

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) No.7865/2010

DELHI MEDICAL ASSOCIATION ...Petitioner
Through: Mr. Nitin K. Gupta, Adv.

Versus

PRINCIPAL SECRETARY HEALTH & ORS. ...Respondents

Through: Ms. Aayushi Gupta, Adv. for Mr. Raman Duggal, Standing Counsel for GNCTD/R-1 to 4.
Mr. Vinay Garg, Sr. Adv. with Mr. Praveen Khattar, Adv. for R-5/DMC.
Mr. Rakesh Tiku, Sr. Adv. with Mr. Sandeep Gupta, Adv. for R-10/Review applicant.
Mr. A.J. Nasir, Adv. for R-11.
Mr. Ruchir Mishra, CGSC with Mr. Mukesh Tiwari, Adv. for UOI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER
13.05.2016

Review Petition No. 226/2016 (of the respondent no.10 All India Indian Medicine Graduates Association (Regd.).

1. Review is sought of our judgment dated 8th April, 2016 allowing the writ petition (i) by declaring that no practitioner of Indian System of Medicine or holding a qualification as listed in the Schedule to the Indian Medicine Central Council Act, 1970, even if it be of in integrated medicine as defined in Section 2(h) of the Delhi Bharatiya Chikitsa Parishad Act, 1998, is entitled to practice modern scientific system of medicine as defined in the Indian Medical Council Act, 1956 read with Indian Medical

Degrees Act, 1916 and as has come to be known as Allopathic system of medicine; (ii) by directing all the authorities concerned with enforcement of the provisions of the Indian Medical Council Act, 1956, Delhi Medical Council Act, 1997, Indian Medicine Central Council Act, 1970 and the Delhi Bharatiya Chikitsa Parishad Act, 1998 and/or entrusted with the task of preventing persons not holding qualification as mentioned in the Schedules of the Indian Medical Council Act, 1956 from practicing modern scientific system of medicine, to not allow any person holding qualification in Indian Medicine as described in the Schedule to the Indian Medicine Central Council Act, 1970, even if holding a degree in integrated course as defined in the Delhi Bharatiya Chikitsa Parishad Act, 1998, from practicing modern scientific system of medicine; (iii) by declaring that Section 2(h) of the Delhi Bharatiya Chikitsa Parishad Act, 1998 or any other provision thereof or of the Indian Medicine Central Council Act, 1970 does not permit any person holding qualification in Indian Medicine as prescribed in the Indian Medicine Central Council Act, 1970 even if a degree in integrated course to practice modern scientific system of medicine in terms of Indian Medical Council Act, 1956 read with Indian Medical Degrees Act, 1916 and Delhi Medical Council Act, 1997; (iv) by declaring that the Notification dated 10th February, 1961 of the Delhi Government issued in pursuance to Rule 2(ee) of the Drugs and Cosmetics Rules, 1945 does not entitle any person not holding a qualification listed in the Schedules to the Indian Medical Council Act, 1956 and whose name is not entered in the State Medical Register under the Delhi Medical Council Act, 1997 to prescribe Allopathic drugs and, (v) by declaring that the Notification dated 19th May, 2004 of the Central Council of Indian Medicine does not entitle the practitioners of Indian Medicine within the meaning of the Indian Medicine Central Council

Act, 1970, even if holding degree in integrated medicine within the meaning of the Delhi Bharatiya Chikitsa Parishad Act, 1998 to practice modern scientific system of medicine / Allopathic system of medicine within the meaning of Indian Medical Council Act, 1956 read with Indian Medical Degrees Act, 1916.

2. We may at the outset state that though the review application emphasises the factum of the judgment dated 8th April, 2016 having been delivered after eleven months of being reserved and cites *Anil Rai Vs. State of Bihar* (2001) 7 SCC 318 and the senior counsel for the review applicant also states that in the title of the judgment the date on which it was reserved has not been given but the judgment expressly records the date when it was reserved and that no oral arguments were addressed by the counsel for the review applicant though he had filed written submission. The senior counsel for the review applicant also admits that no oral arguments were addressed. We wonder, whether a counsel who has not even bothered to address oral arguments, can make such a grievance. Not only so, the counsel for the review applicant also appears to be oblivious of the listing of the matter on 29th January, 2016 to ascertain further developments therein and when further arguments were heard of the counsels who chose to appear. Upon our pointing out the same to the senior counsel, he does not press the said grievance.

3. The thrust of the senior counsel for the review applicant for seeking review is (i) the judgment of the Supreme Court in *Subhasis Bakshi Vs. West Bengal Medical Council* (2003) 9 SCC 269 which he argues was not noticed in the judgment of which review is sought and (ii) Rule 10 of the Delhi Bharatiya Chikitsa Parishad Rules.

4. We have already recorded above that the counsel for the review applicant, when ought to have, did not address arguments. We have in the judgment of which review is sought recorded having perused the written submissions filed before us. We have today again perused the said written submissions filed on behalf of the review applicant through Shri Jasbir Singh Malik, Advocate and do not find even therein any mention even of either of the two grounds on which review is sought. Certainly the scope of review is not to allow a counsel who has not chosen to argue at the time of addressing arguments to, as an afterthought, argue the matter afresh.

5. Having said that we must notice that review is sought by the review applicant through Shri Sandeep Gupta, Advocate who was appearing for the respondent no.12 Central Association of Medical Practitioners (CAMP) and who also though had not chosen to argue at the relevant time but in his written submissions had referred to the judgment of the Supreme Court in *Subhasis Bakshi* supra and which was perused by us. However the same was not found relevant by us for the purposes of the said petition as the said judgment was concerning the Bengal Medical Act, 1914 and the notifications issued by the Government of West Bengal and which had no applicability as far as Delhi is concerned. Undoubtedly the said judgment refers to *Dr. Mukhtiar Chand Vs. State of Punjab* (1998) 7 SCC 579 which has been analysed by us in detail in the judgment of which review is sought but the same was no ground to burden our judgment with *Subhasis Bakshi* supra. We even now do not find the Supreme Court, in *Subhasis Bakshi* supra, to be reading *Dr. Mukhtiar Chand* supra any differently from what has been analysed by us in the judgment of which review is sought.

6. The review applicant, being fully aware that the grounds on which review is sought not finding mention in the written submissions of its Advocate, has along with the review application also filed the written arguments filed by Mr. Sandeep Gupta, Advocate on behalf of the respondent no.12 CAMP. However the review applicant cannot derive any benefit therefrom.

7. As far as Delhi Bharatiya Chikitsa Parishad Rules are concerned, in the light of the reasoning given by us in the judgment of which review is sought, the same are of no relevance.

8. The senior counsel for the review applicant however contends that Rule 10 supra has not been declared as bad.

9. As aforesaid, when the same was not under challenge or relied upon by any counsel, the question of our dealing with the same does not arise.

10. No ground for review is made out.

Dismissed.

No costs.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

MAY 13, 2016

// TRUE COPY //