

(2004) 06 KAR CK 0030
In the Karnataka High Court
Case No : Writ Petition No. 1834 of 1999

Dr. Basavaraj Yellappa Kalgudi

APPELLANT

Vs

The Karnataka Ayurvedic and Unani Practitioners Board

RESPONDENT

Date of Decision : 08-06-2004

Acts Referred:

Karnataka Ayurvedic Naturopathy, Siddha, Unani and Yoga Practitioners Registration and Medical Practitioners Miscellaneous Provisions Act, 1961 — Section 13, 34, 35, 36
Karnataka Homeopathic Practitioners Act, 1961 — Section 17, 2 (g), 25

Citation : AIR 2004 Kar 390 : (2004) ILR (Kar) 3140 : (2004) 3 KCCR 273 SN

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : Ashok R. Kalyanashetty, for the Appellant; N. Devadass, for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J.—The petitioner claims to be a member of the Karnataka Rural Homeopathic Medical Practitioners' Association, Gokak, practicing Homeopathic system of Medicine at Hole Alur. According to him, he has vast experience in Homeopathic system of medicine and that he has been taking special care for the poor patients satisfying all their medical needs. It is his further case that the Homeopathic Medical Practitioners in Karnataka and Karnataka Rural Homeopathic Medical Practitioners' Association, Gokak, have been urging the Government of Karnataka to open Registration for the benefit of the un-registered Homeopathic Medical Practitioners, to get themselves registered in accordance with the provisions of the Homeopathic Medical Practitioners' Act. Though several representations were filed, the State has not heeded to their request. The Registrar of Karnataka Ayurvedic & Unani Practitioners Board, issued a notice as per Annexure-D calling upon the petitioner to appear before him with relevant documents in support of his qualification to practice as a Homeopathic Doctor. The petitioner sent a reply contending that he cannot be prevented from practicing Homeopathic system of medicine. The respondent

passed an order at Annexure-E directing him to stop his practice. Feeling aggrieved by the said order, the petitioner has presented this Writ Petition for the following reliefs;

"a) a writ of certiorari or order or direction in the nature of a writ quashing the order dated 8.4.1999 in No. AUB:Tanika: 94-95 passed by the respondent produced as Annexure-E.

b) grant such other writ or order or direction as this Hon"ble Court deems fit to grant in the circumstances of the case."

2. The respondent has filed its objections, justifying the issuance of notice on 10.10.1998 calling upon the petitioner to produce the certificates relating to his medical qualification and Registration Certificate issued by the competent authorities permitting him to practice Homeopathic system of medicine. Since the petitioner did not satisfy the Authorities about his having the requisite qualification he was directed to stop his practice forthwith as per Annexure-E. He was further informed that in case he continues to practice, a criminal case will be instituted against him u/s 34 and 38 of the Karnataka Ayurvedic & Unani Practitioners" Registration of Medical Practitioners Miscellaneous Provisions Act, 1961 (for short "the Act").

3. I have heard the learned Counsel for the parties and perused the documents placed on record.

4. It is contended by the learned Counsel for the petitioner that the petitioner is governed by the provisions of Karnataka Homeopathic Practitioners Act, 1961 (for short "Homeopathic Act"). The said Act does not contain any provision empowering the authorities to take action against a person who practices Homeopathic system of medicine without requisite qualification. The provision of the Karnataka Ayurvedic and Unani Practitioners" Registration of Medical Practitioners Miscellaneous Provisions Act, 1961 (for short "the Act") are not applicable to a Practitioner who practices Homeopathic System of Medicine. Therefore the order impugned is without jurisdiction. Alternatively, it is argued that the petitioner is not practicing for personal gain. Therefore, the prohibition contained in Section 34 of the Act is not applicable to the petitioner.

