institution in India which are included in the Second Schedule shall be recognised medical qualifications for the purposes of this Act. The Second Schedule to the Act gives a long list of recognised medical qualifications in Indian medicine granted by Universities. Boards and other Medical Institutions in India, Part 1 of this Schedule deals with Ayurveda and Siddha and Part II deals with Unani. Section 17(1) of this Act provides that subject to the other provisions contained in this Act any medical qualification included in the Second Schedule shall be sufficient qualification for enrolment on any State Register of Indian Medicine. Sub-section (2) of Section 17 imposes certain restrictions and Clause (b) thereof lays down that no person other than a practitioner of Indian medicine who possesses a recognised medical qualification and is enrolled on a State Register or the Central Register of Indian Medicine shall practise Indian Medicine in any State. This provision clearly shows that unless a person possesses a recognised medical qualification as laid down in the Schedule of the Act and is enrolled on a State Register or the Central Register of Indian Medicines, he cannot practise Indian Medicine. A similar restriction is contained in Clause (a) of Section 17(2) namely, that unless a person possesses a recognised medical qualification and is enrolled on a State Register or the Central Register of Indian medicine, he cannot hold office as Vaidya, Siddha. Hakim or

Physician or any other office in Government or in any institution maintained by a local or other authority. Sub-Section (3) of Section 17 provides for by mentioning that nothing contained in sub-section (2) of Section 17 shall effect the right of practitioner of Indian Medicine. Section 17(4) provides that any person who acts in contravention of any provisions of Sub-section (2) shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

On the parameters of the provisions quoted above, issue as raised by petitioner is being examined by this Court.

The scope of Section 15 of Indian Medical Council Act, 1956 has been considered before the Apex Court in the case of **Poonam Varma Vs. Ashwin Patel 1996 (4) SCC 332**, wherein the practitioner registered under Bombay Homoeopathic and Biochemic Practitioner Act, 1959 proceeded to administer modern medicine, then Apex Court took the view, that he was not qualified to practice Allopathic, and had entered into prohibited field of Allopathic. Relevant extract of the said judgement is as follows:

“31. The impact of the above provisions is that no person can practice medicine in any State unless he Possesses the requisite qualification and is enrolled as a Medical Practitioner on State Medical Register. The consequences for the breach of these provisions are indicated in Sub-section

32. If a person practices medicine without possessing either the requisite qualification or enrollment under the Act on any State Medical Register, he becomes liable to be punished with imprisonment or fine or both.

32. Apart from the Central Act mentioned above, there is the Maharashtra Medical Council Act 7 1965 dealing with the registration of Medical Practitioners and recognition of qualification and medical institutions. Section 2 (d) defines 'Medical Practitioner' or 'Practitioner' as under : "Medical Practitioner or Practitioner means a person who is engaged in the practice of modern scientific medicine in any of its branches including surgery and obstetrics, but not including Veterinary medicine or surgery or the Ayurvedic, Unani, Homoeopathic or Biochemic system of medicine

(emphasis supplied)

33. It will be seen that the definition consists of two distinct parts; the first part contains the conclusive nature of phraseology and the latter part is the exclusionary part which specifically excludes Homoeopathic or Biochemic System of Medicine. A register of Medical Practitioners is to be maintained in terms of the mandate contained in Section 16(1) of the Act Under Sub-section (3), a person possessing requisite qualification and on payment of requisite fee can apply for registration of his name in the aforesaid Register.

34. A combined reading of the aforesaid Acts, namely, the Bombay Homoeopathic Practitioners Act, 1959, the Indian Medical Council Act, 1956 and the Maharashtra Medical Council Act, 1965 indicates that a person who is registered under the Bombay Homoeopathic Practitioners Act, 1959 can practice Homoeopathy only and that he cannot be registered under the Indian Medical Council Act, 1956 or under the State Act, namely, the Maharashtra Medical Council, Act, 1965, because of the restriction on registration of persons not possessing the requisite qualification. So also, a person possessing the qualification mentioned in the Schedule appended to the Indian Medical Council Act, 1956 or the Maharashtra Medical Counsel Act, 1965 cannot be registered as a Medical Practitioner under the Bombay Homeopathic Practitioners Act, 1959, as he does not possess any qualification in Homoeopathic System of Medicine. The significance of mutual exclusion is relevant inasmuch as the right to practice in any particular system of medicine is dependent upon registration which is permissible only if (qualification) and that too, recognised qualification, is possessed by a person in that System.

