No. C.30011/9/2013-HR
Government of India
Ministry of Health & Family Welfare
(Department of Health Research)

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Nirman Bhawan, New Delhi
December 23rd, 2013

Subject: Alternative Systems of Medicine

This is to state, for information of all concerned, that this Ministry come across, from time to time, various petitions in courts and miscellaneous other references in the matter of education, practice, etc., in the field of Electropathy / Electro-homoeopathy, which is stated to be an alternative system of medicine, but not recognized by this Ministry as yet. The present stand of the Government in the matter is stated in the Appendix.

(Sunita Sharma)
Deputy Secretary to the Government of India

To

Director General,
Indian Council of Medical Research.

This communication may please be hosted on the website of DHR and ICMR.
APPENDIX

Government of India
Ministry of Health & Family Welfare
(Department of Health Research)

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Alternative Systems of Medicine

At present, the modern system of medicine is regulated through the Indian Medical Council Act, 1956, the Homoeopathic system of medicine is regulated through the Homoeopathy Central Council Act, 1973 and the four Indian systems of medicine, namely Ayurveda, Siddha, Sowa Rigpa and Unani, are regulated through the Indian Medicine Central Council Act, 1970. For recognition of other systems of medicine, it is proposed to bring a legislation, titled “The Recognition of New-Systems of Medicine Bill”. The proposed purport of the draft Bill is, inter alia, to provide for the procedure for recognition of new systems of medicine for the purpose of practice and education in those systems and for matters connected therewith or incidental thereto.

2. The Hon’ble Supreme Court, in its Order, dated 03.09.2002 (in the case of Maharashtra Vs. Afroz Khan and Others), wanted to know from the Central Government as to how many institutes / systems of medicine, other than allopathic and ayurvedic institutes, were recognized by the Government, and, further, directed that an affidavit be filed mentioning therein what steps were taken by the Government to regularize such institutes. In pursuance of that order, an affidavit was filed on 18.11.2004, in which the Department of Health & Family Welfare had stated that a statutory framework should be provided. The apex court also directed that the draft legislation, sought to be enacted, be placed on record.

3. In this regard, a proposal was sent to the Cabinet on 15.11.2006 for obtaining its approval. The Cabinet considered the proposal on 23.11.2006 and the proposal was withdrawn. The Note (i.e., the proposal) was, thereafter, circulated again to obtain revised comments of the agencies concerned. Comments of the Ministries / Departments concerned were received. A draft of the Bill titled “The Recognition of New Systems of Medicine Bill, 2011” had again been circulated in
August, 2011, among the Ministries/Departments/Organisations concerned, for comments.

4. In the meantime, the Ministry of Health & Family Welfare had issued an Order vide No.R.14015/25/96-U&H(R)(Pt.), dated 25.11.2003 (copy enclosed as Annexure-I), which included a brief history of the case. This order had made it very clear that the ‘Standing Committee of Experts’, constituted by the Government, had not recommended recognition to any of the alternative systems except the already-recognized traditional systems of medicine. After careful examination, the Government had accepted the recommendations of the Committee. Another Order was issued by this Ministry vide No. V.25011/276/2009-HR, dated 05.05.2010 (copy enclosed as Annexure-II). According to these orders, which are self-explanatory, there is no bar on development or research in alternative systems, and that there is no proposal to stop the petitioners concerned from practicing in electrotherapy or imparting education, for development of the system as long as this is done within the provision of the Order, dated 25.11.2003, mentioned above. However, once the legislation to recognize new systems of medicine is enacted, any practice or education in those systems would be regulated in accordance with the said Act.

5. In pursuance of the Order passed by the Lucknow Bench of the Hon’ble High Court of Judicature at Allahabad in WP No. 3992/2004, a further order was issued by the Ministry of Health & Family Welfare vide Order No. C.30011/22/2010-HR, dated 21.06.2011 (copy enclosed as Annexure-III), and copy of this order had been sent, among others, to the Health Secretaries of all the State Governments / Union Territory Administrations.

6. Again, following an order passed by the Hon’ble High Court of Gujarat of Judicature at Ahmedabad in SPA No.2902/2011, another order was issued by this Ministry vide Order No. C.30011/17/2011-HR, dated 17.02.2012 (copy enclosed as Annexure-IV) and copy of this order was sent to the Health Secretary to the Government of Gujarat, among others, including the petitioners concerned.

