

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2010

CORAM:

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

WRIT PETITION NO.13696 OF 2009

AND

M.P.NO.1 OF 2009

Dr.J.Kaleem Nawaz, B.U.M.S.

... Petitioner

Versus

1. The State of Tamil Nadu, rep. by its Secretary to Government, Welfare Health and Family Welfare Department, Fort St. George, Chennai-600 009.
2. The Commissioner of Police, Chennai City, Egmore, Chennai-600 008.
3. Central Council of Indian Medicine, Institutional Area, Janakpuri, New Delhi - 110 058.
4. Director of Medical Services, Poonamallee High Road, Chennai - 600 010.
5. The Medical Council of India, New Delhi.  
(R5 impleaded as per order dated 4.8.10, in WP 13696/09)

... Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Mandamus, forbearing the respondents 1 and 2 or their men or agents from in any manner preventing the petitioner from using or administering allopathic medicines along with Unani Medicines in accordance with the training and teaching given in the B.U.M.S. degree.

For Petitioner

...

Mr.R.Abdul Mubeen

For Respondents

...

Mr.P.Subramanian, Spl.G.P. for R1,2 &4  
Mr.M.T.Arunan, for R3  
Mr.V.P.Raman for R5.

O R D E R

The petitioner joined the B.U.M.S. (Bachelor of Unani Medicine and Surgery) Course and completed the same in the year 2000 and he was awarded with B.U.M.S. (Bachelor of Unani Medicine and Surgery).

2. As per the regulations for the Bachelor of Unani Medicine and Surgery Degree Course of the Tamil Nadu Dr.M.G.R.Medical University, Chennai-32, for the academic year-2004-2005, the main course is for 4 ½ years duration and the candidates have to study the following subjects:-

I. (a) 1<sup>st</sup> Professional Course:

1. TASHREEHUL BADAN (ANATOMY)
2. MUNAFE-UL-AZA- (PHYSIOLOGY)
3. UMOOR-E-TABIYA (BASIC FUNDAMENTAL PRINCIPLE OF UNANI MEDICINE)
4. MANTIQUE-O-FALSAFA&HAIYAT (LOGIC & PHILOSOPHY)
5. ARABIC
6. TARIKHE-TIB (HISTORY OF UNANI MEDICINE)

(b) 2<sup>nd</sup> Professional Course:-

1. ILMUL-AVDVIA I (MATERIA MEDICA/PHARMACOLOGY) (Kulliyat & Mufradat)
2. ILMUL-ADVIA II (PHARMACOGNACY) (Murakkabat & Saidala)
3. ILMULAMRAZ & SAREERYAT (PATHOLOGY & DIAGNOSIS)
4. ILMUL-SAMOOM & TIBB-E-QANNONI (FORENSIC MEDICINE & TOXICOLOGY)
5. HIFZAN-E-SEHAT TAHAFFUZI & SAMAJITIB (SOCIAL & PREVENTIVE MEDICINE)

(c) 3<sup>rd</sup> Professional Course:

1. MOALEJAT I (MEDICINE-I)
2. MOALEJAT II (MEDICINE-II)
3. JARAHİYAT (SURGERY)
4. AMRAZ-UZN-ANAFO-O-HALAQ (E.N.T)
5. AMRAZ-AIN (OPHTHALMOLOGY)
6. ILMUL-CABALATH-NISWAN-O-ATFAL (OBSTETRICS & GYNAECOLOGY AND PAEDIATRICS)

3. The candidates also have to study the following subjects of Modern Medicine as a part of their curriculum:

- (1) Pharmacological Terminologies
- (2) Classification & Allied fields of Pharmacology
- (3) Route of Drug Administration Mode of Action of Drugs

- (4) Side effects of drugs
- (5) Pharmacological actions and therapeutic uses, absorption, fate and excretion, Doses and side effects of the following drugs.
  - (a) Analgesic, Narcotic analgesics and Non-Narcotic analgesics and anti-pyretics, NSAID's
  - (b) Sedatives, Hypnotics & Tranquilisers
  - (c) Local, spinal and general anaesthetics
  - (d) Anti-histamine
  - (e) Antiseptics, Disinfectants
  - (f) Sulphonamides
  - (g) Antibiotics: The Classification and types
  - (h) Chemotherapy
  - (i) Hormones
  - (j) Contraceptives
  - (k) Receptors and their Blockers.

4. According to the petitioner, during the course of study, he has been taught with the nature and effect of allopathic medicine and the method of treatments. The petitioner was also provided enough training in the Kilpauk Medical College Hospital to handle the emergency situations with allopathic medicines. During the first and second years of study, B.U.M.S. students attended common classes along with M.B.B.S. students on the subject of Anatomy Physiology and Biochemistry.