35. It is true that in all the aforesaid Systems of Medicine, the patient is always a human being. It is also true that Anatomy and Physiology of every human being all over the world, irrespective of the country, the habitat and the region to which he may belong, is the same. He has the same faculties and same systems. The Central Nervous System, the Cardio-Vascular System, the Digestive and Reproductive systems etc. are similar all over the world. Similarly, Emotions, namely, anger, sorrow, happiness, pain etc. are naturally possessed by every human being.

36. But merely because the Anatomy and Physiology are similar, it does not mean that a person having studied one System of Medicine can claim to treat the patient by drugs of another System which he might not have studied at any stage. No doubt, study of Physiology and Anatomy is common in all Systems of Medicines and the students

belonging to different Systems of Medicines may be taught physiology and Anatomy together, but so far as the study of drugs is concerned, the pharmacology of all systems is entirely different.

37. an ailment, if it is not surgical, is treated by medicines or drugs. Typhoid Fever, for example, can be treated not only under Allopathic System of medicine, but also under the Ayurvedic, Unani and Homoeopathic Systems of Medicine by drugs prepared and manufactured according to their own formulate and pharmacopoeia . Therefore, a person having studied one particular System of Medicine cannot possibly claim deep and complete knowledge about the drugs of the other System of Medicine.

38. The bane of Allopathic medicine is that it always has a side-effect. A warning to this effect is printed on the trade label for the use of the person (Doctor) having studied that System of Medicine.

39. Since the law, under which Respondent No. 1 was registered as a Medical Practitioner, required him to practice in HOMOEOPATHY ONLY, he was under a statutory duty not to enter the field of any other System of Medicine as, admittedly, he was not qualified in the other system, Allopathy, to be precise. He trespassed into a prohibited field and was liable to be prosecuted under Section 15(3) of the Indian Medical Council Act, 1956. His conduct amounted to an actionable negligence particularly as the duty of care indicated by this Court in DR. LAXMAN JOSHI'S CASE (SUPRA) WAS BREACHED BY HIM ON ALL THE THREE COUNTS INDICATED THEREIN.

41. A person who does not have knowledge of a particular System of Medicine but practices in that System is a Quack and a mere pretender to medical knowledge or skill, or to put it differently, a Charlatan.

As per the said judgement right to practice in particular system of medicine is dependent upon registration which is permissible only if qualification is there, and that too, if recognised qualification is possessed by a person in that system. Apex Court further made it clear that merely because the subject of Anatomy and Physiology are similar, it does not mean that a person having studied one System of Medicine can claim to treat the patient by drugs of another System which he might not have studied at any stage.

Thereafter once again before the Apex Court in the case of **Dr. Mukhtiar Chand and others Vs. State of Punjab and others**

reported in (1998) 7 SCC 579, issue was raised as to whether an incumbent who is engaged in medical practice in Indian medicines can he be permitted to practise in modern medicine based on the provisions of Drugs and Cosmetics Rules 1945 vis-a vis the provisions of 1956 Act and 1970 Act. The answer has been in negative as follows:

"However, the claim of those who have been notified by State Government under clause (iii) of Rule 2(ee) of the Drugs Rules and those who possess degrees in integrated courses to practice allopathic medicine is sought to be supported from the definition of Indian medicine in Section 2(e) of the 1970 Act, referred to above, meaning the system of Indian medicine commonly known as Ayurvedic, Siddhar or Unani Tabi whether supplemented or not by such modern advances as the Central Council may declare by notification from time to time. A lot of emphasis is laid on the words italicized to show that they indicate modern scientific medicine have been included in the syllabi. A degree-holder in integrated courses is imparted not only the theoretical knowledge of modern scientific medicine but also training there under, is the claim. We shall examine the notifications issued by the Central Council to ascertain the import of those words. In its resolution dated 11-3-1987. The Central Council elucidated the concept of "modern advances" as follows;

"This meeting of the Central Council hereby unanimously resolved that in clause (e) of sub-section (1) of Section 2 of the 1970 Act of the IMCC Act, 'the modern advances', the drug had made advances under the various branches of modern scientific system of medicine, clinical, non-clinical biosciences, also technological innovations made from time to time and declare that the courses and curriculum conducted and recognized by the CCIM are supplemented by such modern advances."

On 30-10-1996, a clarificatory notification was issued, which reads as under:

"As per proven under Section 2(1) of the Indian Medicine Central Council Act, 1970, hereby the Central Council of Indian Medicine notifies that "institutionally qualified practitioners of Indian system of medicine (Ayurvedic, Siddhar and Unani) are eligible to practice Indian system of medicine and modern medicine including surgery, gynecology and obstetrics based on their training and teaching which are included in the syllabi of courses of ISM prescribed by the Central Council of Indian Medicine after approval of the Government of India.

