

Gujarat High Court

Association vs Secretary on 17 September, 2010

Author: Mr.S.J.Mukhopadhaya,&Nbsp;Honourable Mr.Justice K.M.Thaker,&Nbsp;
Gujarat High Court Case Information System

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SCA/7999/1998 2 JUDGMENT

IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL
CIVIL APPLICATION No. 7999 of 1998

With

SPECIAL
CIVIL APPLICATION No. 17485 of 2006

With

SPECIAL
CIVIL APPLICATION No. 6715 of 2008

With

SPECIAL
CIVIL APPLICATION No. 8211 of 2008

With

SPECIAL
CIVIL APPLICATION No. 8193 of 2009

For
Approval and Signature:

HONOURABLE
THE CHIEF JUSTICE MR. S.J. MUKHOPADHAYA

AND

HONOURABLE

MR. JUSTICE K.M. THAKER

=====

Whether Reporters of Local Papers may be allowed to see the judgment ?

To be referred to the Reporter or not ?

Whether their Lordships wish to see the fair copy of the judgment ?

Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

Whether it is to be circulated to the civil judge ?

===== ASSOCIATION OF
PATHOLOGIST OF BHAVNAGAR & 17 - Petitioner(s) Versus SECRETARY HEALTH
D E P A R T M E N T & 8 - R e s p o n d e n t (s)
===== Appearance :

MR PRAKASH K JANI for Petitioner(s) : 1,3 18.

MR AM RAVAL for Petitioner(s) : 1, DELETED for Petitioner(s) : 2, MR JB PARDIWALA for
Petitioner(s) in SCA No. 17485/2006 TANNA ASSOCIATES for Petitioner(s) in SCA No. 6715/2008,
MR PREMAL S RACHH for Petitioner(s) in SCA No. 8211/2008 MR SHIRISH JOSHI for
Petitioner(s) in SCA No. 8193/20092008 GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

RULE SERVED for Respondent(s) : 3 -

6. TANNA ASSOCIATES for Respondent(s) : 4, 8 in SCA No. 7999/1998, MR JF SHAH for
Respondent(s) : 5, MR MEHUL S SHAH for Respondent(s) : 7, MR SURESH M SHAH for
Respondent(s) : 7, MR SACHIN D VASAVADA for Respondent(s) : 9 in SCA No. 7999/1998, MR
SACHIN D VASAVADA for Respondent(s) No. 21 in SCA No.17485 of 2006 MR MITUL K SHELAT
f o r R e s p o n d e n t G U J A R A T M E D I C A L C O U N C I L
===== CORAM :

HONOURABLE THE CHIEF JUSTICE MR. S.J. MUKHOPADHAYA and HONOURABLE
MR.JUSTICE K.M.THAKER Date : 17/09/2010 CAV JUDGMENT (Per : HONOURABLE THE
CHIEF JUSTICE MR. S.J. MUKHOPADHAYA) In these cases, as a common question of law is
involved and almost similar prayers have been made or opposed, they were heard together and
disposed of by this common judgment.

2. The writ petition in Special Civil Application No. 7999 of 1998, was preferred by the Association
of Pathologists for prohibiting the 5th respondent United Clinical Laboratory, Kalanala, Bhavnagar

and other persons from running laboratory of pathology in the State of Gujarat with further prayer to direct other respondent Officers of the State to take legal and criminal action against the persons who are running laboratory of pathology without requisite qualifications. Thus, a prayer was made to ensure that no such laboratory is allowed to operate without qualified pathologists.

3. Subsequently, North Gujarat Pathologists Association preferred the writ petition in Special Civil Application No. 17485 of 2006, by way of public interest litigation with a grievance that unqualified laboratory technicians, claiming themselves to be qualified pathologists, are running various pathological laboratories within the State of Gujarat.

