

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
I.A.NO.

OF 2010

IN

SPECIAL LEAVE PETITION (CIVIL) NO.26361-26362 OF 2010

IN THE MATTEER OF:

The Private Medical Practitioners Association
of India, Tamil Nadu Branch

...Petitioner

Versus

The Chairman Legal Advisory Committee,
Indian Medical Association & Ors.

...Respondents

And

In the matter of:

Indian Medical Association
Through its -Secretary General,
Dr. Dharam-Prakash,
IMA House, I. P. Marg,
New Delhi.

.....Applicants/
Intervenor

APPLICATION FOR INTERVENTION

To,

THE HON'BLE THE CHIEF JUSTICE OF INDIA AND HIS

COMPANION JUDGES OF THE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF

THE APPLICANT ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That the applicant seeks to file the above-mentioned application in the above captioned matter praying that the

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Applicant Association be allowed to intervene in the matter. It is submitted that the applicant Association was founded in 1928 and is the only representative, national voluntary organization of Doctors of Modern Scientific System of Medicine, which looks after the interest of doctors as well as the well being of the community at large.

2. It is submitted that the Application Association is concerned with the safety and security of the general public at large, and has taken pro active role in safeguarding the same, in which steps have also been taken in order to prevent the practice of Modern system of Medicine by the unregistered practitioners, or practitioners of others systems of medicine like Indian System of Medicine including Ayurveda, Unani, Tibb, Siddha and Homeopathy.

3. It is submitted that the present Special Leave Petition has been filed with by the aforesaid Petitioners – unqualified practitioners to obtain permission to practice as ‘doctors’ and prescribe Allopathic Medicines. It is submitted that the Applicant Association constitutes of the Registered Practitioners and is as such directly concerned and would be affected by the grant of relief herein, in view of which it is necessary to make Applicant a party herein. It is submitted that since the notice has been issued by this

Hon'ble Court in the aforesaid Special Leave Petition, the applicant herein is seeking permission for intervention only for the purpose of assist this Hon'ble Court.

4. It is further submitted that the relief sought by the petitioner herein is directly in teeth of the judgement of his Hon'ble Court in the case of *State of Punjab Vs. Mukhtiar Singh* reported in (1998) 7 SCC 579. It is submitted that it was argued before the Hon'ble Supreme Court in Dr. Mukhtiar Chand case that "the practitioners of India Medicine should be allowed the right to having their prescription of Allopathic Medicine honoured by pharmacist or a Chemist under the Pharmacy Act and the Drug Act", on which the Hon'ble Appex Court observed "this argument is too technical to be acceded to because prescribing a drug is a concomitant of the right to practice a system of Medicine. Therefore, in a broader sense, the right to prescribe drugs of a system of Medicine would be synonymous with the right to practice that system of Medicine. In that sense, the right to prescribe an allopathic drug cannot be wholly divorced from the claim to practice Allopathic Medicine".

5. It is further submitted that the issue of practice of Allopathic system of Medicine by registered medical

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practitioners is of immense 'importance to the public at large, in view of the danger to the health of public, in case the unregistered practitioners are allowed to play with that, without having proper and requisite qualification, experience and knowledge to do so.

6. It is further submitted that the Delhi Medical Association, which is the Delhi state branch of the Applicant Association has also taken step like the branches in other states, in order to prevent the practice of Allopathic System of Medicine by the unregistered practitioners i.e. practitioners not registered in the Register maintained for practitioners of Allopathic and Modern System of Medicine.

7. It is submitted that the issue regarding which System of Medicine could be practiced by who all was settled in the Dr. Mukhtiar Chand case itself, when it was specifically laid down that the registered practitioner of Indian System of Medicine could practice and prescribe only within its branch', whereas a registered practitioner of Allopathic System could practice and prescribe only Allopathic medicine and no other, however time and again the practitioners of Indian system of medicine and unregistered practitioners have illegally been prescribing

the Allopathic and Modern medicines without any authority, entitlement or right to do.

