

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1929 OF 1991

670573

21/10/83

Subhasis Bakshi & Ors.

Appellants

versus

West Bengal Medical Council & Ors.

Respondents

JUDGMENT



RAJENDRA BABU, J. :

"Thou shall not prescribe, but treat". Does this commandment stand the test of legal scrutiny? This is the stark and simple question to be decided in this case.

The long-winded facts of this case read as follows:

That about 337 persons, including the appellants had completed the diploma course of Community Medical Service in duly recognized institutions in the State of West Bengal and were posted in different parts of the State by the Government of West Bengal. On October 15, 1980 vide Notification No. Health/MA/7078/5M-5/80 the Government of West Bengal made an amendment in the Statute of the State Medical Faculty by introducing Article 6F under Part B, which reads *verbatim* as under:

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"6F: Students who will undergo and complete the requisite course of studies in Medicine/Medical Science (as defined and detailed in the Schedule to this article and hereinafter called as the said Regulations for the Diploma course in Community Medical Services) in Medical Institutions, duly recognized by the State Medical Faculty of West Bengal, shall be admitted into examinations in the subjects laid down in the said regulations and the students passing the examinations shall be granted Diploma with the abbreviation "Dip. C.M.S", by the Governing body of the aforesaid Faculty.

The Governing Body of the aforesaid Faculty shall also maintain a Register of such Diploma holders with a view to regulating, supervising and restricting their practice for the present."

The objective of the said Notification, as detailed therein, is as follows:

" I. Objectives:

- i). To provide medical training to a group of personnel to man the Health Centers and Subsidiary Health Centers.
- ii). Emphasis is to be given on comprehensive Health Care of the Community including promotive, preventive and curative aspects.
- iii). A candidate after successfully completing the course of studies will act as a Team Leader of various categories of Field Workers.
- iv). Training in curative medicines is to be imparted in such a way that after completion of training the trainees can treat common diseases among rural population including communicable diseases, malnutritional states, snake bite, insecticidal poisoning etc. Instructions on diseases requiring sophisticated treatment not practicable in Health Centers will be restricted to the barest minimum. However, such candidates should learn to recognize sign and symptoms of more serious diseases requiring special treatment at referral hospitals (e.g., Sub-divisional or District Hospital) so that such patients may be sent early to these institutions.
- v). The training in promotive and preventive aspect of Health Care including Family Planning and Child Care should be undertaken by actual

participation in the field work under the supervision of their teachers along with the field workers.

vi). A substantial part of the training will be conducted in Health Centers where they will reside along with their teacher in each term of their course so that they are exposed to the field condition from the beginning of their course."

On 23/6/1987, the Government of West Bengal issued a Corrigendum and the Diploma that was earlier known as 'Diploma in Medicine for Community Physicians' was rechristened as 'Diploma in Community Medical Service.' Apprehending that the re-naming would have a detrimental effect on their rights, the appellants filed W.P. No.7052/89 in the Calcutta High Court. The said Writ Petition was disposed of by the learned Single Judge on the assurance given by the Government Pleader that the State was willing to award the 'Diploma in Community Medical Service' to the successful candidates. It was also assured by the State, in the said petition that it would provide jobs to such candidates in accordance with the stated policy of the Government. The learned Single Judge of the High Court made it clear that the Diploma Holders will not have the right to private practice and that part of the order was not challenged by the appellants at all and entry in the register is only for the right to prescribe medicines and issue certificates.

Aggrieved by the order of the learned Single Judge, the appellants preferred an appeal before the Division Bench of Calcutta High Court. The Division Bench assured that the change in the nomenclature would not affect the Appellants right. The Division Bench reiterated that "the persons holding the

Diploma and employed to man the Health Centers and Subsidiary Health Centers would be competent to treat common diseases among rural population including communicable disease, malnutritional states, snake bite, insecticidal poisoning etc...". The Division Bench also mentioned the stated Government policy on providing jobs to such Diploma holders. Upon this the High Court opined that in the light of the clarifications made by and on behalf of the State Medical Faculty and the State, there should be no reason for the appellants to entertain any kind of apprehension with regard to their being able to perform functions and duties which they as are entitled to do under the Regulations as amended vide notification dated October 10, 1980. Pertaining to the registration of names in the Register of Diploma holders, the High Court stated that the Register shall be prepared and will be maintained in accordance with and in terms of the Statute 6F and that necessary formalities in that regard will be completed on or before March 31, 1990.

This judgment of the High Court was not complied with by the State. Contempt Application was filed on September 7, 1990 in the High Court. By the time, on November 21, 1990 Director of Health Services, West Bengal vide Order No. HPH/10 'S-3-90/1512 issued Job Description of Community Health Service Officers. While hearing the Contempt Application on November 23, 1990 the High Court accepted the assurance given by the Secretary to the Government in Department of Family Welfare in the presence of Secretary of the Medical Faculty and the State Medical Council that the Government would issue fresh instructions to the Job Description of Community Health Officers. These fresh

