

D.K. JOSHI  
v.  
STATE OF U.P. AND ORS.

APRIL 25, 2000

[S. RAJENDRA BABU AND S.N. PHUKAN, JJ.]

*Indian Medical Council Act, 1956—Section 15—Indian Medicine Central Council Act, 1970—United Provinces Medical Act, 1917—Section 30—Action against unauthorised and unqualified medical practitioners practicing in Agra district U.P.—Writ petition for issuance of directions to curb this menace dismissed in limine as Chief Medical Officer was making an inquiry—On appeal Held, effective steps not taken to stop this menace which is hazardous to human life—Directions need to be issued in respect of entire State as after a warning the unauthorised practitioners have shifted to other districts—State Government directed to take necessary steps and further steps suggested.*

The appellant had filed a writ petition before the High Court for issuance of directions to the respondents for taking action against unqualified and unregistered medical practitioners in the district of Agra. The Indian Medical Council and the State Government had also shown concern against this menace. High Court, however, dismissed the writ petition in limine as the Chief Medical Officer was making an inquiry into the matter. Hence this appeal.

Allowing the appeal, the Court

**HELD : 1.** It is distressing to note that inspite of the directions of the State Government, the District Magistrates and the Chief Medical Officers did not take effective steps to stop the menace of unqualified/unregistered doctors practising which is hazardous to human life. Only the names of such unauthorised Medical practitioners were forwarded to the District Magistrates and no follow up action was taken. Such unqualified/unregistered doctors have shifted to other neighbouring districts after being warned and unless directions are issued in respect of the entire State the problem cannot be solved. [527-F-H]

**2.** The respondent-State shall take such steps as may be necessary to

A curb this menace and in addition take the following steps. All District Magistrates and the Chief Medical Officers of the State shall be directed to identify all unqualified/unregistered medical practitioners and initiate legal action; Direct all District Magistrates and the Chief Medical Officers to monitor all legal proceedings initiated against such persons; the Secretary, Health and Family Welfare Department shall give due publicity to names of such practitioners so that people do not approach them for medical treatment; he shall also monitor the actions 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 unauthorised persons cannot pursue their medical profession in the State. [528-B-D]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2016 of 1996.

From the Judgment and Order dated 3.5.93 of the Allahabad High Court in C.W.P. No. Nil of 1993.

D T.B. Padhyay and Sanjay Parikh for the Appellant.

Subodh Markandaya, Irshad Ahmed, R.B. Misra and Ms. Feroza Bana for the Respondents.

The Judgment of the Court was delivered by

E 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 unauthorisedly 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 which was pending in accordance with law. The present appeal is against the said order of the High Court.

G 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 has been stated *inter alia* that some such unqualified medical practitioners were identified and the reports were sent to the District Magistrate. According to

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the deponent such unqualified persons stopped medical practice in the district of Agra and have shifted to nearby districts. We are constrained to observe that reply affidavit discloses as 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 degree 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 unqualified/unregistered medical practitioners. In the letter attention was drawn to Section 15 of the Indian Medical Council Act, 1956, Section 17 of the Indian Medicine Central Council Act, 1970 and Section 30 of the United Provinces Medical Act, 1917. The District Magistrates and the Chief Medical Offices were also advised how to initiate criminal action against these unauthorised 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 unauthorised medical practitioners to the District Magistrates and no follow 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 neighbouring districts. We are, therefore, of the opinion that unless directions 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 :

A 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 followings steps :

B (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;

C (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.

D (iv) The Secretary, Health and Family Welfare Department shall monitor the actions 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 unauthorised persons cannot pursue their medical profession in the State.

E The appeal is allowed. No costs.

A.Q.

Appeal allowed.