REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 8553-8557 OF 2014

STATE OF GUJARAT & ORS. ETC. ...APPELLANT(S)

VERSUS

DR. P. A. BHATT & ORS. ETC. ...RESPONDENT(S)

WITH

CONTEMPT PETITION (C) NO.701 OF 2017
IN
C.A. NO.8556 OF 2014 @ C.A. NOS .8553-8557 OF 2014

CONTEMPT PETITION (C) NO.674 OF 2017
IN
C.A. NO.8555 OF 2014 @ CA NOS. 8553-8557 OF 2014

CONTEMPT PETITION (C) NO.916 OF 2017
IN
C.A. NO.8557 OF 2014 @ CA NOS.8553-8557 OF 2014

J U D G M E N T

V. Ramasubramanian, J.

1. These civil appeals arise out of a common order passed by the Division Bench of the High Court of Gujarat at Ahmedabad confirming the order of the learned Single Judge, holding that the

respondents possessing a degree of BAMS (Bachelor of Ayurved in Medicine and Surgery) should be treated at par with the doctors holding MBBS degrees and that they are entitled to the benefits of the recommendations of the Tikku Pay Commission.

2. We have heard the learned counsel appearing for the parties.

3. On the basis of a Memorandum of Settlement dated 21.08.1989 entered into by the Ministry of Health and Family Welfare with the Joint Action Council of Service Doctors Organisation, a High-Power Committee was constituted on 03.05.1990 with Shri R.K. Tikku as its Chairman, for the purpose of improving the service conditions and prospects of the doctors in Government service.

4. This Committee held 30 meetings during the period from June-1990 to October-1990 and submitted its recommendations under a Report dated 31.10.1990. The recommendations contained in this Report was confined only to service doctors holding MBBS degrees and post-graduate medical degrees and degrees in super-specialities and those on the teaching and non-teaching sides.

5. By a separate order dated 19.11.1990, the Ministry of Health and Family Welfare constituted another High-Power Committee under the chairmanship of the very same person, namely, Shri R.K. Tikku, for the purpose of considering the career improvement and cadre restructuring of the practitioners of Indian Systems of Medicine and Homeopathy. This Committee submitted a separate Report on 26.02.1991 and it was confined to practitioners of alternative Systems of Medicine, holding degrees in Ayurved/Unani/Siddha/Homeopathy.

6. The Government of India accepted the recommendations of the Tikku Committee dated 31.10.1990, in respect of allopathic doctors by Office Memorandum dated 14.11.1991. The State of Gujarat also accepted the recommendations of the Tikku Committee for allopathic doctors and issued an order in Resolution No.GHS/1094/2842/T dated 17.10.1994. It was stated in the said order dated 17.10.1994 that adequate number of allopathic doctors was not available in the State and that therefore, it was necessary to attract talent.

7. After the implementation of the recommendations of the Tikku Committee dated 31.10.1990 in respect of allopathic doctors, in the State of Gujarat by the Government Resolution

dated 17.10.1994, the Local Fund Audit, Ahmedabad sought clarifications, vide letters dated 04.03.1998 and 21.04.1998, as to whether the same benefits are available to non-MBBS medical officers holding qualifications such as G.A.F.M/LMP.

8. In response, the Health and Family Welfare Department of the Government of Gujarat issued a Government Resolution bearing No.KRV/1098/726/CH dated 01.01.1999, holding that non-MBBS medical officers are also entitled to the benefit. Incidentally this letter stated that the recommendations of the Tikku Committee were extended even to doctors working under the Employees State Insurance Scheme, vide Government Resolution dated 01.07.1997.

9. The respondents herein who were originally appointed on adhoc basis, under the 'Community Health Volunteer Medical Officers Scheme' floated by the Government of India and who were later absorbed by the State of Gujarat in May- 1999, filed 4 writ petitions on the file of the High Court of Gujarat seeking extension of the benefit of higher scales of pay on the basis of the recommendations of Tikku Pay Commission. A separate writ petition was filed by the Medical Officers (Ayurved) Association, comprising of persons initially appointed as Medical Officers

Class-III. The relief sought by this Association was similar to the one sought in the batch of four writ petitions.

