

Delhi High Court

Delhi Medical Association vs Principal Secretary (Health) & ... on 8 April, 2016

Author: Rajiv Sahai Endlaw

*IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 8th April, 2016

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W.P.(C) No.7865/2010

DELHI MEDICAL ASSOCIATION

.... Petitioner

Through: Mr. Nitin K. Gupta, Adv.

Versus

PRINCIPAL SECRETARY (HEALTH)

& ORS.

..... Respondents

Through: Mr. Ruchir Mishra & Mr. M.K.

Tiwari, Advs. for UOI.

Mr. Raman Duggal, Adv. for GNCTD.

Mr. Praveen Khattar, Adv. for R-5/DMC.

Mr. K.C. Mittal, Mr. Ashok Mahajan, & Ms. Ruchika Mittal, Advs. for R-9.

Mr. Sandeep Gupta & Mr. Abhishek Goyal, Advs. for R-11&12.

CORAM:-

HON'BLE THE CHIEF JUSTICE HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW RAJIV SAHAI ENDLAW, J

1. This petition under Article 226 of the Constitution of India, filed as a Public Interest Litigation (PIL), inter alia seeks directions for ensuring that no practitioner of Indian System of Medicine or of Homoeopathic Medicine practices in Allopathic System of Medicine including by prescribing Allopathic Medicines. The petition also impugns Section 2(h) of the Delhi Bharatiya Chikitsa Parishad Act, 1998 (DBCP Act) and the Notification No.28-5/2004-Ay. (MM) dated 19th May, 2004 of the respondent no.8 Central Council of Indian Medicine (CCIM) on the basis whereof the practitioners of Indian System of Medicine are said to be claiming to have a right to practice in the Allopathic System of Medicine.

2. The petition was entertained and admitted for hearing and ordered to be heard on an early date. Counter affidavits/replies have been filed by the respondent no.4 Director, Health Services (DHS) of the Govt. of National Capital Territory of Delhi (GNCTD) and respondent no.5 Registrar, Delhi Medical Council (DMC). No replies/counter affidavits have been filed on behalf of the respondent no.1 Principal Secretary (Health), Deptt. of Health and Family Welfare, GNCTD, respondent no.2 Commissioner of Delhi Police, respondent no.3 Drugs Controller, respondent no.6 Principal Secretary (Health), Govt. of India, respondent no.7 Secretary, Medical Council of India, respondent

no.8 CCIM or by the respondent no.9 Delhi Bharatiya Chikitsa Parishad (DBCP) inspite of repeated opportunities. Applications for impleadment were filed by All India Indian Medicine Graduates Association (Regd.) (AIIMGA), by the NGO Sankalp, by the Delhi Integrated Medicine Practitioners Association (DIMPA), by the Central Association of Medical Practitioners (Regd.) (CAMP), by the Masih-Ul-Mulk Hakim Ajmal Khan Memorial Foundation and Dhanwantri Ayurvedic Research Society for Health. Vide orders dated 30th January, 2013 and 25th February, 2013 the applications of AIIMGA, DIMPA and of CAMP were allowed. None appeared for the other applicants to press impleadment.

3. We, on 7th May, 2015 heard the counsel for the petitioner, counsel for the respondent no.9 DBCP and the counsel for the respondent no.5 DMC. No arguments were addressed either on the part of the counsel for the Union of India or on the part of the counsel for the GNCTD. Though counsels stated that they will within one week file written submissions and accordingly liberty was given to all counsels to file written submissions within one week but only the petitioner, respondent no.5 DMC, respondent no.9 DBCP, respondent no.10 AIIMGA and respondent no.12 CAMP have filed written submissions. None of the other counsels also addressed any arguments. We accordingly reserved judgment. Further developments were ascertained on 29th January, 2016.

4. It is the case of the petitioner:-

(i) that it is an Association of registered medical practitioners of Allopathic System of Medicine and is affiliated to the Indian Medical Association;

(ii) that the Central Government has enacted the Indian Medical Council Act, 1956 (MCI Act), the Indian Medicine Central Council Act, 1970 (Indian Medicine Act) and the Homoeopathy Central Council, Act, 1973 (Homoeopathy Act) with the object of defining the different systems of medicine in order to ensure that the medical practitioners of one system of medicine do not transgress in the field of another system of medicine;

(iii) DBCP is a Statutory Body for registration and regulation of the practitioners of Indian System of Medicine in NCT of Delhi;

(iv) however the practitioners of the Indian System of Medicine and who are members of DBCP, have been illegally indulging in the practice of prescribing Allopathic Medicines despite being not registered, neither in the State Medical Register maintained under the Delhi Medical Council Act, 1977 (DMC Act) or nor in the Indian Medical Register maintained under the MCI Act and despite the judgment of the Supreme Court in Dr. Mukhtiar Chand Vs. State of Punjab (1998) 7 SCC 579;

(v) however the respondent authorities have not taken any steps for preventing so and which jeopardizes the health of the citizens and residents of the city;

(vi) the act of the practitioners of Indian System of Medicine, of prescribing allopathic drugs, makes them practitioners of Allopathic System of Medicine and which they are not entitled to;

(vii) that the act of the practitioners of Indian System of Medicine, of prescribing allopathic drugs, is nothing but an act of quackery endangering the life of the residents of the city;

(viii) that though a representation was made to the respondent authorities in this regard but to no avail;

(ix) that though the respondent no.4 DHS of GNCTD published an advertisement dated 14th June, 2009 clarifying that only the persons registered with the respondent no.5 DMC can practice in Allopathic System of Medicine and no practitioner of Ayurvedic/Unani/Homoeopathic medicine is permitted to practice in the Allopathic System of Medicine and that the persons registered with DBCP shall practice only Ayurvedic/Unani/Siddha/Tibb, but DBCP on 21st June, 2009 published an advertisement to the effect that GNCTD had no authority to limit the rights of its members;