instructions, were assured, would be issued in accordance with the earlier judgment of the Bench. On December 10, 1990 the aforementioned description was partially modified vide Order No. HPH/10-'S-3-90/1629. By virtue of this Order, the Diploma Holders were allowed to treat common diseases among rural population as provided in the sub-clause (iv) of the objectives to the Notification dated October 15, 1980 and it was also mentioned that item No 17 in the Notice issued under No 1512 dated November 21, 1990 was treated as omitted. Another Order No HPH/10-'S-3-90/1630 was issued on the same day which says that the Diploma Holders were "not permitted to issue Death Certificate, Sickness Certificate or Medical Fitness Certificates required for Court cases" and also directed that the treatment advice and prescription made by them were to be counter signed by the BMO or the MO-in-charge. While on March 6, 1991 vide Memo No. HPH/10-'S-3/90/222 the Order No HPH/10-'S-3-90/1630 dated December 10, 1990 was cancelled. By Order dated May 7, 1991 the High Court disposed of the contempt proceeding by making the direction to the Government that they would maintain a register of the Diploma Holders in terms of the Article 6F of the original Notification. It is also clarified by the High Court in the Order that the "Registration by the State Medical Faculty will authorize the Community Health Service Officers to continue to discharge their duties as specified in the duty chart in the Health Centers/Subsidiary Health Centers as long as they are in service." Upon this high note, the first round of litigation before the Calcutta High Court was concluded.

At this juncture, by virtue of the order of the High Court, the appellants had obtained the right to treat common diseases among rural population including communicable diseases, malnutritional states, snake bites, insecticidal poisoning etc. But their grievance is that the consequential right of issuing certificates of sickness or death, prescriptions etc. was taken away by Notification No. HPH/10-S-3-90/1630 dated November 21, 1990. It is also the case of the appellants that item no. 17 of the said notification was cancelled. Challenging the denial of 'consequential rights to treat' such as right to issue prescription or certificates of sickness or death, the second round litigation was initiated.

The appellants anchored their case on a Notification No. 1076-Medical dated May 17, 1915 issued by the then Financial Department, Government of Bengal. The relevant portion of the said Notification is extracted hereunder.

"In exercise of the power conferred by clause (1) of Section 18 of the Bengal Medical Act, 1914 (Bengal Act, VI of 1914) and on the recommendation of the Bengal Council of Medical Registration, the Governor in Council is pleased to direct that a title, certificate of qualification, Diploma or license granted by the Governing Body of the State Medical Faculty, to any person shall subject to the provisions referred to in the said Clause entitle the holder of such title, certificate of qualifications, Diploma or License to have his name entered in the Register of Registered practitioners maintained under Section 15 of the said Act."

By virtue of this Notification read with Sections 15 and 18 of the Bengal Medical Act, 1914, the appellants argues that they are entitled to enter their names in the Register of Registered Practitioners maintained by the Bengal Council of Medical Practitioners. Urging this a Writ Petition was filed before the learned Single Judge of Calcutta High Court. The Petition was allowed in favour

of these appellants, subject to the condition that they are not allowed to pursue Private Practice and making it clear that their only right is to prescribe medicines and issue certificates and this part of the order became final.

Aggrieved by this order of the learned Single Judge of the High Court, the Bengal Medical Council preferred an appeal before the Division Bench of Calcutta High Court. The Division Bench allowed the appeal and set-aside the decision of the learned Single Judge. There are two main reasons given by the Division Bench to vacate the Writ. They are - (1). "...The *sine qua non* for the application and operation of Section 18 are- (a) satisfaction of the Council that any particular qualification is sufficient guarantee for the requisite knowledge or skill for efficient medical practice, (b) report to that effect by the Council to the Government, and (c) direction by the Government, on acceptance of such report, by notification in the Official Gazette. We do not think that in 1915, the Council could in any way be satisfied as to the quality or merit of a course or qualification introduced in 1900 and could report its satisfaction by some sort of divine prescience or foresight. Not do we think that the Government could by a Notification recognize or approve a course or certificate or qualification *in futuro* or *in vacuo*, in respect of a course or certificate which was not in existence at the date of Notification." (2). Relying on A.K. Sabhapathy v. State of Kerala, AIR 1992 SC 1310 it was found that 'a person can practice in allopathic system of medicine in a state or in the country only if he possesses a recognized medical qualification' and since the appellants doesn't possess the required

qualification, it was held that their names could not be included in the Medical Register. Thus this appeal by special leave.

The only relief, which these appellants are seeking, is the protection of their 'consequential rights to treat' such as issuing prescriptions or sickness or death certificates. As a matter of fact the respondents do not dispute the validity of Notification No. Health/MA/7076/5M-5/80 dated October 15, 1980. It is by virtue of this Notification that the appellants were having the right to treat. Now the only question for consideration is whether the Appellants, who are having the right to treat could issue prescription or sickness or death certificates?

In this context it is worthwhile to discuss *Dr. Mukhtiar Chand v. State of Punjab*, (1998) 7 SCC 579. In this case the validity of Notifications issued by State Governments of Punjab and Rajasthan, under Rule 2(ee)(iii) of the Drugs and Cosmetics Rules, 1945 whereby the Governments declaring some vaid/ hakims as persons practicing modern medicines were challenged. Upholding the validity of the Notifications and the said Rule, this Court held that, for the purpose of Drugs Act "...what is required is not the qualification in modern scientific system of medicine but a declaration by a State Government that a person is practicing modern scientific system and that he is registered in a Medical Register of the State...". In *Dr. Mukhtiar Chand*, this Court also clarifies that there could be two registers for medical practitioners i.e, Indian Medical Register and State Medical Register. As far as the State Medical Registers are concerned the concerned State Government according to the rules will determine the required

