

IN THE HIGH COURT OF DELHI

C.W.P. No. 4015/96 & C.M. No 8468/97

Date of decision : November 18 ,1998

Wing Commander (Retired) H.M. Sethi

.....in Person

Versus

Ministry of Human Resources

and Ors.

|||

JUDGEMENT ORDER

DASTI

COPY OF ORDER

From

The Registrar,
Delhi High Court,
New Delhi

35252-10
20-11-88

- To,
1. Ministry of Human Resources Development, Govt. of India, New Delhi thr Secretary,
 2. The Secretary, Ministry of Health and Family Welfare, Govt. of India, New Delhi.
 3. The Secretary, Ministry of Home Affairs, Govt. of India, North Block, New Delhi.
 4. University Grants Commission, Govt. of India, through the Chairman/ Principal officer.
 5. The Secretary, Medical Council of India, Aware Chalib Ketla Road, New Delhi.
 6. Dental Council of India, Aware Chalib, Ketla Road, New Delhi through its Secretary.
 7. Indian Medicine Central Council, 1 E/6, Swami Ram Tirath Nagar, New Delhi- 55, through its Secretary.
 8. Central Council of Homoeopathy, 61-65, J.L. NSC Institut-ual Area, D-Block, Jansakpuri, New Delhi- 58
 9. Police Commissioner, Delhi Police, Police Headquarters, NSO Building, Near ITO Building, I.P. Kstate, New Delhi
 10. New Delhi Medical Institute of Electropathy-Affiliated to E.F.M of India, E-38 Street No. 9, New Mahabir Ngr, New Delhi- 10
 11. The Principal Health and Medicare, 80, Chowranghee Road, Calcutta- 7000020.
 12. Dr. Pradeep Kumar Biswa, Founder and Principal and Medical College of Alternative Medicine, 3 Canal street, Calcutta- 700014.
 13. Mrs. Ekka Pelli, Counsel for UOI, 138, Lawyers Chamber Delhi High Court, New Delhi.
 14. Health Secretary, Ministry of Health & Social Welfare, Nirman Bhawan, New Delhi- 110001.
 15. Chief Secretary of Andhra Pradesh 52, Jubile Hills, Colony, Hyderabad- 500034.
 16. Chief Secretary of Arunachal Pradesh C Sector, Itanagar- 791111.
 17. Chief Secretary of Assam Zoo Narangl Road, Guwahati.
 18. Chief Secretary of Bihar, B Circular Road, Bihar.
 19. Chief Secretary of Goa F -5, Altitude, Panaji, Goa- 403001.
 20. Chief Secretary of Gujarat R-1, KJ Coop, Housing Society, Ambawadi, Ahmedabad- 380015.
 21. Chief Secretary of Karyana H.N.C. 15, Sector- 7, Chandigarh.

22. Chief of Himachal Pradesh,
Shimla.
23. Chief of Jammu and Kashmir,
3, V.P. Senwar, Srinagar,
4, X Ved Mandir, Road, Jammu.
24. Chief Secretary of Karnataka,
62/2, Coles Road, Cleveland Town, F.C. Pandalore-
560005.
25. Chief of Secretary of Kerala,
Sansar, Jawahar Nagar, Jawahar Nagar, Thiruvanthapuram.
26. Chief Secretary of Madhya Pradesh,
B-65/74, Swami Dayanand Marg, Bhopal.
27. Chief Secretary of Maharashtra,
121, Ruena Vista Gen. J. Phesale Marg, Bombay- 400021.
28. Chief Secretary of Manipur,
Sanjenthong Officers Colony, Imphal- 795001.
29. Chief Secretary of Meghalaya,
Lampyngad, Fungalew, Shillong- 793001.
30. Chief Secretary of Mizoram,
Chief Secy's, Fungalew,
Aizawi.
31. Chief Secretary of Nagaland,
Kohima.
32. Chief Secretary of Orissa,
Qr. No. 4,
Type VIII Mr. Unit- VI, Phuteyeshwar.
33. Chief Secretary of Punjab,
Chandigarh.
34. Chief Secretary of Rajasthan,
52, Sewal Ram Singh Road,
Jaipur.
35. Chief Secretary of Sikkim,
Gangtok.
36. Chief Secretary of Tamil Nadu,
6, First Avenue,
Room 20, Madras.
37. Chief Secretary of Tripura
Qr No. VI/2, Kunjaban Town Shop, Agartala.
38. Chief Secretary of Uttar Pradesh,
5, Mall Avenue, Lucknow.
39. Chief Secretary of West Bengal
B/2, 44 Ironside Road, Calcutta- 700019.

..3/-

Chief Secretaries of Union Territories

40. Andaman and Nicobar Islands
Port Blair.
41. Chandigarh
Funjab Raj Bhavan, Chandigarh.
42. Dadra & Nagar Haveli
Silvassa- 396230
43. Daman and Diu
Raj Bhavan,
Dona Pavla-
Goa- 403004.
44. Delhi
6, Flag Staff
Road- 54
45. Lakshadweep
Govt. House
(P.O.) Kavaratti, Lakshadweep, Via Cochin,
(H.F.O) 682555.
46. Pondicherry
Pondicherry- 605001

CIVIL SUIT PETITION No. 4015/96

WING COMMANDER (RETIRED) H.M. ALTHI PETITIONER

V/S/SUS

MINISTRY OF HUMAN RESOURCES DEVELOPMENT
& OHS

RESPONDENTS

Sir, I am directed to forward for information and immediate compliance ~~with~~ necessary action a copy of order dt 18/11/98 passed by a Division Bench of this Court.