5. The petitioner would state that he is prescribing Unani medicines for his patients. But at the same time, in case of emergency, he also prescribes allopathic medicines to his patients. According to the petitioner, allopathic medicine and treatment is given to the patients only to the limited extent in accordance with the teaching and training given to him during the course of his study.

6. The petitioner after completion of his course and internship (house surgeon), enrolled himself and registered with Tamil Nadu Board of Indian Medicine, Chennai vide Certificate No.AU 26909 and as per the certificate given by the Tamil Nadu Board of Indian Medicine, the petitioner is qualified as Class "A" Practitioner.

7. It is the further case of the petitioner that at the time he underwent B.U.M.S. Course, he was given six months training in Kilpauk Medical College Hospital in allopathic medicine and he was also given proper training in administering the said medicine and the petitioner is also having theoretical and practical knowledge in administering the allopathic medicines.

8. However, the police authorities had started harassing non-M.B.B.S. Practitioners like the petitioner on the ground that they cannot prescribe allopathic medicines. In this regard, the Tamil

Nadu Unani Doctors Association had also submitted a representation dated 28.5.1998 to the first respondent to stop such harassment, which was followed by another representation dated 20.12.2000. The grievance of the petitioner is that though he is entitled to prescribe allopathic medicine and treat his patients, he was harassed by the police authorities and preventing him from discharging his noble function of treating the patients and hence he has filed the present writ petition forbearing the respondents 1 and 2 from preventing the petitioner from using or administering allopathic medicines along with Unani Medicines in accordance with the training and teaching given to him while he was undergone B.U.M.S. Course.

9. The third respondent viz., Central Council of Indian Medicine, has filed a counter affidavit and it was sworn to by Thiru Vaidya Prem Raj Sharma, Registrar-cum-Secretary of Central Council of Indian Medicine, New Delhi. It is relevant to extract paragraph Nos. 10 , 11 and 12 of the counter affidavit:-

"10. It is also humbly submitted that in Civil Appeal No.89/1987 titled 'Dr.Mukhtiar Chand and others Vs. State of Punjab and others, reported in AIR 1999 SC 468, (1998) 7 SCC 579, a Constitutional Bench of the Hon'ble Supreme Court has clearly upheld that the notification issued by various State Governments thereunder allowing Ayurveda, Siddha, Unani and Homeopathy practitioners holding duly recognized qualifications/registered for practice, to prescribe Allopathic medicines, as legally valid. Therein, it was held that;

"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. However, if any State Act recognizes the qualification of integrated courses as sufficient qualification for registration in the State Medical Register of the State, the prohibition of Section 15(2)(b) will not be attracted."

11. As such, in States where such practitioners have been empowered by a general or special order made by concerned State governments, such practitioners are lawfully entitled to prescribe Allopathic medicines and are also eligible to practice their respective systems with the aid of modern scientific advances. Herein, true copy of letter dated 22.4.2008 issued by the Government of India is also enclosed as Annexure/R-1.



12. It is further submitted that the Indian Medicine Central Council Act, 1970 defines 'Indian Medicine' as "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 declare by notification from time to time". That the word 'modern advances' has been clarified by the CCIM in its meeting held on 23.3.2003 by passing Resolution as under;

"This meeting of Central Council hereby unanimously resolved that in clause (e) of Sub-Section 2(1) of the IMCC Act, 1970, the word 'Modern medicine' be read as advances made in the various branches of Modern Scientific Medicine in all its branches of internal medicine, surgery, gynaecology and obstetrics, anaesthesiology, diagnostic procedures and other technological innovations made from time to time and declare that the courses and curriculum conducted and recognized by the Central Council of Indian Medicine are supplemented with such modern advances."

Thus, according to the third respondent, in view of the decision of the Hon'ble Supreme Court of India, reported in 'Dr. Mukhtiar Chand and others Vs. State of Punjab and others, reported in (1998) 7 SCC 579, the notifications issued by the various State Governments allowing Ayurveda, Siddha, Unani and Homeopathy practitioners holding duly recognized qualifications/registered for practice, to prescribe Allopathic medicines, are legally valid.

10. The 5<sup>th</sup> respondent viz., Medical Council of India, has filed its counter affidavit and it was sworn to by its Deputy Secretary. As per the counter affidavit filed by the 5<sup>th</sup> respondent, in paragraph Nos. 12 and 13 of the said counter affidavit it has been averred as follows:-

"12. It is submitted that the provisions of Section 2(f) defines "medicine" to be modern scientific medicine in all its branches and includes surgery and obstetrics, to the exclusion of all other, Section 2(h) defines a "recognized medical qualification" to be one which is recognised and included in any part of the Schedule to the IMC Act which entitles the holder of such a qualification to be entitled to get registered in a State Medical Council or Medical Council of India. In terms of the Act, only those persons, who possess recognized medical qualifications entered in the Schedule to the IMC Act, are entitled to practice allopathic medicine in any State and any contravention to this provision

may attract punishment and imprisonment in terms of Section 15(3) of the Act.

