

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2016 OF 1996

D.K. Joshi

.....Appellant

Versus

State of U.P & Ors.

.....Respondents

J U D G M E N T

PHUKAN. J.

The appellant filed a writ petition before the High Court of Allahabad in public interest praying for writ of mandamus directing the respondents to initiate action against persons who are unqualified and unregistered but carrying on medical profession unauthorized in the district of Agra, Uttar Pradesh. The High Court by the impugned judgment dismissed the petition in limine with the observation that the chief Medical Officer, Agra would complete the inquiry that was pending in accordance with law. The present appeal is against the said order of the High Court.

Though in the appeal, the State of U.P, the Director General, Medical and Health Services, U.P, the Additional Director. Medical & Health, Agra and the Chief Medical Officer, Agra have been impleaded as respondents only one affidavit has been filed on behalf of all respondents by the Deputy Chief Medical Officer, Agra. In the reply affidavit, the allegation that such unqualified persons are carrying on medical profession, is not denied. However, it had been stated inter alia that some such unqualified medical practitioners were identified and the reports were sent to the District Magistrate. According to the deponent such unqualified person stopped medical practice in the district of Agra and have shifted to nearby districts we are constrained to observe that reply affidavit discloses a sad state of affairs of the administration. Instead of taking action against these unqualified medical practitioners in accordance with law and as per instructions of the State Government to which we shall presently refer their names were only forwarded to District Magistrate without any follow up action by the authorities.

From the letter of Indian Medical Council dated 3.5.91. Which is on record, we find that the Secretary. Health and Family Welfare Department. State Government was apprised by the Medical Council of this problem in the State and it was emphasized in the said letter that these persons were openly playing with the health of public. The Secretary was requested that "Public may be relieved by taking strict action against unqualified unregistered practitioners and institutions which are providing illegal degrees in Indian System of Medicine." The State Government was also concerned with this problem and the Secretary. Health and Family Welfare Department as far back as on 2nd December. 1995 addressed a letter to all District Magistrates and Chief Medical Officers of the State drawing their attention to the legal provisions for taking appropriate action against such persons under Section 15 of the

Indian Medical Council Act, 1956. Section 17 of to Indian Medicine Central Council Act, 1970. The District Magistrates and the Chief Medical Officers were also advised how to initiate criminal action against these unauthorized practitioners.

It is distressing to note that in spite of above direction of the State Government, the District Magistrates and the Chief Medical Officers did not take effective steps to stop this menace which is hazardous to human life. As indicated above, the Chief Medical Officers only forwarded the names of such u unauthorized medical practitioners to the District Magistrates and no follows up action was taken.

In the present appeal, directions have been prayed for only for district of Agra. In the reply affidavit, it has been stated that such unqualified/unregistered doctors after being warned have shifted to other neighboring districts. We are, therefore, of the opinion that unless derections are issued in respect of the entire state of U.P. the problem cannot be solved We set aside the impugned judgment and direct as follows:-

The Secretary. Health and Family Welfare Department, State of U.P. shall take such steps as may be necessary to stop carrying on medical profession in the State of U.P. by persons who are unqualified / unregistered and in addition shall take following steps:

- (i) All district Magistrates and the Chief Medical officers of the State shall be directed to identify, within a time limit to be fixed by the Secretary, all unqualified/ unregistered medical practitioners and to initiate legal actions against these persons immediately;
- (ii) Direct all District Magistrates and the Chief Medical Officers to monitor all legal proceedings initiated against such persons;
- (iii) The Secretary, Health and Family Welfare Department shall give due publicity of the names of such unqualified/ unregistered medical practitioners so that people do not approach such persons for medical treatment.
- (iv) The Secretary, Health and Family Welfare Department Shall monitor the action taken by all District Magistrates and all Chief Medical Officers of the State and issue necessary directions from time to time to these officers so that such unauthorized persons cannot pursue their medical profession in the State

The appeal is allowed. N costs.

.....J.
(S. Rajendara Babu)

.....J
(S.N. Phukan)

New Delhi
April 25, 2000.

IN THE SUPREME COURT OF INDIA

SPECIAL LEAVE PETITION (CIVIL) _____/ 1993
 (Against the Order /Judgment dated 3.5.93 passed by the Allahabad High Court in C.W.P . No. NIL/1993)

IN THE MATTER OF:

D.K. Joshi s/o late Shri A.L. Joshi, r/o 20, Friends Colony, Agra

..... Petitioner

Versus

1. The State of U.P. through the Principal Secretary (Health), Govt. of U.P, Lucknow.
2. The Director General, Medical and Health Services, U.P., Lucknow.
3. The Addl. Director Medical & Health, Agra Region, Agra.
4. The Chief Medical Officer, Agra.

..... Respondents

TO

THE CHIEF JUSTICE OF INDIA AND HIS
 COMPANION JUSTICES.

