
(2000) 02 PAT CK 0097

In the Patna High Court

Case No : Civil Writ Jurdn. Case No. 7253 of 1998

Dr. Sudhir Kumar Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 18-02-2000

Acts Referred:

Citation : (2000) 02 PAT CK 0097

Final Decision : Allowed

Judgement

Shiva Kirti Singh, J.—All the six petitioners in this writ application have obtained G.A.M.S. degrees from State Faculty of Ayurvedic and Unani Medicines (hereinafter referred to as the "State Faculty") established u/s 17 of the Bihar Development of Ayurvedic and Unani System Act of 1951 (hereinafter referred to as the Act of 1951). They have prayed, in this writ application filed under Article 226 of the Constitution of India, to quash the letters dated 11-8-1998 (Annexure 5 series) issued by respondent No. 2 Head of the Department-cum-Convenor, Post-graduate Admission Committee, Post-graduate Department, Govt. Ayurved College, Patna by which the admission committee has rejected the applications of the petitioners for appearing in an examination for admission in Post-graduate course in Ayurved leading to award of Doctor of Medicine degree in Ayurved. The petitioners have further sought a declaration that the respondents may be directed to treat the petitioners eligible for admission in Post-graduate course of Ayurved System of Medicine, on the ground that G.A.M.S. degree granted by the Faculty is till date a degree recognized by the Indian Medicine Central Council Act, 1970 (hereinafter referred to as the Act of 1970) and accordingly they have further prayed to direct the respondents to allow the petitioners to appear in the examination to be held on 30-8-1998.

2. This writ application was filed on 27-8-1998 but no interim order was passed to allow the petitioners to take the examination which is apparently over. However, this case was admitted on 26-10-1999 and taking into consideration the nature of the case and the issue involved which may affect a number of

persons who were provided with G.A.M.S. degree, the matter was ordered to be heard on priority basis and has been heard accordingly.

3. The case of the petitioners is very simple. Without giving any details as to from which institutions they completed their course of study for the G.A.M.S. degree, the petitioners have pleaded that they passed the G.A.M.S. examination conducted by the Faculty under the 1951 Act and were granted certificates and conferred degrees, for the G.A.M.S. course by the Faculty. Their further cases is that the Central Act of 1970 provides, for recognition of medical qualifications granted by certain medical institutions in India which are included in the II Schedule and as per Section 14 of 1970 Act, all such medical qualifications granted by any university, board or other medical institution in India shall be recognized medical qualifications for the purposes of this Act. IIInd Schedule to the Act of 1970 contains statewise entries and entry Nos. 6 to 9A relate to institutions/universities of Bihar. As per entry No. 6 the G.A.M.S. degree granted by the Faculty is a recognized degree from 1953 onwards. The petitioners case is that since their degree is recognized under the Act of 1970, hence the respondents are obliged to accept and honour the said recognition and permit them to take the examination for admission into Post-graduate courses.

4. Although this writ application was filed in the year 1998 but unfortunately various relevant aspects of the real controversy have not been clearly pleaded in the writ petition. The real controversy comes to the fore from the counter-affidavits filed on behalf of respondents State of Bihar and respondent No. 5 the Indian Medical Central Council i.e. is the Central Council for Indian Medicines (C.C.I.M.) consulted under the 1970 Act. So far as the writ petition is concerned, in paragraphs 7 and 8, it is mentioned that prior to 1971 the State Faculty used to take the examination of G.A.M.S. and conferred degree. In 1970 the Bihar University, Muzaffarpur took over four Ayurvedic colleges and started taking examination in G.A.M.S. but the degree holders of higher University, in order to be eligible for practicing etc. had to get registered with the State Council under the 1951 Act. After 1981 the Bihar University started granting B.A.M.S. degree in place of G.A.M.S. degree. According to petitioners, the course of study for both G.A.M.S. and B.A.M.S. are similar. The aforesaid pleadings do throw some light on the real controversy in this case but not fully. The respondents State has filed counter-affidavit and in part 7 thereof a stand has been taken that the G.A.M.S. degree obtained by the petitioners in 1997 is not valid and recognised degree because according to latter dated 4-7-1998 sent by the Secretary, Central Council of Indian Medicine, the G.A.M.S. course is that no more recognized by the Central Council of Indian Medicine. The said letter has been annexed as Annexure A/1 to the counter-affidavit. A counter-affidavit has also been filed on behalf of respondent No. 5, the Central Council for Indian Medicine. In paragraphs 6, 7, 10 and 11 of the said counter-affidavit, the stand of respondent No. 5 is that in accordance with requirements of the 1970 Act the Central Council for Indian Medicine (C.C.I.M.) has prescribed regulations under the Act providing for G.A.M.S. course of graduate level and M.D.A.S. course at Post-graduate level