4. It followed by another writ petition preferred by the Association of Self Employed Owners (Para Medical) of Private Pathology Laboratories of Gujarat in Special Civil Application No. 6715 of 2008. In this case, they have challenged the order dated 19.4.2008 passed by the State of Gujarat whereby, giving reference to the pendency of the public interest litigation, the Chief District Health Officers of the State have been informed about the affidavit filed by the Gujarat Medical Council and directed that all those laboratories within their districts not registered with the Gujarat Medical Council be stopped from functioning forthwith.

5. Another writ petition has been preferred by Gujarat Association of Pathologist and Microbiologist by way of public interest litigation in Special Civil Application No. 8211 of 2008 with prayer for direction to the respondents to restrain the unqualified persons from running pathological laboratory and to restrain the 1st respondent from constituting any committee to permit the Lab Technicians to run independent pathological laboratory.

6. It followed by a writ petition preferred by Anand People's Medicare Society and others in Special Civil Application No. 8193 of 2009 against the order dated 19.4.2008, which is also challenged in the other case. A declaration has been sought for that the courses run by the 1st and the 2nd petitioners and the similar courses run by other University are same and similar and are at par with the courses run by other Medical Colleges so far as the subject of Pathology is concerned and thereby Graduates and Post Graduates in Pathology known as B.Sc. in Medical Laboratory Technology and M.Sc. in Medical Laboratory Technology are entitled to practice as independent Pathologists.

7. For proper appreciation of the case, it is desirable to refer B.Sc. Medical Laboratory Technology and M.Sc. Medical Laboratory Technology as Laboratory Technicians (Pathology) . Those who have passed MBBS with Pathology are referred to as Doctors in Pathology .

8. It is not in dispute that the Laboratory Technicians (Pathology) are not registered with the Medical Council of India or the Gujarat Medical Council, whereas the Doctors in Pathology who have obtained MBBS qualification are registered with the Medical Council of India/Gujarat Medical Council. Thus, who are against the practice by Laboratory Technicians (Pathology), on their behalf, similar plea has been taken. The other two petitioners who have challenged the Government decision dated 19.4.2008 have taken a common plea that the Laboratory Technicians (Pathology) are also entitled for practice.

9. As the question involved in the writ petitions has a direct bearing with the health of human being, we have entertained the public interest litigation filed on behalf of certain Associations.

STAND OF PATHOLOGISTS' ASSOCIATION

10. On behalf of the petitioners, who are against the practice of Laboratory Technicians in running pathological laboratory, the learned counsel would contend that all these persons would not possess requisite degree and they cannot be said to be registered qualified pathologists nor they can claim to be Laboratory Technicians. They are not entitled to run the pathology laboratory. A large number of unauthorized private laboratories which are virtually in the name of pathological type laboratories are being run by persons who are unqualified having no degree in medicine. They are unscrupulous practitioners who are carrying out various tests of pathology and are giving unauthorized diagnosis on the basis of which the persons are treated. Their test reports are not certified by the registered qualified Pathologist and any person approaching them is in great danger of treatment on the basis of such unauthorized reports. The learned counsel would contend that the pathology laboratory can only be run by registered qualified Pathologists and not by any Technicians.

11. The learned counsel for the petitioners would refer to different provisions of the Indian Medical Council Act, 1956, including Section 2(f) which defines Medicine, Section 26 which postulates registration of additional qualification, Section 30 wherein prohibition of medical practice by persons not registered or enlisted has been prescribed and the orders issued by one or other High Courts.

12. On behalf of the aforesaid petitioners, it would be contended that mere possessing of a degree or post graduate degree in Biochemistry, Microbiology, etc. like M.Sc. (Biochemistry), M.Sc. (Microbiology), B.Sc. (Microbiology), etc. would not render the person eligible for registration under the Indian Medical Council Act, 1956 nor they can practice in the pathological field. At the best, they can assist the qualified MBBS Pathologists who are registered with the Medical Council of India.