10. By a common order dated 26.07.2012, a learned Judge of the High Court allowed all the writ petitions, holding that doctors having degrees in alternative Systems of Medicine are entitled to be treated at par with doctors holding MBBS degree.

11. The State of Gujarat preferred intra-court appeals. After filing appeals, the State also issued a Government Resolution dated 31.07.2013 withdrawing the Resolution dated 01.01.1999 by which the benefit was extended to non-MBBS degree holders. This was because the learned Single Judge held that discrimination between non-MBBS degree holders working in the ESI Scheme and non-MBBS degree holders working in other areas was not permissible.

12. But the Division Bench of the High Court dismissed all the intra-court appeals holding, ***(i)*** that both MBBS and non-MBBS doctors form part of the same cadre and hence no discrimination is permissible within the cadre on the basis of educational qualifications; and ***(ii)*** that the non-MBBS doctors were also discharging the same duties and functions discharged by MBBS doctors and were even manning primary health centres

independently and that therefore they were entitled to equal pay.

13. Aggrieved by the said order of the Division Bench of the High Court, the State has come up with the above appeals. On 08.09.2014, this Court granted leave in the special leave petitions and passed an interim order to the following effect.

> "Leave granted.
>
> Having heard learned counsel for the parties, it is directed that the State of Gujarat shall comply with the order of the High Court up to 50% within two months. Needless to say, it case the appeal is dismissed, the respondents shall be entitled to the balance 50% with interest, which shall be determined at the time of final adjudication of the appeal.
>
> Hearing expedited."

14. Claiming that the above interim direction issued on 08.09.2014 was not complied, a batch of contempt petitions was filed in the year 2016. Those contempt petitions were disposed of on the basis of a statement made to the effect that the State will comply with the order by the end of October, 2016.

15. However, a fresh set of three contempt petitions were filed in the year 2017, complaining of wilful disobedience of the order dated 08.09.2014. These contempt petitions were directed to be listed alongwith the main appeals and this is why we have five civil appeals and three contempt petitions on hand.

Preliminary contention

16. The learned counsel for the respondents raised a preliminary issue that the question raised in these appeals is squarely covered by a recent judgment of this Court in ***North Delhi Municipal Corporation vs. Dr. Ram Naresh Sharma***[1] and that therefore the impugned order of the High Court does not need a deeper scrutiny. Therefore, it is necessary to address this preliminary issue before we proceed to consider the rival contentions on merits.

17. In ***Dr. Ram Naresh Sharma*** (supra), the only question that arose was as to whether the benefit of enhancement of age of retirement from 60 years to 65 years, granted in favour of Allopathy doctors, was available even for Ayurved doctors or not. It was held in the said decision as follows:

> "**22.** The common contention of the appellants before us is that classification of AYUSH doctors and doctors under CHS in different categories is reasonable and permissible in law. This however does not appeal to us and we are inclined to agree with the findings of the Tribunal and the Delhi High Court that the classification is discriminatory and unreasonable since doctors under both segments are performing the same function of treating and healing their patients. The only difference is that AYUSH doctors are using indigenous systems of medicine like Ayurveda, Unani, etc. and CHS doctors are using Allopathy for tending to their patients. In our understanding, the mode of treatment by itself under the prevalent scheme of

[1] 2021 (9) SCALE 47

> things, does not qualify as an intelligible differentia. Therefore, such unreasonable classification and discrimination based on it would surely be inconsistent with Article 14 of the Constitution. The order of AYUSH Ministry dated 24.11.2017 extending the age of superannuation to 65 Years also endorses such a view. This extension is in tune with the notification of Ministry of Health and Family Welfare dated 31.05.2016.
>
> **23.** The doctors, both under AYUSH and CHS, render service to patients and on this core aspect, there is nothing to distinguish them. Therefore, no rational justification is seen for having different dates for bestowing the benefit of extended age of superannuation to these two categories of doctors. Hence, the order of AYUSH Ministry (F.No.D14019/4/2016-E-I(AYUSH)) dated 24.11.2017 must be retrospectively applied from 31.05.2016 to all concerned respondent-doctors, in the present appeals. All consequences must follow from this conclusion."

