

Rajesh Kumar Srivastava Vs A.P. Verma and Others

Court: Allahabad High Court

Date of Decision: Jan. 28, 2004

Acts Referred: Constitution of India, 1950 " Article 141, 142
Contempt of Courts Act, 1971 " Section 12, 2

Citation: (2004) 2 AWC 967 : (2005) 2 ESC 857

Hon'ble Judges: Sunil Ambwani, J

Bench: Single Bench

Advocate: Shashi Nandan, U.N. Sharma, Sujeet Kumar and K.P. Bajpai, for the Appellant; H.P. Singh, J.P. Sharma, Vikram Nath, Pankaj Naqvi, Dinesh Kockker and R.B. Pradhan, S.C and S.C., for the Respondent

Final Decision: Disposed Of

Judgement

Sunil Ambwani, J.

Heard counsel for petitioner and Sri R.B. Pradhan, learned standing counsel, Sri Pankaj Naqvi, Sri Dinesh Kackker for interveners, Sri Rakesh Kumar Mittal, Principal Secretary, Medical Health and Family Welfare Government of U.P., Lucknow and Dr. Amrendra

Singh, Director, Medical Care, Government of U.P., Lucknow are present in Court.

2. A XIIIth supplementary-affidavit of Sri Rakesh Kumar Mittal, Principal Secretary, Medical Health and Family Welfare Department,

Government of U.P. dated 15.1.2004, has been filed today, annexing Government orders dated 1.12.2003, 8.1.2004 and 12.1.2004 issued by

him directing all the District Magistrates, the Superintendent and Senior Superintendents of Police, and the Chief Medical Officers in U.P. to take

action in pursuance of order of Supreme Court in D.K. Joshi's case dated 25.9.2000 and in this Contempt Petition No. 820 of 2002, between

Rajesh Kumar Srivastava v. A.P. Verma, the then Chief Secretary, U.P. and Ors. ; to identify the unauthorised and unregistered medical

practitioners and to submit fresh list of such persons to the State Government, to Initiate prosecution and to take effective steps to stop

unauthorised medical practice by such persons. A letter dated 12.1.2004 of Shri Rakesh Kumar Mittal requires Principal Secretary, Home

Government of U.P. to issue directions to all Superintendent of Police/Senior Superintendent of Police to effectively represent the State

Government in Contempt Petition No. 820 of 2002. Annexure-5 is a list of number of unauthorized medical practitioners identified so far in State ;

the number of F.I.Rs. lodged, and number of cases in which the charge-sheets has been submitted in Court. This list provides information from all

the 70 districts in the State of U.P. except District Sant Ravidas Nagar. The respondents have so far, in last two years since these proceedings

were initiated, identified 18,856 persons practicing without any valid registration in the State of U.P. First information reports have been lodged

against 4,381 such persons and charges-sheets have been submitted in 440 cases.

3. In D.K. Joshi Vs. State of U.P. and Others, , decided on 25th April, 2000, it was found by Supreme Court that the Indian Medical Council in

its letter dated 3.5.1991 apprised the Secretary Medical Health, U.P. of the problem of unauthorised medical practice in the State. The Secretary

was requested that the ""public may be relieved by taking strict action against unqualified/ unregistered practitioners, and institutions which are

providing Illegal degrees in the Indian System of Medicine."" The State Government was also concerned and that as far back as on 2.12.1995, the

Secretary, Health and Welfare Department, U.P., addressed a letter to all the District Magistrates and Chief Medical Officers of the State,

drawing their attention to the legal provisions for taking appropriate action against such persons. In this 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, 1971. The District Magistrates and Chief Medical Officers were also advised how to initiate action against these unauthorised

persons. The Supreme Court observed in para 4 of the report as follows :

It is distressing to note that in spite of the 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.

4. The writ petition was disposed of by Supreme Court with following directions :

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 following 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 the 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 to 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.

