
(1985) 03 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 194 of 1977

L.N. Khosla

APPELLANT

Vs

State of Jammu and Kashmir and Another

RESPONDENT

Date of Decision : 29-03-1985

Acts Referred:

Constitution of Jammu and Kashmir, 1956 — Section 103
Drugs and Cosmetics Act, 1940 — Section 23N
Drugs and Cosmetics Rules, 1945 — Rule 2

Citation : AIR 1985 J&K 74

Hon'ble Judges : Mazhar Ali Shah, J

Bench : Single Bench

Advocate : R.P. Sethi, for the Appellant;

Final Decision : Allowed

Judgement

Mazhar Ali Shah, J.—The petitioner after getting his medical training from Banaras Hindu University in an intergrated course of Medical

Science, Banaras University got conferred upon him the degree of Ayurvedacharya with Modern Medicine and Surgery in the year 1948, copy of

the certificate is enclosed with the petition as Annexure 'A' issued on Dec. 2, 1948. The petitioner was selected as Assistant Professor of

Psychology in the government Ayurvedic College, Jammu, from which he retired. In the course of his professional duties, the petitioner has been

adopting both the Allopathic as well as also the Ayurvedic system of medical care for individual to individual depending upon the nature of illness.

It is further submitted while the petition was filed, the petitioner was running his clinic at Muthi, Tehsil Jammu after his retirement as Assistant

Professor. The petitioner was working in Ayurvedic College, at Jammu which is affiliated to the University of Jammu, SMGS Hospital Jammu

which is now also affiliated to the Medical College, Jammu was initially affiliated with the Ayurvedic college. The State of Jammu and Kashmir also

runs a number of Ayurvedic Dispensaries. These dispensaries are supplied medicines by the Medical Department of Jammu and Kashmir, which

include both Allopathic as well as Ayurvedic Drugs. It is also submitted that respondent No. 1 has also started a scheme for imparting training

course of short duration to the School Teachers working in Muffasils, those who got that training are declared as Rahbari-Sehat in which capacity

they are asked to prescribe or administer Allopathic drugs, which are supplied, to them by respondent 1.

2. By this writ petition, the petitioner has prayed for the issuance of a Mandamus against the respondents to declare the petitioner as registered

Medical practitioner by making declaration in accordance with the provisions of Rule 2(ee)(iii) of the Drugs and Cosmetics Rules, 1945 framed

under the Drugs and Cosmetics Act 1940 with a further direction that the name of the petitioner be entered in the Register maintained for the

registration of the Registered Medical Practitioners or any other appropriate writ or order, to which the petitioner may be held entitled. Despite

several opportunities after notice to the respondents, they failed to file any counter. By order of this court on Nov. 18, 1981, one month's time was

granted to the respondents to file the counter with a condition that in case the counter is not filed within this time, the petition be listed for hearing

without the counter affidavit. The respondents by their application filed on April 30, 1983 prayed for recalling of the order whereby the right of the

State to file the counter was closed, which stood dismissed by the order of the court dt. May 13, 1983. At the time of hearing also, nobody

appeared to represent the respondents. Under these circumstances the facts enumerated by the petitioner in his petition stand un-controverted.

3. Heard the learned counsel for the petitioner. The short question canvassed before me in this writ petition relates to the registration of the

petitioner as Medical Practitioner as required under the Drugs and Cosmetics Rules 1945 under Rule 2(ee)(iii) framed under the Drugs and

Cosmetics Act 1940 (hereinafter called the Rules). It is also submitted that the public authorities charged with the functions to discharge the duties

conferred on them can be compelled under the circumstances of the present case to discharge their duties conferred on them for the purpose of

registration under the parallel provisions prevailing in the State of Jammu and Kashmir for the registration of the petitioner. The deprivation by non-

registration and declaring the petitioner eligible to purchase drugs intended to prescribe for his patients from whole sale and retail dealers of drugs

is a violation of his fundamental right recognised under Article 19(1)(g) of the Constitution of India, inas much as it guarantees all citizens a right to

practice any profession or to carry on any occupation, trade or business within the territories of Union of India. Non-performance of the duty cast

upon the respondents under Rule 2(ee)(iii) in not declaring the petitioner as Registered Medical Practitioner is in fact working discrimination on the

basis of Geographical grounds without any reasonable differentia.

