

Rajesh Kumar Srivastava

vs

A.P. Verma And Ors.

Allahabad High Court

1 February 2005

Citations: AIR 2005 All 175, (2005) 2 UPLBEC 1813

Bench: S Ambwani

ORDER

Sunil Ambwani, J.

1. The proceedings in this contempt petition were initiated, to enforce and to monitor the orders passed by Hon'ble Supreme Court in *D. K. Joshi v. State of U.P.*, (2000) 5 SCC 80, by which the Supreme Court had taken notice of the distressing situation of public health in the State of U.P. and inaction of the State Government to stop the menace of the unqualified and unregistered medical practitioners proliferating all over the State. The Supreme Court had directed to Secretary, Health and Family Welfare Department, State of U.P. to take all necessary steps to stop the unqualified and unregistered medical practitioners in carrying on the medical profession and the District Magistrates and the Chief Medical Officers were directed to identify within a time limit to be fixed by the Secretary, Health and Family Welfare Department, all the unqualified and unregistered medical practitioners and to initiate legal action against these persons immediately. The Secretary was required to give publicity to the names of such persons. All the District Magistrates and Chief Medical officers were required to monitor the action taken against such persons.

2. A Contempt Petition No. 292/2001 filed by Sri Rajesh Kumar Srivastava in the Supreme Court was dismissed on 8-10-2001, with liberty to move to the High Court for the relief sought for. Consequently Sri Rajesh Kumar Srivastava, a Public Spirited Citizen and a Reporter of National Daily (*Rashtriya Sahara*) approached this Court and that is how these proceedings were initiated in which about 20,000 unregistered medical practitioners have been identified and criminal prosecutions have been started against them. During the course of proceedings the Court has issued orders for registration of all the qualified and authorised medical practitioners in the State with the Chief Medical Officers of the concerned Districts and has passed several orders in the last two years for identifying and to stop the unauthorised medical practitioners. Directions have also been issued to improve the public health facilities with special emphasis to health care system in rural areas as the surveys and reports demonstrated that wherever the public health system has failed the quacks have proliferated.

3. In this Miscellaneous Application, the Court has been called upon to consider and decide whether 'Faith Healing' practiced by the unqualified and unregistered persons with no fixed identity and qualifications at all at a public place after charging consideration amounts to unauthorised medical practice (quackery) and whether such practice is permissible under our Constitutional and Legislative scheme.

4 Brief facts giving rise to this application are as follows:

The applicant Smt. Santosh Saxena claims to be an active social and political worker of the town. She has identified herself as a President of Samajwadi Women Allahabad and also President of Mahila Manoranjan Club, Batuk Krishna Banerjee Marg, Allahabad. She has brought to the notice of this Hon'ble Court, that one Sri Ajay Pratap Singh son of Sri Lal Mahendra Singh, resident of Kotwa Kot, Hanumanganj, Tehsil Handia, Allahabad, along with his followers and alleged disciples have established an organization known as 'Lal Mahendra Shiva Shakti Sewa Sansthan, Kotwa Kot, Allahabad'. This organization is holding weekly congregation on every Thursday at 'Samaya Mai Mandir Park' opposite the Laxmi Talkies, Allahabad between 8.00A.M. to 10.00 P.M. The congregation is attended by thousands of disease afflicted persons. Each prospective patient is required to obtain a card on a charge of Rs. 30/-, (one such card has been annexed as Annexure No. 1 to the application). On the back of the card, it is proclaimed that the society has remedies for all kinds of diseases except Leprosy. The persons are required to continuously chant 'Om Namoh Shivai' and this treatment is required to continue for at least 15 weeks. The patient is advised to walk on a machine every day and to give up all kinds of intoxication. For the deaf and mute, the treatment is provided between 6.00 to 7.00 PM. The card declares that such congregation is held in live districts namely Allahabad (on Thursday), Kanpur (Saturday) Lucknow (Sunday), Faizabad (Monday) and Varanasi (Tuesday) at the given addresses.