8. It is submitted that the unregistered practitioners and more particularly the practitioners registered under Indian System and not Allopathic System have been flouting the observations of this Hon'ble court by repeatedly claiming their right to practice the Allopathic System under the guise of Integrated Medicine' a term which is not recognized by any law, and has been coined by themselves to show their entitlement to practice the allopathic System.

9. That the Applicant – Association further submits that it has been facing the problem of transgression from the medical practitioners of the Indian System of Medicine, who have been illegally indulging in the practice of prescribing Allopathic Medicines despite not being registered in the State Medical Register maintained under the respective State Acts or Register of Modern and Allopathic Medicine maintained under the Indian Medical Act, 1956 (IMC Act). It is submitted that despite there being clear distinction between the different systems of Medicine in the respective Acts and further clarification of it by the Hon'ble Apex Court in Civil Appeal No.89/1987 vide its

Order dated 08.10.1988 in the case of Dr. Mukhtiar Chand, the members of the Indian System of Medicine working under the auspices of their respective state Acts have been illegally indulging into the practice of prescribing Allopathic Medicine.

10. That the Applicant – Association further submits that the inaction on the part of the appropriated authorities in taking steps to ensure that no transgression is done by the practitioners of Indian System of Medicine into the Modern Scientific System and Allopathic System of Medicine has led to a direct contravention of the observations of the Hon'ble Supreme Court in Dr. Mukhtiar Chand Case, wherein it has been specifically observed that those who possess the requisite qualifications as mentioned in the schedules of IMC Act for being enrolled under the State Medical Register are exclusively entitled to practice the Modern Scientific System of Medicine, whereas those possessing the requisite qualifications as mentioned in the schedules of IMCC Act are entitled to practice the Indian System of Medicine and no other.

11. That the Applicant – Association also seeks to bring forth the gross violation of Right to Health as guaranteed under the Constitution of India, of the citizens of India by the

failure of the authorities from prohibiting the practitioners of Indian System of Medicine, from prescribing the Allopathic and Modern medicines to the patients despite not having required eligibility and qualification to prescribe the same, in addition to not being enrolled on the State Medical Register.

12. That the Applicant - Association further submits that at present the Allopathic Medicine are made available at the Chemist Shops on the prescriptions of medical practitioners of Indian System of Medicine also, which is in serious contravention of the provisions of the Drugs and Cosmetics Act (DC Act) and Drugs and Cosmetics Rules (DC Rules). It is submitted that despite the repeated representation of the Applicant - Association, the authorities have failed to take an appropriate action to ensure that the Chemists honour only the prescriptions of Registered Medical Practitioners of Modern System of Medicine and no other.

13. That the Applicant - Association further submits that the Medical Practices are guided by the Rules and Regulations enumerated under the IMC Act, Indian Medicine Central Council Act, 1970 (IMCC Act) and the Homeopathic Central Council Act, 1973 (HCC Act), which have been enacted by

the Parliament in order to regulate the practices of those practicing Modern System of Medicine, Indian System of Medicine and Homeopathic Medicine respectively. It is further submitted that in order to further the objective of the above said Central Acts, the State Legislature are empowered to enact required legislations, which should strictly comply with the frame work of the Central Acts, thereby meaning that any provisions of the State Act which is inconsistent with the provisions of the Central Act is untenable in the eyes of law.

14. That the Applicant - Association further submits that growing menace of quackery, has put the life and health of the citizens in danger, and the safety of the citizens is the prerogative of the Government, which is under an obligation to take appropriate steps to safeguard the health of its citizens. It is further submitted that the quacks are those persons who wrongly represent themselves to possess the medical qualifications required to treat the patients, and thereby play with their health. It is further submitted that the medical practitioners practicing the Indian System of Medicine, as enumerated under the IMCC Act, are qualified to prescribe the Indian Medicines only and as they do not possess the requisite knowledge regarding the Allopathic Medicines, Modern

Medicines and Homeopathic Medicines, they can be regarded no less than quacks. It is thus submitted that if a person possessing knowledge only of Indian Medicine prescribes the Allopathic Medicines, is wrongly representing himself to possess the qualification of that system of Medicine of which he has no knowledge.

