*Before T. S. Thakur, C.J. and Hemant Gupta, J.*

**ELECTRO-HOMEOPATHIC DOCTOR'S ASSOCIATION, PUNJAB**—*Petitioner*

**versus**

**STATE OF PUNJAB AND OTHERS,**—*Respondents*

C.W.P. No. 7893 of 2002

10th August, 2009

***Constitution of India, 1950—Art. 19(1)(g) and 226—Medical Council Act, 1956—Ss.15 and 25—Drugs and Cosmetics Act, 1950—S.26—Punjab Government issuing instructions dated 17th October, 2000 for taking action against medical practitioners practising modern system of medicine without requisite qualification and registration—Practitioners in Electro-homeopathy not covered under instructions–Central Government ordering Electropathy/Electro-homeopathy not recognized systems of medicines—Challenge thereto—Institutions imparting knowledge, training or course in electro-homeopathy—Not recognized to grant Diplomas or Certificates—Prescribing of necessary qualifications before permitting practice of a medical system—Necessary to save citizens from quacks endangering their lives—Individuals cannot be permitted to practice medicine and institutions cannot be permitted to award degree, diplomas or certificates—Petitioners cannot enforce right to practice medicine except in accordance with provisions of the Act—Challenge to impugned circulars/orders issued by Central/ State Government repelled—Petitions dismissed.***

*Held,* that Section 15(2) of the Act prohibits practice of medicine except when the name of the practitioner appear in the Registers contemplated under the Act. The petitioners are not qualified for registration as medical practitioner under the Act. The institutions imparting knowledge, training or course leading to issuance of Diplomas or Certificates in electro- homeopathy are also not recognized to grant such Diplomas or Certificates under the Act. The prescribing of necessary qualifications before permitting practice of a medical system is in the

interest of general public. It is necessary to save citizens of this country from quacks to practice medicine endangering their lives. Thus, the individuals cannot be permitted to practice medicine and the institutions cannot be permitted to award degree, diplomas or certificates, as they are not so permitted under the Act. We find that a regulatory enactment i.e. The Act, in terms of Clause 6 to Article 19(1)(g) of the Constitution of India is in force, therefore, the petitioners cannot seek right to practice medicine except in accordance with the provisions of the Act. Thus, the challenge of the petitioners to the impugned circulars/ orders issued by the Central/State Government is not tenable.

(Para 28)

*Further held,* that in view of the decision of the Constitutional Bench of Supreme Court in *Khoday's case,* the restriction or prohibition as contemplated by Clause 6 of Article 19(1)(g) can be placed by a subordinate legislation as well. Therefore, the decision of the Central Government in the absence of any other statute would be a decision taken by the executive in exercise of the executive power of the State. It may be noticed that a Division Bench of Delhi High Court has directed the Central/State Government to consider the legislation permitting practice in Electropathy system of medicine. The executive order dated 25th October, 2003 was passed in compliance of the said directions. The Central Government was considering the fact whether any legislation is to be enacted in respect of Electropathy system of medicine. The Central Government came to the conclusion that legislation is not required. The said decision of the Central Government whether to legislate or not is, in fact, an order in exercise of executive power of the State contemplated under Article 73 of the Constitution of India.

(Para 36)

R. S. Bains, Advocate *for the petitioner.*

H. S. Sidhu, Addl. Advocate General, Punjab.

S. M. Sharma, Advocate, *for respondents No. 5 to 14.*

**(2) C.W.P. No. 3261 of 2005**

R. S. Bains, Advocate *for the petitioner.*

H. S. Sidhu, Addl. Advocate General, Punjab.

Gurpreet Singh, Advocate *for respondent No. 3*

Sandeep Khunger, Advocate *for respondent No. 4.*

**(3) C.W.P. 6225 of 2007**

A. P. S. Shergill, Advocate for the petitioner.

K. K. Bansal, Advocte *for respondent No. 1.*

H. S. Sidhu, Addl. Advocate General, Punjab *for respondents No. 2 to 5.*

Randhir Singh, Addl. Advocate General, Haryana.

Ms. Jaishree Thakur, Advocate *for respondents No. 4 to 7.*

S. M. Sharma, Advocate.

**(4) C.W.P. No. 7493 of 2007**

Deepak Sibal, Advocate *for the petitioners.*

Onkar Singh Batalvi, Advocate *for respondent No. 1.*

H. S. Sidhu, Addl. Advocate General, Punjab *for respondents No. 2 to 4.*

Gurminder Singh, Advocate, *for respondent No. 5.*

**(5) C.W.P. No. 13253 of 2007**

R. S. Bains, Advocate *for the petitioner.*

H. S. Sidhu, Addl. Advocate General, Punjab.

Onkar Singh Batalvi, Advocate *for respondents No. 1 3.*

Gurminder Singh, Advocate, *for respondent No. 4*

**(6) C.W.P. No. 7057 of 2009**

R. S. Bajaj, Advocate *for the petitioner.*

***HEMANT GUPTA, J.***

(1) This order shall dispose of Civil Writ Petition Nos. 7893 of 2002, 3261 of 2005, 7493, 13253 of 2007 and 7057 of 2009 challenging the decision of the Central Government, dated 25th November, 2003 and the directions issued by the Punjab Government on 29th October, 2004, 1st March, 2007 and consequent proceedings initiated against the petitioners either for practising the Electro-homeopathy system of medicine and/or establishing the institutes imparting courses in Electro-homeopathy system of medicines. Civil Writ Petition No. 6225 of 2007 is a writ petition filed in public interest claiming action against the institutes imparting education in Electro-homeopathy system of medicines.

