
(1979) 06 CAL CK 0006
In the Calcutta High Court
Case No : C.R. No. 10920 (W) of 1975

Amal Prasad Chakravarty

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 28-06-1979

Acts Referred:

Constitution of India, 1950 — Article 14
Evidence Act, 1872 — Section 17, 24, 28, 38, 39

Citation : 84 CWN 313

Hon'ble Judges : M.N. Roy, J

Bench : Single Bench

Advocate : Amal Prasad Chakravartty, for the Appellant; Kripa Sindhu Hait for Respondent No. 1, Bojon Datta and Bijoy Basanta Koley for Respondent Nos. 2 and 3, for the Respondent

Judgement

M.N. Roy, J.—The petitioner is a qualified Homeopathic medical practitioner and he obtained his D.M.S. degree from the State Faculty of Homeopathic Medicine in 1963. He has stated that since then, he has been practising in the said branch under registration No. 8686. For making necessary provisions for the development of the Homeopathic System of medicine, to regulate the teaching and practice thereof and to deal with certain other connected matters, in 1963, the West Bengal Homeopathic System of Medicine Act, 1963 (hereinafter referred to as the said Act) was passed by the West Bengal Legislature. The said Act requires that as soon as may be necessary after the commencement of the same, the State Government shall by a notification in the Official Gazette, establish a body corporate with perpetual succession and a common seal named The Council of Homoeopathic Medicine, West Bengal (hereinafter referred to as the said Council), which shall be entitled to acquire and hold movable and immovable property, to transfer such property, to contract and to do all things necessary for the purposes of the said Act and shall by its name sue and be sued. The said Council is respondent No. 2 in this Rule and under the Act the same means the Council as constituted under section 3. Under the provisions of

the said Act "Homeopathy" means the system of medicine founded by Dr. Hahnemann and includes, the bio-chemic system of medicine founded by Dr. Schussler and the expression "Homoeopathy" is required to be construed accordingly. The respondent No. 3 in this Rule is the Registrar of the said Council in terms of section 2(9) of the said Act. The said Act, in section 2(7) defines "Register" which means the Register of Homoeopathic practitioners maintained under the said Act and under sub-section 8 of section 2 "Registered Homoeopathic Practitioner" means a homoeopathic practitioner registered under the provisions of the said Act.

2. The composition of the said Council is to be made in terms of section 5 of the said Act and the powers of the Council are regulated by section 13 of the same. Such powers amongst other include the power to collect the prescribed fees or charges for admission to the examination held by the said Council and for Certificates, Diplomas or Degrees granted or conferred by it. That apart, under sub-section 16 of section 18, the said Council is authorised to perform such other functions as the State Government may direct or, on the recommendation of the said Council, approve for carrying out the provisions of the said Act.

3. In terms of the said Act and more particularly u/s 23 of the same, every person who desires to have his name entered in the register is required to submit to the Registrar, an application in the prescribed form stating (a) particulars of his qualifications, (b) the period for which he has been in practice and (c) his address which is to be his registered address. Sub-section (2) of section 23 also requires that all such applications must be accompanied by the prescribed fees and such proof as may be available or necessary in support of the qualifications stated in the concerned application. The said Council in terms of section 24 (1) may on being satisfied that a person is qualified for registration u/s 21, which is to the following effects :

(1) Every person who possesses any qualification mentioned in "paragraphs 1, 2 or 3 of the Schedule shall subject to the provisions of this Act, and on payment of such fee, as may be prescribed, be entitled to have his name entered in Part A of the Register.

(2) Every person who possesses any qualification mentioned in paragraph 4 or 5 of the Schedule shall, subject to the provisions of this Act, and on payment of such fee, as may be prescribed, be entitled to have his name entered in Part B of the Register.

(3) Provided that a person who possesses a qualification mentioned in paragraph 4 of the Schedule shall have passed an examination to be held by the Council in the manner provided by regulation upon an application for registration of his name to be made within a period of two years from the date of commencement of this Act.