(x) that DBCB relies on Section 2(h) of DBCP Act defining "integrated medicine" to claim that its members are entitled to prescribe allopathic drugs and practice the Allopathic System of Medicine;

(xi) that a Notification dated 19th May, 2004 has also been issued by the respondent no.8 CCIM clarifying Section 2(1)(e) of the Indian Medicine Act to the effect that the qualified practitioners of Ayurvedic/Unani/Siddha/Tibb are eligible to practice respective Systems of modern scientific medicine;

(xii) that Section 2(h) of the DBCP Act and the Notification dated 19th May, 2004 of the respondent no.8 CCIM are contrary to Sections 15(2)(b) and 27 of the MCI Act;

(xiii) that though complaints of persons having a Degree in Indian System of Medicine representing themselves as qualified MBBS Doctor were made, but no action taken thereon;

(xiv) that the High Court of Madras vide order dated 12 th February, 2010 in W.P.(C) No.2907/2002 titled Dr. K. Abdul Muneer Vs. State of Tamil Nadu had ordered that it is not open to medical practitioners of other systems of medicine to claim right to practice in modern medicine without qualification in the said system and that the practitioners of Indian System of Medicine though entitled to practice Indian System of Medicine cannot practice modern system of medicine;

(xv) that the High Court of Gujarat also, vide order dated 12th June, 2001 in Special Civil Application No.511/1983 titled Gujarat State Branch of Indian Medical Association Vs. State of Gujarat has observed that diploma holders in Nature Cure and Hygiene cannot be treated as medical practitioners and cannot be allowed to practice in the Allopathic System of Medicine; (xvi) that the High Court of Allahabad also in order dated 6 th September, 2001 in W.P.(C) No.5896/2000 titled Dr. Mehboob Alam Vs. State of Uttar Pradesh has observed that Allopathic System of Medicine is not included in the definition of Indian System of Medicine and that a person holding a qualification recognized under the Indian Medicine Act in the system of Indian Medicine commonly known as Ashtang Ayurveda, Siddha or Unani Tibb is entitled to practice only in the discipline in which he has acquired qualification and not authorized to practice in Allopathic System of Medicine; (xvii) that the High Court of Himachal Pradesh also vide order dated 20th July, 2007 in Criminal Revision No.90/2001 titled Sukhdev Chand Vs. State of Himachal Pradesh has directed that only a registered medical practitioner can stock, sell or exhibit for sale drugs falling under the ambit of Drugs & Cosmetics Act, 1940 (Drugs Act); and, (xviii) that the High Court of Allahabad vide order dated 27th April, 2004 in Special Appeal No.320/2004 has also directed the State Government to ensure that the right to health of citizens is not affected by the practice of unauthorized medical practitioners.

5. The respondent no.5 DMC in its counter affidavit/reply has supported the petition.

6. The respondent no.4 DHS, GNCTD in its reply/counter affidavit has stated that it has its own Unit of Anti-Quackery Cell in alliance with DMC and DBCP and Police and which conducts survey / surveillance of the clinics and any clinic found to be run by fake doctor is being inspected and action being taken thereagainst and that DHS, GNCTD is actively playing its role against fake doctors.

7. The applications for implement aforesaid are by the associations of the practitioners of Indian System of Medicine or by NGOs/Trusts also concerned with the practice of Indian System of Medicine. They, in their applications have inter alia stated:-

(i) that the instant petition has not been filed in public interest but out of professional jealousy and to circumvent the orders dated 11th March, 1997 and 9th March, 2005 passed in a similar writ petition being W.P.(C) No.2728/1996 filed by Delhi Medical Association;

(ii) that the DBCP Act authorizes the practitioners of Indian system of medicine to have the practice of modern scientific system of medicine in as much as they are taught and trained in integrated course of medicine;

(iii) DBCP has already issued a clarification to the said effect to the DMC;

(iv) that the Indian Medicine Act empowers the CCIM to supplement Indian System of Medicine with modern advances by notifications from time to time;

(v) that the Delhi Government also vide Notification dated 10th February, 1961 issued in pursuance to Rule 2 (ee) of the Drugs and Cosmetics Rules, 1945 (Drugs Rules) has declared persons who (a) have passed the final professional examination of the five years Degree course of the Board of Ayurvedic & Unani Systems of Medicine; or (b) possesses a diploma from an institution imparting four years training in integrated medicine recognized by the said Board; or (c) have passed a condensed course prescribed by the said Board; or (d) has at least 15 years regular professional practice; or (e) holds a diploma of Bhishagacharya Dhanvantri or Kamil-e-tib-o-Jarahat of the said Board, as a person practicing modern scientific system of medicine for the purpose of Drugs Act;

(vi) that the dicta of the Supreme Court in Dr. Mukhtiar Chand (supra) also permits the practitioners of Indian System of Medicine to practice the modern system of medicine;

(vii) that the Indian Medicine Act and the DBCP Act give right to practitioners registered with DBCP to practice integrated medicine which includes modern scientific medicine;

(ix) that the High Court of Madras on 2nd November, 2010 in Crl.

O.P. (M.D.) No.11994/2010 titled Dr. S. Arockia Vargheese Vs. Sub Inspector of Police quashed the proceedings/FIR against the practitioners of Indian System of Medicine;

(x) that the High Court of Karnataka also on 23rd March, 2000 in Crl. P. No.408/2000 titled Dr. Sudarshan Aithal PK Vs. State of Karnataka held that persons who possess Degrees of BAMS, BIMS and BUMS are entitled to practice the integrated system of medicine which includes modern scientific medicine including surgery and obstetrics; and,

(xi) that as per the DBCP Act those who have obtained Degrees in Unani and Ayurvedic medicine are also entitled to practice, use, administer and prescribe modern medicines because they have undergone a course in modern medicine.