STAND OF MEDICAL LABORATORY TECHNICIANS

13. The North Gujarat Unit of Association of Self Employed Owners (Paramedical) of Private Pathology Laboratories of Gujarat and other petitioners of Special Civil Application No. 8193 of 2009 has taken similar plea. The learned counsel appearing on behalf of the aforesaid petitioners would contend that the members of the Association are paramedics possessing qualification of Bachelorette of Science or Bachelorette or Diploma in Medical Laboratory Technician (Pathology). The syllabus for the trade of Medical Laboratory Technician (Pathology) is designed by the Government of India, Ministry of Labour (DGE&T) and the course is offered by several universities across the country. Majority of the members of the Association have successfully completed the said course offered at the colleges affiliated to Gujarat University, South Gujarat University, Saurashtra University and other recognized universities of the State and have been awarded the degree of Bachelorette in Medical Laboratory Technician (BMLT) or Diploma in Medical Laboratory Technician (DMLT) or Bachelorette in Science (Microbiology or Chemistry).

They are educated and trained to analyze human fluid samples using techniques available to the clinical laboratory, such as manual white blood cell differentials, analysis by a microscope and advanced analytical equipment. They perform a full range of laboratory tests from simple blood and urine tests to more complex tests, and report laboratory findings to pathologists and other physicians. They have given the details regarding medical or clinical laboratory and work done at a laboratory where tests are done on clinical specimens in order to get information about the contents of the specimen sample.

14. On behalf of the petitioners, the learned counsel would contend that under the law anyone can own a laboratory and there is nothing which restricts setting up of a medical or clinical laboratory to a medical practitioner whose name has been entered in the register maintained under the Indian Medical Council Act or the Gujarat Medical Council Act. A laboratory can be set up even by a Company or be run by qualified professionals.

A patient suffering from some ailment, illness or disease is often sent to a laboratory for getting certain tests performed. Private laboratories also have referrals from general practitioners, Insurance Companies, and other health clinics for analysis. At times, persons get certain basic tests done to keep record of their health. For instance, a patient suffering from malaria or jaundice may be referred to a laboratory by doctor to get his blood examined for presence of Bilirubin, or his urine sample tested to ascertain presence of any fungus or bacteria.

Detailed examples have been given with regard to other work performed by the Medical Laboratory Technicians giving details of analytical values, etc. which are not required to be mentioned being not relevant with the issue.

15. The learned counsel appearing on behalf of the Medical Laboratory Technicians would contend that the recognition of Gujarat Medical Council for running a pathological laboratory in Gujarat is not essential. There is no law in the State of Gujarat nor there is any Central legislation which insists on additional qualification in Pathology as a pre-condition for owning or running a private laboratory. A laboratory, under the existing laws, can be set up by any person and there is nothing in the Gujarat Medical Council Act, 1963 or in the Gujarat Medical Practitioners Act, 1967 which restricts running of a laboratory by a qualified medical practitioner. He would contend that the bar is only a self-read figment of imagination of the Pathologists' Association and is devoid of any substance in law.

16. Further stand taken by the Medical Laboratory Technicians is that they do not fall within the purview of the Indian Medical Council Act, 1956 and, therefore, the provisions of the said Act are not applicable to the Medical Laboratory Technicians. The said Act prohibits a person other than a medical practitioner enrolled in the register maintained under the Act from practicing medicine. It does not prohibit running a medical laboratory.