(2) For the facility of reference, writ petitions filed on behalf of the institutes claiming recognition and the right of the individuals to practise in Electropathy system of medicine shall be called "the petitioners", whereas the petition filed in public interest as well as the State Governments, Central Government etc. shall be referred to as "the respondents". It is also undisputed that Electropathy or Electro-homeopathy is one and the same system of medicine.

**Some background and Facts**

(3) A Division Bench of this Court in CWP No. 1696 of 1997,—*vide* an interim order, dated 4th November, 1997 directed the State Government to weed out unregistered medical practitioners who are engaged in providing medical care without proper registration and appropriate qualifications. On 13th October, 1998, this Court granted six months time to the respondents to implement the directions given earlier on 4th November, 1997 while finally disposing of the matter. In pursuance of said directions, a circular was issued by the Director, Health and Family Welfare, Punjab on 12th March, 1999, to all the Civil Surgeons in the State of Punjab, that action is required against the so called self styled Doctors under section 15 of the Indian Medical Council Act, 1956 and under section 26 of the Drugs and Cosmetics Act, 1950. It was circulated that if it is necessary, then help of the Station House Officers of the concerned area be taken to check unregistered medical practitioners. By another cicular, dated 17th October,

2000, it was conveyed that if any unregistered medical practitioner is found doing medical practice, disciplinary action would be taken against the concerned medical officer.

(4) Electro-Homeopathy Doctors Association, Punjab filed a writ petition challenging the circular dated 17th October, 2000. Learned counsel for the State, made a statement in the said writ peition on 4th March, 2002 to the effect that as per impugned instructions, action is required to be taken against those practising modern system of medicine without requisite qualification and registration under the provisions of the Indian Medical Council Act, 1956, and that the members of the petitioner Association are not to be affected by the impugned circular. The writ petition was disposed of in terms of the statement made by the learned State counsel. Thereafter, the Punjab Government on 25th March, 2002 issued a circular to the effect that a practitioner doing practice in Electro-homeopathy are not covered under the instruction issued on 17th October, 2000.

(5) The Government of India, Ministry of Health and Family Welfare, passed an order on 25th November, 2003 to the effect that Electropathy/Electro-homeopathy are not recognized systems of *medicines* and the State Governments were directed to give wide publicity to the said decision of the Government of India. It was directed that the institutes under the State/Union Territory are not to grant any degree/diploma in the stream of medicines which have not been recommended for recognition. The term "Doctor" can be used by the practitioners of recognized system of medicine only. As a consequence of the said decision of the Central Government, the Central Council of Homeopathy issued a circular on 30th December, 2003, to all the State Councils and the State Governments to comply with the above orders of Government of India. On 5th April, 2004, the Punjab Homeopathy Council decided in its meeting to request all the Administrative Heads/ Deputy Commissioners/Senior Superintendents of Police/Sub-Divisional Magistrates/Deputy Superintendents of Police to implement/comply the orders of the Government of India. The Government of Punjab issued a circular on 29th October, 2004 to take necessary action against the Electropathy and Electro-homeopathy institutions and clinics operating in the areas under their respective jurisdiction. Punjab Government

again issued a circular on 1st March, 2007 to all the Deputy Commissioners and Senior Superintendents of Police to take necessary action against Electropathy/Electro-homeopathy institutes and clinics operating in the area as such stream of medicines have not been recommended for recognition and that the term "Doctor" is to be used by the practitioners of recognized system of medicine only.

(6) The right to practise Electro-homeopathy/Electropathy was raised before the Delhi High Court in **CWP No. 4015 of 1996** titled **Wing Commander (Retd.) M. M. Sethi** *versus* **Ministry of Human Resources.** In the said writ petition, Delhi High Court on 18th November, 1998 issued various directions including a direction to the Central/State Governments to consider making legislation prescribing grant of licence to the existing and new institutes conducing course in Electropathy and other alternative systems of medicines. It also directed that the private respondents before the said court and such like institutes shall not award any degree in the courses conducted by them. The said Division Bench of Delhi High Court has held that in terms of Section 22 of the University Grants Commission Act, 1956, no educational institute in the country, except the University as defined in the said Act, is entitled to award degrees. Therefore, it was held that it is not permissible to award degrees by any of the private respondents in the above-said writ petitions. The Special Leave Petition against the said order was dismissed.

(7) In pursuance of the above said direction of the Delhi High Court, a Standing Committee of Experts on Alternate Systems of Medicine under the Chairmanship of Director General, Indian Council of Medical Research, considered the issue of grant of recognition to Electropathy or Electro-homeopathy as a system of medicine. The said Expert Committee considered the esssential criteria described as (1) Fundamental principles of health and disease must differ in concepts from those of recognized system in the country. It should be a comprehensive systems of health care and not restricted to few diseases only ; (2) Substantial literature on concepts, aetiology diagnosis and management of disease like textbooks including pharmacopoeia and formularies and preferably journals, if any should be available in the country of origin, and also in other countries, and in the countries where

practised ; (3) Whether it is recognized as a system of medicine in the country of origin and/or in any other country where it is currently practised ; (4) Scientifically validated information on modalities of treatment may be by drugs, devices or any other methods such as diet, massage, exercise and how they differ from those in the existing approved systems of medicine; and (5) From the safety and efficacy point of view standardize methods of preparation of drugs/devices used in the therapy and quality control of the same should be available. It also considered criteria described as desirable i.e. (1) Prescribed criteria for admission, curricula and training and details of such course and list of institutions in the country of origin/countries where it is currently recognized system of medicine ; (2) Details of continuing medical education programmes and avialable research/training facilities; and (3) To examine as to whether it can be taught in the recognized Institutions to produce Doctors/Practitioners in this system of medicine. The Committee in its detailed report in respect of Electro-homeopathy system of Medicine concluded as under :—