4. On a bare reading of the rules referred to above, it is no doubt true that Sub-rule (2) of Rule 1 runs as follows : --

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1(2) it extends to the whole of India except the State of Jammu and Kashmir.

Nothing has been pointed out before me by the learned counsel for the petitioner that the same provisions are made applicable by any Notification

to the State of Jammu and Kashmir. The fact remains to be determined whether the said rules are applicable to the State of Jammu and Kashmir. If

no such parallel provision is made or the rules are not extended the right of the petitioner to practise, the profession and to denying the facility to

obtain the Drugs in wholesale and retail from the dealers of the drugs and purchase by stockists on the plea that the petitioner was not a registered

Medical Practitioner cannot be denied. Be that as it may the fact remains that a duty is cast on the respondents under Sub-clause (iii) of Clause

(ee) of Rule 2 of the Rules to declare by a general or special order made by the State Government in this behalf as a person practising in Modern

Scientific System of Medicines for the purpose of this Act. The learned counsel for the petitioner placed before the court several similar facilities

advanced by the different states in India like UP, MP, Rajasthan, Punjab, Delhi, Gujarat, Maharashtra and Bihar etc. for the registration of

Medical Practitioners under the said Rules. It is also submitted that the petitioner was denied by the stockists jn the State that as per conditions laid

down in their license they could not sell any Drug to the petitioner for the use of

his patients. Thereafter the petitioner approached the respondent 2 i.e. The Drug Controller (Director Health Services), J & K Government Srinagar with a request that instructions for the non-supply of the Drugs to the petitioner be withdrawn and his prescriptions be ordered to be honoured by the chemists and Druggists on account of the fact that the petitioner is a competent person to be recognised as Registered Medical Practitioner in view of his technical and educational qualifications and the experience in that branch. Despite repeated applications in that behalf the respondent 2 failed to discharge his duties by not issuing the instructions prayed for and declaring the petitioner as registered medical practitioner for the above said purpose.

5. It is an established law that a licence which can very well be recognised parallel to the right of registration for a particular, profession, trade or business is a civil right, an action on the part of the authorities would be visited with both civil and pecuniary consequences and as the business cannot be carried on without the license, it would also affect the livelihood of the person. The analogy on the principles laid down by their Lordships of the Supreme court in a reported decision in *Raj Restaurant and Another Vs. Municipal Corporation of Delhi*, can safely be relied on in the facts and circumstances of the present case. The second proposition equally applicable to the present case relates to the duty of the statutory functionary, if it is found that a statutory functionary fails in his duty to give relief to a citizen, who is otherwise entitled to practise any profession or to carry on any occupation, trade or business within the territories of India is discriminated on the basis of Geographical grounds without any reasonable differentia. The High Court can under its power of prerogative conferred under Article 226 of the Constitution of India read with Section 103 of the State Constitution direct the public authority to perform its duty. In the instant case, I find that the respondents have failed in their duty to make a declaration as required under Rule 2(ee)(iii) of the Rules or under any parallel provision in the State of Jammu and Kashmir to register the petitioner as Registered Medical Practitioner or refuse registration after considering the case of the petitioner after following the principles of natural justice. If otherwise he is not entitled to get registration, refusal can be for the reasons to be recorded in writing. It is pertinently

pointed out that several applications in this behalf were given to respondent 2 the respondent has failed in its duty to grant registration as required

to the petitioner or issue instructions to the whole-sale and retail dealers of drugs by withdrawing the instructions issued to them under their licenses

for non-supply of the drugs to the petitioner by not honouring his prescription by the chemists and druggists of the state. Thus I find it to be a fit

case, in which a mandamus is to be issued to the respondents to consider the case of the petitioner for his declaration as registered medical

practitioner under the relevant provision of law and the rules and on examining his case to direct that the name of the petitioner be entered by a

proper declaration in the Register maintained for the Registration of the Registered Medical Practitioners.

6. For the reasons mentioned herein above, the petition is allowed to the extent by issuing a command to the respondents by a writ of Mandamus

to consider the case of the petitioner in the light of the observations made above to register him as Medical Practitioner by declaration under the

appropriate provision of law referred to above within a period of four months and if the petitioner is not otherwise disqualified his name be entered

in the Register maintained for the Registration of Registered Medical Practitioners. However, in the facts and circumstances of the case, the parties

are directed to bear their own costs. The petition accordingly stands disposed of.