7. It may, thus, be seen that the issue relating to alternative systems of medicine has already been considered and disposed of by the Apex Court and that
the process of legislation is under process. As a matter of principle, this Ministry is not in a position to support any clinical practice in electropathy / electro-homoeopathy, as this system of medicine itself does not stand recognized by the Union Government at present. Any imparting of education leading to award of degrees or diplomas in this system is not permitted.

8. The present stand of the Union Government, in the Ministry of Health & Family Welfare, on the issues of Electropathy / Electro-homoeopathy is governed by the provisions contained in its aforesaid four Orders. However, as stated above, once the proposed legislation to recognize new systems of medicine (including electropathy / electro-homoeopathy) is enacted, any recognition, practice or education in those systems would be regulated in accordance with the proposed Act.

9. It may also be mentioned that this Ministry come across, from time to time, petitions in courts and, also, miscellaneous references on the issues relating to practice, etc., in the field of Electropathy / Electro-homoeopathy. In all such references, this Ministry’s stand has been as mentioned in the preceding paragraphs. It may also be made clear here that, at present, this Ministry has neither set up / recognized / authorized any body / entity, in whatever form, to impart education in the Electropathy / Electro-homoeopathy nor it propose to do so till a legislation is put in place.

10. In this connection, a copy of the Oral Order, dated 30.09.2013, passed by the Hon’ble High Court of Gujarat at Ahmedabad in SCP No. 285 of 2013 (in the matter of Birendra Kumar Singh & Others Vs. State of Gujarat & Others) is placed at Annexure-V for information.
ORDER

The matter regarding grant of recognition to the various streams of alternative medicines including electropathy, electrohomeopathy, has been under consideration of the Govt. In this process, the Govt. has considered the orders dated 18.11.98 of the Hon'ble High Court of Delhi in CWP No. 4815/96 & OM No. 8156/97 which has inter alia directed the Central/State Govts. to consider making legislation to grant of licenses to the existing and new institutes etc. to control & regulate the various 'unrecognized streams of alternative medicines and also to give adequate publicity through media informing public about the 'Respondents' and similar other institutes not being recognized by the Govt. & affiliated with any of the Councils.

Government constituted a 'Standing Committee of Experts' under the Chairmanship of Director General, Indian Council of Medical Research and members were drawn from various fields of medicine to consider & give its recommendations to the Government on the efficacy/merits of various streams of alternative medicine and also examine feasibility of making legislation as suggested by the Hon'ble Court:

The Committee developed essential & desirable criteria for grant of recognition to a new stream of medicine and analysed the different streams of 'Alternative medicine viz. Ayurveda, Siddha, Unani, Homoeopathy, Yoga & Naturopathy, Electropathy/Electrohomeopathy, Acupuncture, magnetotherpay, Reiki, Reflexology, Urine Therapy/Autourine Therapy, Hypnotherapy, Aromatherapy, Colour Therapy, Pranic Healing, Gems & Stone Therapy and Music Therapy.
The Committee did not recommend the introduction of other systems of medicine and the Ayurveda, Siddha, Unani, Homoeopathy, and Yoga & Naturopathy, which were found to fulfill the essential criteria that are included in the system of medicine. The recommendation for registration as medical practitioners of Ayurveda, Homoeopathy, and Yoga & Naturopathy should be entertained only by practitioners of Systems of Medicine not recognized full time. The Committee has, however, recommended that the curriculum of the Ayurveda and Homoeopathy, and Yoga & Naturopathy, should be extended to include the essential criteria for recognition of Ayurveda, Homoeopathy, and Yoga & Naturopathy. These recommendations are considered as broad guidelines for the recognition of practitioners of other systems of medicine.
ORDER

This order is passed in pursuance of High Court of Allahabad order dated 3.8.2009 in Civil Miscellaneous Writ Petition No. 31904 of 1991, in which the Court has directed that, "the petitioner may file a fresh representation before the Ministry of Health & Family Welfare, New Delhi, bringing on record various orders passed by various High Courts and that of the Supreme Court. If such a representation is made with regard to recognition of the course, the authority will consider and decide that matter by a reasoned and speaking order within six months from the date of the production of a certified copy of this order with the representation. If necessary, the petitioner would be accorded personal opportunity of hearing by the respondents".