(4) Notwithstanding anything contained in subsections (1) and (2), every person, whose name has been registered by the General Council and State Faculty of

Homoeopathic Medicine, West Bengal, shall be deemed to have been registered under the provisions of this Act and his name shall be entered in the Register. If such person possesses any qualification mentioned in paragraphs 1, 2 "or 3 of the schedule his name shall be entered in Part A of the Register; in any other case, his name shall be entered in Part B of the Register.

And has paid the prescribed fees, direct that his name be entered in Part A or Part B of the register as the case may be and the Registrar shall thereupon make necessary entries in the register and grant him a certificate of registration, (2) The said Council may also refuse to permit the registration, or direct the removal from the register, of the name of any person, (a) who has been convicted of any offence involving moral turpitude; and (b) who has been found guilty of infamous conduct in his professional capacity by a majority of at least 2/3rd of the members of the Council, after a due enquiry into his conduct, at which he has had an opportunity of being heard in person or of being duly represented. Sub-section (3) of section 24 lays down that any refusal or removal under subsection (2) of section 24 may be rescinded, if the conduct on the basis of which refusal or removal was directed, is condoned for good and sufficient reasons.

4. In terms of section 25 of the said Act (1) every person whose name has been entered in the register, shall for the retention of his name therein, pay to the Council quinquennially such renewal fee and at such time as may be prescribed. Sub-section (2) of the said section 25 also makes it clear that where the renewal fee is not paid by the due date, the Registrar shall remove the name of the defaulter from the register. In terms of the proviso thereunder the name so removed may also be restored to the register on such conditions as may be prescribed. Section 25(3) further makes the provisions that on payment of the renewal fee, the Registrar shall, in the prescribed manner, endorse the certificate of registration. In terms of section 26 and the sub-section thereunder the name of the person registered may be transferred from Part B to Part A of the register on certain exigencies and circumstances.

5. The said Act, by section 37, gives the registered Homoeopathic practitioners, the rights and privileges (a) to grant a death certificate required by any law or rule to be signed or authenticated by a duly qualified medical practitioner or medical officer (b) to grant a medical or physical fitness certificate required by any law or rule to be signed or authenticated by a duly qualified medical practitioner or medical officer, (c) to give evidence at any enquiry or any Court of law as an expert u/s 45 of the Indian Evidence Act, 1972. Section 38 of the said Act, gives a special right to homoeopathic practitioners, whose names are entered in Part A of the register, in respect of certain appointments and u/s 43, the State Government, for the purposes of carrying out the incidence of the said Act, has been given the necessary powers to make rules and lays down that in particular and without prejudice to the generality of the foregoing powers such rules may provide for or any of the following matters:

(i) the election of members of the Council, members of the Executive Committee

and the Vice-President;

(ii) the functions to be performed by the President and the Vice-President;

(iii) the fees payable under this Act;

(v) the expenses to be paid u/s 17;

(v) the salary and allowances to be paid to the Registrar;

(vi) the conditions for the grant of licenses u/s 39;

(vii) the manner in which the Eccount referred to in sub-section (2) of section 42 shall be maintain-ed;

(viii) the procedure to be followed by the council in;

(a) conducting an enquiry under clause (b) of sub-section (2) of section 24,

(b) disposing of appeals from the decision of the Registrar preferred u/s 28;

(ix) any other matter which may be or is required to be prescribed under this Act.

And under the said section, the said Council has also been authorised, with the previous approval of the State Government, to make regulations not inconsistent with the said Act or rules made thereunder, for discharging its functions under the said Act and in particular, and without prejudice to the generality of the foregoing powers, such regulation may provide for all or any of the following matters :

(i) the conduct of business of the Executive Committee and of Committees appointed by the Council;

(ii) the time and place at which each meeting shall be held;

(iii) the issue of notices convening such meeting;

(iv) the conduct of business thereat;

(v) the conditions of appointment and service and the scalfes of pay and allowances of all the officers and servants appointed by the Council;

(vi) any matter for which power to make regulations is conferred expressly or by implication on the Council by this Act.

It is an admitted position that in terms of the requirements of the pro-Visions of sections 43 and 44 rules and regulations to which reference to DP made hereinafter, have been framed or made.

