



CP. 30/11/94

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

W.P. No. 2957 of 1994

S B (Civil)

Exp
35688
for Ref

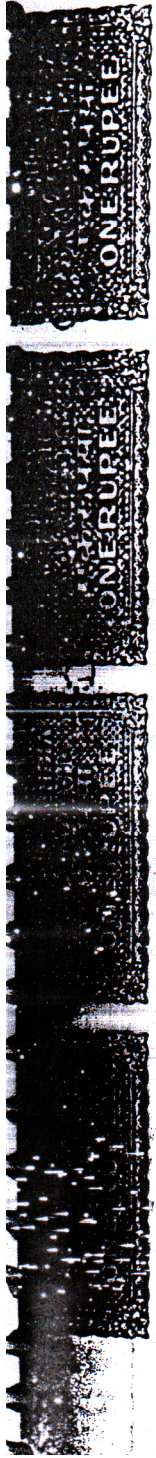
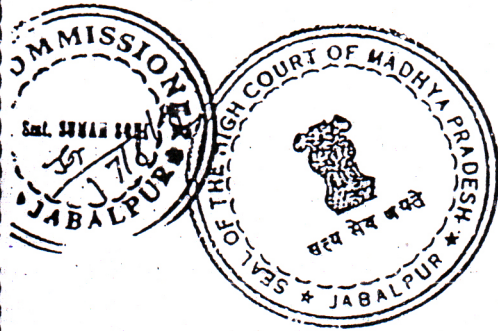
PETITIONERS

1. Council of Alternative System of Medicines (M.P.) and its affiliated Institute, through its President, Dr. G.M. Naskar aged about 41 years, S/o Shri M.A. Naskar, Registered office at Zabra Road, Sarkanda, Bilaspur (M.P.).
2. The Alternative Medical Practitioners Association of Madhya Pradesh, through its President, Dr. G.M. Naskar, aged about 41 years, S/o Shri M.A. Naskar, R/o Masanganj, Bilaspur (M.P.)

Versus

RESPONDENTS

1. State of Madhya Pradesh, through Secretary, Department of Home Affairs, Government of Madhya Pradesh, Vallabh Bhawan, Bhopal (M.P.).
2. Inspector of Police, In-charge office of C.I.D., Police Station Jahangirabad, Control Room, Bhopal (M.P.)



HIGH COURT OF JUDICATURE AT Jabalpur : Madhy Pradesh.

W.P.No. 502/99

Dr. Mukesh Shrivastava

v.

The State of M.P.

For the petitioner : Shri K.C. Shrivastava.

For the respondents : None.

W.P.No. 1633/98

Jagdish Chandra Ray & ors
Raigarh.

v.

Commissioner Bilaspur Div.
and ors

For the petitioner : Shri Prashant Mishra, Adv.

For the respondents : Shri R.S. Jha.

W.P.No. 3108/98

Pawardan Tirkey & ors.

v.

Commissioner Bilaspur and ors.

For the petitioners : Shri Prashant Mishra, Adv.

For the respondents : Shri Vivek Awasthy, Adv.

W.P.No. 4622/98

Dr. Shambhu Sarkar & ors.

v.

State of M.P. & ors.

For the petitioners : Shri Prashant Mishra, Adv.

For the respondents : Advocate General.



W.P.No.2957/94

Council of Alternative System

v.

State of M.P. & anor

For the petitioner : Shri B.N.Mishra, Adv.

For the respondents : Shri V.Asasthy, Adv.

W.P.No.3661/98

Ganpati Sarkar & ors.

v.

The Commiss oner Bilaspur
& ors.

For the petitioners : Shri Prashent Mishra, Adv.
Shri H.S.Patel, Adv.

For the respondents : Shri P.Singh, Adv.

W.P.No.4470/94

Coal India E.L.Medical College

v.

Collector Sidhi & ors.

For the petitioner : Shri S.P.Tripathi, Adv.

For the respondents : Shri Vinay Shukla, Adv.

W.P.No.3979/95

Medical Board of Bio Chemic
system

v.

State of M.P. & ors.

For the petitioner : Sr.S.C.Chaturvedi, Adv.

For the respondents : Shri Abhay Gohil, Adv.



- : 5 : -

W.P.No. 4169/98

Arbinda Biswas and ors.

v.

Commissioner Bilaspur and ors.

For the petitioners : Shri Awadh Tripathi, Adv.

