

(1986) 02 P&H CK 0078
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3760 of 1985

Mohamad Azam and Others	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 14-02-1986

Acts Referred:

Constitution of India, 1950 — Article 254
Drugs and Cosmetics Rules, 1945 — Rule 2
East Punjab Ayurvedic and Unani Practitioners Act, 1949 — Section 34
Evidence Act, 1872 — Section 45, 45(2)
Indian Medicine Central Council Act, 1970 — Section 17, 17(1), 17(2), 17(3), 23
Medical Degrees Act, 1916 — Section 3
Pepsu Ayurvedic and Unani Practitioners Act, 2008 — Section 33
Punjab Ayurvedic and Unani Practitioners Act, 1963 — Section 14, 15(1), 15(3), 2, 29

Citation : (1987) 1 ILR (P&H) 69

Hon'ble Judges : D.V. Sehgal, J

Bench : Single Bench

Advocate : R.K. Malik, for the Appellant; G.S. Chawla, for Respondent No. 1, H.S. Gill and N.K. Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Sehgal, J.—This judgment will also dispose of C.W. Ps. Nos. 3457, 4758, 5861 and 5887 of 1985 as common questions of law and fact are involved in all these petitions.

2. The facts of C.W.P. No. 3760 of 1985 in brief are that the Petitioners are duly registered as medical practitioners with the Bihar State Council of, Ayuryedic and Unani Medicines, Patna, known in Hindi as Ayurvedic Avam Chiktasa Parishad, Bihar. They have been practising as registered medical practitioners at Pahipat. They informed the Registrar, Bihar State Council of Ayurvedic and Unani Medicines, Patna that they wanted to change their addresses and to practice at Panipat and the necessary changes in their address were effected in the record with the said Registrar. A copy of the communication dated 9th August, 1980 to

this effect received by Petitioner No. 2 is Annexure P. 1.

3. The Haryana Board of Ayurvedic and Unani Systems of Medicine, through its Registrar, Respondent No. 3 informed the Petitioners that they could not have their names registered in Haryana nor could they practise in the State of Haryana. A letter to this effect received by Petitioner No. 2 is Annexure P. 2. Similar letters were received by the, other Petitioners also. Respondents Nos. 1 and 2 have appointed a special; Squad to check whether any unregistered medical practitioner is practising in the State of Haryana. The local Drugs Inspector also approached them and warned them against carrying on their practice as medical practitioners in the State of Haryana. The local chemists and druggists have been directed not to issue any medicines to the patients who have been prescribed such medicines by any of the Petitioners, who are not registered as medical practitioners in the State of Haryana. Through the present writ petitions, they contend that they having been duly registered as medical practitioners with the Bihar State Council of Ayurvedic and Unani Medicines, Patna, are very much within their right to practise in the State of Haryana. They have prayed for a writ of certiorari to quash the letter Annexure P. 2 received from Respondent No. 3 by Petitioner No. 2 and the similar letters received by the other Petitioners. A prayer for a writ in the nature of mandamus is also made for a direction to the Respondents not to restrain the Petitioners from practising as registered medical practitioners in the State of Haryana. Two separate written statements have been filed--one on behalf of Respondents Nos. 1 and 2 and the other on behalf of Respondent No. 3. It is contended therein that since the Petitioners do not possess the qualifications prescribed under the Punjab Ayurvedic and Unani Practitioners Act, 1963 (for short "the Punjab Act"), or the Indian Medicine Central Council Act 1970 (for short "the Central Act") they cannot be registered as medical practitioners under the Punjab Act and cannot practise in the State of Haryana. It is further contended that the Petitioners enlistment or registration under the Bihar Development of Ayurvedic and Unani System of Medicine (Enlistment of Ayurvedic and Unani Practitioners) Rules, 1976 (for short "the Bihar Rules"), does not qualify them to carry on their practice as registered medical practitioners in the State of Haryana.