> "As the availabe literature is very scanty and the books prescribed for the NEHM course are all written by a few authors, translated into some Indian language such as Punjabi, Hindi and Urdu, the respresentative of NEHM, Shri O. P. Sharma, Registrar was called to elaborate on the source, publishers, year and edition of books etc. As it was not possible for him to give an instant reply, he was asked to submit the same to the Council within a week's time. The same was submitted on 23rd February, 2001 which was examined by the Member Secretary, Sub-Committee Chairman Dr. B. N. Dhawan and the Chairman Dr. N. K. Ganguly. In the absence of any standard text books, references, pharmacopoeia etc. offering teaching and training leading to Degrees/Diplomas under unrecognized systems/institutions was not found appropriate by the Committee. It is not recognized as a system anywhere in the world. There is no uniqueness in the concept or modalities of treatment. Hence it is suggested that Government should take appropriate steps to close down

such institutions and give wide publicity to such decision to protect the public from such unauthorized activities.

After examining the information submitted on the basis of the guidelines issued, the Committee came to an unanimous decision that the available information on the basic concept, aetiopathology, management and prevention of diseases, available literature and pharmacopoeia, teaching and training programmes, available infrastructure for academic and therapeutic purposes etc. is not sufficient to give recognition to Electrohomeopathy/Electropathy as a new comprehensive system of medicine".

(8) It has further come on record that National Council for Electro-Homeopathy Medicines (NEHM) submitted documents before the said expert committee for recognizing its functioning on the lines of Indian Medical Council Act, 1956, as a fifth medical system in India on 11th February, 2000, the other four medical system being Allopathic, Homeopathic, Ayurvedic and Unani.

(9) The Haryana Electro-homeopathy/Electropathy Medical Association earlier filed a Civil Writ Petition No. 19999 of 2001 before this Court challenging circulars dated 27th February, 1999 and 30th November, 1999 issued by the Government of Haryana directing all the District Ayurvedic Authorities to take action against all those committing offences being committed under the Ayurveda and Unani Practise Act, 1963 and against those practising Ayurveda in unauthorized way and without registration or without requisite qualification. In the said writ petition, it was pointed out by the learned State Counsel that the Central Government has taken a decision on two occasions which is adverse to the petitioner i.e. 19th January, 2003 and 1st November, 1996. It was pointed out by the learned counsel for the respondent that Central Government is reconsidering the entire matter in view of the directions issued by the Delhi High Court in CWP No. 4015 of 1996. In view of the said stand of learned counsel for the respondent, the writ petition was disposed of with a direction to the Central Government to decide the writ petition as a representation. In pursuance of the said direction, Government of India passed an order on 11th October, 2004. It was

declared that a person whose name is borne on the Indian Medical Council Register or under the Indian Medicine Central Council Act, 1970 and under the Homeopathy Central Council Act, 1970 can practise and the institutions impart education in relevant system of medicine and award degrees. It was also declared that Electropathy is not recognized as a system of medicine by any of these Councils, consequently, no institute can award degree nor nay one with unrecognized degree or diploma can be allowed to practise as a system of medicine. It was also stated that two Expert Committees had not recommended Elecropathy as a system of medicine. The Committee of Experts constituted under the Director General of Indian Council of Medical Research had also considered the desirability of recognition of Electropathy as a system of medicine consequent to the directions of the High Court of Delhi but the said Committee did not recommend recognition to any such alternative system of medicine. The recommendations of the Committee have been accepted by the Government and order dated 25th November, 2003 was issued.

(10) In short reply filed by the Union of India in CWP No. 3261 of 2005, it has been averred that an Inquiry Committee was constituted in September, 1988 under the Chairmanship of Director General, Indian Council of Medical Research to examine the feasibility of granting recognition to the so called system. The said Committee did not recommend that grant of recognition to this system in their report submitted in December, 1990. Subsequently, to fulfill an assurance made in the Parliament while discussing a Private Members Bill seeking recognition to the sytem, an Experts Committee was constituted under the Chairmanship of Dr. S. D. Sharma, the then Additional Director General in the Director General of Health Services. The said Committee did not recommend grant of recognition to this system in its report submitted in November 1991. On 19th January, 1993, an order was passed by the Secretary (Health) disposing of the representation received for recognition of Electro-homeopathy/Electropathy. Such systems of medicines have not been recognized for the reason given in the order. A copy of the said order has been appended as Annexure R-1 with the written statement. Subsequently, in terms of the directions of the Delhi High Court, a Standing Committee of experts on Alternate

System of Medicine, considered the claim of the petitioners for recognization of the system but it has not recommended grant of recognition of Electropathy,—*vide* order dated 25th November, 2003 which is subject matter of challenge in the present writ petition. Reliance is also placed on two orders of Delhi High Court in CWP 6287-88 of 2004—Electro Homeopathic Practitioners Association of India *versus* Union of India dated 27th September, 2004 and order dated 17th November, 2004 in WP (c) 4092 of 1993—Academic Medical and Social Welfare Society *versus* Union of India, wherein identical issue as sought to be raised in the present petition has been answered against the petitioners.

**Arguments**

(11) Learned counsel for the writ petitioners have firstly argued that the Central Government has passed an order on 25th November, 2003 without taking into consideration the relevant and complete information on the subject of Electropathy or Electro-homeopathy and without giving opportunity to the effected persons, therefore, the said order is required to be set aside for reason of denial of principles of natural justice as well.