We may notice that AIIMGA has also filed a counter affidavit but with the same pleas as aforesaid.

8. The NGO Sankalp however in its application for impleadment has pleaded,

(i) that the qualified doctors are not inclined to serve in rural areas or in slums or the economically weak and backward areas resulting in unskilled unregistered health practitioners practicing in such

areas;

(ii) even otherwise the country does not have sufficient number of qualified doctors, considering the size of its population;

(iii) that some countries have tried the programmes of barefoot doctors, village doctors, basic and primary health providers to provide healthcare facilities to rural and economically backward areas and slums etc.; and,

(iv) that the applicant has initiated the programme of training of unskilled unregistered locally available health practitioners who can be used in similar programmes in the country.

9. We have considered the aforesaid pleas and the contentions of the counsels who addressed arguments as well as the written submissions filed before us.

10. The MCI Act constitutes the Medical Council of India. Section 2(f) thereof defines medicine as "modern scientific medicine in all its branches and includes surgery and obstetrics but does not include veterinary medicine and surgery" and Section 2(e) thereof defines a medical institution as an institution which grants degrees, diplomas or licences in medicine. Section 10A thereof prohibits establishment of a medical college and commencement of a new or higher course of study or training or increase in admission capacity by the medical college except with the previous permission of the Central Government. Section 10B thereof provides that medical qualification granted to any student by any medical college established without such permission of the Central Government or in a course of study or training not sanctioned by the Central Government shall not be a recognized medical qualification for the purposes of the said Act. Section 11 thereof provides that only those medical qualifications granted by a university or medical institution included in the Schedule to the said Act shall be recognized medical qualifications for the purposes of the Act. Section 15 entitles only those persons possessing qualifications included in the Schedules to the Act to be eligible for enrollment on any State Medical Register. Section 21 provides for maintenance of a Register of medical practitioners to be known as the Indian Medical Register containing the names of all persons who are enrolled on any State Medical Register and who possess any of the recognized medical qualifications. Section 27 confers the persons whose names are contained in the Indian Medical Register with a right to practice as a medical practitioner in any part of India and to recover expenses/charges in respect of medicaments or other appliances or fees.

11. As would be obvious from above, though the MCI Act defines medicine as meaning modern scientific medicine but does not define modern scientific medicine. We have been unable to find any other inkling thereof in the MCI Act. However we find that at the time of enactment of the MCI Act or its predecessor law i.e. the Indian Medical Council Act, 1933, there was already in force, as it continues today, the Indian Medical Degrees Act, 1916 which was enacted to ban conferring of degrees or issuing of certificates, licences etc. to practice western medical science by persons other than those specified in the schedule thereto and notified by State. The same defined western medical science to mean the western methods of allopathic medicine, obstetrics and surgery - the Homoeopathic, Ayurvedic and Unani system of medicine were excluded from its purview. Although

Homoeopathic, Ayurvedic or Unani system was not expressly excluded from the definition of modern scientific medicine in the MCI Act or its predecessor law, yet a perusal of the Schedules thereto makes it abundantly clear that those systems of medicines were / are not within the scope of the MCI Act or its predecessor law.

12. Though the petition claims reliefs with respect to practitioners of homoeopathy also but as the narrative aforesaid would show, the petition is directed against the practitioners of Indian System of Medicine and not against practitioners of Homoeopathic System of Medicine. So much so that the Central Council of Homoeopathy constituted under the Homoeopathy Act has not even been impleaded as respondent to the petition. The arguments also were confined to the practitioners of Indian System of Medicine only. We as such are in this proceeding not dealing with the reliefs claimed vis-à-vis homoeopathy.

13. While the western medical science or the modern scientific system of medicine had been so regulated by the Indian Medical Degrees Act, predecessor law of MCI Act and the MCI Act, there was no law to regulate or govern the Indian System of Medicine viz. Ayurveda, Siddha & Unani Medicine. The Indian Medicine Act was enacted therefor and to inter alia set up CCIM on the analogy of MCI, for the Indian System of Medicine and constitutes CCIM as an equivalent body to the MCI under the MCI Act, with the same functions, powers etc. Provisions of the Indian Medicine Act are pari materia to the MCI Act. The same, in Section 2(1)(e) thereof defines Indian Medicine as under:-

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

The recognized medical qualifications under the said Act are the qualifications in Indian Medicine included in the Schedule to the said Act. The said Act also provides for the maintenance of a "Central Register of Indian Medicine" of persons qualified in Indian Medicine and of a "State Register of Indian Medicine" of persons entitled to practice the Indian System of Medicine in the State.

14. While the MCI Act and the Indian Medicine Act are Central laws, the DBCP Act is an enactment of the Legislative Assembly of the NCT of Delhi enacted to provide for the maintenance of the State Register of Indian Medicine and for establishment of DBCP and the DMC Act is also an enactment of the Legislative Assembly of NCT of Delhi, enacted to provide for maintenance of State Register (within the meaning of the MCI Act) and for establishment of DMC.

15. Though analysis of the provisions of the MCI Act read with DMC Act on the one hand and the provisions of the Indian Medicine Act read with DBCP Act on the other hand, in our mind, leaves no manner of doubt whatsoever that the two operate in distinct fields / territories i.e. the MCI Act and the DMC Act in the field /territory of modern scientific medicine or what has come to be known as Allopathic System of Medicine in all its branches including surgery / obstetrics but not including veterinary medicines and surgery and the Indian Medicine Act and DBCP Act in the field / territory

of Indian System of Medicine commonly known as Ashtang Ayurveda, Siddha or Unani Tibb, sowa/riqpa but the practitioners/supporters of practitioners of Indian System of Medicine, relying on- (i) the words "whether supplemented or not by such modern advances as the Central Council may declare by notification from time to time" in the definition of "Indian Medicine" in Section 2(1)(e) of the Indian Medicine Act; ii) Rule 2(ee)(iii) of the Drugs Rules read with the Notification dated 10th February, 1961 of the Delhi Government; iii) the definition of "integrated medicine" in Section 2(h) of the DBCP Act read with Notification dated 19th May, 2004 of the CCIM, claim that the practitioners of Indian System of Medicine registered in the State Register of Indian Medicine Act i.e. under the DBCP Act and having qualification of integrated medicine are also entitled to practice modern system medicine, the practice whereof is otherwise governed by the MCI Act.