qualification. While recognizing the rights of vaidis or hakims to prescribe allopathic medicines, this Court also took into account of the fact that qualified allopathic doctors were not available in rural areas and the persons like vaidis / hakims are catering to the medical needs of residents in such areas. Hence the provision which allows them to practice modern medicine was found in the public interest. In this context *Dr. Mukhtiar Chand* holds that "...It is thus possible that in any State, the law relating to registration of practitioners of modern scientific medicine may enable a person to be enrolled on the basis of the qualifications other than the 'recognized medical qualification' which is a prerequisite only for being enrolled on the Indian Medical Register but not for registration in a State Medical Register. Even under the 1956 Act, 'recognized medical qualification' is sufficient for that purpose. That does not mean that it is indispensably essential. Persons holding 'recognized medical qualification' cannot be denied registration in any State Medical Register. But the same cannot be insisted for registration in a State Medical Register. However, a person registered in a State Medical Register cannot be enrolled on the Indian Medical Register unless he possesses 'recognized medical qualification'. This follows from a combined reading of Sections 15(1), 21(i) and 23. So by virtue of such qualifications as prescribed in a State Act and on being registered in a State Medical Register, a person will be entitled to practice allopathic medicine under Section 15(2)(b) of the 1956 Act." Based on this reasoning this Court partially overruled *A.K. Sabhapathy*, which earlier ruled that a person could practice allopathic medicine only if he possess a recognized medical qualification. In *Medical Council of India & Another v.*

State of Rajasthan and Anr. (1996) 7 SCC 731 (2 judges), it was observed that "...It would thus be clear that the basic qualification of MBBS as a primary qualification is a precondition for a candidate for being registered in the State Medical Register maintained by the State Board...". Identical view expressed in the decision in A.K. Sabhapathy on the same point having been overruled, this view in Medical Council of India vs. State of Rajasthan [supra] also stands impliedly overruled.

Coming back to the case in hand, the Division Bench in the impugned judgment relied upon A.K. Sabhapathy to deny the appellants' right to prescribe medicines or to issue sickness or death certificates and held that the appellants do not possess the 'recognized medical qualification'. In the light of the ruling in Dr. Mukhtiar Chand this view of the Division Bench cannot be sustained. Therefore there is no bar to register the name of the appellants in the State Medical Register.

Now the only issue for consideration is whether the right to issue prescription or certificates could be treated as a part of right to treat. In Dr. Mukhtiar Chand it was pointed out that "...because prescribing a drug is a concomitant right to practice a system of medicine. Therefore, in a broad sense, the right to prescribe drug of a system of medicine would be synonymous with the right to practice that system of medicine. In that sense, the right to prescribe an allopathic drug cannot be wholly divorced from the claim to practice allopathic medicine." The appellants are validly holding the right to treat certain diseases.

So their right to issue prescriptions or certificates cannot be detached from their right to treat. Such right to issue certificates or prescriptions is imbibed in the right to treat. One cannot and shall not be separated from the other. Once the right to treat is recognized, then the right to prescribe medicine or issue necessary certificate flows from it. Or else the right to treat cannot be completely protected. Hence, even assuming for a moment that the 1915 Notification is not there, still the appellants' right to prescribe medicine cannot be denied. In that view of the matter, the order of the Division Bench is set aside and that of the learned Single Judge is restored.

Therefore, the respondents shall make necessary arrangements to include the names of all the concerned Diploma holders in the State Medical Register for the limited purpose indicated therein within a period of six months from today. The appeal is allowed accordingly.

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[S. RAJENDRA BABU]

.....
[SHIVARAJ V. PATIL]

NEW DELHI,
FEBRUARY 14, 2003.



URGENT FEE Rs. 21/-

SUPREME COURT OF INDIA
 Certificate

Matter No. CA 152-1974.
 Subhasis Bantshi & Ors.
 vs.
 West Bengal Medical Council & Ors.

Brief Cause Title

Sl. No. A1-8257-2003
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 Prescribed Fee 21/-
 Fee Rs. Twenty one only
 Date of receipt of money 2-4-2003
 Date of receipt of balance 2-4-2003
 Date of receipt of balance 7-6-2003
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Section Officer
Supreme Court of India

A
7/4

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7/4/03

**IN THE COURT OF SH. SURESH KUMAR, PCS
CIVIL JUDGE (JUNIOR DIVISION) / FARIDKOT.
(UID No.-PB0481)**

Civil Suit No.-842/26.04.2017
CNR No. PBF02-000307-2017
CIS No. CS/183/2017
Date of Decision:- 23.04.2019

Kulwant Singh son of Sh. Mukhtiar Singh, resident of Near Gurudwara Sahib, Main Road, Basti Nanaksar, Village Sandhwan Tehsil Kotkapura, District Faridkot.

....Plaintiff.

Versus

1. The State of Punjab through its Collector of District Faridkot having his office in Mini Secretariat Faridkot, Faridkot Tehsil and District Faridkot.
2. The Principal Secretary, Department of Health and Family Welfare, Government of Punjab, having his office in Civil Secretariat Chandigarh.
3. The Director Health and Family Welfare Department, Government of Punjab, Punjab Parivar Kalyan Bhawan, Sector 34-A, Chandigarh.
4. The Senior Superintendent of Police, Faridkot having his office in Mini Civil Secretariat Faridkot, Faridkot Tehsil and District Faridkot.

....Contesting Defendants.

