

**RE-REGISTRATION****BEFORE THE HONOURABLE HIGH COURT OF KERALA  
AT ERNAKULAM**

W. P. (C) No. 31277 of 2009

Qualified Private Medical Practitioners' &  
Hospitals' Association & another: *Petitioners*

-Vs-

The Union of India &amp; others

: *Respondents***COUNTER AFFIDAVIT FILED BY THE 4th RESPONDENT  
IN THE ABOVE WRIT PETITION**

*I, C. K. Padmakaran, S/o. Krishnan, aged 50 years, the Registrar, T. C. Medical Councils, Thiruvananthapuram, do hereby solemnly affirm and state as follows:*

1. I am the Registrar of the Travancore-Cochin Medical Councils, the 4th respondent in the above writ petition. I am conversant with the facts of the case as revealed to me from the records kept in the office in this behalf. I am competent and duly authorized to swear to this affidavit for and on behalf of the Travancore-Cochin Medical Councils. I have carefully gone through the averments and allegations made in the writ petition and have correctly understood the same. All the averments and allegations made in the above writ petition, except those that are expressly admitted hereunder, are vehemently denied.

2. The above writ petition is filed praying *inter alia* for a declaration that the direction in Ext. P3 for renewal of registration of modern medicines doctors is illegal, without authority and beyond the power conferred in Travancore-Cochin Medical Practitioners' Act, 1953 ('the TCMP Act' for short). The petitioners have also sought for the issue of a writ in the nature of certiorari calling for the records leading to Ext. P3 and to quash the same. *It is most respectfully submitted that the petitioners are not entitled to any of the reliefs sought for in the writ petition.*

3. It is submitted that the recommendations for Compulsory Continuing Medical Programme linked with renewal of registration of medical practitioners every five years, was mooted by the Parliamentary Committee on Subordinate Legislation of Lok Shaba. The said Committee, after considering various aspects had requested the Union Government as well as the State Governments to enact laws for implementation of the aforesaid recommendations. The Secretary of the Medical Council of India vide letter dated 09.11.1998 has informed the T. C.

Medical Councils about the recommendation for Compulsory Continuing Medical Education programme linked with the renewal of registration mooted by the Parliamentary Committee on Subordinate Legislation of Lok Sabha. A true photocopy of the said letter bearing No. MCI-311(14)/97-CME/70978 dated 09.11.1998, is produced herewith and marked as **Exhibit R4 (a)**.

4. In tune with the above recommendation the Council for Modern Medicine under the Travancore-Cochin Medical Councils, in its meeting held on 27.01.2000, considered the same and resolved to implement those recommendations in the State. Accordingly, the necessary proposal was placed before the State Government to make appropriate amendments in the TCMP Act. *It is true that no amendment was made to the TCMP Act making the periodical renewal of registration of practitioners of modern medicine as mandatory.* Later the Executive Committee for the Council of Modern Medicine in its meeting held on 28.05.2004 resolved to issue certificate of registration with validity for 5 years from the date of issue with direction to renew the registration on expiry of the said period. Accordingly, large number of practitioners of modern medicine submitted their requests for renewal of registration who were issued with registration certificates. The validity of the first batch of such certificate issued in 2004 had already expired and of the subsequent batches is getting due. Therefore, those medical practitioners will have to be reissued with a new certificate with the same registration number and date. *In obedience to the interim order passed by this Hon'ble Court in the above writ petition and connected matters, the reissue of certificates to those practitioners is deferred by this respondent.*

5. With regard to the objection raised in the writ petition to the Compulsory Continuing Medical Education, it is submitted that Regulation 1.2.3 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations 2002, provides that a physician should

participate in the Compulsory Medical Education (CME) programme for at least 30 hours every 5 years organized by reputed professional academic bodies or any other authorized institutions. Compulsory Medical Education is absolutely necessary to keep the practitioners abreast with the latest developments in the field of Medicine, which ultimately would turn to the benefits of society at large. It is also provided therein that the compliance of the above shall be informed regularly to the Medical Council of India or to the State Medical Council as the case may be. It is a fact that despite the above provisions none of the medical practitioners have informed of this Council voluntarily about their participation in Compulsory Continuing Medical Education programmes.

6. It is in the above circumstance the Council of Modern Medicine in its meeting held on 05.02.2009, resolved to renew the Registration Certificates issued to the practitioners of Modern Medicine before 2004 by the end of 2009 and the Registration Certificates issued after 2004, with effect from the due date of expiry of validity and to call for copies of certificate of CME-attendance along with the application for renewal. In order to facilitate the above, a notification was published in the dailies having circulation all over the State. It is submitted that pursuant to the said notification nearly 500 applications with chalan evidencing the remittance of requisite fee, were received in the office of this respondent. In deference to the interim order passed by this Hon'ble Court in the above writ petition and connected matters this respondent has not proceeded further in the matter.

