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**(2002) 06 BOM CK 0093**

**In the Bombay High Court**

**Case No : Writ Petition No. 2340 of 1987**

Ramesh Shridharpant Pande

APPELLANT

Vs

Municipal Council and Others

RESPONDENT

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**Date of Decision : 07-06-2002**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 226  
Indian Medicine Central Council Act, 1970 — Section 17  
Maharashtra Medical Practitioners Act, 1961 — Section 25

**Citation :** (2002) 4 ALLMR 804 : (2003) 2 BomCR 867

**Hon'ble Judges :** R.G. Deshpande, J; P.S. Brahme, J

**Bench :** Division Bench

**Advocate :** Z.A. Hag, for the Appellant; P.C. Madkholkar, for respondent No. 1, Anjan De and Kothari, A.G.P., for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

P.S. Brahme, J.—The petitioner has approached this Court challenging the order and resolution of Standing Committee of respondent No. 1 Municipal Council, Achalpur, dated 10-8-1987 selecting the respondent No. 2 for the post of Ayurvedic Vaidya as also the order of Additional Commissioner, Amravati Division, Amravati, dated 28-10-1987 in Revision No. 10-A/87-88 confirming the selection of respondent No. 2.

2. The relevant facts necessary for our consideration for deciding the controversy involved in this petition are as under :-

The Municipal Council, Achalpur, having decided to establish Ayurvedic Dispensary at Achalpur, sought an approval of the Regional Director of Municipal Administration for creation of necessary posts, viz., (1) Vaidya (Ayurved), (2) Compounder (two) and (3) one post of a peon. The qualification for the post of Vaidya (Ayurved) was stated to be Vaidyacharya Degree Course of six years. The Regional Director of Municipal Administration granted requisite approval for creation of the posts on or about 5-11-1986. The Standing Committee of

Municipal Council, Achalpur passed a resolution on 17-3-1987 to fill up the posts in pursuance of the approval of the Regional Director of Municipal Administration.

3. The petitioner took up a job with Municipal Council, Achalpur as a compounder on or about 20-11-1979 and he holds a permanent post as a compounder. According to the petitioner he has acquired a degree as Vaidyacharya having undergone degree course of six years and degree was conferred on him by Nikhil Bharatvarshiya Ayurved Vidhyapeetham, Delhi. It is also the contention of the petitioner that he was given an appointment order dated 22-6-1982 by the Buldana Zilla Parishad as Ayurvedic Vaidya for a period of one year and he was posted at Loni Gurav with Lakhanwada Primary Health Centre. However, petitioner could take up the said appointment because of the ill-health of his father and, therefore, he continued his service in Municipal Council, Achalpur, as a compounder. But then petitioner applied to Municipal Council, Achalpur, for selecting him to the post of Ayurvedic Vaidya as according to him he was holding requisite qualification.

4. The Standing Committee of Municipal Council, Achalpur on 10-8-1987 interviewed in all eight candidate including the petitioner and respondent No. 2 and vide resolution dated 10-8-1987 selected respondent No. 2 Jeevan B. Harne.

5. As petitioner was not selected and much more he was not promoted as claimed by him to the post of Ayurvedic Vaidya but selected respondent No. 2, petitioner preferred revision application before Additional Commissioner, Amravati. That revision application came to be registered as Revision Application No. 10-A/87-88 and the same came to be dismissed. The Additional Commissioner in his order observed that the Standing Committee of Municipal Council, Achalpur has rightly selected respondent No. 2 for the post of Ayurvedic Vaidya as he was holding requisite qualification inasmuch as he has obtained B.A.M.S. degree of the University in Maharashtra for a course of four and half years duration. So far as petitioner was concerned, the Additional Commissioner observed that the petitioner has not established that he has undergone six years degree course of Vaidyacharya. He also found that it was within the discretion of the Standing Committee to select a person for the post of Ayurvedic Vaidya and that the committee has properly exercised the discretion in selecting respondent No. 2 for that post. In view of this, the Additional Commissioner dismissed the revision application. As stated earlier, the petitioner has preferred this petition challenging the order passed by the Additional Commissioner confirming the selection of respondent No. 2 by the Standing Committee of respondent No. 1 Municipal Council, Achalpur.

6. Respondent No. 1 Municipal Council resisted petitioner's claim by filing their submissions. It was contended that the claim of the petitioner was considered and since the respondent No. 2 was found better equipped and better qualified and more meritorious, he was selected. The selection was made by following due process of law. It was also contended that the employer is the best judge for selecting a suitable candidate and there is no legal right in the petitioner for

getting the appointment. It is also submitted that the respondent No. 2 holds B.A.M.S. degree which is recognised by the State of Maharashtra as well as Medical Council and since he was found more suitable for the post, he came to be selected. In such circumstances, no legitimate grievance could be made against the action taken by this respondent. It is further contended that respondent No. 2 has already taken over and he is already functioning. Respondent No. 1 also assailed the acquisition of degree of Vaidyacharya by the petitioner.

