

Petition to stop Pharmacy and Nurse course – Kerala High Court dismissed

The High Court Of Kerala At Ernakulam Dismissed The S Writ Petition Is Filed By Dr Babu Rajan for Quashing Government Order Issued By The Department Of Health And Family Welfare And For A Direction Not To Start A Certificate Course In Pharmacy (Homoeo) In The Existing Homeopathy Medical Colleges At Thiruvananthapuram And Kozhikode . The Petition Came For Hearing And The Honourable Mr.Justice A.M.Shaffique Pronounced The Judgment on 26th September 2014 .Excerpts from Judgment

This writ petition is filed for quashing Ext.P9 Government Order dated 15/05/2014 bearing No.140/2014 issued by the Department of Health and Family Welfare and for a direction to respondents 3 and 4 not to start a Certificate Course in Pharmacy (Homoeo) in the existing Homeopathy Medical Colleges at Thiruvananthapuram and Kozhikode on the basis of Ext.P9.

2. The facts involved in the above writ petition would disclose that the petitioner, who is working as a private practitioner in Homeopathy, complains of courses being conducted by the Homeopathy Medical Colleges without complying with the provisions of the Homeopathy Central Council Act, 1973

(hereinafter referred as the Act) and the Homeopathy Minimum Standards of Education Regulations 1983 (hereinafter referred as the Regulations). By Ext.P9 dated 15/05/2014, the Government has decided to conduct Certificate in Pharmacy Course (Homeo) in the Government Homeopathy Medical Colleges at Thiruvananthapuram and Kozhikode with a capacity of 50 students each during the academic year 2014-15. The course is for a period of one year. According to the petitioner, when an inspection was conducted with reference to 83 Homeopathy Medical Colleges throughout the country it is observed that most of the colleges did not have the proper facility by way of requisite number of teaching staff or the infrastructure. Hence action was taken pursuant to Ext. P2 dated 19/08/2011 and all the colleges were called upon to remove all the shortcomings within a specified time. It was also mentioned that no relaxation will be granted to the colleges during the academic year 2012-2013 onwards. By Ext.P3 dated 09/01/2006, the Central Council of Homeopathy had informed the State Government that no new/higher course of study shall be conducted in any homeopathy medical colleges in the State of Kerala without permission/ approval from the Central Government. It

is pointed out that as per Government order dated 12/2/2013 produced as Ext. P5, it was decided by the Government to start a Diploma course after stopping Nurse Cum Pharmacy course. Petitioner submitted a representation against Ext. P5 by way of Ext.P6 pointing out that there is no infrastructure facility for conducting diploma course. Petitioner therefore filed W.P.C. 20278 of 2013 seeking for a direction to provide separate building, infrastructure facilities, teaching faculties and staff before starting the new Diploma Course. Ext.P8 is the judgment dated 16/08/2013 wherein this Court directed the 1st respondent to consider Ext.P8 and pass appropriate orders. It is, while the said representation was pending consideration, that Ext.P9 order came to be passed. It is contended that there is no facility in the medical colleges for starting any certificate course and therefore without sanction of the Central Council, no certificate course can be conducted.

3. Statement is filed on behalf of the 3rd respondent inter alia stating that the infrastructure facilities available in the colleges at Thiruvananthapuram and Kozhikode are far above the minimum standard fixed by Regulations of CCH. Government of Kerala has already rectified all defects relating to the conduct

of post graduate courses which is evident from Ext.R3(a). It is further submitted that the Central Council of Homeopathy is prescribing minimum standards of education for granting recognition to medical qualifications like BHMS and MD degrees only. Certificate course in Pharmacy is for training Pharmacists and it is not a medical course. It is only a Para-medical Certificate course which requires the recognition of State Government. No specific qualification is prescribed by CCH in the Regulations as far as Homeopathic Pharmacists are concerned and therefore the recognition of Council is not required for starting Certificate Course in Pharmacy.

4. Heard Sri.N.N.Sugunapalan, the learned senior counsel for the petitioner and Sri.Vijayaraghavan, learned State Attorney and the learned Assistant Solicitor General of India.

5. The short question involved in this writ petition is whether for starting a certificate course of Pharmacy, any permission from CCH is required as per the Regulations and whether the course is covered by the provisions of the Act and the Regulations framed there under.

6. A reference to statutory provisions under the Act will be useful for adjudication of the contentions urged by either side.

