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3k, Picnic Garden 3rd Lane, Calcutta-39

Office : 8, Old Post Office St., (Gr. Floor)

Calcutta-1

Phone : 75-8183

12. Accordingly, even if a single man Administrator of a school be deemed to be representing the entire managing committee of the school or majority of its members and his recommendation may also be deemed to be the recommendation of such managing committee itself for declaring the school as a 'Sponsored Institution', on such a recommendation, the school can be declared as a Sponsored Institution for the purpose of controlling the financial side of the school only, but the Government cannot have any control over the general administration of the school by such declaration. Since I have already discussed and observed hereinbefore, that a single man Administrator of a school cannot be equated with the managing committee of such school nor the decision of such an Administrative can be said to be the decision of the majority members of such managing committee, on the recommendation of such single man Administrator, the State Government cannot declare an Institution to be a Sponsored Institution in terms of clause (ii) to the proviso to Rule 2(g) of the aforesaid Rules and as such the impugned orders and the notifications are wholly illegal and cannot be sustained in law and hence the same are set aside and or quashed.

The Civil Order is thus allowed, without any order as to costs. Let a writ be issued accordingly.

A. N. S.

CONSTITUTIONAL WRIT JURISDICTION

Before Mr. Justice Bhagabati Prasad Banerjee

Decision : May 7, 1990

**The Council of Alternative Systems of
Medicine & Anr.**

.....Petitioners

Versus

State of West Bengal & Ors.

.....Respondents*

Indian Medical Council Act, 1956—Scope of the Act—A system of Medicine known as Alternative system of Medicine devoid of any therapy by chemicals and a system to get cure by controlling diets, sense and breathing does not contravene any provision of the Act.

Indian Medical Degrees Act, 1916—Conferring Certificates diplomas to successful students taught to cure disease by controlling diet,

**Matter No. 546 of 1988*

breathing etc. without any chemical therapy is not illegal—It contravenes no provision of the Act.

Criminal Procedure Code—Sec. 482—Inherent power—First Information Report when discloses no offence, the police investigation is liable to be quashed under inherent power by High Court.

The Council of Alternative System of Medicine is affiliated to Medicine Alternative established in 1962, it being an International Multinational University. The said Medicine Alternative was established in 1962 at Alma Atta U S S R. The said Council had its registered office at 378, Ganguly Bagan East Road, Jadavpur, Calcutta-84. The petitioner No. 2 as the President of the Council of Alternative System of Medicine published advertisement inviting students for admission in degree/diploma courses in a number of disciplines of different system of medicines said to have been conducting by the said organisation and also indicating that the said Council to which the said organisation is affiliated, would confer degree/diploma/certificate etc. in respect of the said medical courses.

The State of W. Bengal filed an F. I. R. alleging inter alia that the said Council contravened the provisions of Sections 3 & 4 of Medical Degrees Act, 1916. It is alleged that degrees, diplomas, licences, certificates etc. to practise modern medicine can be conferred only by the Universities, Institutions and authorities as specified under the Medical Degrees Act, 1916. It is further alleged that the petitioner No. 2 has contravened the Indian Medical Council Act providing that no person other than a medical practitioner enrolled in a State Medical Register can practise. Publication of advertisements inviting intending students to take lesson in the Council and then to practise that system of medicine on the strength of the certificates and Diplomas conferred by the Council on the successful student amounts to attempt to cheat innocent people. On the basis of the F. I. R. petitioner No. 2 was arrested by Jadavpur Police.

The present petition seeks to invoke the inherent jurisdiction of the High Court under Section 482 Cr. P. C. to quash the F. I. R. and the proceeding against petitioner No. 2.

Having quashed the F. I. R. and the proceeding against petitioner No. 2, the Court

HELD: (A) Indian Medical Council Act was passed for providing of recognition of Medical Council Act and the maintenance of medicine in India and matters connected therewith. It was stated that the petitioners have contravention in Section 15 of the Indian Medical Council Act. Section 15 of the said Act provides that "right of persons

possessing qualifications in the schedules to be enrolled". Sub-section (2) of Section 15 of the said Act provides that "No persons other than a medical practitioner enrolled on a State Medical Register"—(a) shall hold office as physician or surgeon or any other office of the Government or in any institution maintained by a local or other authority, (b) shall practise medicine in any State, (c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner, (d) shall be entitled to give evidence at any inquest or in any court of law as an expert under Section 45 of the Evidence Act 1872 or on any matter relating to medicine". Similarly the other acts in respect of the violation of the alleged provision provide the condition under which a person can practise medicine. The schedule of the Act provides various degrees which are recognised under the allopathy system of medicine of various Universities and Medical Colleges. There is no law which can prohibit any person from reading and getting training in any other system of medicine.