The meaning of the word "modern medicine" (advances) means advances made in various branches of modern scientific medicine, clinical, non-clinical biosciences, also technological innovations made from time to time and notify that the courses and curriculum conducted and recognized by the Central Council of Indian Medicine are supplemented by such modern advances"

Based on those clarifications, the arguments proceed that persons who registered under the 1970 Act and have done integrated courses, are entitled to practice allopathic medicine. In our view, all that the definition of "Indian medicine" and the clarifications issued by the Central Council enable such practitioners of Indian Medicine to make use of the modern advances in various sciences such as radiology report, (X-ray), complete blood picture report, lipids report, ECG, etc. for purposes of practicing in their own system. However, if any State Act recognizes the qualification of integrated course as sufficient qualification for registration in the State Medical Register of that State, the prohibition of Section 15(2)(b) will not be attracted.

47. A harmonious reading of Section 15 of the 1956 Act and Section 17 of the 1970 Act leads to the conclusion that there is no scope for a person enrolled on the State Register of Indian Medicine or the Central Register of Indian Medicine to practice modern scientific medicine in any of its branches unless that person is also enrolled on a State Medical Register within the meaning of the 1956 Act.

48. The right to practice modern scientific medicine or Indian system of medicine cannot be based on the provisions of the Drugs Rules and declaration made there under by State Government.

"Neither it is averred in the writ petition nor it has been urged that the petitioner is enrolled on a State Medical register as defined in Section 2(k) of Indian Medical Council Act, 1956 and, therefore, he is not entitled to practise modern scientific medicine or to prescribe allopathic drugs. Learned counsel has also referred to certain provisions of Drugs and Cosmetics Rules but in our opinion they are wholly irrelevant as they deal with import manufacture, distribution and sale of drugs and they neither confer nor deal with the right to practise medicine."

The provisions of Indian Medicine Central Council Act, 1970 under the scheme of things provided for show that a person holding a qualification recognised by the aforesaid Act in the system of Indian medicine commonly known as Ashtang. Ayurveda, Siddha or Unani Tibb is entitled to practise only in the discipline in which he has acquired the qualification. The Act does not authorise him to practice in Allopathy system of medicine. The right to practice modern scientific medicine or Indian system of Medicine can not be based on the provisions of Drug Rules and for practising modern medicine, one has to have the qualifications provided for under 1956 Act, alongwith enrolment on State Medical Register.

Contrary to the said view, as quoted above the most surprising feature of present writ petition is that petitioner is placing reliance on the judgment of the Apex Court, in the case, **State of Haryana vs. Phool Singh, 1998-Laws (SC)-7-81**, decided on 20.7.1998 wherein Apex Court has held as follows:

"(1) For the last few days we have heard a batch of Civil matters in which sub-clause (iii), clause (ee) of Rule 2 of the The Drug and Cosmetics Rules 1945 has been the subject matter of debate in its widest spectrum. Prima facie conclusions drawn therefrom make us feel that the judgment of the High Court cannot be faulted with. The respondent does come within the definition of a registered medical practitioner entitled to keep allopathic medicines by virtue of his degree and registration in the state of Bihar. We thus find nothing to interfere in this appeal. The appeal is therefore

dismissed.”

Bare perusal of the said judgment would go to show, that on prima facie basis conclusions drawn by High Court has not been faulted with. Same Bench comprising of Hon'ble M.M. Punchi, C.J., and K.T. Thomas and S.M. Quadri J., based on hearing that is referred to in the judgment itself by mentioning that for last few days we have heard batch of Civil matters, wherein sub-clause (iii), clause (ee) of Rule 2 has been subject matter of debate in its widest spectrum, subsequent to the same have exhaustively dealt with the issue on 8.10.1998, while deciding the case of Dr. Mukhtar Chandra (Supra) and therein altogether different view, has been taken, then for all practical purposes, view as expressed on prima-facie basis in the case of **State of Haryana vs. Phool Singh**, as relied upon by petitioner, has to be accepted as virtually over-ruled. Subsequent reasoned judgment, by the same Bench will hold the field, and accordingly petitioner, cannot get any benefit or advantage of the judgment and order dated 29.7.1998, in the case of **State of Haryana vs. Phool Singh**.