18. A cursory reading of the portion of the judgment extracted supra, may give an impression as though the question arising for consideration is no longer *res integra* and that Allopathy doctors and Ayurved doctors should be treated on par insofar as all service conditions are concerned. But a careful reading of the entire judgment shows that the said decision was based upon an order of the Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy (AYUSH) dated 24.11.2017. As seen from paragraph 2 of the said decision, the age of retirement of Allopathy doctors was increased by an order dated 31.05.2016 issued by the Ministry of Health and Family Welfare. This was

followed by consequential amendment of the Fundamental Rules and Supplementary Rules, 1922. Since Ayurved doctors were not covered by the Ministry's order dated 31.05.2016, Ayurved doctors filed applications before the Administrative Tribunal. The Administrative Tribunal allowed the applications by an order dated 24.08.2017. The North Delhi Municipal Corporation (employer) filed writ petitions before the High Court of Delhi challenging the decision of the Tribunal. During the pendency of the writ petitions, the Ministry of AYUSH issued an order dated 24.11.2017 enhancing the age of retirement of AYUSH doctors also to 65 years, but with effect from 27.09.2017. It is in that context that this Court held as aforesaid in ***Dr. Ram Naresh Sharma***. This Court did not go into the question whether AYUSH doctors and Allopathy doctors were performing equal duties and responsibilities so as to be entitled to equal pay.

19. We must remember the fundamental distinction between, ***(i)*** the issue of law that equal work entails equal pay; and ***(ii)*** the issue of fact as to whether two categories of employees are performing equal work or not? This Court did not go into the factual aspect in ***Dr. Ram Naresh Sharma*** as to whether AYUSH doctors were performing equal work as Allopathy doctors. This

Court simply relied upon the order of the Ministry of AYUSH itself enhancing the age of retirement of AYUSH doctors on par with Allopathy doctors.

20. In any case, the question of age of retirement stands on a different footing from the service conditions relating to pay and allowances and revision of pay. Therefore, we do not think that the issue raised in these appeals can be said to be covered by the decision in ***Dr. Ram Naresh Sharma***.

Other contentions

21. Assailing the impugned order of the High Court, it is contended on behalf of the State *that* the recommendations of Tikku Pay Commission for enhancement of the scales of pay were *per se* applicable only to MBBS doctors; *that* the revision of scales of pay in favour of Allopathy doctors was warranted by the perennial shortage of Allopathy doctors; *that* the State Government had to fulfil its Constitutional obligation of providing adequate healthcare infrastructure to the citizens by recruiting qualified MBBS doctors, but the State could not attract sufficient talent, due to the poor pay structure; *that* in contrast, the State was never running short of AYUSH doctors and hence there was no necessity to lure qualified AYUSH doctors to come to service;

that there is no impediment in law for providing different scales of pay to persons employed in the same cadre, based upon the qualifications; and *that* the High Court miserably failed to appreciate the completely different nature of duties and responsibilities performed by Allopathy doctors and AYUSH doctors and that therefore the impugned order is wrong, both in law and on facts.

22. In response, it is contended by the learned counsel for the respondents that both Allopathy doctors and AYUSH doctors are appointed to the post of Medical Officer falling in Class-II of Gujarat Medical Services; *that* once persons with different qualifications are appointed to one unified cadre with a common pay scale and governed by one set of rules, then at a later stage, the Government cannot make a classification; *that* all Medical Officers, irrespective of their qualifications were discharging the same duties and responsibilities; *that* by the Government Resolution dated 01.01.1999, the recommendations of the Tikku Pay Commission were made applicable to non-MBBS degree holders working in the ESI Scheme; *that* it was only after the learned Single Judge allowed the writ petitions, that the State issued another Resolution dated 31.07.2013 withdrawing the

Resolution dated 01.01.1999; and *that* the findings of fact recorded by the learned Single Judge and the Division Bench of the High Court that both categories of doctors are performing equal work, does not call for any interference under Article 136 of the Constitution and that therefore the appeals are liable to be dismissed.