Homeopathy is defined under Section 2(d) as under:

"2(d): "Homoeopathy" means the

Homoeopathic system of medicine and includes the use of Biochemic remedies;"

Medical Institution is defined under Section 2(e) as under:

"2(e): "medical institution" means any institution within or without India which grants degrees, diplomas or licences in Homoeopathy;"

Section 12A relates to permission for establishment of new medical institution or new course of study. Section 12A reads as under:

"12-A. Permission for establishment of new medical institution, new course of study, etc.-- (1) Notwithstanding anything contained in this Act or any other law for the time being in force,--

(a) no person shall establish a Homoeopathic Medical College; or

(b) no Homoeopathic Medical College shall--

(i) open a new or higher course of study or training (including postgraduate course of study or training) which would enable students of each course or training to qualify himself for the award of any recognized medical qualification; or

(ii) increase its admission capacity in any course of study or training (including the postgraduate course of study or training), except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1.--For the purposes of this section, "person" includes any University or a trust, but does not include the Central Government.

Explanation 2.--For the purposes of this section, "admission capacity", in relation to any course of study or training (including postgraduate course of study or training) in a medical institution, means the maximum number of students as may be decided by the Central Council from time to time for being admitted to such course or training.

(2)(a) Every person or medical institution shall, for the purpose of obtaining permission under sub-section (1) submit to the Central Government a scheme in accordance with the provisions of clause (b) and the Central Government shall refer the scheme to the Central Council for its recommendations.

(b) The scheme referred to in clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

(3) On receipt of a scheme from the Central Government under sub-section (2), the Central Council may obtain such other particulars as may be considered necessary by it from the person or the medical institution concerned, and thereafter, it may,

(a) if the scheme is defective and does not contain any necessary

particulars, give a reasonable opportunity to the person or medical institution concerned for making a written representation and it shall be open to such person or medical institution to rectify the defects, if any, specified by the Central Council;

(b) consider the scheme, having regard to the factors referred to in sub-section (7), and submit it to the Central Government together with its recommendations thereon within a period not exceeding six months from the date of receipt of the reference from the Central Government. (4) The Central Government may, after considering the scheme and the recommendations of the Central Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or medical institution concerned, and having regard to the factors referred to in sub-section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme and any such approval shall constitute as a permission under sub-section (1): Provided that no scheme shall be disapproved by the Central Government except after giving the person or medical institution concerned a reasonable opportunity of being heard:

Provided further that nothing in this sub-section shall prevent any person or medical institution whose scheme has

not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such scheme, as if such scheme had been submitted for the first time under sub-section (2).

(5) Where, within a period of one year from the date of submission of the scheme to the Central Government under sub-section (2), no order is communicated by the Central Government to the person or medical institution submitting the scheme, such scheme shall be deemed to have been approved by the Central Government in the form in which it was submitted, and, accordingly, the permission of the Central Government required under sub-section (1) shall also be deemed to have been granted.

(6) In computing the time-limit specified in sub-section (5), the time taken by the person or medical institution concerned in submitting the scheme, in furnishing any particulars called for by the Central Council, or by the Central Government, shall be excluded. (7) The Central Council, while making its recommendations under clause (b) of sub-section (3) and the Central Government, while passing an order, either approving or disapproving the scheme under sub-section (4), shall have due regard to the following factors, namely.

(a) whether the proposed medical institution or the existing medical institution seeking to open a new or

higher course of study or training, would be in a position to offer the minimum standards of medical education as prescribed by the Central Council under Section 20;

(b) whether the person seeking to establish a medical institution or the existing medical institution seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources;

(c) whether necessary facilities in respect of staff, equipment, accommodation, training, hospital and other facilities to ensure proper functioning of the medical institution or conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;

(d) whether adequate hospital facilities, having regard to the number of students likely to attend such medical institution or course of study or training or as a result of the increased admission capacity, have been provided or would be provided within the time-limit specified in the scheme;

(e) whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such medical institution or the course of study or training by the persons having the recognised medical qualifications;

(f) the requirement of manpower in

the field of practice of homoeopathic medicine in the medical institution; and

(g) any other factors as may be prescribed. (8) Where the Central Government passes an order either approving or disapproving a scheme under this section, a copy of the order shall be communicated to the person or medical institution concerned."

Sub Section (1) clearly indicates that no person shall establish a homeopathy medical college or no college shall open a new or higher course of study or training which would enable students of each course of study or training for qualifying himself for award of any recognised "medical qualification". Sub Section (2) relates to the procedure to be adopted for obtaining permission under sub section (1), sub section (3) relates to consideration of the scheme by the Central Council. Sub Section (4) empowers the Central Government to either approve the scheme or disapprove the scheme.

7. Section 12B of the Act reads as under:

12-B. Non-recognition of medical qualifications in certain cases.--(1) Where any medical institution is established without the previous permission of the Central Government in accordance with the provisions of Section 12-A, medical qualification granted to any student of such medical institution shall not be deemed to be a recognised

medical qualification for the purposes of this Act.

(2) Where any medical institution opens a new or higher course of study or training (including a postgraduate course of study or training) without the previous permission of the Central Government in accordance with the provisions of Section 12-A, medical qualification granted to any student of such institution on the basis of such study or training shall not be deemed to be recognised medical qualification for the purposes of this Act.