17. The learned counsel would rely on the meeting of the Ethics Committee and submit that the said Committee has held that the existing Medical Council of India Act and the Regulations thereunder are silent with respect to queries raised. In its meeting held on 26th, 27th and 28th August, 2004,

the Ethics Committee on consideration of the matter with regard to clarification of rules of Medical Council of India regarding practice of Pathology, decided that the pathology laboratories do not come under the purview of the Medical Council of India. Referring to the meaning of 'medicine', he would contend that the medicine is the science or practice of diagnosis, treatment and prevention of disease. It includes within its meaning not only education of that science, but also research and development of drugs or remedies. It also includes within its meaning all systems of diagnosis, treatment and prevention of diseases. The word 'medicine', however, does not have such a wide meaning under the Medical Council of India Act and Section 2(f) of the Act only defines 'medicine' to mean 'modern scientific medicine in all its branches and includes surgery and obstetrics, but does not include veterinary medicine and surgery'. Therefore, according to the learned counsel, the modern scientific medicine i.e. allopathic system of medicine, as opposed by traditional system of medicine is governed by a separate legislation and the same cannot be made applicable in the present case. Reliance was placed on the Supreme Court decision in the case of Mukhtiar Chand (Dr.) vs. State of Punjab & Haryana, reported in (1998) 7 SCC 579, wherein the Supreme Court held that the Medical Council Act deals with only allopathic system of medicine.

18. The learned counsel next contended that the Indian Medical Council Act does not define the expression 'medical practice' or 'medical practitioner'. Therefore, it does not apply to the persons who are not practicing modern scientific system of medicine i.e. medicine. The work being performed by the Laboratory Technicians cannot be termed as practicing modern scientific medicine. Their work is restricted to examine the specimen samples and reporting the data observed on analyzing the said sample. The said report is then carried to a person who would read the report, interpret the analytical values in the context of other visible symptoms of the patient, his history and then prescribe medicine or advise therapy/treatment. Thus, the work being done by the members of the Association of Medical Laboratory Technicians is essentially a pre-diagnosis work and the report prepared by the technicians at works is an aid in diagnosis and treatment of the patient. Therefore, it cannot be said that the members of the Association are practicing modern scientific medicine and the bar contained in Section 15(2) would not be attracted to the work being done by the Laboratory Technicians.

19. While it is accepted that the Pathology is a medical qualification recognized by the Indian Medical Council, persons possessing such medical qualification would be entitled to have his name enrolled in the medical register and thus they would be termed as medical practitioners. The said term pathology has to be understood in the context of the Act and other provisions. While the Indian Medical Council Act applies to doctor pathologists, meaning thereby to persons who are qualified to decide which illness or disease the patient is suffering from and not to diagnostic laboratories which merely do analytical reading of the samples and records finding of the tests or analysis carried out by them on the basis of which a qualified doctor would then certify the disease or illness and treat the patient accordingly.

20. Reliance was also placed on the Gujarat Medical Practitioners Act to suggests that there is no definition to mean 'medical practice' or 'medical practitioner'. Section 2(2) thereof defines the expression 'to practice any system of medicine' to mean 'to hold oneself out as being able to diagnose, treat, operate or practice medicine or any other remedy or to give medicine for any

ailment, disease, injury, pain, deformity or physical condition

21. The learned counsel appearing on behalf of the Medical Laboratory Technicians would refer to the National Accreditation Board for Testing and Calibration Laboratories, an autonomous body set up by the Department of Science and Technology, Government of India. According to him, it recognizes persons who are not pathologists as persons having knowledge and competent to sign report of tests done in laboratory. For instance, the qualification norms for authorized signatories provides that a person with qualification M.Sc. in Medical Biochemistry with 5 years experience or M.Sc. in Biochemistry with 7 years experience in Medical Laboratory shall be authorized signatory for the disciplines Clinical Biochemistry, Clinical Pathology, Routine Hematology, Routine Microbiology and Serology. Similarly, persons with M.Sc. (Microbiology) and B.Sc. (Biochemistry) have been recognized as authorized signatory for microbiology and serology. Therefore, the claim of the Pathologists' Association that the Pathologists are qualified and competent to sign reports of clinical pathology tests is fallacious and without any substance.