5. The applicant submits that no permission has been taken from the Allahabad Development Authority to utilise the park, the people who assemble in the park ease and defecate around the park and the entire area becomes nauseative. Sri Ajay Pratap Singh is involved in theft of power by taking unauthorised connection from the main line. He proclaims himself to be a doctor and the persons attending the congregation as patients. He uses a loud speaker which runs throughout the day creating deafening noise. The office of the Senior Superintendent of Police is only about fifty meters away from the park. A number of complaints were made by the residents of the locality to the authorities, but no action has been taken. The card published by the society reveals that the samiti claims remedy for all sorts of ailments, be it leprosy, cancer, tuberculosis or coronary disease. The curatory process is wholly magical. No known therapy is adopted or administered.

6. Notices were issued on 8-10-2004 to Sri Ajay Pratap to show cause as to why he may not be prosecuted for his activity in contravention to the directions issued by the Hon'ble Supreme Court in D. K. Joshi's case, 2000 (5) SCC 80. The Chief Medical Officer was required to submit a report with regard to his activities to have magical powers to cure and professing faith healing is authorised to practice medicine.

7. Dr. Nisar Ahmad, Chief Medical Officer, Allahabad has filed an affidavit enclosing a report given by Dr. (Major) B.P. Singh, Medical officer, Allahabad and Dr. M. N. Misra, Deputy Chief Medical Officer, Allahabad. The report dated 19-10-2004 is quoted as below;

"On 14 October 2004 (Thursday) we Dr. M. N. Mishra, Deputy C.M.O., Allahabad and Dr. Major B.P. Singh, Medical Officer, Allahabad visited the camp organized by Sri Ajay Pratap Singh, s/o Lal Mahendra Singh of Lal Mahendra Shiv Shakti Seva Samiti in Samaya Mai Mandir Park, opposite Laxmi Talkies, Katra, Allahabad.

On enquiry we came to know that each person who attends such camp is charged Rs. 30/- for registration. On further enquiry it was revealed that neither Sri Ajay Pratap Singh proclaims himself a Doctor nor he practices medicines of any kind or any pathy.

We also found that crowd was fully disciplined but constantly chanting "OM NAMA SHIVA". Sri Ajay Pratap Singh was leading the Jap.

We also found that P.A. System was also used with the help of Generator.

It is worth to mention here that many of the participants in this camp were either gazetted officers or bank and railway officials. They refuse to divulge their identity and they also refused to give any written statement. But all of them were candid to mention that they are attending this camp every Thursday and there was marked improvement in the ailments they were suffering from. Sri Ajay Pratap Singh denied prescribing or treating any patient by any pathy. Though he refused to give any written statement, he categorically claimed that persons attending this camp on every Thursday definitely get respite of various ailments. He also admitted that the only power behind the success of such camp is 'OM NAMA SHIVAY' which he practices since long.

We did not find any medicines of any pathy being distributed among the people.

Registration card found is duly annexed with this report'.

8. Sri Vipin Saxena has entered appearance on behalf of Sri Ajay Pratap Singh and has filed a counter affidavit. It is stated by him in Paragraphs 5 to 16 that the Samaya Mai Mandir is a favourite temple situate in a park opposite to Laxmi Talkies, Katra, Allahabad. The park is being used for the religious purposes as well as other occasions. The Lal Mahendra Sewa Shakti Samiti, Kotwa Kot, Allahabad is a registered society, with registration No. 1405 under the provisions of the Societies Registration Act. The aims and object of the society are purely religious and charitable, such as to establish intoxication free society to serve the helpless, to help in the marriages of poor girls, to help in the education of poor children and to maintain old temples. On every Thursday the devotees of Lord Shiva assemble in the park to offer prayers. First of all the Arati of Lord Shiva is performed. Thereafter the devotees sit on Arati in the park and chant the mantra 'Om Namoh Shivai' in a mild and disciplined manner without causing any inconvenience to anybody. Even the neighbours of the parks participate in the Arati. In the end the Arati of Lord Shiva is performed. It is wrong to say that bhajan continues till 10.00 PM. It is also wrong to say that bhajan of Lord Shiva is attended by thousands of disease afflicted persons and each one required to obtain a card. It is also wrong to say that the samiti charges Rs. 30/- for each card. On Thursday the samiti does not charge any amount from the devotees of Lord Shiva. The card annexed as Annexure No. 1 to the application was never used and issued by the samiti nor the alleged signatures of the card concerned with the samiti. He has filed a card used by the samiti as Annexure No. 1 to his affidavit.

