ALLAHABAD HIGH COURT

Y.P. Singh

Vs.

State, (Allahabad)

Civil Misc. Writ Petns. Nos.2250, 2251, 2282, 2454 and 3825 of 1978

(Satish Chandra and T.S. Misra, JJ.)

01.04.1982

JUDGEMENT

T.S. Misra, J.

1. By an order dated 28th Feb. 1978 the Government doctors were prohibited from private practice. The validity of that order was challenged by petitioners in these petitions. The two learned Judges, who heard these petitions, differed in their views, hence on 4th October, 1978 they referred the writ petitions for hearing to a third Judge. The matter was then listed before Hon'ble Mr., Justice C.S.P. Singh but before he could render his opinion, the Governor of Uttar Pradesh framed the Uttar Pradesh Government Doctors (Allopathic) Restriction on Private Practice Rules, 1978 under Article 309 of the Constitution. The petitioners then sought amendment of the writ petitions with a view to challenge the validity of the said rules. Hon'ble C.S.P. Singh J. referred the case batch to the Bench for considering the amendment applications and the validity of the rules. The Bench allowed the amendment applications and permitted the petitioners to challenge the vires of the rules. The matter was then heard by the Division Bench consisting of Hon'ble K.N. Singh, and Hon'ble R.C. Srivastava. JJ.

2. It seems that the validity of the U.P. Government Doctors (Allopathic) Restriction on private practice Rules, 1978 (for short, the Rules) was questioned before the Bench, *inter alia*, on the following grounds.

> (1) The Governor was not competent to frame Rule 3 placing restriction as it does not lay down any condition of service.
> (2) Rule 3 is void as it is repugnant to Section 20-A and Section 33(m) of

the Indian Medical Council Act, 1956.
(3) Rule 5 which confers powers on the State Government to relax the rules in cases of undue hardship in any particular case or cases is violative of Article 14 of the Constitution as it does not lay down any guiding principles, instead it confers arbitrary powers on the State Government. On point No.1 the Bench held that the Governor is competent to frame rules imposing restrictions on a Government servant from carrying on any trade, business or practice any profession but such restrictions must withstand the test of Part III of the Constitution. Rule 3 regulates the conditions of service of those medical practitioners who are in Government service and, according to the Bench, the purpose behind the rule is to achieve efficiency and discipline in public service hence the contention of the petitioners that R.3 did not regulate any condition of service was held to be misconceived. The plea of repugnancy as raised in the second point aforesaid did not find favors with the Division Bench and was rejected. It was held that the power of the Governor to frame rules under Article 309 of the Constitution is coextensive with the power of the State Legislature to make laws. Under entry 41 of List II the State Legislature is competent to make laws with respect to State Public Service "State Public Service Commission." The medical practitioners who are engaged in the service of the State Government fall within the expression "State Public Service", and, as such, the State Legislature is competent to make laws regulating conditions of service of medical practitioners engaged in Government service. Since the State Legislature has not enacted any law, the Governor under the proviso to Article 309 is competent to make rules regulating conditions of service of medicinal practitioners engaged in the Government service. Since the impugned rules are referable to Entry 41 of List II of the Seventh Sch. no question of repugnancy would arise. Further the Division Bench observed as under :-

"The nature and the true character of the rules is to regulate the conditions of service of medical practitioners engaged in Government service. Its object is to achieve discipline and efficiency in Government service. These rules are referable to entry 41 of list II, a matter assigned exclusively, to the State Legislature, therefore, even if the rules

> incidentally entrench on matters covered by the Central Act, the rules are not rendered void. It is quite an erroneous approach to question validity of the rules merely on the incidental entrenching on matters which fall within the Central Act. If a medical practitioner wants to carry on private practice, he is free to do so but the moment he joins Government service he is amenable to restrictions which may be necessary in public interest. The rules do not seek to regulate medical profession, instead the rules lay down restrictions on the rights of Government servants to carry on private practice."

It seems that some statement was made on behalf of the Government with respect to point No.3 and then the learned counsel for the petitioners did not press that question any further.

3. The Division Bench thus held that "the Governor has validly framed these rules under the proviso to Article 309 of the Constitution regulating conditions of service of medical practitioners employed in Government service."

