

(1993) 02 AHC CK 0059

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 394 of 1992

Ishaq Husain Razvi

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 03-02-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Indian Medicine Central Council Act, 1970 — Section 17(1), 17(3)

Uttar Pradesh Indian Medicine Act, 1939 — Section 14, 27, 28, 29, 30

Citation : AIR 1993 All 283 : (1993) AWC 863 : (1993) 2 UPLBEC 1066

Hon'ble Judges : S.P. Srivastava, J;N.L. Ganguly, J

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

N.L. Ganguly, J.—Petitioner filed this writ petition challenging the order of the Chief Medical Officer, Pilibhit dated 31-12-91 by which the Chief Medical Officer directed the petitioner not to practice as a Medical Practitioner unless he gets himself registered as a medical practitioner by the Registrar, Indian Medicines Board, U. P. The petitioner prayed for quashing of the order of the Chief Medical Officer, Pilibhit dated 31-12-91 and also prayed for issuing a writ of mandamus directing the respondents not to interfere in the petitioner's functioning as a medical practitioner in Ayurvedic.

2.The petitioner claimed to have obtained a degree in Vaidya Visharad from Hindi Sahitya Sammelan, Allahabad in the year 1987. He stated to have got himself registered vide Registration No. 72305 in Rajkiya Ayurvedic Evam Unani Chikitsa Parishad, Bihar on 9-12-88. Apparently, on the basis of the alleged degree of Vaidya Visharad, from Hindi Sahitya Sammelan, Allahabad, petitioner claimed to have appeared in the examination of Ayurved Ratna from Hindi Sahitya Sammelan, Allahabad. A photostat copy of the mark-sheet for Ayurved Ratna, II part dated 21-8-90 has been annexed as Annexure 3 with the petition. The

petitioner pleaded to have been registered by a State Council of Ayurvedic and Unani Medicines, of Bihar, Patna registering the petitioner as a Vaidya practising at Village Jalalpur , Bihar. The petitioner sent an application for changing his, place of residence and practice to the State Council of Ayurvedic and Unani Medicines Patna and a Memo No. 353 dated 30th January, 1991 has been annexed showing that the petitioner's enlistment registration certificate has now been shown with its changed address showing Mohalla New Basti, Ward No. 15, Ghyaspur, Bisalpur Distt. Pilibhit:

3. Medical Inspector from the office of the Chief Medical Officer, Pilibhit went to the clinic of petitioner situate at Mohalla Nai Basti Ward No. 15 Bisalpur Distt. Pilibhit on 22-10-91. The petitioner stated that the Medical Inspector enquired about the petitioner's registration and authority to practice as a medical practitioner. The petitioner stated to have informed the respondent No. 3 and submitted to him the copies of the certificates and documents namely (i) certificate of Vaidya Visharad 1st year 1982, (ii) certificate of Vaidya Visharad II year 1987, (iii) certificate of Ayurved Ratna 1st year 1988, (iv) certificate of Ayurved Ratna IIInd year 1989, and also certificate of publication of Amar Ujala and circular of change of address. The petitioner stated that since he possessed qualification in Ayurved for practising medicine, he was legally doing the practice of Indian Medicines (Ayurvedic) at his village.

4. The petitioner stated to have received the letter dated 31-12-91 issued by the Chief Medical Officer, Pilibhit directing not to practice medicines unless he obtained registration from the Bhatiya Chikitsa Parishad, U. P. Lucknow.

5. In our Country and specially in our State, the number of qualified medical practitioners have been much less than the required number of such persons. The scarcity of qualified medical practitioner was previously quite large since there were very few institutions imparting teaching and training to Doctors, Vaidyas and Hakims. The position has now changed and there are quite a good number of medical colleges imparting education in Allopathic system of medicines and similar treatments system of Homoeopathy, Ayurvedic, Tibbi, Hakimi etc. Now no doubt there are sufficient number of such institutions training qualified medical practitioner still there is scarcity of qualified medical practitioner at number of places. The persons having no recognized and approved qualifications are becoming medical practitioner having little knowledge about the medical science, Ayurvedic, Homoeopathy, Hakimi starts practising as a medical practitioner and play with the lives of thousands and millions of people. Some time such quacks commit blunders and precious lives are lost.

