

(1970) 11 GAU CK 0005
In the Gauhati High Court
Case No : Civil Rule No. 165 of 1967

Prabir Kumar Basu

APPELLANT

Vs

Extra Assistant Commissioner, in charge the District Transport
Officer and Others

RESPONDENT

Date of Decision : 26-11-1970

Acts Referred:

Assam Motor Vehicles Rules, 1940 — Rule 16
Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 14, 19(1), 226
Medical Degrees Act, 1916 — Section 2, 3, 7(3)

Citation : AIR 1971 Guw 110

Hon'ble Judges : P.K. Goswami, C.J.; D.M. Sen, J

Bench : Division Bench

Advocate : J.P. Bhattacharjee and B.M. Mahanta, for the Appellant; J.C. Medhi, General and K. Sarma, for the Respondent

Judgement

Goswami, C.J.—The Petitioner in this Civil Rule is a diploma-holder of Licentiate Medical Faculty from the State Medical Faculty of West Bengal recognised under the Indian Medical Council Act, 1956 (Act CU of 1956), hereinafter called "this Act", and the Indian Medical Degrees Act, 1916 (Act of 1916). He is a Registered Medical Practitioner under the Indian Medical Council Act and his registered No. is 2580 of the Assam Medical Council. In course of his professional work, the Petitioner amongst other things used to grant medical certificates to applicants for motor driving licence in Form "C" of the Motor Vehicles Act, 1939 (Act IV of 1939), hereinafter referred to as The Act. These certificates were all along accepted by the authorities.

2. The Petitioner states that on 8th December, 1956 the Extra-Assistant Commissioner-in-charge the District Transport Office, Tezpur, (Respondent No. 1) refused to accept the medical certificate in Form "C" issued by him in favour of Sri Nantoo Das; another certificate issued by him to one kison Coala of Tezpur town on 25th January, 1967 was also reflected by the said authority (Respondent

No. 1). The Petitioner thereafter served a notice u/s 80 of the CPC on the Respondents intending to file a suit for necessary reliefs. In reply to the said notice, the Respondent No. 1 informed that under Rule 16 as amended by the Government Notification No. MTV 349/63/225 dated 76th December .7.964, private medical practitioners holding at least a medical degree are only competent to issue certificates in Form "C" and as the Petitioner was only a Licentiate Diploma holder, the certificate issued by him in Form "C" was not valid. Being aggrieved by the above action of the Respondents, the Petitioner obtained this Rule challenging, the virus of Rule 16(a) of the Assam Motor Vehicles Rules, 1940.

3. We have, therefore, immediately to turn our attention to Rule 16(a) of the said Rules which may be set out:

16. Medical Certificate (a) Licensing Authority shall insist on production of a certificate of fitness in Form. "C" of the First Schedule to the Act from a, registered medical practitioner holding at least a medical degree or from a Government Physician not below the rank of an Assistant Surgeon at the time of initial grant as well as at renewal of a licence to drive transport vehicles. If the Licensing Authority go desires or thinks necessary, he may also insist on a certificate of an Eye Specialist as regards the eye-sight of the applicant. The Licensing Authority may decline to accept a medical certificate grante³ more than one month before the date of application for the grant or renewal of driving licence." In this case, we are only concerned with the first part of Rule 16(a) wherein a limitation has, been introduced with regard to the class of registered medical practitioners. Under this rule now, a registered practitioner of a certain category is alone competent to grant a certificate of fitness in Form "C". This rule has been made by the Governor in exercise of the powers conferred by Sub-section (2) of Section 21 of the Act, and it is pointed out by the learned Advocate-General, Assam, that the power is exercised u/s 21(2)(g), and, according to him, there is no substance in the contention that Rule 16(a) is ultra vires the said provision. We may therefore read the relevant provisions u/s 21:

21. (1) A State Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for-

x x x

(g) the granting by registered medical practitioners of the certificates referred to in Sub-section (3) of Section 7;

x x x

This immediately takes us to Section 7(3), winch may be quoted:

7. (3) Where the application is for a driving licence to drive as a paid employee

or to drive transport vehicle or where in any other case the licensing authority for reasons to be stated in writing so requires, the application shall be accompanied by a medical certificate in Form C, as set forth in the First Schedule, signed by a registered medical practitioner.