4. It appears that the question of reasonableness of the restrictions placed by the rules was also urged on behalf of the petitioners. The two learned Judges, differed on the point and said that their respective opinions, which had already been expressed with regard to the reasonableness of the restrictions laid down by the Government Order dated 28th Feb. 1978, would be equally applicable to restriction imposed by the impugned rules. There was thus difference of opinion on that question and the matter was ordered to be laid before a third judge for deciding the said question with regard to the reasonableness of the restrictions imposed by the impugned rules. That is how this matter has been placed before me.

5. There are two types of petitioners before me though all of them are medical doctors and are in the employment of the Government. The first category consists of those doctors who have been employed by the Government in Government Medical Colleges as teachers and the other category consists of those persons who have been employed by the Government in provincial Medical Service or Provincial Health Service or provincial Medical and Health Services and are posted as Government doctors in various districts in that

capacity. Those petitioners who are employed in Government Medical Colleges as teachers are assigned with the duty of teaching students and guiding research work and also to attend to patients who visit the hospitals attached to the Medical Colleges. Some of the petitioners are specialists in their own branch and are highly qualified. Those petitioners who are appointed as Medical Officers, have to attend to patients in Government hospitals and dispensaries. The Government Doctors (Allopathic) Restriction on Private Practice Rules, 1978, however, apply to all these petitioners.

6. Shri A.K. Sen the learned counsel for the petitioners, submitted that the said rules prohibiting private practice by Government doctors is against the interest of general public because :-

> (i) Prohibition of private practice by Government doctors would increase the pressure on hospitals and without any added hours of duty, a large number of members of the public who turn to the hospital for medical aid will be left unattended.
> (ii) Members of the general public will be deprived of the facility of treatment and consultation of specialists in various branches of medicine.
> (iii) A citizen will be deprived of his right to get himself treated by a medical practitioner of his choice and the members of the general public will be put to great hardship and inconvenience.
> (iv) The petitioners had been carrying on their private practice in their spare time without any interference in their official duties.
> (v) The private practice carried on by the petitioners had always been an incentive for research and advancement of the medical science and in case this right is curtailed the incentive may be affected which may ultimately affect research and advancement of the medical science.
> (vi) The restrictions on the right of the petitioners to carry on private practice under the pretext that some of them are misusing the right and are carrying out malpractices is not a remedy of the evil sought to be remedied. Merely because some of the teachers are misusing the right of private practice cannot be a ground for taking away the right of private practice of the entire teacher community.
> (vii) The petitioners are put to a great financial loss and the non practising allowance offered is inadequate.
> (viii) It is not a private bargain between the State employees and the State

> but it is a matter in which the vast field of public health is to be served by instrumentalities who also happen to be teachers and consultants in Government Medical Colleges, The withdrawal of these instrumentalities in public field will *per se* deprive the field of public health of an important service and it cannot be compensated by giving additional remuneration to those who render such service.

7. The learned Advocate General submitted that the said rules are not violative of Article 19(1)(g) of the Constitution. The petitioners are Government servants and the restriction imposed on their private practice is reasonable and in public interest.

8. The short question, which falls for determination is.-

> "Whether the impugned rules impose reasonable restrictions on the fundamental right of the petitioners to carry on their profession of private practice by giving medical aid and consultation to patients for pecuniary consideration in cash or kind?

9. The said rules have been framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution restricting private practice of teachers of State Medical Colleges and Government doctors (Allopathic) in Uttar Pradesh R.2(c) of the Rules defines 'Government doctors' as meaning the doctors working on various posts in the Pradeshik Medical Services, pradeshik Health service, Pradeshik Medical and Health Services, the posts of Teachers (including Demonstrators. Registrars and Tutors) and other doctors in the State Medical Colleges and attached hospitals and doctors working in ex-cadre posts created by the Government from time to time. R.3 of the said Rules provides that notwithstanding anything to the contrary contained in any rules or orders, contract or any other instrument and subject to the provisions of R.4, a Government doctor shall not be entitled to private practice. R.4 provides that in lieu of private practice a Government doctor shall be paid such amount by way of non practicing pay or allowance or both as the Government may specify from time to time, provided that non-practicing pay or allowance, referred to in this sub-rule shall not be payable to a Government doctor who does not possess M.B.B.S. degree or B.D.S. or LSMF, (LMP) Diploma, or who is not entitled to

be registered by the Indian Medical Council, or who is debarred by the Indian Medical Council from doing private practice or on a post which on the date of commencement of these rules was non practicing and was not eligible to non-practicing pay or allowance, or for which M.B.B.S. degree or B.D.S. or LSMF (LMP) diploma qualifications were not essential. Under R.5 if the State Govt. is satisfied that the operation of the rule restricting private practice causes undue hardship in any particular case or cases, it may, notwithstanding anything contained in the rule by general or special order dispense with or relax the requirement of that rule to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner or in public interest.

