

(1988) 09 RAJ CK 0057

In the Rajasthan High Court

Case No : Civil Writ Petitions No's. 1767 of 1986, 2799, 2800 of 1987 and 908 of 1988

Rajasthan Pradesh Vaidya Samiti

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 23-09-1988

Acts Referred:

Constitution of India, 1950 — Article 254

Evidence Act, 1872 — Section 45

Indian Medical Council Act, 1956 — Section 14, 17, 28

Citation : (1988) 2 WLN 553

Hon'ble Judges : M.B. Sharma, J;I.S. Israni, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.B. Sharma, J.—An identical question of law is involved in these writ petitions and it is as to whether even those who are having medical qualifications which include Ayurvedic qualifications although not included in the Second, Third or Fourth Schedule to the Indian Medical Central Council Act, 1970 (for short, the Central Act), have right to registration in grade "A" or "B" or have a right to practice Ayurvedic Indian System of Medicine? Item No. 25 of list III (Concurrent List) deals with Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List-I, vocational and technical training of labour. It will therefore be clear from the perusal of the aforesaid item 25 of List-III of the Constitution that the powers of the State Legislature and Parliament are concurrent but in case the Parliament has jurisdiction to legislate in accordance with entries 63, 64, 65 and 66 of List-I, and any legislature has been made by Parliament the power under item 25 of List-III shall not be exercised and if exercised it. shall be subject to the powers of the Parliament under List-I. In exercise of the aforesaid powers contained in item No. 25 of List III (Concurrent List), the State Legislature made the Rajasthan Indian Medicine Act, 1953 (for short the State Act). The term "Board has been

defined u/s 3(1)(i) of the State Act which means the Board of Indian Medicine, Rajasthan established u/s 4. The term "enlisted" u/s 3(1)(i) used with reference a practitioner means that the name of such practitioner is for the time being entered in a list. In exercise of the powers u/s 48 of the State Act, Regulations were framed by the Board regulating various matters including registration of Vaidyas etc. Prior to be an entry No. 22 in the Regulations/Rules framed in exercise of the powers vested u/s 48 of the State Act under which persons having qualifications either as Vaidya Visharad or Ayurveda Ratna from Hindi Sahitya Sammelan Prayag were recognised for practising as Vaidya in the State of Rajasthan but under the Regulations published in the Rajasthan Gazette Part IV (Ga) dated January 13, 1964, the new Regulations were framed in supersession of all the earlier Regulations in force and, the schedule was not amended but it cannot be said as to which qualification was to be acquired for registration as Vaidya, which was recognised. It can therefore be taken for the purpose of disposal of these writ petitions that under the State Act the qualifications acquired as aforesaid from Hindi Sahitya Sammelan Prayag were recognised for registration as Vaidya in the State of Rajasthan. It was after the Central Act was passed that to make the Regulations to fall in the line with the Central Act a decision was taken to delete item 22 as aforesaid. A decision was taken by the Board to delete item 22, but it does not appear that the same was notified in the official Gazette.

2. In assailing the decision of the Board deleting the above referred entry 22 from Schedule to the Regulations, Mr. Calla, learned Counsel for the petitioner has contended that the deletion could only be by notification u/s 48 of the State Act and therefore some of the persons who acquired the aforesaid qualifications from the Hindi Sahitya Sammelan It may be stated that some of the petitioners and members of the petitioner society in Writ Petition No. 1767/ 1986, acquired one or other of the aforesaid qualifications from the Hindi Sahitya Sammelan Prayag after the year 1967 and not acquired the qualification in between 1931 to 1967. It is also contended that even under the Central Act the aforesaid degrees acquired by the persons from the Hindi Sahitya Simmelan Prayag from 1931 to 1967 have been recognised and find place in Schedule 2 to the Central Act at S. No. 105. There is no reason why thereafter i.e. after 1967 a departure has been made and the said qualifications are not included in Schedule 2 to the Central Act. The contention of the learned Counsel for the petitioners it that the choice of date and year is arbitrary and has no nexus with the object sought to be achieved and more so when there is no material that there, is difference in the standard of education in 1931 to 1967 and thereafter in the Hindi Sahitya Sammelan Prayag.

3. Each of the petitions is contested by the learned Counsel for the Board and it is contended by Mr. Pareek, learned Counsel for the respondent that after coming into force of the Central Act some of the provisions in the State Act which were in conflict with the Central Act, the subject being of the concurrent list, were impliedly superseded and it is the Central Act which has to hold the field and not

the State Act. The proposition canvassed by Mr. Pareek is not contested and can hardly be contested by the learned Counsel for the petitioners. A reference has already been made to item No. 25 of List III of the Constitution and at this stage reference may also be made to item No. 66 of List I (Union List), It is as under:

Co-ordination and determination of standards in institutions for higher education or research and science and technical institutions.