4. With a view to adjudge the merits of the rival contentions of the parties, it is necessary to set out in brief the different statutory provisions on which reliance has been placed. Section 14 of the Punjab Act lays down that the Registrar of the Board of Ayurvedic and Unani Medicine System, which is constituted separately in the State of Punjab and in the State of Haryana, shall maintain the Register and act as the Secretary of the Board. The Register shall be in the prescribed form and shall contain the names, addresses and qualifications of every registered medical practitioner together with the dates on which qualifications were acquired and shall be divided into the following two parts, namely--

Part I containing the names of persons referred to in Sub-section (1) of Section 15; and

Part II containing the names of persons referred to in Sub-section (3) of Section 15.

Section 15(1) of the Punjab Act provides that every person possessing any of the qualifications specified in Schedule I shall, subject to the provisions of the Act and on payment of such fees as may be prescribed in this behalf be entitled to have his name entered in Part I of the Register subject to the conditions as may be prescribed. Sub-section (3) thereof lays down that any person not in possession of the qualifications specified in Schedule I but whose name is entered immediately before the 13th day of December, 1963, in the list maintained u/s 34 of the East Punjab Ayurvedic and Unani Practitioners Act) 1949, or u/s 33 of the Pepsu Ayurvedic and Unani Practitioners Act 2008 B.K. or who proves to the satisfaction of the Registrar up to 30th June, 1972, that he was in practice as a practitioner on the first day of November, 1966, and is continuing as such shall subject to the provisions of the Act and on payment of such fees as may be prescribed in this behalf, be entitled to have his name entered in Part II of the Register subject to such conditions as may be prescribed. It is not disputed by the Petitioners that they do not possess the qualifications prescribed in Schedule I to the Punjab Act and are, therefore, not entitled to be registered in Part I of the Register maintained by Respondent No. 3. It is also apparent from the averments in the petition that the name of none of the Petitioners was entered in any of the two Lists mentioned in Sub-section (3) of Section 15 of the Punjab Act nor any of them was doing practice as a medical practitioner on the 1st day of November, 1966. It is, thus clear that none of them is entitled to be brought either on Part I or Part II of the Register maintained by Respondent No. 3 under the Punjab Act.

5. The State of Bihar has its own legislation known, as the Bihar Development of Ayurvedic and Unani Systems of Medicines Act, 1951 (for short "the Bihar Act"). In exercise of powers conferred by Section 39 of the Bihar Act, the Governor of Bihar made the Bihar Development of Ayurvedic and Unani System of Medicine (Enlistment of Ayurvedic and Unani Practitioners) Rules, 1976. The Bihar State Council of Ayurvedic and Unani Medicines is constituted under the Bihar Act and a Registrar is appointed by virtue of the said Act. A list of practitioners in Ayurvedic and Unani Systems of Medicine is prepared by the Registrar under Sub-section (2) of Section 39 of the Bihar Act. Any person desirous of getting his name entered in the said list is required to apply to the Registrar in Form "A" prescribed by the Bihar Rules along with the prescribed fee. Under Rule 9 thereof every Vaidya or Hakim who in the opinion of the Registrar possesses sufficient knowledge and skill requisite for efficient practice of medicine and who fulfils all the conditions made by the Rules approved by the Government and whose length of practice is not less than 7 years to be supported by certificate issued by--

1 A member of the Council or Faculty.

2. A Member of the Bihar Legislative Assembly or Council.

3. President or Secretary of the Provincial Vaidya Sammelan.
4. President Anjuman Atibba Sube, Bihar.
5. President of the District Association recognised by the Council.
6. Gazetted Officer of State or Central Government.
7. Member of Lok Sabha or Rajya Sabha shall be listed under the Bihar Rules. It is under the Bihar Act and the Bihar Rules that the Petitioners had been registered as medical practitioners in Ayurvedic and Unani Systems of Medicine.