(12) Learned counsel for the writ petitioners have also vehemently argued that Electropathy or Electro-homeopathy system of medicines is a scientific and well developed system of medicine. Indian Medical Council Act, 1956 ; Indian Medicine Central Act, 1970 ; and Homeopathy Council Act, 1970 permit practise of specific systems of medicines. Such systems of medicines alone are regulated and controlled by the aforesaid legislations. It is contended that the petitioners have a fundamental right to impart knowledge in alternative systems of medicines i.e., Electropathy or Electro-homeopathy, as such system does not contravene any of the three above-mentioned statutes or for that matter any other statute. Since there is no statute prohibiting practising or controlling the imparting of education of Electropathy or Electro-homeopathy system of medicines, the same cannot be controlled or regulated by the Central or State Government by an executive order as any restriction in respect of a right to practise a profession can be only by a suitable law enacted by the Parliament or by a competent State Legislature. The right to practise any profession can only be

regulated in terms of "Law" enacted in terms of clause (6) of Article 19 of the Constitution. Therefore, the executive orders of the Central Government dated 25th November, 2003 and for that matter the subsequent orders of the State Government cannot impose restrictions on the right of the petitioners to practise such system of medicine guaranteed to the petitioners under Article 19(1)(g) of the Constitution of India. Learned counsel for the petitioners in support of their arguments has relied upon a number of judgements. Particular reference was made to **Mohammad Yasin** *versus* **Town Area Committee, Jalalabad** (1) **Sri. Dwarka Nath Tewari and others** *versus* **State of Bihar and others,** (2) **Kharak Singh** *versus* **State of U. P.** (3) **D. Bhuvan Mohan Patnaik and others** *versus* **State of A. P. and others,** (4) and **Godawat Pan Masala Products I. P. Ltd., and another** *versus* **Union of India and others,** (5).

(13) On the other hand, Mr. Batalavi representing the Union of India, relied upon **New Delhi Municipal Council** *versus* **Tanvi Trading And Credit Private Limited and Others** (6). He also referred to Division Bench judgement of Allahabad High Court reported as **The Electro Homoeopathic Practitioners Association of India and another** *versus* **A. P. Verma, Chief Secretary, Government of U. P. and others,** (7), wherein it was held as under :—

> "32. Thus, whether it is modern medicine or ancient medicine, the practitioners thereof must hold the qualifications prescribed by the Act or Rules made thereunder and be registered under he Act to practise.
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> 33. Similarly, in the Homeopathy Central Council Act, 1973 only a person who possesses a recognized medical qualification and is enrolled in the State Register or

(1) AIR 1952 SC 115
(2) AIR 1959 SC 249
(3) AIR 1963 SC 1295
(4) AIR 1974 SC 2092
(5) (2004) 7 SCC 183
(6) (2008) 8 SCC 765
(7) 2004 Allahabad Law Journal 2862

the Central Register of Homeopathy can practise homeopathy in the State. Under section 15(4) the same punishment has been provided for violation of Section 15(2).

34. A perusal of the above provisions shows that Parliament has clearly provided that only those holding a certificate granted by the concerned statutory authority can practise medicine, whether it is modern or ancient medicine. Electro-homeopathy is not recognized in any of the aforesaid Acts. Hence in our opinion it is nothing but quackery which is not permissible by law. The appeal is, therefore, dismissed.

35. The State authorities are directed to restrain the practise or teaching of electro-homeopathy throughout U.P."

(14) Mr. Sidhu, learned Additional Advocate General, Punjab, representing the State of Punjab, has also referred to Single Bench judgment of Andhra Pradesh High Court reported as **M/s Private Medical Practitioners' Association of A. P.** *versus* **Government of Andhra Pradesh and others,** (8) as well as Single Bench of Allahabad High Court reported as **Charan Singh and others** *versus* **State of U. P. and others,** (9). Learned counsel has made reference to the Commentary on Constitution of India by Jagdish Swarup published by the Modern Law Publications in the year 2007 to contend that the medical profession requires more careful preparation by one who seeks to enter it. It has to deal with all those subtle and mysterious influences upon which health and life depend and requires not only a knowledge of the properties of vegetables and mineral substances but of the human body in all its complicated parts, and their relation to each other, as well as their influence upon the mind. The physician must be able to detect readily the presence of disease, and prescribe appropriate remedies for its removal. Everyone may have occasion to consult him, but comparatively few can judge of the qualifications of learning and skill, which he possesses. Reliance must be placed upon the assurance given

(8) AIR 2003 Andhara Pradesh 1

(9) AIR 2004 Allahabad 373

by his licence, issued by an authority competent to judge in that respect, that he possesses the requisite qualifications. He also referred to a judgement of Supreme Court of United States of America reported as **Hawker** *versus* **State of New York,** (10), wherein it was quoted with approval that health, limb and life should not be left to the treatment of ignorant pretenders and charlatans. Mr. Sidhu further contended that right to practise medicine is not an absolute right as such right affects public health and, therefore, a practitioner who wishes to practise must strictly fall within one or the other regulatory statutes. If he does not fall within any of the regulatory statutes, he is not entitled to practise medicine as by necessary implication all other systems of medicines are deemed to be excluded. It is also argued that the order dated 25th November, 2003 was passed by the Central Government in terms of the directions of the Division Bench of the Delhi High Court and such order is not merely an executive order but an order passed in exercise of executive power of the State in terms or Article 73 of the Constitution of India. It, thus, validly prohibits practise in Electropathy system of medicine.

(15) In view of the above, we are of the opinion that the following questions arise for consideration in these writ petitions for our opinion.

1. Whether the decision of the Central Government communicated on 25th November, 2003 can be said to be illegal, arbitrary or void on account of violation of principles of natural justice ?