16. It was the contention of the counsel for the petitioner that the DBCP Act being a State law cannot go beyond the Central law i.e. the Indian Medicine Act. Reliance was placed on Dr. Mukhtiar Chand supra.

17. The counsel for the respondent no.5 DMC while supporting the petitioner contended that the definition of integrated medicine in the DBCP Act cannot expand the scope of Indian System of Medicine under the Indian Medicine Act. Attention was invited to the letter dated 24th November, 2008 issued by the DMC to the DBCP to the effect that the term integrated medicine in association with Indian System of Medicine was misleading. DMC in its written submissions also has contended that it is the MCI Act which regulates the practice of modern scientific system of medicine i.e. allopathy and which is different from Indian System of Medicine under the Indian Medicine Act and Homeopathy System of Medicine under the Homeopathy Act. It was further contended that to practice the modern scientific system of medicine, entry of name in the Indian Medical Register under the MCI Act is necessary and the practitioners of Indian System of Medicine being not possessed of the qualifications recognized in the Schedules to the MCI Act are not entitled to have their names entered in the Indian Medical Register and consequently not entitled to practice the modern scientific system of medicine.

18. Per contra, the counsel for the respondent no.9 DBCP besides reading the dicta of the Supreme Court in Dr. Mukhtiar Chand in his favour has contended that registration of a practitioner of Indian System of Medicine in Delhi has necessarily to be under the State law of Delhi and in exercise of which power the DBCP Act has been enacted and any person registered under the DBCP Act is entitled to practice Indian System of Medicine supplemented by such modern advances as CCIM may declare by notification. It was further contended that such courses in Indian System of Medicine are providing teaching and training in modern advances and CCIM has issued the requisite notification and the practitioners of Indian System of Medicine are thus entitled to practice modern medicine.

19. It is unfortunate that inspite of Notification issued by the CCIM and vires of provisions of the DBCP Act enacted by the Legislative Assembly of Delhi being challenged in the present proceedings and being subject matter of consideration, neither the CCIM nor Government of National Capital Territory of Delhi have bothered to disclose their stand in the matter.

20. We find the Supreme Court in Dr. Mukhtiar Chand (supra) also to have lamented on the said aspect. It is observed in para 11 of the said judgment that the stand taken by the Central Government therein also showed utter bewilderment inasmuch as the authority which framed the rule did not appear to be interested in supporting the legality and validity of the rule nor did it want to do away with the rule wholeheartedly.

21. Having bestowed our consideration to the contentions aforesaid we are of opinion that the words modern advances as the CCIM may declare by notification from time to time in the definition of Indian Medicine in Section 2(1)(e) of the Indian Medicine Act are not capable of taking Indian Medicine to boundaries beyond the essentials of Indian System of Medicine as otherwise defined as Ashtang, Ayurveda, Siddha, Unani etc or of converting Indian System of Medicine to modern scientific system of medicine or Allopathic system of medicine as defined in the MCI Act and the Indian Medical Degrees Act. To hold otherwise would blur the otherwise well defined boundaries between the two systems of medicine. Supreme Court, in Dr. Mukhtiar Chand supra held that the systems of medicine generally prevalent in India are Ayurveda, Sidha, Unani, Allopathic and Homoeopathic; in the Ayurveda, Sidha and Unani systems, the treatment is based on the harmony of the four humours whereas in the Allopathic system of medicine treatment of disease is given by the use of a drug which produces a reaction that itself neutralizes the disease.

22. Those who argue that the words "modern advances" in the definition of Indian Medicine can only mean Allopathic medicine are under erroneous belief that Indian system of Medicine is static or incapable of any modern advances. Undoubtedly the Indian System of Medicine is of much ancient vintage than the Allopathic system of medicine (again per Dr. Mukhtiar Chand supra) but the same has been evolving over the ages and there is nothing to suggest that the same is incapable of any modern advances. The words modern advances as declared by CCIM in the definition of Indian Medicine are only to enable inclusion in the schedule to Indian Medicine Act of the qualifications in such advances to enable the holders thereof to get their names entered into the Central Register of Indian Medicine.

23. The Indian Medicine Act though like the MCI Act sets up CCIM, provides for regulating education in Indian System of Medicine and recognition of qualifications therein and maintenance of Central Register of Indian Medicine but also envisages constitution by law of Board by the State Governments inter alia to regulate registration of practitioners of Indian Medicine in the State. The DBCP Act is enacted to provide for the constitution of DBCP as such Board for the NCT of Delhi and for preparation and maintenance of register of practitioners of Indian medicine for Delhi. Vide sub-section 17(3) thereof, only persons possessing qualifications mentioned in the Schedules to the Indian Medicine Act are entitled to have their names entered in the said Register and to practise Indian System of Medicine in the State. The DBCP Act nowhere envisages prescribing a qualification in Indian System of Medicine (or for that matter in any other system of medicine). We may highlight that even under the Indian Medicine Act, the right to amend the Schedules thereof listing the recognised medical qualifications in Indian Medicine is only of the Central Government and not of CCIM constituted thereunder or for that matter of the State Government.