23. We have carefully considered the above submissions.

24. Two questions, in our opinion, arise for consideration in these appeals. They are:

(i) Whether different scales of pay can be fixed for officers appointed to the same cadre, on the basis of educational qualifications possessed by them?

(ii) Whether Allopathy doctors and doctors of indigenous medicine can be said to be performing "equal work" so as to be entitled to "equal pay"?

Question No.1: Whether different scales of pay can be fixed for officers appointed to the same cadre, on the basis of the educational qualifications possessed by them?

25. The first issue arising for consideration is as to whether persons appointed to the same post in a cadre can be given different scales of pay on the basis of educational qualifications?

26. Though the issue is no longer *res integra,* we shall refer to a few decisions, some of which were cited before the High Court also.

27. In ***The State of Mysore vs. P. Narasinga Rao***[2], which is one of the earliest cases to be considered by a Constitution Bench of this Court, the classification of two grades of Tracers, one for matriculates with a higher pay scale and the other for non-matriculates with a lower pay scale, was held by this Court to be not violative of Articles 14 and 16 of the Constitution. In fact, it was a case where both matriculates as well as non-matriculates were drawing the same scale of pay in the erstwhile State of Hyderabad, but after the reorganization of States in 1956, two different scales of pay came to be given to those who were allotted to the new Mysore State. Yet this Court upheld the classification.

28. In ***Dr. C. Girijambal vs. Government of Andhra Pradesh***[3], the holder of a Diploma in Ayurvedic Medicine (DAM), appointed to the post of Medical Officer, was given a scale of pay lower than the scale of pay given for the holders of Graduate of the College of Integrated Medicine (GCIM) and Licentiate in Indigenous Medicine (LIM). When questioned, the Authorities

[2] AIR 1968 SC 349
[3] (1981) 2 SCC 155

pointed out that a higher scale of pay was available only to those with Class 'A' Registration Certificate under the Andhra Ayurvedic and Homeopathic Medical Practitioners' Registration Act, 1956. Therefore, the Medical Officer filed a writ petition seeking a direction to the Andhra Board of Ayurveda to register her as Class 'A' Practitioner. The High Court allowed the writ petition and the writ petitioner was granted higher scale of pay with retrospective effect. But when a revision of the scales of pay of Medical Officers was undertaken in the year 1975, under GOM No.574 dated 20.10.1975, a higher scale of pay was granted to those holding LIM and the petitioner was granted a lower scale of pay. Her challenge to this classification was rejected by the Administrative Tribunal and the claim landed up before this Court. While rejecting the claim, this Court clarified the law pithily in the following words:

> "**6. Dealing with the first contention we would like to observe at the outset that the principle of equal pay for equal work cannot be invoked or applied invariably in every kind of service and certainly it cannot be invoked in the area of professional services when these are to be compensated.** Dressing of any injury or wound is done both by a doctor as well as a compounder, but surely it cannot be suggested that for doing this job a doctor cannot be compensated more than the compounder. Similarly, a case in Court of law is argued both by a senior and a junior lawyer, but it is difficult to accept that in matter of remuneration both should be treated equally. **It is thus clear that**

> **in the field of rendering professional services at any rate the principle of equal pay for equal work would be inapplicable**. In the instant case Medical Officers holding the qualification of G.C.I.M., or the qualification of L.I.M. or the qualification of D.A.M., though in charge of dispensaries run by Zilla Parishads, cannot, therefore, be created on par with each other and if the State Government or the Zilla Parishads prescribe different scales of pay for each category of Medical Officers no fault could be found with such prescription. …"

29. Though the decision in ***Dr. C. Girijambal*** (supra) was cited, the High Court, in the cases on hand, sought to distinguish the same on the ground that in the case of holders of GCIM, LIM and DAM, the State did not treat them equally in the matter of proficiency right from the beginning, but that in the case of non-MBBS degree holders and MBBS degree holders, the cadre remained the same. Therefore, the High Court held that the ration of the decision in ***Dr. C. Girijambal*** was not applicable to the cases on hand.