6. In so far as the eligibility of the Petitioners as registered medical practitioners under the Drugs and Cosmetics Act is concerned, their position is not in doubt. Rule 2(ee) of the Drugs and Cosmetics Rules, 1945 defines a "Registered Medical Practitioner" thus--

2.(ee): "Registered Medical Practitioner" means a person--

(i) holding a qualification granted by an authority specified or notified u/s 3 of the Indian Medical Degrees Act, 1916 (7 of 1916), or specified in the Schedules to the Indian Medical Council Act, 1956 (102 of 1956); or

(ii) registered or eligible for registration in a medical register of a State meant for the registration of persons practising the modern scientific system of medicine excluding the Homoeopathic system of medicine; or

(iii) registered in a medical register other than a register for the registration of Homoeopathic practitioners of a State, who although not falling within Sub-clause (i) or Sub-clause, (ii) is declared by a general or special order made by the State Government in this behalf as a person practising the modern scientific system of medicine for the purposes of this Act; or

(iv) registered or eligible for registration in the register of dentists for a State under the Dentists Act, 1948 (16 of 1948); or

(v) who is engaged in the practice of veterinary medicine who possesses qualifications approved by the State Government.

7. The Petitioners having been entered in the Register maintained by the Bihar Government under the Bihar Act and the Bihar Rules squarely fall within Sub-clause (ii) of Rule 2(ee) quoted above. A case almost identical to that of the Petitioners, decided by D.S. Tewatia, J. Mittal Trading Agency v. State of Punjab and Ors. C.W. 6308/75 decided on 10th November, 1982. supports the stand of the Petitioners in this regard.

8. Although in view of the above finding, the Petitioners would not be held to be violating the provisions of the Drugs and Cosmetics Act, the contention of the Respondents is that since they are not registered medical practitioners under the Punjab Act, they violate the provisions of Section 29 thereof, which is reproduced hereunder:

29. Prohibition to practice:

No person other than a registered practitioner, shall practise or hold himself out, whether directly or by implication, as practising or as being prepared to practise the Ayurvedic System or Unani System.

9. So, the crucial question that comes up for consideration in these petitions is whether without their being registered under the Punjab Act the Petitioners are entitled to practise Indian medicine in the States of Punjab and Haryana.

Section 2(i) of the Punjab Act defines "registered practitioner" to mean "a practitioner, whose name is entered, or deemed to have been entered in the Register." "Register" has been defined in Section 2(h) of the said Act to mean "the new register of practitioners maintained u/s 14". It is on the strength of these provisions that the Respondents contend that the Petitioners not being registered, indical practitioners under the Punjab Act have no right to practise either in the State of Punjab or in the State of Haryana.

10. Here it is worth to take notice of the provisions of the Central Act. Sections 23 to 25 of the Central Act provide as under:

23. The Central Register of Indian Medicine:

1 The Central Council shall cause to be maintained in the prescribed manner, a register of practitioners in separate parts for each of the system of Indian medicine to be known as the Central Register of Indian Medicine which shall contain the names of all persons who are for the time being enrolled on any State Register of Indian Medicine and who possess any of the recognised medical qualifications.

2. It shall be the duty of the Registrar of the Central Council to keep and maintain the Central Register of Indian medicine in accordance with the provisions of this Act and of any orders made by the Central Council, and from time to time to revise the register and publish it in the Gazette of India and in such other manner as may be prescribed.

3. Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872, and may be proved by a copy published in the Gazette of India.

24. Supply of copies of State Register of Indian Medicine:

Each Board shall supply to the Central Council three printed copies of the State Register of Indian Medicine as soon as may be after the commencement of this Act and subsequently after the first day of April of each year, and each Board shall inform the Central Council without delay of all additions to and other amendments in the State Register of Indian Medicine made from time to time.

25. Registration in the Central Register of Indian Medicine:

The Registrar of the Central Council may on receipt of the report of registration

of a person in a State Register of Indian Medicine or on application made in the prescribed manner by any person, enter his name in the Central Register of Indian Medicine, provided that the Registrar is satisfied that the person concerned is eligible under this Act for such registration.

The above provisions in the Central Act make it incumbent on each Board maintaining the State Register of Indian Medicine to supply to the Central Council three printed copies of the State Register after the commencement of the Central Act and subsequently after the first day of April of each year, and each Board shall inform the Central Council established under the Central Act without delay of all additions thereto and other amendments in the State Register of Indian Medicine made from time to time. The Registrar of the Central Council on receipt of report of registration of a person in a State Register of Indian Medicine is required to enter his name in the Central Register of Indian Medicine provided he is satisfied that the person concerned is eligible under the Central Act for such registration.