15. That the Petitioner further submits that the said prescription of Allopathic and Modern Medicines by those practicing Indian System of Medicine is without the authority and mandate of law, and contrary to the Central Act enacted by the Government of India, which in turn leads to the wrong treatment of the patients by unqualified people leading to disastrous consequences. It is further submitted that the Applicant – Association, keeping in view its objective of taking steps to safeguard the health of the general public in effective manner, had approached the authorities on various occasions and raised its concern about the growing malpractice of quackery which has put the health of the citizens under grave danger, however, the authorities failed to take any action on the same.

16. The Applicant – Association further submits that the Hon'ble Apex Court in the afore-mentioned Dr. Mukhtiar Case further observed 'it may be pointed out first that Act

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of 1956 regulates practice of Allopathic Medicine, so Section 15(2)(b) requires that only those who are registered on State Medical Register alone can practice Allopathic Medicine and secondly, the prohibition is directed against every person who is not registered on any State medical register all such persons are precluded from practicing Allopathic Medicine." It is thus submitted that in view of the observations of the Hon'ble Supreme Court as aforesaid no transgression is permitted and if done is bound to be followed by the provisions of applicable law.

17. The Petitioner - Association further submits that in order to transgress into the field of Modern System of Medicine, a Notification F.No.28-5/2004-Ay.(MM) dated 19.5.2004 was issued by the Central Council of Indian Medicine, New Delhi (hereinafter referred to as CCIM), which sought to clarify the meaning of the word "Modern Advances" as used in Section 2(1)(e) of the IMCC Act, which provides

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

18. It is further submitted that section 21 (1) (e) of the IMCC Act and Section 2 (b) of the Delhi Bhartiya Chitiksa Parishad Act (DBCP Act), both define the Indian Medicine however the DBCP Act which operates under the auspices of IMCC Act makes reference to the word “Modern Advances”, whereas the IMCC Act does not. It is thus submitted that the said transgression by the practitioners of Indian Medicine into the Modern System of Medicine is illegal and contrary to the provisions of law. A true and correct copy of the Notification F.No.28-5/2004-Ay. (MM) dated 19.5.2004 issued by the Central Council of Indian Medicine, New Delhi is annexed hereto and marked as **Annexure A-1.**

19. The Applicant – Association further submits that in the above said Notification it was provided that “This meeting of the Central Council of hereby unanimously resolved that in clause (e) of Sub-section 2(1) of the IMCC Act, 1970, the word “Modern Advances’ be read as advances made in the various branches of Modern Scientific Medicine in all its branches of internal Medicine, Surgery, Gynecology and Obstetrics, Anesthesiology, diagnostic procedures and other technological innovation made from time to time and declare that the course and curriculum conducted and

recognized by the Central Council of Indian Medicine are supplemented with such modern advances.”

20. It is further submitted that the above said clarification provide by the CCIM, to elucidate the term Modern advances, to include various branches of Modern Scientific Medicine in its Notification dated 19.5.2004 is a replica of its earlier Notification dated 30.10.1996 and Resolution dated 11.3.1987, which underwent the scrutiny of the Hon’ble Apex Court in the aforesaid decision of Dr. Mukhtiar Chand, wherein it was observed

“ In our view, all that the definition of ‘Indian Medicine’ and the clarifications issued by the Central Council enable such practitioners of Indian Medicine is to make use of the modern advances in various sciences such as radiology report, (X-ray), complete blood picture report, lipids report, ECG etc., for purposes of practicing in their own system”.