The NEHM through Dr. N K Awasthy filed a representation dated 10.2009 before the Secretary, which was received on 31.1.2009. The major issues raised in this representation are as follows:

1. Electropathy is a medical system based on herbal and its medicines are prepared from medicinal plants with the help of distilled water. Its medicines are therefore 100% safe and curative.

2. Not a single complaint/case has been reported/registered with the Government regarding death of any patient.

3. There have been various Court judgments supporting electropathy. In support of this contention, the representation has annexed copies of orders relating to these cases.

4. Apart from the Court cases, the representation has also submitted affiliation with World Council, Reports of GB Pant University of Agriculture & Technology, letters from Deputy Minister of Health & Family Welfare dated 14.6.91 & 17.6.91, letter from Government Medical Councils, answers to Parliament questions, notification of directorate of health services, Government of NCT of Delhi, private member bill, letter from former Minister of Health & Family Welfare, article published in the "Indian Journal of Veterinary Medicine", Punjab Agricultural Magazine, Ludhiana, Notification of J & K Government and letter of SSP Agra (UP), letter of Government of MP, as well as some publications (books & magazines) on electropathy.

5. Dr. Awasthy has represented that the Health Ministry should honour the judgment and give shelter to Electropathy Medical System by permitting NEHM for promotion, development & Research (Education & Practice) in Electropathy Medical System at least initially for 15 years so that the necessary criteria for the recognition of a new medical system may be achieved without any hindrances.
6. The representation was examined in the Ministry. The facts are as follows:

The following orders of the Court have been submitted:

i) Order dated 14.8.92 within Suit No 27 of 1992 by Additional District Judge, Delhi has directed that no public notice be issued concerning the activity of the plaintiff during the pendency of the suit.

ii) Order of High Court of Delhi dated November 1998, in FAO No. 1205 of 1998: In public notice it will not be stated that the persons possessing the diploma/ certificates from the respondent No 10 are not entitled to practice Electro Homeopathy system of Medicine.

iii) Order of Hon’ble Supreme Court made on 12.01.2000 in SLP No 11262/2000 (Union of India vs Naturo Electro Homeo Medicose of India):

"Learned counsel for the respondent has pointed out that as per his instructions the order made by the High Court in C.W.P No. 4015/96 to the extent indicated at page 4 of the paper book has been accepted by the petitioners and in view of the matter the impugned direction given by the High Court is unexceptionable"

"In view of the order made by us on 12.10.2000 and that no proceedings having been initiated, challenging the order made in the C.W.P No. 4015/96, we decline to entertain the matter."

iv) Order of High Court of Jabalpur, MP: 2957/94 dated 19.3.1999 which essentially stated that the degree/diploma obtained by them are not recognized under any law. The practice in alternative system of medicine is not regulated by any statute & hence in the absence of regulation/prohibition they cannot be asked to stop practice. No legislation governing practice or teaching in alternate system of medicine has been enacted either by the Union or the State. In this case the MP Government has taken action under the MP Ayurvignyan Parishad Adhiniyam 1990. The Court held that this Act applies only to allopathic system of medicine and also stated that no other law was brought to the notice of the Court. So long as a valid law is not made regulating this branch therefore stopping the petitioners from practicing in alternate system of medicine or imparting education is illegal.

v) Order of High Court of Madhya Pradesh at Jabalpur bench, Gwalior in WP No 2462/08 in which directions were given that orders in WP 2957/94 shall apply.
Apart from the above, Letter D.O. No. 2921/ DM (H&FW)91/VIP dated 17.6.1991 from Dasai Chowdhry, Deputy Minister of Health & Family Welfare to Shri Jagannath Singh, MF has been annexed, which states that:

"I have authorized N.E.H.M. of India for the Development Promotion & Research of electropathy in India"

The Government of India issued an Order No. R. 14015/25/96-U & H(R) (pt) dated 25th November 2003, based on the recommendations of a "Standing Committee of Experts" under the chairmanship of Director General ICMR, set up by the Government of India. Based on the recommendations of the Committee, the Government of India has given the following orders:

The committee did not recommend recognition to alternative medicines except Ayurveda, Siddha, Unani, Homeopathy & Yoga & Naturopathy which were found to fulfill the essential & desirable criteria developed by the Committee for recognition of a system of medicine.

