

## Madras High Court

### **Rep By Dr.M.Selvin Innocent Dhas, ... vs Indian Medical Association on 11 February, 2011**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11/02/2011

CORAM

THE HONOURBLE MR.JUSTICE K.CHANDRU

W.P.(MD)NO.7678 of 2010

W.P.(MD)NO.4463 of 2007

W.P.(MD)NO.8907 to 8909 of 2009

W.P.(MD)NO.2244, 5851, 6276, 6277, 8051, 8233 and 12561 of 2010 and

M.P.(MD)Nos.1 of 2007, 1,1 and 1 of 2009,

1,1,1,1,1,2,1,1 and 2 of 2010

W.P.(MD)No.7678 of 2010

Tamilnadu Siddha Medical Graduates Association,

Reg. No.105/2000,

rep by Dr.M.Selvin Innocent Dhas, MD(s),

President,

Tamilnadu Siddha Medical Graduates Association,

Kanyakumari Chapter:3-2, Muthalakurichy,

Thuckalay Post,

Kanyakumari District. .. Petitioner

vs

1.Indian Medical Association,

rep by Dr.K.Prakasam, Chairman,

IMA Quackery Eradication Committee,

Tamilnadu State Branch, Chennai.

2.State of Tamilnadu,

rep by its Secretary to Government,

Department of Health and Family welfare,

Fort St. George, Chennai-9.

3.The Director,

Public Health and Preventive Medicine,

DMS Complex, Teynampet, Chennai-18.

4.The Director General of Police,

Chennai-4.

5.The District Collector,

Nagercoil, Kanyakumari District.

6.The Superintendent of Police,

Nagercoil, Kanyakumari District.

7.Tamil Nadu Medical Council,

rep by its Registrar Mr.S.Kandasamy,

D Block, First Floor, TNHB Complex,

Jawaharlal Nehru Salai,

100 feet Inner Ring Road,

Vadapalani, Chennai-26.

(R-7 impleaded as a party respondent as

per order dt.31.8.2010 in MP(MD)No.2 of 2010) .. Respondents

W.P.(MD)No.4463 of 2007

Dr.Jillus .. Petitioner

vs

1.The Superintendent of Police,

Kanyakumari District at

Nagercoil.

2.The Inspector of Police,

Colachel Police Station,

Kanyakumari District. .. Respondents

W.P.(MD)Nos.8907 to 8909 of 2009

Dr.N.Vivekanandham .. Petitioner in

WP(MD)No.8907 of 2009

Dr.N.Sornappan .. Petitioner in

WP(MD)No.8908 of 2009

Dr.N.Selvam .. Petitioner in

WP(MD)No.8909 of 2009

vs

1.The Joint Director,

Public Health Department,

Kottar,

Nagerkovil,

Kanyakumari District.

2.The Deputy Director,

Public Health Department,

Krishnankovil, Vadaseri,

Nagercoil, Kanakumari District.

3.The Superintendent of Police,

Kanyakumari District,

Nagerkovil,

Kanyakumari. .. Respondents in

all three writ petitions

W.P.(MD)No.2244 of 2010

Tamizhaga Homeopathy and Siddha (Ayush)

Doctors Association,

Registered No.2

rep by State General Secretary

Dr.K.Chinnaiyan

Registered office at

No.15,Baloba Nanthavanam,

North Vasal Street, Thanjavur. .. Petitioner

Vs

1.The Secretary,

Department of Health,

Indian Medicine and Homeopathy and

Family Welfare Department,

Fort St. George,

Chennai-600 009.

2.State of Tamil Nadu,

rep by Special Secretary,

Home Department,

Fort St. George,

Madras-600 009.

3.The Director General of Police,

Kamarajar Salai,

Madras-600 004.

4.The Superintendent of Police,

Thanjavur District,

Thanjavur.

5.The Superintendent of Police,

Pudukkottai District,

Pudukkottai.

6.The Drug Controller,

Arulananda Nagar,

Thanjavur. .. Respondents

W.P.(MD)Nos.5851, 6276 and 6277 of 2010

Rural Medical Private Practitioners' Associations, Regd. No.312/1994

Kodairoad Main Road, Pudur,

Kodairaod, Dindigul District-624 006

rep by its President,

Dr.S.Belavandran .. Petitioner in

W.P.(MD)No.5851 of 2010

Dr.S.Palanimuthu .. Petitioner in

W.P.(MD)No.6276 of 2010

Dr.R.Murugesan .. Petitioner in

W.P.(MD)No.6277 of 2010

vs

1.The State of Tamilnadu,

rep by its Chief Secretary,

Secretariat, Chennai.

2.The State of Tamilnadu,

rep by its Secretary to Government,

Health & Family Welfare Department,

Secretariat, Chennai.

3.The State of Tamilnadu,

rep by its Secretary to Government,

Home Department,

Secretariat, Chennai.

4.The Director General of Police,

Santhome, Chennai-6.

5.The Inspector General of Police,

South Zone, Alagar Kovil Road,

Madurai-2.

6.The District Collector,

Dindigul District, Dindigul.

7.The Superintendent of Police,

Dindigul District, Dindigul. .. Respondents in all the three writ petitions

W.P.(MD)No.8051 of 2010

L.Arivazhagan .. Petitioner

Vs

1.The State of Tamil Nadu,

rep by its Secretary to Government,

Health & Family Welfare Department,

Fort St George, Chennai-9.

2.The District Collector,

Dindigul, Dindigul District.

3.The Superintendent of Police,

Dindigul, Dindigul District. .. Respondents

W.P.(MD)No.8233 of 2010 :

Karikalan .. Petitioner

Vs

1.The Joint Director of Medicines,

Sivagangai

2.The Superintendent of Police,

Sivagangai. .. Respondents

W.P.(MD)No.12561 of 2010

Dr.S.Selvaraj .. Petitioner

Vs

1.The State of Tamilnadu,

rep by Commissioner and Secretary to Government,

Health and Family Department,

Secretariat, Chennai-600 009.

2.The Deputy Director,

Public Health Department,

Meenakshi Nayakkan Patti Post,

Dindigul District.

3.The District Collector,

Office of the Collectorate, Dindigul.

4.The Superintendent of Police,

District Police Office, Dindigul.

5.The Inspector of Police,

Chanarpatti Police Station, Dindigul District .. Respondents

W.P.(MD)No.7678 of 2010 has been preferred under Article 226 of the Constitution of India praying for the issue of a writ of mandamus to forbear the respondents and their men not to interfere with the professional practice of the members of the petitioner association and taking action in the name of Anti-quackery action against the members of the petitioner's association who are practicing their profession as per the Regulations passed by the Central Council of Indian Medicine, New Delhi and as per the Indian Medical Degrees (Madras Amendment) Act, 1940.