and the said regulations have been notified in the Gazette of India. Further stand of respondent No. 5 is that only the course prescribed by C.C.I.M. is to be conducted by the universities and the prescribed degree can only be awarded by them. No course other than the course prescribed by the C.C.I.M. is being allowed to be conducted nor other degrees are being treated as recognized medical qualifications for the purposes of the said Central Act. There is further categorical averments that there are 185 colleges of Ayurvedic, 38 of Unani and 2 of Sidhu Kanu in the whole of India and all of them are affiliated to the universities of the area. None of them is affiliated to any Board-Facultry etc. Respondent No. 5 has also referred to para 7 of the writ petition and pointed out that admittedly the State Faculty used to take examination of G.A.M.S. and conferred degrees prior to 1971, in 1970 Bihar University, Muzaffarpur took over the Ayurvedic colleges and started taking examination and conferred degrees and from 1981 the Bihar University admittedly conducted examinations only for B.A.M.S. in place of G.A.M.S. It has been further stated by respondent No. 5 that the Govt. of Bihar has been rightly issuing notices upon the State Faculty requesting it not to provide affiliation to some colleges for G.A.M.S. course since the same was in violation of the Act of 1970 and also in violation of Bihar Indegenous Medical Educational Institution (Regulations and Control Ordinance, 1981), later on inacted as Bihar Act 20 of 1982, (hereinafter referred to as the Act of 1982).

5. From the facts appearing in this case, it is evident that the real controversy is whether the Faculty under the 1951 Act has unqualified right to grant affiliation to such institutions or colleges which are not following the B.A.M.S. course prescribed by C.C.I.M. through regulations under the 1970 Act and further whether the provisions of the 1982 Act which seek to regulate institutions the imparting training in Ayurved and Unani Systems of Medicine shall cover and regulate even those institutions which have been granted affiliation by the State Faculty.

6. So far as the facts are concerned, the petitioners, as noticed above have not mentioned anything regarding the institutions from which they claim to have completed the course of study prescribed in G.A.M.S. course but totality of facts and circumstances as well as from the trend of arguments, it is not in dispute that the petitioners as well as respondent No. 3 in this case i.e. the State Ayurvedy and Unani Medicine Council under the 1951 Act have adopted the stand that institutions recognized by the State Faculty and providing teaching for G.A.M.S. course have the competence to give the requisite training and education for conferring of valid G.A.M.S. Degree by the State Faculty and such degree must be accepted by all concerned as valid degrees because of entries in the IInd Schedule to the 1970 Act. Thus, the writ petition has been argued on the basis that the colleges where the petitioners have studied follow the course of G.A.M.S. and not the course of G.A.M.S. as prescribed by the C.C.I.M. and such colleges have only the affiliation granted by the State Faculty and not the permission or recognition of State Govt. required by the Act of 1982.

7. The argument on behalf of the contesting respondents, that is the State of Bihar and Respondent No. 5 the C.C.I.M. is to the effect that regardless of recognition to G.A.M.S. degree, granted by the Faculty as mentioned in the Schedule IIInd of 1970 Act. this matter requires that a comprehensive view be taken of the entire scheme of 1970 Act and of the 1982 Act and if it is found that a institution is imparting education in Ayurvedic or Unani System of Medicine in a course which is not in accordance with the course prescribed by the competent authority under the 1970 Act, the C.C.I.M. and if it is further found that such institution is imparting training contrary to the provisions in the Bihar Act of 1982 then the degree awarded by the Faculty should not be accepted as a valid degree and in any case this Court in exercise of powers under Article 226 of the Constitution of India should not issued any direction or mandamus which has the effect of making the respondents to ignore valid statutory provisions such as those contained in the 1970 Act or in the 1982 Act.