10. The power conferred by Article 309 is subject to the opening words of the article which govern not only the power of the Legislature but also the rule making power conferred by the proviso. Hence if any rule contravenes any of the provisions of the Constitution, namely Articles 14, 15, 16, 19, 229. 234, 310 (1), 311 (1) or 311 (2), the rule shall be void. A citizen is entitled to each and every one of the freedoms guaranteed by clause (1) of Article 19 of the Constitution. A Government servant being a citizen remains entitled to the freedoms guaranteed by Article 19. Of course, the freedoms guaranteed by clause (1) of Article 19 are subject to certain restrictions which may be imposed in the enjoyment thereof. It cannot be claimed by a citizen that his right to exercise any of the freedoms guaranteed by Article 19 should be unfettered by restrictions which the State would otherwise be entitled to impose. Those restrictions are referred to in clauses (2) to (6) of the said Article. However, in order to justify the restrictions under clauses (2) to (6) the law which imposes the restrictions must be otherwise valid.

11. Clause (1) (g) of Article 19 guarantees to all citizens of this country the right to practice any profession, or to carry on any occupation, trade or business. Clause (6) of Article 19(1) however, provides that nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes or prevents the State from making any law imposing in the interests of the general public reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to or prevents the

State from making any law relating to the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business. So, the fundamental rights guaranteed under Article 19(1) are subject to the power of the State to impose restrictions on the exercise thereof. The restriction may be imposed to regulate private rights in the public interest. The fundamental rights under Article 19(1)(g) are not absolute or uncontrolled. Their enjoyment is subject to such reasonable restrictions as may be deemed essential in the interest of the general public. Article 19 thus strikes a balance between individual liberty and social control. The words, "nothing in sub-clause (g) of the said clause shall affect" at the beginning of clause (6) of Article 19 imply that the rights declared in sub-clause (g) of clause (1) shall be subject to the exceptions mentioned in clause (6). The words "reasonable restrictions" import the idea that the restrictions imposed should be in the interest of general public and should be reasonable. It has therefore, to be shown that the restriction imposed has the reasonable relation to the authorised purpose and is not an arbitrary abridgement of the freedoms guaranteed by the Article. The court has to examine the substance of the legislation to ascertain as to whether the restriction imposed on the fundamental right is reasonable and in doing so all the attending circumstances must be taken into consideration. Further, it has to be been whether the restrictions are in the public interest.

12. The question as to the circumstances under which restrictions imposed by the State can be said to contain the quality of reasonableness cropped up in a number of cases before the Supreme Court. The leading case on the point is *State of Madras v. V.G. Row* [1]which lays down (at p.200) :-

> "The test of reasonableness, wherever prescribed, should be applied to each individual statute impugned and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

13. Recently in the case of *Laxmi Khandsari v. State of U.P.* [2] the same question fell for consideration. Referring to its earlier decisions which had a close

bearing on the point at issue the Supreme Court laid down (at pp.880, 881):

> It is abundantly clear that fundamental rights enshrined in Part III of the Constitution are neither absolute nor unlimited but are subject to reasonable restrictions which may be imposed by the State in public interest under clauses (2) to (6) of Article 19. As to what are reasonable restrictions would naturally depend on the nature and circumstance of the case, the character of the statute, the object which it seeks to serve, the existing circumstances, the extent of the evil sought to be remedied as also the nature of restraint or restriction placed on the rights of the citizen. It is difficult to lay down any hard and fast rule of universal application but this Court has consistently held that in imposing such restrictions the State must adopt an objective standard amounting to a social control by restricting the right of the citizen where the necessities of the situation demand. It is manifest that in adopting the social control one of the primary considerations which should weigh with the court is that as the directive principles contained in the Constitution aim at the establishment of a egalitarian society so as to bring about a welfare State within the framework of the Constitution, these principles also should be kept in mind in judging the question as to whether or not the restrictions are reasonable. If the restrictions imposed appear to be consistent with the directive principles of State policy, they would have to be upheld as the same would be in public interest and manifestly reasonable."Further, restrictions may be partial, complete, permanent or temporary but they must bear a close nexus with the object in the interest of which they are imposed. Sometimes even a complete prohibition of the fundamental right to trade may be upheld if the commodity in which the trade is carried on is essential to the life of the community and the said restriction has been imposed for a limited period in order to achieve the desired goal."Another important consideration is that the restrictions must be in public interest and are imposed by striking a just balance between the deprivation of right and the danger or evil sought to be avoided. Thus freezing of stocks of food grains in order to secure equitable distribution and availability on fair prices have been held to be a reasonable restriction in the cases of *Narendra Kumar v. Union of India*[3] *Diwan Sugar and General Mills (P) Limited v. Union of India* [4] and the *State of*