Please acknowledge receipt.

Yours faithfully,

B. K. Srinivasan 20/11/98
ASSISTANT REGISTRAR (W)
FOR REGISTRAR

IN THE HIGH COURT OF DELHI

C.W.P.No.4015/96 & CM No.8468/97

Date of decision : November 18, 1998

Wing Commander(Retired) H.M.Sethi
...In person.

Versus

Ministry of Human Resources
and Wrs.

...through
Ms.Rekha Palli for
respondents 1 to 3.
Mr.G.K.Banerjee for
respondent No.4.
Mr.Navin Prakash for
respondent No.5.
Mr.Rajesh Srivastava
for respondent No.8
Mr.V.C.Misra,Sr.Adv. with
Mr.A.P.Mahajan for R-10.
Mr.P.N.Duda,Sr.Adv. with
Mr.Y.R.Sharma for
Students' Association.

Coram:

The Hon'ble Mr.Justice Y.K.Sabharwal, ACJ
The Hon'ble Mr.Justice K.S.Gupta

1. Whether reporters of local papers may be *ref*
allowed to see the judgment?
2. To be referred to the Reporters or not? *ref*
K.S.Gupta. J.

This petition under Article 226 of the
Constitution of India has been filed alleging
that the medical education and grant of degrees
etc. in the field of medicine, are controlled
and regulated by the Indian Medical Council Act,
1956, Indian Medicine Central Council Act, 1970,
Homeopathic Central Council Act, 1973 and Indian
Medical Degrees Act, 1916. Of late, newspapers
have been flooded with advertisements of the
institutions which are functioning in violation

of the provisions of said Acts and causing incalculable damage to public health. The New Delhi Medical Institute of Electropathy, functioning at N-38, Street No.9, New Mahabir Nagar, New Delhi is one of such institutions. It claims to be affiliated to Naturo Electro Homoeo Medicines of India (for short 'N.E.H.M.')

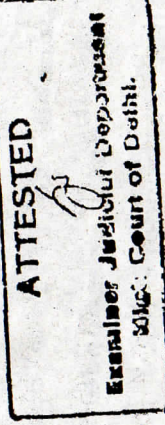
and authorised to function by the Ministry of Health and Family Welfare, Government of India. Dr.M.K.Awasthy projected as the Electropathy Samarat of India, is the founder of this institution. It grants degree of Bachelor of Electropathy Medicine and Surgery (B.E.M.S) on completion of four year course. Said institution is housed in three rooms and does not even possess the symbolic infrastructure for teaching and training about one thousand students on its roll. A photostat copy of the prospectus of the institution has been placed on the record. It is stated that the Medical College of Alternative Medicines at 3, Canal Street, Calcutta, is yet another institution which claims to be having the legal authority to impart education in Alternate systems of medicine and is said to have been recognised by the Department of Health and Family Welfare, Government of West Bengal. It also claims to be accepted by the Indian Medical

Council and grants degrees and diplomas. A photostat copy of the advertisement published by it in the Hindustan Times dated 17th July, 1996 has been annexed to the petition. Health and Medicare Institute at 80, Chowringhee Road, Calcutta, another such institution has inserted advertisement in Hindustan Times dated 15th September, 1996 (Annexure 'G') inviting applications for admission to Degree/Diploma/RMP courses on regular and correspondence basis. These courses are not at all recognised under any of the aforesaid Acts. There are many such unapproved institutions dealing in medical science operating in India. It is stated that the persons acquiring medical qualifications from these unauthorised institutions have been and would be posing serious threat to public health at large. With a view to curb the menace, the petitioner served notices dated 19th September, 1996 on the respondents but of no avail. It is prayed that by issue of writ, direction or order respondents 1 to 9 be commanded to forthwith ban the aforesaid institutions and a probe into their functioning be made. Said respondents be further directed to work out a policy to check such like institutions and the persons found guilty be

By the order dated 29th September, 1997 on CM No.7742/97, Electropathy Medical Council of India, Nagpur, Institute of Public Health and Hygiene, New Delhi, The Indian Board of Alternative Medicines, Calcutta and Indian Institute of Alternative Medicine, Nagpur were allowed to be impleaded as respondents 13 to 16.

In response to show cause notices respondents No.2,4,5,8,10,11,12 and the Students Association of Electropathy Medicines of India have filed reply affidavits.

In the reply on the affidavit of Mrs.Shoba Koshy, Director, Medical Education, Ministry of Health and Family Welfare, respondent No.2 it is stated that system of Electropathy has neither been recognised nor respondent No.10 authorised by respondent No.2 to conduct any kind of classes and award diplomas and certificates to its students. Avertments made by respondent No.10 in the prospectus regarding grant of authorisation by respondent No.2 is wholly wrong and misleading. Letter dated 17th June, 1991 written in his purely personal capacity by the then Deputy Health Minister to a Member of Parliament by no stretch of imagination can be termed as an authorisation on behalf of the Ministry to award any kind of certificate or



diploma by respondent No.10. Through the said letter respondent No.10 was permitted only to conduct research, promotion and development in the system of Electropathy.