It was further observed:

“ A harmonious reading of Section 15 of the 1956 Act and Section 17 of the 1970 Act leads to the conclusion that there is no scope for a person enrolled on the state Register of Indian Medicine or

The Central Register of Indian Medicine to practice modern Scientific in any of its branches unless that person is also enrolled on a State Medical register within the meaning of the 1956 Act. ”

21. It is thus submitted that despite the said issue being already determined by the Hon'ble Supreme Court, and the limitations of practice ascertained therein, the CCIM still did not abstain from surpassing its limits in regulating the practice of Indian System of Medicine. It is submitted that despite the various Notification being struck down by the Hon'ble Supreme Court as violating the right to practice of those detailing in Modern Scientific Medicine, an identical Notification was again issued, which is contrary to the observations of the Hon'ble Supreme Court.

22. The Applicant – Association has repeatedly been trying to bring the aforesaid illegality of transgression in the knowledge of the authorities, so that necessary action can be taken in order to prevent the violation of constitutional rights of the citizens and the Applicant – Association, however, no action has been taken till date. It is submitted that a representation dated 30.3.2009 was made, wherein it was stated that confusion was being created by the practitioners of Indian Medicine, by representing themselves as the practitioners having knowledge of

Modern System of Medicine and thereby playing with the health of the innocent people at large. It is submitted that it was further requested to take the requisites step for ensuring that the health of the citizens is not played with and for that steps must be taken to conduct a survey and display the information of the Medical practitioners on the website for the observations of the general public. A true and correct copy of the Representation with Ref. No.IMA/Admn./3-3/267 dated 30.3.2009 is annexed hereto and marked as **Annexure A-2.**

23. The Applicant – Association in the aforesaid representation further stated the binding character of the applicable Central and State Acts, which are mandatory and binding in character. It was further stated that the graduates of Indian medical System who are conferred with BAMS, BIMS and BUMS Degrees and not that of the Integrated System, since the word “Integrated System” is self made and has been rejected by the hon’ble Supreme Court in Dr. Mukhtiar Chand case. In the said case it has been observed that in order to practice the Modern Medicine or Allopathy a person has to be enrolled in the State Medical Register under respective State Act.

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24. The Applicant – Association further submits that vide its Memorandum dated 30.7.2009, it was observed that by virtue of the Section 15 before the amendment provided that the medical qualification in the schedule shall be sufficient for enrollment in the State Medical Register and there was no inconsistency between the said section and Rule 2(ee) of the Drugs and Cosmetic Rules. It is further submitted that the aforesaid confusion had already been clarified by the Hon'ble Supreme Court in Dr. Mukhtiar Chand Case, however the graduates of Indian System of Medicine have still used it for furthering their illegal transgression into the Modern System of Medicine. A true and correct copy of the memorandum with Ref. No. IMA/Admn/J-3/861 dated 30.7.2009 is annexed hereto and marked as **Annexure A-3**.

25. The Applicant – Association further submits that a memorandum was forwarded by it in August 2009, seeking a suitable amendment in the DC Rules, in order to bring it in conformity with the observations of the Hon'ble Supreme Court in Dr. Mukhtiar Chand case. It is submitted that a proposal was made to insert a clarification in the form of proviso to Rule 2 (ee) (iii) of the DC Rules to cease the authority of State Government's declaration as per Section 15 (2) of the IMC Act. A true and correct copy of

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the Memorandum dated August 2009 sent by the Indian Medical Association to Respondent No.3 is annexed hereto and marked as **ANNEXURE A-4.**

26. The Applicant - Association further submits that it made another representation dated 01.02.2010 and further reiterated the averments as stated in the previous representations and vehemently urged to take action against the erring Chemists who were not issuing Medicines in accordance with the DC Act & DC Rules. A true and correct copy of the representation dated 01.02.2010 is annexed hereto and marked as **ANNEXURE A-5.**