2. Whether Electropathy or Electro-homeopathy system of medicine is a modern scientific medical system and falls within the scope of Indian Medical Council Act, 1956 ?

3. Whether the decision of the Central Government dated 25th November, 2003 or of the State Government is the decision taken by the executive in exercise of the executive powers of the State if the Indian Medical

(10) 170 US 189 (1898)

Council Act, 1956 is not applicable to the Electropathy or Electro-homeopathy system of medicine ?

(16) We shall now deal with the first question that the order of the Central Government on 25th November, 2003 was passed without giving an opportunity to the affected persons and is therefore violates the principls of natural justice. In CWP No. 7493 of 2007, the petitioners have relied upon a detailed representation submitted by the N.E.H.M of India, a representative body of Electro-homeopaths, which has sought recognition of such system of medicine. The Committee considered the representation of the representative body of Electro-homeopaths and made its recommendations on the basis of such representation and other material collected and available before them. In considering recognition to a system of medicine, it is neither feasible nor practicable to hear all those who were practicing that particular system of medicine. The representative body was associated in the decision making process. Therefore, the said argument raised by learned counsel for the petitioners is not tenable.

(17) From the reply by Central Government, it is apparent that from the year 1988, it has considered the issue of recognition of Electropathy system of medicine. Such claim for the grant of recognition has not been found to be meritorious. The Ministry of Health and Family Welfare has constituted a Standing Committee of Experts under the Chairmanship of Director General of Indian Council of Medical Reserach and Deputy Director General, Indian Council of Medical Research as Member Secretary with 15 other members. The said Standing Committee has considered not only the claim of the Electro-homeopathy system of medicine for recognition but other alternative system of medicines as well. The report of the Committee shows that it has examined the claim of alternative systems of medicines in a scientific manner by taking into consideration various parameters as enumerated above. It could not be pointed out that such consideration by the Committee is based upon parameters which are not relevant for arriving at the conclusion that Electropathy stystem of medicine is not required to be recommended for practise in India. While exercising the power of judicial review, this court is required to examine the decision making process alone. Whether a particular system of medicine requires recognition or legislation is

a matter for experts or for the Parliament to consider and to take action thereon. This Court in judicial review is not possessed of the expertise to examine the issues of scientific and technical nature so as to find fault with the report of the Committee consisting of persons of eminence. This Court also cannot issue any direction to legislate for the purpose of grnat of recognition to Electro-homeopathy system of medicine.

(18) It would be necessary to examine the relevant statutes and some background of development of Allopathic system of Medicine and that of Electro-homeopathy before, the second question and framed ealrier is taken up for consideration.

(19) The first of Statutes governing medical education in India is The Medical Degree Act, 1916. It deals with "western medical science" which is defined to mean the western methods of allopathic medicine, obstetrics and surgery but not Homoeopathic or Ayurvedic or Unani system of medicine. The right to conferring, granting or issuing degrees, diplomas, liciences, certificates etc. to be qualified to practise western medical sicence shall be exercisable by the authorities specified in the schedule as per the provisions of Section 3 of the aforesaid Act. Section 4 of the Act prohibits that no other person than authorized under Section 3, is competent to confer, grant or issue any degree. Later, The Medical Council Act, 1933 was enacted. It dealt with medical institutes that grant degrees, diplmas or licences in Medicine. The medicine was defined to mean modern scientific medicine inclusive of surgery and obstetrics but excluding veterinary medicine and surgery. The Medical Council Act, 1956 (for short referred to as the Act) was enacted by repealing The Medical Council Act, 1933. Section 15 of this Act prohibits any person other than a medical practitioner enrolled on a State Medical Register or Central Medical Register to practise medicine. The relevant provisions read as under :

> ***"Section 15. Right of persons possessing qualifications in the Schedules to be enrolled—***
>
> (1) Subject to the other provisions contained in this Act, the medical qualifications included in the Schedules shall be sufficient qualification for enrolment on any State Medical Register.

(2) Save as provided in Section 25, no person other than a medical practitioner enrolled on a State Medical Register,—

*(a)* —

*(b)* shall practise medicine in any State ;

*(c)* —

**2. Definitions.**—In this Act, unless the context otherwise requires,—

*(a)* "approved institution" means a hospital, health centre or other such institution recognized by a University as an institution in which a person may undergo the training, if any, required by his course of study before the award of any medical qualification to him;

xxxx

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

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

xxxx

(l) "University" means any University in India established by law and having a medical faculty.

**11. Recognition of medical qualifications granted by Universities or medical institutions in India.**—(1) The medical qualifications granted by any University or medical institution in India which are included in the First Schedule shall be recognized medical qualifications for the purposes of this Act.

(2) Any University or medical institution in India which grants a medical qualification not included in the First

> Schedule may apply to the Central Government to have such qualification recognized, and the Central Government, after consulting the Council, may, by notification in the Official Gazette, amend the First 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 First Schedule against such medical qualification declaring that it shall be a recognized medical qualification only when granted after a specified date".

(20) Section 25 of the aforesaid Act deals with provisional registration on fulfillment of certain conditions. It may be noticed that the Medical Degrees Act, 1916 is in respect of with western medical science and that too recognizes degrees etc. by limited number of Insitutes, whereas the Medical Council Act, 1933 and its successor. The Medical Council Act, 1956 dealt with "modern scientific medicine". It needs to be now examined—Whether the Act would include into its ambit, the electro-homeopathic system of medicine as well.