30. But we do not think that the High Court was right in distinguishing the decision in ***Dr. C. Girijambal***. In the said case, the writ petitioner succeeded in the first round of litigation and secured a Class 'A' Registration Certificate as well as the same scale of pay on par with holders of GCIM and LIM. It was only thereafter when a revision was undertaken that a classification was sought to be made. In other words, the

petitioner in ***Dr. C. Girijambal*** reached the same pedestal as that of others through a court order and it was only subsequently, that she suffered inequal treatment at the time of revision of pay. Therefore, the distinguishment made by the High Court to the decision in ***Dr. C. Girijambal*** is not well founded.

31. In ***Mewa Ram Kanojia vs. All India Institute of Medical Sciences***[4], a person initially appointed to the post of Teacher Coordinator in a project funded by the Indian Council of Medical Research, was redesignated as Hearing Therapist, upon his unit getting absorbed with the All India Institute of Medical Sciences. While implementing the recommendations of the Third Pay Commission, he sought parity with Speech Therapists and Audiologists. His claim was not considered, forcing him to approach this Court directly under Article 32 of the Constitution, contending that he was performing the same duties and functions as that of Speech Therapists and Audiologists. While rejecting his claim, this Court held that *"... it is open to the State to classify employees on the basis of qualifications, duties and responsibilities of the posts concerned. ..."*.

[4] (1989) 2 SCC 235

32. The decision in ***Mewa Ram Kanojia*** (supra) was distinguished by the High Court on the ground that in the case on hand the Allopathy doctors and Ayurved doctors are performing the same duties and responsibilities. The question whether they are in fact performing the same duties and functions will be dealt with by us while answering the second issue arising for consideration before us.

33. In ***Shyam Babu Verma vs. Union of India***[5], this Court clarified that though *"…the nature of work may be more or less the same, but scale of pay may vary based on academic qualifications or experience which justifies the classification. …"*. This view has been the consistent view of this court.

34. In the impugned order, the High Court placed reliance on the decision in ***State of Haryana vs. Ram Chander***[6]. It was a case where language teachers in Haryana Government Vocational Education Institute sought parity in pay scale with teachers in higher secondary schools. There was a finding of fact in that case that the teachers in higher secondary schools were designated as lecturers and only those with a Master's Degree were appointed. However, language teachers in Vocational Education Institutes

[5] (1994) 2 SCC 521
[6] (1997) 5 SCC 253

possessed only an undergraduate degree in Arts and an undergraduate degree in Education with Hindi/English as one of the teaching subjects. Despite finding that the teachers in higher secondary schools had a higher educational qualification than those in Vocational Education Institutes, the High Court granted relief to language teachers working in those Institutes and the same was upheld by this Court. Therefore, the High Court, in the impugned order, placed strong reliance upon this decision.

35. But a careful perusal of the decision in ***Ram Chander*** (supra) will show that this Court was convinced to uphold the judgment of the High Court mainly for the reason that the State itself had ignored the difference in the educational qualifications. In paragraph 13 of the decision, this Court held as follows:

> "**13.** In the light of these salient features which are well established on record there would be no escape from the conclusion that but for the difference in educational qualifications both these sets of employees are similarly circumscribed. **So far as the educational qualifications' difference is concerned that would have, as noted above, made some vital difference but for the fact that the appellants themselves in their own wisdom thought it fit to ignore this difference in the educational qualifications** by offering a uniform time scale of Rs 1640-2900 to all postgraduate lecturers in higher secondary schools. …."

36. In ***Director of Elementary Education, Odisha vs. Pramod Kumar Sahoo***[7], this Court held that the classification based upon educational qualification for the grant of higher pay scale, is a valid classification. This Court relied upon the decision in ***Shyam Babu Verma*** (supra).

