

REPORTABLE**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO. 4049 OF 2020**

**(arising out of SLP (C) No. 15293/2020 Diary No.
19638 of 2020)**

**DR. AKB SADBHAVANA MISSION
SCHOOL OF HOMEOPHARMACY**

...APPELLANT(S)

VERSUS

**THE SECRETARY,
MINISTRY OF AYUSH & ORS.**

...RESPONDENT(S)

J U D G M E N T

ASHOK BHUSHAN, J.

The application seeking permission to file special leave petition is allowed.

Leave granted.

2. This appeal has been filed by the appellant Dr. AKB Sadbhavana Mission School of Homeo Pharmacy aggrieved by the part of Division Bench judgment of Kerala High Court dated 21.08.2020 passed in Writ Petition (C) No.9459 of 2020. The appellant, who was not party in the writ petition feeling aggrieved by

certain directions issued by the High Court have come up in this appeal.

3. We need to notice the contents and prayers of the writ petition filed in the Kerala High Court by respondent No.4 (proforma respondent). The writ petition was filed by respondent No.4, an Advocate praying for writ of Mandamus or for any other writ or order directing the Secretary, Department of AYUSH, Government Secretariat, Trivandrum to ensure that the Homeopathic practitioners are immediately allowed to perform in accordance with the Exhibit-P1 notification (Guidelines dated 06.03.2020 issued by Secretary, Department of AYUSH (Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha, Sowa-Rigpa and Homeopathy) (AYUSH, New Delhi).

4. The petitioner's case in the writ petition is that petitioner is an ardent admirer of the Homeopathic medicine system, which system of medicine in India is controlled and regulated by the Ministry of AYUSH. The petitioner pleaded that to control the

spread of Coronavirus (COVID-19), notification dated 06.03.2020 was issued by the Secretary, Ministry of AYUSH to the Chief Secretaries of all States in which notification, it was pointed out that interventions under AYUSH systems have been varyingly used for making an effective public health response in similar situations faced in many States/Union Territories earlier. The petitioner's grievance was that State of Kerala and the Secretary, Department of AYUSH, Government Secretariat, Trivandrum did not take steps to implement the advisory dated 06.03.2020 whereas many other State Governments have taken steps much earlier. The petitioner pleaded that Homeopathic system would have been absolutely able to control the spread of COVID-19 through its immunity boosting medicines. Petitioner further stated in the writ petition that if the Homeopathic medicines had been distributed earlier in highly affected pockets and particularly to those under isolation and quarantine, the explosive situation had not happened, which has happened in the State of Kerala. The only prayer made in the writ petition are to the following effect:-

- (i) To issue a Writ of Mandamus or any other Writ or Order directing the third respondent to ensure that the Homeopathic practitioners are immediately allowed to perform in accordance with the Exhibit P-1 notification.
- (ii) To grant such other reliefs as this Honourable Court deems fit and proper in the facts and circumstances of the case.

5. The Division Bench of the High Court disposed of the writ petition by judgment dated 21.08.2020. The High Court in its judgment has extracted advisory dated 06.03.2020 of the Government of India, Ministry of AYUSH, the Government Order dated 08.04.2020 and 21.04.2020 issued by Government of Kerala and after noticing the aforesaid, the High Court disposed of the writ petition. In paragraphs 13 and 14 of the judgment, the High Court has stated as follows:-

"13. It is the case of the petitioner that Exhibit-P1 has not been implemented by the State of Kerala, whereas it is the

submission of learned Senior Government Pleader that Government has approved the action plan of Homeo Department for giving Homeo medicines as prophylactic. However, the target population was not intended to include COVID-19 patients or their contacts or those people, under quarantine. Advisory of the Ministry of AYUSH is being followed by the Government and tablets are given free of cost to those persons as immunity boosters. As per the State Medical Protocol, COVID-19 affected persons should not be treated by anybody other than the Government and those authorised by the Government. As per the medical protocol of the Government, doctors practising in AYUSH medicines are not supposed to prescribe any medicines, stating that it is curative for COVID-19 disease. However, as per the advisory, there is nothing prohibiting the qualified medical AYUSH practitioners to prescribe immunity booster mixture or tablets, as suggested by the Ministry of AYUSH, Government of India, New Delhi. When the Central as well as State Governments have approved prescription of certain mixtures and tablets, as immunity boosters, qualified medical practitioners in AYUSH can also prescribe the same, but only as immunity boosters.

