

The State of U.P. and ors. Vs. Dr. Atma Ram Chauhan and ors.

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Court : Allahabad

Decided On : May-21-1973

Reported in : AIR1973All495

Judge : Satish Chandra and ;K.N. Seth, JJ.

Acts : Uttar Pradesh Indian Medicine Act, 1939 - Sections 39(4)

Appeal No. : Special Appeal No. 1088 of 1970

Appellant : The State of U.P. and ors.

Respondent : Dr. Atma Ram Chauhan and ors.

Advocate for Def. : Mohd. Iqbal, Adv.

Advocate for Pet/Ap. : Standing Counsel

Disposition : Appeal dismissed

Judgement :

1. The State of Uttar Pradesh and the authorities of Medical Health Services have come up in appeal against the judgment of a learned Single Judge quashing an order passed by the Civil Surgeon, Saharanpur on 30th May, 1968. By this order the Civil Surgeon directed all the Medical Officers in-charge of Zila Parishad Dispensaries in the district of Saharanpur that they were not authorised to do Medico-legal work at the dispensary as they were not fully qualified for this work.

2. It is not disputed that all the Medical Officers of the Zila Parishad Dispensaries, who are respondents before us, being auryeda graduates were registered medical practitioners within meaning of Indian Medicine Act, 1939. Section 39(4) of that Act provides:

'39 (1)

(4) A registered practitioner shall be entitled to

(a) sign or authenticate a birth or death certificate required by any law or rule to be signed or authenticated by a duly qualified medical practitioner;

(b) sign or authenticate a medical or physical fitness certificate required by any law or rule to be signed or authenticated by a duly qualified medical practitioner;

(c) give evidence at any inquest or in any Court of law as an expert under Section 45 of the Indian Evidence Act, 1872 on any matter relating to medicine, surgery or midwifery.'

Section 41(2) of the Act provides that the registered practitioners shall have the same privileges as the medical practitioners registered under the U. P. Medical Act, 1917, have under the U. P. Excise Act, 1910, or any other Act for the time being in force. It is apparent from Section 39(1) that the expression 'legally qualified medical practitioner' or duly qualified medical practitioner or any word importing that a person is recognised by law as a medical practitioner or member of medical profession shall in all Acts in force in Uttar Pradesh and in all Central Acts in so far as such Acts relate to any of the matters specified in List II or List III in the Seventh Schedule to the Constitution be deemed to include a registered practitioner.

3. It is thus clear that the Aurvedic practitioners, who have been granted the requisite diploma and who were deemed to be the registered practitioners are also deemed to be the legally qualified medical practitioners within meaning of Indian Medicine Act. They are entitled to do the various acts as well as to the same privileges as the Medical practitioners registered under the U. P. Medical Act, 1917.

4. It appears that the Government received some complaints against the competence of Aurvedic practitioners who were acting as Medical Officers of the Zila Parishad Dispensaries. In October, 1966 the Government constituted a committee and charged it with the duty of examining whether such practitioners should be permitted to do medico-legal work and to submit its report within a fortnight. In November, 1966, the committee submitted its report after examining the various curricula and the courses prescribed by the various Aurvedic Colleges. It found that the Aurvedic practitioners were deficient in qualifications. The State Government appears to have accepted this report and to have issued instructions to the Civil Surgeons of the various districts to see that the Aurvedic practitioners are not permitted to do medico-legal work. In the context of these instructions the Civil Surgeon, Saharanpur passed the impugned order dated 30th May, 1968 prohibiting the medical officers of the Zila Parishad Dispensaries from doing any medico-legal work. It is not disputed that the medico-legal work includes giving of evidence at any inquest or in any Court of law as an expert under Section 45 of the Indian Evidence Act on any matter relating to medicine, surgery or midwifery.

5. The question that arises for consideration is whether the State Government or its Executive Officers are entitled to pass orders prohibiting the registered medical practitioners from doing the work which they had been expressly authorised to do by virtue of their registration under the Indian Medicines Act. We are clear in our mind that the orders of the State Government cannot override the provisions of legislative enactments. When the Indian Medicines Act expressly entitles these registered practitioners to appear as an expert, the State Government has no power to contravene that provision. The impugned order passed by the Civil Surgeon, Saharanpur is clearly violative of the provisions contained in Section 39(4) of the Act.

6. It was urged that under paragraph 422 of the U. P. Medical Manual as well as under the Notification dated November 16, 1946, issued by the State Government under the District Boards Act, the Medical Officers In-charge of the Zila Parishad Dispensaries are under the personal control of the Civil Surgeons. That may be so. But in the guise of control, the Civil Surgeon cannot deprive the registered practitioners of their statutory right.

7. The impugned order is a general order operating on all medical officers irrespective of their individual capacity to do medico-legal work. Such a general order violates Section 39(4) of the Act. The learned Single Judge was justified in quashing this order.

8. The appeal has no substance and is accordingly dismissed with costs.

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