> *Rajasthan v. Nath Mal and Mitha Mal*[5] These are some of the general principles on the basis of which the quality of reasonableness of a particular restriction can be judged and have been lucidly adumbrated in *State of Madras v. V.G. Row (AIR 1952 SC 196).* Another important test that has been laid down by this Court is that restrictions should not be excessive or arbitrary and the court must examine the direct and immediate impact of the restrictions on the rights of the citizens and determine if the restrictions are in larger public interest while deciding the question that they contain the quality of reasonableness."In such cases a doctrinaire approach should not be made but care should be taken to see that the real purpose which is sought to be achieved by restricting the rights of the citizens is subserved. This can be done only by examining the nature of the social control, the interest of the General public which is subserved by the restrictions, the existing circumstances which necessitated the imposition of the restrictions, the degree and urgency of the evil sought to be mitigated by the restrictions and the period during which the restrictions are to remain in force. At the same time the possibility of an alternative scheme which might have been but has not been enforced would not expose the restrictions to challenge on the ground that they are not reasonable."

14. Again in its latest decision in *Bishambhar Dayal Chandra Mohan v. State of Uttar Pradesh* [6] it was noticed that the liberty of an individual to do as he pleases is not absolute and it roust yield to the common good. Absolute or unrestricted individual rights do not and cannot exist in any modern State. There is no protection of the rights themselves unless there is a measure of control and regulation of the rights of each individual in the interest of all. The limitation is inherent in the exercise of those rights. The Supreme Court observed (at p.46 of AIR) :

> "Under Article 19(1)(g) of the Constitution a citizen has the right to carry on any occupation, trade or business and the only restriction on this unfettered right is the authority of the State to make a law imposing reasonable restrictions under clause (6). The principles underlying in clauses (5) and (6) of Article 19 are now well settled and ingrained in our legal system in a number of decisions of this Court, and it is not

> necessary to burden this judgment with citations. The expression "reasonable restriction" signifies that the limitation imposed on a person in enjoyment of the right should not be arbitrary or an expressive nature, beyond what is required in the interests of the public. The test of reasonableness, wherever prescribed, should be applied to each individual statute impugned and no abstract standard, or general pattern of reasonableness can be laid down as applicable in all cases. The restriction which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality."

15. Now, the restrictions envisaged in clause (6) of Article 19 besides being reasonable should also be in the interest of general public. Here again there is no hard and fast rule for determining when a business or trade or profession is affected with public interest. The circumstances in each case would determine whether challenged governmental rule or regulation should be vindicated or condemned where interest of public health is involved. Public interest would justify interference with the exercise of the freedom in question. The circumstances which clothe a particular kind of business or profession with a public interest must be such as to create a peculiarly close relation between the public and those engaged in the business or profession and raise implications of an affirmative obligation on their part to be reasonable in dealing with the public. In matters of health and education public interest appears to be public needs. When one devotes himself of a profession in which the public has an interest, he in effect grants to the public an interest in that profession and must, therefore, submit to be controlled by the public for the common good. He may withdraw the grant by discontinuing the profession but so long as he continues with the profession, he must submit to the control. Private interest is, therefore, to be adjusted as against public interest. While public interest cannot be converted into a precise set of guidelines to inform the action of the decision markers, it cannot at the same time be described as merely a myth. It directs our attention beyond the more immediate towards broader, more universal interest because public interest connotes that which benefits society.

16. To say that some policy or program me is in the public interest numerically expressed is not to say that it is in everyone's interest only, that it is a preponderant interest of the society. No specification of what is to be counted may ever be final indicator of the public interest. A structural view of the public interest also provides for a conflict between individual interests and the public interest. A person may find it in his interest, for example, to oppose a social rule. Yet the rule may still be viewed as in the interests of society to maintain.