STAND OF GUJARAT MEDICAL COUNCIL

22. The Gujarat Medical Council has taken a specific plea that Medical Laboratory Technicians are neither competent nor authorized to practice pathology by running pathology laboratories and/or give certificate/reports. The learned counsel would contend that Pathology is the branch of modern medicine which is connected with the study and diagnosis of disease. Pathology, Microbiology, Hematology and Biochemistry are branches of modern medicine. The practice of pathology would include running of the laboratory, giving of certificates and reports. Pathology being a branch of modern scientific comes within the definition of 'medicine' as defined under the Indian Medical Council Act, 1956.

DISCUSSION & CONCLUSION

23. We have heard the counsel for the parties, noticed the rival contentions, perused the relevant provisions and the decisions as referred to by the parties.

24. Section 2(f) of the Indian Medical Council Act, 1956, defines 'medicine' as under :-

2(f).

'medicine' means modern scientific medicine in all its branches and includes surgery and obstetrics, but does not include veterinary medicine and surgery.

Section 15(2) of the said Act provides as under :-

15(2). No person other than a medical practitioners enrolled on a State Medical Register,-

(a) shall hold office as physicians or surgeon or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority.

(b) shall practise medicine in any State;

(c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner.

(d) shall be entitled to give evidence at any inquest or in any Court of Law as an expert under Section 45 of the Evidence Act, 1872 or on any matter relating to medicine.

Section 2(k) defines State Medical Register to mean a register maintained under any law for the time being in force in any State regulating the registration of practitioners of medicine.

Section 2(j) defines State Medical Council to mean a medical council constituted under any law for the time being in force in any State regulating the registration of practitioners of medicine.

25. It has been brought to our notice by the Medical Council that the Establishment of New Medical Colleges Regulations, 1993 have been framed by the Council in exercise of powers conferred under Section 10A read with Section 33 of the Indian Medical Council Act, 1956. In Annexure I to the said Regulations, the list of higher courses in Medical subjects has been listed. In Group 'D' at Sr. No. 6 is Pathology . Further, the notice to the subsequent paragraph specifically provides that Non-Medical persons should not be admitted to post-graduate course in Pathology . Further in Group 'C' against item No. 10, Clinical Hematology which is a super speciality, it is specifically provided that the candidate must possess the post graduate degree in Pathology, that means, it talks of a MBBS with Pathology or MD with Biology.

26. The Gujarat Medical Council Act, 1967 has been enacted by the State Government and the Gujarat Medical Council is constituted as a State Council withing the meaning of Section 2(j) of the Indian Medical Council Act.

Section 16(3) of the Gujarat Medical Council Act, 1967 stipulates as follows :-

16(3).

Any person who possesses any of the qualifications specified in the Schedule to this Act or in the First, Second or Third Schedule to the Indian Medical Council Act, 1956, (CII of 1956) shall, subject to any conditions laid down by or under the Indian Medical Council Act, 1956, at any time on an application made in the prescribed form to the Registrar and on payment of the prescribed fee and on presentation of his degree, diploma, license or certificate, be entitled to have his name entered in the register :

Provided that the name of an applicant who is unable to present his degree, diploma, license or certificate may be entered in the register, if he satisfies the President that he holds such degree, diploma, license or certificate but cannot for sufficient cause present the same with his application.

27. The Gujarat Medical Practitioners Act, 1963 has been enacted by the State Government to regulate the qualifications, and providing for registration, of practitioners of the Ayurvedic and Unani systems of medicine and making certain provisions relating to medical practitioners generally, in the State of Gujarat.