W.P.(MD)No.4463 of 2007 has been preferred under Article 226 of the Constitution of India praying for the issue of a writ of mandamus forbearing the respondents from interfering with the practice of the petitioner as Homeopathy Doctor in St. Mary's Hospital, Beach Junction, Colachel, Kanyakumar District. W.P.(MD)Nos.8907 to 8909 of 2009 have been preferred under Article 226 of the Constitution of India praying for the issue of a writ of mandamus forbearing the respondents herein from in any way interfering the Siddha and Ayurvedic medical practice in the petitioners' clinic M/s.Nambirajan Siddha Clinic at Nangai Nagar, Akkarai Cape Road, Suseendhiram and also at Register Office Road, Edalakudi, Nagerkovil, Kanyakumari District, M/s.Sorna Clinic at 11/48, main Road, Kulasekaranpudhur, Kanyakumari District and M/s.Selvam Clinic at Kheezhur, Thirupathi Saaram, Kanyakumari District without following due process of law. W.P.(MD)No.2244 of 2010 has been preferred under Article 226 of the Constitution of India praying for the issue of a writ of mandamus to direct the respondents not to take any penal action against the members of the petitioner's association except complaint from the competent persons under the provisions of Tamil Nadu Homeopathy System of Medicine and Practitioners of Homeopathy Act and Tamil Nadu Council of Indian Medicine to enable the members of the petitioner's association to practice in the system of Homeopathy and Siddha Medicine without any interruption from respondents 2 and 6.

W.P.(MD)Nos.5851, 6276 and 6277 of 2010 have been preferred under Article 226 of the Constitution of India praying for the issue of a writ of mandamus to forbear the respondents from interfering with the day today practice of Indian system of medicines, viz., Siddha, Unani, Ayurvedha and Homeopathy by the members of the petitioner association within a period that may be stipulated by the court. W.P.(MD)No.8051 of 2010 has been preferred



under Article 226 of the Constitution of India praying for the issue of a writ of mandamus to direct the respondents to break open the seal of the petitioner premises situated in D.No.1/111, Therodum Veethi, Sempatti, Dindigul District and consequently to forbear the respondents herein in any way interfering with the petitioner's day today practice in Indian System of Siddha Medicine and Homeopathy. W.P.(MD)No.8233 of 2010 has been preferred under Article 226 of the Constitution of India praying for the issue of a writ of mandamus to forbear the respondents and their subordinates from interfering with the peaceful and lawful practice of the petitioner in the field of Siddha, Herbal Medicine, Herbal Physiotherapy and Acupuncture.

W.P.(MD)No.12561 of 2010 has been preferred under Article 226 of the Constitution of India praying for the issue of a writ of mandamus to forbear the respondents herein from in any way interfering with the petitioner's Siddha, Ayurvedic and Homeo Medical practice in the petitioner's clinic without following due process of law.

!For Petitioners ... Ms.Victoria Gowri

Mr.K.Sellathurai

Mr.M.Ajmal Khan

Mr.K.Gokul

Mr.M.Ramaratnam

Mr.P.Ganapathi Subramani

Mr.N.Anandhakumar

Mr.C.K.M.Appaji

^For Respondents ... Mrs.V.Chellammal Murthy, AAG-V assisted by Mr.S.C.Herold Singh, GA

Mr.Veerakathiravan

Mr.C.Karthick

Mr.B.Cheran

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:COMMON ORDER

In W.P.(MD)No.7678 of 2010, the petitioner is the Tamilnadu Siddha Medical Graduates Association represented by its President. In that writ petition, they seek writ in the nature of mandamus to forbear the respondents from interfering with the professional practice of the members of the petitioner association and from taking action in the name of Anti-quackery action against the members of the petitioner's association who are practicing their profession as per the Regulations passed by the Central Council of Indian Medicine, New Delhi and as per the Indian Medical Degrees (Madras Amendment) Act, 1940.

2.The writ petition was admitted on 18.6.2010. Pending the writ petition, an interim injunction was granted against fourth and sixth respondents, i.e. Director General of Police, Chennai and the Superintendent of Police, Nagercoil, Kanyakumari District from interfering with the professional practice of the members of the petitioner association who hold valid registration certificate issued by the Tamilnadu Siddha Medical Council, even if they practice their respective system with modern scientific medicines including Surgery and Gynecology, Obstetrics, Anesthesiology, ENT, Ophthalmology based on the training and teaching they had during the course of their study. But, it was made clear that they are not entitled to practice exclusively Allopathy medicine. Subsequently, the Tamil Nadu Medical Council represented by its Registrar was impleaded as the 7th respondent in that writ petition.

3.Even before filing of the said writ petition, a writ petition was filed by one Dr..Jillus in the year 2007 in W.P.(MD)No.4463 of 2007 seeking to forbear the respondents, i.e. Superintendent of Police, Kanyakumari District and his subordinates from interfering with the practice of the petitioner as Homeopathy Doctor in St. Mary's Hospital, Beach Junction, Colachel, Kanyakumar District. In that writ petition, notice of motion was ordered. Pending notice of motion, no interim relief was granted. It was directed to be listed along with other batch of cases relating to Homeopathy Doctors.

4.Thereafter, 10 other writ petitions were filed. W.P.(MD)No.2244 of 2010 is filed by the Tamizhaga Homeopathy and Siddha (Ayush) Doctors Association, functioning from Thanjavur seeking for a direction to the respondents not to take any penal action against the members of the petitioner's association except complaint from the competent persons under the provisions of Tamil Nadu Homeopathy System of Medicine and Practitioners of Homeopathy Act and Tamil Nadu Council of Indian Medicine to enable the members of the petitioner's association to practice in the system of Homeopathy and Siddha Medicine without any interruption. That writ petition was admitted on 25.2.2010. Pending the writ petition, an interim injunction was granted. In that case, the fifth respondent, i.e. Superintendent of Police, Pudukkottai had filed a counter affidavit, dated 20.4.2010. It was claimed that the police have no reason to harass the Homeopathy and Siddha Doctors. Section 15 of the Indian Medical Council Act, 1956 bars the Homeopathy and Siddha Doctors from using Allopathy medicines. They were acting upon the complaints received from the Allopathy doctors. A Siddha or Homeopathy Doctor cannot be let off without prosecution if they impersonated as Allopathy Doctor. They have been dealt with under the provisions of the IPC and as per the Indian Homeopathy Council Act.

5.W.P.(MD)No.5851 of 2010 was filed by the Rural Medical Private Practitioners' Association represented by its President. The prayer in that writ petition was to forbear the respondents from interfering with the day today practice of Indian system of medicines, viz., Siddha, Unani, Ayurvedha and Homeopathy by the members of the petitioner association. In that writ petition, notice was taken by the Government Pleader. An interim injunction was also granted provided the members of the petitioner association do not use, prescribe Allopathic medicines or perform surgery or any other activity which is unknown to Indian medicine and homeopathy.

6.In W.P.(MD)Nos.6276 and 6277 of 2010, the two petitioners who are Doctors in Dindigul District sought for the prayer against the official respondents including the State and the Police Officers from interfering with the day today practice of Indian medicine, i.e Siddha by the petitioners. In those two writ petitions, notice regarding admission was granted on 29.4.2010. An interim prayer as made in W.P.(MD)No.5851 of 2010 was granted by this court.

7.In W.P.(MD)No.8051 of 2010, again the petitioner was a Doctor in Dindigul District practicing Siddha medicine, who had registered with Tamil Nadu Siddha Medical Council. He prayed for a direction to respondents to break open the seal of the petitioner premises situated in Door no.1/111, Therodum Veethi, Sempatti, Dindigul District and to forbear the respondents from in any way interfering with the petitioner' day today practice in Indian System of Siddha medicine and Homeopathy. That writ petition was not admitted till date.