17. The rights under Article 19(1)(a) to (g) in a way represent the claims of the individual. But the claims of the individual have been made subject to the claims of the society or State or other individuals. So the limitations imposed under Article 19(2) to (6) protect the claims of the society or State or other individuals

18. Under Article 19(1)(a) all citizens of India have the right to practice any profession or to carry on any occupation, trade or business. However, Article 19(6) empowers the State to make any law imposing in the interest of general public reasonable restrictions on the exercise of this right. Government servants are entitled to the enjoyment of the fundamental rights guaranteed under Article 19(1) as any other citizen is but in the case of the Armed and Police Forces the Parliament can pass a ' law determining and to what extent the fundamental rights will be restricted or abrogated so as to ensure a proper discharge of their duties and the maintenance of discipline among them. Matters relating to employment including all matters in relation to employment both prior and subsequent to the employment which are incidental to the employment form part of the terms and conditions of such employment. It is open to the appointing authority to lay down qualifications for recruitment to Government offices and to further lay down prerequisite conditions of appointment which are conducive to the maintenance of proper discipline among the Government servants; see *Banarsi Das v. State of Uttar pradesh* [7] Certain restrictions on the fundamental rights of public servants can hence be imposed if warranted by the Constitution. For instance, reasonable restriction can be imposed on the grounds mentioned in Article 19 with a view to secure efficiency, integrity, impartiality, responsibility and maintenance of discipline. These restrictions should, however, have a direct, proximate and rational relation to the conditions of service and they can be imposed on the ground of public interest. So long as the

rule prohibiting private practice by Government doctors does not violate any provision of the Constitution, the Court cannot invalidate it on the specious ground that it is calculated in interfere with the private interest of the said doctors.

19. Under Article 19(1)(g) a citizen has the right to practice any profession or to carry on any occupation. "Occupation" is a generic term, and includes every species of that genus, and holding or discharging the duties of a public office is one species of occupation, just as carpentry, tailoring, farming etc. are species of occupation ((1881) 39 American Reports 34). So an employ by which a person earns his living is occupation.

20. Article 16 (1) guarantees equality of opportunity to all citizens in matters relating to employment or appointment to any office under the State. The right guaranteed by Article 16(1) includes a right to make an application for any post under the Government and to be considered on merits for the post for which the application has been made. The State may lay down conditions or requisites for employment and may define rules of conduct in the interest of discipline. Rules may be framed under Article 309 regulating the recruitment and conditions of service of persons appointed to such service and posts.

21. Now, if a person obtains a M.B.B.S. or even a higher degree of M.S., M.D. and the like he may adopt any of the following courses for his life;

1. Start private practice and open his own clinic.
2. Apply for a teaching job.
3. Apply few a Government job under the Provincial Medical Service or Provincial Health Service or Provincial Medical and Health Services.
4. Engage himself in any other trade or business or profession.

If he wants to take up the profession of a medical doctor, he has to get himself registered under the Indian Medical Council Act. It is only after he is so registered he can start his private practice or can apply for a Government job. Article 19(1)(g) gives such a person, who has obtained a degree in medicine and surgery, a right to choose the profession of a medical doctor or to engage himself in any trade or business or in any occupation including Government

service or private service. The choice is his. He has a right under Article 16(1) to apply for a service under the State and, if selected, to join the service. Once he joins the Government service, he shall be subject to all terms and conditions of employment and rules and regulations governing the employment. His freedom of movement besides being restricted by a valid law under clause (5) of Article 19 would be subject to the leave rules governing him. Similarly, this rules may provide that if he purchases any property, he has to inform the Government or obtain sanction from the Government. The rules may prohibit him from engaging m any other profession, trade or business without permission of the Government in the interest of general public, maintenance of health, discipline, efficiency and secrecy. A Government servant is a Government servant for all the 24 hours and his status as Government servant remains the same even after the prescribed office hours. He is expected to behave in a dignified manner. Even in his private behaviour he has to acquit himself with dignity. No doubt a Government servant being a citizen is entitled to all the freedoms guaranteed under Article 19(1) of the Constitution but reasonable restrictions in the interest of public order or in the interest of general public may be imposed if deemed essential, in the enjoyment of those rights just in the same way as reasonable restrictions in public interest or in the interest of public order as the case may be can be imposed in the enjoyment of those rights by any other citizen. The responsibility arising from official position would by itself impose some limitations on the exercise of these rights as citizens. A Government servant may be prohibited from communicating information which comes to him in the course of the performance of duties of his office to others. The information having been obtained by him in the course of his duties by virtue of his official position, rules or provisions of the law prescribing the circumstances in which alone such information may be given out or used do not infringe the right of freedom of speech as is guaranteed by the Constitution. (See *Kameshwar Prasad v. State of Bihar).* [8] The nature and incidents of the duties which he has to discharge in his capacity as Government servant must necessarily involve restrictions of freedoms conferred by clauses (e) and (f) of Article 19 (1).