8. Learned counsel for the State has further submitted that if found necessary then the provisions in Schedule IIInd of the 1970 Act which accepts G.A.M.S. degree granted by the State Faculty as a recognized degree since 1953 onwards should be read down so that such a degree be treated as valid only till 1952 and in any case not after 1981 when admittedly G.A.M.S. course was prescribed by the C.C.I.M. under its statutory powers and through regulations issued in accordance with law. In support of this contention learned counsel relied upon a Full Bench Judgment of this Court in the case of Braj Kishore Singh and Others Vs. State of Bihar and Others, in that case Section 35 of the Bihar State Universities Act was read down by this Court to remove the defect of unworkability of the impugned provision and at the same time in order to protect the purpose and soul of the provisions. The aforesaid full bench decision took into consideration several judgments of the Apex Court including the case of Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, , where it was held that the doctrine of reading down or to recasting the statute can be applied for saving a statute from being struck down on account of unconstitutionality or on the ground of vagueness or ambiguity where it is possible together the intention of the legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made.

9. Learned counsel for the State then referred to Ordinance of 1981 and the succeeding 1982 Act. It is worthwhile to notice the preamble in the Bihar Ordinance No. 200 of 1981, which was succeeded by the 1982 Act. The preamble reads as follows :--

"Preamble:--Whereas, the Legislature of the State of Bihar is not in session; And, whereas, the Governor of Bihar is satisfied that in spite of repeated warnings from Government through Press Notes and Notices unregulated and indiscriminate opening of Indigenous Medical Educational Institutions in this State by persons or bodies Registered under the Societies Registration Act, 1960 or otherwise without providing for adequate teaching facilities is hampering the

cause of indigenous Medical Education and is highly detrimental to the interest of students, admitted to such institutions after charging heavy capitation fee or donation and as such the circumstances exist which render it necessary to prescribe for regulation and control on the opening of College or Institutions of Indigenous System of Medicine in the State of Bihar."

10. The preamble of the 1982 Act is concise and precise and the purpose of the Act has been spelt out as regulation and control of Educational institutions teaching Indian System of Medicine. The preamble to the Ordinance followed by that of the Act indicate the quacks that had come to infect the system of education in Indian Medical Science such as Homeopathy and Unani and therefore, the legislature decided to make provisions to control and regulate such educational institutions. All such educational institutions which appear to have commercialised such education to an intolerable extent. Section 2 of the Act provides for aban in quite comprehensive terms and prohibits any person from running any institution (sic) and (raining in Indian System of Medicines except in accordance with the provisions of the Act. For opening of new institutions a permission of the State Government has been made mandatory. Section 4 provides for certain commitments and obligations which shall bind the persons seeking permission of the Government and Section 5 provides for an investigation prior to grant of permission. Section 6 refers to permission from the Central Government and from the C.C.I.M. Sections 7 and 9 arc of special significance in this case because these sections make the provisions of the Act clearly applicable even to existing institutions imparting teaching and in Indian System of Medicines subject to exceptions mentioned in Section 7 itself. Section 7 clearly provides that this Act shall cover all those private colleges and such medical institutions which are engaged in teaching students in Indian System of Medicines for obtaining degree, diplomas mentioned in Schedule IInd of the 1970 Act. The only exception is of those institutions, which are permanently affiliated to any university in the State of Bihar. Further Section 9 of the Act creates an obliataion for all such teaching institutions existing from before to apply for approval of the State Government as per provisions of this Act within a month from the date of coming into force of this Act. in case of violation of this provision or if the State Government refuses to grant the approval then it will be deemed that such institutions have been established in violation of the provisions of this Act. Section 10 provides the penalty of fine as well as the imprisonment for violation of provisions of the Act and Section 11 provides the effect of denial of permission from the State Government, whether actual or a deemed and in all such cases the concerned institutions are under a legal obligation to close the institutions within three months and to refund the amount accepted as fees, grants or other charges. For default they would be individually as well as jointly liable to penalty u/s 10 of the Act.