37. Therefore, it is clear that the classification based upon educational qualification is not violative of Articles 14 and 16 of the Constitution. Hence, our answer to Issue No.1 will be in favour of the State and against the respondents.

Question No.2: Whether Allopathy doctors and the respondents practicing alternative systems of medicine can be said to be performing "equal work" so as to be entitled to "equal pay"?

38. The second question arising for consideration is as to whether the holders of degrees and post-graduate degrees in indigenous and other non-Allopathic Systems of Medicine can be said to be performing equal work as the holders of degrees and postgraduate degrees in Allopathic Systems of Medicine, so as to be entitled to equal pay?

39. In the writ petition filed by them, it was claimed by the respondents herein that they were doing the same work as was done by other medical officers holding MBBS degrees and that

[7] (2019) 10 SCC 674

they were also serving in various Primary Health Centres/ Community Health Centres. They also claimed that even as per the job-chart of the General Duty Medical Officers, the duties performed by both categories of doctors are the same. The respondents further claimed that they held posts interchangeable with those having MBBS degrees.

40. The Government filed an affidavit before the High Court contending *inter alia* :-

> **(i)** *that* while General Hospitals and Government Hospitals come under the Medical Services Department, PHCs, CHCs and Government dispensaries come under the Public Health Department;
>
> **(ii)** *that* in respect of medical services, doctors with MD/MS or postgraduate degree/diploma are appointed to Class-I specialist cadre;
>
> **(iii)** *that* Homoeopathy doctors are appointed to Class-III posts;
>
> **(iv)** *that* Ayurved doctors are appointed to Class-II posts; and
>
> **(v)** *that* there are lot of differences between the duties and responsibilities discharged by both these categories of doctors.

41. In paragraph 9 of the affidavit filed on 23.07.2013, on behalf of the Government before the Division Bench of the High Court, a comparative chart was provided. It reads as follows:-

Sr. no.	Allopathy Doctors	Ayurved Doctors
1.	MBBS/MD/P.G.Degree/P.G Diploma / Specialization	BAMS/BHMS/MD
2.	Required to perform emergency duties and trauma cases, surgery cases and post mortem cases.	No emergency duty, cannot perform surgery and post mortem.
3.	Have to work in OPD and operation theater.	No operation work
4.	Give IV injections and ART injections themselves.	Not applicable
5.	Medicines given are allopathic. For eg: pain killers	The medicine is based on ayurved. For eg: Powder to be taken with boiled water
6.	Main duty is with respect to emergencies, casualty and OPD patients.	Main duty is to advertise/make people aware about ayurvedic treatment and organizing camps where different vanaspati are displayed.
7.	Nature of treatment thus different from ayurved.	Nature of treatment is totally different from allopathy.
8.	Such doctors not easily available.	Available in plenty.
9.	Therefore bond system applicable for getting service of atleast 5 years in village.	No such bond system.
10.	Night Duty	No Night Duty

42. Apart from the above comparative chart, the learned Government Pleader also placed before the High Court, another comparative chart showing the various characteristics of

Ayurvedic medicine and Allopathic medicine. The High Court extracted the said comparative chart in paragraph 5 of the impugned order. But unfortunately, the said chart is of no assistance to find out whether both these categories of doctors are performing the same or similar duties and responsibilities, to be entitled to claim equal pay. The comparative chart extracted in paragraph 5 of the impugned order merely shows what these two categories of doctors "*can do*" and the different approaches that the different systems of medicine have towards persons suffering from various illnesses. But an appreciation of these characteristics will not empower the Court to direct the Government to treat both categories of doctors on par. Taking into consideration a comparative chart relating to the characteristics of both these types of medicine and not taking into consideration the comparative chart which we have extracted in paragraph 41 above, was the first mistake committed by the High Court in the impugned order.

43. As seen from paragraph 41 above, Allopathy doctors are required to perform emergency duties and to provide trauma care. By the very nature of the science that they practice and with the advancement of science and modern medical technology,

the emergency duty that Allopathy doctors are capable of performing and the trauma care that they are capable of providing, cannot be performed by Ayurved doctors.