The Committee further recommended that all systems of medicine not recognized as separate systems should not be allowed to continue full time Bachelor and Masters degrees and the term doctor should be used only by practitioners of systems of medicine recognized by Government of India. Those considered as mode of therapy can be conducted as certificate courses for registered medical practitioners.

The Committee, however, recommended that certain practices as Acupuncture which qualified as modes of therapy, could be allowed to be practised by registered practitioners or appropriately trained personnel.

The Committee, based on the essential & desirable criteria, did not find electropathy to qualify as a system of medicine. Therefore, it is clear that, in accordance with this order, electropathy cannot run full time Bachelor and Masters degrees and those practicing this cannot use the term "doctor".

NEHM, as per the document submitted by them is conducting diploma and certificate courses, and not running full time Bachelor and Masters degrees.

In so far as recognizing the courses run by them, it is clarified that the concerned boards/statutory bodies like the Medical Council, give recognition to courses. Since electropathy is not recognized as a system of medicine, there is no system for recognition of any course run by them in the Health Ministry.

NEHM, has also not submitted any document according to which they fill the essential & desirable criteria developed by the Committee for recognition a system of medicine.

However, the Order No. R. 14015/25/96-U & H(R) (pt) dated 25th November 2003, does not bar the Development & Research of Electropathy.
In accordance with Orders of the High Court & Supreme Court quoted here, there is no proposal to stop the petitioners from practicing in 'electrotherapy or imparting education', as long as this is done within the provision of the Order No. R. 14015/25/96-U & H (R) (Pt) dated 25th November 2003. Once the legislation to recognize new systems of medicine is enacted, any practice or education would be regulated in accordance with the said Act. The representation of the petitioner dated 28.10.2009 is disposed off accordingly.

This issues with the approval of Secretary, Department of Health Research in this Ministry.

(MOHD. SALEEM)
Under Secretary to the Government of India of India
Tel No:23061988

N. E. H. M. of India, H.O. C-2 C/123; Pocket 12, Janak Puri, New Delhi - 110058.

for information and necessary action to:

Shri Ravi Bhushan Singhal, Assistant Solicitor General of India, 200, Lukerganj, Allahabad. (U.P.)
Shri Ravi Bhushan Singhal, Assistant Solicitor General of India, High Court of Allahabad, Allahabad. (U.P.)

(MOHD. SALEEM)
Under Secretary to the Government of India of India
An order was passed on 11.10.2010 by the Lucknow Bench of the Hon. High Court of Judicature at Allahabad in the WP No.3892/2004 filed before the Hon. High Court of Judicature at Allahabad at Lucknow Bench, in Electro Homeo Medical Association of India vs. State of UP & 4 Ors. as under:

"Heard Learned counsel for the parties and perused the record.

With regard to the grievance, the petitioner may make a representation within a month from today in the light of the Government Order dated 5.5.2010 (No.V.25011/276/2009-HR) issued by the Government of India, Ministry of Health & Family Welfare Department of Health Research.

If the representation made by the petitioner within the aforesaid period, the same shall be decided by the Government of India within three months from the date of its filing.

With above observation, the writ petition is finally disposed of."

Consequently, in accordance with the said order, Sh. Taj Ali, Secretary, Electro Homeo Medical Association of India, Lucknow has filed a representation in the matter vide his letter dated 03.11.2010 in which he has made the following submissions and prayer:

"That the order dated 25.11.2003 addressed to different officials and copies sent, however, to all their subordinates was mis-interpreted as if the Government of India has altogether prohibited the development and research of Electrotherapy, however the order dated 05.05.2010 has clarified that there is no proposal to stop the petitioner from practicing in electrotherapy or imparting education as long as this is done within the parameters of the order dated 25.11.2003 and once the legislation to recognize new system of medicine is enacted any practice or education would be regulated in accordance with the said Act.

On the basis of the order dated 25.11.2003 different authorities issued preventive orders as if, there can be no teaching or practice in Electrotherapy/Electro Homeopathy at all and that forced the applicant to file the above noted writ petition in the Hon'ble High Court Allahabad, Lucknow Bench, Lucknow. However in the meantime the order dated 05.05.2010 has clarified the position and the Hon'ble Division Bench in the light thereof has opined that now no detailed order is required to be passed and the petitioner may make the representation to the Government of India and Government of India may pass the order in the light of the order dated 05.05.2010.