The Petitioner most respectfully Sheds:

This Special Leave petition had been filed against the impugned order/ Judgment dated 3.5.93 passed by the High Court of Allahabad in a writ Petition No. NIL of 1993 which was filed in public Interest against persons who are unqualified, untrained and unregistered but still carrying on medical profession unauthorized, to prosecute them and for taking such action which may prevent them from injuring the public health and lives. The High Court disposed of the writ Petition in Limit leaving it to the authority concerned to do the enquiry, when it was a case of total inaction by the concerned authorities which had compelled the Petitioner to approach the High Court. It is against this Order/ Judgment of the High Court that the present Special Leave petition had been filed.

- (A) This Special Leave Petitioner raises the following among other, substantial questions of law of great public importance;

1. Whether the High Court was justified in disposing of the writ Petition, in Limini, when it had raised a serious question about untrained and unqualified persons doing medical professional in Agra District and thereby endanger lives or lakhs of people?
2. Whether the High Court was justified in leaving it to the authorities concerned to inquire into the problem of quacks when the petitioner had pointed out in the writ Petition inaction on the part of authorities in not fulfilling their statutory duties?
3. Whether it is not imminent in the public interest to immediately stop the quacks operating in and around Agra so that any further damage to human lives could be avoided?
4. Whether providing safe environment for protecting the lives of the people is not a duty of the State under the Directive principle and the same being a right enforceable under Article 21 of the constitution?

(B) Brief Facts of the case:

1. The Petitioner is a social worker and a respectable resident of Agra (U.P.). He is President of various organization, namely Mahapalika karmchari Congress, Jal Sansthan karmachari Sangh, Nagar Vikas karmchari Sangh, etc. He has been actively engaged in espousing the social cause and grievances of the people of Agra. He has taken up the present cause against the unqualified, untrained medical practitioners (quacks) who are practicing in the district of Agra, in public interest.
2. That the District of Agra is divided into 15 primary Health Centres. Most of these unqualified, untrained and unregistered persons are practicing medicine and surgery in the rural areas, where due to lack of education and proper information amongst people, they are able to exploit them. It is quite well-known that due to treatment given by this fake medical practitioner several deaths take place but only few come to light. This hon'ble court had the occasion to examine the grave tragedy taking place in an eye-camp in Dr. A.K. Mittal vs. State of U.P. 1989 (3) SCC 223 where due to non-adherence to proper and sterile conditions several persons lost their eye-sight. This hon'ble Court had issued several directions in that case to the Government. The Petitioner is filing representation of one Jalaluddin of Village Runukata, Agra, where he complained about one Dr. Raman operating Lal Dawa Kahan killing his grandson due to ignorance and negligence. A true and correct copy of the letter (undated) of Jalaluddin to the Chief Minister U.P. is ANNEXURE-A-1. The petitioner is also filing letter dated 7.5.93 by Shri Baboo Lal Goyal, Ex. M.L.C. as ANNEXURE – A-2 drawing attention of the President of India to the serious problem of the fake doctors/quacks operating in Agra causing deaths of innocent people.
3. That as early as on 2.12.85, the Secretary to the Government of U.P. directed the District Magistrate and Chief Medical officers of the State of U.P. to find out such persons who are practicing medicine and surgery without being qualified for the same in the State and initiate legal proceedings against them as per the provision of law. It was directed that instructions should be given to all village authorities to keep an eye on organization of any eye-camps etc. by these unqualified persons and if there is any such camp to immediately

- inform the primary health centre or police stating. Reference was made to the provisions of the Indian medical Council Act, 1956, Indian Medicine Central Council Act, 1917 as well as the relevant provisions of Cr.P.C and I.P.C. A true and correct copy of the Government order.
4. That the Indian Medical Central Council had also written to the Secretary , Department of Health and Family Welfare, U.P., Lucknow, vide letter dated 30.5.91 requesting for identifying such unregistered and unqualified persons and taking penal action against them as they were growing in alarming proportions. It was also mentioned that the laws made in this connection were not being implemented and the District Administration/Health Department were not alert regarding these problems. It was stated that strict action against such persons/initiations should be taken. A true and correct copy of the letter dated 30.5.91 by the Indian Medical Central Council, New Delhi, is Annexure-C to this Petition.
 5. That the special secretary. U.P. Government , vide his letter dated 5.8.91 drew attention of the District Magistrates and C.M.O.S to a G.O. dated 25.5.75 by which directions were issued for taking action against the unqualified and unregistered medical practitioners. It was further directed by the said letter that immediate action should be taken against such unqualified, fake medical practitioners / institutions and the Government should be kept informed regularly about the same. A true and correct copy of the letter dated 5.8.91 by the special Secretary; U.P. Govt. is Annexure-D to this Petition.
 6. That the Director-General, Health and Family Welfare, U.P., Lucknow, vide his letter dated 25.2.92 wrote to all chief medical officers of U.P. and the Additional Director, Medical Health and Family Welfare that action taken or contemplated against untrained and unregistered Medical Practitioner should be intimated to the Government and the Director General. A true and correct copy of two letter dated 25.2.92 is Annexure-E to this Petition.
 7. That it appears that the chief Medical officer had conducted inquiries/ raids concerning such persons unauthorized practicing medicine and surgery in and around Agra City. In these inquiries about sixty-four (64) such persons were identified. While it was incumbent on the C.M.O. to take strict legal action against them, the action was dropped due to reasons best known to the concerned authorities. The news about the same was flashed in the local newspaper, namely Dinik Jagran; dated 17.12.92 and Amr Ujals, dated 21.12.92, translated copies of which have been filed as ANNEXURES-F-1 AND F-2 respectively.