44. It is also not possible for Ayurved doctors to assist surgeons performing complicated surgeries, while MBBS doctors can assist. We shall not be understood to mean as though one system of medicine is superior to the other. It is not our mandate nor within our competence to assess the relative merits of these two systems of medical sciences. As a matter of fact, we are conscious that the history of Ayurveda dates back to several centuries. The Encyclopaedia Britannica states that the golden age of Indian medicine from 800 B.C., till 1000 A.D., was marked by the production of two medical treatises known as "*caraka-samhita*" and "*susruta-samhita*". The Britannica records in page 776 of Volume-23 (15th Edition) as follows:-

> "In surgery, ancient Hindu medicine reached its zenith. Operations performed by Hindu surgeons included excision of tumours, incision and draining of abscesses, punctures to release fluid in the abdomen, extraction of foreign bodies, repair of anal fistulas, splinting of fractures, amputations, cesarean sections, and stitching of wounds.
>
> A broad array of surgical instruments were used. According to Susruta the surgeon should be equipped with 20 sharp and 101 blunt instruments of various descriptions. The instruments were largely of steel. Alcohol seems to have been used as a narcotic during

> operations, and bleeding was stopped by hot oils and tar.
>
> Hindu surgeons also operated on cataracts by couching or displacing the lens to improve vision."

45. In a Book titled "*Man and Medicine - A History*" authored by Farokh Erach Udwadia, an Emeritus Professor of Medicine (Allopathy) and published by Oxford University Press (2001 Edition), an interesting event is reported at page No.43. It is about the documented performance of Rhinoplasty (for which *Susruta* was famous) witnessed and recorded in 1793 in Pune. A Parsee gentleman by the name of Cowasjee, who was serving the English Army at the time of the Mysore War in 1792, was captured by the soldiers of Tipu Sultan. His nose and one hand was cut off. He and three of his friends, who had met with the same fate, consulted a person who was only a bricklayer by profession. The bricklayer performed a surgery, which was witnessed by Thomas Cruso and James Findlay, Senior British Surgeons in Bombay Presidency. They described and drew the skin graft procedure and the same was published in the Madras Gazette. It was later reproduced in the October 1794 issue of the *Gentleman's Magazine* of London. The surgery was described in the following words:-

> "A thin plate of wax is fitted to the stump of the nose so as to make a nose of a good appearance, it is then

> flattened and laid on the forehead. A line is drawn around the wax which is then of no further use and the surgeon then dissects off as much skin as it had covered, leaving undivided a small slip between the eyes. This slip preserves the circulation till a union has taken place between the new and old parts.
>
> The cicatrix of the stumps of the nose is next paired off and immediately behind the new part an incision is made through the skin which passes around both alae, and goes along the upper lip. The skin now brought down from the forehead and being twisted half around, is inserted into this incision, so that a nose is formed with a double hold above and with its alae and septum below fixed in the incision.
>
> A little Terra Japanica (pale catechu) is softened with water and being spread on slips of cloth, five or six of these are placed over each other to secure the joining. No other dressing but this cement is used for four days. It is then removed and clothes dipped in ghee (clarified butter) are applied. The connecting slip of skin is divided about the twentieth day, when a little more dissection is necessary to improve the appearance of the new nose. Four, five or six days after the operation, the patient is made to lie on his back and on the tenth day bits of soft cloth are put into the nostrils to keep them sufficiently open."

46. The learned author of the Book Mr. Udwadia, goes on to say that the above occurrence caught the attention of J.C. Carpue, a 30 year old Surgeon in London. He successfully used the same skin graft procedure for nose repair on a patient in 1814. According to the learned author, J.C. Carpue *reported his successful results in 1816, introducing the "Hindu Surgical Technique" and with it, "The Indian Nose" to the West.*

47. After pointing out that *Susruta* recommended the use of a facial skin flap for repair of a cleft lip, the author of the Book

states that Carl Ferdinand Von Graefe (1747-1840) popularised the Indian Surgical Technique of plastic reconstruction of the nose in Germany and Europe.