6. The petitioner, as stated hereinbefore and more particularly before coming into force of the said Act, got himself registered as a homoeopathic medical practitioner with his registration No. 8686. He has stated that after the coming into force or operation of the said Act, the State Government has recognised the Homoeopathic branch of medicine and Homoeopathic physicians were also

accepted as recognised physician like other physicians practising in the recognised system of Allopathic medicine, under sections 37 and 38 of the said Act. It is his case that after coming into force of the said Act, " he was required and in fact he did obtain, a fresh registration number from the said Council, on payment of necessary requisite fee of Rs. 25/-. On such, he has stated that his name was registered in the required register with the registration No. as A 691. It is an admitted fact that the petitioner defaulted in making his application for renewal in terms of section 25 of the said Act in time and as such, on 14th June, 1973, he was asked by the Registrar of the said Council to renew his registration. The petitioner in fact complied with such request and asked for the renewal of his registration on due payment of the late fee of Rs. 10/- in excess of the prescribed fees. The respondents, for whom Mr. Bijon Datta, has appeared, have mentioned that on receipt of such late fee along with the prescribed fee, the petitioner's registration has been duly renewed and the petitioner has also stated in the Court on being asked, that the fact is so and he is now practising as registered and qualified homoeopathic practitioner.

7. The petitioner has contended that the provisions of section 25 of the said Act, would be ultra vires the Constitution, as members of other profession including the medical practitioners practising in allopathic medicine, so also Advocates practising under the Advocates Act, are not required to take out or to have their licenses renewed quin-quennially. Dr. Amar Prosad Chakra-vartty, viz the petitioner, appearing in person, has specifically stated that since practice of homoeopathy has been recognised and both homoeopathic practitioners and Allopathic practitioners are required to know the human metabolism and system, so there could be no earthly reason as to why in respect of persons desirous of practising in Homoeopathic medicine would have to have their licenes renewed quinquennially, while others practising in allopathy are not requiried to do so. He has also argued that previously Advocates, other than those, who are enrolled in this Court, were required to have ther licenses renewed every year but after the coming into force of the Advocates Act, they are no longer required to have their licenses renewed every year. This also according to him, has created discremination amongst persons professing on professions, which may be different but the fact remains that there is discrimination amongst persons, who are in profession. So, Dr. Chakravartty contended that the said section 25, with the fetter created on a Homoeopathic practitioner, for not having his licence renewed quinquennially, would be ultra vires the Constitution and discreminatory too. It must be mentioned that Dr. Chakravartty has not argued and in fact he could not do so, on the question of any discremination amongst Homoeopathic practitioners, created under the said Act. In support of his submissions, Dr. Chakravartty placed strong reliance on the fact that since Homoeopathic medical science has now been granted a status and recognition, both by the State and the Central Government and the intending practitioners are also practising on human metabolism and system like the Allopathic practitioners, so there should not at least be any distinction or difference created between them in the matter

of obtaining the licence for such practice.

8. Mr. Bijon Datta, appearing for the respondent Nos. 2 and 3, firstly contended that since there was no proper demand of justice, this Court would not be authorised to or at least should not entertain the petition. It was secondly submitted by him after placing the pleadings as recorded hereinbefore, that since the petitioner has asked for the renewal of his licence on payment of necessary fee and the required penalty, so "it would no longer be open to him to throw the challenges as in the instant case. In fact it was contended by him that as the petitioner has got his licence renewed, even inspite of his alleged challenges to the said Act, and he has also been granted the necessary licence, on acceptance of the fine, he has no present grievance and by such conduct, he has also waived his right to challenge the validity, propriety or otherwise of the said Act. He thirdly submitted that sections 43 and 44 of the said Act do authorize the State Government and the Council respectively, to frame rules and regulations and u/s 45 such rules and regulations are required to be published in the official gazette. It is his case that such rules and regulations have been duly framed and formulated by the respective authorities and they have also been duly published u/s 45. He has in fact amongst others referred to rules 13 and 14, which are quoted hereunder :