5. It is therefore for the Parliament which has power to legislate for item No. 66 of List I. and as stated earlier the power of the State to legislate under item No. 25 of List III, is subject to power of the Parliament to legislate for item No. 66 of the List I, Union List. There can be no dispute that even if it is taken for the purpose of disposal of these writ petitions that the subject falls in the concurrent list once the Parliament has legislated in respect of matters of concurrent list and thereafter any State enactment has come into force, the provisions of which are in conflict with the Central legislature the provisions of State legislature in so far as conflict is concerned, will be, said to be impliedly superseded. A reference in this connection is made to Article 254 of the Constitution of India and under Clause (1) thereof, if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by the Parliament which the Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then subject to the provisions of Clause (2), the law made by the 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. Under Clause (2) where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by the Parliament or an existing law with respect to that manner, then the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State. Proviso to that clause provides that nothing in that clause shall prevent the Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State. Therefore, the Central law having been enacted by the Parliament in so far as the provisions of the State law are repugnant to it the provisions which are repugnant to central law, shall not be valid and will be impliedly repealed. In this connection, though hardly any precedent is necessary, reference is made to the case of *Zaverbhai Amaldas Vs. The State of Bombay*,

6. Let us see whether there is repugnancy in the State Act and the Central Act? Section 32 of the State Act deals with the persons entitled to be registered. Every person possessing any of the qualifications mentioned in part A of the Schedule shall subject, to the other provisions of the State Act and on payment of the fee prescribed by Section 33, be entitled subject to such conditions as the

Board may prescribe to have his name entered in the appropriate register as "A" class Vaidya, Hakim or Midwife as the case may be. Under sub Section (2) of Section 32 any person possessing any of the qualifications mentioned in part B of the Schedule shall like wise be entitled on payment of the fee prescribed by Section 33, to have his name entered in the appropriate register as a "B" class Vaidya Hakim, Midwife as the case may be. Then the various sub-sections provide the mode in which the application is to be made and registration is to be done by the Board. u/s 36(1)(a) every practitioner not being a registered practitioner, who proves to the satisfaction of the Registrar that he has been in regular practice for the prescribed number of years in Rajasthan of an Indian system of medicine, surgery or midwifery and (b) every person, not being a practitioner, registered or enlisted under the State Act that he intends to start the practice in Rajasthan of an Indian system of medicine, surgery or midwifery and possesses the requisite qualifications or fulfills the requisite conditions prescribed for such practice shall be entitled to have his name entered in the appropriate list on payment of the fee prescribed by Section 37. It will therefore be clear that such of the persons who have qualifications mentioned in either part A or B of the Schedule to the State Act on application are entitled to be registered to practice in Rajasthan. Such of the persons who does not have the aforesaid qualifications but who could upon the satisfaction of the Registrar that he has been in regular practice for prescribed number of years in Rajasthan of Indian system of medicine, surgery or midwifery, had a right to practice. It has already been said in the earlier part of this order that so far as the qualifications of Vaidya Visharad and Ayurveda Ratna are concerned, as per item No. 22 of the Regulations framed u/s 48 of the State Act they were recognised and only later on, being in conflict with the provisions of the Central Act, the said item No. 22 was deleted, though not notified in the official Gazette. A comparative study of the relevant provisions of the Central Act in respect of registration of Vaidyas will leave no manner of doubt that the provisions contained in Sections 32 and 36 of the State Act are repugnant to the provisions of the Central Act. A perusal of the statement of objects and reasons of the Central Act will show that some States had constituted State Boards or Councils, either by legislation or by executive orders for the purpose of registration of practitioners in the various systems of Indian Medicine and Homeopathy as well as recognition of qualifications There was, how ever, no Central legislation for the regulation of practice or for minimum standards of training and conduct of examinations in these systems of medicine on an all India basis. In the absence of such legislation there was no effective control over the large number of unregistered practitioners in these systems. The Central Council of Health at its 13th meeting in June 1966, while discussing the policy on Ayurvedic education, recommended the setting up of a Central Council for Indian systems of Medicine to lay down and regulate standards, of education and examinations, qualifications and practice in these systems. The main functions of the Central Council were to evolve uniform standards of education in and registration of the practitioners of these systems of Indian Medicine and Homeopathy. The bill which ultimately became the Act,

intended to achieve the aforesaid objects. Section 17 of the aforesaid Central Act is 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 enrollment 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, Sidha, Hakim or Physician or any other office (by whatever designation called) in the Government or in any Institution maintained by a local or other authority;

[b] shall practice 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 effect;

[a] the right of a practitioner of Indian Medicine enrolled on a State Register of Indian Medicine to practice 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 privilege (including the right to practice any system of medicine) conferred by or under any law relating to registration of practitioner 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 practice 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 person any qualification included in the Schedules to the said Act.

