

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

WEDNESDAY, THE 2ND DAY OF JUNE 2021/12TH JYAISHTA, 1943

WP(C) NO. 11555 OF 2021

PETITIONER:

DR. JAYAPRASAD KARUNAKARAN,
MAHANAIM HOMEOPATHIC MEDICAL CENTRE,
T.C.25/1255, 2ND FLOOR, DIVYA BUILDING,
ARISTO JUNCTION, NEW THEATRE ROAD,
THAMPANOR, THIRUVANANTHAPURAM-695 001.
PHONE : 9496965701.

BY ADVS.
V.T.MADHAVANUNNI
M.S.VINEETH

RESPONDENTS:

- 1 UNION OF INDIA REPRESENTED BY
THE SECRETARY, MINISTRY OF AYUSH,
AYUSH BHAWAN, B-BLOCK, GPO COMPLEX,
INA, NEW DELHI-110 023.
PH. 011-24651950. EMAIL secy-ayush@nic.in
- 2 STATE OF KERALA REPRESENTED BY
THE CHIEF SECRETARY, GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT, TRIVANDRUM-695 001.
PH. 0471-2333147, 0471-2518181
EMAIL: chiefsecy@kerala.gov.in.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 02.06.2021, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

[CR]

J U D G M E N T

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Dated this the 2nd day of June, 2021

The petitioner, a Homoeopathic Practitioner conducting a Medical Centre at Thiruvananthapuram, is before this Court seeking a writ of Mandamus directing the respondents to ensure that the petitioner is not obstructed in any manner from performing in accordance with Ext.P4 judgment of the Hon'ble Supreme Court.

2. The petitioner claims that he has 17 years of practice and experience in treating chronic illnesses including viral diseases. The petitioner had presented research document on HIV Virus treatment in the International AYUSH Conclave, after having selected from among 107 academicians. The petitioner has also treated and saved serious Covid-19 patients in foreign countries. However, when the petitioner attempted to treat Covid-19 patients at

Thiruvananthapuram recently, he was informed by the officials of the State Health Department that action will be taken against him under the Disaster Management Act.

3. The learned counsel for the petitioner Sri. V.T. Madhavanunni would contend that the Hon'ble Apex Court has upheld the right of Homoeopathic Practitioners to treat Covid-19 patients and hence invoking provisions of the Disaster Management Act against the petitioner is highly arbitrary and illegal. The action of the Governmental authorities offends the right of the petitioner guaranteed under Article 19(1)(g) of the Constitution.

4. When the Kerala State itself holds an extensive network of Homoeopathic Clinics and Hospitals, prohibiting the Homoeopathic Practitioners from dispensing medicines to patients would destroy the very system of Homoeopathy. Though the Ministry of AYUSH of the Government of India has issued Ext.P5 Guidelines, the Union Ministry has not taken effective steps to properly implement the said Guidelines contended the learned counsel for the petitioner.

5. Sri. P. Vijayakumar, the learned Assistant Solicitor General of India representing the first respondent-Union of India, submitted that the Government of India, Ministry of AYUSH has issued Ext.P2 recommendations advising utilisation of Homoeopathy for preventive and prophylactic purposes, for symptom management of Covid-19 like illnesses and for add on intervention to the conventional care. There is no prohibition imposed by the Government of India on Homoeopathy for treatment of patients to the extent indicated in Ext.P2 recommendations.

6. The learned Government Pleader representing the 2nd respondent-State of Kerala submitted that the Government of Kerala had formed an expert committee for chartering the protocols for treatment for the management of Covid-19. The Government has approved the action plan of the Homoeo Department for giving Homoeo medicines as prophylactic. However the target population was not intended to include Covid-19 patients or their contacts or those people under quarantine.

7. In the light of the judgment of the Apex Court in Civil Appeal No.4049/2020, the Circular issued by the Government of Kerala has been modified as per Circular No.B1/150/2020/AYUSH dated 24.12.2020 and the qualified Homoeopathic Practitioners have been advised to follow Ext.P2 advisory and guidelines dated 06.03.2020 issued by the Ministry of AYUSH as well as the various Government Orders issued by the Government of Kerala. However, the Homoeopathic Practitioners should not make any claims regarding effectiveness of particular medicines in curing Covid-19.