5. A Contempt Petition No. 292 of 2001 was filed by Rajesh Kumar Srivastava, Reporter of National Daily "Rastriya Sahara" drawing the

attention of the Apex Court that the directions passed by the Court have not been complied with by the officials of the State Government. By an

order dated 8.10.2001, the contempt petition was dismissed with the following directions.

It is appropriate for the petitioner to move the High Court for the relief sought for. The contempt petition is dismissed accordingly.

6. The petitioner thereafter filed this contempt petition which was registered as Contempt Petition No. 820 of 2002. Notices were issued by this

Court on 21.3.2002 to the respondents namely, the Chief Secretary, Government of U.P., Secretary, Department of Health and Family Welfare,

the District Magistrate, Meerut and Chief Medical Officer, Meerut. On 27.7.2002, directions were issued to the Principal Secretary, Medical and

Health, Government of U.P. and to all the District Magistrates, Chief Medical Officers as well as Director General of Information and Public

Relations Department, Director, Medical Care, Government of U.P. as well as Officiating Director General, Medical Health of U.P. On 5.8.2002,

all the District Magistrates and Chief Medical Officers of the State were impleaded as parties and were required to take action.

7. Since thereafter, the Court is monitoring the matter. The successive Principal Secretaries, Medical Health, Government of U.P. have filed

supplementary-affidavits including the action taken on reports of the Chief Medical Officers. The Court by its order dated 5.8.2002 also directed

the Director General of Police and Director General of Prosecution to submit their reports. Interventions were also made on behalf of D.K. Joshi,

Shiba Jose and Indian Association of Pathologists and Microbiologists Varanasi Forums. These intervenors have also highlighted the reality that the

unauthorised/unregistered medical practitioners in thousands are still flourishing in the State of U. P.

8. During the pendency of contempt petition this Court also directed inspections of Community Health Centres at Koraon and Shankergarh at

Allahabad as exemplars to verify the complaint alleging that the unauthorised practitioners are flourishing on account of wholly inadequate Primary

and Secondary Medical care provided by the State Government, and that there is a close nexus between the State Government Health Machinery

and the unauthorised practitioners. The report submitted by Dr. Ram Babu, Director, Medical Health, U. P., verified these assertions. It was found

that the Community Health Centres are not providing adequate medical Care and the Government medical care in remote rural areas is almost

absent ; the Doctors are not attending their duties, the medical equipment is either not available or is nonfunctional, the para-medical staff is wholly

insensitive, and that apart from advertised Government medical and family welfare schemes, like Pulse Polio Programme, Family Welfare camps,

Aids care, Blood donation camps the actual and much needed medical care is not available. Some doctors and Para Medics, managing long

tenures at their postings have entered into a close nexus with unauthorised practitioners. The State Government assured the Court to make further

inspections, but no follow up action was taken.

9. The Medical Council of India was impleaded and is represented by Sri Vikram Nath. The council filed an affidavit of Shri Jagtar Singh,

Assistant Secretary, Medical Council of India, New Delhi. In respect of qualifications for running pathological laboratories the council clarified in

the affidavit as follows :

10. It is most respectfully submitted that the following are the submissions/answers to the queries set out in para 5 above :

(i) The minimum qualification required by persons for setting up a pathological lab and practice pathology is M.B.B.S. However, in order for a

physician to claim himself to be a specialist in pathology he has to have a special qualification in pathology, i.e., either post-graduate degree or

diploma.

(ii) Persons who hold degrees of B.A.M.S. or B.H.M.S. do not fall within the purview of holding recognised degrees under the Indian Medical

Council Act, 1956, and would not be entitled to practice pathology being a part of modern medicine.

(iii) Any person can establish a pathology laboratory. But, the said person would certainly be required and obliged to employ of a graduates of

modern medicine to examine the pathological specimens and sign the certificates and reports.