[4] Any person who acts in contravention of any 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.

7. A perusal of the above extracted Section 17 of the Central Act will show that only the medical qualification included in the Second, Third or Fourth Schedule shall be sufficient qualification for enrollment on any State Register of Indian Medicine. There is clear prohibition contained in Section 17(2) that 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, shall hold office as Vaid, Sidha, Hakim or Physician or any other office by what ever designation called" in the Govt. or in any institution maintained by a local or other authority and shall practice Indian medicine in any State, shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be duly qualified medical practitioner, 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. It can there fore, be said that unless one holds and possesses, medical qualification included in the Schedules Second, Third or Fourth to the Central Act, cannot be enrolled in the State Register. A reference to entry No. 105 of Schedule 2 to the Central Act has already been made in the earlier part of this order. So far as the qualifications acquired by any of the petitioners or members of the petitioner society, they acquired qualifications of either Vaidya Visharad or Ayurveda Ratna much after 1967. The said entry No. 105 of Schedule 2 to the Central Act is as under:

Hindi Sahitya Vaidya Vishared from 1931 to 1957 Sammelan Prayag Ayurveda-Ratna from 1931 to 1967

8. Thus, such of the persons who acquired qualifications of either Vaidya Vishared or Ayurveda Ratna after year 1967 from the Hindi Sahitya Sammelan are not entitled of be registered in the State Register and are not entitled to practice as Vaidya. We may state that Section 14 of the Central, Act vests powers on Central Government to delete or include any of the qualifications in the Schedule, If such qualifications are not given in the Schedule then the concerned University Board or Institution may apply to the Central Government for such inclusion and the Central Government after consulting the Central Council may by notification in the official Gazette amend the Second Schedule so as to include such qualification therein and any such notification may also direct that an entry shall be made in the last column of the Second Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date. Therefore, when in Schedule 2 item No. 105, one or other referred qualifications acquired in between 1931 and 1967 were recognised as medical qualifications for the purpose of Section 17 then if the University, Board or institution concerned wants that even such qualification acquired from the Hindi Sahitya Sammelan Prayag after 1967 should also be recognised the remedy was for the University, Board or Institution concerned to apply to the Central Government u/s 14 of the Central Act for such inclusion. We

are of the opinion that none of the persons who acquired either Vaidya Visharad or Ayurveda Ratna from the Hindi Sahitya Sammelan Prayag after 1967 is entitled to either registration in the State Register or to practice as Vaidya in Rajasthan. Mr. Calla learned Counsel for the petitioners argued that the choice of the year 1967 arbitrary and no reason has been given as to why that year was chosen and it has no nexus with the object sought to be achieved. We may state that the Indian Medical Council has not been arrayed as party to the writ petitions. Even otherwise, the only remedy available is to the Hindi Sahitya Sammelan Prayag and not to the petitioners for applying to the Central Government to have such inclusion of the said qualifications in the Schedule 2 to the Central Act. Being the expert body, the Central Council has to consider the various factors before ordering the inclusion of medical qualifications in the Schedule 2.

9. Mr. Sharma, learned Counsel for one of the petitioners brought to our notice Section 61 of the State Act and has contended that the effect of the non-registration or non-enrolling the petitioners either u/s 32 or 36 of the State Act is that by virtue of Section 61 of the State Act they cannot practice. We have already said that the provisions made under the State Act in respect of registration are clearly repugnant to the provisions of the Central Act and they must give way to the provisions of the Central Act. We find no merit in the apprehension of the learned Counsel for the petitioners that as a result of this judgment even if the Hindi Sahitya Sammelan applies u/s 14(2) of the Central Act to the Central Government for inclusion of the degrees given by it after 1967, a favourable view may not be taken. The provisions of Section 14 of the Central Act are clear and when an application is filed by the concerned Board, University or Institution, the Central Government will examine it as per the provisions of the Central Act. We have said earlier, that qualifications of the petitioners are not included in Schedule 2 of the Central Act they are not entitled to either registration in the State Register or to practice as Vaidya in Rajasthan and therefore there is no question as prayed by the learned Counsel for the petitioners allowing them to practice as Vaidya in Ayurved in Rajasthan.

10. Consequently, we find no merit in any of the writ petitions. They are hereby dismissed with no order as to costs.