14. We also make it clear that if any qualified doctor practising AYUSH medicine, makes any advertisement or prescribes any drugs or medicines, as a cure for COVID-19 disease, except those specifically mentioned in Annexure-I advisory to Exhibit-P1 D.O. letter dated 6.3.2020, it is open for the respondents to take appropriate action under the provisions of the Disaster Management Act, 2005, and the orders of the Governments, both Central as well as the State, issued from time-to-time. Only those tablets or

mixtures shall be given as immunity booster and not as cure for COVID-19. AYUSH medical practitioners are further directed not to violate the Government Order dated 6.3.2020. In this regard, Medical/Police Departments are also directed to monitor the action of AYUSH medical practitioners.

Writ petition is disposed of accordingly."

6. The appellant, who was not party to the writ petition, has filed this appeal and the reasons given for filing this appeal by the appellant as stated in paragraph 4 of the application seeking permission to file special leave petition, are as follows:-

"4. It is respectfully submitted that the Hon'ble High Court had not issued any notice either to Ministry of AYUSH, Government of India or to Homoeopathy doctors or its organisation before passing the impugned order. Homoeopathy Doctors are treating all patients who come for treatment. As is well known, most of the Covid-19 patients, are asymptomatic and therefore such blanket orders will cause grave prejudice to the Homoeopathy doctors, who treat the patients. The direction to take action under the Disaster Management Act is very harsh and the said order has been passed without hearing the doctors, who are affected by such orders. The Writ Petition has been filed by a lawyer, who is an ardent follower of homoeopathy medicine. The prayer was to implement the direction passed by AYUSH on 06.03.2020. The Hon'ble High Court unfortunately went beyond the pleadings and made observations which will

affect the profession of Homoeopathy doctors. It is pertinent to mention here that many of the State Governments have been prescribing Homoeopathy medicines as an immunity booster. Even the Health Minister, Government of Kerala had given a press statement that Homoeopathy medicines are very good for prevention of Covid-19. In the State of Gujarat, the Government itself had prescribed the homoeopathy medicines for its citizens.”

7. The appellant is aggrieved by the directions of the High Court contained in paragraph 14 only. The High Court in its judgment dated 21.08.2020 itself has extracted the G.O. dated 21.04.2020 of the Government of Kerala where Government of Kerala was pleased to approve the action plan outlining the Homeopathy Strategies for prevention and management of COVID-19 in Kerala. It is now useful to refer to the G.O. dated 21.04.2020, which has been quoted in the impugned judgment, which is to the following effect:-

“GOVERNMENT OF KERALA
Abstract

AYUSH Dept. - COVID-19 - Action Plan outlining the Homeopathy Strategies for Prevention, and Management of COVID-19 in Kerala - Approved - Orders issued.

AYUSH(B) DEPARTMENT

G.O.(Rt)No.161/2020/AYUSH

Dated,

Thiruvananthapuram,
21/04/2020

Read:- 1. Letter No. DHTVM/2606/2019-P2
dtd. 13.04.2020 of the Director
of Homeopathy.

ORDER

In the circumstances explained by the Director of Homeopathy vide letter read above, Government are pleased to approve the Action Plan outlining the Homeopathy Strategies for prevention and management of COVID-19 in Kerala as appended to this order.

(By order of the Governor)
Bhooshan V.,"

8. We have heard Shri Venkita Subramoniam, learned counsel for the appellant and Shri Tushar Mehta, learned Solicitor General of India for the respondent.

9. An affidavit has been filed on behalf of Ministry of AYUSH to which rejoinder has also been filed. The appellant being aggrieved only with directions in paragraph 14 and no relief having been claimed by the appellant against the State of Kerala,

we have not issued notice to respondent Nos. 2 and 3 and we proceeded to decide this appeal after hearing the learned counsel for the petitioner as well as learned Solicitor General of India for the respondent.

10. Learned counsel for the appellant contends that the directions issued by the Division Bench of Kerala High Court in paragraph 14 to take actions against Homeopathic doctors, who prescribe any drug as a cure for COVID-19 disease should be proceeded with under the provisions of Disaster Management Act, 2005 was uncalled for and beyond the scope of the writ petition. Learned counsel submits that even the Government of India advisory dated 06.03.2020 permitted COVID-19 like illness to be managed by AYUSH systems. The advisory itself permits Homeopathy to be used as preventive, prophylactic, symptom management of COVID-19 like illnesses and add on interventions to the conventional care. The High Court has erred in confining right of Homeopathic medical practitioners to prescribe only as immunity

booster, which direction is not in accord to the Guidelines dated 06.03.2020.