11. On behalf of the petitioners as well as on behalf of respondent No. 3, it has been argued that 1951 Act is a exhaustive Act having assent of the President and Exhaustive Regulation framed under the same Act and hence it should be held

that nothing in the 1982 Act can affect the power of the Faculty under the 1951 Act or institutions which have been granted affiliation by the State Faculty. With reference to Act of 1953 and Act of 1987 relating to Homoeopathic System of Medicine, it was submitted that in that case the State legislature while inacting Act of 1987 specifically repealed several provisions of the 1953 Act but in the present case the Act of 1982 has not referred to any provisions of the 1951 Act nor has chosen to repeal any provisions of the said Act, therefore, the 1982 Act must be interpreted in such a manner that the powers of the Faculty granted by the 1951 Act are left intact. This power, according to learned counsel for the petitioner and respondent No. 3 will include exclusive control over all educational institutions that may be recognized by the State Faculty and hence the provisions of Sections 7 and 9 of the 1982 Act should be so construed as to leave out educational institution granted affiliation by the State Faculty.

12. It has further been argued on behalf of respondent No. 3 that since Section 7 of the 1982 Act provides exception in favour of colleges permanently affiliated to the universities hence an exception should be read in favour of educational institution granted affiliation by the State Faculty otherwise the provisions of the 1982 Act will be violative of Article 14 in making a distinction between the State Faculty and the universities of the State within distinct user under the 1951 Act, the functions of the State Faculty are similar to those of universities.

13. Having given my anxious consideration of the submissions advanced by different parties as noticed above, I find sufficient force in the submissions advanced by learned counsel for the State to the effect that this Court cannot issue mandamus or direction requiring respondent to ignore statutory provisions, regulations or other obligations imposed by a valid statute. From a close perusal of the provisions of 1970 Act it is clear that the G.C.I.M. has a legal authority to lay down courses of study for Ayurvedic and Unani System of Medicines throughout the country so that the Indian system of medicines may maintain uniformity of teaching and standard all over the country. Admittedly, that has been done through regulations framed under the 1970 Act and even according to admitted pleadings the system of courses for G.A.M.S. had come to an end for quite some time and B.A.M.S. course was being followed as per regulations of the C.C.I.M. Hence, only on the basis of a continued entry in Schedule II of the 1970 Act with regard to G.A.M.S., which in my view is now archaic, no right can be found in a person or institution to ignore the courses validly prescribed by the competent authority the C.C.I.M.

14. Further in my view the 1982 Act aims at curing rampant evil in concerned colleges in the State and hence the State Government was given control in matters of making queries into the standard of educational institutions teaching Indian System of Medicines. Such a situation appears to have developed long back and that appears to be the reason why the colleges imparting teaching in Ayurvedic and Unani System of Medicine were transferred to one university as far back as in 1971. But the facts available in the records of the present case reveal

that since the last few years again attempts are being made to take some advantage of the entry in Schedule II of the 1970 Act with regard to G.A.M.S. degree. In these facts, in my view, the State Faculty cannot be equated with the universities of the State and there is no question of violation of Article 14 involved in this case. Moreover, no provisions of the 1982 Act have been challenged in this writ application. On a careful reading of the provisions of the 1982 Act, in my view the same clearly cover even the cases of such institutions which may have been granted affiliation by the State Faculty. By a subsequent Act the legislature of the State can always impose further checks or controls over educational institutions of the nature covered by the 1982 Act. I find no good ground to indulge in any hypothetical interpretation of the provisions of the 1982 Act as the literal meaning is quite clear and discloses no difficulty or ambiguity. For this reason, I do not find it necessary to discuss the case laws cited on behalf of the respondent No. 3 with regard to interpretation of statutes.

15. In this case, I have not appreciated the stand of respondent No. 3, the council created under the 1951 Act in insisting upon its right to continue to recognize and grant affiliation to such institutions which are not imparting training as per the current course of B.A.M.S. prescribed by the C.C.I.M. and upon its further insistence that the State Government should not exercise any further control over the institution to whom the State Faculty, a creature of the council has granted, affiliation.

16. In my view, the petitioners cannot claim any right in them on the basis of having obtained G.A.M.S. degree to get admissions in Post-graduate courses of Government Ayurvedic college when the institution from which they have received education and training were apparently not following the course prescribed by the C.C.I.M., the statutory central authority and further when such institution was apparently being run in total controvention and violation of the provisions of the 1982 Act. In such circumstances, this Court cannot come to help of the petitioners in exercise of its power under Article 226 of the Constitution of India and accordingly this writ application is dismissed, but without any order as to cost.