9. Shri Saxena submits that the samiti has no concern with the ailment of any person nor does it claim and pose itself to remedy any sort of ailment. The functions of the samiti are purely religious and charitable. The samiti and Sri Ajai Pratap Singh does not adopt any curator process nor practice and exercise any pathy. They have no concern with the ailments of any persons. The deponent is staunch devotee of Lord Shiva and only preaches the mantra 'Om Namoh Shivai'. It is the basis of universe and is the seed of all virtues and powers. The

deponent does not claim to be a doctor and does not claim to cure any disease. He does not prescribe of any kind of any medical or administer any therapy. No complaint has been made by any recipient of the society. On the other hand these recipient participate in the Arati and chanting of mantra. In the end he has submitted that the deponent has regard for the law laid down by the Hon'ble Supreme Court in D. K. Joshi's case, 2000 (5) SCC 80. He has done nothing contrary to the aforesaid law nor he can ever dream of doing anything contrary to the law and thus the proceedings be dropped against him.

10. I have heard Sri Ravi Kant, Senior Advocate assisted by Sri M. K. Pandey for the applicant; Sri Vipin Kumar Saxena for Sri Ajay Pratap Singh and the Samiti, and Sri R. B. Pradhan, learned Standing Counsel for State respondents.

11. Before proceeding to consider the question, I find that Sri Ajay Pratap Singh has not given any information about himself in spite of repeated adjournments. He has not given his educational qualification or religious achievements, or the background except his name, parentage and address. There is absolutely nothing on record to find out whether Sri Ajay Pratap has any educational qualifications at all, or any religious knowledge, distinction or training. He only claims himself to be a devotee of Lord Shiva. He has not brought on record any permission or authority to hold the congregation in a public park managed by Allahabad Development Authority. He has not taken any permission from the District authorities to hold congregations regularly or the U.P. Power Corporation to extract the electrical energy from the main lines, to install tents and using of public address system with loud speakers, throughout the day on every Thursday. Although he has denied that he is not using the yellow card which has been annexed to the affidavit of applicant Smt. Santosh Saxena, the card annexed along with his counter affidavit is substantially the same except that the words 'Rog' has been substituted by the word 'Kast'. He has not annexed the certificate of registration of the society and the bye laws to show that the society has been registered for purely religious and charitable purpose.

12. The report of Dr. M. N. Misra, Deputy Chief Medical Officer, Allahabad, Dr. (Major) V. P. Singh, Medical Officer, Allahabad shows that on 11-10-2004 about 300 persons had assembled and were chanting 'Om Namoh Shivai' at Samai Mai Park opposite to Laxmi Cinema, Katra, Allahabad. They verified and found that each person had taken a token of Rs. 30/- for registration and that a public address system was used with the help of generator. The camp was attended by several officers of Bank and Railway employees. They refused to give their identity or to give anything in writing. They, however, admitted that they are attending the camps every Thursday and there was marked improvement in the ailments with which they were suffering. Sri Ajai Pratap Singh denied, issuing any prescription and treatment to any patient by any method. He refused to give anything in writing. He categorically claimed that persons attending the camp every Thursday definitely get respite from various ailments. He also admitted that the only power behind the success of the camp is 'Om Namoh Shivai'. The inspecting party did not find any medicine or pathy being prescribed amongst the people.