Rule--13 (1) A fee of twenty five rupees shall be paid for every renewal of registration. (2) Registration made at any time during a year shall remain valid for five years inclusive of the year of registration. Provided that the registration made in terms of sub-section (3) of section 21 shall remain valid for five years inclusive of the year in which the Act is brought into force. (3) Not less than ninety days before the expiry of the period of validity of registration under sub-rule (2), a person whose name has been entered in the Register shall apply in writing to the Registrar for renewal of registration u/s 25. Every such application shall be accompanied by the renewal fee and the certificate of registration. (4) The fact of renewal shall be endorsed on the reverse of the certificate of registration. Every such application shall be accompanied by the renewal fee and the certificate of registration. (5) The fact of renewal shall be endorsed on the reverse of the certificate of registration. Every such endorsement shall be attested by the Registrar with his signature under his official seal.

Removal of name from Register for default and restoration of name.

Rule--14: (1) The Registrar shall, in case of--

(a) removal of the name of person from the Register under subsection (2) of section 24 or

(b) Cancellation of any entry in the Register u/s 29, send notice of such removal or of such cancellation, as the case may be, to the person concerned by a registered letter addressed to his registered address and shall keep the acknowledgment receipt thereof.

(2) A person whose name has been removed from the Register may, within sixty days from the date of receipt of the letter, apply to the Registrar for restoration of his name. He shall in his application, state reasons for non-payment of renewal fee within the specified period.

(3) A fee of ten rupees shall be paid for such restoration.

(4) The Council may, if satisfied with such reasons, order restoration of the name of such person in the Register.

(5) The name of such person shall thereupon be restored to the Register.

Rule 10 deals with or requires the maintenance of a register, rule 11 speaks of application to be made by the intending homoeopathic practitioner and rule 13 speaks of fees and rule 14 deals with removal of name from the Register for default and restoration of name. These rules, Mr. Datta has claimed, have been framed and formulated in terms of the requirements of the statute and duly. He has fourthly submitted that since there is no discrimination alleged between homoeopathic practitioners or any difference created between them under the statute so in the instant case the challenge regarding discrimination under Article 14 of the Constitution of India, would be of no assistance or avail to the petitioner. He submitted that discrimination, if any, must be between two equals and when there is no case made out about such discrimination between two equals and the petitioner has specifically claimed discrimination between two unequals viz., a doctor practising as a homoeopath and a doctor practising as an allopath and more particularly when those two categories of doctors are required to have different trainings, learning and education, may be on human metabolism or system, yet the fixation of different licence fees for carrying on their profession would not be discriminatory as they should, in view of their character, regarded as two unequals.

9. On the pleadings as aforesaid and considering the provisions of the said Act and the rules framed thereunder, the rules as framed seem to me to be reasonable. Now the question is whether they are discriminatory as alleged under Article 14 of the Constitution of India.

10. Dr. Chakravarty, in support of his submissions firstly referred to the determination in the case of Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, and the State of Bombay v. F.N. Balsara, AIR 1951 SC 318 apart from referring secondly to the case of The Collector of Customs, Madras Vs. Nathella Sampathu Chetty and Another, .

11. The principle of equality as observed in the case of Kedar Nath Bajoria Vs. The State of West Bengal, does not mean that each and every law must have universal application for all concerned who are not by nature of attainments or circumstances, in the same position and, has the varying needs of different class of persons often require separate treatment. As observed in the case of Chiranjit Lal v. Union of India (supra), such principle does not take away from the State,

the power of classifying persons for legitimate purposes and every classification is in some degree, likely to produce some inequality, and mere production of such inequality, is not enough. It has also been observed in that case that if a law deals with the members of a well defined class, it is not obnoxious and is not open to the charge of denial of equal production on the ground that it has no application to other persons. It has further been observed in that case that while reasonable classification is permissible the same must be based upon some real and substantial distinction, bearing a reasonable and just relation to the objects sought to be attained, and the classification cannot be made arbitrarily and without any sub-tantial basis. In the second case as mentioned above, it has been observed that, where the statute shows on the face of it that the legislature has not at all made a classification, but singled out a particular individual or class without having any difference peculiar to that individual or class, the presumption of reasonableness in favour of the legislature is instantly rebutted and the person challenging the statute cannot be called upon to adduce further or external evidence to discharge his onus.