13. It is submitted that no provision of any State enactment can have the effect of diluting the privileges of any registered medical practitioner whose name is entered in the Indian Medical Register. It has been held by the Hon'ble Supreme Court in the cases of - MCI vs. State of Karnataka - (1998) 6 SCC 131 and Dr.Preeti Srivastava Versus State of M.P. - (1999) 7 SCC 120) - that the IMC Act being a Central legislation relatable to entry 66 of list-I of the VIIth Schedule to the Constitution of India, any provision of any State enactment which is contrary to or in conflict with any of the provisions of the Act, shall be repugnant."

According to the 5<sup>th</sup> respondent, only those persons who are having recognized qualifications as provided in Indian Medical Council Act, 1956, can practice modern medicine.

11. Mr.R.Abdul Mubeen learned, counsel appearing for the petitioner has drawn the attention of this Court to the typed set of papers and would submit that the petitioner had undergone training in modern medicine for a period of six months and therefore, he is aware of the nature and effect of allopathic medicines in the event of the said drugs being administered to the patients. It is further submitted by the learned counsel appearing for the petitioner, the petitioner has undergone B.U.M.S. Course in a recognized medical institution as found in the second schedule to the Indian Medicine Central Council Act, 1970.

12. The learned counsel appearing for the petitioner has drawn the attention of this Court to Section 17(3) (b) of the above said Act and as per the said provision, a practitioner of Indian Medicine, who possess a recognized medical qualification and is enrolled on a State Register or the Central Register of Indian Medicine, shall practice Indian Medicine in any State and the privileges (including right to practice any system of medicine) conferred by or under any law relating to registration of practitioners 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. It is the further submission of the learned counsel appearing for the petitioner that he got registered himself with B.U.M.S. qualification with Tamil Nadu Board of Indian Medicine and as per the Tamil Nadu Medical Registration Act 1914, his registration is valid and consequently he is entitled to administer Unani System of medicine as well as allopathic system of medicine. The learned counsel appearing for the petitioner invited the attention of this Court to the copy of the letter F.No.8-5/96-Ay, dated 18.10.96 from the Secretary, Central Council of Indian

Medicine, New Delhi, addressed to the Health Secretaries of all State Governments, wherein it has been stated as follows:-

" Subject: Rights & Privileges of Practitioners of ISM. The resolution therefor.

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With reference to the subject mentioned above, I am to inform you that rights and privileges of Indian System of Medicine practitioners have been protected under Indian Medicine Central Council Act, 1970 which provides as under:-

"Nothing contained in Sub-section (2) shall affect privileges (including the right to practice any system of medicine) conferred by or under any law relating to registration of practitioners 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."

I am further to inform you that the matter was considered by the Executive Committee of the Council. The Committee discussed and passed the following resolution:-

"Institutionally qualified practitioners of Indian System of Medicine (Ayurvedic, Unani & Siddha) and those covered under Indian Medicine Central Council Act, 1970 are eligible to practice Indian System of Medicine and modern medicines, which is commonly known as Allopathic Medicines including Surgery, Gynaecology and obstetrics, based on their training and teaching. This training and teaching is included in the syllabus of C.C.I.M."

The meaning of word Modern Medicine (Advances) means the advances made in various branches of Modern Scientific Medicine, Clinical, Non-clinical, Bio-sciences."

You are requested to implement the above resolution and notify the same in your State publicly.

Yours faithfully,

Sd/-----

/True Copy/

Sd/- .....

REGISTRAR."

The attention of this Court was also drawn to notification dated 30.10.1996 issued by the Central Council of Indian Medicine, New Delhi and as per the said notification, it has been clarified that the rights of practitioners of Indian system of medicine who practiced modern scientific system of medicine (allopathic medicine)



are protected under Section 17(3)(b) of the Indian Medical Councils Act, 1973. Therefore, according to the learned counsel appearing for the petitioner, the said notifications give him protection and eligibility to practice modern scientific system of medicine.

13 The learned counsel appearing for the petitioner in support of his submission, heavily placed reliance upon the judgment of the Hon'ble Supreme Court of India reported in 1998(7) SCC page 579-'Dr.Mukhtiar Chand and others Vs. State of Punjab and others. The issue arose for consideration in the said decision before the Hon'ble Supreme Court of India is with regard to the issuance of declarations by the State Governments under Clause (iii) of Rule 2 (ee) of the Drugs and Cosmetics Rules 1945 which defines registered medical practitioner. Under such declarations, notified vaid/hakims claim right to proscribe allopathic drugs covered by the Indian Drugs and Cosmetics Act 1940 and the said persons who have obtained degrees in integrated courses claim right to practice the allopathic system of medicine. The writ petitions were filed before the Punjab and Haryana High Court and Rajasthan High Court restraining the authorities from interfering with their right to prescribe medicines falling under the Drugs Act on the strength of such notifications. Those writ petitions were dismissed which lead to the filing of the appeals before the Hon'ble Supreme Court of India. It is useful and relevant to extract the following paragraphs of the above cited judgment.