In the reply affidavit of Gurcharan Singh, Deputy Secretary, University Grants Commission, respondent No.4 it is, inter-alia, averred that subject of medical education is not within its purview and the statutory authorities responsible for regulating medical education and institutions are respondents 5,7 & 8. It is stated that activities of respondent No.10 have come to the notice of U.G.C through the instant petition. From the prospectus of the said institution which claims to be affiliated to NEHM of India and authorised by the Ministry of Health and Family Welfare, Government of India, it appears that four year course of Bachelor of Electropathic Medicine and Surgery is being conducted by the institution and certificates issued to the successful candidates. Said B.E.M.S. is not within the list of the Degrees approved for the purpose of Section 22 of the University, Grants Commission Act and respondent No.4 proposes to file a complaint with MRTPC against the said respondent. It is further stated that respondent No.4 had taken note of the

existence and activities of the Principal, Health and Medicare, respondent No.11 and even before the present writ petition was filed, a letter dated 24th January, 1997 was written to the Secretary(Education), Government of West Bengal (Annexure 'V') to intimate the credentials of the Open University of Alternative Medicine to which the said institution claims affiliation. From the copy of the advertisement issued by the said institution annexed with the petition it appears that correspondence and regular courses towards Diploma/Degree/MD/RMP are being conducted by it in violation of law and, therefore, a complaint is also proposed to be filed with MRTPC. It is averred that activities of respondent No.12 came to the knowledge of UGC through the instant writ petition. From a copy of the advertisement published in Hindustan Times dated 17th July, 1996 it appears that the said institution is conducting correspondence and regular courses for various Medical Degrees, Diplomas and PG Degrees in Alternate Systems of medicine and respondent No.4 further proposes to take up the matter with the State Authorities besides filing a complaint with MRTPC.

In its reply affidavit Medical Council of India, respondent No.5 has stated that provisions

contained in Indian Medical Degrees Act, 1916 and Indian Medical Council Act, 1956 apply only in the field of Allopathy system of medicine. Right to practice in Homoeopathy is regulated by the Homoeopathy Central Council Act, 1973 while in Ayurvedic and Unani systems of medicine by Indian Medicine Central Council Act, 1970. So called Electropathy/Electrohomoeopathy system of medicine does not appear to come within the purview of any of the aforesaid Acts. It is alleged that the Ministry of Health and Family Welfare, Government of India by the letter dated 1st November, 1996 informed respondent No.5 by giving reference of a decision taken by the Ministry on 19th November, 1993 that Electropathy/Electrohomoeopathy system has not been granted recognition as an independent system of medicine. There is no legislation concerning Electropathy/Electrohomoeopathy system of medicine in India. It is further stated that respondent No.5 received complaints in regard to respondent No.12 imparting certain medical degrees/diplomas, practitioners claiming to be registered with respondent No.12 and prescribing allopathic medicines. Respondent No.5, therefore, took up the matter with respondent No.12 and sought clarification from it with

regard to its status and authority. Respondent No.12 not only sent nasty replies but gave threat with an action of contempt of Court against respondent No.5. Respondent No.12 claims that it has been approved by the Calcutta High Court in Matter No.546/88 and the Indian Medical Council has accepted it vide CR No.2419(W) of 1988 of the Calcutta High Court. There is no record available with respondent No.5 in regard to the said cases nor did it appear in them before the Calcutta High Court. Respondent No.5 does not have any branch office in West Bengal. The claim of respondent No.12 about the alleged acceptance by respondent No.5 is misleading and deceptive. It is further stated that respondent No.5 also received complaints with regard to similar institution by the name of Indian Board of Alternative Medicines which is awarding degrees and diplomas in 'Indo-Allopathy', a medical system which is unheard in Allopathy medicine System. Respondent No.5 received an advertisement published by the Indian Institute of Alternative Medicine stating that the degrees/diplomas etc. which are granted by it are recognised by Public Health Training Institute, India and that respondent No.5 had given permission for the RMP course conducted by

that institute. Respondent No.5 has not given any such permission and the claim made by the institute is false and misleading.

In the reply affidavit of H.D.Rikhadi, Assistant Secretary of the Central Council of Homoeopathy, respondent No.8 it is, inter alia, stated that neither Electropathy nor Alternative medicines are recognised, accepted or officially known systems of medicine.

Respondent No.10 in its counter affidavit has stated that it is affiliated to Naturo Electro Homoeopathy Medicos of India which is a society registered under the Societies Registration Act for promotion, development and research in Electropathy system of medicine in India. N.K.Awasthi is the Secretary thereof. Ministry of Health and Family Welfare, Government of India vide memo No.V-25017/4/90/R dated 16th May, 1991 appointed an Expert Committee which inter alia comprised of Dr.S.D.Sharma, Additional Director General(M) as Chairman, Dr.N.K.Awasthi as Secretary, Dr.V.T.Augustine, Advisor(M), Dr.D.P.Rastogi, Director, CCRH and Dr.B.N.Dawan, Director, CDRI, as members thereof. Said committee submitted its report in August 1991 and has found that thousands of doctors are practising Electropathy/Electrohomoeopathy system

of medicine in India by using electropathic medicines. Aforesaid report is under consideration of the Ministry of Health and Family Welfare, Government of India. It is further stated that the said system has a history of 500 years and it mainly functions as preventive and curative on the principles of "The Human Organisation is entirely composed of two elementary liquids known as Lymph and Blood and Health and Diseases are depending upon such liquids." In response to a Private Member Bill bearing No.138/90 Sh.Dasai Choudhry, the then Minister for Health and Family Welfare stated that he had authorised NEHM of India, New Delhi for development, promotion and research of Electropathy in India vide DO letter bearing No.2921/DM(H&F)/9/VIP/ dated 17th June, 1991. It is not denied that respondent No.10 is functioning at 38, New Mahabir Nagar. However, it is stated that the institute has 120 students of Bachelor of Electropathy Medicine & Surgery which is four year certification course. It is operating in a building having sufficient space for coaching. Respondent No.10 does not claim that the said system of medicine is recognised by the Government of India. There is no law which may prevent further systems of medicine being

practised by the people of India.