(iv) The council towards discharge of its statutory responsibilities for maintenance of highest standards of medical education have prescribed norms

etc. for setting up of a medical college having a teaching hospital. The norms for hospitals, beds, wards, operation theatres, etc. laboratories have

been laid down but no separate norms for pathology labs only have been prescribed by the Medical Council of India, i.e., for establishment of a

pathological laboratory.

10. In the last two years the respondents have only identified some of the unauthorised medical practitioners. It is only a tip of the ice berg. It is

estimated that apart from 18,856 identified so far there are many more thousands unauthorised persons playing with the health of the population of

the State. In two years the authorities have only been able to identify only 18,856 and at some places the names have been published in

newspapers. Director of Information, Government of U.P. has expressed his inability to publish all the names. The State Government has put up an

excuse that they do not have sufficient funds to comply with the order, and instead of publishing and prosecuting they have caused a few awkward

and clumsy advertisements, warning public to visit such unauthorised persons. The effort made to initiate prosecution only against 4381 persons

and charge-sheets only in 440 cases, proves the lack of will and inadequacy of efforts by the respondent.

11. The orders passed by Supreme Court intended to curb the growing menace of unauthorised practitioners. The proceedings in this contempt in

last two years petition have made it apparent that the menace cannot be effectively checked, unless and until all the establishment offering

unauthorised medical care in the State of U.P. are compulsorily registered. This will exclude the black sheep and also provide a valuable data bank

of the authorised private medical care in the State.

12. In these two years, the Court has experienced, and that all the parties have suggested, that instead of chasing unauthorised persons, by process

of inviting complaints and conducting raids (which was made a one time affair, with no follow up actions) the authorised medical practitioners must

be identified to exclude the unauthorised persons. Whenever raids were conducted the unauthorised persons either closed their clinics or ran away.

Most of them were found absent. A large number of letters have been received from the general public complaining their mischief and manner in

which these persons are playing with public health. Almost every day there are reports of deaths, spoiled medical cases, blindings, etc. They are

also engaged in carrying out hazardous medical procedures operation to remove cataracts, caesarians, and do not fear in prescribing scheduled

drugs advertise magical remedies, of which they have no knowledge.

13. Sri R.K. Mittal, and Dr. Amrendra Singh, participated in the deliberations, and assured the Court that any effective method, which may place

burden upon such unauthorised practitioners, shall be accepted and implemented by the State Government.

14. Article 142 of the Constitution of India provides that Supreme Court in exercise of its jurisdiction may pass such decree, or make such order

as it is necessary for doing complete justice in any cause or matter pending before it. The law declared by Supreme Court of India is binding on all

Courts under Article 141 of the Constitution of India and that all the authorities civil or judicial, in the territory of India, under Article 144 have

been mandated to act in aid of Supreme Court. The power of the Supreme Court under this Article is meant to supplement the existing legal

framework-to do complete Justice between the parties and not to supplant it. It is conceived to meet the situations which cannot be effectively and

appropriately tackled by the existing provisions of law. The Article provides that the Supreme Court in exercise of its jurisdiction may pass such

decree or make such order as is necessary for doing complete justice in any "cause" or "matter", which would include any proceeding pending in

Court and would cover almost every kind of proceeding in Court. It is residuary power, supplementary and complementary to the powers

specially conferred by the Statutes to do complete justice between the parties whenever it is just and equitable to do so. It is intended to prevent

any obstruction to the stream of justice. It can grant relief even to a party who is not before the Supreme Court and has omitted to challenge the

impugned order before the Supreme Court.

15. The Medical Council of India has notified the Indian Medical Council (Professional Conduct, Etiquette and Ethics), Regulations, 2002 (Part

III, Section 4, Gazette of India dated 6th April, 2002). These Regulations made u/s 20A read with Section 33(m) of the Indian Medical Council

Act, 1956, with previous approval of Central Government, provides a Code of Conduct, etiquette and ethics. Chapter I (B) 1.1.3, 1.3.