"34. We have perused the above said notifications issued by the State Governments and we find that they are well within the confines of clause (iii) of Rule 2 (ee). Therefore, we conclude that the said circular and the notification issued by the said State Governments declaring the categories of vaid/hakims who were practising modern system of medicine and were registered in the State Medical Registers, are valid in law.

38. For the present discussion, the germane provision is Section 15(2)(b) of the 1956 Act which prohibits all persons from practising modern scientific medicine in all its branches in any State except a medical practitioner enrolled on a State Medical Register. There are two types of registration as far as the State Medical Register is concerned. The first is under Section 25, provisional registration for the purposes of training in the approved institution and the second is registration under Section 15(1). The third category of registration is in the "Indian Medical Register" which the Council is enjoined to maintain under Section 21 for which recognised medical qualification is a prerequisite. The privileges of persons who are enrolled on the



Indian Medical Register are mentioned in Section 27 and include the right to practice as a medical practitioner in any part of India. "State Medical Register" in contradistinction to "Indian Medical Register", is maintained by the State Medical Council which is not constituted under the 1956 Act but is constituted under any law for the time being in force in any State; so also a State Medical Register is maintained not under the 1956 Act but under any law for the time being in force in any State regulating the registration of practitioners of medicine. It is thus possible that in any State, the law relating to registration of practitioners of modern scientific medicine may enable a person to be enrolled on the basis of the qualifications other than the "recognised medical qualification" which is a prerequisite only for being enrolled on the Indian Medical Register but not for registration in a State Medical Register. Even under the 1956 Act, "recognised medical qualification" is sufficient for that purpose. That does not mean that it is indispensably essential. Persons holding "recognised medical qualification" cannot be denied registration in any State Medical Register. But the same cannot be insisted upon for registration in a State Medical Register. However, a person registered in a State Medical Register cannot be enrolled on the Indian Medical Register unless he possesses "recognised medical qualification". This follows from a combined reading of Sections 15(1), 21(1) and 23. So by virtue of such qualifications as prescribed in a State Act and on being registered in a State Medical Register, a person will be entitled to practice allopathic medicine under Section 15(2)(b) of the 1956 Act.

41. Rule 2(ee), as noted above, has been inserted in the Drugs Rules with effect from 14-5-1960. Section 15 of the 1956 Act, as it then stood, only provided that the medical qualifications in the Schedule shall be sufficient qualification for enrolment on any State Medical Register and so there was no inconsistency between the section and the Rule when it was brought into force. But after sub-section (2) of Section 15 was inserted in the 1956 Act, with effect from 15-9-1964, which, inter alia, provides that no person other than a medical practitioner enrolled on a "State Medical Register" shall practice modern scientific medicine in any State, the right of non-allopathic doctors to prescribe drugs by virtue of the declaration issued under the said Drugs Rules, by

implication, got obliterated. However, this does not debar them from prescribing or administering allopathic drugs sold across the counter for common ailments.

42. .... In other words, under clause (d) the right to practice modern scientific medicine in all its branches is confined to only such persons who possess any qualification included in the Schedules to the 1956 Act. In view of this conclusion, it matters little if the practitioners registered under the 1970 Act are being involved in various programmes or given postings in hospitals of allopathic medicine and the like.

43. It will be appropriate to notice that the 1970 Act also maintains a similar distinction between a State Register of Indian Medicine and the Central Register of Indian Medicine. Whereas the State Register of Indian Medicine is maintained under any law for the time being in force in any State regulating the registration of practitioners of Indian medicine, the Central Register of Indian Medicine has to be maintained by the Central Council under Section 23 of that Act. For a person to be registered in the Central Register, Section 25 enjoins that the Registrar should be satisfied that the person concerned was eligible under that Act for such registration. Keeping this position in mind, if we read Section 17(3)(b), it becomes clear that the privileges which include the right to practice any system of medicine conferred by or under any law relating to registration of practitioners 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, are not affected by the prohibition contained in sub-section (2) of Section 17.

47. 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 medicine in any of its branches unless that person is also enrolled on a State Medical Register within the meaning of the 1956 Act."