The stand taken in the counter filed by the Students Association of respondent No.10 is more or less similar to that taken in the reply affidavit filed on behalf of respondent No.10.

In the reply affidavit filed by respondent No.11 it is stated that it is affiliated to the Indian Board of Alternative Medicines and is authorised to guide the students for admission to various courses conducted by the said Board. It has been giving advertisements for regular as well as correspondence courses. Indian Board of Alternative Medicines is registered under Act XXVI of 1961 of the Govt. of West Bengal, and is affiliated with the Open International University for complimentary medicines and the courses are approved and recognised by this University. It is stated that after completion of the course one can register his name as a registered medical practitioner under Rule 7A of the said Board and start practice as per the rules and regulations of the Board. It is admitted that the Board awards degrees including Ph.D, MD, Master, Bachelor etc. as well as diplomas and certificates but the degrees granted by the said Board are entirely different from those granted by the UGC under

section 22 of the UGC Act, 1956. It is further pleaded that the Board does not permit persons whom degrees etc. are awarded to practice except in alternate medicines such as accupressure, accu-puncture, magnet therapy, naturopathy, yoga, flower remedy and other indigenous medicines. They are not allowed to practice in Homoeopathy, Allopathy, Ayurveda or Unani medicines.

In the reply affidavit filed by P.K.Biswas, respondent No.12 it is stated that Medical College of Alternative Medicines of which he is the principal, is affiliated to the Council of Alternative Systems of Medicines having its office at No.3, Canal Street, Calcutta. Council for Alternative Systems of Medicines was registered under the West Bengal Societies Registration Act, 1961 with the main aim and object to promote and advance the science of alternate systems of medicine other than official schools of medicines such as electrohomoeopathy, bach flower remedies, biochemic treatment, naturopathy, Indo-allopathy, magnate therapy etc. and to raise the status of all alternative systems of medicinal knowledge with all the aspects. In terms of the memorandum of the society, respondent No.12 is entitled to impart education in alternative systems of medicine and

grant degrees, diplomas, certificates etc. It is further stated that challenging the initiation of proceedings and State Government's notification, a petition under Article 226 of the Constitution was filed by respondent No.12 in the High Court of Calcutta and that petition was allowed and the State Government was restrained from initiating and continuing with criminal prosecution against it on the basis of an FIR. In the order High Court also held that imparting training and conferring diplomas and certificates in Alternative systems of medicine contravenes no legal provision and there is no bar in opening any school or college for imparting education for any such system.

On Whether respondents 10 to 16 are debarred under any law from running the medical courses complained of, awarding degrees/diplomas/certificates and successful candidates not entitled to practise on the strength of such degrees/diplomas/certificates, are the main points which arise for determination in this petition. Before we deal with these points it would be appropriate to notice the relevant legal provisions on the subject.

THE INDIAN MEDICAL COUNCIL ACT, 1956

(a) It was enacted by the Parliament to provide for reconstitution of the Medical Council of India and maintenance of medical register for India and for matters connected therewith. The expression "approved institution" is defined in clause (a) of Section 2 to mean a hospital, health centre or other such institution recognised by a University as an institution in which a person may undergo the training, if any, required by his course of study before the award of any medical qualification to him. The expression "Council" as defined in clause (b) means the Medical Council of India constituted under the Act. The expression "medicine" as defined in clause (f) of the aforesaid Section means the modern scientific medicine in all its branches and includes surgery and obstetrics, but does not include veterinary medicine and surgery. The expression "recognised medical qualification" is defined in clause (h) to mean any of the medical qualifications included in the Schedules. Under clause (k) "State Medical Register" has been defined as a register maintained under any law for the time being in force in any state regulating the registration of practitioners of medicine. The expression "University" under

clause (e) is defined to mean any University in India established by law and having a medical faculty. Section 11 says that the medical qualifications granted by any University or medical institution in India which are included in the First Schedule shall be recognised medical qualifications for the purposes of the Act. Section 12 provides that medical qualifications granted by medical institutions outside India which are included in the Second Schedule shall be recognised medical qualifications for the purposes of the Act. Section 13 provides that the medical qualifications granted by medical institutions in India which are not included in the First Schedule and which are included in Part I of the Third Schedule shall also be recognised medical qualifications for the purposes of the Act. Section 15 which is relevant runs as under:-

"(1) Subject to the other provisions contained in the Act, the medical qualifications included in the Schedule shall be sufficient qualification 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 office as physician

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 practise 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 an expert under Section 45 of the Evidence Act, 1872 or 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."

Section 21 states that the Council shall cause to be maintained in the prescribed manner a register of medical practitioners to be known as the Indian Medical Register, which shall contain the names of all persons who are for any time being enrolled on any State Medical Register and who possess any of the recognised medical qualifications. Section 23 says that the Registrar of the Council may, on receipt of the report of registration of a person in a State

Medical Register or on application made in the prescribed manner by any such person, enter his name in the Indian Medical Register. Section 27 provides that subject to the conditions and restrictions laid down in the Act regarding medical practice by persons possessing certain recognised medical qualifications, every person whose name is for the time being borne on the Indian Medical Register shall be entitled according to his qualifications to practice as a medical practitioner in any part of India. In the First Schedule appended to the Act the recognised medical qualifications granted by the Universities or the medical institutions in India have been enumerated. Details of recognised medical qualifications granted by medical institutions outside India have been set out in the Second Schedule. In the Third Schedule the recognised medical qualifications granted by medical institutions not included in the First Schedule, have been given.