48. It is common knowledge that smallpox vaccine was invented by Dr. Edward Jenner, an English Physician in 1798. But on the occasion of the opening ceremony of the King's Institute of Preventive Medicine in February 1905 at Madras, the then Governor of Madras, Lord Ampthill, said the following:-

> "It is also very probable, so Colonel King assures me, that the ancient Hindus used animal vaccination secured by transmission of the smallpox virus through the cow, and he bases this interesting theory on a quotation from a writing by Dhanwantari, the greatest of the ancient Hindu physicians, which is so striking and so appropriate to the present occasion that I must take the liberty of reading it to you. It is as follows:
>
> > *"Take the fluid of the pock on the udder of the cow or on the arm between the shoulder and elbow of a human subject on the point of a lancet, and lance with it, the arm between the shoulders and elbows until the blood appears : then mixing the fluid with the blood the fever of the smallpox will be produced. This is vaccination pure and simple. It would seem from it that Jenner's great invention was actually forestalled by the ancient Hindus."*

49. Therefore, we have no doubt that every alternative system of medicine may have its pride of place in history. But today, the practitioners of indigenous systems of medicine do not perform complicated surgical operations. A study of Ayurved does not authorise them to perform these surgeries.

50. Similarly, a post-mortem or autopsy is not carried out by/in the presence of Ayurved doctors. Section 174 of the Code of Criminal Procedure, 1973[8] deals with the procedure for the police to inquire and report on suicide, etc. Sub-section (3) of Section 174 mandates that the police officer shall, subject to such rules as the State Government may prescribe, forward the dead body, with a view to its being examined, ***to the nearest Civil Surgeon, or other qualified medical man*** appointed in this behalf by the State Government, in certain types of cases such as, ***(i)*** suicide by a woman within seven years of marriage; ***(ii)*** death of a woman within seven years of marriage in certain circumstances; and ***(iii)*** cases where there are any doubts regarding the cause of death.

51. Section 176 of Cr.P.C deals with inquiry by Magistrates into cause of death. Sub-section (5) of Section 176 uses similar words namely "*Civil Surgeon or other qualified medical man*". We do not think that the AYUSH doctors are normally notified as competent to perform post-mortem.

52. It is common knowledge that during out-patient days (OPD) in general hospitals in cities/towns, MBBS doctors are made to

[8]For short "***Cr.P.C***"

attend to hundreds of patients, which is not the case with Ayurved doctors.

53. In the comparative chart extracted in paragraph 41 above, the State of Gujarat have claimed that IV injections and ART injections cannot be administered by Ayurved doctors.

54. Therefore, even while recognizing the importance of Ayurved doctors and the need to promote alternative/indigenous systems of medicine, we cannot be oblivious of the fact that both categories of doctors are certainly not performing equal work to be entitled to equal pay. Hence, Issue No.2 has to be answered in favour of the appellant-State and against the respondents.

Conclusion

55. In view of our answer to both the issues, the Civil Appeals are liable to be allowed and the impugned order of the High Court is liable to be set aside. As a *sequitur*, the benefits derived by the respondents by virtue of the interim order passed by this Court on 08.09.2014, are liable to be recovered from the respondents. In the normal course, we would not have desired to allow the State to effect recovery but for the fact that a few doctors have received and a few have not. Among the Ayurved doctors, we cannot make a classification between those who have already

received some benefits by virtue of the interim order of this Court dated 08.09.2014 and those who have not received such benefits. Moreover, we cannot overlook the fundamental principle that a benefit derived by an individual by virtue of an interim order passed by a Court cannot be allowed to be retained, if the ultimate outcome of the case went against such a person.

56. Therefore, all the appeals are allowed, the impugned order of the High Court is set aside and the writ petitions filed by the respondents are dismissed. The contempt petitions are also dismissed along with all interlocutory applications including the impleadment application(s). No costs.

..... J.
(V. RAMASUBRAMANIAN)

..... J.
(PANKAJ MITHAL)

New Delhi;
April 26, 2023