5. Para Medical Council Punjab (Regd.) having its office in Sahibjada Ajit Singh Nagar, Mohali through its Registrar as its Principal Officer and as also in his individual capacity.
6. Para Medical Council Punjab (Regd.) having its Office in Sahibjada Ajit Singh Nagar, Mohali through its Controller of Examination.

...Performa Defendants.

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Civil Judge (Jr. Divn.),
Faridkot, UID No.PB0481

Suit under section 38 of the Specific Relief Act read with other attracted and enabling Provisions of the laws praying thereby this Court to may please order issuance of permanent restraining thereby the contesting defendants from not permitting/ allowing the plaintiff to prescribe but to treat the patients if any coming to him, as the plaintiff is possessed of a Diploma in Community Medical Services and Essential Drugs and is thus qualified, entitled and eligible to practice by making prescriptions of the permissible medicines and administration thereof meaning thereby the treatment of the patients, if any coming to him because in view of the law laid down in various authorities Pronouncements of Hon'ble Supreme Court and Hon'ble High Courts of out Country inter alia in Re: Subhashis Bakshi and others Versus West Bengal Medical Council and others Civil Appeal No.52/133 of 1999 decided on 14.02.2013, the plaintiff is at liberty to deal with the essential drugs for primary health care by prescribing their use by the ailing persons;

AND thus a prayer to may please recognize and to make the declaration to the effect that the plaintiff is entitled to the aforesaid relief claimed for as the plaintiff

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has been promised a Constitutional Right to earn livelihood for himself and his dependents by lawful and legal means and thus to may please restrain the contesting defendants from interfering in his intended profession and practice and thus to may please ensure the removal of hovering apprehensions and dangers upon him that if he chooses to profess as prayed above, he may again be put into distress and troubles by the contesting defendants;

With a further prayer to may please grant any other relief to the plaintiff to which he is found entitled or ends of justice deem fit and conducive to the plaintiff;

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Present :- Sh. S.K Chawla, Advocate Counsel for the plaintiff.
Sh. S.S Gill, Government Pleader for defendants No.1 to 4.
Shri Vinod Maini, Advocate, counsel for the defendants No.5 and 6.

JUDGMENT

1. Brief facts of the case of the plaintiff are that he was attracted from the advertisements and schemes of Para Medical Council Punjab (Regd.) Mohali and undergone the requisite courses, classes and training and accordingly he was awarded the requisite diploma in Community Medical Services and Essential Drugs in Short C.M.S & E.D for having passed the course and examination from Para Medical Council, Punjab,

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Mohali in the year 2006. That performants claimed its affiliation with 'The Open International University for Complimentary Medicine established as per World Health Organization, Alma Ata U.S.S.R declaration 1962 & recognized by the United Nations Peace University constituted under Resolution No.35/55/5/XII/80. That on intervening night of 22/23.07.2017, police party raided the house of plaintiff alleging that he was suspect of indulging in anti social activities i.e. sale of intoxicated drugs etc. That the plaintiff told the police party that he was not doing anything like that and was earning his livelihood by hard earning means. At that time relatives of the plaintiff were also present in the house. However, police remained adamant and started searching the house of plaintiff and did throw away his house hold articles here and there. Police party became furious and started misbehaving with the children and women, which resulted into altercation with the police and due to noise, the local residents also came to the house of plaintiff and they were intervened. Inspector who was heading the police party told the plaintiff that he would teach him a lesson and plaintiff was taken away to P.S Sadar Kotkapura. It is submitted that relatives and well wishers of the plaintiff came to the police station, but they were not allowed to enter the police premises. So, they went to the office of SSP, Faridkot, but none heard them. Lateron police registered false FIR No.27 dated 23.03.2017 under section 420 of the Indian Penal Code read with Section 15 (2) (B)

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Indian Medical Council Act, PS Sadar Kotkapura and arrested the plaintiff in that case on concocted story. Plaintiff was produced before the Learned Chief Judicial Magistrate, Faridkot and was remanded to police custody and thereafter, he was released on bail vide order dated 29.03.2017. That plaintiff handed over authenticated copies of his Diploma to Investigating Officer and at the time of raid, no medicine or anything incriminating was recovered from his house. That plaintiff is Diploma holder and is authorised to prescribe and administer the medicines and to run his profession as health care worker. Plaintiff has been repeatedly requested the defendants to let him work and profess as a health care worker so as to earn his livelihood, but to no effect. Cause of action to file the present suit created in favour of plaintiff a day prior to filing of the present suit, when defendants refused to consider the claim of the plaintiff. Hence, the present suit.

2. Upon notice, defendants No.1 and 4 appeared through Government Pleader and filed written statement by taking preliminary objections that on 23.03.2017 Inspector Roop Chand, P.S Sadar Kotkapura, while on patrolling got a secret information that plaintiff is running a medical clinic in his house and doing a medical practice and doing treatment of people pretending to be a authorized doctor and thereby defrauding public at large and collecting a huge amount. It is contended that from the information offence under section 420 of the