22. To do private practice in any branch of medical science a doctor would no doubt need a clinic, a place to receive patients, a compounder or attendant and other relevant paraphernalia. Or the doctor may just be a visiting physician

attending to the patients at their residence. There has hardly been any in the human species who has not suffered from any ailment during the course of his existence. Science of medicine and surgery was developed by man to protect from physical and mental ailment. This science caters to the needs of not only human beings but also animals. And in fact drugs meant for the use of men, women and children are in the course of research first experimented on animals and other creatures. Medical profession has thus blossomed into a noble profession and has (reached?) great heights. There is no gainsaying that members of this most noble profession have done and still do yeomen service to the ailing people. They are the protectors of the health of the masses. And only healthy people can defend the country from foreign invasion in the battlefield.

23. However, a doctor, who chooses to take up a Government job circumscribes himself to certain rules and regulations having the force of law regulating his activity and occupation. There may be a rule restricting either fully or partially private practice by a "Government doctor" if it is in public interest for the maintenance of discipline and for social benefit. A doctor, who is in employment of the Government, may not be permitted to do private practice, just as a lawyer who gives up private practice and joins a Government service either as a Magistrate or Judge or as any other officer cannot claim to do private practice of consultancy after the office hours.

24. Public interest requires that only such persons should be appointed as Government doctors who are physically, intellectually and morally fit to be appointed as a doctor in Government Medical Colleges and Government Hospitals and Dispensaries and it would indeed be contrary to public weal to retain a person as a Government Doctor if he neglects his duties, which are pious and noble and missionary in character and adopts exploitative tactics and indulges in fleecing the helpless ailing patients openly in public gaze. A teacher in a Medical College whatever may be his rank in the hierarchy, is expected to give his unflinching devotion to his task of teaching and to render medical aid and advice to the hungry patients who would go to him in the hospital. Then his spare time is expected to be utilized in academic pursuits and research work to keep him efficient. There would hardly be any time left with him to run a private clinic unless he concedes that after being saddled firmly in the Govt. job he has nothing to read and write.

25. The petitioners who are teachers have been employed to do teaching work in respective Medical Colleges. They have to teach students who would ultimately be qualified to become medical practitioners. They have to guide students in their research work. And for all this they have to keep themselves abreast with up-to-date knowledge of their subjects and continue with their research work. All this needs devotion to the work assigned to them as teachers. They have specialized in particular field of medicine or surgery. They deliberately chose the profession of a teacher in a Govt. Medical College. They have built up their own reputation in the field. They are specialists of great repute and eminence. Their teaching obviously helps the society inasmuch as students who learn at their feet come out as competent doctors. In the course of teaching they have also to attend to patients in the hospitals attached to their medical colleges. The teaching work goes on there as well, Poor persons who cannot afford to consult a private practitioner and to purchase medicine outside visit the hospitals for their treatment. These patients also get benefit of being attended to by specialists like the petitioners. These poor patients would not obviously go to the petitioners if they are asked to pay their handsome fee. It is a matter of common knowledge that treatment of an ailment is in these days a very costly affair. Prices of medicines are exorbitantly high. The consultation fee of the eminent doctors is equally high. If the petitioners who are either teachers or Government doctors employed in Medical and Health Services are allowed to do private practice, there is bound to be distraction in their attention to the work for which they have been engaged by the Government. Their private practice may maintain their reputation and respectability with the elite community. But the poor man's access to Medicare is of more importance. Medicare covers within its sweep the medical education, efficient doctors, properly equipped medical clinics, hospitals and dispensaries run and managed by the Government for the benefit of the public, the medical aid camps and mobile dispensaries, the first-aid projects and the like. The commitment to raise the level of nutrition and the standard of living of its people and the improvement of public health is found to be embedded in Article 47 of the Constitution and it is the primary duty of the State to take every step and remove all hurdles to achieve the same. The goal is obvious as it is essential. The Government must so plan the Medicare, organize it and build it that public health is improved. To look after the health of the teeming millions is the duty

of the Government doctors. Anything which causes distraction from their duties is against public interest.