24. The definitions of Bharatiya Chikitsa, integrated medicine and practitioner, in Section 2(b), (h) and (k) of the DBCP Act, are as under:

"(b) "Bharatiya Chikitsa (Indian Medicine)" means Astang Ayurved Siddha and Unani Tibb supplemented or not with modern advances in modern scientific system of medicine in all its branches including surgery and obstetrics;

(h) "integrated medicine" means conjoint, concurrent study, training and practice in Ayurved/Siddha/Unani Tibb and Modern Scientific System of Medicine in all its branches including surgery and obstetrics."

(k) "practitioner" means a medical practitioner who practices the Bharatiya Chikitsa Paddhati (Indian Systems of Medicine)".

and the Notification dated 19th May, 2004 of supra of CCIM as under:

"In exercise of the power conferred by 2(1)(e) of the Indian Medicine Central Council Act, 1970 thereby Central Council of Indian Medicine notify that:-

The Indian Medicine Central Council Act, 1970 is very clear with regard to definition of Indian Systems of Medicine of which reads as follows:-

"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.

To clarify the word "Modern Advances" the Council at its meeting held on 23rd March 2003 has passed the resolution and defined Indian Medicine as under:-

"This meeting of the Central Council hereby unanimously resolved that in clause (e) of Sub-section 2(1) of the IMCC Act, 1970, the word Modern Advances be read as advances made in various branches of Modern Scientific medicine in all its branches of internal medicine, surgery, gynaecology and obstetrics, anaesthesiology, diagnostic procedures and other technological innovation made from time to time and declare that the courses and curriculum conducted and recognized by the Central Council of Indian Medicine are supplemented with such "modern advances". It is further clarified that the right of practitioners of Indian Systems of Medicine are protected under Indian Medicine Central Council Act, 1970 under section 17(3)(b) which states as under :-

"Nothing contained in Sub-section (2) shall affect privileges (including the right to practise any system of medicine) conferred by or under any law relating to registration of practitioners of Indian Medicine for the time being in force in any

state on a practitioners of Indian Medicine enrolled on a state register of Indian Medicine"

The Government of India from time and again have asked the Council to improve the syllabus by including subjects with regard to National Programmes like National Malaria eradication programme, TB, Leprosy, Family Welfare Programme, RCH Programme, Immunisation Programme, Aids, Cancer etc. and accordingly the Council has strengthened the Syllabus of all the system of Medicine. The institutionally qualified practitioners of Ayurveda, Siddha, Unani Tibb are eligible to practice respective Systems with modern Scientific medicine including Surgery and Gynaecology obstetrics, Anesthesiology, ENT, ophthalmology etc. based on the training and teaching."

are to be seen in the said light. What the State legislature or the DBCP Act or the CCIM is incapable of doing or what is beyond the scope and ambit of their powers or functions cannot be attributed to them or read into aforesaid. We may here add that though the DBCP Act has defined integrated medicine but no reference thereto is to be found in any of the other provisions thereof or in any substantive provision of Indian Medicine Act. Only in the Schedules to the Indian Medicine Act the same is mentioned as one of the recognized qualifications in Indian medicine which some of the Institutes imparting teaching therein are empowered to grant.

25. We are thus of the opinion that the definition of Indian Medicine in the Indian Medicine Act or of integrated medicine in DBCP Act or the Notification dated 19th May, 2004 of the CCIM cannot be read as entitling those registered in the State register of Indian Medicine maintained by DBCP to practise modern scientific system of medicine in any form regulated by the MCI Act and the DMC Act.

26. As far as Rule 2(ee) of the Drugs Rules and the Notification dated 10th February, 1961 of the Delhi Government thereunder are concerned, we do not feel the need to deal therewith as the said issue was squarely covered by Dr. Mukhtiar Chand supra. We however set out hereinbelow the Notification dated 10th February, 1961:

"No.F.21(2)60-M&PH:- In pursuance of the provisions of sub- clause (iii) of Clause (ee) of rule 2 of the Drugs Rule, 1945, the Chief Commissioner, Delhi is pleaded to declare each person who

(a) has passed the final professional examination of the five years degree course of the Board for Ayurvedic and Unani systems of Medicine, Delhi

(b) possess a diploma from a institution imparting four years training in integrated medicine recognized by the said

(i) has passed the condensed course prescribed by the said Board or

(ii) has at least fifteen years regular professional practice: or

(e) holds diploma of Bhashagacharya Dhanwantari (Diploma in Indian Medicine and Surgery) or Kamil-i-tib-jarahat) (Diploma in Indian Medicine & Surgery) of the said Board. as a person practising the modern scientific system of medicine for the purposes of the Drugs Act, 1940."

27. The counsel for the petitioner as well as the counsel for the respondent No.9 DBCP as aforesaid relied on Dr. Mukhtiar Chand supra. Supreme Court therein was concerned with (i) declarations made by the State Governments under Clause (iii) of Rule 2(ee) of the Drugs Rules defining "Registered medical practitioners" and under which declaration the Vaidys/Hakims were claiming right to prescribe Allopathic drugs covered by the Drugs Act; and, (ii) the claims of Vaidys/Hakims who had obtained degrees in integrated courses to practice Allopathic system of medicine. Supreme Court observed that the said questions were of general importance and practical significance because they not only relate to the right to practice medical profession but also the right to life which includes health and well being of a person. We, on a reading of said judgment, cull out the following propositions therefrom.

A. That the MCI Act (which repealed the Indian Medical Council Act, 1933) regulates modern system of medicine; the Indian Medicine Act regulates Indian medicine and the Homoeopathic Act regulates practice of Homoeopathic medicine. B. That 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.