As lines were repeatedly being crossed by incumbents, who were not authorised to practice allopathic branch of medicine, on 25.04.2000 the Apex Court in the case of **D.K. Joshi Vs. State of U.P. reported in 2000 (5) SCC 80** came heavily by issuing following directions:

- (i) All district Magistrates and the Chief Medical officers of the State shall be directed to identify, within a time limit to be fixed by the Secretary, all unqualified/ unregistered medical practitioners and to initiate legal actions against these persons immediately;*
- (ii) Direct all District Magistrates and the Chief Medical Officers to monitor all legal proceedings initiated against such persons;*
- (iii) The Secretary, Health and Family Welfare Department shall give due publicity of the names of such unqualified/ unregistered medical practitioners so that people do not approach such persons for medical treatment.*
- (iv) The Secretary, Health and Family Welfare Department Shall monitor the action taken by all District Magistrates and all Chief Medical Officers of the State and issue necessary directions from time to time to these officers so that such unauthorized persons cannot pursue their medical profession*

in the State

This Court also had an occasion to consider whether the persons holding degrees in Indian Medicines such as Ashang, Ayurved, Siddha, Unani Tibb are authorized to practice Allopathic system of medicines in the case of **Dr. Mehboob Alam vs. State of U.P. and Ors. (06.09.2001) W.P.(Cr.) 5896 of 2000 reported in [(2001) 2 JIC 774 (All)]** and after analysis of provisions of Indian Medical Council Act, 1956 took the view that the medicine means modern scientific medicine for all its branches and includes surgery, and same is entirely different from the Indian Medicine and only a person who possess the qualification enumerated in the first schedule of this order which have been recognized and entitled to be enrolled on any State register, can only practice. A person holding qualification recognised under 1970 Act, does not authorise him to practice Allopathy system of medicine.

This Court once again on issue being raised as to whether incumbents who has got to his credit degree in Indian Medicine can he be permitted to practice in modern medicine, proceeded to consider the matter at length in the case of **Rajesh Kumar Srivastava (II) Vs. A.P. Verma, reported in 2004 (2) ESC (All) 960**, and repelled the submission, so advanced.

Division Bench of this Court once again reiterated the same principal in the case of **Ravinder Kumar Goel vs. State of U.P. 2004 (2) ESC 976**, that a person with Ayurvedic and Unani qualification, if is practising Allopathic, same is illegal.

The field of practice thus stands demarcated i.e. the doctors enrolled in their branch of medicine should not be allowed to practice in any other branch of medicine of which he has not acquired knowledge or has little knowledge. Under the scheme of things provided for, there is mutual exclusion i.e. one is not allowed to practice in any other branch of medicine of which he has not acquired knowledge.

Petitioner has next proceeded to place reliance on the Government Notification dated 25.11.1992, issued by Government of Maharashtra, under Maharashtra Medical Practitioners Act, 1961, as well as on the notification dated 22.01.2004, issued by Central Council of Indian Medicine.

Petitioner will not succeed on this score also, for the reason that the

provisions of Maharashtra Medical Practitioner Act, 1961, cannot be pressed in reference of practice of modern medicine in the State of U.P. Coupled with this, the circular as has been issued, the same has been interpreted by Kerela High Court in the case of **National Integrated Medical Association and another Vs. State of Kerala WA No. 1260 of 2006** (A) decided on the 12.12.2006 wherein the High Court of Kerela at Ernakulam held that the modern advances mentioned in Section 2(e) of the Act of 1970 can only be advanced in Ayurveda, Siddha and Unani and not Allopathic medicine. By virtue of Section 15(2) (b) of the Indian Medical Council Act, 1956 the persons having the prescribed qualifications included in the schedules alone are eligible to practice modern medicine. The words "modern medicine" would be referable to the modern advances made in the respective fields of Ayurveda, Siddha and Unani. The Kerela High Court followed **Mukhtar Chand Vs. State of Punjab AIR 1999 SC 468**. In support of the observations made by it and reiterated that modern advances mentioned in Section 2(3) of the Act of 1970 cannot be interpreted to mean Allopathic Medicines.

Against the judgment of Kerela High Court dated 12.12.2006, Special Leave to Appeal NO.6116 of 2007 had been filed, and the same has also been dismissed on 23.7.2007. Thereafter, Central Council of Indian Medicine, taking note of judicial proceedings in its 158th Meeting dated 28.6.2010 has decided to withdraw all earlier resolutions. Madras High Court also in **Writ Petition No.13696 of 2009, D.J. Kaleem Nawaz, BUMS vs. State of Tamilnadu, decided on 29.10.2010**, wherein prayer was made to the similar effect, not to interfere in administering allopathic medicine, very clearly ruled that such a prayer cannot be accorded and clarifications issued by Central Council of Indian Medicine are of no consequence, wherein it has been mentioned that practitioners of Indian System of Medicine who practised modern scientific system of medicine, allopathic medicine are protected under Section 17(3)(b) of 1970 Act is not correct as provisions of 1956 Act have been ignored.