6. The Government had been vigilant all along to stop such quackery. We may refer to the Medical Council Act of 1933 which used to regulate the medical practitioners practising medicines and surgery particularly Allopathic system of medicine. The scope for unqualified, untrained quacks was still there posing to be Ayurvedic, Hakimi or Homoeopathy medical practitioners without having the scientific training and education in the science from approved institutions. The

Indian system of medicines i.e. Ayurvedic or Unani, Tibbi system of medicines was brought within the preview of United Provinces Indian Medicines Act, 1939. A Board was constituted and provisions were made for maintaining register of registered Vaidyas or Hakims by the Registrar under the said Act. Under Sec. 35-A of the U. P. Indian Medicines Act, 1939 faculties in Ayurvedic and Unani Tibbi Systems were to be created and they were empowered to conduct, recognize and regulate the system of medical treatment according to Ayurvedic and Unani Tibbi system in the State of U. P. under Sections 27, 28, 29 and 30, schedule was framed under the said Act, which entitled Vaidyas, Hakims, who hold degree or certificate of any Government Ayurvedic or Unani College or school within the State of Uttar Pradesh or outside it or a degree in Indian Science or surgery, or midwifery or any University established by law in India; Vaidyas, Hakims holding degree or diploma granted by the Board or any of Ayurvedic or Unani institutions in U. P. or outside recognized by the Board for the purpose of registrations The aforesaid provisions of U. P. Act of 1939 was perhaps not capable of holding the situation and prevent the malady of quack medical practitioner all over the country. The Central Government created a Central Council of Indian Medicines, and a Central Registrar of Indian Medicines and for matters connected therewith was enacted by the Indian Medicines, Central Council Act, 1970 (Act 48 of 1970). This Act is a complete Code in the matters of system of education in Indian Medicines which includes Astanga Ayurved, Sidha Ayurved, Unani Tibbi. The provisions of this Act constituted a Council known as Central Council and appended II schedule under Sec. 14 of the said Act. The States, nominations of Colleges of various States and the degree and abbreviations thereafter with special remarks are contained in said II schedule. Entry No. 99 of the II to entry No. 107 mentions the name of the approved institutions whose degree and certificates were constituted to be valid and registrable as a Ayurvedic medical practitioner.

7. The learned counsel for the petitioner placed reliance on the provisions of Sec. 17(3) of the Central Act of 1970, which is quoted as under:

"17(3)(b): The privileges (including the right to practise any system of medicine) conferred by or under any law relating to registration of practitioner of Indian medicine for the time being in force in any State on a practitioner of Indian medicine enrolled on a State Register of Indian Medicine."

8. The learned counsel for the petitioner submitted that the petitioner is qualified and possessed degree of Vaidya Visharad and Ayurved Ratna from Hindi Sahitya Sammellan, Allahabad. He is also registered by Rajkiya Ayurvedic Avam Unani Chikitsa Parishad, Bihar, hence he is legally entitled to practise as a Ayurvedic medical practitioner in the State of U. P. at Pilibhit. The direction of the Chief Medical Officer asking the petitioner to stop practise in medicines unless he gets himself registered by the U. P. States Indian Medicines Board, Lucknow is challenged. It is submitted that the order of the Chief Medical Officer is wholly illegal, unwarranted and without jurisdiction.