Maintenance of Medical Records, 1.4 Display of registration numbers and 1.9 Evasion of Legal Restrictions (relevant for the matter) are quoted as

below :

1.3. Maintenance of Medical Records :

1.3.1. Every physician shall maintain the medical records pertaining to his/her indoor patients for a period of 3 years from the date of

commencement of the treatment in a standard proforma laid down by the Medical Council of India and attached as Appendix-3.

1.3.2. If any request is made for medical records either by the patients/authorised attendant or legal authorities involved, the same may be duly

acknowledged and documents shall be issued within the period of 72 hours.

1.3.3. A registered medical practitioner shall maintain a Register of Medical Certificates giving full details of certificates issued. When issuing a

medical certificate he/she shall always enter the identification marks of the patient and keep a copy of the certificate. He/she shall not omit to

record the signature and/or thumb mark, address and atleast one identification mark of the patient on the medical certificates or report. The

medical certificate shall be prepared as in Appendix-2.

1.3.4. Efforts shall be made to computerize medical records for quick retrieval.

1.4. Display of registration numbers :

1.4.1. Every Physician shall display the registration number accorded to him by the State Medical Council/Medical Council of India in his clinic and

in all his prescriptions, certificates, money receipts given to this patients.

1.4.2. Physicians shall display as suffix to their names only recognised medical degrees or such certificates/diplomas and memberships/ honours

which confer professional knowledge of recognizes any exemplary qualification / achievements.

1.9. Evasion of Legal Restrictions.--The physician shall observe the laws of the country in regulating the practice of medicine and shall also not

assist others to evade such laws. He should be co-operative in observance and enforcement of sanitary laws and regulations in the interest of

public health. A physician should observe the provisions of the State Acts like Drugs and Cosmetics Act, 1940 ; Pharmacy Act, 1948 ; Narcotic

Drug and Psychotropic Substances Act, 1985 ; Medical Termination of. Pregnancy Act, 1971 ; Transplantation of Human Organ Act, 1994 ;

Mental Health Act, 1987 ; Environmental Protection Act, 1994 ; Drug and Magic Remedies (Objectionable Advertisement) Act, 1954 ; Persons

with Disabilities (Equal Opportunities and Full Participation) Act, 1995 and Biomedical Waste (Management and Handling Rules, 1998 and such

other Acts. Rules and Regulations made by the Central/ State Government or local Administrative Bodies or any other relevant Act relating to the

protection and promotion of public health.

16. The directions issued by Supreme Court in D.K. Joshi's case must be complied. The object and purpose of the order is to identify,

unauthorised persons, publish their names and to prosecute them. The magnitude of the problem, the practical difficulties put forward by the

respondents, and the expediency requires to adopt same innovative method. The suggestions made by the parties were deliberated and readily

accepted by Shri R. K. Mittal and Dr. Amrendra Singh. They made valuable suggestions. The Regulations, 2002 of Medical Council of India, also

require maintenance of records.

17. Having the considered deliberated, and discussed the matter in detail with the officials and the counsels appearing from either side, I find that

the orders passed by the Apex Court can be effectively complied, if the burden of proving the competence to practice be shifted upon all such

persons engaged in private medical practice, and offering private medical care/services in the State.

18. Having regard to the facts and circumstances, and with the consent of all the parties including the senior State officials present and, including

their valuable suggestions, following directions are issued, for strict compliance by all those who are concerned ;

(1) All the Hospitals, Nursing Homes, Maternity Homes, Medical Clinics, Private Practitioners, practicing medicine and offering medical and health

care services. Pathology Labs, Diagnostic Clinics ; whether run privately or by Firms, Societies. Trusts, Private limited or Public limited companies,

in the State, shall register themselves with Chief Medical Officer of the district where these establishments are situate, giving full details of the

medical facilities offered at these establishments, the names of the registered and authorised medical personnel practicing, employed or engaged by

them, their qualifications with proof of their registrations ; the Para Medical staff employed or engaged and their qualifications, on a form (for each

category) prescribed by the Principal Secretary, Medical Health and Family Welfare, Government of U.P. The prescribed proforma with true and

accurate information shall be submitted, supported by an affidavit of the person providing such medical services or the person incharge of such

establishment, sworn before Notary Public. The required information shall be submitted for registration, by all these persons, on or before

30.4.2004.

