

CASE NO.:
Appeal (civil) 2016 of 1996

PETITIONER:
D.K. JOSHI

RESPONDENT:
STATE OF U.P. AND ORS.

DATE OF JUDGMENT: 25/04/2000

BENCH:
S. RAJENDRA BABU & S.N. PHUKAN

JUDGMENT:
JUDGMENT

2000 (3) SCR 525

The Judgment of the Court was delivered by

PHUKAN, J. The appellant filed a writ petition before the High Court of Allahabad in public interest praying for writ of mandamus directing the respondents to initiate action against persons who are unqualified and unregistered but carrying on medical profession unauthorisedly in the district of Agra, Uttar Pradesh. The High Court by the impugned judgment dismissed the petition in limine with the observation that the Chief Medical Officer, Agra would complete the inquiry which was pending in accordance with law. The present appeal is against the said order of the High Court.

Though in the appeal, the State of U.P., the Director General, Medical and Health Services, U.P., the Additional Director, Medical & Health, Agra and the Chief Medical Officer, Agra have been impleaded as respondents, only one affidavit has been filed on behalf of all respondents by the Deputy Chief Medical Officer, Agra. In the reply affidavit, the allegation that such unqualified persons are carrying on medical profession, is not denied. However, it has been stated inter alia that some such unqualified medical practitioners were identified and the reports were sent to the District Magistrate. According to the deponent such unqualified persons stopped medical practice in the district of Agra and have shifted to nearby districts. We are constrained to observe that reply affidavit discloses as sad state of affairs of the administration. Instead of taking action against these unqualified medical practitioners in accordance with law and as per instructions of the State Government to which we shall presently refer their names, were only forwarded to District Magistrate without any follow up action by the authorities.

From the letter of Indian Medical Council dated 3.5.91, which is on record, we find that the Secretary, Health and Family Welfare Department, State Government was apprised by the Medical Council of this problem in the State and it was emphasized in the said letter that these persons were openly playing with the health of public. The Secretary was requested that "public may be relieved by taking strict action against unqualified/unregistered practitioners and institutions which are providing illegal degree in Indian System of Medicine." The State Government was also concerned with this problem and the Secretary, Health and Family Welfare Department as far back as on 2nd December, 1995 addressed a letter to all District Magistrates and Chief Medical Officers of the State drawing their attention to the legal provisions for taking appropriate action against such unqualified/unregistered medical practitioners. In the letter attention was drawn to Section 15 of the Indian Medical Council Act, 1956, Section 17 of the Indian Medicine Central Council Act, 1970 and Section 30 of the United Provinces Medical Act, 1917. The District Magistrates and the Chief Medical Offices were also advised how to initiate criminal action against these

unauthorised practitioners.

It is distressing to note that in spite of above direction of the State Government, the District Magistrates and the Chief Medical Officers did not take effective steps to stop this menace which is hazardous to human life. As indicated above, the Chief Medical Officers only forwarded the names of such unauthorised medical practitioners to the District Magistrates and no follow up action was taken.

In the present appeal, directions have been prayed for only for district of Agra. In the reply affidavit, it has been stated that such unqualified/unregistered doctors after being warned have shifted to other neighbouring districts. We are, therefore, of the opinion that unless directions are issued in respect of the entire State of U.P. the problem cannot be solved. We set aside the impugned judgment and direct as follows :

The Secretary, Health and Family Welfare Department, State of U.P. shall take such steps as may be necessary to stop carrying on medical profession in the State of U.P. by persons who are unqualified/unregistered and in addition shall take followings steps :

(i) All District Magistrates and the Chief Medical Officers of the State shall be directed to identify, within a time limit to be fixed by the Secretary, all unqualified/unregistered medical practitioners and to initiate legal actions against these persons immediately;

(ii) Direct all District Magistrates and the Chief Medical Officers to monitor all legal proceedings initiated against such persons;

(iii) The Secretary, Health and Family Welfare Department shall give due publicity of the names of such unqualified/unregistered medical practitioners so that people do not approach such persons for medical treatment.

(iv) The Secretary, Health and Family Welfare Department shall monitor the actions taken by all District Magistrates and all Chief Medical Officers of the State and issue necessary directions from time to time to these officers so that such unauthorised persons cannot pursue their medical profession in the State.

The appeal is allowed. No costs.