8.In W.P.(MD)No.8233 of 2010, the petitioner had claimed that he had underwent self employment course for youth conducted by the Madurai Kamaraj University in Herbal Education. He had undergone training in Acupuncture Therapy conducted by the Department of Adult Continuing Education and Extension, Madurai Kamaraj University. He is having diploma in Acupuncture and Herbal Physiotherapy as well as holding diploma in Siddha Medicine. He is also practicing an alternate medicine of Acupuncture, Herbal and Siddha Medicine. He seeks for a direction to the respondent police at Sivagangai to forbear them from interfering with the peaceful and lawful practice of the petitioner in the field of Siddha, Herbal Medicine, Herbal Physiotherapy and Acupuncture. When that writ petition came up for hearing, the learned Government Pleader took notice. No interim order was granted by this court.

9.In W.P.(MD)Nos.8907 to 8909 of 2009, the three writ petitioners who are residents of Kanyakumari District and are registered Ayurvedic and Siddha Medical practitioners. They sought for direction to the respondent police to forbear them from interfering with the Siddha and Aurvedic medical practice in their respective clinics at various places as found in the prayer portion. In these three writ petitions, notice of motion was ordered on 8.9.2009. No interim order was granted by this court.

10.In W.P.(MD)No.12561 of 2010, the petitioner who is a registered Ayurvedic, Siddha and Homeopathy medical practitioner, seeks for a direction to forbear the respondents from in any way interfering with the petitioner's right to practice Indian medicine except following due process of law. When that writ petition came up on 02.11.2010, this court directed the third respondent, i.e. District Collector, Dindigul to remove the seal in the office of the petitioner at Athikaripatti. The third respondent was also given liberty to take an inventory of all items found in the clinic for the purpose of further investigation and prosecution of cases registered against the petitioner. He was also given liberty to seize the goods which are necessary to be used as material evidence in the prosecution. In that case, notice was taken by the learned Government Advocate.

11.It is unnecessary to deal with the facts of the individual cases filed by certain medical practitioners of Indian Medicine. It is agreed between the parties that W.P.(MD)No.7678 of 2010 which was filed by the Tamil Nadu Siddha Medical Graduates Association can be taken as a representative case and that the contentions raised therein if answered will dispose of all other individual cases. Apart from that W.P.(MD)Nos.2244 of 2010 and 5851 of 2010 were also filed by two associations representing different sections.

12.Heard the arguments of Mrs.Victoria Gowri, learned counsel for petitioners, Mrs.Chellammal Murthy, learned Additional Advocate General-V, leading Mr.S.C.Herold Singh, learned Government Advocate appearing for respondent State and Police, Mr.Veerakathiravan, learned counsel appearing for the Tamil Nadu Medical Council and Mr.C.Karthik and Dr.B.Cheran for the first respondent Indian Medical Association.

13.Before proceeding to deal with the rival contentions in all these writ petitions, it is necessary that the Tamil Nadu Government by G.O.Ms.No.248, Health and Family Welfare Department, dated 8.9.2010 had issued a notification in the Government Gazette under Rule 2(ee)(iii) of the Drugs and Cosmetics Rules, 1945. It is necessary to set out the entire notification, which reads as follows:

&quot;WHEREAS, the rights of practitioners of Indian System of Medicine are protected under section 17(3)(b) of the Indian Medicine Central Council Act, 1970 (Central Act 48 of 1970);

AND WHEREAS, as per section 2(1)(e) of the said Act, &quot;Indian Medicine&quot; means the system of Indian Medicine commonly known as Ashtang Ayurveda, Siddha or Unani Tibb whether supplemented or not by such modern advances, as the Central Council of Indian Medicine may declare by notification from time to time; AND WHEREAS, the Central Council of Indian Medicine in its Notification F.No.28- 5/2004-AY.(MM), dated the 19th

May 2004, has clarified that the word "Modern Advances" in clause (e) of Section 2(1) of the said Act as advances made in the various branches of modern scientific medicine in all its branches of internal medicine, surgery, gynaecology and obstetrics, anesthesiology, diagnostic procedures and other technological innovation 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; AND WHEREAS, the Central Council of Indian Medicine has improved and strengthened the syllabus of Indian Medicine by including subjects with regard to National Programmes like National Malaria Eradication programmes, Tuberculosis, Leprosy, Family Welfare Programme, Reproductive and Child Health Programme, Immunisation Programme, AIDS, Cancer etc : Now, THEREFORE, under sub-clause (iii) of clause (ee) of rule 2 of the Drugs and Cosmetics Rules, 1945 the Governor of Tamil Nadu hereby declares every registered medical practitioner holding the qualifications specified in the second, third or fourth Schedule to the Indian Medicine Central Council Act, 1970 (Central Act 48 of 1970) and Part III of the Schedule to the Tamil Nadu Siddha System of Medicine (Development and Registration of Practitioners) Act, 1997 (Tamil Nadu Act 34 of 1997) and registered in the Medical Register of State maintained under the aforesaid Acts, as a person practicing the modern scientific system of medicine for the purposes of the Drugs and Cosmetics Act, 1940 (Central Act 23 of 1940.)"

14. It is claimed that the said notification is the subject matter of challenge by the Indian Medical Association, the first respondent, in W.P.No.23783 of 2010 before the Principal Bench. They had obtained an interim stay and the same is pending. It is the case of the petitioner that the Principal Bench in W.P.No.22155 of 2009 passed an interim order on 5.1.2010, seeking for a direction to the petitioner association to furnish to the respondents the names of such persons who are allegedly practicing medicine without valid licence. The respondents 2 to 4 in that writ petition were directed to take an action against those persons on receiving any such information.

15. The Indian Medical Association had earlier filed W.P.No.30259 of 2008 before the Principal Bench, seeking for a direction to consider their representations, dated 15.5.2008 and 14.6.2008 and to initiate an appropriate criminal prosecution against the paramedical technicians, paramedical practitioners and Physiotherapists, who are practicing Allopathic medicine and doing Allopathy treatment by using the prefix Doctor before their names in the prescriptions and advertisements within the State of Tamil Nadu. In that writ petition, the Principal Bench on 23.2.2010 had directed the first respondent to take an action against persons who pose themselves as Doctors or persons who are qualified otherwise than Doctors prefixing the title Doctor before their names in the prescriptions and advertisements. The Association was also directed to give the names of such persons who according to them were illegally practicing, before the Superintendent of Police of the respective districts as well as to the District Medical Officer.

16. In the light of these two orders of the High Court, the first respondent Association made a representation to the District Collector of all Districts in the name of Anti-quackery action at the District level. As per the directions of this court in those two writ petitions, they had furnished a list of the alleged quack Doctors in every District and a consolidated list of 2000 quacks was handed over to the Director General of Police. The first respondent Association themselves made a definition as to who is quack so as to include even the names of Doctors who are practicing over the system of medicine in the list of quacks which are beyond the scope of the order passed by this court. While no doubt the practice of unqualified quacks will have to be checked, but the first respondent cannot use those two orders as a mean to eliminate the other Doctors who are practicing the other systems of medicine. Therefore, the petitioner association made a representation to the District Collector, Kanyakumari District to convene a meeting for proper identification of quacks. Therefore, it is claimed that their right to practice any system of medicine is derived from the Act under which the medical practitioner is registered. The members of the petitioner association were governed by the provision of the Indian Medical Degree (Madras Amendment) Act, 1940, Indian Medicine Central Council Act, 1970, The Tamilnadu Siddha System of Medicine (Development and Registration of Practitioners) Act, 1997, The Drugs and Cosmetics Act 1940, The Drugs and Cosmetics Rules, 1945 and the Indian Medical Practitioners Professional Conduct Etiquette and Code of Ethics Regulations.