7. It is submitted that the registration with the provisions of Travancore Cochin Medical Councils is governed by the T.C.M.P. Act and the relevant provisions in the Indian Medical Council Act, 1956. The Registers maintained in this Council shows that practitioners in modern medicine from 1944 onwards have registered with this Council. As on 31.10.2009 there are 39,000 practitioners registered with this Council. But a good number of them may not be practising medicine at present due to various reasons such as death, old age, migration to other states or countries, etc. Moreover this Council is finding it difficult to furnish replies to queries especially under R. T. I. Act as to the number of medical practitioners at present, how many of them have post graduation, super speciality, etc., due to lack of data base and an efficient mechanism to collect data. There are also instances of subsequent changes in name and address of the practitioners once registered. Such changes in addresses are not informed to the Council in time even though there is a stipulation in the certificate to inform of such changes immediately. Lack of details of the practitioners in modern medicine has created problems on many occasions especially during election to the Council, in the matter of disciplinary

action initiated against the practitioners for violation of code of conduct, etc. In this regard, it is pertinent to bring to the notice of this Hon'ble Court that in 2007, ballot papers were sent to 33,000 electors by the Returning Officer in the election to the Council. But more than 1000 of them returned undelivered for want of correct address. Even after due advertisements in all the leading dailies by the Returning Officers, only a few had responded in this regard.

8. It is submitted that the Certificates now possessed by the Medical practitioners do not have information such as father's name, date of birth, the Institution from which they have obtained their qualification, etc. They also contain no photographs of the practitioners. It is submitted that almost all the other State Councils issue certificates with a photograph of the holder of the certificate. That apart the paper quality of the certificate now possessed by the practitioners is very poor and susceptible to decay. No security features are there in the certificates, which make these certificates vulnerable to manipulation. Considering the above aspects this respondent on behalf of the Council has entered into an agreement with the Centre for Development of Imaging Technology (C-DIT) for production and supply of holographic high security certificates for medical registration. A true photocopy of the said agreement dated 19.09.2009, is produced herewith and marked as Exhibit R4(b). In pursuance of Ext. R4 (b) agreement the C-DIT has supplied 50,000 certificates for the purpose of issuing the same to the practitioners. A true photocopy of the format of the said certificate is produced herewith and marked as Exhibit R4(c). It is submitted that substantial amounts has been spent by the Council in this regard.

9. It is submitted that Section 28 of the Indian Medical Council Act, 1956 provides that every person registered in the Indian Medical shall notify any transfer of place of his residence or practice to the Council and to the State Medical Councils concerned within 30 days of such transfer failing with his right to participate with election by order of the Central Government either permanently or for such period as may be specified therein. Likewise, Section 20 of the TCMP Act, 1953 and Rule 54 of the TCMP Rules empower the Registrar of the State Council to make additions and deletions in the Registers and cause them to be published periodically. As per Section 20(4) of the said Act, the Registrar has to issue registered notice to the doctors for updating the Register. It is very difficult for the Council to issue registered notice to more than 39,000 doctors for updating the Register due to lack of correct address. As mentioned earlier a majority of practitioners have not informed this Council about their change in address and place of practice as stipulated in the Indian Medical Council Act and the TCMP Act.

10. It is in the above circumstance this Council resorted to renew the registration of all practitioners every five years and to call for copies of certificates of CME programme attendance as a precondition for renewal. Considering the absence of any statutory provisions to insist for periodical renewal of registration, the Council for Modern Medicine has decided not to insist for periodical renewal of registration and mandatory attendance of CME programmes as a precondition for such renewal. However, this Council intends to collect the latest details from the practitioners so as to create a new database and to replace the old certificates with a new high security holographic certificate with scanned photograph to all the practitioners registered with this Council without insisting or further renewal and compulsory attendance of CME programme. The Council has taken a decision in this regard in its meeting held on 10.11.2009. A true photo-

copy of the said Resolution dated 10.11.2009, is produced herewith and marked as Exhibit R4(d).

In the light of the facts and circumstances above it is most respectfully prayed that this Hon'ble Court may be pleased to permit the Council for Modern Medicine to replace the old certificate with new one without changing the registration number and date to all the practitioners with the Council, and are actively engaged in this profession.

All the facts stated above are true and correct to the best of my knowledge, information and belief.

*Dated this the 5th day of December, 2009.*

**DEPONENT**

Solemnly affirmed and signed before me by the deponent on this the 5th day of December, 2009, in my Office at Ernakulam.