(B) The alternative system of medicine is a system devoid of medicine made by chemicals. It is a system to get cure by controlling diet, sense, breathing. If any disease is cured by a practise of Yogo, it cannot be said that such system contravened any of the provisions of law and it is an offence to get training in Yogo and to advise the people and to follow the system of Yogo. Yogo is not a recognised system of treatment by the Legislator and/or the Parliament but it is practised and propagated through T. C. by the Government. Similarly, the alternative system of medicine clearly indicates that it is a system which is contrary to the modern system of medicine based on antibiotics and chemical compound. Thus, imparting training and conferring diploma and certificate as to Alternative System of medicine contravenes no legal provision.

(C) If an F. I. R. or criminal complaint alleges an offence by contravention of some law, but no law in reality it seeks to contravene, the F. I. R. or complaint is liable to be quashed as the F. I. R. which does not allege or disclose that the essential requirements of the penal provision are prima facie satisfied, cannot form the foundation or constitute the starting point of a lawful investigation. An investigation can be quashed if no cognizable offence is disclosed by the F. I. R.

Case referred to :—

(1) *State of West Bengal v. Swapan Kumar*, AIR 1982 SC 949

Mr. Debatosh Khan, Rupendra Nath Mitra and

Prabir Kumar Samanta

Mr. Sudhir Bhattacharyya

.....for the Petitioners

.....for the State

The judgment of the Court was as follows :—

The petitioner No. 1 the Council of Alternative System of Medicine (referred to as the said Council) is a body registered by the Government of West Bengal under the West Bengal Societies Registration Act.

2. The petitioners in this case challenged the notification issued by the Government of West Bengal, Department of Health in which it was stated that the said Council was misleading the people and that the said system of medicine was not recognised and had no authority to enroll any doctor and/or to grant any registration certificate. The petitioner also further challenged the validity of the First Information Report lodged by the Sub-Inspector of Police, Jadavpur Police Station dated 17.12.87 in which there was an allegation of violation of the provisions of Section 417/420 of the Indian Penal Code and Section 5 of the Indian Medical Degree Act, 1916, Sections 30, 31 of Bengal Medical Act, 1914, Section 15 of Indian Medical Council Act, 1956, Sections 35 and 35A of West Bengal Homeopathy System of Medical Act, 1963; Sections 22, 33 and 36 of Paschim Banga Ayurvedic System of Medicine Act 1961 against Pradeep Kumar Biswas, the petitioner No. 2 who is the President of the said Council and others. The First Information Report was lodged on the basis of the complaint filed by the Assistant Secretary, Government of West Bengal before the Officer-in-Charge, Jadavpur Police Station for taking steps to stop illegal activities of the Medical College of Alternative Medicine at 378, Ganguly Bagan Road, Calcutta. By the complaint under the memo dated 16th December, 1987, the Assistant Secretary, Government of West Bengal, Department of Health informed the Officer-in-Charge of Jadavpur Police Station that for some time past reports were being received by that department from different sources, namely Baishaki Club, Ashoke Trust, Calcutta and others that an organisation under style "The Medical College of Alternative Medicine" had started advertising repeatedly in the leading newspapers inviting students for admission in degree/diploma courses in a number of disciplines of different system of medicines said to have been conducting by the said organisation and also indicating that the said Council to which the said organisation is affiliated, would confer degree/diploma certificate etc. in respect of the said medical courses. It was further stated that under the provisions of Section 3 read with Section 4 of Indian Medical Degree Act, 1916, degrees, diplomas, licences, certificates etc. to practice modern scientific medicine including obstetrics and surgery can be conferred guaranteed or issued only by the Universities, Institutions and authorities as specified under those Acts. It was stated that the said Council had contravened the provisions of the aforesaid Acts for which immediate

steps should be taken against the persons concerned. On the basis of the said complaint an First Information Report was lodged and C. Sengupta an officer attached to Jadavpur Police Station forwarded the petitioner No. 2 and others as accused person in connection with the alleged offences. It was further stated that the said Council was not recognised by any statute on the subject and the said Institution was not to conduct any medical courses or conferred any diploma, degree, certificate etc. to any person authorising him to practise as medical practitioner. The accused was arrested and/or forwarded before the court with a prayer that the accused persons may be taken into custody and remained to jail till the investigation is completed. This was the subject matter of challenge before this court.