17.The respondent police on the basis of the list furnished by the first respondent had arrested many members of the petitioner association and remanded them to custody under various provisions of the IPC read with Section 15(2) of the Indian Medical Council Act, 1956. But, already this court in the year 2006 had granted an interim injunction restraining the police from interfering with the professional practice of such of those members of the petitioner association having a valid registration certificate issued by the Tamil Nadu Siddha Medical Council. As long as their registration holds good, they should not be disturbed. In the light of the constant pressure by the first respondent and various cases filed by the police, the association has filed the present writ petition so as to save their members from the harassment faced at the hands of the respondents.

18.The case of the petitioner association with reference to their right to practice the Indian medicine in their affidavit stated as follows: &quot;c.The members of the petitioner-association studied in approved institutions, obtained their professional degrees from Universities and enrolled as Siddha Practitioner in the State register maintained by the Tamilnadu Siddha Medical Council.

d.The members of the petitioner-association are qualified B.S.M.S. (Bachelor of Indian Medicine and Surgery) which is placed under the second schedule of the IMCC Act, 1970 and it is a recognized medical qualification for practicing Indian Medicine.

e.The duration of the courses like B.A.M.S. (Bachelor of Ayurveda Medicine and Surgery) and B.S.M.S. (Bachelor of Siddha Medicine and Surgery) is equal to the duration of the course for M.B.B.S. (Bachelor of Medicine and Bachelor of Surgery) and all these three courses are involving five years period of study and a six months house surgeon period. Thus the scheme of study of Indian Medicine and English Medicine are similar.

f.Sec.2(1)(e) of the IMCC Act says that &quot;Indian Medicine&quot; means the system of Indian Medicine commonly known as Ashtang Ayurveda, Siddha, and Unani Tibb whether supplemented or not by such modern advances as the Central Council may declare by notifications from time to time. Thus the three types of practice of Indian Medicine namely Ayurveda, Siddha and Unani Tibb also includes the practices of modern advances as the Central Council constituted u/s.3 of IMCC Act may declare by notifications from time to time.

g.The Central Council of Indian Medicine issued a notification in No:8-5-96- Ay.(MM) dated 30.10.96 and notified that &quot;Institutionally qualified practitioners of India Systems of Medicine (Ayurveda, Siddha & Unani) are eligible to practice Indian Systems of Medicine and Modern Medicine including Surgery, Gynecology, Obstetrics based on their training and teaching which are included in the syllabi of via courses of Indian System of Medicine prescribed by Central Council of Indian Medicine after approval of the Govt. of India.

h.It was further clarified in the said notification that the rights of practitioners of Indian system of Medicine to practice modern scientific system of Medicine (Allopathic Medicine) are protected under Section 17 of the Indian Medicine Central Council Act, 1970.

j.The members of the petitioner-association are doctors by profession and holders of Medical Degree as recognized by the Union and State Governments of India.

l.The respondents ought to have taken into consideration, that the members of the petitioner-association are holders of medical degrees under the Indian Medical Degrees (Madras Amendment) Act, 1940 and are registered medical practitioners according to section 2(ee)(iii) of the Drugs and Cosmetic Rules, 1945 and legally qualified medical practitioners under Section 25 of The Tamilnadu Siddha System of Medicine (Development and Practitioners) Act, 1997.

m.The respondents failed to honour the constitutional validity of the Tamilnadu Siddha System of Medicine (Development and Registration of Practitioners) Act, 1997 and failed to appreciate the provisions regarding professional misconduct or infamous conduct in any professional respect as explained in Section 30(1) stating, &quot;No court shall take cognizance of any offence punishable under this Act except on complaint in writing made by the Registrar of any officer authorized by him in this behalf.&quot;

n.The respondents failed to appreciate the Indian Medical Practitioners Professional Conduct, Etiquette and Code of Ethics Regulations enacted by the exercise of the powers conferred by clause (1) of (2) of section 26 of the Indian Medicine Central Council Act, 1970, by the Central Council of Indian Medicine, with the previous sanction of the Central Government.

o.The respondents failed to understand that except on complaint in writing by the registrar of Indian Medicine or any officer authorized by him in this behalf, the 4th respondent could not take action against the members of the petitioner-association for professional misconduct or infamous conduct in any professional aspect.

p.The 1st respondent-association has prepared the list of quacks with the malafide intention to defame and demean the professional good will of the members of the petitioner-association, by including the names of the petitioner-association who are practicing their system of medicine within the scope of the Central and State Acts under which they have registered their medical degrees.

r.The respondents have violated the fundamental right to practice any profession of the members of the petitioner-association as guaranteed by Article 19(g) of the Constitution of India, and the 4th respondent ought to have appreciated the order dated 13.10.2009 bearing No:K.Dis.No:70/TNBIM/2009 passed by Tamilnadu Board of Indian Medicine.&quot;

19.In the typed set filed by the petitioner association, they have enclosed various registration certificates obtained by them under the Tamil Nadu Siddha Medical Council to show that they are not quacks so as to be harassed by the respondent.

20.Ms.Victora Gowri, the learned counsel also referred to the following judgments in support of her submissions. She referred to a judgment of the Supreme Court in Dr.Mukhtiar Chand and others Vs. State of Punjab and others reported in 1998 (7) SCC 579 with reference to right of guarantee under Article 19(1)(g) of the Constitution of India to carry on any occupation. In paragraph 35, the Supreme Court had observed as follows:

&quot;35.Points 2 and 3 have some overlapping so it will be convenient to discuss them together. The right to practise any profession or to carry on any occupation, trade or business is no doubt a fundamental right guaranteed under Article 19(1)(g) of the Constitution of India. But that right is subject to any law relating to the professional or technical qualifications necessary for practising any profession or carrying on any occupation or trade or business enacted under clause (6) of Article 19. The regulatory measures on the exercise of this right both with regard to the standard of professional qualifications and professional conduct have been applied keeping in view not only the right of the medical practitioners but also the right to life and proper health care of persons who need medical care and treatment. There can, therefore, be no compromise on the professional standards of medical practitioners. With regard to ensuring professional standards required to practise allopathic medicine, the 1956 Act was passed which deals also with reconstitution of the Medical Council of India and maintenance of an Indian Medical Register. Thus, for the first time, an Indian Medical Register for the whole of India came to be maintained from 1956. In the 1956 Act, Section 2(f) defines &quot;medicine&quot; to mean &quot;modern scientific medicine&quot; in all its branches and includes surgery and obstetrics, but does not include veterinary medicine

and surgery and the expression "recognised medical qualification" is defined in Section 2(h) to mean any of the medical qualifications included in the Schedules to the Act."