11. Learned counsel for the appellant submits that guidelines for Homeopathic practitioners for COVID-19 has been issued by Government of India, Ministry of AYUSH, which clearly permits medical practitioners, which permission from local health authorities and Medical Superintendent of the hospital to prescribe medicines for COVID-19. When the guidelines issued specifically permits treatment of COVID-19 patients, the High Court erred in observing that Homeopathy practitioners can only prescribe medicines as immunity booster. It is submitted that the direction issued by the High Court in paragraph 14 has made vulnerable the Homeopathic practitioners from being proceeded with under Disaster Management Act, 2005 and actions by police and other medical staff, which is demoralising the practitioners of Homeopathy.

12. Shri Tushar Mehta, learned Solicitor General of India appearing for Ministry of AYUSH, Government of

India has submitted that Government of India keeping in view the unprecedented and unforeseen precarious situation caused by COVID-19, the Ministry of AYUSH decided to augment and strengthen the COVID -19 medical response of the country by using the traditional healthcare system of the country, which includes AYUSH Organisation, Homeopathic practices as well as Unani practices. Learned Solicitor General of India has referred to advisory dated 06.03.2020, which covers the field and he has also referred to the guidelines issued by Government of India. Shri Mehta has referred to the affidavit filed on behalf of Ministry of AYUSH. He submits that Homeopathy practitioners are permitted by the Ministry of AYUSH to prescribe medicines as (i) preventive and prophylactic; (ii) symptom management of COVID-19; (iii) add on interventions to the conventional care.

13. We have considered the submissions of the learned counsel for the parties and have perused the records.

14. The advisory dated 06.03.2020 issued by the Ministry of AYUSH has been relied by the learned counsel for the appellant as well as learned Solicitor General and was also extensively extracted by the High Court in its judgment. The advisory dated 06.03.2020 contains the object of AYUSH systems. It is useful to extract following (relevant of Homeopathic only), which is part of advisory dated 06.03.2020:-

“i. Preventive and prophylactic:

XXXXXXXXXXXXXXXXXX

Homoeopathy:

Arsenicum album 30, daily once in empty stomach for three days. The dose should be repeated after one month by following the same schedule till Coronavirus infections prevalent in the community.

In one of the studies Arsenic album as one of the constituents in a formulation affected HT29 cells and human macrophages. Also, it showed SNF-KB hyperactivity (reduced expression of reporter gene GFP in transfected HT29 cells), tTNF-a release in macrophages. More over, Arsenic album is a common prescription in the cases of respiratory infections in day to day practice.

ii. Symptom management of COVID-19 like illnesses

XXXXXXXXXXXXXXXXXX

Homoeopathy

Various medicines which found to be effective in treating flu like illness are Arsenicum album, Btyonia alba, Rhus toxico dendron, Belladonna Gelsemium Eupatorium perfoliatum. All these medicines should be taken in consultation with qualified physicians of respective AYUSH systems.

iii. Add on Interventions to the conventional care

XXXXXXXXXXXXXXXXXX

Homoeopathy

Medicine mentioned Symptom management of COVID-19 like illnesses under subhead Homoeopathy can also be given as add on to conventional care.

All these medicines should be taken in consultation with qualified physicians of respective AYUSH systems.

15. The above clearly indicate that Ministry of AYUSH specifically permits use of Homeopathy for following three ways:-

- (i) Preventive and prophylactic;
- (ii) Symptom management of COVID-19 like illness;
- (iii) Add on interventions to the conventional care.

16. We may further notice the specific averments made by Ministry of AYUSH in its affidavit dated 23.11.2020 regarding what is permitted to the Homeopathy Medical Practitioner as per Ministry of AYUSH. Paragraph 16 of the affidavit sworn on behalf of the Ministry of AYUSH is as follows:-

"16. In addition to the above, it is respectfully reiterated that Ministry of AYUSH has clearly permitted the homeopathic medical practitioners to prescribe the chugs, as mentioned in the guidelines, as an add-on drug to the conventional treatment for patients who have been tested Covid positive and are undergoing conventional treatment.

Thus in the respectful submission of the answering respondent, prescription of the medication prescribed by the Ministry of AYUSH to Covid positive patients as an add-on treatment is permitted, and therefore, any contention to the contrary stating that homeopathic medical practitioner cannot prescribe any treatment to Covid-19 positive patients, even as an add-on to conventional treatment is liable to be rejected. It is stated that the only embargo is that the said Medicines should not be administered or advertised as a cure but should be administered as preventive measure/immunity booster or as an add-on to the conventional treatment."