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Indian Penal Code and 15 Indian Medical Act was made out against plaintiff and FIR No.27 dated 23.03.2017, PS Sadar Kotakapura was registered against plaintiff. Thereafter, police joined Sh. Harjinder Singh, Drug Inspector, Faridkot and Dr. Ramesh Kumar, Medical Officer, Civil Hospital, Kotkapura notified under IMC, and conducted a raid at his clinic at Village Sandhwan, where-from police recovered 1810 tablets and 152 capsules, 14 injections, 38 bottles of syrups and stethoscope from his possession without any licence of permit. At that time, they also joined Sh. Mangli Dass Namberdar son of Rattan Singh, resident of Village Sandhwan. Further it is contended that no notice under section 80 of CPC has been served by the plaintiff upon the defendants prior to filing of the suit. On merits, it is contended that the plaintiff is not licence holder nor have permission to sell and possess the drugs and to treat the patients or to practice. The present suit has been filed by plaintiff on false and frivolous grounds. There is no valid licence with the plaintiff to practice in drugs and medicine. It is also contended that at the time of raid, plaintiff produced his three certificates and same were scrutinized by Dr. Ramesh Kumar, who found the same certificates to be forged and not valid and the same were taken into police possession. The recoveries of medicines from the clinic of plaintiff are true and genuine and there is nothing illegal done in the police proceedings. Rest all other averments have been denied and it has been prayed that the suit of the plaintiff may kindly be dismissed.

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3. Defendants No.2 and 3 also filed separate statement by taking preliminary objections that the plaintiff has no right to file civil suit against the defendants, because the Registration Certificate of Community Medical Services and Essential Drugs issued on 01.10.2010 and valid upto 30.09.2015 by Para Medical Council (Punjab) is not coming under the preview of Director Health & Family Welfare (Punjab) Chandigarh. It is contended that on 23.03.2017 raid was conducted by police by taking the employee of Health Department in which police seized case property i.e. medicines and instruments. The plaintiff has no right to file civil suit against the defendants because during different types of medicines were seized and according to their salts mentioned is not fall in the list of Essential Drugs and List of OTC Drugs on all Registration Certificates reissued by Para Medical Council (Punjab). Therefore, the plaintiff has no right to file the present suit. It is contended that all Registration Certificates issued by Para Medical Council not renewed periodically instead reissued periodically. As per Indian Medical Council Act guidelines in which any doctor or physician or registered medical practitioner registered under the said Act and the registration certificate of the qualified doctor or RMP issued only once a time periodically and entered the name in Punjab State Medical Register thereafter it is renewed same periodically. As per plaintiff's registration certificate in which Atropine Suplhate drug is a life saving drug and for his plaintiff no special

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training of Cardiopulmonary resuscitation and only the Medical officer can use the same drug in emergency conditions in well equipped hospitals. No notice under section 80 CPC was served upon the defendants before filing the present suit. Rest all other averments have been denied and it has been prayed that the suit of the plaintiff may kindly be dismissed.

4. Defendants No.5 and 6 also appeared through their counsel and filed separate written statement by admitting case of plaintiff that Para Medical Council Punjab, Mohali is a society registered under the Societies Registration Act, XXIV 1860 and is running and affiliating various educational institutions pertaining to field of Para Medical Courses. There is no Central Act to regulate the field of Para Medical Courses. The defendants-council has formed a group of expert doctors as Committee Members to run the various Para Medical Courses. There is no law/ regulation for regulating the registration of paramedical field. There is no State or statutory council for paramedical education set up in the State of Punjab, Haryana and Chandigarh nor has any procedure for registration of paramedical technicians ever been set up. The defendants-council training to its students in Para Medical Field like Multipurpose Health Workers, Community Medicine Service & Essential Drugs, Dental Bag Technicians, laboratory technicians of various types and these are simple skill based knowledge courses and do not require any elaborate

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academic training. It is contended that the students of the defendants, after completion of their courses, are well settled in their professional fields and even many of them have got Government jobs and some of the students who have diploma in Multipurpose Health Worker Course from the defendants had applied for the post of Multipurpose Health Workers in the State of Haryana as per the advertisement, but they were not called for interview on the ground that they have not acquired the diploma from institutions either run by Haryana Government or approved by Haryana Government.

5. Further it is contended that the the paramedical field is unregulated field in the State of Punjab, Haryana and Chandigarh and in the Central Government, and the Haryana Government or Punjab Government has not framed any rule or regulations nor enacted any law to regulate para medical filed or alternative field of medicines like Yoga, acupressure, m magneto graph, naturopathy etc. Further it is contended that the plaintiff holding the diploma in Community Medical Service & Essential Drugs Course would be competent to treat diseases among rural population including communicable diseases, malnutrition states, snake bites etc. and the diseases mentioned in the Manual issued by World health Organization, Regional Office, New Delhi, on Essential Drugs for primary health care and have right to issue prescriptions or certificate. In the end, they prayed that the suit of the plaintiff may be decreed.

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6. After going through the pleadings of the parties Ld. predecessor of this court framed following issues:

1. *Whether the plaintiff is entitled for a relief of permanent injunction, as prayed for?OPP*
2. *Whether the plaintiff is entitled for a relief of declaration, as prayed for?OPP*
3. *Whether the plaintiff is entitled for any other relief, as prayed for? OPP*
4. *Whether the suit of the plaintiff is not maintainable?OPD*
5. *Whether the plaintiff has no cause of action to file the present suit? OPD*
6. *Whether no notice under section 80 CPC has been served by plaintiff?OPD*
7. *Relief.*

7. In order to prove his case, plaintiff Kulwant Singh himself stepped into the witness as PW1, who stepped into the witness box and tendered into evidence his duly sworn affidavit Ex.PW1/A in which he has reiterated his entire version of his plaint and the same is not reproduced here for the sake of brevity and repetition. He also tendered into evidence documents i.e. Diploma Certificate as Ex.P1 issued by Paramedical Council Punjab, Mohani, his registration certificate as Ex.P2 issued by Paramedical Council Punjab, Mohali and contents of essential drugs as Ex.P3.