THE INDIAN MEDICINE CENTRAL COUNCIL ACT, 1970

It was enacted by the Parliament to provide for constitution of a Central Council of Indian Medicine and maintenance of a Central Register of Indian Medicine and for matters

connected therewith. The expression "Indian medicine" in clause (e) of section 2 of the Act is defined to mean 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. Under clause (f) expression "medical institution" is defined to mean any institution within or without India which grants degrees, diplomas or licences in Indian medicine. The expression "recognised medical qualification" in clause (h) is defined to mean any of the medical qualifications, including post-graduate medical qualification of Indian medicine included in the Second, Third or Fourth Schedules. The expression "State Register of Indian Medicine" is defined in clause (j) of the aforesaid Section to mean a register or registers maintained under any law for the time being in force in any State regulating the registration of practitioners of Indian medicine. The expression "University" in clause (k) is defined as any University in India established by law and having a faculty of Indian Medicine and includes a University in India ~~established~~ established by law in which instruction, teaching, training or research in Indian medicine is provided. Section

14 says that the medical qualifications granted by any University, Board or other medical institution in India which are included in the Second Schedule shall be recognised medical qualifications for the purposes of the Act. section 15 provides that medical qualifications included in the Third schedule granted to a citizen of India before the 15th day of August, 1947, by any medical institution in any area which was comprised before that date within India as defined in the Government of India Act, 1935, shall also be recognised medical qualifications for the purposes of the Act. Under Section 16, the medical qualifications granted by medical institutions outside India which are included in the Fourth Schedule shall be recognised medical qualifications for the purposes of the Act. Section 17 of the Act which is material runs as under: -

"(1) Subject to the other provisions contained in the 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 recognised medical qualification and is enrolled on a State

Register or the Central Register
of Indian Medicine--

- (a) shall hold office as Vaid, Siddha, Hakim or physician or any other office (by whatever designation or called) in Government or in any institution maintained by a local or other authority;
 - (b) shall practise 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 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, or any matter relating to Indian medicine.
- (3) Nothing contained in sub-section (2) shall affect,
- (a) the right of a practitioner of Indian medicine enrolled on a State Register of Indian Medicine to practise Indian medicine in any State merely on the ground that, on the commencement of this Act, he does not possess a recognised medical qualification.
 - (b) the privileges (including the right to practise 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:

(c) the right of a person to practise 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 been practising Indian medicine for not less than five years:

(d) the rights conferred by or under the Indian Medical Council Act, 1956 (including the right to practise medicine as defined in clause (f) of section 2 of the said Act), on persons possessing any qualifications 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."

Section 23 says that the Central Council shall cause to be maintained in the prescribed manner, a register of practitioners in separate parts for each of the system of Indian medicine to be known as the Central Register of Indian Medicine which shall contain the names of all persons who are for the time being enrolled on any State Register of Indian Medicine and who possess any of the recognised medical qualifications. Section 29 provides that subject to the conditions and restrictions laid down in

this Act regarding practice of Indian medicine by persons possessing certain recognised medical qualifications, every person whose name is for the time being borne on the Central Register of Indian Medicine shall be entitled according to his qualifications to practise Indian medicine in any part of India. In the Second Schedule appended to the Act, details of the recognised medical qualifications in Indian Medicine granted by Universities, Boards or other medical institution in India have been set out. The qualifications granted by certain medical institutions before the 15th day of August, 1947, in any area which comprised within India as defined in the Government of India Act, 1935, are noted in the Third Schedule. Qualifications granted by medical institutions in countries with which there is a scheme of reciprocity, is provided in the Fourth Schedule.

HOMOEOPATHY CENTRAL COUNCIL ACT, 1973*

It was enacted by the Parliament to provide for constitution of a Central Council of Homoeopathy and maintenance of a Central Register of Homoeopathy and for matters connected therewith. The expression "Homoeopathy" in clause (d) of Section 2 is defined to mean the

Homeopathic system of medicine and includes the use of Biochemic remedies. The expression "Board" in clause (a) of the said Section is defined to mean a Board, Council, Examining Body or Faculty of Homoeopathy (by whatever name called) constituted by the State Government under any law for the time being in force regulating the award of medical qualifications in, and registration of practitioners of Homoeopathy. Under clause (e) the expression "medical institution" is defined as any institution within or without India which grants degrees, diplomas or licences in Homoeopathy. The expression "recognised medical qualification" in clause (g) is defined to mean any of the medical qualifications in Homoeopathy, included in the Second or the Third Schedule. The expression "State Register of Homoeopathy" in clause (i) is defined to mean a register or registers maintained under any law for the time being in force in any State regulating the registration of practitioners of Homoeopathy. In clause (j) the expression "University" is defined to mean any University in India established by law and having a Faculty of Homoeopathy and includes a University in India established by law in which instruction, teaching, training or research in

Homeopathy is provided. Section 13 of the aforesaid Act says that the medical qualifications granted by any University, Board or other medical institution in India which are included in the Second Schedule shall be recognised medical qualifications for the purposes of the Act. Section 14 further says that the medical qualifications granted by medical institutions outside India which are included in the Third Schedule shall be recognised medical qualifications for the purposes of the Act. Section 15 which is relevant provides thus:-

"(1) Subject to the other provisions contained in the Act, any medical qualification included in the Second or the Third Schedule shall be sufficient qualification for enrolment on any State Register of Homeopathy.