13. From the averment made in the affidavits, and the report I find that Lal Mahendra Sewa Shakti Samiti, Kotwa Kote, Allahabad through Sri Ajai Pratap Singh son of Sri Lal Mahendra Singh unauthorizedly occupy the entire public park every Thursday, and use loud speaker without any permission from the Allahabad Development Authority and the District Magistrate, Allahabad. He draws unauthorized power from the U.P. Power Corporation and claims to have cure for all kinds of ailments only by chanting of "Om Namoh Shivai". He practices 'Faith Healing' at a public place after charging Rs. 30/- from each person. The

inspecting party consisting of the senior medical officers of the district found that each of the persons had admitted that they had marked improvement in their ailments and Sri Ajay Pratap Singh also admitted that the persons assembled got respite from various ailments. It is as such established on record and admitted that the society through Sri Ajai Pratap Singh is practicing 'Faith Healing' at a public park and claim to have cure of various diseases on the chanting of mantra 'Om Namoh Shivai', for which they are charging from every person attending the camp and that this activity goes on various other places namely at Allahabad, Kanpur, Lucknow, Faizabad and Varanasi.

14. With the aforesaid findings I come back on the question whether the 'Faith Healing' amounts to unauthorized medical practice i.e. quackery and is permissible under our constitutional and legislative scheme, and whether such a practice is violative of the right to health guaranteed to the citizens of the Country.

15. Article 25 of Constitution of India gives fundamental right of freedom of conscience, and free profession, practice and propagation of religion. This right is, however, subject to public order, morality and health and to the other provisions of Part-III of Constitution of India. Clause (2) of Article 25 provides that nothing in the Article shall affect the operation of any existing law and prevent the State from time to time from making any law, as provided in Sub-Clause (a) and (b) of Clause 2. Article 25 is quoted as below;

"Article 25(1) Subject to public order, morality and health and two other provisions of this part all persons are equally entitled to freedom of conscience of right freely to profess, practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and of Hindus....."

16. Article 47 in Part IV, Article 38, Article 39(i), Article 41 and Article 48(a) as well as the fundamental rights in Article 21 deal with the substantive and potent content of right to life which includes right to live with human dignity and which also includes right to good health. In *Consumer Education and Research Centre v. Union of India*, (1995) 3 SCC 42: AIR 1995 SC 922, *Paschim Banga Khet Mazdoor Samiti v. State of West Bengal*, (1996) 4 SCC 37; AIR 1996 SC 2426, *Murali S. Deora v. Union of India*, (2001) 8 SCC 765: AIR 2002 SC 40; *Parmanand Katara v. Union of India*, (1989) 4 SCC 286: AIR 1989 SC 2039; *M. C. Mehta v. Union of India*, (1999) 6 SCC 9. Supreme Court has by a dynamic interpretation of Article 21 expanded the meaning of right to life, to include right to health. This right to health can be guaranteed only if the State provides for adequate measures for treatment and takes care of its citizen by protecting them from persons practicing and professing unauthorized medical practices.

17. The Indian Medical Council Act 1956, the Indian Medicine Central Council Act 1970, The U.P. Indian Medicine Act 1939, the Homoeopathic Central Council Act 1993, the Dentists Act, 1948 provide for a statutory scheme of educational qualifications, standards of education, award of degrees and registration of medical practitioners in their respective fields. There are several other acts protecting public health namely Drug and magical Remedies

(Objectionable Advertisements) Act 1954, Drugs and Cosmetics Act 1940, Pharmacy Act 1948, Narcotic Drugs and Psychotropics Substances Act 1985, Medical Termination of Pregnancy Act 1971, Transplantation of Human Organs Act 1994, Mental Health Act, 1987, Environmental Protection Act 1994 and the Persons with Disabilities (Equal Opportunities and Full Participation) Act 1995. The scheme of these Acts is to regulate the medical practice in various disciplines. Where a branch of medicine is neither established nor has proved its methods in curing and healing the persons professing such medicine are not authorized to practice such branch of medicines in public. There is a common feeling with where medicines are not prescribed or where no particular form of treatment is preached or practiced, such practice or form to cure ailments is not required to be regulated, and that there cannot be any law which may restrict such persons from using these methods and practices, and that every person has a right to cure himself, which the person may decide for himself. It is also commonly believed that faith in the Almighty by whatever name or form of belief is the cure to all ailments, and that no law can stop the persons, who have fundamental right to choose, practice and profess the religion in adopting such methods.