21. With reference to Doctors practicing Indian System of Medicine using Allopathy, in paragraph 27, it was observed as follows: "27. The learned counsel argued at length on the question whether clause (iii) is also intended for left-out qualified allopathic doctors. But if that interpretation is accepted, the said clause will become redundant as admittedly clauses (i) and (ii) exhaust all categories of practitioners entitled to practise in allopathic medicine. It was conceded at the end of the day and, in our view rightly, that the clause takes in medical practitioners other than qualified practitioners entitled to practise allopathic medicine. And as practitioners of homoeopathic medicine are specifically excluded, it becomes evident that this category comprises practitioners who are enrolled in a Medical Register of a State and though not answering the description of clauses (i) and (ii), are de facto practising modern system of medicine (allopathic) and those facts are declared by the State Government concerned. By this sub-clause, a de facto practitioner of modern scientific medicine (allopathic) is recognized as a registered medical practitioner and is enabled to prescribe drugs covered by the Drugs Act."

22. Similarly, in paragraph 40, the Supreme Court had observed as follows: "40. We have perused the Bombay Medical Act, 1912, the Bihar and Orissa Medical Act, 1916, the Punjab Medical Registration Act, 1916, the Rajasthan Medical Act, 1952 and the Maharashtra Medical Council Act, 1965 which regulate maintenance of registers of medical practitioners and the entitlement to practise allopathic medicine. Under those Acts, State Medical Registers are maintained. Section 7(3) of the Bombay Act of 1912 enabled the Provincial Government, after consulting the State Medical Council, to permit the registration of any person who was actually practising medicine in the Bombay Presidency before 25-6-1912; this seems to be the only case of registration without the requisite qualification. Further, persons possessing Ayurvedya Visharad of the Tilak Maharashtra Vidyapeeth of Poona, obtained during the years 1921-1935 (which was included in the Schedule to that Act on 30-9-1939 pursuant to Notification No. 3020/33 dated 12-9-1939) were entitled to be registered in the State Medical Register; this is the only ayurvedic qualification on the basis of which persons were eligible to be registered on the State Medical Register in Maharashtra; further with regard to rural areas, the prohibition to practise allopathic medicine under that Act did not apply provided a person had commenced practice in any village in the rural area prior to 1912. None of the petitioners has claimed benefit of these exceptions. We could not find any other provision which enables a person, other than those possessing the qualification prescribed in the Schedules to the Acts, to be registered in the State Medical Register to practise allopathic medicine. So it can be observed that if any State law relating to registration of medical practitioners permits practise of allopathic medicine on the basis of a degree in integrated medicines, the bar in Section 15(2)(b) of the 1956 Act will not apply."

23. With reference to the provisions of the Drugs and Cosmetics Act and the right to use such Allopathy medicines by such Doctors, in paragraph 41, it was observed as follows:

"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 practise 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."

24. It was further stated that if the State law provides registration of Indian medicine practitioners, then the notification issued under the Central Act will be available in their favour. In paragraph 49, the Supreme Court had stated as follows:

“49. The upshot of the above discussion is that Rule 2(ee)(iii) as effected from 14-5-1960 is valid and does not suffer from the vice of want of legislative competence and the notifications issued by the State Governments thereunder are not ultra vires the said Rule and are legal. However, after sub-section (2) in Section 15 of the 1956 Act occupied the field vide Central Act 24 of 1964 with effect from 16-6-1964, the benefit of the said Rule and the notifications issued thereunder would be available only in those States where the privilege of such right to practise any system of medicine is conferred by the State law under which practitioners of Indian medicine are registered in the State, which is for the time being in force. The position with regard to medical practitioners of Indian medicine holding degrees in integrated courses is on the same plane inasmuch as if any State Act recognizes their qualification as sufficient for registration in the State Medical Register, the prohibition contained in Section 15(2)(b) of the 1956 Act will not apply.”

25. The learned counsel also submitted that the petitioner association had filed W.P.No.9648 of 2006 before the Principal bench. Despite the interim order since the respondents were taking action flouting those orders, the association was constrained to file a contempt petition being Contempt Petition No.775 of 2010 before the Principal Bench against the Director General of Police. In that contempt petition, a learned Judge of this Court by his order, dated 23.7.2010 which was subsequently reported in 2010 (4) CTC 798, after referring to the submissions made by the parties, in paragraph 4 had observed as follows: “4....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 recognised 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.”

26. Thereafter, pains were taken to explain the various provisions of relevant enactments including the import of the Drugs and Cosmetics Act and the usage of medicine therein. It was also stated that the course undergone by them during the degree including Pharmacology as well as surgery. Therefore, it is too late for them to call the Siddha practitioners as quacks. It was also claimed that there are many of Siddha and Ayurvedic preparations were prescribed by Allopathy Doctors. Therefore, there is no legal bar for the Siddha Doctors prescribing Allopathy medicines. Both systems are based upon modern medicines. The syllabus and question papers that were issued during the course undergone by the petitioner were also referred to as well as various articles were also referred to.

27. The counsel also referred to the order passed by this court in CrI.O.P.(MD)No.11994 of 2010 and batch cases, dated 2.11.2010, wherein a learned Judge quashed the FIR registered against the members of the petitioner association. The learned counsel also referred to a circular issued by the State Government, dated 15.6.2010 by the Health and Family Welfare Department to the Director General of Police, wherein after referring to the cases earlier filed by the petitioner association, the Director General of Police was directed as follows:

“I am therefore to request you to instruct the police officers in the Districts not to intervene with the Practice of Registered Practitioners of Siddha, Ayurveda, Unani and Naturopathy who are registered in the Tamilnadu Siddha Medical Council and Tamilnadu Board of Indian Medicine. If any of these ISM Doctors are exclusively doing practice in Allopathy medicine, names of these Doctors may be intimated to the Council and the Government



for taking action against them under the Tamilnadu Siddha System of Medicine (Development and Registration of Practitioners) Act, 1997 and Tamilnadu Board of Indian Medicine Rules. The cases of the Doctors who are already under arrest may be reviewed with reference to the above clarifications.&quot;

28.They also submitted that the State Government had issued G.O.Ms.No.248, Health and Family Welfare Department, dated 8.9.2010 under the Drugs and Cosmetics Rules, allowing to register the medical practitioners under the Indian Medical Central Council Act in the II, III and IV schedule and Tamilnadu Siddha System of Medicine (Development and Registration of Practitioners) Act, 1997 registered under the III Schedule and registered in the Medical Register of the State maintained under various Acts practicing the modern scientific system of medicine for the purpose of Drugs and Cosmetics Act. Therefore, merely because they are prescribing Allopathy medicine as a part of their treatment procedure, they cannot be prosecuted.

29.Unfortunately, the official respondents have not filed any counter affidavit. It is the first respondent who has filed a counter affidavit. The first respondent had stated that the term of quack is defined by the Supreme Court in Poonam Verma Vs. Ashwin Patel reported in 1996 (4) SCC 332. It means a person who does not have knowledge of a particular system of medicine but practices in that system is a Quack and a mere pretender to medical knowledge or skill or to put it differently as charlatan.