11. No doubt if the Petitioners are duly registered with the Registrar under the Central Act, they are entitled to practise Indian medicine as registered medical practitioners throughout India including the States of Punjab and Haryana.

12. The legal, medical and other professions are covered by Entry 26 of List III--Concurrent List--contained in Schedule VII to the Constitution of India. Article 254 of the Constitution, inter-alia provides that if any provision of law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in that Concurrent List, then, subject to the provisions of Clause (2) this law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void. The Punjab Act was brought on the statute book in the year 1963. The Central Act was enacted by the Parliament in the year 1970. Thus, any person who is eligible to practise Indian medicine by virtue of the provisions of the Central Act can practise in the States of Punjab and Haryana also.

13. It is for the Petitioners to satisfy this Court that their names are entered in the Register under the Central Act. The learned Counsel for the Petitioners contended that since their names are borne on the list maintained by the Registrar under the Bihar Act, information in this regard must have been sent by him to the Registrar under the Central Act and it is to be presumed that the same must have been added in the Register maintained under the Central Act. It is, however, not that simple. A reading of Sections 23 to 25 of the Central Act makes it clear that before the name of a person is entered in the Central Register, besides being enrolled on a State Register he should possess any of the recognised qualifications, or the Registrar should be satisfied that such person is eligible under the Central Act for registration.

14. Section 17 of the Central Act provides as under:

17. Rights of persons possessing; qualifications included in Second, Third and Fourth Schedules to be enrolled:

(1) Subject to the other provisions contained in this Act, any medical qualification included in the Second, Third or Fourth Schedule shall be sufficient qualification for enrolment on any State Register of Indian Medicine.

2. 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--

(a) shall hold office as Vaid, Siddha, Hakim or Physician or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority;

(b) shall practise Indian medicine in any State;

(c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner;

(d) shall be entitled to give evidence at any inquest or in any court of law as an expert u/s 45 of the Indian Evidence Act, 1872, on any matter relating to Indian medicine.

3. Nothing contained in Sub-section (2) shall affect:

(a) the right of a practitioner of Indian medicine enrolled

on a State Register of Indian Medicine to practise Indian Medicine in any State merely on the ground that, on the commencement of this Act, he does not possess a recognised medical qualification;

(b) the privileges (including the right to practise any system of medicine) conferred by or under any law relating to registration of practitioners 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;

(c) the right of a person to practise Indian medicine in a State in which, on the commencement of this Act, a State Register of Indian Medicine is not maintained if, on such commencement, he has been practising Indian medicine for not less than five years;

(d) the rights conferred by or under the Indian Medical, Council Act, 1956 (including the right to practice medicine as defined in clause (f) of Section 2 of the said Act; on persons possessing any qualifications included in the Schedules to the said Act.

4. Any person who acts in contravention of any provision of Sub-section (2) shall

be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

15. The Petitioners admittedly do not possess one of the recognised qualifications mentioned in the IInd, IIId or IVth Schedule to the Central Act. Thus, they do not come within the fold of Sub-section (1) of Section 17 *ibid.*, They were not enrolled on the list under the Bihar Act on the commencement of the Central Act in 1970. They are, thus, not covered by Sub-section (3)(c) *ibid.* For obvious reasons, they are also not covered by Clauses (c) and (d) of Sub-section (3) *ibid.* No doubt, by virtue of Clause (b) of Sub-section (3) *ibid.*, they are conferred with the privilege under the Bihar Act to practise Indian medicine, but this privilege in the context of the Central Act they can avail of only within the State of Bihar. If their registration under the Bihar Act without their being eligible for enrolment on the Register of the Central Council is to be construed under Clause (b) of Sub-section (3) of Section 17 of the Central Act to mean that they are entitled to practise Indian medicine throughout India, the very purpose of Section 17(2) read with Sections 23 to 25 of the Central Act shall stand frustrated. In my view, therefore to practise Indian medicine in the States of Punjab and Haryana, they should be registered either under the Central Act or the Punjab Act. Since they are not so registered, they are not entitled to the relief claimed for by them in these writ petitions.

16. Consequently, finding no merit in these petitions the same are dismissed with no order as to costs.