

(2007) 07 KAR CK 0032

In the Karnataka High Court

Case No : Writ Petition No. 9248 of 2006

Akhila Karnataka Ayurveda, Siddha and Homeopathy,
Registered Professional Medical Practitioners Association and
Others

APPELLANT

Vs

The Secretary, Health and Family Welfare Department and
Others

RESPONDENT

Date of Decision : 18-07-2007

Acts Referred:

Karnataka Ayurvedic Naturopathy, Siddha, Unani and Yoga Practitioners Registration
and Medical Practitioners Miscellaneous Provisions Act, 1961 — Section 16, 21

Citation : (2007) 6 KarLJ 620 : (2007) 4 KCCR 383 SN

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : T.N. Arakeswara and Arakeswara Associates, for the Appellant; B. Veerappa, High Court Government Advocate for Respondent Nos. 1, 3 and 4, Anasuyadevi, for Nyayamitra Associates, for the Respondent

Final Decision : Dismissed

Judgement

Ajit J. Gunjal, J.—Mr. B. Veerappa, High Court Government Advocate is directed to take notice for respondents 1, 3 and 4.

2. The first petitioner is an Association registered under the Karnataka Societies Registration Act, 1960. The other petitioners are practicing in the field of Siddha, Ayurveda, Unani and Homeopathy Systems of Medicines in various places in the District of Tumkur in the State of Karnataka. Petitioners 2 to 18 are the Doctors practicing at various places in the State of Karnataka as stated earlier. The case of the petitioners is that they are Vaidyas (Doctors) having a valid licence to practice based on experience in the field of Ayurveda and Unani Systems and integrated Systems of Medicines from the State Council of Ayurvedic and Unani Medicines, Patna, Bihar, which is a body recognised under the Bihar Development of Ayurvedic and Unani Systems of Medicine Act, 1951. One of the certificates issued by the said State Council of Ayurvedic and Unani Medicines is produced at

Annexure-B. The said certificate would relate to petitioner 3. The petitioners gave an application to respondent 2 to register them as Medical Practitioners in the field of Ayurvedic. Their applications for registration was rejected, as against which the petitioners preferred an appeal before the Board. Since, the appeal before the Board was not disposed of, a writ petition was filed in W.P. Nos. 26876 to 26897 of 2002. This Court disposed of the writ petition, directing the Board to dispose of the appeal within a period of eight weeks. The Board pursuant to the order dated 15-2-2006, dismissed the appeal holding that the petitioners are not qualified for being registered as Practitioners under the Act. The said order passed by the Board is questioned in this petition. The impugned order is at Annexure-H.

3. Mr. Arakeswara, learned Counsel appearing for the petitioners submits that u/s 16 of the Karnataka Ayurvedic Naturopathy, Siddha, Unani and Yoga Practitioners' Registration and Medical Practitioners' Miscellaneous Provisions Act, 1961 (for short, "the Act"), every person who has passed a qualifying examination may apply to the Registrar giving a correct description of his qualifications and if he is armed with a Degree, Diploma and licence along with a fee or a licence is required to be registered. He also submits that u/s 21 of the Act, a person who has passed a qualifying examination as specified in the schedule to the Act can be registered as a Practitioner. He did submit that none of the petitioners possess any qualifying degree, but however, by their experience, a licence has been granted by the Bihar Institute to practice Ayurvedic Medicine. In the circumstances, he submits that the Appellate Board was not justified in dismissing the appeal nor the second respondent was justified in declining to register the petitioners to practice Ayurvedic form of Medicine.

4. Smt. K.S. Anasuya Devi, learned Counsel appearing for the respondents submits that none of the petitioners qualify to be registered as Practitioners under the Act. She submits that admittedly none of the petitioners are qualified. But however, they claim to have certain experience on the basis of which they claim that they are entitled to be registered as Practitioners.

5. I have given my anxious consideration to the submissions made by the learned Counsel appearing for the parties. To appreciate the controversy in question, certain provisions of the Act are required to be noticed. Section 16 of the Act would relate to the Registration and Removal of the Practitioners from the register. The requisite qualification u/s 16 of the Act is that the applicant must have passed the qualifying examination and must be armed with a Degree or Diploma or a licence. It is not in dispute that none of the petitioners possess a Degree or a Diploma in Ayurvedic Medicine. They rest their case only on the basis of certificate issued by the Bihar State Council of Ayurvedic and Unani Medicines. Except for this certificate, the petitioners have not produced anything to show since how long they have been practicing in the State of Bihar. Indeed, the petitioners have produced a communication issued from the Registrar, State

Council of Ayurvedic and Unani Medicine at Bihar, a copy of which is produced at Annexure-K, which would only indicate the certificate number of the petitioners. It is significant to note that all the petitioners are from Karnataka and there is no apparent reason forthcoming as to why they should go all the way to Bihar to practice Ayurvedic Medicine. Indeed, may be to take advantage of the fact that if by dint of experience, if a registration could be obtained, the same could be of some assistance to them to get themselves registered in Karnataka. A perusal of the averments made in the petition does not disclose as to since how many years the petitioners have been practicing Ayurvedic Medicine in Bihar to get themselves registered as Medical Practitioners. Merely being registered as a Medical Practitioner does not necessarily entitle them to get registered in Karnataka. What is significant is that they must possess a licence to practice. A licence is granted only on the basis of a Degree or a Diploma as envisaged u/s 16 of the Act. A licence is nothing but a permission to practice. Such permission is granted only if the requisite qualifications are possessed by the applicant. In the absence of any requisite qualifications, the question of issuing the licence would not arise. Annexure-K does not give any indication as to the years of practice which could be termed as an experience to get themselves registered in Karnataka. Incidentally, a look at the age of the petitioners in all these petitions shows that they are in the range between 30 years and 40 years. Apparently, if the petitioners were practicing for over a period of years so that they can acquire vast experience which could be considered as a requisite qualification to possess a licence, but however, it is not forthcoming as to the extent of experience which the petitioners possess.

6. Section 21 of the Act will not come to the assistance of Mr. Arakeswara, learned Counsel appearing for the petitioners. Section 21 of the Act contemplates as to what are the qualifications for registration as Medical Practitioners under the Act. A perusal of the said provision clearly indicates that the requisite qualification for registration is that he must possess a qualifying examination. Qualifying examination would necessarily mean that he must possess a Degree or a Diploma in the particular discipline which is not forthcoming in this petition. It is also to be noticed that the Appellate Board while considering the appeal has verified and looked into the Schedule u/s 21 of the Act, wherein what are the qualifications which are recognised and enables the petitioners to get themselves registered are mentioned. This schedule certainly excludes a person who claims that he possesses practicing experience and is entitled to be registered. But, however, there is a paucity of material in this regard. It is also to be noticed that u/s 34 of the Act, a person who is not registered as a Medical Practitioner under the Act nor the laws which govern this field are prohibited from practicing.

7. Having perused the order passed by the Appellate Board and having given the interpretation to the word "licence" u/s 16 of the Act, I am of the view that the petitioners cannot be termed as "Vaidyas" who have requisite qualifications or possess a valid licence to be registered under the Act.

8. There is no merit in this petition. Accordingly, the writ petition stands rejected.
9. Mr. B. Veerappa, learned High Court Government Advocate appearing for respondents 1, 3 and 4 is permitted to file memo of appearance within four weeks from today.