30.It was submitted that in W.P.No.1598 of 2001, dated 19.8.2008, this court in paragraph 7 had observed as follows:

&quot;7.It is also seen that the Government of Tamilnadu had taken a policy decision not to regularise the practice of unqualified medical practitioners, considering the public welfare and in view of the fact that adequate number of registered medical practitioners in Modern Medicine, Indian Medicine, Homeopathy, etc., are available to cater to the needs of the public. Regulating the practice of unqualified medical practitioners would result in the loss of precious human lives and it will also pose various health hazards. Unless the members of the petitioner Association are possessing the required qualifications, as prescribed by the recognised University and unless they are registered in their respective Medical Councils they cannot be permitted to practice.&quot;

31.Thereafter, in W.P(MD).No.2267 of 2009, dated 24.8.2009, this court after referring to Dr.Mukhtiar Chand case and Poonam Verma's case (cited supra), in paragraph 8 had observed as follows:

&quot;8.The petitioner has filed the Chart of duties and responsibilities of Pharmacists in the typed set of papers. Even under the said chart a pharmacist is only entitled to dispense with the drugs and he shall not do so without prescription by the medical officer. Therefore, merely because the petitioner possessing a Diploma in pharmacy and stated to be running a medical shop, he is not entitled to dispense drugs without a prescription from an authorised medical officer. Further the petitioner has stated in the affidavit that he is assisting the patients by administering injunction and taking blood samples, at no stretch of imagination the petitioner shall go on with such activities in his medical shop on the strength of having studied such procedure in his diploma course. The Chart of duties also placed an embargo on the petitioner that he should not on any account prescribe medicine for patient on his own. An inclusion of a particular subject or a nature of studies in the curriculum of a course, cannot be used by the petitioner to state that he is entitled to practise the same. If such interpretation is given, then the very purpose of enacting the Indian Medical Council Act and maintaining the list of registered practitioner would be an empty formality. It is needless to state that as long as the petitioner confines himself to the sphere of activity for which he is authorised and for which purpose he holds the qualification, he cannot apprehend of any harassment in the hands of the police. Further in the event of a complaint being lodged with the jurisdictional police, the petitioner cannot seek for a blanket order that such complaint cannot be investigated.&quot;

32.Subsequently in Dr.K.Abdul Muneer and another Vs. The State of Tamil Nadu and others reported in 2010 (4) CTC 88, vide judgment, dated 12.2.2010, a learned Judge after referring to Dr.Mukhtiar Chand case and Poonam Verma's case (cited supra) and Yash Ahuja Vs. Medical Council of India reported in 2009 (12) Scale 687 in paragraphs 30 and 31 had observed as follows: "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 surgeoncy 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."

33.Further, the matter was taken on appeal in W.A.No.755 of 2010. A division bench of this court by its judgment, dated 8.6.2010 dismissed the writ appeal. In paragraph 6, the division bench had observed as follows: "6.Taking clue from the last paragraph of the said circular, learned senior counsel submitted that the appellants have already undergone training, which is evident from page No.17 of the typed set of papers viz., the completion certificate issued by the Government Royapettah Hospital, Chennai-14 in respect of the appellants for the period of training undergone by them from 01.07.1990 to 16.07.1990; therefore they are entitled for practising in the Indian Medicine and the learned Single Judge should have considered the same and allowed the appellants to practice in Allopathic medicine. Once again, we went through the entire materials available on record and we are of the considered opinion that the appellants have undergone training in Indian Medicine only for a period of 15 days, which is not sufficient for allowing the appellants to practice in Allopathic Medicine. Further, the circular issued by the Central Council of Indian Medicine on 19.05.2004 is prospective in operation and unless it is specifically stated in the said circular that it must be given retrospective effect, the appellants cannot be allowed to practice Allopathic Medicine based on the said circular. As held by the Hon'ble Supreme Court of India in the case reported in (1998) 7 SCC Pg.579 referred to supra, 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 practise 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. In the case on hand, the qualification of the appellants are not registered in the State Medical Register and therefore, they are not entitled to practice Allopathic medicine. Moreover, in the definition of "Indian medicine" given in the circular dated 19.05.2004, nothing is stated about the registration."

34.In W.P.No.2722 of 2010, dated 30.3.2010, another learned Judge of this court after referring to all previous cases held that omnibus prayer of the petitioner association cannot be granted. But if any member is individually

aggrieved by any action taken, they can challenge it before the competent court and no blanket order can be granted. Further, the State Government had taken a policy decision not to regularise the practice of an unqualified medical practitioners. Considering the public welfare and unless the member of the petitioner association possesses required qualification as prescribed by the recognized University and unless they have registered with respective medical council, they cannot be permitted to practice.

35. In the light of the judgments of this court, the petitioners contended that any Doctor who has registered under the Siddha system of medicine, if he violates any condition, he can be punishable under the Indian Medical Council Act. Likewise, the Indian Medicine Central Council Act, 1970 is to regularize the practice of Siddha medicine by enrolling the members of the council. Therefore, the members who have registered under various councils can practice only the system of medicines for which they were qualified. Likewise if they are not registered themselves in the State register under the Indian Medical Council Act, 1950 cannot practice Allopathy. Both the Indian Medical Council Act and the Indian Medicine Central Council Act though they are statutory bodies, the members registered under each of the council can only practice for which they have been licensed. The Central Council of Indian Medicine had issued a notification, dated 19.5.2004 permitting the qualified practitioners of Ayurvedic, Siddha, Unani Tibb are eligible to practice respective systems with modern Scientific medicine including Surgery, Gynecology, Obstetrics, Anesthesiology, ENT, Ophthalmology, etc based on the training and teaching.

36. But the Medical Council of India had issued a notification on 11.3.2002 and published in the Gazette dated 6.4.2002 in the following lines: "No person other than a doctor having qualification recognized by Medical Council of India and registered with Medical Council of India / State Medical Council(s) is allowed to practice Modern system of Medicine or Surgery. A person obtaining qualification in any other system of medicine is not allowed to practice Modern system of Medicine in any form."

37. It was contended that the notification issued by the Central Council of Indian Medicine was beyond its power, but the syllabus, curriculum and training in the two systems are different. Dr. Muththiar Chand case (cited supra) do not help the case of the petitioners. On the other hand, it only strengthens the stand of the respondents. A harmonious reading of the Medical Council Act, 1956 and the Central Council of Indian Medicine Act was only mean a person enrolls either under the State register of Indian Medicine or the Central register of Indian Medicine can practice modern scientific medicine in any of its branches unless that person is also enrolled under the State Medical Register of 1956 Act. Thereafter, it was argued that the syllabus between the two courses are different and what the Doctor under the Indian medicine system had is only the birds eye view of the subject and not enough to practice Allopathy medicine.

38. Further, a reference was also made to a judgment of the Supreme Court in Yash Ahuja and others Vs. Medical Council of India and others reported in 2009 (12) Scale 687 to contend that under the Indian Medical Council Act even medical degrees from other countries were not recognised directly and those Doctors will have to undergo screening test. Each system, i.e. Ayurvedic, Siddha, Unani, Allopathy and Homeopathy have got their own history, heritage, advantages and importance and so long as they are practicing within their system, there will be no difficulty, but if they transgressed their limits, certainly, they are liable for an action. While Ayurvedic medicines are derived from Herbs, Siddha medicine is developed from plants and metals and Allopathy medicines are made from chemicals. Though they are dealing with common patient, each system has got its own regime of treatment. Therefore, it was stated that the petitioners cannot be allowed to treat any patient with Allopathy medicine and that will be a clear case of transgression of their limits.

