Punjab-Haryana High Court
Dr. Barinder Singh vs State Of Punjab And Others on 11 August, 2009
Review Application No. 587 of 1999 [1]

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Review Application No. 587 of 1999 in
Civil Writ Petition No. 1696 of 1997

Date of Decision: 11.08.2009

Dr. Barinder Singh, President, Ludhiana Medical Welfare Association

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE T.S.THAKUR,CHIEF JUSTICE
HON'BLE MR. JUSTICE KANWALJIT SINGH AHLUWALIA

Present : Mr. Gurminder Singh, Advocate
for review applicant-respondent No.12.

Mr. Amar Vivek, Advocate (Amicus-Curiae) and
Ms. Rachna Arora, Advocate

Mr. Rupinder Khosla, Addl. A.G. Punjab

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T.S.Thakur, C.J. (Oral) Writ Petition No. 1696 of 1997 was filed in public interest which brought into focus the menace of self-styled doctors and quacks practicing in the States of Punjab, Haryana and U.T. Administration, Chandigarh. Such self styled Doctors and quacks were according to the petitioner neither registered as medical practitioners under the Indian Medical Council Act, 1956 nor possessed any recognised degrees or other qualifications that could entitled them to practice medicine in any Review Application No. 587 of 1999 [2] known and recognized system like Homeopathy, Ayurveda, Unani and Allopathy. The hazards arising out of such unauthorised self styled quacks who are taking the gullible and innocent in the society for a ride were also pointed out by the petitioner in an attempt to stamp and rout out the menace.

By an order dated 04.11.1997, a Division Bench of this Court directed the Director, Health & Family Welfare, Punjab to take action against all such persons practising medicines in allopathy in various Districts of Punjab without medical degree recognised by the Medical Council of India. He was also directed to give clear instructions in that regard to the Civil Surgeons concerned and file a compliance report within a period of one month.

In the course of the hearing of the case, on the adjourned date, the Government of Punjab appears to have expressed some difficulties in proceeding against the so called self styled doctors and suggested that action could be initiated by the Medical Council of India. This led to the addition of the Medical Council of India as a party-respondent to the petition who appeared through Shri K.K.Goyal, Advocate and produced a copy of letter dated 11.06.1982 addressed to all the State Governments and Union Territories requesting them to take action on most immediate basis to put an end to the problem of unqualified medical practitioners and endangering human lives by practising medicine which they were otherwise not qualified or entitled to practice. On behalf of the petitioner, it was, however, pointed out by Mr. Patwalia that Section 15 of the Indian Medical Council Act, 1956 had been amended and the punishment provided for the offence Review Application No. 587 of 1999 [3] increased from one year to three years with fine upto Rs. 10000/- or both. On that premise, the Court observed that the offence punishable under Section 15(3) of the Act aforementioned had become a cognizable offence and accordingly issued directions for taking action against the unauthorised and unregistered medical practitioners within a period of six months from the date of the said order both under Section 15 of the Indian Medical Council Act,1956 as also under Section 26 of the Drugs and Cosmetics Act, 1940. The Court also observed that in order to make the exercise effective, it was necessary to address letters to all the Station House Officers in the states of Punjab and Haryana and U.T. Chandigarh for immediate action in the matter and disposed of the writ petition with a direction that a compliance report be filed in the Court.

The Indian Medical Council of India has in the present review application sought modification of the above directions of this Court in so far as the same suggest that the offence punishable under Section 15(3) of the Indian Medical Council Act, 1956 has by reason by an amendment become cognizable.

Mr. Gurminder Singh, learned counsel appearing for Medical Council of India submitted that the statement attributed to Mr. Patwalia was made under some misconception regarding an amendment to the provision of Section 15(3) of the Indian Medical Council Act, 1956. He urged that no amendment to Section 15(3) of the Indian Medical Council Act, 1956 had infact been introduced either in regard to the period of imprisonment or otherwise. The observation made by this Court that the offence punishable under Section 15(3) of Review Application No. 587 of 1999 [4] the Indian Medical Council Act, 1956 was cognizable, was therefore, factually incorrect and required to be recalled. He further stated that the action is being taken against those violating the provisions of the Act by filing appropriate complaints before the competent jurisdictional Courts and urged that this Court could issue a direction so that the process of identification of such unauthorised and self styled quack continued and those indulging in such mal-practices were brought to book.

Mr. Amar Vivek, Advocate, who was appointed as Amicus- Curiae to assist us in these proceedings, on the other hand argued that while the observation made by this Court that offence punishable under Section 15(3) of the Indian Medical Council Act, 1956 had become cognizable may not be factually and legally correct, the fact remains that the menace of unauthorised and unregistered and wholly unqualified self styled Doctors continued to prevail. This according to learned counsel required effective action against such undesirable elements as are a source of great hazard to the patients apart from their exploitation. He submitted that while under Section 32 of the Drugs and Cosmetics Act, 1940, cognizance of the offence under the said Act could be taken on a complaint filed by an Inspector, an aggrieved person or recognized consumer association or any Gazetted Officer authorised in that behalf by general or special order, there was no analogous provision in the Indian Medical Council Act, 1956. The result was that for prosecution of the offenders under Section 15(3) of the said Act, there was no mechanism either under the Act or otherwise. This according to learned counsel made the prosecution of the offenders Review Application No. 587 of 1999 [5] difficult as it is not known as to who can or is expected to file complaints against such elements and on what authority.

Mr. Khosla, learned counsel appearing for the State Government, however, urged that keeping in view the request received from the Medical Council of India and the fact that there was no legal bar to authorising an officer for filing of complaints under Section 15 (3) of the Indian Medical Council Act, 1956, it should be possible for the State Government to authorise filing of such complaints by the Drug Inspectors concerned and also by the Civil Surgeons within their respective jurisdiction. This would according to Mr. Khosla remove any vagueness or uncertainty about who is expected to file such complaints and prosecute the offenders.