(2) No person, other than a practitioner of Homeopathy who possesses a recognised medical qualification and is enrolled on a State Register or the Central Register of Homeopathy,--

(a) shall hold office as Homeopathic physician or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority;

(b) shall practise Homeopathy 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 practitioner;
- (d) shall be entitled to give any evidence at any inquest or any Court of law as an expert under section 45 of the Indian Evidence Act, 1872 or any matter relating to Homoeopathy.
- (3) Nothing contained in sub-section (2) shall affect--
- (a) the right of a practitioner of Homoeopathy enrolled on a State Register of Homoeopathy to practise Homoeopathy in any State merely on the ground that, on the commencement of the Act, he does not possess a recognised medical qualification;
- (b) the privileges (including the right to practise Homoeopathy) conferred by or under any law relating to registration of practitioners of Homoeopathy for the time being in force in any State, on a practitioner of Homoeopathy enrolled on a State Register of Homoeopathy;
- (c) the right of a person to practise Homoeopathy in a State in which the commencement of the Act, a State Register of Homoeopathy is not maintained if, on such commencement, he has been practising Homoeopathy for not less than five years;
- (d) the rights conferred by or under the Indian Medical Council Act, 1956 (including

the right to practise medicine as defined in clause (f) of section 2 of the said Act), or the Indian Medicine Central Council Act, 1970 of persons possessing any qualifications included in the respective 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."

Section 21 says that the Central Council shall cause to be maintained in the prescribed manner, a register of practitioners of Homoeopathy to be known as the Central Register of Homoeopathy in parts I & II. Section 26 provides that subject to the conditions and restrictions laid down in the Act regarding practice of Homoeopathy by person possessing certain recognised medical qualifications, every person whose name is for the time being borne on Part I of the Central Register of Homoeopathy shall be entitled according to his qualifications to practise Homoeopathy, in any part of India. Any person whose name is for the time being borne on Part II of the Central Register of Homoeopathy, may practise Homoeopathy in any State, other than the State where he is enrolled on the State Register of Homoeopathy. In the

second schedule appended to the Act the details of the recognised medical qualifications in Homoeopathy granted by the Universities, Boards or medical institutions in India are enumerated. Third Schedule provides for the qualifications granted by the medical institution outside India.

THE INDIAN MEDICAL DEGREES ACT, 1916

It was enacted to ban conferring of degrees or issuing of certificates, licences etc. to practise western medical science, by persons or authorities other than those specified in the schedule and notified by State Governments. The expression "western medical science" in Section 2 of the Act is defined to mean the western methods of Allopathic medicine, Obstetrics and Surgery, but does not include the Homoeopathic or Ayurvedic or Unani systems of medicine. Section 3 says that the right of conferring, granting, or issuing in the states degrees, diplomas, licences, certificates or other documents stating or implying that the holder, grantee or recipient thereof is qualified to practise western medical science, shall be exercisable only by the authorities specified in the Schedule, and by such other authority as the State Government may, by notification in the Official Gazette, and

subject to such conditions and restrictions as it thinks fit to impose, authorise in this behalf. section 4 provides that as provided by section 3, no person in the States shall confer, grant, or issue or hold himself out as entitled to confer, grant, or issue any degree, diploma, licence, certificate or other document stating or implying that the holder, grantee or recipient is qualified to practise western medical science. The contravention of the provision contained in Section 4 has been made punishable under Section 5 with fine which may extend to five hundred rupees. Penalty for falsely assuming medical titles has been provided under Section 6 of the Act.

THE UNIVERSITY GRANTS COMMISSION ACT, 1956

The expression "University" is defined in clause (f) of Section 2 to mean a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognised by the Commission in accordance with the regulations made in this behalf under the Act. Section 3 says that the Central Government may, on the advice of the Commission, declare, by

notification in the Official Gazette, that any institution for higher education, other than a University, shall be deemed to be a University for the purposes of the Act, and on such a declaration being made, all the provisions of the Act shall apply to such institution as it was a University within the meaning of clause (f) of section 2. The expression "Commission" in clause (a) of Section 2 is defined to mean the University Grants Commission established under section 4. Section 22 dealing with the right to confer degrees which is relevant reads thus:-

"(1) The right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under the Central Act, a Provincial Act or a State Act or an institution deemed to be a University under section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.

(2) Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree.

(3) For the purposes of this section, "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the official Gazette."

Under Section 24 penalty for violation of the said provisions has been provided with fine which may extend to one thousand rupees.

On a conspectus of the provisions extracted above it may be seen that the persons possessing medical qualifications granted by universities or medical institutions included in Schedules I, II & III of aforesaid 1956 Act and enrolled on State Medical Register or Indian Medical Register alone can practise Allopathy system of medicine. Persons holding any medical qualification from a University, Board or Medical Institution included in Schedules II, III & IV of the said Act of 1970 and enrolled on State Register or Central Register only are eligible to practise Ayurveda, Sidha and Unani systems of medicine. Similarly persons having medical qualifications granted by Universities, Boards or Medical Institutions included in Schedules II & III of 1973 Act and enrolled on State Register or Central Register alone are entitled to practise Homeopathy. In a recent decision in Dr. Mukhtiar Chand & Others Vs State of Punjab & Others, JT 1978 (7) SC 78, Vaidys/Hakims have been held to be entitled to practise in modern scientific medicine in any of its branches provided th

names are enrolled on State Medical Register within the meaning of 1956 Act and notification under clause (iii) of Rule 2(ee) of the Drugs and Cosmetics Rules, 1945 issued declaring them as persons practising modern system of medicine for the purposes of the Drugs Act.