39. A reference was made to a latest judgment of the Supreme Court in Rajasthan Pradesh V.S. Sardarshahar and another Vs. Union of India and others reported in 2010 (6) MLJ 82 (SC), wherein the Supreme Court in paragraph 42 had observed as follows:

42. In view of the above, it is evident that right to practice under Article 19(1)(g) of the Constitution is not absolute. By virtue of the provisions of Clause (6) to Article 19 reasonable restrictions can be imposed. The Court has a duty to strike a balance between the right of a Vaidya to practice, particularly, when he does not possess the requisite qualification and the right of a "little Indian" guaranteed under Article 21 of the Constitution which includes the protection and safeguarding the health and life of a public at large from mal-medical treatment. An unqualified, unregistered and unauthorized medical practitioner possessing no valid qualification, degree or diploma cannot be permitted to exploit the poor Indians on the basis of a certificate granted by an institution without any enrolment of students or imparting any education or having any affiliation or recognition and that too without knowing the basic qualification of the candidates.

Question of entertaining the issue of validity of Entry No.105 to the Second schedule to the Act 1970 i.e. "to 1967" does not arise as it is not a cut-off date fixed by the Statutory Authority rather a date, after which the qualification in question was not recognised. Hindi Sahitya Sammelan itself admitted that the Society was not imparting any education. It had no affiliated colleges. It merely conducts the test. The Society never submitted any application after 1967 before the Statutory Authority to accord recognition and modify the Entry No.105 to Part I of Schedule II to the Act 1970. Submissions to the effect that 1953 Act conferred privileges upon the Vaidyas in exceptional circumstances to practice and any restriction to practice unless the names are entered in the Central Register is arbitrary and violative of statutory provisions of the State Act, are preposterous for the reason that such privileges, if are repugnant to the provisions of Act 1970, cannot be availed by operation of the provisions contained in Article 254 of the Constitution. Thus, such a restriction cannot be held violative of equality clause enshrined in Article 14 of the Constitution. In the context of the above, the first respondent had contended that the petitioner's association writ petition should be dismissed. The earlier order having become final, they will operate as res judicata against the contentions raised by the petitioner.

40. In the light of the rival pleadings, two questions arise for consideration. The first was whether the first respondent association can be given a carte blanche to find out as to who are all practicing quackery and on that basis, the police can be directed to proceed against those individuals in a criminal court. But, if such a power is given to the practitioners of one system, it will naturally result in witch hunting of others who did not have licence to practice in Allopathic system of medicine. A reading of all the earlier orders did not indicate that if a person is having licence to practice under a particular system of medicine and registered under the respective council, he can be simply proceeded for the alleged transgression of their limits. If a person who did not have any degree under any system and if he practices any form of medicine, they can be easily identified as a quack and can be proceeded on a complaint even under the provisions of IPC. In respect of violation of any professional conduct or ethics under each system for which separate registration under a council is provided. Hence each council will be the only authority to deal with those persons who violate their professional ethics and conduct. Even in those cases, there is no difficulty because each of the councils were empowered by a Central enactment and fully geared to deal with such contingencies.

41. A further question will arise that if a Doctor under the system of Indian medicine prescribed Allopathic drugs, whether it would amount to violation of Indian Medicine Council Act? In fact, the Government Order issued by the State Government in G.O.Ms.No.248, Health and Family Welfare Department, dated 8.9.2010 permits such of those practitioners to be brought under the registered practitioner in terms of Rule 2(ee)(iii). It is the statutory order that takes out the taboo of such of those Indian medicine doctors prescribing even Allopathy medicine. In the judgment in Dr.Muththiar Chand's case (cited supra), the said issue has been dealt with and the term modern medicine has been defined. There is lot of misconception about the Doctors who are qualified under the Indian medicine and having valid degree as well as registration under the statutory council being dealt with by the police solely at the instance of the first respondent association and treating them as criminals. If allowed it will certainly bring disrepute to them in the eye of public and will make it appear that the system of Indian medicine comprises of only quacks or non professionals. Such can never be the stand of any Government. The issues to merit and

demerits of each system has to be scientifically established. Ultimately, it is for the people to opt for a particular system of treatment. The faith of the people matters more than any other criteria. The legal interpretation given by the court can only ultimately guide to deal with complaints of malpraxis. But certainly the police cannot be allowed to take an initiative in such matters.

42. Even in cases of medical negligence, the Supreme Court had laid down several restrictions. In many cases, the complaints of medical negligence before the Consumer forum or criminal courts have been found fault with. In matters of criminal negligence, the Supreme Court has now held that such conduct must first be enquired into by experts in the field and then only the criminal court can deal with such matters.

43. While talking about the system of medicine and denial of access by poor to this institution, the Supreme Court in *Samira Kohli Vs. Dr. Prabha Manchanda* and another reported in 2008 (2) SCC 1 in paragraphs 38, 39, 40 and 43 had observed as follows:

“38. In India, majority of citizens requiring medical care and treatment fall below the poverty line. Most of them are illiterate or semi-literate. They cannot comprehend medical terms, concepts, and treatment procedures. They cannot understand the functions of various organs or the effect of removal of such organs. They do not have access to effective but costly diagnostic procedures. Poor patients lying in the corridors of hospitals after admission for want of beds or patients waiting for days on the roadside for an admission or a mere examination, is a common sight. For them, any treatment with reference to rough and ready diagnosis based on their outward symptoms and doctor's experience or intuition is acceptable and welcome so long as it is free or cheap; and whatever the doctor decides as being in their interest, is usually unquestioningly accepted. They are a passive, ignorant and uninvolved in treatment procedures.

39. The poor and needy face a hostile medical environment - inadequacy in the number of hospitals and beds, non-availability of adequate treatment facilities, utter lack of qualitative treatment, corruption, callousness and apathy. Many poor patients with serious ailments (e.g. heart patients and cancer patients) have to wait for months for their turn even for diagnosis, and due to limited treatment facilities, many die even before their turn comes for treatment. What choice do these poor patients have? Any treatment of whatever degree, is a boon or a favour, for them. The stark reality is that for a vast majority in the country, the concepts of informed consent or any form of consent, and choice in treatment, have no meaning or relevance.

40. The position of doctors in government and charitable hospitals, who treat them, is also unenviable. They are overworked, understaffed, with little or no diagnostic or surgical facilities and limited choice of medicines and treatment procedures. They have to improvise with virtual non-existent facilities and limited dubious medicines. They are required to be committed, service oriented and non-commercial in outlook. What choice of treatment can these doctors give to the poor patients? What informed consent can they take from them?

43. Health care (like education) can thrive in the hands of charitable institutions. It also requires more serious attention from the State. In a developing country like ours where teeming millions of poor, downtrodden and illiterate cry out for health care, there is a desperate need for making health care easily accessible and affordable. Remarkable developments in the field of medicine might have revolutionised health care. But they cannot be afforded by the common man. The woes of non-affording patients have in no way decreased. Gone are the days when any patient could go to a neighbourhood general practitioner or a family doctor and get affordable treatment at a very reasonable cost, with affection, care and concern. Their noble tribe is dwindling. Every doctor wants to be a specialist. The proliferation of specialists and super specialists, have exhausted many a patient both financially and physically, by having to move from doctor to doctor, in search of the appropriate specialist who can identify the problem and provide treatment. What used to be competent treatment by one general practitioner has now become multi-pronged treatment by several specialists.”

