
(2016) 01 DEL CK 0206

In the Delhi High Court

Case No : W.P. (C) 5472/2014, CM Nos. 10868-69/2014, 12873/2015 and 16579/2015

Ashfaque Ansari

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Bihar Development of Ayurvedic and Unani Systems of Medicines Act, 1951 — Section 17

Indian Medicine Central Council Act, 1970 — Section 13A, Section 13-A, Section 13B, Section 13-B, Section 13C, Section 13-C, Section 14, Section 14(1), Section

Citation : (2016) 226 DLT 10

Hon'ble Judges : G. Rohini, C.J. and Jayant Nath, J.

Bench : Division Bench

Advocate : V. Shekhar, Sr. Adv., Azam Ansari, Soumo Palit, Richa Sharma and Nishant Anand, Advocates, for the Appellant; B.S. Shukla and Shubhra Parashar, Advocates, for the Respondent

Final Decision : Disposed off

Judgement

G. Rohini, C.J.

1. This petition is filed challenging the amendment to the Second Schedule to Indian Medicine Central Council Act, 1970 (for short IMCC Act, 1970) vide Notification dated 25.06.2010 issued by the Ministry of Health and Family Welfare, Department of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy, and also to quash the orders dated 01.05.2014 passed by the Respondent Nos. 2 and 4, and consequently, to direct the respondents to grant registration to the petitioner's qualification of GAMS (Graduate in Ayurvedic Medicine and Surgery) obtained in the year 2012.

2. The petitioner who hails from the State of Bihar, joined GAMS course conducted by the Respondent No. 7 College in the Academic Session 1996-97. While he was undergoing the said course, a dispute arose regarding the validity

of the GAMS degree conferred by the State faculty of Ayurvedic and Unani Medicines, established under Section 17 of the Bihar Development of Ayurvedic and Unani Systems of Medicine Act, 1951 (for short "State Act, 1951") and therefore, no examinations were conducted after the year 2000 for GAMS course. Ultimately, the dispute was concluded by the judgment of the Supreme Court of India dated 01.11.2007 in Civil Appeal No. 4643/2003 titled Bihar State Council of Ayurvedic v. State of Bihar and others, , (2007) 12 SCC 728, wherein it was held that the GAMS degree shall be treated as a recognised degree for the purposes of taking admission to the higher courses of study and also for the purposes of employment. Even thereafter, the Respondent No. 6/Bihar State Ayurvedic and Unani Chikitsa Parishad failed to conduct the examinations of GAMS course and finally the Chairman of the State Faculty of Ayurvedic and Unani Medicine, in exercise of the powers vested in him under Section 17 of the State Act, conducted the exams in the month of April, 2012. Having appeared for the said examinations, the petitioner cleared all the left over subjects of GAMS course and has been declared passed. He was also issued provisional certificate by Bihar State Ayurvedic and Unani Chikitsa Parishad (for short "Bihar Parishad") and the petitioner had also completed the compulsory internship from 06.08.2012 to 05.02.2013. Thereafter, on 10.10.2013, the petitioner made an application before the Delhi Bhartiya Chikitsa Parishad, (for short "DBCP"), Department of Health and Family Welfare, Government of NCTD, for registration of his GAMS qualification.

3. By letter dated 31.12.2013, DBCP informed the petitioner that the registration as sought by him cannot be granted for various reasons stated therein. The petitioner filed Writ Petition No. 80/2014 and the same was disposed of by this Court by order dated 06.01.2014 holding that the impugned order dated 31.12.2013 was only a notice to show cause and, therefore, the petitioner should present its defence before the Statutory Authority who shall decide the same in accordance with law. In pursuance thereof, the DBCP/Respondent No. 4 herein passed an order dated 01.05.2014 stating that the GAMS qualification obtained by the petitioner from State Faculty of Ayurveda and Unani Medicine, Patna after 2003 is not recognised for any purpose and therefore, the registration with DBCP cannot be granted. The said order is based upon the information obtained from Central Council of Indian Medicine/Respondent No. 2, (for short "CCIM") vide letter dated 01.05.2014 stating that GAMS qualification awarded by State Faculty of Ayurveda and Unani Medicine, Patna is included in the Second Schedule to IMCC Act, 1970 as a recognised medical qualification from 1953 to 2003 and therefore, the petitioner's qualification obtained after 2003 is not recognised and valid for any purpose.

4. Hence, the present petition challenging the impugned orders of DBCP and CCIM and also questioning the validity of the amendment to the Second Schedule to the IMCC Act, 1970 by notification dated 25.6.2010.