5. Per contra, learned Counsel for the respondent submits that admittedly, the petitioner does not possess any qualification to practice Homeopathic system of medicine. Homeopathic Act defines a "Practitioner" as a person who practices Homeopathic system of medicine as his principal occupation and that a "Registered Practitioner" is a person whose name for the time being is entered in the Register. Since Homeopathic Act does not contain any provision for taking action against a person who practices Homeopathic System of Medicine without requisite qualification, the legislature in its wisdom has made a provision in the "Act" empowering the authorities to take action against such practitioners. He has drawn my attention to various provision of the "Act" and concludes by saying that the respondent has competence to take action against the petitioner as per

Section 34 of the Act particularly when the petitioner is practicing, Homeopathic system of medicine without requisite qualification.

6. In the light of the rival contentions of the parties, the question to be considered is whether the respondent has jurisdiction to take action against the petitioner for practicing Homeopathic system of medicine.

7. Admittedly, the petitioner does not possess requisite qualification for practicing Homeopathic system of medicine. The Karnataka Homeopathic Practitioners' Act, 1961, has come into force w.e.f. 31.3.1961. Section 2(g) of the said Act defines the "Practitioner" as follows:

" "Practitioner" means a person who practices the Homoeopathic system of medicine, as his Principal Occupation."

Section 2(j) defines "qualifying examination" as follows;

" "Qualifying examination" means an examination in Homoeopathic system of medicine specified in the Schedule;

Section 2(1) defines "Registered Practitioner" as follows;

" "Registered Practitioner" means a practitioner whose name is for the time being entered in the register;"

Section 17 provides for preparation of Register of Homoeopathic Practitioners for the State as follows;

" "Preparation of first Register" - (1) The State Government shall, as soon as may be, cause to be prepared a register of Homeopathic Practitioners for the State.

(2) The register shall include the following particulars, namely,-

- a) the full name, nationality and residential address of the registered Practitioner;
- b) the date of his first admission to the register;
- c) the qualification for registration and the date on which he obtained his degree or diploma in Homeopathy, if any, and the authority which conferred or granted it;
- d) his professional address; and
- e) such further particulars as may be prescribed.

(3) The register shall be divided into three parts as follows,-

(i) Part A - This part shall include -

- a) persons who have been engaged in the practice of the Homeopathic system of medicine for a period of not less than ten years immediately before the date of coming into force of this chapter as the principal occupation;
- b) persons who have received personal clinical instruction for a period of not less

than two years in a hospital where indoor patients are kept and where the service includes surgery, gynecology and midwifery and homeopathic medicine and passed an examination in the said subjects approved by the Registration Tribunal;

(ii) Part B - This part shall include medical Practitioners who are registered under the Karnataka Medical Registration Act, 1961 or the Karnataka Ayurvedic and Unani Practitioners' Registration and medical Practitioners' Miscellaneous Provisions Act, 1961, and who practice the Homeopathic system of medicine; and

(iii) Part C - Other persons who have been in practice of the Homeopathic system of medicine for not less than two years as the principal occupation on the date of coming into force of this Chapter."

As provided in Section 25 of the Homeopathic Act, the qualified Medical Practitioners are as follows:

"i) the expression "legally qualified medical Practitioner" or "duly qualified medical Practitioner" or any word importing a person recognized by law as a medical practitioner or member of medical profession shall in all Acts of Legislature in the State of Karnataka and in all Central Acts in their application to the State of Karnataka in so far as such Acts relate to any matters specified in List II or List III of the Seventh Schedule to the Constitution, include a Practitioner whose name is entered in Part-A or Part-B of the Register.

ii) a certificate required by any Act from any medical practitioner or medical officer shall be valid, if such certificate has been signed by a practitioner whose name is entered in Part-A or Part-B of the register;

iii) a Practitioner whose name is entered in Part "A" or Part "B" of the register shall be eligible to treat patients according to the Homeopathic system of medicine or to hold any appointment as a physician or other medical officer in any Homeopathic dispensary, hospital or infirmary supported by or receiving a grant from the State Government and treating patients according to the Homeopathic system of medicine or in any public establishment, body or institution dealing with such system of medicine.

iv) a practitioner whose name is entered in Part "A" of the register may possess and prescribe the drugs relating to the Homoeopathic system of medicine only."