This Court, also approves of the same view, and further clarifies that a statutory body created under Indian Medicine Central Council Act, 1970 such as Central Council of Indian Medicine, at the point of time when it proceeds

to exercise its statutory authority the same has to be in connection with "Indian Medicine" and not at all beyond the same. Words "Modern advances" has to be contextually interpreted i.e "Modern advances" in the field of Ayurveda, Sidha and Unani and not at all in context of "Modern Medicines". In the context of, practitioners of "Indian Medicine" the practitioners of "Indian Medicine" can make use of modern advances in various sciences such as radiology report (X-ray), complete blood picture report, lipids report, ECG etc for practising in their own system. This does not mean that practitioners of "Indian Medicine" would start acting as Radiologist/Pathologist/Cardiologist. Only for the purposes of practising "Indian Medicine" they can make use of the reports and this will not at all authorize the practitioners of "Indian Medicine" to administer and prescribe modern medicines (allopathic)"

Recently, the Apex Court in the case of ***Bhanwar Kanwar Vs. R.K. Gupta and another reported in (2013) 4 SCC 252*** has taken the view that wherein unauthorized medical treatment is administered, same is unfair trade practice and administering allopathic medicine by person who is qualified in Ayurvedic medicine cannot be approved of. Apex Court in the facts of case, enhanced the compensation amount from Rs.5 lacs to Rs. 15 lacs.

In the said judgment benefit has been sought to be taken of the Government Order dated 24.02.2003. Qua the same, Apex Court has mentioned that in connection with some cases, the High Court Allahabad has issued direction to take action against the quacks who are practising Allopathic medicine but not registered with Medical Council. In order to put restrain from practising modern medicine two further Government Orders have been issued by the State Government on 04.03.2008 and 08.06.2012 wherein State Government has clearly proceeded to issue guidelines mentioning therein that any incumbent who is authorized to practice under Indian Medicine Central Council Act, 1970 is not at all entitled and authorized to prescribe medicines under the Indian Medical Council Act, 1956. Said Government Orders still hold the field and same are in consonance with the repeated view taken by this Court and by the Apex Court that an incumbent who has obtained degree under 1970 Act cannot

be permitted to prescribe modern medicine as provided for under 1956 Act.

Under the scheme of things provided for it is clear and categorical that the definition as has been provided for under Rule 2(ee) of the Drugs and Cosmetics Rules 1945 will not at all come to the rescue and reprieve of the petitioner. Said definition has been used in different context and same does not authorize incumbent having qualification under the Indian Medicine Central Council Act, 1970 to start prescribing medicine which the incumbents registered under Indian Medical Council Act, 1956 only can administer.

Petitioner cannot be permitted to prescribe allopathic/modern medicine as is provided for under Indian Medical Council Act, 1956, by any means, as a person having studied one particular system of medicine cannot possibly claim deep and complete knowledge about the drugs of the other system of medicine, and specially when right to health and medical care is fundamental right under Article 21 read with Articles 39(c), 41 and 43 of Constitution, as expressed by Apex Court, in the case of **Consumer Education and Research Centre Vs. Union of India, AIR 1995 SC 922**, and by further providing that right to life includes protection of health and strength and the minimum requirement to enable the persons to live with dignity. Petitioner will have to practice in his own branch, and it would be a extremely grave situation, to allow petitioner to treat and prescribe a sick incumbent with allopathic medicine. The transgression into other branches of medicine as has been prayed for is not permissible, as same would tantamount to quackery and exposing petitioner to cancellation of registration and prosecution.

Petitioner at last stated before this Court that there is dearth of doctors, in such a situation in this background such resources should be utilized.

This is not at all case of the petitioner that he has acquired degree or qualification as is provided for under the Indian Medical Council Act, 1956, and is registered in the State register, maintained in this regard then, in such a situation and in this background, the petitioner cannot be permitted to administer the medicine connected with the modern medicine and it may be true on the ground that large number of poorer sections of the society,

being rendered service by him and various other similarly situated but the same cannot be a criteria to flout the statutory provisions, the same being in the realm of policy decision of other constitutional functionaries. Apex Court in the case of **Mumbai Vs. State of Maharashtra and another reported in JT 2009 (3) SC 351** has repelled such an argument wherein plea has been raised that incumbent was rendering service to treat the poor people and there is dearth of Doctors, and accordingly, he should be permitted to prescribe medicine.

In terms of above, prayer made by the petitioner cannot be entertained, accordingly, present writ petition is dismissed.

(Suneet Kumar, J.) (V.K. Shukla, J.)

Order Date :- 16.12.2013

Dhruv