

(2001) 09 AHC CK 0055

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No. 5896 of 2000

Dr. Mehboob Alam

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-09-2001

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226
Indian Medical Council Act, 1956 — Section 15(2), 15(3), 2
Indian Medicine Central Council Act, 1970 — Section 17, 2(1)

Citation : AIR 2001 All 374 : (2002) CriLJ 1218

Hon'ble Judges : U.S. Tripathi, J;G.P. Mathur, J

Bench : Division Bench

Advocate : B.D. Pandey and J.P. Mishra, for the Appellant; Vinod Pd., A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—The question which requires consideration here is whether a person having the degree of Bachelor of Unani Medicine and Surgery is entitled to practise modern medicine and to prescribe allopathic drugs.

2. The petitioner obtained the degree of Kamil-e-Tib-o-Jarahat from Aligarh Muslim University in the year 1990 which is also described as Bachelor of Unani Medicine and Surgery in the degree awarded by the University, a photocopy of which has been filed as Annexure-2 to the writ petition. The Janta Nursing Home being run by the petitioner in Kolhui district Maharajganj was inspected by a team consisting of a senior Medical Officer, a S.D.M. and a Drug Inspector on 26-8-2000 and it was found that allopathic drugs were being prescribed and administered to patients. A. F.I.R. was then lodged u/s 420 I.P.C. and Section 15 of Indian Medical Council Act, against the petitioner and one Aurangzeb, who claimed to be the compounder at the Nursing Home. The present writ petition under Article 226 of the Constitution has been filed for quashing of the F.I.R and investigation of the case.

3. The petitioner claims that he was awarded the degree of Bachelor of Unani Medicine and Surgery (for short BUMS) by Aligarh Muslim University in the year 1990 and thereafter he completed six month's rotatory internship at A. K. Tibbiya College, Aligarh Muslim University. Aligarh and in the District Hospital, Sahjahanpur. His name has been entered in the register main-tained by Board of Indian Medicine on 29-9-1992. On the basis of the aforesaid degree and registration of the name, the petitioner contends that he is entitled to practise as a doctor and prescribe allopathic medicines as well apart from unani medicines.

4. In order to examine the contention raised it is necessary to briefly refer to relevant statutory provisions which have a bearing on the controversy raised. The statutes which have to be looked into are as under :

U. P. ACTS

- (1) The United Provinces Medical Act, 1917 (U. P. Act No. III of 1917)
- (2) The United Provinces Indian Medicine Act, 1939 (U. P. Act X of 1939)

CENTRAL ACTS

- (1) Indian Medical Degrees Act. 1916 (Act No. VII of 1916)
- (2) Indian Medicine Council Act. 1956 (Act No. 102 of 1956)
- (3) Indian Medicine Central Council Act, 1970 (Act No. 48 of 1970)
- (4) Homoeopathy Central Council Act, 1973 (Act No. 59 of 1973)
- (5) Drugs and Cosmetics Act. 1940 (Act No. 23 of 1940)

5. The preamble of the United Provinces Indian Medicine Act, 1939, which was published on September 23, 1939 says that it is an Act to provide for the development of the Indian Systems of Medicines and to regulate their practice in the United Provinces. Section 2 gives the definition and Sub-section (ii), (iii-b), (v), (vii), (viii), (x) and (xi) thereof are being reproduced below :

"(ii) "Indian system of medicine" means the Ayurvedic or the Unani Tibbi system of medicine, whether supplemented or not by such modern advances as the Board may from time to time have determined.

(iii-b) "Faculty" means "faculty of Ayurvedic and Unani Tibbi systems of medicine" constituted u/s 36-A.

(v) "Practitioner" means a practitioner of an Indian system of medicine.

(vii) "Register" means the register of Vaidyas and Hakims, surgeons and mid-wives maintained u/s 25.

(viii) "Registered practioner" means a practitioner whose name is for the time being entered in the register.

(x) "Vaidya" means a practitioner of Ayurvedic system of medicine and surgery.

(xi) "Hakim" means a practitioner of Unani Tibbi system of medicine and surgery."

6. The definition clause of the Act shows that the Ayurvedic or the Unani Tibbi System of medicine is known as Indian System of Medicine and therefore, a Vaidya who practises Ayurvedic system and a Hakim who practises Unani tibbi system come within the purview of Indian Medicine System. Section 3 of this Act provides that the State Government may establish a Board to be called as the Board of Indian Medicine. Section 25 provides that the Registrar of the Board shall maintain a register of Vaidyas and Hakims practising in Uttar Pradesh in the prescribed form.