14. According to the learned counsel appearing for the petitioner, in the light of the ratio laid down in the above cited decision, the petitioner is entitled to prescribe or administer allopathic drugs and even assuming without admitting that he is not

competent to do so, he may be permitted to prescribe allopathic drugs to his patients in case of emergency or for common ailments.

15. Reliance was also placed upon the decision rendered by a Single Bench of this Court reported in 2010 CIJ page 359 - T.N.Siddha Medical Graduates Association vs. Letika Saran, I.P.S. D.G.P. (L & O), wherein the Circular Memorandum dated 19.6.2010 issued by the Additional Director General of Police (ADGP) Law and Order of Tamil Nadu has been taken into consideration in paragraph No.4 of the said decision, it has been held as follows:-

"4. In the light of the said circular, it is imperative that no proceedings can be initiated against any of those registered practitioners in Siddha, Ayurveda, Homeopathy and Unani, who are eligible to practice irrespective of the respective system also with Modern Scientific Medicine including Surgery and Gynecology Obstetrics, Anesthesiology, ENT, Ophthalmology etc. Such registration of the medical practitioners with Tamil Nadu Siddha Medical Council, Tamil Nadu Board of Indian Medicine and Tamil Nadu Homeopathy Medical Council as well as such of those qualified doctors who were recognized as such by the Madurai Kamaraj University and Tamil Nadu Dr. MGR Medical University who have been qualified respectively in the system of bachelor of Siddha Medicine and Surgery. If any action had been taken against such of those medical practitioners referred to above, it is needless to state that, such action should be dropped forthwith pending further orders in the writ petition."

Therefore, the learned counsel appearing for the petitioner prayed for allowing of this writ petition.

16. Mr.M.T.Arunan, learned counsel appearing for the third respondent has drawn the attention of this Court to the counter affidavit especially to paragraph Nos. 10 to 12 and would submit that in terms of the notification referred to in the counter affidavit, the petitioner can prescribe allopathic medicine. In fact the third respondent has supported the case of the writ petitioner.

17. Per contra, Mr.V.P.Raman, learned counsel appearing for the 5<sup>th</sup> respondent, has vehemently contended that the petitioner by virtue of his registration as a holder of B.U.M.S. degree with Tamil Nadu Board of Indian Medicine, Chennai, cannot practice the allopathic system of medicine and consequently cannot prescribe allopathic medicines to his patients as he has not qualified to do so. The learned counsel appearing for the 5<sup>th</sup> respondent has invited the attention of this Court to the Indian Medical Council's Act 1956. Sub-Section (d) of Section 2 defines Indian Medical Register which means medical register maintained by the Council. As per sub-section



(f) of Section 2 "Medicine" means modern scientific medicine in all its branches and include surgery and obstetrics but does not include Veterinary medicine and surgery. Sub-section (k) of Section 2 defines "State Medical Register" which means, the register maintained under any law for the time being in force in any State Regulation of Practitioners of medicine.

18. Section 11 of Indian Medical Council Act 1956 speaks about the recognition of Medical qualifications granted by Universities or Medical Institutions in India and in the First Schedule recognized medical qualifications granted by the Universities or Medical Institutions in India has been stated. A perusal of First Schedule would disclose the Bachelors Degree, based graduate degree and Super specialty pertain to allopathic medicine/surgery. The learned counsel appearing for the 5<sup>th</sup> respondent would submit that unless the petitioner/registered practitioner enrolled himself as a member under Section 15 of the Indian Council Act 1956 in the State Medical Register, he cannot practice allopathic form of medicine and prescribe allopathic medicines.

19. The learned counsel appearing for the 5<sup>th</sup> respondent in support of his submission, has invited the attention of this Court to the decision reported in 1998(7) SCC page 579 (cited supra), relied upon by the learned counsel appearing for the petitioner.

20. In paragraph No.47 of the said decision, it has been held that "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 medicine in any of its branches unless that person is also enrolled on a State Medical Register within the meaning of the 1956 Act."

21. The sum and substance of the submission made by the learned counsel appearing for the 5<sup>th</sup> respondent is that the petitioner by virtue of his registration as a medical practitioner in terms of Indian Medicine Central Council Act 1970, the Tamil Nadu Board of Indian Medicine, Chennai cannot practice and prescribe allopathic form of medicine and if he indulges so, he is liable to be prosecuted. In this connection, reliance was placed upon the decision reported in (1996) 4 SCC page 332- Poonam Verma vs. Ashwin Patel and others, and it is useful to extract the following paragraphs of the decision.