3. The case of the petitioner is that the Council of Alternative System of Medicines is affiliated to Medicine Alternative which was established in 1962. The medicine alternative is an International Multi National University. The said Medicine Alternative was established in 1962 at Alma Atta U. S. S. R. The said Council had its registered office at 378, Ganguly Bagan East-Road, Jadavpur, Calcutta-84. The aims and objects of the society were as follows :

i) To promote and advance the science of Alternative System of Medicine other than official School of Medicines, as Electro Homeopathy, Bach Flower, Remedies, Biochemic, Neuropathy, I do Allopathy, Magnete Therapy etc. and to raise the status of all Alternative Systems of Medicines knowledged with all its aspect.

ii) To establish the Faculty to control examination of teaching and Educational Institution or College etc. and award degrees, diplomas or certificate thereof.

iii) To establish an Advisory Committee which consists of its own members or outsiders co-operation for the purpose of both as may decide for any purpose it deems fit.

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

4. The further case of the petitioner is that the system of Alternative Medicine is now well recognised all over the World and the complaints that were being made against the petitioner, were based on total ignorance of this system of medicine. In this connection, several

books of alternative medicine written by various renowned persons were produced before this Court. One of the books written by Andrews Stanway, M. B. Member of the Royal College of Physician, who had practised Medicine at King's Hospital in London. The book is forwarded by Alec Forks, M. A. D. M. (Oxford), Fellows of the Royal College of Physicians, Plymouth who says—

"This is a splendid book, I am sure it will have the success that such clear and sensible writing on an important subject deserves."

The said book also carries the statement by H. R. II. Prince of Wales that—

"When it comes to healing people it seems to me that account has to be taken of those sometimes long included complementary method of medicine which in the right hands can bring considerable reliefs if not hope to an increasing number of people."

The writer of the book himself in his preface—

"Only a couple of centuries ago, medicine was a blend of art, science, myth, Magic and Superstition, To-day it is overwhelmingly a scientific extension of 24th. Century technology and the other facets have become either unacceptable or have been so ridiculed as to render them worthless. We are currently experiencing a widening of horizon and breaking down of barriers in the ways. Meditation ways of controlling mind, oriental religion, the greater interest in healthy eating, greater awareness of the problem of pollution and a growing sense of man as a part of the larger World, are all enjoying a wide public following. In spite of general movement towards naturalness which is touching families who would by no means align themselves with a way out frings, the western medical profession continues to plod the never ending increasingly frustrating path of orthodox health care."

At page 34 the said author observes—

"Over the last 20 years also people have become increasingly disenchanted with western allopathic medicine but the pace has hosted up over the last 5 years to the point where many westerns are now actually sceptical of it and unwilling to subject themselves of their facilities to it. In a recent study in Washington D. C. the majority of those asked to choose between a low risk drug effective 50 percent of the time, a high risk (Possible carcinogenic) drug effective 100 percent of the time, or on non-drug remedy that would held control the symptoms but not cure the problem, choose the

last. For example 80 percent said they would rather go on a low salt diet for their hypertension than take drug."

At page 35 the said author states—

"Change is occurring slowly though as was found in a 1984 study carried out for the Times Newspaper in the U. K. Some of the findings were rather surprising. For example:

1) 26 percent of the doctors had tried a form of Alternative Medicine themselves for their own illness.

2) 57 percent of those who were not already practising some kind of alternative therapy said that they would like to do so.

3) Much higher proportion of doctors actually practised some of alternative therapy than was previously thought and many more doctors referred patients to alternative practitioners than expected.

4) In spite of all these interest there was still side spread ignorance of the therapies.