7. The Indian Medicine Central Council Act. 1970 was enacted by the Parliament and was published on 21-12-1970. Its preamble shows that it is an Act to provide for the Constitution of a Central Council of Indian Medicine and the maintenance of a Central Register of Indian Medicine and for matters connected therewith. Section 2(1) of this Act gives the definition clause and Clauses (b), (c), (d), (e), (j) and (h) of Section 2(1) read as follows :

"(b) "Board" means a Board, Council, Examining Body or Faculty of Indian Medicine (by whatever name called) constituted by the State Government under any law for the time being in force regulating the award of medical qualifications in, and registration of practitioners of, Indian medicine.

(c) "Central Council" means the Central Council of Indian Medicine constituted u/s 3.

(d) "Central Register of Indian Medicine" means the register maintained by the Central Council under this Act.

(e) "Indian medicine" means the system of Indian medicine commonly known as Ashtang, Ayurveda, Siddha or Unani Tibb whether supplemented or not by such modern advances as the Central Council may declare by notification from time to time.

(h) "recognised institution" means any institution within or without India which granted degrees, diplomas or licences in Indian medicine.

(j) "State Register of Indian Medicine" means a register or registers maintained under any law for the time being in force in any State regulating the registration of practitioners of Indian medicine."

8. Section 2(1)(e) shows that "Indian Medicine" means the system of Indian medicine commonly known as Ashtang Ayurveda, Siddha or Unani Tibb. It is important to note that Allopathic system of medicine is not included in the aforesaid definition. Chapter III of this Act deals with recognition of medical qualifications and Section 14 thereof provides that 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 purposes of this Act. The Second Schedule to the Act gives a long list of

recognised medical qualifications in Indian medicine granted by Universities, Boards and other Medical Institutions in India, Part I of this Schedule deals with Ayurveda and Siddha and Part II deals with Unani. The degree possessed by the petitioner viz. Kamil-e-Tib-o-Jarahat (B.U.M.S.) is noted at Serial No. 21 of Part II of the Schedule. Section 17(1) of this Act provides that subject to the other provisions contained in this Act any medical qualification included in the Second Schedule shall be sufficient qualification for enrolment on any State Register of Indian Medicine. Sub-section (2) of Section 17 imposes certain restrictions and Clause (b) thereof lays down that no person other than a practitioner of Indian medicine who possesses a recognised medical qualification and is enrolled on a State Register or the Central Register of Indian Medicine shall practise Indian Medicine in any State. This provision clearly shows that unless a person possesses a recognised medical qualification as laid down in the Schedule of the Act and is enrolled on a State Register or the Central Register of Indian Medicines, he cannot practise Indian Medicine. A similar restriction is contained in Clause (a) of Section 17(2) namely, that unless a person possesses a recognised medical qualification and is enrolled on a State Register or the Central Register of Indian medicine, he cannot hold office as Vaidya, Siddha, Hakim or Physician or any other office in Government or in any institution maintained by a local or other authority. Section 17(4) provides that any person who acts in contravention of any provisions of Sub-section (2) shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both. The provisions of Indian Medicine Central Council Act, 1970 show that a person holding a qualification recognised by the aforesaid Act in the system of Indian medicine commonly known as Ashtang, Ayurveda, Siddha or Unnai Tibb is entitled to practise only in the discipline in which he has acquired the qualification. The Act does not authorise him to practise in Allopathy system of medicine.

9. Though it is not very relevant for the decision of the present case but as we are dealing with the controversy we may also take notice of Homoeopathy Central Council Act, 1973, Section 2(1) of the Act gives the definition and Clauses (d), (g) and (i) thereof read as under :

"(d) "Homoeopathy" means the Homoeopathic system of medicine and includes the use of Biochemic remedies.

(g) "recognised medical qualification" means any of the medical qualification in Homoeopathy, included in the Second or the Third Schedule:

(i) "State Register of Homoeopathy" means a register or registers maintained under any law for the time being in force in any State regulating the registration of practitioners of Homoeopathy."

10. Section 13(1) provides that 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 purposes of

this Act. The Second Schedule gives a long list of recognised medical qualifications in Homoeopathy which are granted by Universities, Boards or Medical Institutions of India. Section 15 provides that no person other than a practitioner of Homoeopathy who possesses a recognised medical qualification and is enrolled on a State Register or the Central Register of Homoeopathy shall practise Homoeopathy in any State. This Act also does not authorise a practitioner of Homoeopathy, who only possesses a recognised medical qualification as enumerated in Second or Third Schedule of this Act to practise Allopathy or any other system of Indian medicine like, Ashtang, Ayurveda, Siddha or Unani Tibb.