"36. A combined reading of the aforesaid Acts, namely, the Bombay Homoeopathic Practitioners' Act, 1959, the Indian Medical Council Act, 1956 and the Maharashtra Medical Council Act, 1965 indicates that a person who is registered under the Bombay Homoeopathic Practitioners' Act, 1959 can practice Homoeopathy only

and that he cannot be registered under the Indian Medical Council Act, 1956 or under the State Act, namely, the Maharashtra Medical Council Act, 1965, because of the restriction on registration of persons not possessing the requisite qualification. So also, a person possessing the qualification mentioned in the Schedule appended to the Indian Medical Council Act, 1956 or the Maharashtra Medical Council Act, 1965 cannot be registered as a medical practitioner under the Bombay Homoeopathic Practitioners' Act, 1959, as he does not possess any qualification in Homoeopathic system of medicine. The significance of mutual exclusion is relevant inasmuch as the right to practice in any particular system of medicine is dependent upon registration which is permissible only if qualification, and that too, recognised qualification, is possessed by a person in that system.

38. But merely because the Anatomy and Physiology are similar, it does not mean that a person having studied one system of medicine can claim to treat the patient by drugs of another system which he might not have studied at any stage. No doubt, study of Physiology and Anatomy is common in all systems of medicines and the students belonging to different systems of medicines may be taught Physiology and Anatomy together, but so far as the study of drugs is concerned, the Pharmacology of all systems is entirely different.

39. An ailment, if it is not surgical, is treated by medicines or drugs. Typhoid fever, for example, can be treated not only under Allopathic system of medicine, but also under the Ayurvedic, Unani and Homoeopathic systems of medicines by drugs prepared and manufactured according to their own formulae and pharmacopoeia. Therefore, a person having studied one particular system of medicine cannot possibly claim deep and complete knowledge about the drugs of the other system of medicine.

40. The bane of Allopathic medicine is that it always has a side-effect. A warning to this effect is printed on the trade label for the use of the person (doctor) having studied that system of medicine.

41. Since the law, under which Respondent 1 was registered as a medical practitioner, required him to practise in HOMOEOPATHY ONLY, he was under a statutory duty not to enter the field of any other system of medicine as, admittedly, he was not qualified in the other system, Allopathy, to be precise. He trespassed

into a prohibited field and was liable to be prosecuted under Section 15(3) of the Indian Medical Council Act, 1956. His conduct amounted to an actionable negligence particularly as the duty of care indicated by this Court in Dr Laxman Joshi case<sup>10</sup> WAS BREACHED BY HIM ON ALL THE THREE COUNTS INDICATED THEREIN.

43. A person who does not have knowledge of a particular system of medicine but practises in that system is a quack and a mere pretender to medical knowledge or skill, or to put it differently, a charlatan."

22. In 2009 MANU/TN/2407/2009-A.Ramesh Babu vs. The Superintendent of Police, the petitioner therein filed a writ of mandamus forbearing the respondent from in any way preventing him from giving first aid to the patients permissible in law and for a further direction not to harass him in so far as rendering the first aid as a measure of immediate relief to the patients.

23. The facts of the said case are that the petitioner is a holder of Diploma in D.Pharm Course and he is running a medical shop and also administering injection to patients i.e. TT in the process of first aid and he apprehends arrest at the hands of the police under the guise that he is a fake Doctor. The learned Judge (Hon'ble Mr.Justice T.S.Sivagnanam) in the said decision after taking into consideration the Chart of duties and responsibilities of Pharmacists under the provisions of the Pharmacy Act and also the above cited decisions of the Hon'ble Supreme Court of India and the Division Bench of this Court reported in 2002(4) CTC page 577 - All India Association of Private Medical Practitioners vs. State of Tamil Nadu, has held that if these things are permitted, the very purpose of enacting Indian Medical Council Act and maintaining the list of registered Medical Practitioners would be an empty formality and hence dismissed the said writ petition.

24. Similar issue came up for consideration before a Single Bench of this Court in a decision reported in 2010 (4) CTC page 88- Dr.K.Abdul Muneer and another vs. The State of Tamil Nadu. The issue arose for consideration in the said writ petition was whether the Unani Medical Practitioners can practice allopathic system of medicine without their name being registered under Indian Medical Council Act 1956. The Hon'ble Mr.Justice K.K.Sasidharan in the said decision, has relied upon 'Dr.Mukhtiar Chand's case, Poonam Verma's case (cited supra) and Yash Ahuja and others vs. Medical Council of India and others (2009 12 Scale page 687) and held as follows:-

"29. When the Medical Council Act prohibits registration of MBBS degree holders from other countries in India without undergoing screening test,



it is not open to the Medical Practitioners of other system of medicine to claim their right to practice in modern medicine without qualification in the said system. In fact, the conduct of screening test for foreign MBBS Degree holders to register in India was upheld by the Supreme Court in *Yash Ahuja and others v. Medical Council of India and others*, 2009 (12) Scale 687.