44. In fact, anticipating that there may be large scale of complaints against medical professionals from the aggrieved patients and others, the Supreme Court had warned Courts and the Consumer forums to keep several factors in mind in cases relating to medical negligence and not to take a view which would have in fact disservice to the public vide its judgment in *Martin F. D.'Souza Vs. Mohd. Ishfaq* reported in 2009 (3) SCC 1. Thereafter, the Supreme Court held that in such a case, the following safeguards should be provided to Doctors at paragraph 106 which reads as follows:

“106. We, therefore, direct that whenever a complaint is received against a doctor or hospital by the Consumer Fora (whether District, State or National) or by the criminal court then before issuing notice to the doctor or hospital against whom the complaint was made the Consumer Forum or the criminal court should first refer the matter to a competent doctor or committee of doctors, specialised in the field relating to which the medical negligence is attributed, and only after that doctor or committee reports that there is a prima facie case of medical negligence should notice be then issued to the doctor/hospital concerned. This is necessary to avoid harassment to doctors who may not be ultimately found to be negligent. We further warn the police officials not to arrest or harass doctors unless the facts clearly come within the parameters laid down in *Jacob Mathew case*<sup>1</sup>, otherwise the policemen will themselves have to face legal action.”

Therefore, as apprehended by the Supreme Court that leaving the choice to the policemen to be let loose on the Doctors who are actually having qualified medical degrees will not only be undesirable but will be disservice to the public.

45. Once again reiterating the principles laid down in *Jacob Mathew Vs. State of Punjab* reported in 2005 (6) SCC 1, the Supreme Court in *INS. Malhotra (Ms) Vs. Dr. A. Kriplani and others* reported in 2009 (4) SCC 705, in paragraph 49 had observed as follows:

“49. Again, it has been held that indiscriminate prosecution of medical professionals for criminal medical negligence is counterproductive and does no service or good to the society.

“28. A medical practitioner faced with an emergency ordinarily tries his best to redeem the patient out of his suffering. He does not gain anything by acting with negligence or by omitting to do an act. Obviously, therefore, it will be for the complainant to clearly make out a case of negligence before a medical practitioner is charged with or proceeded against criminally. A surgeon with shaky hands under fear of legal action cannot perform a successful operation and a quivering physician cannot administer the end-dose of medicine to his patient.

29. If the hands be trembling with the dangling fear of facing a criminal prosecution in the event of failure for whatever reason—whether attributable to himself or not, neither can a surgeon successfully wield his life-saving scalpel to perform an essential surgery, nor can a physician successfully administer the life-saving dose of medicine. Discretion being the better part of valour, a medical professional would feel better advised to leave a terminal patient to his own fate in the case of emergency where the chance of success may be 10% (or so), rather than taking the risk of making a last ditch effort towards saving the subject and facing a criminal prosecution if his effort fails. Such timidity forced upon a doctor would be a disservice to society.” (Jacob Mathew case<sup>2</sup>, SCC pp.22-23, paras 28-29)

46. The principles laid down in *Jacob Mathew's case* (cited supra) once again was reiterated and followed in *Nizam's Institute of Medical Sciences Vs. Prasanth S. Dhananka and others* reported in 2009 (6) SCC 1.

47. In the light of the above, if it is seen the Supreme Court is of the opinion that medical professionals must be saved from unjust complaints of negligence or malpraxis and safeguards should be made. No blanket permission

can be issued to the police to arrest or to prosecute the so-called quacks identified by the respondent Indian Medical Association. If the IMA as a guild association of Allopathic medical practitioners are aggrieved by any misconduct committed by other medical professionals governed by other systems of medicines, they can make complaints to their professional bodies under which those professionals are registered as they have valid licence and can find remedies. It is only in case where they are able to establish that there persons masquerading as Doctors, then the question of pressing into service anti quackery act will come into play. It will enable them to take that person to be prosecuted by legal methods.

48.The State Government realizing the difficulties faced by such practitioners had issued a circular, dated 15.6.2010, wherein an aggrieved individual was directed to approach the respective council and the Government for taking an appropriate action. Since each of the council is established by the Parliament and having a statutory body to deal with such misconducts, it is appropriate that those councils should be approached in case of any deviation in the licence to practice. The respective councils can also decide whether the members registered under the respective council had transgressed their limits under the licence conditions which were issued under a particular Act of the Parliament. But at no point of time, a person who is having a valid degree and having registered under an enactment can be directed to be proceeded by the police by registering a criminal case against them in a criminal court and that too at the instance of an Association like the first respondent which is not even a statutory body, but a mere association of Doctors practicing under Allopathy System of medicine.

49.In the light of the above, this court is of the view that the order passed by this court in 2010 (4) CTC 798 is held to be a correct position of law. For the sake of repetition, it is observed as follows: &quot;4....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 recognised 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.&quot;

50.In the light of the above, the writ petition in W.P.(MD)No.7678 of 2010 is disposed of with the above directions. Since all the issues have been decided in W.P.(MD)No.7678 of 2010, the other writ petitions as they do not raise similar contentions must necessarily fail. Hence all the other writ petitions will stand dismissed. In individual cases, where actions have been already initiated (which are now under challenge) and if it is pending before any forum, it is open to the petitioners to approach those forums and take such defences that are open to them. However, there will be no order as to costs. Consequently, connected miscellaneous petitions will stand closed.

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To

1.The Superintendent of Police,

Kanyakumari District at

Nagercoil.

2.The Inspector of Police,

Colachel Police Station,

Kanyakumari District.

3.The Joint Director,

Public Health Department,

Kottar,

Nagerkovil,

Kanyakumari District.

4.The Deputy Director,

Public Health Department,

Krishnankovil, Vadaseri,

Nagercoil, Kanakumari District.

5.The Secretary,

Department of Health,

Indian Medicine and Homeopathy and

Family Welfare Department,

Fort St. George,

Chennai-600 009.

6.The Special Secretary,

State of Tamil Nadu,

Home Department,

Fort St. George,

Madras-600 009.

7.The Director General of Police,



Kamarajar Salai,

Madras-600 004.

8.The Superintendent of Police,

Thanjavur District,

Thanjavur.

9.The Superintendent of Police,

Pudukkottai District,

Pudukkottai.

10.The Drug Controller,

Arulananda Nagar,

Thanjavur.

11.The Chief Secretary,

The State of Tamilnadu,

Secretariat, Chennai.

12.The Secretary to Government,

The State of Tamilnadu,

Health & Family Welfare Department,

Secretariat, Chennai.

13.The Secretary to Government,

The State of Tamilnadu,

Home Department,

Secretariat, Chennai.

14.The Inspector General of Police,

South Zone, Alagar Kovil Road,

Madurai-2.

15.The District Collector,

Dindigul District, Dindigul.

16.The Superintendent of Police,

Dindigul District, Dindigul.

17.The Director,

Public Health and Preventive Medicine,

DMS Complex, Teynampet, Chennai-18.

18.The District Collector,

Nagercoil, Kanyakumari District.

19.The Joint Director of Medicines,

Sivagangai

20.The Superintendent of Police,

Sivagangai.

21.The Commissioner and Secretary to Government,

The State of Tamilnadu,

Health and Family Department,

Secretariat, Chennai-600 009.

22.The Deputy Director,

Public Health Department,

Meenakshi Nayakkan Patti Post,

Dindigul District.

23.The Inspector of Police,

Chanarpatti Police Station, Dindigul District