The book in 319 pages describes all the various system of alternative medicine including acupuncture, Alexander Technique, Ayurvedic, Colour Therapy, Herbal Medicine, Hyponitism and Homeopathy. Thus Ayurveda and Homeopathy which are recognised by the two Acts of 1971 and 1973 mentioned above are, in fact system of Alternative Medicine. They were recognised by Parliamentary Acts only as recently as the beginning of the last decade. But before that they were practised only as system of alternative medicine. Without any formal recognition by the Indian Medical Council or any University.

5. It was pointed out that the United Nation in order to fight the health problem of the World has approved and recognised the Graduate and Post Graduate Classes of the open and complimentary Medicines and inter-University academic co-operation for providing medicines to mankind of all sorts of healing process. The said Council in order to help in its small way the sufferings of Humanity. to when the Allopathic system, Ayurvedic system and other recognised system fail to reach to the majority of the people in India. The Society imparts and train its members, students through the trained persons in the matter of different therapy namely Neturopathy, Bach Flower, Acupuncture, Electro Homeopathy Herbal Product etc.

6. In this society of the petitioner already in its rolls there are practitioners of Alternative System of Medicines to the extent about 6 (six) thousand the practitioners have rendered immense help to the suffering public and in doing so no crime has committed by the society, or its member on the other hand the society has rendered social service to the common people in healing the disease.

7. It may be remembered that Homoeopathy, Ayurvedic, Unani etc. in the past were not been recognised by any Act in India and West Bengal before 1961 and 1969 respectively -but it is quite clear that the Ayurvedic Systems itself is an oldest form of medicine in the World but only few years back it has been recognised by the Government. Dr. Andrew Stanway in his book of 'Alternative Medicine' has stated at page 114 which is as follows :

"Oriental therapy of which Ayurvedic is a part, is very ancient dating from 1000 to 3000 B. C. It probably all started in the Nile and Euphrates Valley. It is widely held that much of our Western Medicines Originating in ancient Greek. This is true as far as it goes but the Greeks learned much in turn from the Indians. Hindu Medical classics are said to contain no technical terms that point to a foreign origin whereas the ideas and many of the drugs used by the Greeks are of Middle Eastern and Indian origin. A leading expert who has spent years studying the subject has come to the conclusion that pythagoras (who directly affected so much of the teaching of Hippo cho has been called the father of Western medicine) took his whole system directly from India. So it looks very much as though most of our medical knowledge originated in India. Ayurveda 'ayur means' (life and veda 'knowledge' or science) the science of life, is a later addition to an ancient Hindu sacred writing dating from 1200 B. C. the Aautharva veda. The first known school to teach Ayurvedic medicine was at the University of Benaras in about 500 B. C. It was here that the great samhita or encyclopaedits or medicine was written. Seven hundred years later another great encyclopaedis was written and these two between them form basis of Ayurveda."

8. This school of medicine is responsible for the health care of 80-90 percent of the people of India to-day although there are extremely few practitioners in the West. But Ayurveda is worth looking at because it is almost certainly the most ancient school of medical thought still in practice to-day and because many of the other systems, including very ancient Chinese and Japanese disciplines, arose from it. Even this Ayurveda was not recognised by any Act before 1961 and the Government of India in 1971 recourse the same. The Indian Medical Council Act did not recognise very base of Western Medicine which was in existence from 1000 to 3000 B. C.

9. It is not necessary to go into the details of the alternative system of medicine. But one thing is clear that this alternative system of medicine has not yet been recognised by the Government giving

status and protection under any law. It is also not in dispute that until and unless a particular system of medicine is recognised by the law, the death certificate could not be issued by any doctor or any person who has obtained training of diploma & degree from any system of medicine. (Originally Homeopath doctors or Ayurveda doctors had no authority to issue death certificate, but since Homeopathy system of medicine and Ayurveda system of medicine have been recognised by law, they have been given such power and authority.)

10. Now the only question that is necessary to be decided this writ application is whether the Council had contravened any of the provisions of law and/or had committed any offence under the law for which they were liable to be prosecuted under the law.