C. The Drugs Act was enacted to regulate import, manufacture, distribution, sale of drugs to curb the evil of adulteration and production of substandard drugs posing a serious threat to the health of the community; at the time of its enactment in 1940 it was not intended to apply to Ayurvedic, Siddha or Unani drugs which were brought into its purview only by Act 13 of 1964. Section 33 which falls in Chapter-IV of Drugs Act empowers Central Government to make Rules for the purpose of giving effect to the provisions of Chapter-IV which deals with manufacture, sale and distribution of drugs. Section 33A says that Chapter-IV shall not, except as provided in the Act, apply to Ayurvedic, Siddha or Unani drugs.

D. That Rule 2(ee) of the Drugs Rules defines a registered medical practitioner as a person (i) holding a qualification granted by an Authority specified or notified under Section 3 of the Indian Medical Degrees Act, 1916 or specified in the schedules to the MCI Act; or (ii) registered or eligible for registration in a Medical Register of a State meant for the registration of persons practising the modern scientific system of medicine excluding the Homoeopathic system of medicine; or (iii) registered in a Medical Register other than a Register for registration of Homoeopathic practitioners of a State, who although not falling within sub-clause (i) or sub-clause (ii) is 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 purpose of the Drugs Act or (iv); or (v) (not relevant).

E. That there is no dispute that categories (i) and (ii) of Rule 2 (ee) of the Drugs Rules relate to practitioner of Allopathic medicine; however the Vaid/Hakims (non-Allopathic doctors) were basing their claim under clause (iii).

F. That vide sub-clause (iii) of Rule 2(ee), a de facto practitioner of modern scientific medicine (Allopathic) and declared so by the State Government is recognised as a registered medical practitioner and is enabled to prescribe drugs covered by the Drugs Act; for the purposes of Clause (iii) of Rule 2(ee) what is required is not the qualification in modern scientific system of medicine but a declaration by a State Government that a person is practising modern scientific system and that he is registered in a medical register of a State (other than a register for registration of Homoeopathic practitioners); the State Governments under Clause (iii) of Rule 2(ee) were entitled to declare the categories of Vaid/Hakims practising modern system of medicine and registered in the State Medical Register to be "Registered medical practitioners" within the meaning of Rule 2(ee) of the Drugs Rules.

G. Drugs can be sold or supplied by a pharmacist or druggist only on the prescription of a "registered medical practitioner" who can also store them for treatment of his patients.

H. The right to practice any profession is no doubt a fundamental right guaranteed under Article 19(1)(g) of the Constitution of India but that right is subject to any law relating to the professional qualifications necessary for practising any profession enacted under Article 19(6); the regulatory measures on the exercise of this right, both with regard to standard of professional qualification and professional conduct have been applied keeping in view not only the right of the medical practitioners but also the right to life and proper health care of persons who need medical care and treatment; there can be no compromise on professional standards of medical practitioners. I. To ensure professional standards required to practice Allopathic medicine, the MCI Act had been enacted which also deals with re-constitution of the MCI and maintenance of an Indian Medical Register for whole of India.

J. Section 2(f) of the MCI Act defines "medicine" to mean modern scientific medicine in all its branches including surgery and obstetrics but not including veterinary medicine and surgery and Section 2(h) thereof defines "recognised medical qualification" as a medical qualification included in the Schedules to the MCI Act.

K. That Section 15 of the MCI Act lays down that qualifications in the Schedules to the Act are sufficient qualification for enrolment on any State Medical Register. Section 15(2)(b) of the MCI Act prohibits all persons from practicing modern scientific medicine in all its branches in any State except a medical practitioner enrolled on a "State Medical Register". "State Medical Register" is defined in Section 2(k) of the MCI Act to mean a register maintained under any law for the time being in force in any State regulating the registration of practitioners of medicine.

L. That the State Medical Register under the MCI Act, in contra-

distinction to the Indian Medical Register, is maintained by the State Medical Council which is not constituted under the MCI Act but is constituted under any law for the time being in force in any State regulating the registration of practitioners of medicine.

M. That it is thus possible that in any State, the law relating to registration of practitioners of modern scientific medicine may enable a person to be enrolled on the basis of the qualifications other than the recognized medical qualification which is a pre-requisite only for being enrolled on the Indian Medical Register but not for registration in a State Medical Register. N. That holding a recognized medical qualification under the MCI Act cannot be insisted upon for registration in a State Medical Register; however a person registered in a State Medical Register cannot be enrolled on the Indian Medical Register unless possesses recognized medical qualification. O. So by virtue of such qualifications as prescribed in a State Act and on being registered in a State Medical Register, a person will be entitled to practice allopathic medicine under Section 15(2)(b) of the MCI Act.

P. Section 15(2) of the MCI Act (inserted w.e.f. 16th June, 1964) providing that no person other than a medical practitioner enrolled on a "State Medical Register" shall practice modern scientific medicine in any State obliterates the right of non-allopathic doctors to prescribe drugs by virtue of the declaration issued under the Drugs Rules; however, this does not debar them from prescribing or administering allopathic drugs sold across the counter for common ailments.

Q. The Indian Medicine Act also provides for maintenance of a "State Register of Indian Medicine" and enables all persons who possess qualifications mentioned in Schedules to the Indian Medicine Act to be enrolled in the State Register of Indian Medicine.

R. That a perusal of the Second, Third and Fourth Schedules of the Indian Medicine Act shows that they contain both integrated medicine as well as other qualification; so a holder of degree in integrated medicine is entitled to be enrolled under Section 17 of the Indian Medicine Act.

S. That by virtue of Section 17(3)(d) of the Indian Medicine Act, the right to practice modern scientific medicine in all its branches is confined to only such persons who possess any qualification included in the Schedules to MCI Act.

T. That all that the definition of Indian Medicine in the Indian
Medicine Act particularly the words "whether

supplemented or not by such modern advances as the Central Council may declare by notification from time to time" and the notifications / clarifications of the CCIM thereunder and the imparting of theoretical knowledge of modern scientific medicine and training thereunder to holders of degrees in integrated medicine within the schedules to the Indian Medicine Act do is to 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, E.C.G., etc. for purposes of practicing in their own system. U. That however if any State Act (within the meaning of MCI 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.