7. The respondent No. 2 resisted the claim of the petitioner by his return. The learned Counsel for the respondent No. 2 made his submissions in pursuance of the contentions raised in the return. It is specifically denied that the petitioner obtained degree of Vaidyacharya conferred by the Nikhil Bharatvarshiya Ayurved Vidhyapeetham, Delhi, after undergoing a training of six years. As regards the certificate of registration Annexure G allegedly issued by the Maharashtra Board of Ayurvedic and Unani Systems of Medicine, Bombay, it is contended that this certificate does not show the date on which it was issued and as such the said certificate has no relevance. It is denied that the petitioner was qualified for appointment to the post of Ayurvedic Vaidya on the basis of Ayurvaidyacharya qualification. It is contended that respondent No. 2 was holding B.A.M.S. degree and as such he is more qualified than the petitioner and, therefore, it cannot be said that respondent No. 2 was not entitled for the appointment to the post of Ayurvedic Vaidya. It is further contended that the Municipal Council has selected this respondent as Vaidya there is no illegality whatsoever being committed in passing the said resolution. It is contended that it was within the discretion and wisdom of the Standing Committee to verify the suitability of the candidate and that is based on the performance of the candidate in the interview.

8. We have heard Mr. Haq, the learned Counsel for the petitioner. His contention is that petitioner has acquired degree of Vaidyacharya from a recognised University and that fact is substantiated by the certificate issued by the University conferring the said degree to him. The petitioner has undergone six years course and after having undergone that course, the degree has been conferred on him and as such as per the resolution of the Municipal Council requiring degree of Ayurvaidyacharya of six years duration, petitioner had qualified for the post of Ayurvedic Vaidya. As against that, the qualification of respondent No. 2 was not in accordance with the requirements of the standing committee inasmuch as he was holding degree of B.A.M.S. having undergone course of four and half years duration. Mr. Haq further contended that the Standing Committee was not justified in selecting respondent No. 2 merely on the basis of the performance of respondent No. 2 in the interview when he was not holding requisite qualification required for the post of Ayurvedic Vaidya. He submitted that the selection of respondent No. 2 was arbitrary and not in accordance with law. The action of Municipal Council in not selecting the petitioner was violative of Article 14 of the Constitution, being arbitrary and discriminatory. He also pointed out that the degree conferred on the petitioner by

the University has been recognised by the Maharashtra Board of Ayurvedic and Unani Systems of Medicine, Bombay, inasmuch as petitioner has been duly registered and a certificate has been issued by the Board, that he was registered under the Maharashtra Medical Practitioners Act, 1961 read with section 17 of the Indian Medicines Central Council Act, 1970. Mr. Haq, therefore, submitted that the Standing Committee as well as the Additional Commissioner committed an error in not selecting the petitioner. He urged that the petitioner be allowed and the appointment of the respondent No. 2 be set aside.

9. We have given our anxious thought to the submissions of the learned Counsel. We have also gone through the resolution passed by the Standing Committee dated 10th of August, 1987 Annexure E so also the order passed by the Additional Commissioner confirming the order of selection of respondent No. 2. In fact petitioner claimed that he has acquired necessary qualification as he has obtained degree of Ayurvedacharya after having undergone course of six years. He has produced the certificate issued by the university conferring degree of Ayurvedacharya. He has also produced the certificate showing that he was duly registered by the Maharashtra Board of Ayurvedic and Unani Systems of Medicine, Bombay, as Medical Practitioner, but then this certificate does not show that petitioner has acquired degree of Ayurvedacharya from Nikhil Bharat-Varshiya Ayurved Vidhyapeetham, Delhi. Apart from that the degree certificate which petitioner has produced does not indicate that the petitioner has undergone degree course of six years as contended by him. The Additional Commissioner in his order has elaborately considered as to the authenticity of the qualification acquired or alleged to have been acquired by the petitioner. Respondent No. 1 Municipal Council has also questioned the degree alleged to have been acquired by the petitioner. Therefore, on this count itself, the decision of the standing committee of not selecting the petitioner appears to be correct. The Additional Commissioner has rightly rejected and dismissed the revision application of petitioner and particularly his claim for selection to the post of Ayurvedic Vaidya.

10. We may take into consideration the reasoning given by the Standing Committee for selecting the respondent No. 2. The Standing Committee has found the respondent No. 2 suitable for the post of Ayurvedic Vaidya. It is needless to say that it is the discretion of the selection Committee and once we found that the selection Committee has exercised the discretion properly and there is no perversity in making selection of respondent No. 2, there is no justification to interfere with the decision of the Selection Committee. As such petitioner has no vested right to challenge the selection of respondent No. 2. Therefore, we do not find any substance and merit in this petition. The petition is dismissed. There is no order as to costs.