It is a very sorry state of affairs that in spite of the unqualified medical practitioner's being identified, no action has been taken and they are allowed to play havoc with the lives of lakhs of people.

8. That the petitioner is able to get document concerning one Raja Baboo Manhal, who is practicing medicine at Fatehpur Sikri District, Agra,. He had represented to the Chief Medical Officer that he is registered with the Indian Medicine Council. U.P. When the Chief Medical Officer, Agra, inquired about the veracity of the said registration it was pointed out by the Indian Medicine council, Uttar Pradesh, vide letter dated 30.1.1992 that the said Raja Baboo Manhal is not registered. The C.M.O. was asked to take legal action against the said person

for carrying on medical practice on the basis of fake registration number. A true and correct copy of the letter dated 30.1.92. By the Register. Indian Medicine Council is ANNEXURE-G.

9. That the petitioner is filing herewith list of the persons who, are carrying on medical practice unauthorisedly at Saiyan Block , Painahat Block , Ermadpur, Akola, Fatehpur Sikri (all in District Agra) and Agra city as ANNEXURE-H (COLLY.). The C.M.O. has identified these persons as being unqualified, untrained and unregistered medical practitioners.
10. Article 47 of the constitution provides that it is the duty of the State to raise the level of nutrition, standard of living and the improvement of public health as among its primary duties. Article 21 of the Constitution which safeguards the lives of every citizen against any just, arbitrary or illegal act also provides for a decent life and livelihood which ought to be secured by the State. The unqualified persons who give medical treatment to the people expose them to a potential hazard and endanger their life. In fact, there is evidence on record that thousands of people die every year because of the wrong treatment given by these quacks. It is indeed very shocking that in spite of safeguards being provided in the Indian Medical Council Act as well as in the Indian Medicine Central Council Act, strict action against these fake medical practitioners is not taken, for the facility of convenient reference Section 15 of the Indian Medical Council Act and Section 17 of the Indian Medicine Central Council Act, are quoted

Below:

“15 (1) Subject to the other provisions contained in the Act, the Medical qualifications included in the schedules shall be sufficient qualifications 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) Shall hold the office as physical or surgeon or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority

(b) Shall practice medicine in any State.

© Shall be entitled to sign or authenticate a medical or fitness 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 Indian Evidence Act, 1872 on any matter relating to medicine.

(3) Any person who acts in contravention of any provision of sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

“17(1) Subject to the other provision contained in this Act, any medical qualification included in the Second, third or Fourth Schedule shall be sufficient qualification for enrolment on any State Register of Indian Medicine.

(2) Save as provided in Section 28 no person other than a practitioner of Indian Medicine who possesses a recognized medical qualification and is enrolled on a state Register of the Central Register of Indian Medicine.

- (a) Shall hold office as vaid, Sidda, Hakim of physician or any other office (by whatever designation called) in Government or any institution maintained by a local or other authority.
- (b) Shall practice Indian 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 expert under Section 45 of the Indian Evidence Act, 1872, on any matter relating to Indian Medicine.

(3) Nothing contained in Sub-section (2) shall affect—

(a) a Right of a practitioner of Indian Medicine enrolled on a State Register of Indian Medicine to practice Indian Medicine in any State merely on the ground that. On the commencement of this Act, he does not possess a recognized qualification.

(b) The privileges (including the right to practice any system of medicine) conferred by or under any law relating to registration of practitioner of Indian Medicine for the time being in force in any State on a practitioner of Indian Medicine enrolled on a State Register of Indian Medicine.

(c) the right of a person to practice Indian Medicine in a State in which on the commencement of this Act, a State Register of Indian Medicine is not maintained if, on such commencement. He has practicing Indian Medicine for not less than 5 year.

(d) the rights conferred by or under the Indian Medical Council Act, 1956 (including the right to practice medicine as defined in Clause (f) of Section 2 of the said Act), on persons possessing any qualification, included in the schedules to the said Act.