V. That a harmonious reading of Section 15 of MCI Act and Section 17 of the Indian Medicine Act leads to the conclusion that there is no scope for a person enrolled on the State Register of Indian medicine or 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 MCI Act. W. That 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 thereunder by State Governments.

X. That right to prescribe a drug of a system of medicine is a concomitant of the right to practice that system of medicine; therefore in a broader sense, the right to prescribe drugs of a system of medicine would be synonymous with the right to practice that system of medicine; in that sense, the right to prescribe an allopathic drug cannot be wholly divorced from the claim to practice allopathic medicine.

Y. That thus the benefit of Rule 2(ee)(iii) of the Drugs Rule and of the notifications issued thereunder would be available only in those States where the privilege of such right to practice any system of medicine is conferred by the State law under which practitioners of Indian Medicine are registered in the State. Z. That the position with regard to Medical practitioners of Indian medicine holding degrees in integrated courses is on the same plain inasmuch as if any State Act recognizes their qualification as sufficient for registration in the State Medical register, the prohibition contained in Section 15(2)(b) of the MCI Act will not apply.

28. Though again, a reading and analysis of the aforesaid judgment, in our mind leaves no manner of doubt that it is the MCI Act which alone governs the practice of modern scientific system of medicine and persons holding qualifications under the Indian Medicine Act even if in Integrated Medicine as defined in the DBCP Act are not entitled to engage in the field of modern scientific medicine as covered by the MCI Act but the counsels for the practitioners of Indian Medicine and supporters of practitioners of Indian Medicine want to read the judgment aforesaid as laying down that those having qualification of integrated medicine within the meaning of DBCP Act and registered in the Register maintained under the DBCP Act are also permitted and entitled to practice modern medicine.

29. We must admit that a first reading of some of the paragraphs of Dr. Mukhtiar Chand supra particularly the following penultimate paragraph 49 (as reported in SCC):

"49. The upshot of the above discussion is that Rule 2(ee)(iii) as effected from 14-5-1960 is valid and does not suffer from the vice of want of the legislative competence and the notifications issued by the State Governments thereunder are not ultra vires the said rule and are legal. However, after subsection (2) in Section 15

of the 1956 Act occupied the field vide Central Act 24 of 1964 with effect from 16-6-1964, the benefit of the said rule and the notifications issued thereunder would be available only in those States where the privilege of such right to practise any system of medicine is conferred by the State Law under which practitioners of Indian Medicine are registered in the State, which is for the time being in force. The position with regard to Medical practitioners of Indian medicine holding degrees in integrated courses is on the same plane inasmuch as if any State Act recognizes their qualification as sufficient for registration in the State Medical register, the prohibition contained in Section 15(2)(b) of the 1956 Act will not apply."

(emphasis added) does cause some confusion. But on a reading of the whole judgment it is clear that the State Medical Register referred to in paragraph 49 aforesaid is the State Medical Register in accordance with the MCI Act and not the State Register of Indian Medicine in accordance with the Indian Medicine Act. The confusion if any arises from similarity of expressions i.e., the State register under the MCI Act as well as in the Indian Medicine Act.

However the question of the prohibition contained in Section 15(2)(b) of the MCI Act not applying on registration of the qualification in integrated medicine under the DBCP Act recorded in the State Register of Indian Medicine under the DBCP Act does not arise. Thus what Mukhtiar Chand supra holds is that only if the person holding the degree in integrated courses under the Indian Medicine Act and the DBCP Act is entered in the State Medical Register within the meaning of the MCI Act (and not the State Register of Indian Medicine within the meaning of the Indian Medicine Act) can such a person practice modern scientific system of medicine and prescribe Allopathic drugs.

30. It is not the case of the practitioners of Indian Medicine and/or supporters of practitioners of Indian Medicine that the State Medical register within the meaning of the MCI Act for Delhi records or has recorded the name of any person holding the degree in Indian Medicine Integrated Course. Thus the question of any such person being entitled to practice modern scientific system of medicine in Delhi does not arise.

31. A perusal of the provisions of the DMC Act under which the State Medical Register within the meaning of the MCI Act is maintained for Delhi leaves no manner of doubt that a person holding qualification in Indian Medicine, even if it be a degree in integrated course, cannot be registered thereunder. Section 2(7) of the DMC Act defines "Medical Practitioner" or "practitioner" as "a person who is engaged in the practice of modern scientific system of medicine and all its branches and has qualifications as prescribed in the First, Second or Third Schedule to the Indian Medical Council Act, 1956 (102 of 1956)" and Section 2(8) thereof defines "Medicine" as "modern scientific system of medicine and includes surgery and obstetrics but does not include veterinary medicine or veterinary surgery or the Homoeopathic or the Ayurveda or the Siddha or the Unani system of medicine" and further provides that "the expression "medical" shall be construed accordingly." Section 2(14) thereof defines a "registered practitioner" as "a medical practitioners having registerable qualification as prescribed in the Indian Medical Council Act, 1956 (102 of 1956) whose name is, for the time being, entered in the register, but does not include a person whose name is

provisionally entered in the register". Section 15 of the said Act provides for the preparation of the register and sub-Sections (3), (4), (5) and (6) thereof relevant for our purpose are as under:

"(3) Any person who possesses any of the qualifications in the First, Second or Third Schedule to the Indian Medical Council Act, 1956 (102 of 1956) shall subject to any condition laid down by or under the Indian Medical Council Act, 1956, at any time on an application made in the prescribed form to the Registrar and on payment of a prescribed fee and on presentation of proof of his registerable qualification, be entitled to have his name entered in the register.