Section 15(3) of the Indian Medical Council Act, 1956 as it stands on the statute book prescribes a punishment of only one year for any one contravening the provisions of the said Act. Part (ii) of Schedule (I) of the Code of Criminal Procedure deals with the classification of offences against-other laws and inter-alia provides that if the offence is punishable with imprisonment for a period of less then three years or with fine only, the same would be non-cognizable and can be tried by a Magistrate. This implies that a Magistrate taking cognizance of such an offence can do so on a complaint filed before him under Section 190(1)(a) read with Section 200 of the Code of Criminal Procedure. The expression 'Complaint' has been defined in Section 2(d) of the Code of Criminal Procedure to mean any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, Review Application No. 587 of 1999 [6] has committed an offence, but does not include a police report. This implies that no sooner the Magistrate receives a complaint containing an allegation orally or in writing, he can take cognizance under Section 190 and issue process under Section 204 of the Code of Criminal Procedure. The expression 'offence' as defined under Section 2(n) means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under Section 20 of the Cattle-trespass Act, 1871.

Section 32 of the Drugs & Cosmetics Act, 1940 makes a specific provision to the effect that no prosecution under the said Act shall be instituted except by one of those enumerated in clauses (a) to

(d) thereof, which includes the person aggrieved or an Inspector and/or a Gazetted Officer authorised by the Central Government or State Government by a general or special order. Even a recognized consumer association is competent to file such a complaint. We have therefore no difficulty in holding that a complaint under the said Act can be lodged by any one enumerated under Section 32 of the Act aforementioned. All that needs to be done by the State Government is to authorise, in writing by a general or special order, a Gazetted Officer for the purpose of filing of complaints under the said Act, as no such authorisation has been issued so far. This would mean that apart from an Inspector or aggrieved person or a recognized consumer association, even a Gazetted Officer duly authorised as above, can also file a complaint under the said Act.

The only question then is whether the Officer so authorised can also be authorised to file complaints under section 15(3) of the Review Application No. 587 of 1999 [7] Indian Medical Council Act, 1956. We see no reason why that cannot be done. As a matter of fact, not only a Gazetted Officer whom the State Government may authorise, in terms of section 32 of the Act but even an Inspector who is otherwise competent to file a complaint under Section 32(A) of the Drugs and Cosmetics Act can be authorised to lodge complains under the Indian Medical Council Act, 1956. This would ensure that no sooner a violation of the provisions of Section 15 (2) of the of the Indian Medical Council Act, 1956 comes to the notice of an Inspector or Gazetted Officer authorised generally or specially by the State Government, a complaint under Section 15(3) of the said Act can be filed against any such offender either by the Inspector under the Drugs and Cosmetics Act or the Gazetted Officer. In the event of any such delinquent being found to be violating any provision under the Drugs and Cosmetics Act, there would be no difficulty for the Inspector or the Gazetted Officer instituting prosecution under the said Act also.

One other aspect which Mr. Amar Vivek, Amicus-Curiae pointed out was that there should be a conscious verification on a regular basis by a responsible officer within his respective territorial jurisdiction, so that those who do not possess the requisite registrations and the qualifications required for practicing medicine, can be identified and action taken against them. There is in our opinion merit in that contention also. In the absence of a proper and regular check of the qualifications and registrations obtained by the medical practitioners by an authority designated for that purpose, the process of identifying those violating the law may be very difficult if not any impossible. The only manner in which this can be done is by Review Application No. 587 of 1999 [8] authorising Civil Surgeons of the districts concerned to undertake checking of all such establishments or persons practicing medicines regarding the genuineness of their qualifications and the registrations under the provisions of the relevant statute. As and when any case involving violation of the provisions of the Indian Medical Council Act, 1956 is noticed by the Civil Surgeon, he can either himself or through the Inspector authorised in that behalf, launch prosecution against such fake practitioners. This would not, however, limit in any way the right of any other person to launch such prosecution, if otherwise, permissible in law.

In the result, we allow this review petition to the extent indicated below:-

> i) The observations made in order dated 13.10.1998 to the effect that the offence punishable under Sections 15(3) of the Indian Medical Council Act, 1956 has by

reason of amendment of the said provision become cognizable, shall stand deleted.

ii) The State Governments of Punjab, Haryana and U.T. Chandigarh shall by a special or general order authorise for their respective territories all the Civil Surgeons in their respective districts, for filing of complaints under Section 32 of the Drugs and Cosmetics Act, 1940.

iii)The State Governments of Punjab, Haryana and Union Territory, Chandigarh shall also authorise the Drug Inspectors and/or any other Gazetted Officers including the Civil Surgeons in their respective districts to file Review Application No. 587 of 1999 [9] complaints for offences punishable under Section 15(3) of the Indian Medical Council Act, 1956.

iv)The State Governments shall issue directions to the Civil Surgeons in their respective territorial jurisdiction to verify the registration of medical practitioners and their qualifications and initiate action including the action by way of prosecution of the offenders in the competent jurisdictional Courts.

v) The Civil Surgeons shall also be asked by the State Governments concerned to send annual reports to them about the verification of the qualifications and registrations of the medical practitioners conducted by them and the action, if any, taken against those found to be violating the said provisions.

Copies of this order shall be forwarded to the Chief Secretaries of both the States of Punjab and Haryana and Home Secretary, Union Territory of Chandigarh for compliance.

(T.S.THAKUR) CHIEF JUSTICE (KANWALJIT SINGH AHLUWALIA) JUDGE 11.08.2009 'ravinder'