Form C, as we have noticed in the First Schedule, has the heading "Form of medical certificate in respect of an applicant for a licence to drive any transport vehicle or to drive any vehicle as a paid employee". Then appears the following in brackets: "To be filled up by a registered medical practitioner". Reading the Form, we find eight items against which the registered medical Practitioner has got to give his opinion while granting the certificate. It also reveals that the medical practitioner concerned has to examine the applicant carefully before he is able to give his opinion with regard to the particulars noted under the eight heads in Form C. The expression "registered medical practitioner" is not defined in the Motor Vehicles Act. But the Indian Medical Council Act, 1956 provides for the re-constitution of the Medical Council of India and the maintenance of a medical Register for India and for matters connected therewith, and it appears u/s 2(h) of his Act recognised medical qualification" In Case any of the medical qualifications included in the Schedules. u/s 2(k) of the same Act, "State Medical Register" means a register maintained under any law for the time being in force in any State regulating the registration of practitioners of medicine. Section 11 of this Act provides for recognition of medical qualifications granted by Universities or medical institutions in India. Section 12 provides for recognition of Medical qualifications granted by medical institutions in countries with which there is a scheme of reciprocity. Section 13 provides for recognition of medical qualifications granted by certain medical institutions whose qualifications are not included in the First or Second Schedule. Section 13(1) provides that the medical qualifications granted by medical institutions in India which are not included in the First Schedule and which are included in Part I of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act. Section 21 provides for maintenance of the Indian Medical Register, which shall contain the names of all persons who are for the time being enrolled on any State Medical Register and who possess any of the recognised medical qualifications. Section 23 provides that the Registrar of the Council may, on receipt of the report of registration of a person in a State Medical Register or on application made in the prescribed manner by any such person, enter his name in the Indian Medical Register, provided that the Registrar is satisfied that the person concerned possesses a recognised medical qualification. Section 27 of this Act deals with the privileges of persons who, are enrolled on the Indian Medical Register and may be read:

Subject to the conditions and restrictions laid down in this Act regarding medical practice by persons possessing certain recognised medical qualifications, every person whose name is for the time being borne on the Indian Medical Register shall be entitled according to his qualifications to practice as a medical practitioner in any part of India and to recover in due course of law in respect of

such practice any expenses, charges in respect of medicaments or other appliances, or any fees to which he may be entitled."

Section 3 of the Indian Medical Degrees Act, 1916, provides for the right to confer degrees, diplomas, licences etc. and the right of the State Medical Faculty of West Bengal to grant the diplomas etc. has not been questioned before us.

4. From the provisions of the Indian Medical Council Act which we have noticed above, it is clear that the Petitioner is a registered medical practitioner recognised under this Act. He comes u/s 13(1) since the State Medical Faculty of West Bengal is included in Part I of the Third Schedule. It is also not denied by the learned Advocate General that the Petitioner is a registered medical practitioner under this Act.

5. It is common knowledge and can be safely presumed that the Petitioner, while undertaking the examination of the applicants for driving licenses, rendering some professional service, would be entitled to is fees, and it is not at all material if in a particular case a medical practitioner grants a certificate without demanding any fees for some reason or other.

6. The most important question that falls for consideration in this Rule is whether the State Government was competent to make the impugned part of Rule 16(a) in exercise of the powers u/s 21(2)(g) . The source of the power to make this rule is derived from Section 21. Section 21(2)(g) of the Act empowers the State Government to make rules providing for the granting by registered medical practitioners of the certificates referred to in Sub-section (3) of Section 7. No rule-making power is conferred on the State Government to prescribe any qualifications for the registered medical practitioners who are a class definitely known, described and recognised under the Indian Medical Council Act. By virtue of the impugned provision, the Government is limiting the qualification of a number of practitioners amongst them only to be entitled to grant certificates in the case of transport vehicles. There is nothing in the parent Act, which is an Act of Parliament, limiting the qualification of a registered medical practitioner in this behalf. What is therefore not found in the parent Act cannot be introduced by the State Government in the shape of a rule, which is in excess of the rule-making power conferred upon it by Section 21(2)(g) of the Act. If this part of the State Government's rule is held to be operative, it will, in effect, amount to an amendment of a provision in the Central Act, viz., Form "C", which clearly shows in the heading that it can be filled up by a registered medical practitioner and not by a particular category of registered medical practitioners. We have, therefore, no hesitation in coming to the conclusion that this part of Rule 16(a), namely, the provision regarding "holding at least a medical degree or from a Government physician not below the rank of an Assistant Surgeon" is ultra vires the provisions of Section 21(2)(g). The State Government exceeded its authority in making the above impugned provision in Rule 16(a). We therefore, In exercise of the powers Under Article 226 of the Constitution, strike down that part of Rule 16(a) reading as follows: "holding at least a medical degree or from a

Government Physician not below the rank of an Assistant Surgeon."

Since the excised portion is easily severable from the rest of the provision in Rule 16(a) and it does not affect the remaining provision of the rule which is workable by itself, there is no need to declare the whole rule as ultra vires.

7. In the above view we have taken, it is not necessary to deal with the contentions of the Petitioner regarding Articles 14 and 19(1)(g) of the Constitution.

8. In the result, the application is allowed and a Writ of Mandamus shall issue directing the Respondents not to give effect to the above-quoted impugned provision in Rule 16(a) of the Assam Motor Vehicles Rules, 1940 as amended by the State Government's Notification dated 16th December, 1964. We will, however, make no order as to costs.

D.M. Sen, J.

9. I agree.