(3) Where any medical institution increases its admission capacity in any course of study or training without the previous permission of the Central Government in accordance with the provisions of Section 12-A, medical qualification granted to any student of such medical institution on the basis of the increase in its admission capacity shall not be deemed to be recognised medical qualification for the purposes of this Act.] Section 12B(2) indicates that if any medical institution opens a new or higher course of study or training without the previous permission of the Central Government in accordance with the provisions of Section 12A, the medical qualification granted to any student of such institution shall not be deemed to be a recognised medical qualification for the purposes of the Act. Section 2(g) defines recognised medical qualification as meaning thereby any of the medical qualifications in Homeopathy included in

the 2nd or 3rd schedule.

8. Section 13 imposes restriction on giving of a medical qualification without recognition of the Central Council. Section 13 reads as under:

"13. Recognition of medical qualifications granted by certain medical institutions in India.- (1) 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.

(2) Any University, Board or other medical institution in India which grants a medical qualification not included in the Second Schedule may apply to the Central Government to have any such qualification recognized, and the Central Government, after consulting the Central Council, may, by notification in the Official Gazette, amend the Second Schedule so as to include such qualification therein and any such notification may also direct that an entry shall be made in the last column of the Second Schedule against such medical qualification only when granted after a specified date."

Therefore medical qualification is to be granted by institutes referred to in the second schedule which are considered to be recognised medical qualification. A reference to recognised medical qualification of the 2nd schedule would include Diploma in Homoeopathic

Medicine and other categories, Bachelor of Homoeopathic Medicine and other categories, Doctor of Medicine in Homoeopathy and other categories, Licentiate of the Court of Examiners in Homoeopathy, Graduate of the Court of Examiners in Homoeopathy, Doctor of Medicine in Homoeopathy or Homoeopathy Pharmacy etc. Perusal of the schedule does not anywhere indicate the certificate course in pharmacy to be a recognised medical qualification. Section 13 apparently refers to medical qualifications granted by any University, Board or other medical institutions in India which are included in the 2nd schedule. The said medical qualifications shall be recognised medical qualifications for the purpose of the Act. Sub Section (2) of Section 13 further indicates that those institutions in India which grants a medical qualification which is not included in the 2nd schedule may apply to the Central Government to have any such qualification recognised and the Central Government shall after consulting the Central Council, amend the 2nd schedule in order to include such qualification thereon.

9. Coming to the facts of this case, it is the contention of the State Government by issuing Ext.P9 that Certificate Course in Pharmacy is not a medical course as defined under the Regulations. Ext.R3(b) is the Central Council of Hoemopathy notification dated 08/03/2013, by virtue of which Homoeopathy Central Council (Minimum Standards Requirement of

Homoeopathic Colleges and attached Hospitals) Regulations 2013 (hereinafter referred as 2013 Regulations) has been framed. College is defined in 2013 Regulations as meaning a medical college of Homoeopathy in which a person undergoes a course of study and training including a Post Graduate Course of Study and training, which will qualify him for the award of a recognised medical qualification in Homoeopathy. Course is defined under 2013 Regulations 2(d) as under:

"2(d) : "Courses" means the courses of study in Homoeopathy, namely;

(i) B.H.M.S. (Bachelor of Homoeopathic Medicine and Surgery)

(ii) M.D. (Hom.) [Doctor of Medicine (Homoeopathy)] in various specialties."

10. Therefore, having regard to the statutory provision and the Rules, the same applies only in respect of courses approved and recognised by the Central Council.

11. As far as the proposed course namely Certificate Course in Pharmacy is concerned, it is not forming part of any course, Degree or Diploma as stated in the Act or Regulations nor is it a recognised course of study approved in terms of Schedule 2 or 3 of the Act. If the State Government proceeds on the basis that the certificate course does not require permission from the Central Council under the provisions of the Act, it apparently means that it is not a course

of study or training which is considered to be a recognised medical qualification for the purposes of the Act. Section 12B(2) of the Act is clear in this aspect. Therefore, nothing prevents a college in conducting a course of study without previous permission from the Central Government and the effect of the same is clear from Section 12B(2).

12. In such circumstances, I do not think that there is any statutory prohibition on the part of the State Government in starting a Certificate Course in Pharmacy (Homoeo). But the fact remains that the certificate so issued cannot be characterised as a certificate granted in terms of the provisions of the Act. That apart, it is clear from the 2nd schedule that Central Council has not recognised any Certificate Course in Pharmacy for any institution. Regulations also does not contain any provision for recognition or approval of a Certificate Course in Pharmacy. It is therefore a course which is outside the provisions of the Act and the Rules framed thereunder. Merely for the reason that the medical institution as defined under the Act undertakes a course of study which is not recognised by the Central Council, by itself will not indicate that the said course of study cannot be carried on in the said institution.

Under these circumstances, I do not think that there is any merit in the contentions urged in the writ petition and accordingly the writ petition is dismissed.