8. Petitioner does not fit into any of categories provided in this provision. Therefore, the petitioner's practice in Homeopathic System of Medicine is contrary to law. There is no provision in the Homeopathic Act for taking action against a person who practices Homeopathic system of medicine contrary to the provisions of the said Act.

9. The Karnataka Ayurvedic and Unani Practitioners Registration and Medical Practitioners Miscellaneous Provisions Act, 1961 is an Act to regulate the qualification and to provide Registration of Practitioners for Ayurvedic & Unani

system of medicine with a view to encourage the study and spread such system and to amend the law relating to medical Practitioners generally in the State of Karnataka. It is clear from the preamble of the Act that the Act is not only to regulate the qualifications and to provide registration of Practitioners of Ayurvedic and Unani System of Medicine but also to amend the law relating to Medical Practitioners generally.

10. Section 2(e) of the Karnataka Ayurvedic & Unani Practitioners" Registration and Medical Practitioners" Miscellaneous Provisions Act, 1961, defines integrated system of medicine or integrated system as follows;

" "Integrated system of medicine" or "integrated system" means a conjoint study, training and practice in indigenous medicine and modern medicine;

Explanation to Section 2(e) states that

"indigenous medicine" means one or all of the three of medicine that is Ayurvedic, Siddha and Unani System of Medicine, and "modern medicine" means modern scientific medicine including surgery and obstetrics:

System of Medicine as defined in Section 2(q) is as follows:

"System of medicine" means the Ayurvedic system of medicine, the integrated system of medicine, or the Unani System of medicine; and"

11. Chapter-II of the Act provides for Establishment, Constitution and Incorporation of the Board for three systems of medicine. Section 13 of the Act, provides the other powers and functions of the Board, which is as follows;

"Other powers and functions of the Board - The Board shall also exercise such other powers and perform such other functions as may be prescribed by or under this Act or as the State Government may direct, for carrying out the purposes of this Act."

12. Therefore, the power of the Board includes such other powers and perform such other functions prescribed under the Act.

13. Chapter-III of the Act contains Medical Practitioners" Miscellaneous Provisions. Section 34 bars the Medical Practitioners not registered under the said Act, but also under certain other laws to practice any system of Medicine, surgery or midwifery. Chapter-III of the Act is not confined to three System of Medicine, namely; Ayurveda, Sidha and Unani or even modern medicines. Section 34 is as follows:

"Medical Practitioners not registered under this Act or under certain law not to practice, etc. - (1) No person other than (i) a practitioner registered under Chapter II of this Act or (ii) a Practitioner registered under the Mysore Medical Registration Act, 1961 or the Mysore Homeopathic Practitioners Act. 1961 or a practitioner whose name if for the time being borne on the Indian Medical Register maintained under the Indian Medical Council Act, 1956 or (iii) a person

whose name is entered in the list mentioned in Section 18, shall practice or hold himself out, whether directly or by implication, as practicing for personal gain any system of medicine, surgery or midwifery."

14. Thus, Section 34 contains prohibition for a person to practice in Homeopathic system of medicine if he is not qualified in accordance with the Karnataka Homoeopathic Practitioners" Act, 1961.

15. There is no dispute that the petitioner does not possess requisite qualification to practice as per Karnataka Homeopathic Practitioners" Act, 1961. Chapters-I and II of the Act are confined to three systems of medicine. Whereas, Chapter-III provides for penal provisions applicable not only to three systems of medicine but also to other systems of medicine.