It is, therefore, respectfully prayed that the authorities to whom the order No.R.14015/25/96-U&H(R)(Pt.) dated 25.11.2003 was issued, may kindly be communi-
caled to read the order in the light of the Government of India later order dated 05.05.2010 and act only in accordance with the same and may not cause any interference in contravention of the same."

3. As per the directions of the Hon. Lucknow Bench of the High Court of Judicature at Allahabad, the representation has been considered. It is clarified that the MH&FW Order No.R.14015/25/96-U&H(R)(Pt.) dated 25.11.2003 and No.V.25011/276/2009-HR dated 05.05.2010 would be treated as instructions of the Government of India related to practice, education and research with regard to alternative systems of medicine like electropathy, electro-homeopathy, etc.

4. A copy of each of the said two orders viz. MH&FW Order No.R.14015/25/96-U&H(R)(Pt.) dated 25.11.2003 and No. V.25011/276/2009-HR dated 05.05.2010 is being forwarded herewith to each of the State Governments/UTs for information and necessary action. With this your representation is disposed off.

5. This issues with the approval of Secretary (Department of Health Research), Ministry of Health & Family Welfare, New Delhi.

(J. P. Mehta)
Director (HR)

To,

All Health Secretaries of State Governments/Union Territory Administrations.

Copy to:

Sh. Taj Ali, Secretary, Electro Homeo Medical Association of India, 8 - Lal Bagh, Lucknow - 226001 (Uttar Pradesh).

The Registrar, High Court, Lucknow Bench, Lucknow.
No.C.30011/17/2011–HR
Government of India
Ministry of Health & Family Welfare
(Department of Health Research)

ORDER

Nirman Bhawan, New Delhi;
Dated: 17-02-2012

Subject:- Representation dated 26-01-2012 of Jignasaben. S. Patel and ors-regarding.

An order was passed on 20.01.2012 by the Hon. High Court of Gujarat of Judicature at Ahmedabad in the SPA No.2902/2011 filed before the Hon. High Court by Jignasaben. S. Patel & 4 Ors. as under:

"the petition is disposed of with a liberty to the petitioners to take out appropriate representation to all the concerned authorities and submit along with the Central Government order dated 05.05.2010 and in such an eventuality, the concerned authority shall pass appropriate reasoned order in r/o the petitioners grievances. The petitioners shall approach within 2 (two) weeks from today and the authorities concerned shall pass order within 2 (two) weeks thereafter. In case if the order is adverse to the petitioners, it would be open for the petitioners to challenge the same in accordance with law with this observation, petition is disposed".

2. Consequently, in accordance with the said order, Jignasaben. S. Patel and the other petitioners have filed a joint representation vide letter dated 20-01-2012 in which following submissions and prayer has been made:-

"That kindly look into the matter at your honour's earliest, and issue appropriate reasoned orders. To the authorities and Government agencies concerned in accordance of the judgement of the honourable High Court of Gujarat Ahmedabad dated 20th January 2012. Along with the suitable instructions not to stop us from practicing in Electropathy and Electro-homeopathy system of medicine and surgery and also not to disturb our day to day’s peaceful professional life for which we are entitled for by law".

3. As per the directions of the Hon. Gujarat High Court of Judicature at Ahmedabad, the representation has been considered. It is clarified that the MH&FW Order No.R.14015/25/96-U&H(R)(Pt.) dated 25.11.2003 and No.V.25011/276/2009-HR dated 05.05.2010 would be treated as instructions of the Government of India related to practice, education and research with regard to alternative systems of medicine like electropathy, electro-homoeopathy, etc.

4. A copy of each of the said two orders viz. MH&FW Order No.R.14015/25/96-U&H(R)(Pt.) dated 25.11.2003 and No. V.25011/276/2009-HR dated 05.05.2010 is being forwarded herewith to the State Governments for information and necessary action. With this your representation is disposed off.
5. This issues with the approval of Joint Secretary (Department of Health Research), Ministry of Health & Family Welfare, New Delhi.