(4) Any person who acts in contravention of any provision of Sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees or with both. The petitioner craves leave to refer and rely on other provisions of the said Acts at the time of arguments.

11. That the petitioner took up this public cause by filing a writ petition in the High Court of Allahabad considering that to be his fundamental duty under the constitution so that the lives of innocent persons may be saved from the hands of these fake medical practitioners. At the High Court, instead of making appropriate directions in the said matter, left it to the chief Medical officer to continue the said inquiry, even when it was pointed out in the writ petition itself that in spite of these unqualified persons being

identified, no action has been taken against them. Vide the impugned Order dated 3.5.93 the Writ petition was disposed of. It is against this Order/Judgment that the present Special Leave Petition this Order/Judgment that the present Special Leave Petition has been filed.

12. That it may also be proper to mention that the Petitioner had also given a representation on 20.5.93 for taking action in this matter of great importance. A copy of this representation was marked to the other Respondents also. The Petitioner has not received any response from the respondents so far. A true and correct copy of the representation of the Petitioner dated 20.5.93 is ANNEXURE-I

13. That the Petitioner had not filed any other Special Leave Petition against the impugned Order/Judgment dated 3.5.93 passed by the Allahabad High Court in writ

(c) This Special Leave Petition had been filed on the following, among other, Grounds:

1. Because that High Court disposed of the writ petition without making proper directions to the authorities concerned in the matter of great public importance involving health and human lives.
2. Because the High Court failed to see that in spite of there being so many Government Order for taking action against the untrained, unqualified and unregistered medical practitioner, nothing was done for many year and even when the C.M.O was able to identify these fake medical practitioners, action against them was dropped. This was clearly a case of neglect and failure to discharge the statutory duties and constitutional obligations by the authorities which required court's interference in public interest. The non-action by the Respondents was clearly violative of Art cal 14 of the Constitution
3. Because right to healthy life is a part of Article 21 of the constitution; Article 47 of the constituent mandates that it would be the primary duty of the State to raise the standards of living and improvement of Public health. It has now been held by the Constitution Bench of this Honourable Court in Unni Krishnan Vs state of A.P 1993 (1) SCC 645 at 730 that provision of part III and IV are supplementary and complimentary to each other and Fundamental rights must be construed in the light of Directive Principle. The untrained, unqualified and unregistered medical practitioners have become potent danger to the health and lives of lakhs of people in the rural and urban areas of Agra District. This was acknowledged in the letters of the Governments Departments that the number of these fake practitioners is increasing in large proportion. The State should have, therefore, taken strict action to curb/eliminate the medical practice by such persons. Failure to do so was clearly a violation of Fundamental Rights of the people of Agra District under Article 21 of the Constitution.
4. Because the Medical Council of India Constituted under the Indian Medical Council Act, 1956 and the Central/ State Council of Indian Medicine formed under the Indian Medicine Central Council Act, 1970 have also failed in their duties to take preventive and strict action against the fake medical practitioners not only in the State of U.P. but throughout the country which has

become a serious problem. It is time when these authorities should become alert and strict in enforcing their duties that only a qualified, trained and registered doctor would be allowed to do the profession of medicine / surgery.

P R A Y E R

The Petitioner, therefore, prays that in the facts and circumstances of the present cases, this Humble Court may be pleased to:

1. Grant special leave to appeal against the Order/ Judgment dated 3.5.93 passed by the Allahabad High Court in Civil (Misc.) Writ Petition No. NIL 1993 in D.K. Joshi vs. State of U.P and Others.
2. Pass such other order (s) this Hon'ble court may deem fit and proper in the circumstances of the case.

FILED ON: 3.8.93

DRAFTED AND FILED BY:

**(SANJAY PARIKH)
ADVOCATE FOR THE PETITIONER**

INDAIN MEDICAL CENTRAL COUNCIL
(Statutory Trust under Ministry of Health and Family Welfare, government of Indian)

1 E/6, Swami Ram Tirth Nagar (Jhandewalan Campus),
New Delhi --- 110 055.

No. 6-21-90-MG

Dt.30.5.1991

To

Secretary,
U.P. Govt
Health and Family Welfare Deptt,
Secretariat,
Lucknow (U.P)

Sub: For taking strict action against unregistered medical practitioners and for their been.

Sir,

While inviting your attention to the above noted subject, I have to request that the Central Government is receiving complains that problem relating to unregistered medical prationres in U.P.is complicated These practitioners are openly playing with the health of public. The laws made in conation with the action to be taken against them are not being implemented. The district administration and the health department are not alert regarding this problem. This is affecting the Registered Ayurvedic Practitioners.

Therefore your are requested that public may be relieved by taking strict action against unqualified unregistered practitioners and the stations which are providing illegal degrees in Indian System of Medicine.

Your's faithfully

Sd/-

Secretary