18. The Court is not concerned in this application to decide whether a person has right to choose any form and method for himself and to have any belief or faith in curing his ailments. The question to be considered is whether the persons professing such form and method which include 'Faith Healing' can practice and preach such forms or methods for curing ailments, in a public place after charging a fees or taking consideration for such practices.

19. The fundamental right to profess practice and propagate religion, guaranteed under Article 25 of Constitution of India is subject to public order, morality and health. Where health of the citizens is involved the right of such practice to profess, practice and propagate religion gets controlled and is subservient to the powers of the State to regulate such practice. No person has a right to make a claim of curing the ailments and to improve health on the basis of his right to freedom of religion. Every form and method of curing and healing must have established procedures, which must be proved by known and accepted methods, and verified and approved by experts in the field of medicines. It is only when a particular form, method or pathy is accepted by the experts in the field of medicine that it can be permitted to be practiced in public. The right to health included in Article 21 of Constitution of India does not come in conflict or overlap with the right to propagate and profess religion. These two are separate and distinct rights. Where the right to health is regulated by validly enacted legislation the right to cure the ailment through religious practices including 'Faith Healing', cannot be claimed as a fundamental right. The freedom of conscience supplemented by freedom of unhampered expression of free conviction to practice rituals and ceremonies are part of religion or subject to public order, morality and health. There is no conflict between the two. The faith in any religion to practice rituals and observance of such religion is not to be confused with right to conscience and to practice and propagate the religion. The claim to cure ailments falls in the domain of right to health. A person has no right to induce others to believe in his faith in religion to cure others from ailments.

20. In the present case the Society and Sri Ajay Pratap Singh have an individual right to believe, that the chanting of 'Om Namoh Shivai' is a cure for all ailments but they have no right to impose by professing and practicing on others to believe and to propagate the same belief in a public place by charging fees by way of consideration or contribution to any temple or to the society. Such an activity exclusively falls within the domain of the right to health, which is protected and regulated by the legislations. These legislations do not come in

conflict with the right of the petitioner to believe that his faith in 'Om Namoh Shivai' cures all ailments. For example a person may be suffering from serious ailments like cancer, thalassemia or HIV infection, which may ultimately lead to suffering and death. If such a person is made to believe on the faith of a person in his religion that such belief is cure to all ailments and on such conviction the persons suffering from ailments, does not take any treatment and suffers , or dies the person professing such faith commits a crime which has no defence in his faith, or any right to his religion.

21. The Court, therefore, find that the propagation, practice and profession of 'Faith Healing' in public on charging consideration is violative to the Constitutional and Legislative scheme, and that such 'Faith Healing' based on a person's faith in the religious practises, in public for consideration is not permitted and is violative of the legislations detailed as above. In the present case the Lal Mahendra Sewa Shakti Samiti Kotwa Kote, Allahabad through its members and Sri Ajay Pratap Singh has no right to hold congregation in public parks, charge consideration and to profess and practice in public that the chanting of 'Om Namoh Shivai' is cure to all ailments. Such a practice is illegal, and violative of law as well as the right of citizen including those innocent persons suffering from various ailments, who participate in such congregation guaranteed under Article 21 of Constitution of India and which the State and the Court are obliged to protect.

22. The application is consequently allowed. The Lal Mahendra Sewa Shakti Samiti Kotwa Kot, Allahabad through any of its members including Sri Ajay Pratap Singh son of Sri Lal Mahendra Singh, resident of Kotwa Kot, Hanumanganj, Tehsil Handia, District Allahabad is restrained from practicing and professing 'Faith Healing' using public parks, illegally extracting energy from main lines, using loud speakers, charging consideration, either by themselves or through their followers and disciples, at any place. The respondents shall strictly enforce these orders.