
(2013) 02 MP CK 0102
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2227 of 2005

Nizamuddin Ansari

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 12-02-2013

Acts Referred:

Citation : (2013) ILR (MP) 2548 : (2014) 2 MPHT 479 : (2013) 1 MPLJ 546

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : A.P. Singh, for the Appellant; Ved Prakash Tiwari, Panel Lawyer, for Respondent Nos. 1 and 2 and R.K. Verma, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Trivedi, J.—This is a second round of litigation before this Court and the petitioner is aggrieved by the order by which the claim made by the petitioner for his registration as an Ayurved Medical Practitioner, has been rejected. The petitioner approached this Court by way of filing Writ Petition No. 909/2004. The said writ petition was disposed of vide order dated 3-3-2004 with the following directions :--

(a) The petitioner may file fresh application for registration under the M.P. Ayurvedic, Unani Tatha Prakritic Chikitsa Vyavasayi Adhiniyam, 1970.

(b) If such an application is filed by the petitioner before respondent No. 3 for registration under the said provisions, respondent No. 3 shall consider and decide it in accordance with law within a period of three months from the date of receipt of the application.

Now since the order is passed on 23-8-2004 rejecting the claim of the petitioner, this writ petition has been filed. It is contended by the petitioner that he has obtained a degree of Ayurved Ratna from Hindi Sahitya Sammelan Prayag, on 14-6-1989. The said degree was recognized as a degree for the purposes of registration of Ayurved doctors in the respondent No. 3 Council, as was

mentioned in the M.P. Ayurvedic, Unani Tatha Prakritic Chikitsa Vyavasayi Adhiniyam, 1970 (hereinafter referred to as the Act for brevity). An amendment was made in the said Act in the year 1989, which came to be published in the Gazette on 4-11-1989, deleting the degree of Ayurved Ratna or Vaidya Visharad granted by Hindi Sahitya Sammelan Prayag. It is contended that since the petitioner has obtained degree before its deletion from the aforesaid Act, the same was to be treated as recognized by the State Government and, thus, the petitioner was entitled to be registered by the respondent No. 3 as an Ayurved Medical Practitioner. It is contended that such an application was made on 16-8-1989, but the said application was rejected. In view of the law laid down by this Court in the case of Prafulla Shrivastava vs. State of M.P. and others, W.P. No. 1348/2000 decided on 9-8-2000, the petitioner made approach before this Court and this Court disposed of the writ petition with a direction to consider the application of the petitioner afresh. It is contended that if the consideration is done keeping in view the fact that the petitioner has obtained the degree when it was duly recognized by the State Government, the petitioner was entitled to be registered as a Medical Practitioner in Ayurved. However, since this has not been done, the writ petition is required to be filed.

2. The respondents No. 1 and 2 have filed a return adopting the return filed by the respondent No. 3. The respondent No. 3 has filed a detailed return categorically contending that the Indian Medicines Central Council Act, 1970 was promulgated by the Parliament and according to the said Act of 1970, the provisions were made for recognition of the degrees in Ayurved form of Medicines. Only those who were holding the degrees duly recognized were to be registered as Ayurved Medical Practitioner. The petitioner has obtained the degree when it was already recognized, but the same was subsequently de-recognized by the State Government by making an amendment. Even if, the petitioner was holder of such a degree, on the date of application made for registration, the degree was not recognized qualification for such registration and, therefore, rightly the application of the petitioner was rejected. This issue was dealt with by this Court in the case of Kripesh Kumar Shrivastava vs. State of M.P. and others; W.P. No. 1182/2003 decided on 5-3-2003 wherein after examining the Central Law, various laws laid down by the Apex Court, this Court reached to the conclusion that on the date of making of the application, a candidate must be possessing a degree in particular field for his registration, duly recognized by the Council. It is contended that as per the law laid down by this Court, a person is to be recognized as a medical practitioner if he has to his credit a degree duly recognized by the Council. In case such a person is not having the degree duly recognized by the Council, on the date of application, he would not be registered as a medical practitioner. It is further contended that the law is well settled in respect of such a situation and even the degree granted by certain Universities were not to be treated to be valid degree for the purposes of registration of the medical practitioner. This being so, it is contended that the petitioner is not entitled to any relief and the petition is liable to be dismissed.

3. Heard learned counsel for the parties at length and perused the record.

4. This is not in dispute that the petitioner when made the application on 16-8-1989, the degree obtained by him was duly recognized by the State Government as no amendment in the Act was done by that time. However, this particular aspect is considered by the Apex Court in the case of Rajasthan Pradesh V.S. Sardarshahar and Another Vs. Union of India (UOI) and Others, . The Apex Court considering the law made by the Parliament has categorically dealt with the degree and diploma of Vaidya Visharad or Ayurved Ratna from Hindi Sahitya Sammelan Prayag, Allahabad, and has reached to the conclusion that the same were never recognized by the Parliamentary Act or by the Central Council and, therefore, were not to be treated as eligible qualification to register any person as medical practitioner in Ayurved. The Apex Court has not only directed to remove the name of such persons, but has also directed that such person should not be allowed to indulge in any kind of medical practice. In paragraph 45 of the report, the Apex Court has categorically directed thus :

45. In view of the above, Civil Appeal arising out of SLP (C) No. 21043 of 2008 is allowed and it is held that a person who acquired the certificate, degree or diploma from Hindi Sahitya Sammelan Prayag after 1967 is not eligible to indulge in any kind of medical practice. All other Civil Appeals are dismissed. No costs.

5. Even if order was passed by this Court in the case of Prafulla Shrivastava (supra), the said order is not helpful to the petitioner now in view of the law laid down by the Apex Court and, therefore, no benefit could be granted to the petitioner. Of course, amendment was made after making of the application by the petitioner for his registration as a medical practitioner in Ayurved, in the State Act, but once it is held by the Apex Court that any degree or diploma granted by Hindi Sahitya Sammelan Prayag, Allahabad, after 1967, is not requisite qualification to indulge any person in any kind of medical practice, no such direction can be given to the respondents to register the petitioner as a medical practitioner in Ayurved. Secondly, the order was passed on the earlier writ petition of the petitioner as has been indicated hereinabove by which the petitioner was directed to make a fresh application for registration. The fresh application made by the petitioner would only after the order of this Court and, therefore, would be after 4-1-1989. If the application is to be considered, again the petitioner is not to be allowed to practice as a medical practitioner in Ayurved because the degree obtained by him is no longer recognized by the State Government for the said purposes. In view of the aforesaid, the writ petition fails and is hereby dismissed. However, there shall be no order as to costs.