(2) The Principal Secretary, Medical Health and Family Welfare, U.P., shall publish the information requiring all these persons to obtain

registrations, along with the directions given in this order, and the prescribed proforma, in all leading newspapers of the State, at least three times,

in the month of February, 2004.

(3) Any change or addition in the particulars submitted shall be notified within thirty days and that the registrations shall be renewed every year

before 30th April of the year.

(4) On and from 1.5.2004, all those persons who have not furnished the information and obtained registration with the Chief Medical Officers of

the district, shall be taken to be practicing unauthorisedly and that the Chief Medical Officers, shall scrutinize and forthwith report the matter to the

Superintendent/Senior Superintendent of Police of the district with information to this Court, to conduct raids and to seal the unauthorised

premises/establishments. All the authorised persons/ establishments, who fail to obtain registration will have liberty to apply only to this Court to

explain the delay and to seek permission to continue with their medical practice/ profession.

(5) All those medical practitioners who desire to offer medical services in the State, in future, shall be required to submit the details in the aforesaid

proforma for registration as above with the Chief Medical Officer of the district before they start medical practice.

(6) All the institutions/ establishments/ colleges awarding medical degrees in the State shall apply and get themselves registered with the Principal

Secretary Medical Health and Family Welfare, U.P. with full particulars of their authorization to confer such degrees/certificates, on or before

30.4.2004.

(7) The news papers and magazines, published in Uttar Pradesh, are restrained from publishing advertisements by and from unauthorised medical

practitioners, publishing their claims of quick and magical remedies. They shall require these persons to give proof of their qualifications and

registrations. The breach shall be taken to aid and abet illegal activities violative of Magic Remedies (Objectionable Advertisement) Act, 1954, and

other relevant legislation"s.

(8) The Principal Secretary, Medical Health and Family Welfare, it is directed to ensure that no Medical Officer in the Government service is

posted beyond three years in any district, and that all para medical staff serving in the Primary Health Centre/ Community Health Centre/ District

Hospitals and other hospitals run by Government of U.P. for more than five years, shall be transferred from that centre/hospital. Any doctor in

employment of State Government offering their services to the unauthorised medical practitioners shall face immediate disciplinary action by the

State Government and shall be prosecuted for aiding and abetting such unauthorised practice.

19. These orders shall be strictly complied with. Any breach of these orders shall be treated to be contempt of the Court, and shall be punished

accordingly.

20. These directions shall not affect the earlier directions issued in this matter. The respondents shall continue to identify and prosecute

unauthorised medical practitioners. There is a large gap between the identified unauthorised practitioners so far, and the prosecutions launched

against them. A request has been made by standing counsel on behalf of Director General, Prosecutions, U.P. to file a reply with regard to the

delay and status of the prosecutions. Let a detailed affidavit be filed by him within three weeks. All the District Magistrates and Chief Medical

Officers shall comply with the order of the Apex Court and the Government Orders dated 1.12.2003, 8.1.2004 and 12.1.2004 issued by the

Principal Secretary, Medical Health and Family Welfare, U.P. Government, Lucknow. They shall continue to identify, advertise and prosecute the

unauthorised practitioners. They shall be held personally responsible for unauthorised practitioners practicing in their areas.

21. List on 16.2.2004 for further orders and hearing in the matter of Unauthorised Pathology Laboratories at Varanasi, and the contempt

proceedings drawn against Dr. A. K. Dubey. A copy of the order shall be supplied to chief standing counsel for compliance.