(R.K. Ahluwalia)
Under Secretary (HR)

To,

1. The Health Secretary to the Government of Gujarat.
2. The Registrar High Court of Gujarat at Ahmedabad.
3. Jignashaben S Patel, AT-Post -Ukai, Taluka-Songadh, DIST-Tapi(GUJARAT).
4. Sanjaybhai Arjubhai Chaudhari, AT-Post Taluka-Songadh, DIST-Tapi(GUJARAT).
5. Chetanbhai Jagannathbhai Patel, AT-Post -Ukai, Taluka-Songadh, DIST-Tapi(GUJARAT).
6. Sunilbhai Nathubhai Bhandari, AT-Post -Ukai, Taluka-Songadh, DIST-Tapi(GUJARAT).
7. Abhaykumar Raghunathbhai Patil, AT-Post Songadh, Taluka-Songadh, DIST-Tapi(GUJARAT).
IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 285 of 2013

BIRENDRA KUMAR SINGH & 12....Petitioner(s)
Versus
STATE OF GUJARAT THRO SECRETARY & 2....Respondent(s)

Appearance:
MR SACHIN D VASAVADA, ADVOCATE for the Petitioner(s) No. 1 - 13
MS KRINA CALLA AGP for the Respondent(s) No. 1
MR NISHANT LALAKIYA, ADVOCATE for the Respondent(s) No. 2
NOTICE SERVED BY DS for the Respondent(s) No. 3

CORAM: HONOURABLE MR.JUSTICE ANANT S. DAVE

Date : 30/9/2013

ORAL ORDER

1. The petitioners have filed this petition under Article 226 of the Constitution of India with the following main prayer:

"[B] YOUR LORDSHIPS may be pleased issue a writ of mandamus and/or a writ of a certiorari or a writ in nature of mandamus and/or a writ in nature of a certiorari to quash and set aside the impugned order which is at Annexure A and further be pleased to direct respondent No.1 to maintain the status quo till Respondent No.2 and/or Respondent No.1 frame any law / legislation and further be pleased to restrain Respondent no.1 and 2 in taking any action against present Petitioners in developing, promoting and in doing research of Electropathy / Electro homeopathy system in India".

2. It is not in dispute that as on date there is no Central or State enactment for regulating the system of medicine called Electropathy /
Electro homeopathy. The petitioners earlier made representation dated 26.01.2012 pursuant to the judgment delivered by this Court in Special Civil Application No.2902 of 2011.

3 It is the case of the petitioners that a new system of medicine i.e. Electropathy / Electro Homeopathy is discovered in 1865 in Italy and in India it was recognized and there are about 114 colleges imparting the education throughout the country. That Government of India, Ministry of Health & Family Welfare issued order dated 25.11.2003 with regard to order passed by the High Court of Delhi dated 18.11.1998 in CWP No.4015 of 1996 to consider making of legislation to grant licence to the existing and new institutions and also to control and regulate the various unrecognized systems of alternative medicines and to give adequate publicity. There are similar such orders of other High Courts and finally the order dated 21.06.2011 issued by the Ministry of Health and Family Welfare [Department of Health Research], Government of India refers to the order dated 11.10.2010 passed by the Lucknow Bench of High Court of Judicature at Allahabad in W.P. No.3992 of 2001, wherein the Hon'ble Lucknow Bench of the High Court of Judicature at Allahabad considering the representation and held that MH & FW Order No.R:14015/25/96-U&H®(Pt) dated 25.11.2003 and No.V.25011/276/2009-HR dated 05.05.2010 would be treated as instructions of the Government of India related to practice, education and research with regard to alternative systems of medicine like electropathy, electro-homeopathy, etc.

4 In the above factual backdrop, learned advocate for the petitioner would contend that the instructions issued by the Central Government to the above extent are binding to the State Government and decision dated 06.06.2012 of the Department of Health and Family Welfare, State of Gujarat rejecting the representation of the petitioner is bad,
illegal and deserves to be quashed and set aside. It is further submitted that the State Government is not competent to take any decision for enactment of law with regard to the subject petition. Learned advocate for the petitioners placed reliance on the decision of Apex Court in the case of the State of Bihar vs. Kalyanpur Cements Ltd. reported in 2010(3) SCC 274 wherein it is held that the promissory estoppel would apply where a party alters his position pursuant to or in furtherance of the promise made by a State and such a policy decision can be expressed in notifications under statutory provisions or even by executive instructions and in the facts of the case the State Government was duty bound to carry on executive instructions issued by the Central Government. It is, therefore, submitted that prayers made in the petition may be granted.