12. There is no doubt that the presumption is always in favour of the constitutionality of an Act, since as observed in the case of *Probhudas Morarjee Rajkotia and Others Vs. Union of India (UOI) and Others*, , it must be assumed that the Legislature understands and correctly appreciates the needs of its own people that its laws are redirected to problems made to manifest by experience and its discrimination are based on adequate terms. In the case as mentioned above, it has further been observed that such presumption may be rebutted in certain cases by shewing that on the face of the statute, there is no classification at all and no difference peculiar to any individual or class, and not applicable to any other individual or class, and yet the law hits only a particular individual or class.

13. It is also true and as observed in the case of *Budhan Choudhry and Others Vs. The State of Bihar*, , that what Article 14 prohibits, is class legislation and not reasonable classification for the purposes of legislation and in terms of the determination in the case of *State of West Bengal v. Amal Nath*, 1954 SCR 284 if the legislature reasonably takes care to classify persons for legislation purposes and if it deals equally with all persons belonging to a well defined class, it is not open to the charge of denial of equal protection and that the law does not apply to other persons, Thus, on the basis of the determination of the Supreme Court, for the purpose of basing the test of permissible classification two conditions" must be fulfilled viz., (1) that the classification must be founded out, on an intelligible differential which distinguish persons or things that are grouped together from others left out of the group and (2) that the said differentia must have a rational relation to the objects said to be achieved by the statute in question and lastly what is necessary, is that there must be nexus, between the basis of classification and the object of the Art under consideration.

14. In the instant case, the persons practising as Homoeopaths and those

practising as Allopaths, although they deal with the human anatomy and metabolism, cannot in my view be regarded as equals because of the difference in the method of treatment and the science. As such, the submissions of Dr. Chakravartty that since persons practising as allopaths are required to take out professional licences once and are not required to have their licences renewed quinquennially, which persons practising as Homeopaths are required to obtain, would not be discriminatory and as such, this case would not come within the purview of the creating discrimination between two equals. That apart, since Dr. Chakra-va"rtty has not challenged any discrimination among Homoeopathic practitioners under or in the statute, I think that the challenge as thrown to section 25 would not be available to him. The rules as mentioned hereinbefore also appear to me to be reasonable and framed duly in terms of the requirements of the statute and apart from them, the regulations also have been duly incorporated. When such rule; and regulations have been duly incorporated and they are not, unreasonable according to me. I further find that there will be no justification, in making interference in this case.

15. On the question of not making a proper demand of justice as was argued by Mr. Datta, I do not find much substance in such contentions, as from the representations as referred to in the pleadings, it appears that enough demand was made and further demand would have been futile. It should also be noted that while on the question of the lack of demand of justice as mentioned above, Mr. Datta further argued and that too on the basis of the determinations in the case of Beant Singh Vs. Union of India (UOI) and Others, , that this Court, in this jurisdiction should not interfere because there has been no jurisdictional error involved. It is true that in the instant case there is no jurisdictional error involved. But when a challenge has been thrown regarding the infringement of the fundamental rights of a citizen, in the matter of creating a fetter for carrying on his profession, I am of the view that this Court, on the pleadings, would be entitled to hear the application. That the petitioner has no present grievance, because of the subsequent renewal obtained by him, the payment of necessary fees and the penalty, is not in dispute and in fact such position viz., that Dr. Chakravarty is still practising as a Homeopathic practitioner, has been accepted by him. In view of that, it may be reasonably argued that perhaps Dr. Chakravarty has no present grievance as far as his practising is concerned. But that would not take away his right to challenge the views or the constitutionality of the section as referred to hereinbefore.

16. For the views which I have taken, this application should fail and the rule is thus discharged. There will be an order for costs. I am informed by Mr. Datta that there is a move to abolish the levy of quinquennial fees by the authorities concerned and as such, I have it on record that this determination would not prejudice the taking of any decision on the said report.