(21) Allopathic medicine and allopathy (from Greek allos, other, different + pathos, suffering) are terms coined in 1842 by Samuel Hahnemann, the founder of homeopathy. It meant "other than the disease". The etymology of Allopathy from "online etymology dictionary" is "treatment of disease by remedies that produce effect opposite to the symptoms," from Ger. Allopathie (Hahnemann), from Gk. *allos* "other" (see *alias*) + patheia "effect", from *pathos* "suffering" (see *pathos).* Among the systems of non-ethno medicine being in use in different parts of the world today, Allopathy stands apart from the rest, in philosophy and methods.

(22) **In Mukhtiar Chand (Dr)** *versus* **State of Punjab,** (11) the Supreme Court examined various medicinal systems in use in India when it noticed to the following effect :

> "18.Of the medical systems that are in vogue in India, Ayurveda had its origin in 5000 BC and is being practised

(11) (1998) 7 S.C.C. 579

throughout India but Siddha is practised in the Tamil-speaking areas of South India. These systems differ very little both in theory and practice. The Unani system dates back to 460-370 BC but that had come to be practised in India in the 10th century AD (Park : *Textbook of Preventive and Social Medicine,* 15th Edn., pp. 1 & 2). Allopathic medicine is comparatively recent and had its origin in the 19th century".

(23) In C.W.P. No. 13253 of 2007, the invention and development of Electro-homeopathy as a system of medicine has been explained. It read as under :

"Inventor and Invention :

The medical system of electro-homeopathy is an art of healing through herbs only. The inventor, Grafen Ceasre Mattei (Count Ceasre Mattei, 1809–1869), who was an Italian to whom the title of Count was later bestowed by Pople Pius IX was very impressed by the art of healing of spagyrism and homeopathy. Due to the inspiration of these healing systems, he developed a concept of healings by following the principles of spagyrism and homeopathy in the name of electro-homeopathy in 1865 at Bologna, Italy. Electro-homeopathy, the, is a product of the well-known, centuries old, healing systems: spagyrism and homeopathy.

Spagyrism is the practical application of alchemy in medical treatment. The intellectual origin of spagyrism lies in alchemy. We can still final alchemical views and preparation process today in Indian Ayurveda medicine and particularly in southern Indian Siddha medicine also.

In alchemical and spaygric methods, all of the plant's components are separate from each other, purified chemically elevated energetically and then recombined in the original proportion. In fact, the spagyric word comes from two root words meaning separate and reunite. The result of this process is the preparation, with holistic balance, of the original plants, as well as original intelligence and life force of the plant, but with greater focus, intensity and healing potential. Spagyric

medicines consist of the secrets of balanced powers and the structures formed by them.

Spagyrism and homeopathy are two different healing systems whose conjunction emerges in the form of electro-homeopathy as an enhanced and very effective healing system with respect to both of these healing systems. The medicine was known as "electric medicines" in the time of Mattei because he gave his medicine this name for its rapid effects. Mattei's treatment spread in Europe in the second half of the 19th Century. By 1884, there were 79 distribution centres in 10 European countries. It goes without saying that homeopathic practitioners protested the bitter profanation of homeopathy by Mattei's secret medicines.

Law and Principle

Count Ceasre Mattei described his prescriptions on the basis of the physiology of human organs systems. He stated that the human body is complex in its structure and function and no disease can be simple in its form. He also stated that organ systems working coordination within the body so, whenever a disturbance or dis-equilibrium happens, it leads to complex symptoms due to the involvement of the coordination of different organs and organs system of body. Thus, the Master suggested a compound medicine to cure the complex symptoms, which result from the manufacturing of the biochemistry of the cells and tissues of the body. Thus, to cure the complexity of the symptoms of the body, Mattei advised prescribing complex, compound medicines.

Another concept presented by Mattei is based upon the vitiation of lymph and blood. He argued that these two vital fluids are important and necessary for the health of cells and tissues of the body because only these two vehicles serves the purpose of nutrition supply to each proximal and distal cell of the body to keep the biochemistry intact within the cells. These two fluids are very good buffers that fight and resist the spread of any infection within the body. Whenever an infection is found in body, the root cause is always found in these two body tools, so they also mediate the transfer of the infection from one part of the body to another. Therefore, Mattei configured two specific groups of medicines to arrest the vitiation of lymph and blood, which act as the

preserver against the invading micro-organisms of diseases. According to Mattei, "Life is in blood and lymph while disease is in its vitiation".

(24) The Standing Committee of Experts on Alternate System of Medicine has, *inter alia,* found that all the literature is very ancient and written by one scientist i.e., the inventor of the system. The rest of the books are translations from the original texts. The pharmacopoeia of the system does not disclose the year of publication and the year in which it was updated. It was also noticed that there is no evidence that the system is recognized as a system of medicine in Italy or any other country. It was also noticed that the term Electropathy or Electro-homeopathy do not exist in any available literature or recognized anywhere in the world as Alternative/Complementary system of medicine. Though it bears the name of Electro-homeopathy, it has no affiliation to Homeopathy, either in principle or practise. The Central Council of Homeopathy has denied any link with this system and does not consider it part of its system. In fact, the practitioners of Electropathy have agreed to delete the term Homeopathy and call the system as Electropathy.