PW2 Sukhmander Singh son of Chand Singh, resident of Near Nanaksar Gurudwara Sahib, Village Sandhwan, Tehsil Kotkapura, District Faridkot, being co-villager and known to plaintiff stepped into the witness

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box and tendered into evidence his duly sworn affidavit Ex.PW2/A, in which he stated that he personally knows the plaintiff. He also deposed that he has been practicing in their village as a Health Worker. The witness further deposed that he has been studied upto Middle Standard and he has been the diploma of the plaintiff, who is possessed of a Diploma in Community Medical Services and Essentials Drugs. He further deposed that he has seen registration certificate of the plaintiff which he has been getting renewed from time to time and same is now valid up to 09.08.2020. The witness also deposed that the plaintiff has been prescribing the medicines meant for small but frequent diseases i.e. fever, cough, cold etc and he does not sell any sort of medicines in contravention of the authorization possessed by him by way of certificate in question. He also deposed that they are poor person and when they fall ill or suffer from any frequent ailment, they cannot afford to avail the services of the big doctors of the area because they can not arrange the funds meant for their fee for the purpose of check-up and obtaining of the clinical reports. The witness also deposed that fortunately, and due to the grace of almighty the medicines prescribed by the plaintiff, invariably suit to the patients and they get cured and become well by the treatment prescribed by the plaintiff. He further deposed that plaintiff should not be stopped from carrying on his aforesaid profession which infact is their need and necessity.

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PW3 Joginder Singh son of Gurcharan Singh, resident of Near Nanaksar Gurudwara Sahib, Village Sandhwan, Tehsil Kotkapura, District Faridkot, being co-villager and known to plaintiff stepped into the witness box and tendered into evidence his duly sworn affidavit Ex.PW3/A, in which he fully supported and corroborated the version of PW2 Sukhmander Singh and the same is not reproduced here for the sake of brevity and repetition.

PW4 Kartar Singh son of Buta Singh, Panch of Gram Panchayat of Village Sandhwan, stepped into the witness box and tendered into evidence his duly sworn affidavit Ex.PW4/A, in which he also fully supported and corroborated the version of PW2 Sukhmander Singh and the same is not reproduced here for the sake of brevity and repetition.

Thereafter, Learned counsel for the plaintiff tendered into evidence documents i.e. certified copy of FIR No.27 dated 23.03.2017 as Ex.P4, certified copy of memo regarding production of case property as Ex.P5, certified copy of report dated 23.03.2017 as Ex.P6, certified copy of site plan as Ex.P7, certified copy of memo to call counsel as Ex.P8, certified copy of arrest memo as Ex.P9, certified copy of memo regarding disclosing rank and posting as Ex.P10, certified copy of memo regarding personal search as Ex.P11, certified copy of memo regarding intimation given to his relatives as Ex.P12, certified copy of letter issued by Para Medical Council (Pb). Mohali regarding verification of certificates as

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Ex.P13, certified copy of letter written by SHO, PS Sadar to Incharge Para Medical Council, Punjab, Mohali as Ex.P14, certified copy of letter written by Para Medical Council Punjab, Mohali to SHO PS Sadar Kotkapura as Ex.P15, certified copy of registration certificate dated 01.10.2010 of plaintiff as Ex.P16, certified copy of registration certificate dated 23.12.2013 of plaintiff as Ex.P17 and closed the evidence on 22.01.2019.

8. In order to rebut the case of the plaintiff, defendants examined Dr. Ramesh Kumar, Medical Officer, Civil Hospital, Kotkapura as DW1 and tendered into evidence his duly sworn affidavit Ex.DW1/A, in which he has reiterated the entire version of written statement.

Thereafter, evidence of defendant was closed by order vide order dated 26.03.2019.

9. Learned counsel for the plaintiff argued that plaintiff is Diploma Holder in Community Medical Services and Essential Drugs and is qualified and entitled to Drugs by making prescriptions of the permissible medicines and administration therefore to treat the patients if any coming to him. He further argued that defendants No.1 to 4 are not permitting the plaintiff to prescribe and treat the patients, if any coming to him. Learned counsel for the plaintiff further argued that plaintiff has obtained Diploma Holder in Community Medical Services and Essential Drugs from Para Medical Council Punjab (Regd.) Mohali. He also argued

that on intervening night of 22/23.03.2017, police party raided his house on the grounds that he is indulging in anti social activities i.e. sale of intoxicated drugs etc. and also registered a false FIR bearing No.27 dated 23.03.2017 under section 420 of the Indian Penal Code read with Section 15 (2) (B) Indian Medical Council Act, PS Sadar Kotkapura regarding which a separate trial is pending before criminal court and the same is illegal without any basis. Learned counsel for the plaintiff further argued that defendants No.1 to 4 are restraining him from continuing his profession. He prayed that suit be decreed.

10. On the other hand, Ld. Government Pleader on behalf of defendants No.1 to 4 argued that FIR has been registered against plaintiff as he was running a Medical Clinic in his house pretending himself to be a authorized doctor and defrauded public at large and during the raid conducted at his house, police recovered 1810 tablets, 152 capsuls, 14 injections and 38 bottles of syrup, regarding which he was having no authority to keep those articles with him. He further argued that plaintiff was having no right to keep 46 types of medicines in which 18 combination drugs were seized by plaintiff during raid. He prayed that suit of plaintiff be dismissed.