17. It is clear from the advisory dated 06.03.2020 and the specific stand taken by the Ministry of AYUSH as contained in paragraph 16 extracted above that Homeopathic medical practitioners are not only confined to prescribe Homeopathic medicines only as immunity booster. The following observations in paragraph 13 by the High Court does not correctly comprehend the guidelines dated 06.03.2020:-

"13.When the Central as well as State Governments have approved prescription of certain mixtures and tablets, as immunity boosters, qualified medical practitioners in AYUSH can also prescribe the same, but only as immunity boosters."

18. The High Court in the impugned judgment has emphasised that if any qualified doctor practising AYUSH medicine, makes any advertisement or prescribes any drugs or medicines, as a cure for COVID-19 disease, except as prescribed in letter dated 6.3.2020, it is open to the authorities to take appropriate action under the provisions of the Disaster Management Act, 2005. Insofar as advertisement by Homeopathic practitioners is concerned, i.e., clearly prohibited by the

regulations framed in Section 33 read with Section 24 of Homeopathy Central Council Act, 1973 namely the Homeopathic Practitioners (Professional Conduct, Etiquette and Code of Ethics) Regulations, 1982. The Regulation 6 prohibits advertisement for solicitation of patients personally or advertisement in the newspaper by the Homeopathic practitioners. Regulation 6 is to the following effect:-

"6. (1) Advertising

Solicitation of patients directly or indirectly by a practitioner of Homoeopathy either personally or by advertisement in the newspapers, by placards or by the distribution of circular cards or handbills is unethical. A practitioner of Homoeopathy shall not make use of, or permit others to make use of, him or his name as a subject of any form or manner of advertising or publicity through lay channels which shall be of such a character as to invite attention to him or to his professional position or skill or as would ordinarily result in his self-aggrandisement provided that a practitioner of Homoeopathy is permitted formal announcement in press about the following matters, namely :-

- (i) the starting of his practice;
- (ii) change of the type of practice;
- (iii) change of address;
- (iv) temporary absence from duty;.
- (v) resumption of practice
- (vi) succeeding to another's practice.

(2) He shall further not advertise himself directly or indirectly through price lists or publicity materials of manufacturing firms or traders with whom he may be connected in any capacity, nor shall he publish cases, operations or letters of thanks from patients in non-professional newspapers or journals provided it shall be permissible for him to publish his name in connection with a prospectus or a director's or a technical expert's report."

19. When statutory regulations itself prohibit advertisement, there is no occasion for Homeopathic medical practitioners to advertise that they are competent to cure COVID-19 disease. When the Scientists of entire world are engaged in research to find out proper medicine/vaccine for COVID-19, there is no occasion for making any observation as contained in paragraph 14 with regard to Homeopathic medical practitioners. The homeopathy does not cure the disease, but it cures the patients.

20. We have already noticed that the writ petition, which was filed in the Kerala High Court only with a limited relief for issuing direction to respondent to implement the advisory dated 06.03.2020 issued by Ministry of AYUSH, there was no occasion for High

Court to make observations and issue direction as it has been made in paragraph 14.

21. We, however, make it clear that what is permissible for Homeopathic medical practitioner in reference to COVID-19 symptomatic and asymptomatic patients is already regulated by the said advisory and guidelines. The Government of India, Ministry of AYUSH has also brought on record the guidelines issued subsequent to 06.03.2020 for Homeopathy medical practitioners for COVID-19, where Homeopathic approach to COVID-19 has been elaborately dealt with. The said guidelines, which has been issued after 04.04.2020 has been brought on the record as Annexure C by the Ministry of AYUSH. The guidelines contained following under the heading "Homeopathic approach"-

"Homoeopathic Approach

It is advised that before taking up for homoeopathic medicines for prophylaxis, Amelioration and mitigation, physician must acquaint himself of above sections.

In case of epidemics or pandemics, first approach is to follow preventive measures and educate people about general measures and to provide such interventions which will keep their immunity enhanced.

Homeopathy therefore recommends issuing of public notice for Genus epidemics identified by the designated experts for immunity enhancement and practitioners may suggest the same to the people and as per the Advisory issued by Ministry of AYUSH(6).