26. The admitted fact is that the petitioners who are eminent doctors do run their private clinics if not during office hours, at least during off time and charge fees from the patients. Their private consultancy is said to be in great demand which obviously keeps them awfully busy throughout the day. But is it done out of gratis and free of charge ? No, it was urged that the number of patients who attend the hospitals (attached to Medical Colleges) every day is so large that all of them cannot be attended to by these experts in the hospitals on the day of visit hence if the unattended patients or any of them visit the expert at his residence for immediate treatment he has to be given medical aid and advice. The contention was that medical ethics demands that if a patient comes to a doctor or if a doctor happens to be at a place where someone needs medical treatment the doctor must attend to him. Nobody disputes this wholesome ethical proposition. The question, however, is, should the Government doctors charge for the services rendered? Is he not paid by the Government for his service? The impugned rule prohibits charging remuneration for the services rendered by the Government doctor to the patients. There is no prohibition in giving free medical aid and advice to the indigent, deprived and hungry who constitute the bulk of the population. A Government servant is paid salary for his work. He is accountable to the public. The public exchequer pays him for the job entrusted to him as Government doctor. And that is all, so long as he is in Government service (do i.e. public service). He has freedom to any profession or occupation. He has of his own free will adopted the occupation of Government service on determined remuneration. So long as he is in Government service he can be called to duly at any time during the twenty four hours of the day. But the tendency to resort to private practice had become so rampant that it had achieved notoriety and had become exploitative in nature as would appear from the reports of the various Committees and as may be spelled out from the recommendation of the Medical Council of India. Obviously, in these petitions private interest has come into clash with public interest. The learned Advocate General referred to the reports of various Committees which had stressed that private practice by Government doctors should be banned. The earlier in point of time when this view was expressed was in the year 1946 when the Bhore Committee in its report recommended that private practice be

banned. Then the Kher Committee stated the same view in the year 1948 49. Again this view was emphasised by the Mudaliar Committee in the year 1961 and by the U.P. Pay Rationalization Committee in the year 1964-65, and the Verma Commission in the year 1975. Finally came the recommendation of the Indian Medical Council in March 1976 strongly recommending that Government doctors should be prohibited from indulging in private practice. So the consistent view of all the Committees and the Indian Medical Council over the years has been that Government doctors should not be allowed to do private practice for remuneration. The impugned rule mainly aims in achieving the object so emphatically asserted from time to time. The policy evolved in the rule is manifestly in public interest and is in conformity with the directive principles contained in Article 47 of the Constitution.

27. It was submitted on behalf of the petitioners that the field of public health is being served by these petitioners and if they are restrained from doing so, public will be deprived of their services which would not therefore, be in public interest. I do not find any merits in this contention. The petitioners do not give (service) after office hours without charging fees. Their fees cannot be paid by hungry, indigent persons. They are approached by those who can afford to pay them. So, the majority of these deprived persons are not going to get any benefit from them. They have to depend on the hospital and dispensaries set up by the Government for public benefit. The right of the petitioners to practice the profession of medicine cannot be said to have been violated by the impugned rules. The rules do not prevent a graduate in medicine and surgery from practicing his profession. It in effect only provides that if such a graduate has become a Government doctor and draws salary from public exchequer he shall not be entitled to do private practice for pecuniary consideration in cash or kind while remaining in Government service. The restriction imposed by the impugned rules merely prescribes conditions which must be observed if the petitioners want to remain in Government service. No medical graduate is entitled to practice as of right unless his name is entered in the rolls of doctors maintained under the Indian Medical Council Act. He can practice if under the relevant existing statute he is registered and granted a certificate to practice as such. He is thereafter entitled to apply for a Government job if there is a vacancy and if he gets that job, he has to abide by the terms and conditions thereof and the rules and regulations governing the employment under the State.