(4) (a) Every person, whose name was entered on a date prior to 1st May, 1961 in Indian Medical Council Register and continued in such register on the day immediately preceding the appointed day, shall be entitled to have his name continued in the register prepared under this Act.

(b) Within a period of three months from the appointed day or such further period as the Government may allow, the Registrar shall publish a general notice in the Official Gazette and in such newspapers, as the Council may select, in such form as may be prescribed, calling upon every person to whom Clause (a) applies, to pay to the Registrar in the prescribed manner the prescribed fee if he desires to have his name on the register under this Act, and shall also send individual notice for a like purpose by registered post to every such person at his last known address in such form as may be prescribed. The name of every such person who pays such fee before the expiry of the period of two months from the date of publication of the general notice in the Official Gazette shall be enlisted on the register.

(5) After the last date for payment of the prescribed fee under Clause (b) of sub-section (4) has expired and the register prepared in accordance with foregoing provisions is ready, the Registrar, shall publish notice in the Official Gazette and such newspapers as the Council may select, about the register having prepared, and the register shall come into force from the date of the publication of such notice in the Official Gazette.

(6) Any person servicing or practising modern scientific system of medicine in Delhi shall be registered with the Council under this Act. Without registration with the Council any person though qualified in modern scientific system of medicine shall be liable for action as specified by the Council."

Though the DMC Act is of comparatively recent origin i.e. of the year 1997 but as aforesaid, it is not the case of the practitioners of Indian Medicine or supporters thereof that the names of any of the practitioner of Indian Medicine even if holding the degree of integrated courses is registered thereunder.

32. In view of the categorical provisions of the DMC Act, need to deal with the judgments/orders of the High Courts of Madras and Karnataka quashing the proceedings/FIR registered against practitioners of Indian Medicine in those States, cited by counsel for DBCP, is not felt.

33. Similarly, in view of the statutory provisions applicable to Delhi i.e. in the DMC Act, which do not allow name of anyone other than those holding the qualifications listed in the Schedules to the MCI Act to be registered in the State Register maintained thereunder and which is essential for practicing modern scientific system of medicine in Delhi, the question of allowing the practitioners of Indian System of Medicine even if holding degree in integrated medicine, to practice modern scientific system of medicine in any form, for the reason of need in rural areas or in the slums or to serve the economically weak and backward areas or for the reason of deficiency in sufficient number of doctors qualified in modern scientific system of medicine does not arise.

34. We also do not find any merit in the challenge to the maintainability of this petition as a PIL or on the ground of the same having been filed for any oblique purpose. Rather, we do find the notification dated 19 th May, 2004 of the CCIM as set out hereinabove to be quite misleading and capable of being understood as allowing persons not holding qualification in modern scientific system of medicine to practice the said system of medicine and which is contrary to law and can play havoc with the health and lives of citizens of the city. We remind CCIM that it being a creature of the Indian Medicine Act, does not enjoy any legislative or quasi legislative powers and has to confine itself to the field of Indian System of Medicine only and perform duties and functions as prescribed in the said Act and cannot transgress into the field/territory occupied by the MCI Act.

35. We thus allow this petition-

(A) By declaring that no practitioner of Indian System of Medicine or holding a qualification as listed in the Schedule to the Indian Medicine Central Council Act, 1970, even if it be of in integrated medicine as defined in Section 2(h) of the Delhi Bharatiya Chikitsa Parishad Act, 1998, is entitled to practice modern scientific system of medicine as defined in the Indian Medical Council Act, 1956 read with Indian Medical Degrees Act, 1916 and as has come to be known as Allopathic system of medicine.

(B) By directing all the authorities concerned with enforcement of the provisions of the Indian Medical Council Act, 1956, Delhi Medical Council Act, 1997, Indian Medicine Central Council Act, 1970 and the Delhi Bharatiya Chikitsa Parishad Act, 1998 and/or entrusted with the task of preventing persons not holding qualification as mentioned in the Schedules of the Indian Medical Council Act, 1956 from practicing modern scientific system of medicine, to not allow any person holding qualification in Indian Medicine as described in the Schedule to the Indian Medicine Central Council Act, 1970, even if holding a degree in integrated course as defined in the Delhi Bharatiya Chikitsa Parishad Act, 1998, from practicing modern scientific system of medicine.

(C) By declaring that Section 2(h) of the Delhi Bharatiya Chikitsa Parishad Act, 1998 or any other provision thereof or of the Indian Medicine Central Council Act, 1970 does not permit any person holding qualification in Indian Medicine as prescribed in the Indian Medicine Central Council Act,

1970 even if a degree in integrated course to practice modern scientific system of medicine in terms of Indian Medical Council Act, 1956 read with Indian Medical Degrees Act, 1916 and Delhi Medical Council Act, 1997.

(D) By declaring that the Notification dated 10th February, 1961 of the Delhi Government issued in pursuance to Rule 2(ee) of the Drugs and Cosmetics Rules, 1945 does not entitle any person not holding a qualification listed in the Schedules to the Indian Medical Council Act, 1956 and whose name is not entered in the State Medical Register under the Delhi Medical Council Act, 1997 to prescribe Allopathic drugs.

(E) By declaring that the Notification dated 19th May, 2004 of the Central Council of Indian Medicine does not entitle the practitioners of Indian Medicine within the meaning of the Indian Medicine Central Council Act, 1970, even if holding degree in integrated medicine within the meaning of the Delhi Bharatiya Chikitsa Parishad Act, 1998 to practice modern scientific system of medicine / Allopathic system of medicine within the meaning of Indian Medical Council Act, 1956 read with Indian Medical Degrees Act, 1916.

Parties are left to bear their own costs.

RAJIV SAHAI ENDLAW, J CHIEF JUSTICE APRIL 8th , 2016 pp/gsr/m...