30. The grievance of the petitioners are on account of the raid conducted by the Police Authorities in their clinic on account of their practice in Allopathic Medicine along with Unani Medicine. The Director of Medical Sciences in his counter affidavit has categorically stated that the Unani Practitioners like the petitioners are not entitled to practice in the system of Allopathic Medicine. The petitioners have also no case that they are qualified in the Allopathic system of medicine. The petitioners are taking shelter under the brief training given to them during their internship. The training which the petitioners have undergone during the time of house surgeon was only for the purpose of completing the course as per the Regulations. During that particular period of six months, the petitioners were given training in as many as seven departments viz., Obstetrics, Gynecology, Medicine, Surgery, Pediatrics, E.N.T. and Ophthalmology. The training for a brief period given to the petitioners were not for the purpose of practicing in the system of Allopathic Medicine or to administer modern medicine. It was only as part of their curriculum to get the degree in BUMS they have undergone such training. The training received by the petitioners in the Government Hospital will not qualify them to practice in the Allopathic system of medicine. So long as there is no entry of the petitioners name in the State Register maintained by the statutory authorities under the Indian Medical Council Act, 1956, it is not open to them to practice in the Allopathic Medicine.

31. There is no dispute that Ayurveda, Siddha, Unani and allopathic and homeopathic system of medicines have got their own history, heritage, advantages and importance. It is not possible to ignore our traditional, indigenous system of medicine and the service rendered by the Medical Practitioners of Indian Medicine for the cause of public health. There is no restriction for practicing the Indian Medicine by the qualified practitioners. The problem would arise only when they attempt to practice the

allopathic system of medicine without a Degree and training in the modern system of medicine.

32. The petitioners have no case that they were prevented by police from practicing in the Unani system of medicine. The police attempted to prevent only their practice in the Allopathic Medicine as they are not qualified to administer modern medicine. In such circumstances, the petitioners are not entitled to the relief claimed in the writ petition. There is no merit in their contention and as such, the writ petition is liable to be dismissed. "

25. In yet another decision reported in 2010 WLR page 345- Tiruvannamalai District Indian Medicine and Homeopathic Practitioners Welfare Association vs. The State of Tamil Nadu and others, a writ petition was filed for the issuance of mandamus forbearing the respondents from enforcing the penal provisions of the Indian Medical Council Act 1956 and Drugs and Cosmetics Act 1940, against the members of the petitioner's association and also to direct the 4<sup>th</sup> respondent to issue identity cards to the members of the petitioner's association based on their representation in terms of the earlier orders passed in a batch of writ petitions. The Hon'ble Mr. Justice N. Paul Vasanthakumar, after placing reliance upon the above cited decisions, in paragraph No.12 of the judgment had held as follows:-

"12. This Court is conscious of the fact that nowadays some people are practising medicine without possessing the prescribed qualification and without registering their names in the respective Medical Council and are prescribing medicines to the patients, even though they are not authorised to do so. Likewise, certain persons having dispensaries are storing and selling time barred medicines and selling the same to the patients. Such kind of practice adopted by the unscrupulous persons under the guise of Medical Practitioner has to be put an end to by the competent authorities, who are vested with power to inspect and initiate penal action to protect the health of the citizens which is a guaranteed fundamental right under Article 21 of the Constitution of India. Most of the patients getting treatments from Medical Practitioners are illiterates, who are ignorant to verify the fact of time expired drugs and tablets. Such being the factual scenario, it is imperative and all the more required for the authorities to inspect and proceed against the so called Medical Practitioner, who is violating the laws. In fact the State is duty bound to protect the public health. "

26. In a decision reported in (2010) 6 MLJ page 82 (SC) - Rajasthan Pradesh V.S. Sardarshahar vs. Union of India, the following questions arose for consideration:-

"1. Whether persons who hold certain degree or diploma which are not included as recognized qualification in Schedule II of the Indian Medicine Central Council Act, 1970 have a right to practice in medical sciences?

2. Whether restriction imposed under the Central Act from practicing, unless names appear in the Central Register, is violative of Article 14 of the Constitution with reference to the State Act?"

The Hon'ble Supreme Court of India after taking into consideration number of its earlier decisions including 'Dr. Mukhtiar Chand's case (cited supra), has held that unless the person possesses the qualification as prescribed in Schedule II, III and IV of Indian Medicine Central Council Act, 1970, he cannot claim any right to practice in medical science and mere registration in any State Register is of no consequence. It has been further held that the right of practice under Article 19(1)(g) of the Constitution of India, is not absolute and is subject to reasonable restrictions.

27. This Court has carefully considered the submissions made by the learned counsel appearing for the petitioner and the respondents and also the decisions relied upon by the respective counsel.