8. Heard the learned counsel for the petitioner, the learned Assistant Solicitor General of India representing the 1st respondent and the learned Government Pleader representing the 2nd respondent.

9. The issue in this writ petition concerns the extent to which the Practitioners in Homoeopathic Medicine can treat Covid-19 patients prescribing Homoeopathic medicines. The system of Homoeopathy is statutorily recognised in India. In

1973, the Homoeopathy Central Council Act, 1973 (Act No.59 of 1973) was enacted and Section 26 thereof provided that every person whose name is for the time being in force borne on Part I of the Central Register of Homoeopathy, shall be entitled to practice Homoeopathy in any part of India.

10. The National Commission for Homoeopathy Act, 2020 was enacted by the Parliament with effect from 07.10.2020. Section 58 of the Act, 2020 enables the Central Government to repeal the Homoeopathy Central Council Act, 1973. Section 34 of the Act 2020, provides that no person other than a person enrolled in the State Register or the National Register shall be allowed to practice Homoeopathy as a qualified practitioner. Thus a person whose name is entered in the State Register or Central Register has a right to practice Homoeopathy.

11. The issue arose when in view of Covid-19 pandemic, the Government of Kerala invoked provisions of the Disaster Management Act. The Government issued a State Medical Protocol, as per which Covid-19 affected persons

should not be treated by anybody other than the Government and those authorised by the Government. However, as per the advisory, there was nothing prohibiting the qualified medical AYUSH practitioners (which term would include Homoeopathy Practitioners also) to prescribe immunity booster mixture or tablets, as suggested by the Ministry of AYUSH, Government of India.

12. On 06.03.2020, the Government of India, Ministry of AYUSH issued Ext.P2 Circular. The Ministry of AYUSH took a systemwise approach towards Covid-19 treatment and recommended under the head 'Preventive and Prophylactic' that Arsenicum Album 30 can be given daily once in an empty stomach for three days. The dose should be repeated after one month by following the same schedule till Corona Virus infections prevalent in the community. Under the head 'Symptom Management of Covid-19 like illnesses', it was stated that various medicines which found to be effective in treating flue like illness are Arsenicum Album, Btyonia Alba, Rhus Toxicodendron, Belladonna, Gelsemium, Eupatorium

Perfoliatum. All these medicines should be taken in consultation with qualified physicians of AYUSH systems. On add on interventions to the conventional care, it has been stated that medicine mentioned symptom management of Covid-19 like illnesses under sub-head 'Homoeopathy' can also be given as add on to conventional care and all these medicines should be taken in consultation with qualified physicians of AYUSH systems. The said advisory also provided certain general preventive measures and additional AYUSH specific measures to be adopted.

13. Subsequent to the said advisory from the Ministry of AYUSH, the Government of Kerala issued GO(RT) No.156/2020/Ayush dated 08.04.2020 approving the Action Plan outlining the Ayurveda strategies for prevention and mitigation and rehabilitation of Covid-19 patients in Kerala as appended to the order. The said GO dated 08.04.2020 however was silent on any Action Plan for Homoeopathic strategies for prevention, mitigation or rehabilitation of Covid-19 patients in Kerala. Subsequently, the Government of

Kerala issued GO(RT) No.161/202/Ayush dated 21.04.2020 approving the Action Plan outlining the homoeopathy strategies for prevention and management of Covid-19 in Kerala. The appended Action Plan provided details of strategy, setting up of communication platform, establishing necessary linkages, preparedness and readiness, implementation of the program and distribution of Homoeopathy Immune Booster. However, it was mentioned in the said Action Plan that the target population for the action plan does not include Covid-19 patients, their contacts or those under quarantine.