11. It must be remembered that the history of medicine and surgery is the account of man's efforts to deal with human illness and disease from the primitive attempts of preliterate men to the present complex array of specialities and treatment. An article on so vast a subject can trace only an outline of the rise and development of medical thought and practice from the earliest times. No rigid classification can be applied to the history of medicine, and the story cannot be unfolded as a steadily progressive series of events. It has had many developments and set backs and is best understood as a simple narrative rather than as a chapter of epochs. It is often stated that medicine, like so many other arts and science, had its origin in ancient Greece, but that is only a partial truth. There were many great men before the ancient Greeks and even before the tale could be written down, the healing art was taught and practised. (see Encyclopaedia Britannica, Vol. II page 823).

12. It was also provided in that book that Indian medicine is ancient. Its earliest concepts are set out in the sacred writing called the Vedas, especially in the metrical passages of the Atharvaveda, which may possibly date as far back as the 2nd millennium B. C. According to a later writer, the system of medicine called Ayurveda was received by a certain Dhanvantari from Brahma and Dhanvantari was deified as the God of medicine. The golden age of Indian medicine, from 800 B. C. until about AD 1000 may be termed the Brahmanistic period. It is marked especially by production of the medical treatises known respectively as the Caraka-Samhita and Susruta Samhita attributed respectively, to the physician Caraka and Susruta, traditionally a surgeon. Both these works were formerly regarded as being of great antiquity and hence claims arose for the priority of Indian Scientific medicine over its Greek counterpart....."The Chinese system of

medicine is of great antiquity and is independent of any recorded external influences". The Chinese system of Acupuncture is practiced in many countries including India and in particular city of Calcutta..... "The first six decades of the 20th. Century witnessed such a plethora of discoveries and advances that in some ways the face of medicine was changed out of all recognition". The discovery of sulfonamide drugs in 1932 and Antibiotics in 1928 was considered to be remarkable contribution in the system of medicine.

13. "The Indian materia medica was extensive and consisted mainly of vegetable drugs, all of which were from indigenous plants Caraka knew 500 medicinal plants, and susruta knew 760. The physicians collected and prepared their own vegetable drugs. Among those that eventually appeared in Western pharmacopoeias are cardamon and cinnamon. In surgery ancient Hindu medicine reached its zenith. Detailed instructions about the choice of instruments and the different operations are given in the classical texts. It has been said that the Hindus knew all ancient operations except the arrest of hemorrhage by the ligature. Their operations were grouped broadly as follows :

Excision of tumours ; incision of abscesses ; punctures of collections of fluid in the abdomen ; extraction of foreign bodies pressing out of the contents of abscesses ; probing of fistulas and stitching of wounds. The surgical instruments used by the Hindus have received special attention in modern times. According to susruta the surgeon should be equipped with 20 sharp and 101 blunt instruments. The sharp instruments including knives of various patterns, scissors, trocars (instruments for piercing tissues and draining fluid from them), saws and needles. In two types of operations especially, the ancient Hindus were outstanding. Stone in the bladder was common in ancient India and the surgeons frequently carried out the operation of lateral lithotomy for removal of the stones. They also introduced plastic surgery. Amputation of the nose was one of the prescribed punishments for adultery and repair was carried out by cutting from the patient's cheek a piece of tissue of the required size and shape and applying it to the stump of the nose. The results appear to have been tolerably satisfactory and the modern operation is certainly derived indirectly from this ancient course. The Hindu surgeons also performed an operation for the cure of anal fistula and in this they were definitely in advance of the Greeks". These were the passages quoted and summarised from the Encyclopaedia Britannica, Vol. II at pages 823 to 840.

14. In the modern system of medicine what was considered to be the good medicine 10/20 years back is now being made ban for its side

effect and adverse effect. Hahnemann's discovery of homeopathy medicine was not recognised as a system of medicine 20 years back by the legislator in this country. But it has been proved that the small globules of homeopathy medicine can control and cure the complicated diseases and in some of the diseases where there is no medicine in allopathy system, homeopathy can successfully meet with such situation. True the Parliament and Legislator had been conferred power under the seventh Schedule of the Constitution of India to make laws for the purpose of regulation of any system of education. It can recognise any system of medicine according to his choice and can authorise the holder of degree/diploma which should be recognised and respected by all.