(25) The Division Bench of Kerala High Court in **Dr. A.K. Sabhapathy** *versus* **State of Kerala, (12)** has held that the schedule to the Act does not contain any of the qualifications in Homeopathy or Ayurveda, Unani or Siddha systems. The schedule to the Act concerns only with modern scientific medicine, which is other name of allopathic medicine. The judgment of the High Court was approved by Supreme Court in **A.K. Sabhapathy (Dr.)** *versus* **State of Kerala, (13).** The said issue in the judgment has been overruled in **Mukhtiar Chand's case** *(supra).* But the issue involved in that case was different. The challenge in the aforesaid proceeding was to the proviso to Section 38 of the Travancore and Cochin Medical Practitioner Act, 1953. The Diploma Holders from the State of Bihar in Homeopathic medicine have initiated the said proceedings claiming right to practise modern medicine under the aforesaid Act. It is the said contention that was negated by the High Court and affirmed by the Supreme Court. It was found that the Homeopathic system of medicine has been specifically

(12) AIR 1997 S.C. 610

(13) 1992 Supp. (3) SCC 147

excluded from the operation of the Act. The modern scientific medicine system, as defined in Section 2(f) of the Act, was examined in the limited sphere vis-a-vis the right of Homeopathy Diploma Holder to practise modern medicine. Therefore, the aforesaid judgment has no applicability to the issue raised in the present writ petitions.

(26) The High Court of Allahabad in Electro Homeopathic Practitioners Association (supra) has observed that Electro-homeopathy claims to be modern medical science discovered by Court Ceaser Mattei in Italy in 1865. It does not claim to be some ancient of medicine. It thus held that only a person registered in the Indian Medical Register maintained by Medical Council of India can practise modern scientific medicine. It follows that others are debarred. The right to practise profession guranteed under Article 19(1)(g) of the Constitution is subject to reasonable restrictions, which can be placed in exercise of such right in the interest of general public.

(27) In view of the averments made by the writ petitioners in respect of the inventor of the system, law and principle, the system in issue came to be developed in the later part of 19th Century i.e., later than the invetion of Allopathic System of Medicine. The "medicine" in Section 2(f) of the Act in inclusive definition to mean modern scientific medicine in all its branches including surgey and obstetrices but excludes veterinary medicine and surgery. It is thus not earlir than allopathic system of medicine such as the Ayurveda, Unani or Homeopathic system of medicine. Such system is of recent origin. The Act is not respct of allopathic system of medicine alone. It is in respect of all modern scientific system and its branches. It thus would exclude traditional or ancient systems but shall include the systems that are modern and/or of recent origin.

(28) Section 15(2) of the Act prohibits practise of medicine except when the name of the practitioner appear in the Registers contemplated under the Act. The petitioners are not qualified for registration as medical practitioner under the Act. The institutions imparting knowledge, training or course leading to issuance of Diplomas or Certificates in electro-homeopathy are also not recognized to grant such Diploma or Certificates under the Act. The prescribing of necessary

qualifications before permitting practise of a medical system is in the interest of general public. It is necessary to save citizens of this country from quacks to practise medicine endangering their lives. Thus, we are of the opinion that the individuals cannot be permitted to practise medicine and the institutions cannot be permitted to award degree, diplomas or certificates, as they are not so permitted under the Act. We find that a regulatory enactment i.e. The Act, in terms of Clause 6 to Article 19(1)(g) of the Constitution of India is in force, therefore, the petitioners cannot seek right to practise medicine except in accordance with the provisions of the Act. Thus the challenge of the petitioners to the impugned circulars/orders issued by the Central/State Government is not tentable.

(29) Though, it is not necessary to examine other limb of the arguments raised by learned cousnel for the petitioners that the circulars or the decisions of the Central/State Governemts cannot impose restrictions as such restrictions can be placed only by a Statute. But since detailed arguments were addressed on that issue, we have examined such question as well. Now, if the Act is not applicable to the electro-homeopaths as argued, then the question to be examined is whether, the directions of the Central Government dated 25th October, 2003 or that of the State Govenment is the directions issued in exercise of the executive power of the State ?

(30) Entry 25 of List III–Concurrent List of Seventh Schedule is Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour. Entry 26 is Legal, medical and other professions. Therefore, the medical education and profession falls within List–III of Seventh Scheduled and, thus, the Central Government and the State Government both are competent to legislate on the said subjects.

(31) We shall now discuss the judgments cited by the learned counsel for the petitioners. **In Mohammad Yasin's case** (*supra*), the Town Area Committee has framed bye laws under which all rights and power to levy or collect commission on sale or purchase of vegetables and fruits within the limits of town vested in the committee or any other

agency appointed by the committee and no one except the committee is authorized to deal in wholesale vegetables and fruits. It was found that any restriction to carry out business could be placed only by State Legislature. In **Kharak Singh's case** *(supra),* Chapter XX of U.P. Police Regulations was the subject matter of challenge. The stand of the State was that the Regulations contained in Chapter XX has no statutory basis but was merely determined by executive instructions framed under the guidance of the police officers. It was conceded that it would not be a law which the State is entitled to make under the relevant clauses (2) to (6) of Article 19(1) of the Constitution in order to regulate or curtail the fundamental right under sub-clauses of Article 19(1) of the Constitution of India. In **Sri Dwarka Nath Tewari's case** *(supra),* Bihar Education Code was found to be not based upon any statutory authority which could give it the force of law. It was stated to be an administrative order or rule. In **Godawat Pan Masala Products I.P. Ltd's case** *(supra),* it was found that whether the consumption of pan masala of gutka (containing tobacoo), or for that matter tobacco itself, considered inherently or viciiously dangerous to health is a matter of legislative policy. It was found that the legilsation enacted in this country never treated a tobacco article as res extra commercium nor the Parliament ever attempted to ban its use absolutely, therefore, to levy restrictions and control the manufacture and sale of tobacco and its allied products as well as pan masala cannot be affected by the executive decision in the absence of legislative policy by an Act of the Legislature. All these judgments relied by the petitioners do not support the arguments raised that the decision to restrict or prohibit the practise Electropathy could not have taken by the Executive in exercise of the executive power of the State.