14. One Mr. M.S. Vineeth, a former Central Government Counsel, approached this Court filing W.P.(C) No.9459/2020 seeking to ensure that the Homoeopathic Practitioners are immediately allowed to perform in accordance with Ext.P2 notification dated 06.03.2020. A Division Bench of this Court held that 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, and held that 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. At the same time, this Court also found that 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.

15. One Dr. AKB Sadbhavana Mission School of Homoeo Pharmacy challenged the judgment of this Court in W.P.(C) No.9459/2020, before the Apex Court. The Hon'ble Apex Court, after considering the various Government Orders and after hearing the learned Solicitor General of India appearing for Ministry of AYUSH, Government of India, noted that paragraph 16 of the affidavit sworn on behalf of the Ministry of AYUSH stated as follows:-

“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.”

The Hon'ble Apex Court stated that it is clear from the advisory dated 06.03.2020 and the specific stand taken by the Ministry of AYUSH that Homoeopathic Medical Practitioners are not only constrained to prescribe homoeopathic medicines only as Immunity Booster.

16. The Government of India, Ministry of AYUSH has issued Ext.P5 guidelines for Homoeopathic Practitioners for Covid-19. The extensive guidelines *inter alia* provides as follows:-

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 epidemicus 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, Ipecacacunya, 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 (SpO₂) $\leq 93\%$, PaO₂/FiO₂ 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).”

Considering Ext.P5 guidelines also, the Apex Court held that what is permissible for Homoeopathic Medical Practitioner in reference to Covid-19 symptomatic and asymptomatic patients is already regulated by the advisories and guidelines.

17. Taking into account various Guidelines issued by the Government of India, Ext.P3 Division Bench judgment of this Court and Ext.P4 judgment of the Hon'ble Apex Court, the following conclusions can be arrived at:-

(1) A qualified Homoeopathic Physicians can prescribe and dispense preventive and prophylactic homoeo medicines, for preventing Covid-19.

(2) The Homoeopathic Physicians can resort to Homoeopathy for symptom management of Covid-19 like illnesses.

(3) They may provide Add on interventions to the conventional cases of Covid-19 and prescribe drugs as mentioned in the guidelines but the suggested medicines should be as adjuvant to Standard Management Guidelines in the hospital setting only with the approval of authorities and willingness of the patient/guardian.

(4) Advertisement by Homoeopathic Physicians is prohibited in view of Regulation 6 of the Homoeopathic Practitioners (Professional Conduct, Etiquette and Code of Ethics) Regulations, 1982 read with Sections 33 and 24 of the Homoeopathic Central Council Act, 1973.

In view of the afore conclusions, the writ petition is disposed of directing respondents 1 and 2 to ensure that the petitioner is not obstructed in any manner from practising Homoeopathy as per the Guidelines issued by the Ministry of AYUSH, Government of India and Ext.P4 judgment of the Hon'ble Apex Court.

Sd/-
N. NAGARESH, JUDGE

APPENDIX

PETITIONER'S EXHIBITS :

- Exhibit P1 TRUE COPY OF THE MALAYALAM NEWS PAPER REPORT DATED 01.12.2014 ABOUT THE UNIQUE ACHIEVEMENTS OF THE PETITIONER.
- Exhibit P2 TRUE COPY OF THE NOTIFICATION NUMBERED D.O.NO.S.16030/18/2019-NAM DATED 06.03.2020 WITH ANNEXURES ISSUED BY THE FIRST RESPONDENT TO THE CHIEF SECRETARIES OF ALL STATES.
- Exhibit P3 TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN WPC NO.9459/2020 DATED 21.08.2020.
- Exhibit P4 TRUE COPY OF THE JUDGMENT OF THE HONOURABLE SUPREME COURT IN CIVIL APPEAL NO.4049/2020 DATED 15.12.2020.
- Exhibit P5 TRUE COPY OF THE GUIDELINES ISSUED BY THE UNION MINISTRY OF AYUSH MARKED AS ANNEXURE C IN THE JUDGMENT OF THE HONOURABLE SUPREME COURT IN CIVIL APPEAL NO.4049/2020 DATED 15.12.2020.

ncd