For the maintenance of discipline and for social good the rule may prohibit him from private practice for pecuniary consideration in cash or kind. It may be that the staff in the Government hospital and dispensaries may not be sufficient to attend to all the patients who visit the same in large number but that would not mean that those poor patients who remain unattended should be driven to private clinics of those Government doctors to be attended to only on payment of fabulous fees. A rule prohibiting exploitation of the misery of the people by the privileged doctors is in the preponderant interest of the society. It has come in counter-affidavit that teachers of the medical Colleges have been paying their attention to their private patients which has obstructed the discharge of their duties in teaching medical students as well as in attending to the patients in the hospitals. To say that if the petitioners would not be allowed to do private practice, they would lose their incentive is to speak against their competence and efficiency as teachers and Government doctors. The time which they devote in their private clinics can better be utilised for making researches and further studies in medical science. The reports of the aforesaid Committees point out that private practice has been responsible for neglect of essential parts of the duties of these Government doctors and teachers. It has been stated in para 14 of the counter affidavit that the State Government has been cognizant of the fact that private practice by the teachers in the Medical Colleges distracts their attention from the task assigned to them, their time and energy is devoted in attending to their patients at private side and the patients who can afford to pay on the private side receive greater attention from them than those who do not possess such means and resources. It was also said that hospital equipment, medicines, laboratory test facilities and the like are diverted and utilized for, the treatment and care of the patients in whom the teachers of the Medical Colleges are interested in private side.

28. The fact that the petitioners' private earnings would be adversely affected is no valid ground to hold that the restriction is not in public interest or is unreasonable. These petitioners are in the employment of Government and they cannot claim as of right to earn any additional income by resorting to private practice. The various reports referred to hereinabove submitted to the Government furnish sufficient evidence to come to the conclusion that private practice by the medical practitioners employed in State service would not be beneficial to the interest of general public and to the cause of medical

education. It seems that the situation had become so appalling that even the Medical Council of India in its resolution of 24th Mar. 1976 had to recommend to the State Governments that all posts of teachers of Medical Colleges should be declared full-time and non-practicing in order to ensure high standard of medical education and research. The Medical Council consists of experts who lay down curriculum for medical education and provide guidance to teachers and medical practitioners in the matter of medical education. There was no reason for the Government to ignore the aforesaid recommendation of the Medical Council.

29. The medical education seems to lay stress on the provision of a solid foundation in the path physiology of disease and the practical aspects of the patient management. The Medical Colleges provide teaching of both core curriculum and elective courses. Indisputably the most meaningful educational experience would come from training in a Medical College where provisions of quality care, community service and research are its major goals. These Medical Colleges and the hospitals attached thereto are expected to render medical and surgical aid and service to the needy and distressed sick of the community without regard to race or creed or wealth. The staff including teachers in these Colleges and Hospitals get opportunity to manage patients varying greatly in age, type and economic background and presenting a wider variety of clinical problems. Illness and recovery are frequently manifestations of a complex interplay among biological, social and psychological forces. Multi-disciplinary research in these colleges is, therefore, an imperative necessity so as to provide effective and wholesome Medicare and Medicare. Private practice by Government doctors would be the greatest hindrance in achieving the goal. The impugned rule is obviously a prescription to cure the malady. The restriction on private practice by Government doctors would benefit the student community and the poor neglected patients and help in improving the academic standard in Medical Colleges. It is quite plainly in the interest of the general public.

30. It may be that by banning private practice by Government doctors those persons who can afford consulting them in private would not he in a position to do so but they would not be without a remedy. They may consult these government Doctors in the hospitals like any other patient free of cost or they

may consult any other medical practitioner who is not in Government employment.

31. For the reasons set out hereinabove, I am of the opinion that the imposition of total restriction on private practice by medical practitioners engaged in Government service is reasonable and is in the interest of general public. It is neither arbitrary, nor unfair, nor excessive m nature. With respect I wholly endorse the view taken by my learned brother K.N. Singh, as also the reasons given by him in support of that view that the Uttar Pradesh Government Doctors (Allopathic) Restriction on Private Practice Rules, 1978 are not violative of Article 19(1)(g) of the Constitution.

32. Let this opinion be placed before the Division Bench.

Order accordingly.

Cases Referred.

1. (AIR 1952 SC 196)
2. (1981)2 SCC 600: (AIR 1981 SC 873)
3. (AIR 1960 SC 430)
4. (AIR 1959 SC 626)
5. (AIR 1954 SC 307)
6. (1982) 1 SCC 39: (AIR 1982 SC 33)
7. (AIR 1956 SC 520)
8. AIR 1962 SC 1166