5 Learned AGP would contend that no writ much less writ of mandamus could be issued with a direction to the State Government to consider the subject petition for enacting legislation and that no legal right accrued in favour of the petitioner for seeking any writ as prayed for.

6 Upon hearing learned counsels for the parties and on perusal of the record of the case, I am of the view that in well demarcated functions of legislature, executive and judiciary, it is exclusively the domain of the State Government to take up the issue as to whether it is necessary for making any enactment subject to the constitutional provisions and schedule 7 of the Constitution of India. That the instructions of the Central Government referred by learned counsel for the petitioners is based on the order passed by Lucknow Bench of High Court of Judicature at Allahabad and it is to be treated as instructions only. No duty is cast upon the State Government in absence of any valid act or any national council like Medical Council of India, or Homeopathy
Counsel of India or any other technical institute etc., the decision taken by the Department of Health and Family Welfare rejecting representation cannot be said to be in any manner illegal or contrary to law.

7 The Under Secretary, Health & Family Welfare Department, Sachivalaya, Gandhinagar vide letter dated 06.06.2012 addressed to the petitioner while rejecting the representation dated 26.01.2012 made by the petitioner, in paras 7 onwards, stated as under:

"In accordance of orders of the High Courts and Supreme Court quoted in that order, there is no proposal to stop the petitioner from practicing Electropathy or imparting education, as long as this is done within the provision of the order No.R:14015/25/96-U&H(R)(Pt) dated 25.11.2003 once the legislation to recognised new systems of medicine is enacted, any practice or education would be regulated in accordance with the said act. The representation of the petitioner dated 28.10.2009 was disposed of accordingly.

Government of India, Ministry of Health and Family Welfare Department of Health Research, New Delhi issued order dated 21.06.2011 hearing No.C30011/22/2010-HR, some of the part of the above order is reproduced hereunder:

An order was passed on 11.10.2010 by the Lucknow Bench of Hon’ble High Court of Judicature at Allahabad in the WP No.3992/2004 filed before the Hon’ble Court of Judicature at Allahabad at Lucknow Bench. In Electro Homeo Medical Association of India v. State of UP & 4 others. Consequently, in accordance with the said order, Secretary, Electro Homeo Medical Association of India Lucknow has filed a representation in the matter vide his letter dated 03.11.2010.

In Para-3 of the order it is mentioned that, as per the directions of the Hon’ble Lucknow Bench of the High Court of the Judicature at Allahabad, the representation has been considered. It is clarified that the MH & FW order No.R:14015/25/96-U&H(R)(Pt) dated 25/112003 and No.V.25011/276/2009-HR dated 05.05.2010 would be treated as instructions of the
Government of India related to practice education and research with regard to alternative systems of medicine like electropathy, electro-homeopathy, etc. A copy of both orders dated 25.11.2003 and 05.05.2010 has been forwarded to each of the State/UT Governments for information and necessary actions.

Looking to the above mentioned facts, it is clarified to the petitioners as follows:-

It is not within the competence of the State Government to decide whether Electropathy/Electrohomeopathy practice is valid system of medicine or not. System such as this should be evaluated by an appropriate body (as constituted a standing expert committee) of GOI in a scientific manner. It is only then the State Government can implement or allow the implementation of such an approved system of medicine.

Looking to the formation of MCI, CCIM etc., by Government of India, it can be understood that the Central Council for any such system of medicine which may be recognised by the Government of India Ministry of Health and Family Welfare, Department of Health Research then and then only the State Government may consider to implementation of such and approved system of medicine.

In absence of any regulatory Act/Rules enacted by Parliament of India, State Government is not competent enough to take any decision with regards to the representation made by the petitioner of SCA 2902/2011".

The above order, in any manner, can be said to be contrary to law in absence of any statutory provisions viz. Enactment passed by the Parliament or the State Legislature.

The decision in the case of Kalyan Cements Ltd. [supra] has no application to the facts of the present case inasmuch as no promise is given by the State Government or its agency.

However, it will be open for the petitioners to pursue respective
Governments to consider the case within the framework of law and case if the Central Government or State Government or both decide to enact a legislation with regard to subject grievance, this order will not come in their way in enacting such legislation.

With the aforesaid, the petition is disposed of accordingly.
Notice discharged.

(ANANT S. DAVE, J.)