
(1968) 10 P&H CK 0024
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1767 of 1968

Kartar Singh Vaid

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-10-1968

Acts Referred:

Constitution of India, 1950 — Article 226, 245
Punjab Ayurvedic and Unani Practitioners (Amendment) Act, 1968 — Section 4
Punjab Ayurvedic and Unani Practitioners Act, 1963 — Section 3(6)
Punjab Reorganisation Act, 1966 — Section 77, 88

Citation : AIR 1969 P&H 287

Hon'ble Judges : P.C. Pandit, J

Bench : Single Bench

Advocate : B.S. Kamthania, for the Appellant; M.R. Agnithotri and G.R. Majithia, Deputy A.G., for the Respondent

Judgement

1. This is a petition under Articles 226 and 227 of the Constitution filed by Kartar Singh Vaid, challenging the legality of a notification dated 7-3-1968 issued by the Governor of the Punjab in exercise of the powers conferred on him by sub-section (6) of Section 3 of the Punjab Ayurvedic and Unani ;Practitioners Act, 1963 (hereinafter called the Act), constituting an interim board of Ayurvedic and Unani System of Medicines Punjab (hereinafter referred to as the Board).

2. The petitioner is a Vaid practising on the Ayurvedic side at Ambala Cantonment for the last so many years. He is registered under the Act. His grievance is that after the coming into force of the Punjab Reorganisation Act, 1966, the State of Punjab, respondent No. 3, alone had no authority in law to constitute the Board by appointing a number of persons mentioned in the impugned notification, because its jurisdiction now extended to the territories which were comprised in the State of Punjab, Haryana, Union territory of Chandigarh and the territory transferred to Himachal Pradesh, State of Punjab alone had no jurisdiction to nominate Kanwar Moti Singh and five others, respondents 6 to 11, as the members of the Board and R. N. Bhardwaj,

respondent No. 12 as the Registrar of the Board, for exercising powers under the Act outside the jurisdiction of respondent No. 3.

There is, according to the petitioner, no procedure laid down in the Act or in the Punjab Reorganisation Act, 1966, for the selection or nomination of the members of the Board by the respective Governments. In any case, the nomination or the selection should have been done in consultation with the Governments of the various States after getting the approval of the Central Government. The petitioner fulfils all the qualifications laid down under the Act for his appointment as a members of the Board. He approached the various authorities in that connection, but the Board was constituted without listening to him.

3. According to Section 1 (3) of the Act, it had to come into force on such date as the State Government might, by notification, appoint. On 4th of February 1964, a notification was issued by the Governor of Punjab, appointing that very date as the date on which the Act would come into force. u/s 3(6) of the Act, until the Board was established and constituted in accordance with the provisions of Section 3, sub-sections (1) to (5), the State Government was authorised to constitute a Board consisting of six persons ;and the Board so constituted had to continue for a period not exceeding one year from the commencement of the Act and the said Board was to carry out all the provisions of the Act. By a notification of the State Government, such a Board was constituted on 2nd of March, 1964.

The life of this Board had to end on 3rd of February, 1965 i.e. within one year from the date of the commencement of the Act, namely 4th of February, 1964. However, by the Punjab Ayurvedic and Unani Practitioners (Amendment and Validation) Act (Act 15 of 1965), sub-section (6) of Section 3 of the Act was amended and the life of the Board was extended to 2 years. That meant that the Board constituted on 2nd of March, 1964, could go up to 3rd of February, 1966. After that date, i.e. on 1st of November, 1966, on which date the Punjab Reorganisation Act, 1966, came into force, there was no Board functioning in the State of Punjab. Section 72 (1) of that Act was as follows:-

"Save as otherwise expressly provided by the foregoing provisions of this Part, where any body corporate constituted under a Central Act, State Act or Provincial Act for the existing State of Punjab or any part thereof serves the needs of the successor States or has, by virtue of the provisions of Part II, become an inter-State body corporate, then the body corporate shall, on and from the appointed day, continue to function and operate in those areas in respect of which it was functioning and operating immediately before that day, subject to such directions as may from time to time be issued by the Central Government, until other provision is made by law in respect of the said body corporate".