27. That the Delhi state branch - Delhi Medical Association preferred Writ Petition (Civil) No.3491/2010 before Hon'ble Delhi High Court, in order to bring forth the illegality being committed by the illegal and unregistered practitioners in Delhi by practicing the Allopathic System of Medicine, without, legal authority. It is submitted that the said Writ . • petition' was dismissed as withdrawn for the purpose of filing a properly reconstituted Writ Petition, for which steps have been taken. A true and correct copy of order dated 6.10.2010 in Writ Petition (Civil) No.3491/2010 is annexed hereto and marked as **Annexure P-6.**

28. That the Medical Council of India herein issued a Circular No. MCI/Circular/10/1116-31-32/Anti- Quackery/2010 dated 10.8.2010, informing the Health Secretary of all the State Governments, the Applicant – Association amongst others regarding the non-recognition of Electrohomoeopathy, alternative system of medicine, integrated system of medicine and Indoallopathy by law. It was further stated that these kind of practitioners are quacks and in case it is allowed it would amount to playing with the health of the public at large. A true and correct copy of the Circular No. MCI/Circular/10/1116-31-32/Anti quackery/2010 dated 10.8.2010 is annexed herewith and marked as **Annexure A-7.**

29. The Applicant – Association further submits that it had filed Writ Petition (Civil) No.580/2008 before this Hon'ble Court, for the issueing of Writ of mandamus in order to protect the Right to Life enshrined under Article 21 and freedom to practice one's profession under Article 19 of the Constitution of India. The Hon'ble Apex court vide its order dated 16.12.2008, was pleased to allow the Applicant – Association to withdraw the Writ Petition with liberty to take other appropriate and requisites steps. A tru and correct copy of order dated 16.12.2008 in Writ Petition

(Civil) No.580/2008 is annexed hereto and marked as **Annexure P-8**.

30. The Applicant – Association submits that the rights of the members of the Applicant – Association have continuously been infringed due to complete inaction and ineffective decisions by the authorities, who despite there being clarity in the law specially after the decision of the Hon’ble Apex Court in Dr. Mukhtiar Chand case and being sufficiently empowered under the law to take requisite action have still failed to do so. It is submitted that this failure on the parts of the authorities has put the health of the citizens at stake, and further led to the violation of their fundamental right to health protected under the Constitution.

31. The Application – Association further submits that in the aforesaid case of Dr. Mukhtiar Chand, the Hon’ble Supreme Court has considered the provisions of the relevant statutes like IMC Act, IMCC Act, DMC Act, DBCP Act etc. like Sections 2(f), 2(h), 2 (j), 2(k), 15 of the IMC Act; Sections 2(1) (e) 2(1)(j), 17, 22 of the IMCC Act, Sections 2(7), 2(8), 2(13), 2(14), 15, 27 and 28(2) of the DCM Act; Sections 2(b), 2(c), 2(h), 2(k), 2(n), 2(o), 17 and 32 of the DBCP Act and Rule 2 (ee) of the DC Rules;

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True and correct copies of the Sections 21(1) (e), 2 (1) (i), 17,22 of the IMCC Act, sections 2(7), 2(8) 2(13), (14), 15, 27 NS 28 (2) of the DMC Act; Sections 2(b), 2(c) 2(h), 2(k), 2(n), 2(o), 17 and 32 of the DBCP Act and Rule 2(ee) of the DC Rules are collectively annexed hereto and marked as **ANNEXURE A-9 (colly)**.

P R A Y E R

The applicants, therefore, respectfully prays that this Hon'ble Court may be pleased to:

- A) allow the Applicant - Association to intervene in the present matter;
- B) pass any other or further orders as may be deemed fit and proper in the circumstances of the case.

UNDER FOR THIS ACT OF KINENESS THE APPLICANTS AS IN DUTY
BOUND SHALL EVERYPRAY

DRAWN AND FILED BY

(SHIVAJI M. JADHAV)
ADVOCATE FOR THE APPLICANTS

New Delhi
Filed on - /10/2010
Dated : /10/2010