15. Indian Medical Council Act was passed for providing of recognition of Medical Council Act and the maintenance of medicine in India and matters connected therewith. It was stated that the petitioners have contravention in Section 15 of the Indian Medical Council Act. Section 15 of the said Act provides that "right of persons possessing qualifications in the schedules to be enrolled". Sub-section (2) of Section 15 of the said Act provides that "No persons other than a medical practitioner enrolled on a State Medical Register"—(a) shall hold office as physician or surgeon or any other office of the Government or in any institution maintained by a local or other authority, (b) shall practise medicine in any State, (c) shall be entitled to sign or authenticated a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner, (d) shall be entitled to give evidence at any inquest or in any court of law as an expert under Section 45 of the Evidence Act 1872 or on any matter relating to medicine". Similarly the other acts in respect of the violation of the alleged provision provide the condition under which a person can practise medicine. The schedule of the Act provides various degrees which are recognised under the allopathy system of medicine of various Universities and Medical Colleges. There is no law which can prohibit any person from reading and getting training in any other system of medicine.

16. It may be mentioned that the alternative system of medicine is a system devoid of medicine made by chemicals. It is a system to get cure by controlling diet, sense, breathing. If any disease is cured by a practise of Yogo, it cannot be said that such system controvened any of the provisions of law and it is an offence to get training in Yogo and to advise the people and to follow the system of Yogo. Yogo is not a recognised system of treatment by the Legislator and/or the Parliament but it is practised and propagated through T. C. by the Government.

Similarly, the alternative system of medicine clearly indicates that it is a system which is contrary to the modern system of medicine based on antibiotics and chemical compound. It is alleged that the modern system of medicine, allopathy is unable to cure all the diseases and further when the system of medicine cannot reach to the villagers or poor people of the country, but the people are taught to get cure and keep their body fit by means other modern medicines, certainly it cannot be said that these are offences and/or prohibited under the law. It must be remembered that excepting the man the whole of the animal kingdom get their medicine from nature. For them there was no school or college and/or any University but the whole of the animal kingdom knows what is the medicine for a particular disease. It is a matter of common knowledge that even dogs and cats frequently found to eat grass and vomits to get rid of some disease and takes some plants as medicine for their disease and by that process they get cure from some ailments. The system of medicine cannot be said to be confined and limited to allopathy or homeopathic system of medicine. Any medicine which cures the disease is a medicine and it cannot be confined to a particular type of system. Sometime by controlling diet, by practising Yogo or by Joging, people keep their body fit and can get away from diseases. It appears that a system of healing from naturopathy is the part of new system of Ayurveda. Healing from naturopathy by controlling diets is a thing which is recognised by the eminent doctors of modern allopathy system of medicine providing of laws referred to by the Assistant Secretary to the Government of West Bengal and the police authorities do not construe any offence if the petitioners confer any distinction or diploma. This degree/diploma is not recognised by the Government but that does not mean that the learning and research must come to an end unless permitted by the Government by law. If it is said that no other person can prosecute any course of studies and can make any research and impart training to any other system as alternative system of medicine, in that event, the learning of the subject will come to halt. It is needless to point out that the Legislator has right to make laws for regulating the system of medicine and education but certainly it has not right to stop a person from finding out any other alternative system of medicine. It cannot stop a person from getting cured from systems not recognised by the Legislator. Legislator is certainly competent to make laws, but anything which is injurious to public health or anything is injurious to mankind, Legislator can certainly stop it. But it is an alternative system of medicine for curing the people from diseases by adopting the course which is alternative to modern medical science based on chemical compounds. This cannot

be stopped. If this is stopped, in that event, the researching the field will come to a halt. When Hahneman invented the homeopathy system of medicine, nobody thought that all over the World the same should accepted to be a good system of medicine and particularly the poor people would be benefited. Even then very recently the homeopathy system of medicine has been recognised by the legislator but this system of medicine was taken from time immorial and there Colleges for imparting such education. The Homeopathy doctors could practice without the legislative recognition. The progressive of system of medicine and the progressive of the man's effort to find out the medicine and the man's effort to get cure, cannot be stopped by the legislator and as a matter of fact it has not been stopped. It does not require permission and prior sanction of the legislature to get one cure without any medicine. The legislator cannot prevent a man from propagating and advising the people how to get themselves cured and not to affect by illness by practising some methods which are alternative to the existing system of medicine. Alternative System of Medicine means it depends on a system in which no medicine make from chemicals would be required. If the alternative system of medicine impart education after making research of plant, in my view, people has right to do so and the legislator has no power to stop all these things. After all these are being done for the purpose of curing the people without taking risk and giving relief to the poor people. We have to remember that in India according to Encyclopaedia Britannica the recognised system of medicine can provided one doctor per 6000 people. At present population is growing at a very fast rate and the doctors are not increasing proportionately now it would be roughly one doctor per 10 to 15 thousand people. (If the poor people cannot reach to the medicine because of high cost and expenses and if they are asked to take other alternative system of medicine, in my vlew, the Government has no jurisdiction to take an exception to it.) It cannot be intention of the legislator that the poor people must die without any treatment unless they can get medicine from recognised system of medicine which is costly and which is beyond the means of the poor people. We have to remember the present economic condition in our country. We are not living a developing country or countries. The poor people are depriving from medicine and if alternative system of medicine can find some solution and can help the people to get treatment they must be appreciated and encouraged. Government had not recognised the degree/diploma conferred by this authorities but certainly the Government cannot stop the people from getting education in this system which is an alternative system of medicine. Article 19(1) (J) confers report