16. A Division Bench of this Court in the case of Khalsa Medical and Educational Trust Vs. Union of India (UOI), while upholding the validity of Section 34 and other provisions of the Act has observed as follows;

"The Mysore Ayurvedic and Unani Practitioners" Registration and Medical Practitioner"s Miscellaneous Provisions Act, 1961 was enacted to regulate the recognition and provide for registration of practitioners of Ayurvedic, Unani and integrated systems of medicines in the State of Karnataka. The Act envisages the establishment of a Board and makes provisions for recognition of Institutions and Registration of Medical Practitioners for purposes of giving instructions in any system of medicines or practicing any such system within the State of Karnataka. Section 22 prescribes the procedure for recognition of the Institutions whereas Section 34 prohibits any person from practicing as a medical Practitioner in any system of medicine in the absence of a registration under the aforesaid Act, or other enactment"s referred to therein. By virtue of Section 38 of the Act, no person can add to his name any title, description, letter or abbreviation which may imply that he holds a Degree, Diploma, License or Certificate to practice any system of medicine unless he actually holds such degree, Diploma or Certificate and such Degree or Certificate is recognized under any law for the time being in India or any part thereof or has been conferred, granted or issued by a body or an Institution referred to in Sub-section (2) of Section 37 of the Act, Section 37 in turn provides that no person other than the Body or an Institution authorized u/s 22 of the Act, or under Central Act or State Act, for the time being in force shall confer, grant or issue or holds himself conferred, grant or issue any Degree, diploma, certificate or Licence, which is identical with or is a colourable imitation of any Degree, Diploma, Certificate or Licence granted by a Body or Institution authorized under this Act or under any Central Act or State Act, for the time being in force, Sub-section (2) of Section 38 makes contravention of the provisions of Sub-section (1) thereof an offence punishable with fine.

11. A conjoint reading of the provisions of the Act, makes it fairly manifest that the same are intended to prohibit Institutions from either giving instructions in any system of medicine and practitioners from practicing any such system unless

of-course the Institution is duly recognized and the practitioner is duly registered under the Act to so practice. The purpose behind the provisions of the Act clearly is to prevent Institutions and individuals from propagating any system of medicine, which is not recognized, and practicing any such system without being duly registered under the Act to do so. The provisions, in our opinion, are clearly regulatory in character and are meant to prevent prejudice to unsuspecting and innocent members of the public from falling prey to quacks and such other unregistered medical Practitioners professing to teach or practice systems of medicines which have not been recognised. We do not therefore see any apparent illegality or unconstitutionality in the provisions of Section 34, 37 and 38 of the Act, so as to warrant the issue of any interim Order rendering the said provisions ineffective or nugatory.

xxxxxx xxxxxx xxxxxx"

17. As noticed above, Homeopathic Act does not provide for taking action against a person who practices Homeopathic system of medicine without requisite qualification. The Karnataka Ayurvedic and Unani Practitioners' Registration and Medical Practitioners' Miscellaneous Provisions Act, 1961, not only regulates the qualifications and provides for registration of Practitioners of Ayurvedic and Unani system of medicine, but also amends the law relating to medical Practitioners generally. Chapter-III of the Act is not confined to three systems of medicine provided in Section 2(q) of the Act. The regulatory measures contained in Chapter-III of the Act is applicable to any person from practicing as a medical Practitioner in any system of medicine, including Homoeopathic system of medicine.

18. Section 34, of the "Act" prohibits any person from practicing as a medical Practitioner in any system of medicine, without requisite qualification. Section 36 provides penalty for contravention of the provisions of Sections 34 and 35 of the "Act". It states that any person who acts in contravention of provisions of Section 34 or 35 of the "Act" shall, on conviction, be punished with fine as provided under the said section. A combined reading of Sections 34, 35 and 36 of the "Act" makes it clear that the Authorities under the "Act" have not only power to punish a person who contravenes Section 34 or 35 of the Act in the manner provided under the Act, but also have power to stop a person from practicing Homeopathic system of medicine or any other system of medicine when he does not possess requisite qualification. I am of the view that the action initiated by the authorities in, this case cannot be termed as the one without jurisdiction.

19. In so far as the alternative submission of the learned Counsel that the petitioner does not practice Homeopathic system of medicine for personal gain, is essentially a question of fact. Petitioner has not raised such a contention before the authorities. It is open for the petitioner to file a representation before the authorities accordingly. In such an event, the authorities are directed to examine the merits of the claim of the petitioner and pass appropriate orders in accordance with law.

20. In the light of the above discussions, I pass the following order;
Writ Petition is dismissed. No costs.