**ADVOCATE**

**RE-REGISTRATION JUDGMENT****IN THE HIGH COURT OF KERALA AT ERNAKULAM**

PRESENT:

THE HONOURABLE MR. JUSTICE T. R. RAMACHANDRAN NAIR

TUESDAY, THE 12TH JANUARY 2010 / 22TH POUSHA 1931

**WP(C). No. 31277 of 2009 (D)****PETITIONER(S):**

1. Qualified Private Medical Practitioners' & Hospitals' Association (QPMPA), Kerala, Reg. Office — 5th Floor, Vallamattam Estate, Ravipuram, M.G. Road, KOCHI - 682 015, represented by its President Dr. Joseph Stephen Chazhikattu, S/o. C. K. Stephen, aged 65.
2. Dr. O. Baby, S/o. Late M. Kochummen, aged 65, Anaesthesiologist, Sanjoe Hospital, Perumbavoor, residing at Chempakasseril, 2D, Unity Towers, Vedippura Lane, Collectorate P.O., Kottayam - 686002.

*By ADVS.:* Mr. S. Sreekumar, Mr. P. Martin Jose, Mr. P. Prijith, Mr. S. Vaidyanathan**RESPONDENT(S):**

1. The Union of India, represented by its Secretary, Health Department, New Delhi.
2. The Medical Council of India, Pocket -14, Sector-8, Dwaraka, New Delhi -110077
3. The State of Kerala, represented by its Secretary (Health & Family Welfare Department) Government Secretariat, Thiruvananthapuram.
4. The Registrar, Travancore-Cochin Council for Modern Medicine, Red Cross Road, Thiruvananthapuram - 695035.

*R1 By ADV.*

Mr. T. P. M. Ibrahim Khan, Asst. Solicitor.

*R2 By ADV.*

Mr. Alexanderr Thomas, SC, MCI.

*R3 By Govt. Pleader*

Mr. K. Ramesh.

*R4 By ADV.*

Mr. Raghuraj, SC, TCMC &amp; KNMC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/01/2010,  
ALONG WITH WPC. Nos. 34884 OF 2009 & 31654 OF 2009  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T. R. Ramachandran Nair, J.**

W. P. (C) Nos. 31277/2009 - D, 31654/2009 - B &amp; 34884/2009 - E

**Dated this the 12th day of January 2010.****JUDGMENT**

These writ petitions raise a common issue and therefore they are disposed of by a common judgment. The petitioners in the three writ petitions are medical practitioners except the first petitioner in W.P. (C) No. 31277/2009. The first petitioner in the said writ petition is an association of qualified private medical practitioners. These medical practitioners have acquired the qualifications from recognised institutions in India. They are registered with the Travancore -Cochin Medical Council and have also entered their names in the Indian Medical Register.

2. The challenge in the writ petitions is against the circular issued by the Travancore Cochin Medical

Council for renewal of registration every five years. Various grounds have been raised in the writ petitions in support of the challenge. The contention raised mainly is that there is no power vested in the State Council to issue any direction to any Medical practitioner to renew his registration in the State.

3. In W.P. (C) No. 31277/2009 the 4th respondent Registrar of the Travancore Cochin Medical Council has filed a counter affidavit. Learned counsel appearing for the parties submitted that the writ petitions could be disposed of in the light of the averments contained in the said counter affidavit. Ext. R4 (d) produced therein is the

copy of the minutes of the meeting of the Council of Modern Medicine held on 10.11.2009. Regarding the renewal of registration, they have taken the following decision:

*"The council discussed in detail the notes regarding renewal of registration and resolved to approve the same with the modification that since the whereabouts of the practitioners are not available with the Council it has become difficult for the Council to take disciplinary action against violations of medical ethics. After detailed discussion the Council resolved that in the absence of statutory provisions for periodic renewal of Registration every five years with the pre-condition of compulsory attendance of CME, notice issued for renewal may be deferred and a fresh notice may be issued calling for details from the practitioners to issue of registration certificate with the same registration number and date of registration with photograph and security features, replacing the old certificate and thereby update the registers, after bringing the above aspect to the notice of the Hon'ble High Court."*

4. It is averred in Para 10 of the counter affidavit that considering the absence of any statutory provisions to insist for periodical renewal of registration, the Council for Modern Medicine has decided not to insist for periodical renewal of registration and mandatory

attendance of CME programmes as a pre condition for such renewal. Therefore, it is evident that the Council is of the view that in the absence of statutory provisions providing for periodical renewal of registration every five years, the notices now issued cannot be sustained.

5. Learned Standing Counsel for the 4th respondent submitted that the Council intends to issue fresh registration certificate and to update the registers. For this purpose, they will be issuing public notice and the petitioners and other medical practitioners will have to respond to the same.

6. In the light of the above, the writ petitions are disposed of recording the decision taken in Ext. R4 (d) that periodic renewal of registration every five years is not being insisted as notified. The Travancore Cochin Medical will take appropriate action to implement Ext. R4 (d) decision to issue registration certificate with the same registration number and date of registration with photograph and security features, replacing the old certificate so as to update the registers.

Regarding the same, appropriate notices will be issued for information of all the parties. No costs.

*Sd/- (T. R. Ramachandran Nair, Judge.)*