11. We may now consider the statutes which deal with Allopathic medicines.

12. The earlier Act namely, the United Provinces Medical Act, 1917 may be considered first, Section 2 of this Act gives the definition and Sub-section (b) provides that the expression "the Council" means the Council established u/s 3 and Sub-section (c) provides that the expression "registered practitioner" means a person registered under the provisions of this Act. Section 3 provides that a Council shall be established and called "Uttar Pradesh Medical Council" and such Council shall be a body corporate and have perpetual succession and a common seal. Section 16 provides that the Council shall, make orders for regulating the maintenance of the register of medical practitioners. Section 18 provides that every person referred to in the Schedule shall be entitled to have his name entered in the register of medical practitioners. The Schedule to the Act enumerates and identifies the persons who are entitled to have their names entered in the Register of medical practitioners. Para 1 of the Schedule is being reproduced below :

"Every person who holds a degree, diploma or licence which is included in Schedule I or II to the Indian Medical Council Act, 1933 (XXVII of 1933), or granted by the Universities in India established by an Act of the Governor-General in Council or of the Governor of any Province in India."

13. Paragraphs 2 and 3 of the Schedule enumerate certain other categories of persons. The provisions of this Act show that a person holding any kind of degree or diploma or certificate in Ashtang, Ayurveda, Siddha or Unani Tibb is not included in the Schedule and he cannot get his name entered in the register of medical practitioner which is maintained under this Act as the Schedule refers to only Allopathic qualification.

14. Now we come to most important enactment namely, The Indian Medical Council Act, 1956. Section 2 of the Act gives that definition and Sub-sections (d), (f), (h) and (k) are being reproduced below :

"(d) "Indian Medical Register" means the medical register maintained by the Council.

(f) "medicine" means modern scientific medicine in all its branches and includes

surgery and obstetrics, but does not include veterinary medicine and surgery.

(h) "recognised medical qualification" means any of the medical qualifications included in the Schedules.

(k) "State Medical Register" means a register maintained under any law for the time being in force in any state regulating the registration of practitioners of medicine."

15. Section 11 of this Act provides that the medical qualifications granted by any University or Medical Institution in India which are included in the First Schedule shall be recognised medical qualifications for the purposes of this Act. The First Schedule enumerates the recognised medical qualifications granted by Universities or Medical Institutions in India. Section 15(1) provides that subject to the other provisions contained in this Act, the medical qualifications included in the Schedule shall be sufficient qualification for enrolment on any State Medical Register. Section 15(2)(b) provides that save as provided in Section 25, no person other than a medical practitioner enrolled on a State Medical Register, shall practise medicine in any State. Section 15(3) lays down that any person who acts in contravention of any provision of Sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both. An analysis of the relevant provisions of this Act shows that "medicine" means the modern scientific medicine in all its branches and includes surgery and obstetrics. It is entirely different from Indian medicine commonly known as Ashtang, Ayurveda, Siddha or Unani Tibb. It is only a person who possesses the qualifications enumerated in the First Schedule of this Act, and which have been recognised for the purposes of the Act, is entitled for enrolment on any State Register and unless a person is enrolled on a State Register he is not entitled to practise medicine namely, modern scientific medicine in all its branches including surgery and obstetrics in any State.

16. There is no dispute that the petitioner does not possess any one of the qualifications which have been recognised and have been enumerated in the First Schedule of Indian Medical Council Act, 1956. He is neither enrolled on a State Medical Register maintained under the aforesaid Act nor he is entitled to claim enrolment, as he does not possess the requisite qualification. Consequently, he is not entitled to practise "medicine" in view of clear bar created by Section 15(2) (b) of this Act. Since the allegations in the F. I. R. are that he was practising and was prescribing allopathic medicines, which comes within the definition of medicine as given in Section 2(f) of the Act, he has committed an offence punishable u/s 15(3) of the Indian Medical Council Act, 1956.

17. The scope of Section 15 of Indian Medical Council Act, 1956 was considered in Poonam Verma Vs. Ashwin Patel and others, and in para 31, it was held as follows at page 2118 :

"31. The impact of the above provisions is that no person can practise medicine

in any State unless he possesses the requisite qualification and is enrolled as a Medical Practitioner on State Medical Register. The consequences for the breach of these provisions are indicated in Sub-section (3). If a person practises medicine without possessing either the requisite qualification or enrolment under the Act on any State Medical Register, he becomes liable to be punished with imprisonment or fine or both."