For the respondents : Adv. General.

W.P.No. 861/99

Dr. Rajan Bhattacharya

v.

State of M.P. & ors.

For the petitioner : Shri S.D.Khan, Adv.

For the respondents : Advocate General.

W.P.No. 2011/98

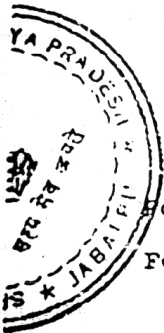
Dr. Santosh Kumar Chouhan & ors.

v.

Commissioner Bilaspur & ors.

For the petitioners : Shri Awadh Tripathi, Adv.

For the respondents : Shri P.D.Gupta, Adv.





ORDER

1. In this bunch of writ petitions, petitioners are either individuals or institutions. Individuals contend that they have the right to practice in the alternative system of medicines whereas the grievance of the institutions are that action of the respondents, not permitting them to impart education in alternative system of medicines is illegal. Individual petitioners are registered either with the Indian Council of Alternative System of Medicines, Alternative Medical Council, Subhash Alternative Academic Council or Council of Electro Homeopathy Society which are societies registered under the Societies Registration Act. Individual petitioners claim that they have right to practice in alternative system of medicine namely Indo Electropathy, Electro Homeopathy whereas institutions contend that they have the right to impart education on the alternative system of medicine and action of the respondents in interfering with right to practice or impart education is in the teeth of their fundamental right guaranteed under Article 19(1)(g) of the Constitution of India.

2. It is conceded by the individual petitioners that degree / diploma obtained by them are not recognised under any law. They contend that practice in the alternative system of medicine is not regulated by any of the statute and hence in the absence of regulation / prohibition they cannot be asked to stop practice has been done by the Magistrate under section 133 of the Code of Criminal Procedure.

5. Section 21 of the Madhya Pradesh Ayurvedigyan Parishad Adhiniyam, 1990 (Act No.11/90) which is relevant for the purpose reads as under:-

"21. Prohibition from practice except as provided in this Act or Central Act No.102 of 1956.-Save as provided in this Act or the Indian Medical Council Act, 1956 (No.102 of 1956) no person shall practice or hold himself out, whether directly or indirectly as practising medicine within the State".

6. It is the stand of Shri Shukla, appearing on behalf of the State that the aforesaid provision prohibits practice in medicine and the same will not include only Allopathic System of medicine, but any kind of medicine which claims to treat a patient. However, counsels for the petitioners have taken the stand that Sec.21 of the aforesaid Act operates in the field of Allopathic system of medicine, but not other systems of treatment. Further stand of the petitioners is that in alternate system of medicine, no medicine is used.

7. Having appreciated the rival submissions I am of the opinion that the provisions of the Madhya Pradesh Ayurvedigyan Parishad Adhiniyam, 1976 does operate in the field of Allopathic system of medicine and in not alternate system of medicine. Expression medicine has been defined under section 2(c) of the Act which reads as under:-

"2.(c) 'Medicine' means modern scientific medicine in all its branches and includes



"The High Court, in our opinion, has rightly held that the expression 'modern scientific medicine' in Section 2(1) of the Central Act refers to the Allopathic system of medicine and that the provisions of the Central Act have been made in relation to medical practitioners practicing the said system. This view finds support from the fact that after the enactment of the Central Act, Parliament has enacted the Indian Medicine Central Council Act, 1970 in relation to the system of Indian medicine commonly known as Ayurveda, Siddha and Unani and the Homeopathy Central Council Act, 1973 in relation to Homeopathic system of medicine wherein provisions similar to those contained in the Central Act have been made in relation to the said system of medicine."

9. Thus, the only statutory provision which has been invoked to prohibit practice in alternative system of medicine ~~under~~ section 21 of the Act, which in my opinion being confined to the Allopathic system of medicine, I am of the opinion that respondents cannot take recourse to the aforesaid provisions to stop practice in the alternative system of medicine. It is the stand of both sets of petitioner that they are practising and imparting education in alternative system of medicine which is not regulated by any of the statute and hence, they cannot be stopped from carrying out the practice in alternative system and teaching in the said system in view of Article 19(1)(g) of the Constitution of India. True it is that Article 19(1)(g) of the Constitution of India gives right to all citizens to practice any profession or to carry on any ~~business~~ occupation trade or business, but in view of Art.19(6), some