Second approach is to provide homoeopathic symptomatic mitigation to affected persons. Homoeopathic medicines are also useful in the treatment of communicable diseases like Influenza Like Illness(7) (8), dengue(9), acute encephalitis syndrome(10). Several studies are also published which shows the immune modulatory potential of homoeopathic medicines in preclinical studies (11) (12) (13) (14) (15) (16). These medicines can be prescribed in an integrated manner or standalone depending on the severity on a case to case

Therapeutic Aid

As a system with wholistic approach medicine were selected based on the presenting signs and symptoms of each patients (17) (18) (19) (20). The medicines given here are suggestive based on their use and studies in the past in diseases of similar presentation like COVID-19 (21) (22) (23). Patients of COVID-19 are to be treated with adjuvant Homoeopathic medicines with the permission from local health authorities and Medical Superintendent of the Hospital. Homoeopathic doctors must follow all preventive measures (using PPEs) as are required for dealing with COVID 19 patients.

The remedies according to different stages of disease are given below:

Mild Disease (Symptomatic Amelioration and Mitigation Approach):

Medicines like Aconite napellus, Arsenicum album, Bryonia alba, Gelsemium sempervirens, Rhus tox. Eupatorium perfoliatum, Ipecacacunha, Belladonna, Camphora, may be used depending upon the symptoms similarities.

Severe disease but not in critical condition:

It is defined by following criteria (Dyspnoea, respiratory frequency $\geq 30/\text{min}$, blood oxygen saturation (SpO_2) $\leq 93\%$, $\text{PaO}_2/\text{FiO}_2$ ratio < 300 , and/or lung infiltrates $> 50\%$ within 24 to 48 hours)/)

- Suggested medicines are as adjuvant to Standard Management guidelines in the hospital setting only with the approval of authorities and willingness of the patient/guardian.
- The prescription is to be given only by institutionally qualified practitioner.
- Medicines like Phosphorus, Chelidonium, Veratrum Viride, Iodum, Camphora, Cinchona officinalis, Lycopodium, Ars. iod., Antim ars., Stannum met, Carbo veg., can be prescribed on symptomatic indication.

Posology

The medicine selected for each patient is tailored to person specific, taking into consideration, his/her mental make-up, physical symptoms, and characteristic particulars etc. In case of long term illness, besides the above mentioned factors, age, occupation, previous illnesses and life circumstance unique to that individual irrespective of the disease which he/she is suffering from, are also taken into consideration; thus the dictum "Homoeopathy treats the patient but not the disease".

After the appropriate medicine is selected, it is essential to decide the requisite potency, dose and repetition which is imperative for optimum response and faster recovery in each case. Different types of potencies such as decimal or centesimal potencies can be employed for treatment as are required for acute diseases. However, selection of potency of the remedy is dependent on various factors like susceptibility of the patient (high or low), type of disease (acute/chronic), seat/ nature and intensity of the disease, stage and duration of the disease and also the previous treatment of the disease(24)."

22. The above guidelines make it clear that Homeopathy has been envisaged by the Ministry as the therapeutic aid.

23. The above guidelines refer to Homeopathy medicines as medicines for prophylaxis, Amelioration and mitigation. The guidelines, however, specifically provides that “the prescription has to be given only by institutionally qualified practitioners”. The High Court in its impugned judgment has not fully comprehended the guidelines dated 06.03.2020 and taking a restricted view of the guidelines and have made observations for taking appropriate actions against the Homeopathic medical practitioners, which cannot be approved. The High Court, however, is right in its observation that no medical practitioner can claim that it can cure COVID-19. There is no such claim in other therapy including allopathy. The High Court is right in observing that no claim for cure can be made in Homeopathy. The Homeopathy is contemplated to be used in preventing and mitigating COVID-19 as is reflected by the advisory and guidelines issued by the Ministry of AYUSH as noticed above.

24. We, thus, observe that directions issued by the High Court in paragraph 14 of the judgment need to be

modified to the extent as indicated above. It goes without saying that Homeopathic medical practitioners have to follow the advisory dated 06.03.2020 issued by AYUSH Ministry as well as guidelines for Homeopathic medical practitioners for COVID-19 issued by Government of India, Ministry of AYUSH, as noted above. The Civil Appeal is disposed of accordingly. The interlocutory applications filed seeking permission for impleadment is rejected.

.....J.
(ASHOK BHUSHAN)

.....J.
(R. SUBHASH REDDY)

.....J.
(M.R. SHAH)

New Delhi,
December 15, 2020.