Learned counsel for the defendants No.5 and 6 admitted the claim of the plaintiff that he has been issued Certificate in C.M.S and E.D., as he has completed requisite Para Medical Training and Course with their

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Council and he is allowed to prescribe and treat the patients approaching him. He prayed that the suit of the plaintiff may be decreed.

11. I have heard rival contentions of both the parties and perused the case filed carefully with their able assistance. After hearing both the parties and going through the record my issue wise findings are as given below:

ISSUES NO. 1 TO 3.

12. All these issues are taken up together being interconnected and to avoid the repetition of facts and evidence. Onus to prove these issues was upon the plaintiff and in order to prove and rebut these issues, the parties have examined the witnesses mentioned above and proved on record documents mentioned above, the same are not repeated here for the sake of brevity. The present suit for declaration and permanent injunction has been filed by plaintiff against the defendants on the grounds that plaintiff is Diploma Holder in Community Medical Services and Essential Drugs and is qualified and entitled to Drugs by making prescriptions of the permissible medicines and administration therefore to treat the patients if any coming to him and restraining the defendants No.1 to 4 who are not permitting the plaintiff to prescribe and treat the patients if any coming to him. It is case of the plaintiff that he has obtained Diploma Holder in Community Medical Services and Essential Drugs in short C.M.S & E.D from Para Medical Council Punjab (Regd.) Mohali i.e.

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performa defendants No.5 and 6. It is further alleged by plaintiff that on intervening night of 22/23.03.2017, police party raided his house on the grounds that he is indulging in anti social activities i.e. sale of intoxicated drugs etc and police party thrown household articles of the house of plaintiff and also registered a false FIR bearing No.27 dated 23.03.2017 under section 420 of the Indian Penal Code read with Section 15 (2) (B) Indian Medical Council Act, PS Sadar Kotkapura regarding which a separate trial is pending before criminal court. It is apprehended by plaintiff that defendants No.1 to 4 are restraining him from continuing his profession.

13. On the other hand, it is case of the defendants No.1 to 4 that above-said FIR has been registered against plaintiff as he was running a Medical Clinic in his house pretending himself to be a authorized doctor and defrauded public at large and during the raid conducted at his house, police recovered 1810 tablets, 152 capsuls, 14 injections and 38 bottles of syrup, regarding which he was having no authority to keep those articles with him. It is defence of defendants No.2 and 3 that they have been unnecessarily impleaded as defendants in the present suit, because they have nothing to do with the certificate of C.M.S and E.D issued on 01.10.2010 valid till 30.09.2015 issued by Para Medical Council Punjab (Regd.) Mohali. Although they have admitted that FIR was got registered against the plaintiff and certain medicines, equipments alongwith tablets

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were got recovered from him. It is also alleged by them that plaintiff was having no right to keep 46 types of medicines in which 18 combination drugs which were seized by plaintiff during raid.

14. Performa defendants No.5 and 6 have filed their written statement admitting claim of the plaintiff that he has been issued Certificate in C.M.S and E.D., as he has completed requisite Para Medical Training and Course with their Council and he is allowed to prescribe and treat the patients approaching him.

15. At the very outset, it is admitted fact that plaintiff is a diploma holder in C.M.S and E.D issued by Para Medical Council Punjab (Regd.) Mohali, as he has passed examination. Certificate regarding the same is Ex.P1. Registration certificate of plaintiff with C.M.S and E.D is Ex.P2 bearing No.7953 is valid upto 09.08.2020 and this certificate also contains list of essential drugs, equipments and list of OTC Drugs which plaintiff can keep for treatment of patients. At the very outset, it is important to mention here that as far as registration of FIR bearing No.27 dated 23.03.2017 under section 420 of the Indian Penal Code read with Section 15 (2) (B) Indian Medical Council Act at PS Sadar Kotkapura against plaintiff is concerned, this Court is not going to give any findings regarding the legality or illegality of above-said FIR as the matter is already pending before the criminal court. Whether plaintiff was found in possession of any illegal or combination drugs is a matter which shall be

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decided independently by the criminal court. Hence, it is made clear that this judgment of mine shall have no effect whatsoever on the trial in FIR No.27 dated 23.03.2017, as mentioned above.

16. This Court shall only deal with the matter of permanent injunction and declaration in which plaintiff has sought declaration that he is entitled to prescribe and treat the patients coming to him, as he is having Diploma in C.M.S and E.D and further relief of permanent injunction restraining defendants No.1 to 4 from stopping him to prescribe and treat the patients coming to him. As already discussed above, defendants No.1 to 4 have never denied the fact that plaintiff has completed course from Para Medical Council Punjab (Regd.) Mohali and he has been issued certificate of the registration from time to time as earlier he was issued certificate Ex.P16 bearing Registration No.7953 which was valid upto 30.09.2015 and now he is having certificate of registration Ex.P2 bearing same registration number valid upto 09.08.2020. It is also important to mention here that DW1 Dr. Ramesh Kumar, Medical Officer, Civil Hospital, who appeared into the witness box on behalf of defendants also admitted during his cross-examination that *“Certificates issued to plaintiff are correct. Plaintiff cannot prescribe medicines, but he can administer medicines to patients to save their lives and can also treat them. It is correct that plaintiff is entitled to practice legally regarding the Essential Drugs mentioned in his registration*

