

(1999) 04 AHC CK 0173
In the Allahabad High Court
Case No : C.M.W.P. No. 35827 of 1993

Dr. Vijai Kumar Gupta and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 16-04-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Indian Medicine Central Council Act, 1970 — Section 14, 14(1), 17, 28

Citation : (1999) 2 AWC 1783 : (1999) 2 UPLBEC 1063

Hon'ble Judges : Lakshmi Behari, J;D.S. Sinha, J

Bench : Division Bench

Advocate : K.D. Tripathi, for the Appellant;

Final Decision : Dismissed

Judgement

D. S. Sinha, J.—Heard Sri K. D. Tripathi, learned counsel appearing for the petitioners and Dr. Madhu Tandon, learned Brief Holder of the State of U. P. representing the respondents.

2. By means of this petition under Article 226 of the Constitution of India, the petitioners pray for the following two reliefs :

"(a) issue a writ, order or direction in the nature of mandamus restraining the respondents from interfering in the rights of the petitioners to carry on their private medical practice in Indian Medicine at district Pilibhit.

(b) issue a writ, order or direction in the nature of mandamus restraining the respondents from prohibiting the petitioner to keep the primary instruments of diagnosis of Indian medicines, namely. Stethoscope, Thermometers. B. P. Instruments, etc. and to provide first aid to the people in immediate requirement of medical area as a part of practice of Indian medicines."

3. The foundation of the claim of the petitioners for the reliefs sought is their passing of "Vaidya Visharad" and "Ayurved-Ratna" examination from Hindi

Sahitya Sammelan. Prayag.

4. Section 14 of the Indian Medicine Central Council Act, 1970 (hereinafter called the Act), deals with the recognition of medical qualifications granted by certain medical institutions in India. Subsection (1) of Section 14 of the Act says 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 purpose of the Act. Entry No. 105 of the Second Schedule includes qualifications "Vaidya Visharad" and "Ayurved Ratna" from Hindi Sahitya Sammelan, Prayag as recognised qualifications. But, remark in column (4) against the entry shows that the qualifications "Vaidya Visharad" and "Ayurved Ratna" were recognised qualifications during the period 1931 and 1967. Thus, the above qualifications, if acquired subsequent to the year. 1967, are not covered by the expression "recognised medical qualifications" for the purpose of Section 14 of the Act.

5. It is not disputed that the petitioners acquired the qualifications of "Vaidya Visharad" and "Ayurved Ratna" subsequent to the year, 1967. Therefore, they cannot be deemed to possess recognised medical qualifications for the purpose of the Act.

6. Section 17 of the Act provides that save as provided in Section 28, 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. Thus, the minimum (win requirements for right to practise in Indian medicine in any State are (1) possession of a recognised medical qualification ; and (2) enrolment on a State Register or Central Register of Indian medicine. Although the petitioners allege to possess medical qualifications of "Vaidya Vfsharad" and "Ayurved Ratna" but these qualifications having been acquired subsequent to the year. 1967 are not recognised medical qualifications envisaged in Section 14 read with Second Schedule of the Act. Therefore, the petitioners do not possess recognised medical qualifications, and are not entitled to practise Indian medicine in any State.

7. Learned counsel for the petitioners invites the attention of the Court towards the factum of alleged registration of the petitioners with Rajkiya Ayurvedlc Evam Unani Chikttsa Parishad. Bihar under the provisions of Bihar Development of Ayurvedic and Unani System of Medicine Act, 1951. The alleged registration of the petitioners, in the opinion of the Court, shall not entitle them to practise Indian medicine in view of the fact that they are not in possession of recognised medical qualifications which is one of the conditions precedent for right to practise Indian medicine in any State. Indeed. Section 17 of the Act restrains the petitioner from practising in Indian medicine in any State as they are not in possession of recognised medical qualifications.

8. For what has been said above, the petitioners are held not to be entitled to the reliefs claimed by them. They being not entitled to practise Indian medicine in

any State must stop practising Indian medicine forthwith.

9. In the result, the petition fails and is, hereby, dismissed. There is no order as to costs. The interim order dated 1st October, 1993 whereby the petitioners were permitted to practise during the pendency of the petition is vacated. The respondents are directed to ensure that the petitioners do not practise Indian medicine anywhere in the State of Uttar Pradesh, much less in the district of Pilibhit. Registry of the Court is directed to transmit copies of this judgment and order to the respondents separately, as soon as possible.