This provision would have applied if the Board constituted by the State of Punjab had been functioning and operating on the appointed day i.e. 1-11-1966. But as I have already said, the Board constituted by respondent No. 3 had come to an end on 3rd of February, 1966, and ceased to function thereafter. This was also so

stated in the return filed by the respondents. If it had been alive, then it might have been governed by the provisions of Sections 67 to 72 of the Punjab Reorganisation Act, 1966, Section 89 of the Punjab Re-organisation Act said:-

"For the purpose of facilitating the application in relation to the State of Punjab or Haryana or to the Union Territory of Himachal Pradesh or Chandigarh of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

Explanation :- In this section, the expression "appropriate Government" means:-

(a) as respects any law relating to a matter enumerated in ;the Union List, the Central Government; and

(b) as respects any other law:-

(I) in its application to a State, the State Government, and

(ii) in its application to a Union territory, the Central Government."

According to this section, the Punjab Government, which was the appropriate Government within the meaning of the Explanation quoted above, because the law related to a matter which was not enumerated in the Union List, could modify the Act by making amendment therein as might be necessary and expedient and thereupon such law would have effect subject to the modification so made competent legislature or other competent authority. The State of Punjab then passed the Punjab Ayurvedic and Unani Practitioners (Amendment and Validation) Act (Act 5 of 1968), and substituted the following for sub-section (6) of Section 3 of the Act :-

"Until the Board is established and constituted in accordance with the provisions of the preceding sub-sections, the State Government may constitute a Board consisting of six persons, including the Director, to be appointed by the State Government and the Board so constituted shall, as from the commencement of the Punjab Ayurvedic and Unani Practitioners (Amendment and Validation) Act, 1967, and for a period not exceeding one year from such commencement, be deemed to be the Board established and constituted for the purpose of carrying out the provisions of this Act and the provisions of sub-sections (3) and (5) shall apply to such a Board."

Action was then taken under the new provisions of Section 3(6) of the Act and the impugned notification was issued constituting the interim Board for a period of one year for the present State of Punjab only. The interim Board could not become an inter-State corporate body within the meaning of Section 72 of the Punjab Reorganisation Act, 1966. This Board, according to the return filed by the

respondents, would have jurisdiction over the territories included in the present State of Punjab only. The petitioner, who is a Vaid in Ambala Cantonment which forms part of the State of Haryana has no locus standi to challenge the constitution of the Board for the State of Punjab. Besides, learned counsel for the petitioner could not point out which legal right of the petitioner had been infringed for the redress of which he had come to this Court under Article 226 of the Constitution.

4. There is another ground also on which this writ petition deserves to be dismissed. The impugned notification was issued in exercise of the powers conferred on the State of Punjab under sub-section (6) of Section 3 of the Act as amended up-to-date. This sub-section (6), as already mentioned above, had been introduced by the Punjab Ayurvedic and Unani Practitioners (Amendment and Validation) Act, 1967. It is pertinent to mention that the legality and the vires of this Amendment and Validation Act had not been challenged by the petitioner in the writ petition. Consequently, the action taken under that Act cannot be quashed unless it is shown that the said action i.e., the notification in question was not in accordance with that Act which was not the case of the petitioner in the writ petition.

5. It may be mentioned that the learned counsel for the petitioner also submitted that the Board had not ended on 3rd of February 1966, as contended by the counsel for the respondents. The mere fact that in the Punjab Ayurvedic and Unani Practitioners (Amendment and Validation) Act, 1967, which came into force on 1-2-1968, Section 4 had been introduced by which the action of the Registrar during the period commencing 4th of February 1966 had been validated by the State of Punjab showed that the Board was in existence on and after 4th of February, 1966. It was, therefore, in existence on 1-11-1966 when the Reorganisation Act came into force and by virtue of the provisions of Section 72 of that Act, the Board would become an inter-State Corporate body and the State of Punjab alone could not constitute the interim Board by means of the impugned notification.

6. There is no merit in this contention as well. The Board, as already mentioned above, ceased to function on 3rd of February 1966. The Registrar, however, still continued. Under the provisions of Section 88 of the Punjab Reorganisation Act, 1966, the Act continued to apply to the territories now included in the present Punjab. u/s 4 of the Punjab Ayurvedic and Unani Practitioners (Amendment and Validation) Act, 1967, the State of Punjab had validated the action taken by the Registrar or any other authority or Punjab Government on and after 4th of February 1966 after the Board had ceased to exist, but only for the territories now forming part of the present Punjab. This the State legislature was competent to do under Article 245 of the Constitution. All this, however, does not mean that the Board as such was in existence on 1-11-1966 when the Punjab Reorganisation Act came into force or that it was revived by Section 4 of the Punjab Ayurvedic and Unani Practitioners (Amendment and Validation) Act, 1967.

7. In view of what has been stated above, the writ petition fails and is dismissed, but with no order as to costs.

8. Petition dismissed.