IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1314 of 2009
In SPECIAL CIVIL APPLICATION No. 2549 of 2009
With
CIVIL APPLICATION No. 6580 of 2009
With
LETTERS PATENT APPEAL No. 1336 of 2009
In SPECIAL CIVIL APPLICATION No. 2527 of 2009
With
CIVIL APPLICATION No. 6806 of 2009

B K SINGH + DEHM & 10 + Appellant(s)
Versus
SURAT MUNICIPAL CORPORATION & 4 + Respondent(s)

Appearance :
MR SACHIN D VASAVADA for Appellant(s) : 1 + 11.
MR DHAVAL G NANAVATI for Respondent(s) : 1.
MRS KRINA CALLA AGP for Respondent(s) : 2.
NOTICE SERVED BY DS for Respondent(s) : 2 + 3, 5.
MRS SUMAN KHARE for Respondent(s) : 4.
MR MITUL K SHELAT for Respondent(s) : 5.

CORAM : HONOURABLE THE CHIEF JUSTICE MR. S.J. MUKHOPADHAYA

HONOURABLE MR.JUSTICE ANANT S. DAVE

Date : 31/08/2010

ORAL ORDER

(Per : HONOURABLE THE CHIEF JUSTICE MR. S.J. MUKHOPADHAYA)

The petitioner Dr. B.K. Singh and ten others, who claim to be medical practitioners having done Diploma in Electropathy/ Electrohomeopathy and qualified in D.E.H.M. Examination from Naturo Electro Homeopathy Medico's India, New Delhi, preferred the writ petition in Special Civil Application No.2549 of 2009 against the order, by which the 1st respondent seized and locked the clinic of the petitioners. A prayer was made to direct the 1st respondent to open the seal and lock of the clinic, and to direct the 1st respondent not to stop the petitioners from practising Electropathy/Electrohomeopathy. Learned Single Judge having dismissed the writ petition, they have challenged the impugned order dated 22.06.2009, which reads as follows:-

"Heard learned advocates Mr.Sudhir Mehta for the petitioner and Mr.Sachin D. Vasavda for respondent no.2-Naturo Electro Homoeopathy Medico's India (NEHM of India). Learned advocate Mr.Mehta submitted that though there are directions issued by Allahabad High Court and Delhi High Court, Government of Gujarat is no allowing the petitioners to practise. Mr.Vasavda, learned advocate for respondent no.2 also complains of the same. If that is so, necessary proceedings may be initiated before appropriate forum.

2. No case is made out for interference at the hands of this Court. The petition is disposed of. Notice is discharged."

2. The petitioner, Vaibhav Vijay Mahajan and 54 others preferred another writ petition in Special Civil Application No.2527 of 2009. They also claim to be senior-most Doctors practising in Electro Homeopathy for more than 8-10 years. They prayed to set aside the oral instruction dated 2/3.03.2009, whereby petitioners were directed to close their dispensaries. A similar prayer has been made, as in the aforesaid case. Learned Single Judge by the impugned order dated 22.06.2009 having dismissed the writ petition, as quoted hereunder, the present appeal has been preferred:

"1. Heard learned advocate Mr. Mishra for the petitioners and learned advocate Mr. Baghel for Mr. Munshaw, learned advocate and Mr. Nanavati, for the Municipal Commissioner and learned Assistant Government Pleader Ms. Manisha Narsinghani for the State.

2. The Court does not find any substance, therefore, the petitions are dismissed. The Court does not find any reason to take any different view than what is taken by brother Mr. Justice M.R. Shah in Special Civil Application No.3312 of 1997 with other allied matters vide judgment and order dated 30.11.2005. Notice is discharged.

3. At the request of learned advocate of for the petitioners, it is clarified that it will be open for the petitioners to file an application to grant them recognition for the practice which they intend to do and in the event, the Government does not consider the application and passes any order adverse to them, it will be open for the petitioners to take recourse available to them in accordance with law."

3. Learned counsel appearing on behalf of the petitioners would contend that during the pendency of the appeal, Ministry of Health and Family Welfare, Department of Health Research, Government of India, by their order No.V.25011/276/2009-HR dated 05.05.2010, noticed certain

order passed by High Court of Allahabad on 03.08.2009 in Civil Miscellaneous Writ Petition No.31904 of 1991. Pursuant to the said order, the representations were considered and taking into consideration the order passed by the High Court and Supreme Court, Central Government passed the following order:-

> *"In accordance with Orders of the High Court & Supreme Court quoted here, there is no proposal to stop the petitioners from practicing in electropathy or imparting education, as long as this is done within the provision of the Order No.R.14015/25/96-U&H(R)(Pt) dated 25th November 2003. Once the legislation to recognize new systems of medicine is enacted, any practice or education would be regulated in accordance with the said Act. The representation of the petitioner dated 28.10.2009 is disposed off accordingly.*
> *This issues with the approval of Secretary, Department of Health Research in this Ministry"*

4. It is contended that in view of the finding of the Supreme Court and decision of different High Courts, the Central Government having given a specific decision dated 05.05.2010, the oral direction as made by the respondent - Surat Municipal Corporation is uncalled for.

5. We have heard counsel for the parties and perused the record. At this stage, we do not intend to decide the issue as raised in the appeals for the reasons hereunder:

(i) the order passed by the learned Single Judge both dated 22.06.2009 as quoted above being non-speaking orders, they cannot be allowed to continue.

(ii) The Central Government having taken a policy decision by its letter dated 05.05.2010, the respondent authorities, including the Surat Municipal Corporation and the State Government, are bound to give weightage to the same, and to act in accordance with law and the judgments of different High Courts and Supreme Court, as referred in the Central Government letter aforesaid.

6. For the reasons aforesaid, we set aside both the impugned orders dated 22.06.2009 passed by the learned Single Judge in two different writ petitions and remit the case with directions to the respondent Surat Municipal Corporation to notice the decision of the Central Government dated 05.05.2010 and pass appropriate reasoned order with regard to running of clinics by the petitioners. Order should be passed within two weeks from the date of receipt/production of the copy of this order. If any adverse decision is given, they are supposed to give grounds. The petitioners will file a representation enclosing a copy of the Central Government order dated 05.05.2010. Both the Letters Patent Appeals and Civil Applications stand disposed of with the aforesaid observations and directions. No costs.

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(S.J. MUKHOPADHAYA, C.J.)

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(ANANT S. DAVE, J.)

CERTIFIED COPY

TRUE COPY

DEPUTY/ASSISTANT REGISTRAR

THIS 29-09-2010 DAY OF