18. In the same decision, it was observed in para 34 and 36 of the reports that the significance of mutual exclusion is relevant Inasmuch as the right to practice in particular system of medicine is dependent upon registration which is permissible only if qualification, and that too, recognised qualification is possessed by a person in that system. It was further observed that merely because the Autonomy and Physiology are similar, it does not mean that a person having studied one System of Medicine can claim to treat the patient by drugs of another System which he might not have studied at any stage.

19. The petitioner has filed a supplementary affidavit wherein he has annexed copies of Government Orders issued by the State Government on October 27, 1950 and March 17, 1961. The first Government Order says that u/s 39(1) and 41(2) of United Provinces Indian Medicine Act, 1939, the Ayurvedic and Unani practitioners who have been registered under the said Act enjoy same status as the Allopathic Registered Practitioner and that there is no provision in the Indian Drugs Act and Rules framed thereunder specifically prohibiting the registered Ayurvedic and Unani practitioners from prescribing sulpha drugs and accordingly no objection should be raised to Vaidyas and Hakims using sulpha drugs, streptomycin and other allopathic medicines and drugs in treating their patients. By the second Government Order, the government declined to grant permission to withdraw the earlier Government Order. On the strength of the aforesaid Government Orders, Shri J. P. Mishra has urged that the petitioner is entitled to prescribe drugs used in allopathic system of medicine. Sub-sections (2) and (3) of Section 15 of Indian Medical Council Act, 1956 were inserted by an amendment dated June 16, 1964 and they clearly prohibit practice of medicine by any person who is not enrolled in the State Medical Register. In view of this clear statutory provision, the Government Orders issued by the Uttar Pradesh Government, which are antecedent in point of time have become non est and cannot be of any assistance to the petitioner. The Government Orders being contrary to an Act of Parliament are wholly ultra vires.

20. Sri Misra also placed reliance upon a notification dated October 30, 1996 Issued by Central Council of Indian Medicine which says that institutionally qualified practitioner of Indian System of Medicine (Ashtang, Ayurveda, Siddha and Unani) are eligible to practice Indian System of Medicine and Modern medicine including surgery, Gynaecology and obstetrics based on their training and coaching which are included in the syllabi of courses of Indian System of Medicine prescribed by Central Council of Indian Medicine after approval of the Government of India. The notification further says that the rights of practitioners

of Indian System of Medicine to practise modern scientific system of medicine (Allopathic Medicine) are protected u/s 17(3)(b) of Indian Medicine Central Council Act, 1970. On the strength of the aforesaid notification, it has been urged that the petitioner is entitled to practise Allopathic medicine. The effect of this notification has been considered by the Apex Court in Dr. Mukhtiar Chand and Others Vs. The State of Punjab and Others, and in paras 46 and 47 of the reports, it was held as under at page 481-482 :

46.....In our view, all that the definitions of "Indian Medicine" and the clarifications issued by the Central Council enable such practitioners of Indian medicine is to make use of the modern advances in various sciences such as Radiology Report, (X-ray), complete blood picture report, lipids report, E.C.G. etc. for purposes of practising in their own system. However, if any State Act recognizes the qualification of integrated course as sufficient qualification for registration in the State Medical Register of that State, the prohibition of Section 15(2)(b) will not be attracted.

47. A harmonious reading of Section 15 of 1956 Act and Section 17 of 1970 Act leads to the conclusion that there is no scope for a person enrolled on the State Register of Indian medicine or Central Register of Indian Medicine to practise modern scientific medicine in any of its branches unless that person is also enrolled on a State Medical Register within the meaning of 1956 Act."

21. Neither it is averred in the writ petition nor it has been urged that the petitioner is enrolled on a State Medical register as defined in Section 2(k) of Indian Medical Council Act, 1956 and, therefore, he is not entitled to practise modern scientific medicine or to prescribe allopathic drugs. Learned counsel has also referred to certain provisions of Drugs and Cosmetics Rules but in our opinion they are wholly irrelevant as they deal with import manufacture, distribution and sale of drugs and they neither confer nor deal with the right to practise medicine.

22. The allegations made in the F.I.R. if accepted on their face value, show that the petitioner has committed an offence punishable u/s 15(3) of Indian Council Act. 1956. No ground has, therefore, been made out to quash the F.I.R.. which clearly discloses commission of an offence.

23. Before parting with the case, we would like to place on the record that Shri Vinod Prasad, who was appointed amicus curiae to argue the case, rendered valuable assistance to Court.

24. The writ petition lacks merit and is hereby dismissed. The stay order staying the arrest of the petitioner, as extended from time to time, is vacated.