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certificate.” Hence, in view of the discussion made above and in view of cross-examination of DW1, it is admitted and proved fact that plaintiff has completed a course in C.M.S and E.D and his certificate is Ex.P1 and further that he is registered to practice and treat the patients till 09.08.2020, as per Ex.P2 and he can also administer medicines which are mentioned in Ex.P2 and can keep equipments and OTC Drugs which are mentioned in that certificate. The only point of contention raised by defendants is that plaintiff is not entitled to prescribe drugs to patients but he can administer drugs patients to save their lives by way of treatment. However, this Court does not agree with the arguments so raised by Learned counsel for the defendants as this point has already been decided by Hon'ble Supreme Court of India in case titled as **“Subhashis Bakshi and others Versus West Bengal Medical Council and others AIR, 2003 S.C 1563”**, in which Hon'ble Supreme Court of India has decided this question and held that the right to prescribe drug of a system of medicine would be synonymous with the right to practice that system of medicine. In that sense, the right to prescribe an allopathic drug cannot be wholly divorced from the claim to practice allopathic medicine. One cannot and shall not be separated from the other. Once the right to treat is recognized, then the right to prescribe medicine or issue necessary certificate flows from it. The facts of the present case were also similar to the facts of the case before the Hon'ble Supreme Court of India and in that case also

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appeal was filed before Hon'ble Supreme Court of India by persons who completed the Diploma of course of Community Medical Services in duly recognized institution in the State of West Bengal and they were not allowed to prescribe but to treat. Hence, in view of the law laid down by Hon'ble Supreme Court of India, it is clear that right to treat also includes right to prescribe medicines. As already discussed above, plaintiff has duly proved on record his Diploma Certificate Ex.P1 and latest registration certificate which is valid upto 09.08.2020 in which list of essential drugs and equipments and list of OTC drugs is clearly mentioned which the plaintiff is entitled to keep with him. Needless to say, plaintiff is also duty bound to follow the instructions and directives mentioned at Sr. No.1 to 10 in his certificate Ex.P2 and other instructions and directives issued by Government and Para Medical Council from time to time. But in view of the discussion made above, it is certainly clear that plaintiff is entitled to prescribe and to treat patients if any coming to him as plaintiff is Diploma holder in C.M.S and E.D and is a qualified person and he cannot be restrained by defendants No.1 to 4 from doing so. Hence, in view of the discussion made above issues No.1 and 2 are decided in favour of plaintiff and against the defendants. As far as relief regarding issue No.3 is concerned, neither the plaintiff has claimed any other relief nor he is entitled to any other relief. Thus, this issue is decided against the plaintiff and in favour of defendants.

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ISSUE NO.4 AND 5.

17. Onus to prove these issues was upon the defendants, but neither any evidence was produced nor arguments were raised by Ld. Counsel for the defendants. Rather, it is clear from discussion made above, suit of the plaintiff is maintainable and he was having cause of action to file the suit against the defendants No.1 to 4 as plaintiff was having threat that defendants did not allow him to continue his profession. Accordingly, these issue are decided against the defendants and in favour of plaintiff.

ISSUE NO.6

18. Onus to prove this issue was upon the defendants. It is admitted fact that no notice was issued by plaintiff under section 80 CPC prior to filing of the present suit. But at the time of filing of this suit, plaintiff moved an application under section 80 (2) CPC for seeking exemption from the service of statutory legal notice under section 80 CPC and defendants never filed reply to this application and never objected to the same. Learned Predecessor of this Court allowed the suit to be registered exempting necessary notice under section 80 CPC. Therefore, it is clear that no notice was served upon the defendants, but exemption from the same was sought from the court. Therefore, it is not fatal to the case of plaintiff and accordingly, this issue is disposed of.

RELIEF

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19. In view of the discussion made above suit of the plaintiff is decreed with costs and it is held that plaintiff is entitled to prescribe and treat the patients, if any coming to him, as he is having Diploma in C.M.S and E.D till 09.08.2020 and defendants No.1 to 4 are hereby restrained from stopping plaintiff to prescribe and to treat patients, if any coming to him. It is made clear that registration certificate of plaintiff Ex.P2 is only valid till 09.08.2020. Therefore, this judgment shall have affect only till that period and in case plaintiff want to continue his profession, as mentioned above, he shall renew his certificate from Para Medical Council Punjab (Regd.), as per rules from time to time. Decree-sheet be prepared accordingly. File be consigned to record room as per rules.

Pronounced on
Dated: 23.04.2019
Amit Kumar

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Civil Judge (Junior Division),
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This Judgment contains 22 pages and every page has been signed by under-signed.

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Present :- Sh. S.K Chawla, Advocate Counsel for the plaintiff.
Sh. S.S Gill, Government Pleader for defendants No.1 to 4
Shri Vinod Maini, Advocate, counsel for the defendants No.5
and 6

No rebuttal evidence is present. Perusal of file reveals that plaintiff has availed number of opportunity for rebuttal evidence, but did not lead the same. No request has been made specifically for adjourned for the said purpose. Therefore, the rebuttal evidence is closed by order.

Arguments heard. Vide my separate judgment of even date, the suit of the plaintiff is decreed with costs. Decree-sheet be prepared accordingly. File be consigned to record room as per rules.

Pronounced on
Dated: 23.04.2019
Amit Kumar

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