5. In the writ petition, it is inter alia contended that the impugned amendment to

the IMCC Act, 1970 vide notification dated 25.06.2010 is unconstitutional being ultra vires Section 14(2) of the IMCC Act, 1970. It is also contended that the Central Government does not have the power to amend the Second Schedule since Section 14(2) confers power on the Central Government only to include in the Second Schedule any unrecognised qualification on the application of any University/Board or other Medical Institution which grants a medical qualification. Therefore, the deletion of GAMS which already existed in the Second Schedule is impossible in exercise of the powers of Section 14(2) of the IMCC Act, 1970. The further contention is that the amendment affected by the Notification dated 25.06.2010 cannot be applied retrospectively from the year 2003.

6. It is also contended that the impugned amendment has been deliberately carried out to nullify the judgment of the Supreme Court in Bihar State Council of Ayurvedic (supra) in which it was held that GAMS degree is valid for all purposes. On facts, it is contended that since the petitioner had joined the course for the Academic Session 1996-2001 and cleared all the papers in time upto the year 2000, he cannot be penalised for the failure on the part of the respondents in conducting the examinations after the year 2000.

7. In the counter affidavit filed on behalf of Respondent No. 4/DBCP, it is pleaded that since the medical qualification of the petitioner is not recognised as per the Schedule to the IMCC Act, 1970, he is not entitled to seek registration with DBCP. Certain allegations have also been made as to the genuineness of the qualification claimed to have been obtained by the petitioner and the competence of the Respondent No. 5 to conduct the exam in the year 2012.

8. In the counter affidavit filed on behalf of Respondent No. 1/UOI, it is contended that after the enactment of IMCC Act, 1970, no Ayurvedic Medical College remained affiliated to the Board constituted under the State Act, 1951. It is also contended that the degree of GAMS was recognized under IMCC Act, 1970 only to enable the students who had already taken admission for GAMS degree. From 1970 onwards, the Ayurvedic Colleges have been taken over by Bihar University, Muzaffarnagar and the degree of Bachelor of Ayurvedic Medicine and Surgery (BAMS) has been awarded to the students who studied Ayurveda. The IMCC Act, 1970 was enforced in the State of Bihar in 1973 and, therefore, the Second Scheduled of the said Act mentioned that the qualification of GAMS is recognized from 1973 to 1981. It is also sought to be explained that the amendment to the Second Schedule to IMCC Act, 1970 is in due compliance with the law laid down by the Supreme Court in Bihar State Council of Ayurvedic (supra).

9. We have heard the learned counsel for both the parties and perused the material available on record.

10. Admittedly, the petitioner had studied GAMS from the Respondent No. 7 College during the Academic Session 1996-2001. The Respondent No. 7 college was granted affiliation by the State Faculty established under the State Act,

1951. Under the provisions of the said Act, the State Faculty was also authorised to hold examinations and confer degrees and diplomas on persons who had pursued a course of study, including GAMS, in the institution affiliated to the said faculty. However, Section 14 of the Indian Medicine Central Council Act, 1970, which has come into force on 21.12.1970 provides for recognition of the medical qualifications granted by any University, Board or other Medical Institutions in India which are included in the Second Schedule to the said Act. The State Faculty of Ayurvedic and Unani Medicines, Patna, Bihar has been included as Item 6 of the Second Schedule and qualification of GAMS has been shown as recognised qualification from 1953 onwards. It is not in dispute that the State Act, 1951 has not been repealed by the IMCC Act, 1970, however, the IMCC Act 1970 read with the Regulations made thereunder prescribed a different course for conferment of a degree of BAMS.

11. So as to ensure that the conditions laid down by CCIM are followed and adhered to by the indigenous medical educational institutions in State of Bihar, the State has enacted Bihar Indigenous Medical Education Institution (Regulation and Control) Act 1982 (For Short "State Act, 1982") providing for regulation and control of educational institutions of indigenous system of medicine in the State of Bihar. As per Section 5 of the said State Act the fulfilment of the conditions laid down by CCIM, constituted under IMCC Act 1970 is mandatory for granting permission to open the medical course of Study of Indigenous System of Medicine. The said Act has been made applicable to all private medical colleges and medical institutions which are not permanently affiliated to any University in the State of Bihar. While interpreting the provisions of the State Act, 1951 and the State Act, 1982 it has been held by the Supreme Court in Bihar State Council of Ayurvedic (supra) that the State Act, 1982 is supplementary to the State Act, 1951 and that the colleges which want to impart education in the indigenous system of medicine have not only to follow the conditions laid down by the State Faculty established under 1951 Act but also under the 1982 Act and that no college or institution can continue without the permission of the State Government as contemplated in the 1982 Act after the said Act came into force. The issue regarding the validity of the degrees given to the students who studied in the colleges which have been affiliated to the State Faculty established under the 1951 Act but without permission under State Act, 1982 was also considered by the Supreme Court in detail and it was held:

"...By virtue of introduction of the 1982 Act, it cannot be said that the degrees conferred on the students who have studied in the colleges which have not been granted permission by the State Government as required under the 1982 Act, will be ipso facto illegal and could not be given effect to. However, we make it clear that any body, agency, college or institution which has not sought permission from the State Government would not be granted affiliation by the Faculty under the 1951 Act and the State Government shall take appropriate steps under the 1982 Act if any body, agency, college or institution is/are functioning without the permission of the State Government as required under

the 1982 Act."