Section (2) deals with the expression to practice any system of medicine with all its grammatical variations and cognate expression means to hold oneself out as being able to diagnose, treat, operate or prescribe medicine or any other remedy or to give medicine for any ailment, disease, injury, pain, deformity or physical condition or by any advertisement, demonstration, exhibition or teaching to offer or undertake by any means or method whatsoever to diagnose, treat, operate or prescribe medicine or any other remedy or to give medicine for any ailment, disease, injury, pain, deformity or physical condition. The proviso and the explanation therein read as follows :-

Provided that, a person who,

- (i) mechanically fits or sells lenses, artificial eyes, limbs or other apparatus or appliances; or
- (ii) is engaged in the mechanical examination of eyes for the purpose of constructing or adjusting spectacles, eye-glasses of lenses; or
- (iii) practises physiotherapy or electrotherapy or chiropody or naturopathy or hydropathy or yogic healing; or
- (iv) without personal gain furnishes medical treatment or does domestic administration of family remedies; or
- (v) being registered under the Dentists Act, 1948, (XVI of 1948) limits his practice to the are of dentistry; or
- (vi) being a nurse, midwife or health visitor registered or enlisted under the Bombay Nurses, Midwives and Heath Visitors Act, 1954, (Bom XIV of 1954) or any other corresponding law for the time being in force in the State, or a Dai, attends on a case of labour, shall not be deemed on that account only to practice any system of medicine.

Explanation,

- In this sub-section -

- (i) advertisement includes any word, letter, notice, circular, picture, illustration, model, sign, placard or other document any any announcement made orally or by any means of producing or transmitting light, sound, smoke, or other audible or visible representation; and
- (ii) physiotherapy means treatment of any ailment, disease, injury, pain, deformity or physical condition by message or other physical means, but does not include bone-setting.

Section 30 thereof prohibits the practice of medicine by persons not registered or enlisted, which reads as follows :-

30. (1) Save as otherwise expressly provided in any special law for the time being in force, no person other than a medical practitioner whose name is entered in -

(i) the register or the list maintained under this Act;

(ii) the register or the list prepared and maintained under any law for the time being in force in relation to the qualifications and registration of Homeopathic practitioners in any part of the State, or

(iii) the register prepared and maintained under the Bombay Medical Act, 1912 (Bom VI of 1912) the said Act as adapted and applied to the Saurashtra area of the State or any other corresponding law for the time being in force in any part of the State; or

(iv) the Indian Medical Register prepared and maintained under the Indian Medical Council Act, 1956 (II of 1956), shall practice any system of medicine in the State :

Provided that, the State Government may, by notification in the Official Gazette, direct that, subject to such conditions as it may deem fit to impose and the payment of such fees as may be prescribed, the provisions of this section shall not apply to any class of persons, or to any area, as may be specified in such notification."

It is also informed that the Committee appointed by the State Government has also submitted report which supports the case of the Association of Pathologists.

28. The learned counsel appearing on behalf of the Gujarat Medical Council would rely on a decision of the Madhya Pradesh High Court in the case of Smt. Kamla Patel vs. State of MP, reported in AIR 2007 MP 1925, wherein the Court decided the issue in question and held as follows :-

13. The aforesaid analysis of the provisions of the law prescribing the profession or technical qualifications necessary for the practice of medicine and the law prescribing the qualifications for running a pathology laboratory would show that laboratory technicians registered as a paramedical practitioner under the Adhiniyam, 2000, cannot sign or authenticate any pathological test/report or certificate and he can only assist the pathologist registered in the State Medical Register as a medical practitioner in carrying out the technical tests in the pathology laboratory. In other words, a laboratory technician registered as a paramedical practitioner under the Adhiniyam, 2000 can only assist the pathologist in the technical tests in a pathology laboratory in the State of Madhya Pradesh, but he cannot sign or authenticate any certificate or test report relating to pathology and such certificate or test report can only be signed and authenticated by a pathologist having the required qualification such as MBBS, MD or other degrees as mentioned in the Act, 1956, and also registered as a medical practitioner in the State Medical Register under the Adhiniyam, 1987.

29. The Supreme Court in the case of Mukhtiar Chand (Dr.) vs. State of Punjab & Haryana, reported in (1998) 7 SCC 579, while examining the provisions of Section 15(2) of the Indian Medical Council Act, 1956 held that - 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 practice 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 .