Submission made by S/Sh.V.C.Misra appearing for respondent No.1 and P.N.Duda for Students Association was that the Ayurveda had been practised for thousands of years by the people as an unrecognised medical system and it was only in 1970 that the Govt. of India gave recognition to it by enacting Indian Medicine Central Council Act. Likewise Homoeopathy which was brought to India in 1839 by Dr.Honiberger of Germany, was being practised for about 110 years as an unrecognised system before it came to be recognised by the Govt. of India by passing Homoeopathy Central Council Act. The day is not far off when the Govt. would also grant recognition to Electropathy system. According to the learned counsel, there is no legislation whatsoever prohibiting a body or person from conducting courses in Electropathy system and the persons practising the same. Somewhat identical stand has been taken in the reply affidavits by respondents 11 & 12 who have been conducting

courses in Alternative systems of medicine. Aforesaid Central Acts of 1956, 1970 & 1973 obviously do not deal with Electropathy or other Alternative systems of medicine. Existence of any other Central or State legislation regulating the said systems of medicine was not brought to our notice by any of the learned counsel appearing in the case. Thus, the submission in regard to there being no legal bar in conducting courses in Electropathy and for that matter any other Alternative systems of medicine and practising them, is not without substance.

As regards award of degrees/diplomas/certificates, respondent No.10 in its reply affidavit admits of awarding degree of Bachelor of Electropathy Medicine and Surgery (B.E.M.S.) on completion of four year course to the students, as alleged in the petition. In its reply affidavit plea taken by respondent No.11 is that it is affiliated to the Indian Board of Alternative Medicine, respondent No.15 which has been awarding degrees including Ph.D, M.D., Master and Bachelor besides diplomas and certificates. In the reply affidavit respondent No.12 has alleged that it is affiliated to the Council of Alternative systems of medicine and grants degrees, diplomas and certificates. In

the decision in Unni Krishnan, J.P. & Others Vs. State of Andhra Pradesh & Others, AIR 1993 SC 2170, the Apex Court had the occasion to consider the scope of Section 22 of University Grants Commission Act, 1956. It was held that no educational institution in this country except a university as defined in the said Act is entitled to award degrees. That be the legal position, it is not permissible to award degrees by any of the said respondents. During the course of arguments Shri V.C.Misra conceded that respondent No.10 has no right to award degrees and he would advise his client accordingly and ensure that it does not award degrees in future.

At the same time, as the law stands there seems to be no legal prohibition in granting diplomas and certificates for the courses conducted by respondents 10 to 16. Our country has a large number of unemployed youths and it is not difficult to lure them by the institutes like respondents 10 to 16 as the issue of certificates/diplomas for practising the systems other than the recognised one, is almost guaranteed by them. Judicial notice can be taken of the fact that such institutes do not possess proper infra-structure for teaching and training the students and they make misleading claims.

These are run purely on commercial considerations and the efficacy of their systems in treating the patients is yet to be established scientifically. Therefore, in public interest functioning of the institutes like respondents 10 to 16 deserves to be checked and regulated by making legislation by the Central/State Governments. On the aspect of prescribing minimum standards for medical education etc. we may notice the provisions made in the aforesaid Acts of 1956, 1970 & 1973.

Section 19A of the Medical Council Act, 1956 provides that the Council may prescribe the minimum standards of medical education required for granting recognised medical qualifications by universities or medical institutions in India. Section 17(1) says that the Committee (constituted under the Act) shall appoint such number of medical inspectors as it may deem requisite to inspect any medical institution, college, hospital or other institution where medical education is given or to attend any examination held by any university or medical institution for the purpose of recommending to the Central Govt. recognition of medical qualifications granted by that university or medical institution. Section 18(1) further says that the Council may appoint such number of

visitors as it may deem requisite to inspect any medical institution, college, hospital or other institution where medical education is given or to attend any examination held by any university or medical institution for the purpose of granting recognition to medical qualifications. Section 19 which is relevant, provides -

19. "Withdrawal of recognition - (1) When upon resort by the Committee or the visitor, it appears to the Council -

(a) that the course of study and examination to be undergone in, or the proficiency required from candidates at any examination held by, any University or or medical institution, or

(b) that the staff, equipment, accommodation, training and other facilities for instruction and training provided in such University or medical institution or in any College or other institution affiliated to that University,

do not conform to the standards prescribed by the Council the Council shall make a representation to that effect to the Central Government.

(2) After considering such representation, the Central Government may send it to the State Government of the State in which the University or medical institution is situated and the State Government shall forward it along with such remarks as it may choose to make to the University or medical institution, with an intimation of the period within which the University or medical institution may submit its explanation to the State Government.

(3) On the receipt of the explanation or, where no explanation is submitted within the period fixed, then on the expiry of that period, the State Government shall make its recommendations to the Central Government.

(4) The Central Government after making such further inquiry, if any, as it may think fit, may, by notification in the Official Gazette, direct that an entry shall be made in the appropriate Schedule against the said medical qualification declaring that it shall be a recognised medical qualification only when granted before a specified date, or that the said medical qualification if granted to students of a specified college or institution affiliated to any University shall be a recognised medical qualification only when granted before a specified date or, as the case may be, that the said medical qualification shall be a recognised medical qualification in relation to a specified college or institution affiliated to any University only when granted after a specified date."

Sections 22(1), 19(1), 20(1) & 21 of Indian Medicine Central Council Act, 1970, 20(1), 17(1), 18(1) & 19 of Homeopathy Central Council Act, 1973 make provisions identical to those made in the said Medical Council Act, 1956. Said provisions may serve as guideline for making the legislation in the matter by the Governments.