12. The Supreme Court has also considered the effect of the amendment brought about in the IMCC Act, 1970 by amendment Act, 2003 (w.e.f 17.11.2003) by inserting Sections 13A, 13B and 13C and summed up the legal position as under:

"59. The whole spectrum of the amendment brought about by introducing Sections 13-A, 13-B and 13-C indicates that it has an application from the date they have been introduced by an amendment in the 1970 Central Act. The effect of the amendment brought about is clear to us that all the medical colleges which are in existence or the medical colleges which have to be established should compulsorily seek permission of the Central Government within the period provided and on failure to get the permission of the Central Government the medical qualification granted to any student of such medical college shall not be a recognised medical qualification for the purposes of the 1970 Act. The established colleges are also required to seek permission of the Central Government for the medical qualification to be recognised medical qualification but it would not mean that the already conferred medical qualification of the students studied in such previously established medical colleges would not be a recognised medical qualification under the 1970 Act.

60. On a reasonable construction of these sections, we hold that the provisions of Section 13-B whereby the qualification granted to any student of a medical college would not be deemed to be a recognised medical qualification would not apply. When a degree has been legally conferred on the students prior to the commencement of the amending Act of 2003, it shall be treated as a recognised degree although the medical college has not sought permission of the Central Government within a period of three years from the commencement of the amending Act of 2003."

13. Thus, it is clear that the degree of GAMS was awarded under the State Act, 1951 by the State Faculty upto 1972 only and thereafter the degree of GAMS was awarded by the Bihar University, Muzaffarnagar upto 1981 and later on BAMS degree has been awarded under the State Act, 1982. Therefore, the contentions of the petitioner are without any substance. In fact, all the issues raised in this petition have already been decided by the Supreme Court in Bihar State Council of Ayurvedic (supra) and it is not open to the petitioner to re-agitate the same.

14. The further contention of the petitioner that under Section 14(2) of the IMCC Act, 1970, the Central Government is empowered only to include any unrecognized qualification in the Second Schedule but the deletion of any qualification already existing in the Second Schedule is impermissible, is equally untenable. Section 14(1) and (2) may be reproduced hereunder for ready reference:

"14 (1). The medical qualifications granted by any University, Board or other medical institution in India which are included in the Second Schedule shall be

recognised medical qualifications for the purpose of this Act.

(2) Any University, Board or other medical institution in India which grants a medical qualification not included in the Second Schedule may apply to the Central Government to have any such qualification recognised, and the Central Government, after consulting the Central Council, may, by notification in the Official Gazette, amend the Second Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the Second Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date."

15. It is no doubt true that in exercise of the power so conferred by Section 14(2), the Central Government issued the impugned Notification dated 25.6.2010 by virtue of which in Item No. 6 relating to State Faculty of Ayurvedic and Unani Medicine, Patna, the entry "from 1953 onwards" in Column No. 4 has been substituted as "from 1953 to 2003". It is no doubt true that consequent to the said amendment, the qualification of GAMS granted by the State Faculty established under State Act, 1951 has not been recognised after 2003. We are of the view that the said amendment under no circumstances can be equated to deletion of a qualification as sought to be contended by the petitioner. The amendment has only clarified the position that GAMS qualification is not a recognized qualification after 2003 as held by the Supreme Court in Bihar State Council of Ayurvedic (supra). The contention of the petitioner that it would amount to deletion of the qualification of GAMS from the Second Schedule is misconceived and cannot be accepted.

16. The learned counsel for the petitioner placed much reliance upon para 61 of the judgment in Bihar State Council of Ayurvedic (supra) wherein it was held that GAMS degree conferred on the appellant students shall be treated as a recognised degree for the purposes of taking admission to the higher course of study and also for the purpose of employment, to substantiate his contention that the impugned notification runs contrary to the law declared by the Supreme Court.

17. We are unable to agree with the said submission since it is clear that the declaration in para 61 was only in respect of the Appellants therein and it is not as if the Supreme Court had declared that GAMS qualification is valid for all purposes as sought to be contended by the petitioner.

18. For the aforesaid reasons, the writ petition is devoid of any merit and the same is accordingly dismissed. All the pending applications shall also stand disposed of.

No costs.