30. It is true that the members of the Association of Laboratory Technicians possess different qualifications such as Bachelorette of Science or Bachelorette or Diploma in Medical Laboratory Technician (Pathology). Though the Laboratory Technicians have obtained such qualifications with subjects like Pathology, such qualification cannot be termed to be a course in medical subject as recognized by the Medical Council of India. In Group 'D' at Sr. No. 6 to Annexure I to the Establishment of New Medical Colleges Regulations, 1993, 'Pathology' is a subject of higher course in Medical Science. It is distinct and different than the qualification of Medical Laboratory Technician. A person who passed Medical Science in Pathology cannot be equated with Laboratory Technician, who merely obtains a Diploma in Medical Laboratory Technician course, which may be of one or other faculties like Biology or Hematology or Microbiology or Chemistry and he cannot be termed to be a Pathologist.

31. Under Section 16(3) of the Indian Medical Council Act, 1967, only the persons who are entitled to have their names entered into the register of medical practitioners and possess the qualifications specified in the Schedule to the Act or in the first or second or third Schedule to the Indian Medical Council Act, 1956, on presentation of a degree, diploma, license or certificate, can be enlisted in the register. Under the aforesaid Act, only such persons can practice any system of medicine, which includes Pathology and are able to diagnose, treat, operate or prescribe medicine or any other remedy to give medicine for any ailment, disease, injury, pain, deformity or physical condition, etc.

32. It is a different thing that a Pathologist, registered with the Medical Council of India, can take help from a Laboratory Technician, who has the knowledge to analyze human fluid samples using techniques available to the clinical laboratory, such as manual white blood cell differentials, analysis by a microscope and advanced analytical equipment. For doing so, the Laboratory Technicians may perform a full range of laboratory tests from simple blood and urine tests to more complex tests, and report laboratory findings to pathologists and other physicians. But it cannot be said supplied to any patient for its utility, though such report may be submitted before a Pathologist, who being registered, is competent to medical practice under the Act and being satisfied, the Pathologist may sign the same for utility of the patient or to diagnose, treat, operate or prescribe medicine or any other remedy, etc.

33. We accordingly hold that the Laboratory Technicians being not Pathologists, cannot run any laboratory independently. They cannot directly give any report to any patient or any other individual, or to any institution or practicing doctor, without the authentication of the same by the pathologist registered with the Medical Council. Though it is open to any person or institute to run a pathology laboratory, but no report can be issued without the signature or counter signature of the

practicing pathologist recognized by the Medical Council of India. The respondents are directed to ensure that no pathology laboratory is run by any unqualified person or institute having no recognized pathologists registered with the Medical Council. However, if such pathological laboratory is run by a pathologist registered with the Medical Council, or if such pathological laboratory engages a pathologist registered with the Medical Council, the respondents may allow such laboratory to run. Individual Laboratory Technician cannot be allowed to run pathological laboratory independently without engaging a pathologist registered with the Medical Council.

The writ petition preferred by the Association of Pathologists of Bhavnagar in Special Civil Application No. 7999 of 1998, North Gujarat Pathologists Association in Special Civil Application No. 17485 of 2006 and Gujarat Association of Pathologists and Microbiologists in Special Civil Application No. 8211 of 2008 are allowed. The contrary prayers made by the Association of Self Employed Owners (Para Medical) of Private Pathology Laboratories of Gujarat in Special Civil Application No. 6715 of 2008 and Anand People's Medicare Society and others in Special Civil Application No. 8193 of 2009 are rejected.

34. The writ petitions stand disposed of with the aforesaid observations and directions. No costs.

[S.J.]

MUKHOPADHAYA, C.J.] [K.]

M. THAKER, J.] The prayer for stay as made by the counsel appearing on behalf of the petitioners in SCA No. 8193 of 2009 is rejected in view of the grounds shown in the judgment.

[S.J.]

MUKHOPADHAYA, C.J.] [K.]

M. THAKER, J.] sundar/-

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