It may be noted that in terms of the order dated January 30, 1997 respondent No.10 was restrained by this court from issuing any degree, diploma or certificate of any course conducted by any of the colleges or institutions affiliated to it in Electropathy. The order further directs that if there is any infraction of the order by any of the hundred and odd institutions being run by respondent No.10 it will be fastened with

vicarious liability. Said order came to be modified by the order dated March 12, 1997 which runs as under:-

"Till the next date of hearing the Naturo Electro Homoeopathy Medicos of India is hereby restrained from issuing any degree, diploma or certificate of any course conducted either by itself or by its affiliated colleges in respect of any course conducted by it or any of its colleges affiliated to it in regard to Electropathy/ Electro Homoeopathy. If there is any infraction of this order by any of the institutions affiliated to the Naturo Electro Homoeopathy Medicos of India, it is made clear that the responsibility will be fastened with vicarious liability therefor."

This order continues to operate till date and needs to be extended for a further period of six months to enable the Central/State Governments to consider the desirability of bringing suitable legislation in the matter.

During the course of arguments it was brought to our notice that the prospectus issued by respondent No.10 and the advertisement issued by respondent No.12 in Hindustan Times dated July 17, 1996 contain material that either the respondents have been authorised by the Ministry of Health & Welfare, respondent No.2 or granted permission by Medical Council of India, respondent No.5 to conduct the courses complained of. Photostat copy of the prospectus is placed

on pages 47 to 50 while that of the advertisement on page 46 (Vol.I). On page 47 below the name of respondent No.10 with logo it is printed thus:-

AFFILIATED TO
N.E.H.M. OF INDIA
AUTHORISED BY:
MINISTRY OF HEALTH & FAMILY
WELFARE GOVT. OF INDIA

Further on page 50 on right hand side it is printed -

VIEWS OF SHRI B.SHANKRANAND, HON'BLE THE HEALTH MINISTER,GOVT.OF INDIA,EXPRESSED IN LOK SABHA ON 26 FEBRUARY 1993.

In the words of Shri B.Shankranand, the Union Health Minister:

"Electroopathy System of Medicine is presently in its development stage."

Presumably, claim as made on page 47 is based on a letter dated June 17, 1991 (on page 99) sent by the then Deputy Health Minister to a Member of Parliament. In the reply affidavit filed on behalf of respondent No.2 it is stated that the said letter was sent purely in his personal capacity by the then Deputy Health Minister and further that in terms of the said letter respondent No.10 was permitted only to conduct research, promotion and development work in Electroopathy system. Latter part of the stand is fully substantiated by the letter dated June

17. 1991. Obviously, the claim on page 47 about respondent No.10 having been authorised by the Ministry of Health & Family Welfare, Govt. of India, is not only inaccurate but also misleading.

Coming to the printed material on page 50, submission made by Ms.Rekha Palli appearing for respondent No.2 was that no unstarred question was answered by the then Health Minister on February 26, 1993. She has placed on record the photostat copy of the Lok Sabha unstarred question No.410 which was to be replied on February 25, 1993 and the answer thereto given by the then Minister of Health & Family Welfare. Answer at (c), which is relevant, reads thus:-

"Government has not granted recognition to the system of medicine called Electropathy/Electro Homoeopathy at its present stage of development."

Again the statement made on said page of the prospectus is misleading.

Turning to the advertisement appearing in Hindustan Times dated July 17, 1996, respondent No.12 claims that Council of Alternative system of medicine is recognised by the Department of Health & Family Welfare, Govt. of West Bengal and accepted by the Medical Council of India, respondent No.5. In the reply affidavit filed on

behalf of respondent No.5, it is denied that such an acceptance was accorded by it to respondent No.12. Claim as made in the said issue of the newspaper is thus not only false but also misleading. The right to carry on trade, occupation and profession does not carry with it any right to misrepresent.

Considering the nature of the problem as is evident from the aforesaid discussion, we issue the following directions:-

1. The Central/State Governments shall consider making legislation prescribing:

(a) grant of licences to the existing and new institutes conducting courses in Electropathy and other Alternative systems of medicine

(b) minimum standards of education and check on the functioning of such institutes on the lines set out in sections 17, 18, 19 & 19A of the Medical Council Act 1956;

(c) minimum qualification for getting admission in such institutes;

- (d) conditions entitling these institutes to issue diplomas and certificates; and
- (e) Right to use the prefix 'Doctor' and to issue medical certificates to the patients by diploma/certificate holders from such institutes.
- (2) Respondents 10 to 16 and the like institutes shall not award any degree for the courses conducted by them.
- (3) Respondent No.10 shall forthwith delete the misleading statements printed on pages 47 & 50 of the prospectus issued by it.
- (4) Respondent No.12 shall not make misleading claim in regard to its having been recognised by the Medical Council of India/respondent No.5 in the advertisements.
- (5) Adequate publicity through the media shall be given by the Government(s) informing general public about

respondents 10 to 16 and similar other institutes not being recognised and affiliated with any of the Councils under aforesaid Acts of 1956, 1970 & 1973.

operation of the order dated January 30, 1997 as modified by the order dated March 12, 1997 is extended further for a period of six months from today

Copy of this order be sent by the Registry to the Health Secretary, Govt. of India and the Chief Secretaries of all the States and Union territories for doing the needful in the matter.

Petition is disposed of in terms of the aforesaid directions.

K. S. GUPTA, J.

November 18, 1998.
JLK

ACTING CHIEF JUSTICE