(32) In **Naraindas Indurkhya** *versus* **The State of M.P. and others, (14)** it was held that the executive power of the State Government under Article 162 stends to all matters in respect with respect to which the State Legislature has power to make laws and since education is a subject which falls within enry 11 of List of the Seventh Schedule to the Constitution, the State Government could apparently in exercise of its executive power prescribe test books, provided that in doing so

(14) AIR 1974 SC 1232

it did not trench on the rights of any person. On the basis of the said finding, an argument was raised by Shri Bains that since the right of the petitioners to practise profession of medicine is affected, the same could not have been done by the Central/State Government in exercise of its executive power. Such action could be taken by the legislative enactment only. He also relied upon an order passed by Hon'ble Supreme Court in Civil Appeal No. 13327 of 2007 Decided on 27th February, 2009—Ayurvedic Enlisted Doctors Association *versus* State of Maharashtra.

(33) The said appeal arose out of judgment of Bombay High Court in respect of practitioners of different system of medicine. In fact, the Division Bench of High Court found that Section 2(2) of Maharashtra Medical Practitioner Act, 1951, provided that certain person do not require registration under Chapter VI i.e. persons practising electrotherapy etc. It was held that if such person claim to practise medicine for the purpose of diagnosis, treatment etc., then they would come within the definition of medical practitioner and would require registration under Section 33 of the Act. There was no appeal by the persons professing Electropathy or electrotherapy before the Supreme Court against the finding recorded by Bombay High Court. Even, the appeal against the said judgment has been dismissed except to the extent of granting relief in the matter of prosectuion. The said judgment hardly supports the contentions raised. In fact, the High Court held by examining the provisions of the Maharashra Act that registration under the Act is necessary before any person is permitted to practise as medical practitioner.

(34) In **New Delhi Municipal Corporation** *versus* **Tanvi Trading and Credit Private Ltd.,** (15) it was held that the Union Government has power to issue executive directions relating to matters dealt with under the Delhi Development Authority Act, 1957 and New Delhi Municipal Act, 1954, though directions contrary to the provisions of the Act cannot be issued. It was held to the following effect :

> "The executive power of the Union under Article 73 extends to the matter in respect to which the Parliament has the power

(15) (2008) 8 SCC 765

to make law and hence fall under which the law could have been made, executive instructions may be issued in the absence of legislation in the field and if there is existing legislation then to supplement it".

(35) **In Khoday Distilleries Ltd.** *(supra)* it was held that the State can place reasonable restrictions under clause (6) of Article 19 by subordinate legislation as well. It was found that clauses (2) to (6) of Article 19 makes no distinction between the law made by the Legislature and the subordinate legislation for the purpose of placing restriction on the exercise of fundamental right mentioned in Article 19(1) of the Constitution. It was held to the following effect :

"64. The last contention in these groups of matters is whether the State can place restrictions and limitations under Article 19(6) by subordinate legislation. Article 13(3)(a) of the Constitution states that law includes "any ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law". Clauses (2) to (6) of Article 19 make no distinction between the law made by the legislature and the subordinate legislation for the purpose of placing the restrictions on the exercise of the respective fundamental rights mentioned in Article 19(1)(a) to (g). We are concerned in the present case with clause (6) of Article 19. It will be apparent from the said clause that it only speaks of "operation of any existing law insofar as it imposes....." "from making any law imposing" reasonable restrictions on the exercise of the rights conferred by Article 19(1)(g). There is nothing in this provision which makes it imperative to impose the restrictions in question only by a law enacted by the legislature. Hence the restrictions in question can also be imposed by any subordinate legislation so long as such legislation is not violative of any provisions of the Constitution...."

(36) In view of the decision of the Constitutional Bench of Supreme Court in **Khoday's case** *(supra)* the restriction or prohibition as contemplated by Clause 6 of Article 19(1)(g) can be placed by a subordinate legislation as well. Therefore, the decision of the Central Government in the absence of any other statute would be a decision taken by the executive in exercise of the executive power of the State.

It may be noticed that a Division Bench of Delhi High Court has directed the Central/State Government to consider the legislation permitting practise in Electropathy system of medicine. The executive order dated 25th October, 2003 was passed in compliance of the said directions. The Central Government was considering the fact whether any legislation is to be enacted in respect of Electropathy system of medicine. The Central Government came to the conclusion that legislation is not required. The said decision of the Central Government whether to legislate or not is, in fact, an order in exercise of executive power of the State contemplated under Article 73 of the Constitution of India.

(37) In view of the aforesaid discussion, none of the judgments referred to by the learned counsel for the petitioners are applicable to the facts of the present case of the proposition that prohibition to practise alternative system of medicine could be only by a law enacted by the Parlaiment or the State Legislature. Such proposition is not supported either by statutory provisions or by the precedents referred to above.

(38) In view of the above, we do not find any merit in the present writ petitions. the same are dismissed with no order as to costs.

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*R.N.R.*

*Before M.M. Kumar & Nirmaljit Kaur, JJ.*

**BEJUL SOMAIA AND OTHERS,**—*Petitioners*

*versus*

**STATE OF HARYANA AND OTHERS,**—*Respondents*

C.W.P. No. 3648 of 2007

27th August, 2009

***Constitution of India, 1950—Art. 226—Haryana Cooperative Societies Act, 1984—Ss. 20 & 131(2)(x)—Haryana Cooperative Societies Rules, 1989—Appendix 'A', Rl. 34—Election to Cooperative Society—Right to vote—S.20 grants every member of a cooperative society one vote in affairs of Society—Rl. 34 of Appendix 'A' restricting right of a member to cast only one vote irrespective of number of executive members to be elected—Whether expression 'one vote in affairs of the society' used in S. 20 means***