28. Even according to the petitioner, during the course of study in B.U.M.S. degree course, he was given six months training in Kilpauk Medical College Hospital in allopathic medicine. A perusal of the Regulations for the Bachelor of Unani Medicine and Surgery-2004-2005 issued by the Tamil Nadu DR.M.G.R. Medical University would disclose that the main course is of 4 ½ years duration and it has been divided to I, II and III provisional Course and had mainly dealt with Unani form of Medicine and Surgery. Merely because the petitioner had been taught the subject of modern medicine for a period of six months the same will not enable him to practice and prescribe allopathic medicine. Allopathic form of medicine differs from Unani form of medicine. As observed in 1996(4) SCC page 332 - Poonam Verma's case (cited supra), the State of Physiology and Anatomy is common in all systems of medicine and the student belonging to different systems of medicine may be studied physiology and Anatomy together and in so far as the study of drugs is concerned, the Pharmacology of all systems is entirely different and a person having studied one particular system of medicine cannot possibly claim deep and complete knowledge about the drugs of the other system of medicine. The above said observation of the Hon'ble Supreme Court of India is squarely applicable to the case on hand.



29. Admittedly, the petitioner had undergone only six months of training in allopathic form of medicine while he had undergone B.U.M.S. course and the same would not enable him to claim knowledge in allopathic form of medicine and he cannot claim that he has acquired rich knowledge and experience out of such training.

30. The petitioner after completion of B.U.M.S. course, got enrolled/registered himself as a Unani Practitioner with the Tamil Nadu Board of Indian Medicine, Chennai and he has been issued with Class 'A' of medical registration certificate.

31. As per the ratio laid down in 'Dr.Mukhtiar Chand's case-1998(7) SCC page 579 (cited supra), unless the petitioner enrolled on the State Register of Indian Medicine or the Central Register of Indian Medicine, in terms of Indian Medical Council Act 1956, he cannot practice modern scientific medicine.

32. Admittedly, the petitioner has not registered/enrolled himself in the State Register maintained under Indian Medical Council Act 1956 and therefore, he cannot practice modern system/allopathic system of medicine. The decision rendered in 2010 (4) CTC page 88 (cited supra) has also laid down the said proposition and so also the decision reported in 2010 WLR page 345 (cited supra).

33. In the counter affidavit filed by the third respondent, the decision of the Hon'ble Supreme Court of India in 'Dr.Mukhtiar Chand's case, (cited supra) has been misinterpreted and it is unfortunate that the deponent of the affidavit has not gone through the entire judgment especially paragraph No.47 of the said judgment.

34. The reliance placed upon by the learned counsel appearing for the petitioner on the circular 18.10.1996 and 30.10.1996 is of no consequence as the clarification issued by the Central Council of Indian Medicine, New Delhi that the practitioners of Indian system of medicine who practiced modern scientific system of medicine, allopathic medicine are protected under Section 17(3)(b) of Indian Medicine Central Council Act, 1970, is not correct as the said authority has not taken into consideration the provisions of Indian Medical Council Act, 1956. 'Dr.Mukhtiar Chand's case, (cited supra) which came to be delivered subsequent to the said notifications had also clarified that unless a person/medical practitioner registered himself in the State Register in terms of Indian Medical Council Act, 1956, he cannot practice modern system/allopathic system of medicine.

35. The Circular Memorandum dated 19.6.2010, issued by the Additional Director General of Police (ADGP) Tamil Nadu, has not taken into consideration the provisions of Indian Medical Council Act 1956 and the decisions of the Hon'ble Supreme Court of India in 'Dr.Mukhtiar Chand's case, Poonam Verma's case (cited supra) and also the decisions rendered by this Court in the judgments reported in 2010 WLR page 345 and 2010 (4) CTC page 88 (cited supra).

36. This Court after carefully considering the submissions and the materials placed before it, and the decisions cited before it, is of the considered opinion that this writ petition lacks merit and is liable to be dismissed.

37. In the result, this writ petition is dismissed and consequently interim order dated 21.6.2010 made in M.P.No.1/2009 is vacated and is also dismissed. In the circumstances, there will be no order as to costs.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

gr.

To

1. The Secretary to Government, Welfare Health and Family Welfare Department, Fort St. George, Chennai-600 009.
  2. The Commissioner of Police, Chennai City, Egmore, Chennai-600 008.
  3. Central Council of Indian Medicine, Institutional Area, Janakpuri, New Delhi - 110 058.
  4. Director of Medical Services, Poonamallee High Road, Chennai - 600 010.
  5. The Medical Council of India, New Delhi.
- 2 ccs To Mr.M.R.Arunan, Advocate, SR.784, 78267
- 1 cc To Mr.V.P.Raman, Advocate, SR.78322
- 1 cc To Mr.R.Abdul Banu, Advocate, SR.78052

Order  
in W.P.No.13696 of 2009

MDR (CO)  
RH (22.11.10)