9. The learned counsel for K. D. Tripathi pointed out entry No. 105 of II Schedule of the Indian Medicines Central Council Act 1970 and pointed out that Vaidya Visharad and Ayurved Ratna of Hindi Sahitya Sammelan, Allahabad is shown to be recognized for registration as Indian Medicines practitioner. The learned counsel for the petitioner conveniently ignored to notice the relevant remark entries in respect of qualifications of Vaidya Visharad Ayurved Ratna of Hindi Sahitya Sammelan, Prayed. eg. The remarks column No. 4 entries namely show that these two qualifications acquired from 1931 to 1957 have been specified to be approved for registration under the Act. Neither prior nor subsequent certificates of the said date is recognized and approved for registration. Thus, the learned counsel for the petitioner has not correctly argued that the petitioner possessed, recognized and approved qualification of Vaidya Visharad and Ayurved Ratna from Hindi Sahitya Sammelan, entitling him competent to be registered under the Indian Medicines System (Ayurved) for practising in the State of U. P.

10. We may further examine the entries in II schedule in respect of State of Bihar which enumerates four institutions of the Bihar, namely, State Faculty of Ayurvedic and Unani Medicines, Patna, Bihar, Government Ayurvedic College, Patna, Bihar Government Ayurvedic School, Patna Bihar and Sanskrit University, Darbhanga, Bihar giving Graduate in Ayurvedic Medicines and Surgery (G.A.M.S.) and Ayurvedacharya / Pranacharya from 1953 onward is only approved for registration as a practitioner of Indian Medicines System of treatment. No doubt the Indian Medicines Central Council may further include degrees and diplomas of other recognized Universities and Institutions in the schedule of the Act, for registration as Ayurvedic Unani Tibbi medical practitioners. The petitioner has failed to show that he possessed requisite recognized qualification for registration entitling him for practising in Ayurvedic system of medicines. The direction by the Chief Medical Officer asking the petitioner to stop practise as a Ayurvedic medical practitioner unless he is registered by the U. P. Indian Medicines Board (sic).

11. The petition was presented on January 20, 1992 and the Division Bench was pleased to direct the Standing Counsel to find out and state as to how the U. P. Authorities are insisting the person holding Ayurvedic degree from a different States should be registered before practising in this State. The petition was listed for admission before us on 15th January 1993, and even after more than ten months the learned Standing Counsel appearing for the State was not able to assist us or tell us anything about the present writ petition. Today (15-1-1993) there are about 20 cases on the list and the learned Standing Counsel has only three briefs with him. He failed to obtain the necessary records of this case in spite of his attempt. We are constrained to say that although the State of U. P. is a biggest litigant in the State and in not less than 80% of the writ petitions the State of U.P. is a party but the State Government is so poorly represented in the Court which is a matter to be examined and tried to be rectified. It is strange that in the recent past, it has become a practice to change the State Law Officers

with the change of the Government and attempt is always to have State Law Officers of political party basis or of other considerations which has no relation with the professional work with an Advocate. The State Law Officers and the Standing Counsels" who happen to be present in courts, are often heard saying that the State Law Officers Office has failed to supply the briefs to them and they are sitting in the Court merely hearing the arguments of the learned counsel for the petitioner, and sometimes when asked by the Court, they note down on sheet of paper that they are required to file the counter affidavit. It is seldom that any: counter affidavit is filed by the learned State Law Officers and in time. The State Law Officers are perhaps only instructed to ask for further time for filing counter affidavits. The assistance which we get from the State Law Officers these days is nothing but a farce. These observations are made with an object that if the Law Department of the State is still activities and tried to remedy the malady, the cases may be properly decided with speed that may help in reducing the number of arrears and cases would not be repeatedly listed for time again and again. We direct that a copy of this judgment may be sent to the Legal Remembrancer of the State of U.P. and learned Advocate General for necessary remedial action. As already observed and found the petitioner's writ petition is devoid of merits and calls for no interference under Art. 226 of the Constitution of India.

12. The writ petition is dismissed.

S.P. Srivastava J.

13. On matters dealt with in the judgment of brother Hon. N.L. Ganguly J., which I have had the opportunity to read in draft, I agree and have nothing to add.

14. Petition dismissed.