

(2003) 04 KAR CK 0024

In the Karnataka High Court

Case No : Writ Petition No. 10236 of 2000

Dr. Akhtar Hussain Delvi

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 01-04-2003

Acts Referred:

Indian Medicine Central Council Act, 1970 — Section 17, 28
Karnataka Ayurvedic Naturopathy, Siddha, Unani and Yoga Practitioners Registration
and Medical Practitioners Miscellaneous Provisions Act, 1961 — Section 16, 21

Citation : AIR 2003 Kar 388 : (2003) ILR (Kar) 2137 : (2003) 4 KarLJ 217 :
(2003) 3 KCCR 156 SN

Hon'ble Judges : Chandrashekaraiah, J

Bench : Single Bench

Advocate : Somashekar, for the Appellant; Shobha Patil, HCGP, for the
Respondent

Final Decision : Dismissed

Judgement

Chandrashekaraiah, J.—The petitioner is an allopathic medical practitioner practising medicine at Bangalore. This Writ Petition has been filed by the petitioner seeking for a declaration declaring that it is legally permissible for allopathic medical practitioners to prescribe drugs and medicines of ayurvedic origin which have been subjected to clinical and/or other tests and have consequently been accepted by the profession of allopathic medical practice and also for a direction not to take any penal action against him for prescribing any drug or medicine to his patients.

2. The contention of the learned Counsel for the petitioner is, once the petitioner has been registered as a medical practitioner he is entitled to prescribe any medical including medicine of ayurvedic origin since there is no prohibition either under the Indian medicine Central Council Act, 1970 (for short "the Central Act") or under the Karnataka Ayurvedic, Naturopathy, Siddha, Unani and Yoga Practitioners" Registration and Medical Practitioner"s Miscellaneous Provisions

Act, 1961 (for short "the State Act") and therefore, in the event if he prescribes any medicine of ayurvedic origin, the petitioner shall not be prosecuted. He further submits that the Supreme Court in the case of Dr. Mukhtiar Chand and Others Vs. The State of Punjab and Others, has disagreed with the view taken by the Supreme Court in the case of A.K. sabhapathy (dr.) v. state of kerala, SCC p.160, para 16 and has taken the view that in the absence of any law prohibiting the practice either by the State or Centre it is open for a doctor to prescribe any medicine.

At para 46 of the above said judgment, the Supreme Court has held as follows:-

"However, if any State Act recognises the qualification of integrated course as sufficient qualification for registration in the State Medical Registrar of that State, the prohibition of Section 15(2)(b) will not be attracted".

3. From this it is seen that if the State Government by legislation recognises any qualification as sufficient qualification for registration in the State medical register of that State, it is open for such persons to practice in that field in that State.

4. u/s 17 of the Central Act the medical qualification found in the Second, Third or Fourth Schedule shall be sufficient qualification for enrolment on any State Register of Indian Medicine.

Under Section 28 of the Central Act in order to practice in Indian medicine a person shall get himself registered in the State register.

5. Section 21 of the State Act prescribes qualification for registration in the State register. Under this Section if a person passes the qualifying examination as specified in the Schedule to the Act is entitled to get his name registered in the State Register. In the instant case, the petitioner has not passed anyone of the examinations prescribed in the schedule to the Act. Section 16 of the State Act provides for registration and removal from the register. Under this section every person who passes the qualifying examination is entitled to get himself registered in the State register. Section 34 of the State Act prohibits a person from practising if he is not a registered practitioner under Chapter II of the State Act. In the instant case admittedly the petitioner is not qualified to get himself registered in the State register under the State Act. If that is the case, the petitioner being an Allopathic doctor having not qualified in get himself registered under the State Act cannot practise or prescribe any medicine of ayurvedic origin and in the event if the petitioner were to prescribe, he is liable for penalty as provided u/s 36 of the State Act. Therefore, in my considered view, the petitioner is not entitled to prescribe medicines of ayurvedic origin and consequently, is not entitled for declaration as prayed for in this Writ Petition.

6. In the result, I pass the following order-Writ Petition is rejected.