the citizen to practice any profession or to carry on any occupation or trade or business subject to the limitation that the State can impose reasonable restrictions in the interest of general public Article 19(6) did not provide any power upon the legislature to prohibit teaching or imparting education in alternative medicine nor there was any legislator imposing any ban on such studies. The person concerned who had got training and who may get training under this system, may not practice like an allopathy or homeopathy doctor, but certainly they have right to pursue this system and can prescribe the same to the people. It is very unfortunate before I part with this matter, I must put on record that the Government did not apply its mind to this aspect of the matter but by some instructions of some local club the Government arrested the people and put them into jail alleging the violation of the provisions of law in the facts and circumstances of the case.

17. The petitioners also alleged that repeated attempts were made by some anti-socials upon the petitioner's institution and in support of this they have annexed various newspaper cutting. It is not necessary to go into this question. But the State Government without knowing what is 'alternative medicine' have acted in the manner which in my view, was wholly unwarranted. There is no bar for opening any School or College and imparting education on any system. But the degrees and diplomas cannot be recognised unless there is a law recognising the same but that does not mean that nobody can read and get himself trained in any system of education not recognised by law. The activities of the said Council cannot be illegal or wrongful activities. When the eminent doctors of the United Kingdom are supporting this system, it is very unfortunate that the State Government will inacting in this manner.

18. In this connection, the petitioners have annexed various certificates and testimonials. It appears that Dr. Ambarish Mukherjee, Minister of State-in-Charge, Health and Family Welfare Department, in letter dated 17. 9. 85 addressing the Secretary Organising Committee. The Central Council of Monopathic system of Medicine stated that this was a social welfare service worth congratulation, It was stated that there should be intensive research and evaluation so that the system of medicine may get impetus for the benefit of the rural poor. This was the view expressed by Dr. Ambarish Mukherjee, Minister of State. There are various other documents which would go to show that many eminent persons inside or outside of India have expressed their interest in the matter and/or hoping that the same would become instrument in augmenting framing with the health. The petitioner is the society registered under the societies Registration Act and it is carrying on its

activities on the basis of the aims and objects of the said association. The aims and objects are legal and cannot be said to be against public policy. The said institution is also registered by the Government of West Bengal under Central Government Act XIV based on literal and scientific Act, 1864 and affiliated with the Council of Alternative System of Medicine registered under the Societies Registration Act. It is firmly established principle that if the First Information Report does not disclose any offence, in that events, the First Information Report must be quashed. Reference is made to the decision of the Supreme Court in the case of (1) *State of West Bengal v. Swapan Kumar* reported in AIR 1982 SC 949 wherein Supreme Court held that—"The First Information Report which does not allege or disclose that the essential requirements of the penal provision are *prima facie* satisfied, cannot form the foundation or constitute the starting point of a lawful investigation. An investigation can be quashed if no cognizable offence is disclosed by the F. I. R."

For the aforesaid reasons the writ petitioner succeeds. The complaint lodged by the State Government and the F. I. R. of the police and the report of the police to the Registrar which is Annexure 'I' are set aside and the respondents are restrained from initiating and continuing any criminal prosecution on the basis of the aforesaid lodged complaint. The respondents are further restrained from in any manner whatsoever in working of the said institution which is meant for imparting education to its system which is alternative system of medicine.

A. N. S.