

**(1953) 07 KL CK 0007**  
**In the High Court Of Kerala**  
**Case No : O.P. No. 45 of 1952**

Reghunathan

APPELLANT

Vs

Travancore Cochin State and Others

RESPONDENT

**Date of Decision :** 20-07-1953

**Acts Referred:**

Travancore Medical Practitioners Act, 1119 — Section 1, 2, 22, 22(1), 23

**Citation :** AIR 1954 Ker 201

**Hon'ble Judges :** V.S. Subramanya Iyer, J

**Bench :** Single Bench

**Advocate :** N. Varadaraja Iyengar, for the Appellant; Govt. Pleader, for the Respondent

**Final Decision :** Dismissed

## Judgement

Subramania Iyer, J.—This is an application for the issue of a writ of certiorari to quash certain proceedings and orders and a writ of Mandamus directing the Respondents to issue appropriate orders.

2. The Petitioner is a medical practitioner in Vakkom. He has been and is even now running a dispensary. He made an application under the Travancore Medical Practitioners Act, 7 of 1119, for registration in Part A for Ayurveda. That was on 11-1-1120, the aforesaid Act having come into force on 1-9-1943 according to the notification dated 31-8-1943 issued by the Government under Sub-section (iii) of Section 1. 4 days later, that is on, 15-1-1120 he made Anr. application for registration in Part B for Allopathy. On 24-12-1945, the first application was allowed and the second was rejected. The order of rejection was passed u/s 25. u/s 32 such an order was subject to an appeal to the Government which, has to be preferred within 3 months of the order. No appeal was preferred either within the time allowed or at any time. On 26-1-1951 he presented an application to the Medical Council stating the grounds why he is entitled to be registered in Part B for Allopathy. That application was not accompanied by the fee of Rs. 10/- as required by Section 24. On 31-1-1951 the Council rejected that application.

Intimation thereof was given to the Petitioner on 14-2-1951. Thereafter on 20-3-1951 the Petitioner appealed to the Government u/s 32 on the basis that the order passed by the Medical Council on 31-1-1951 was an order u/s 31 of the Act. Section 31 reads as follows:

31. (1) Any person aggrieved by the decision of the Registrar regarding any entry in the register may appeal to the Council.

(2) Such appeal shall be heard and decided by the Council in the manner prescribed by regulations.

(3) The Council may on its own motion or on the application of any person, after due and proper enquiries and after giving an opportunity to the person concerned, of being heard, cancel or alter any entry in the register, if in the opinion of the Council, such entry was fraudulently or incorrectly made.

On 4-12-1951 the Government rejected the appeal. This original petition is consequent upon the aforesaid last order of the Government and the prior order of the Medical Council dated 31-1-1951 leading up to it.

3. The right of a medical practitioner to get registered is provided for by Section 23 which reads as follows:

23 (1) An applicant shall be eligible for registration in the system of medicine in which he holds a recognised qualification.

(2) An applicant may be registered under as many systems of medicine as he is eligible under.

Recognised qualification is defined in Section 2, Clause (1) as follows:

(1) "Recognised qualification" means qualification recognised by the Council as sufficient to permit its holder to practise.

While the Council is bound to register an applicant who holds a recognised qualification, it is in the discretion of the Council to register or not to register an applicant under the other provisions of Section 22. The request made by the Petitioner for registration for allopathy was not on the ground that he holds a recognised qualification. The prayer was based on Clause (iii) of Sub-section (1) of Section 22 which provides that-

(iii) every person who within the period of one year from the date on which this Act comes into force, proves to the satisfaction of the Council that he has been in regular practice as a practitioner for a period of not less than five years, preceding the date on which he makes the application for being registered as a practitioner under this Act, shall be eligible for registration.

If, notwithstanding the fact that it was in the discretion of the Council to register or not to register, the applicant felt aggrieved by the order passed by the Council dismissing his application dated 15-1-1120, it was up to him to avail himself of the opportunity afforded by the law by preferring an appeal to the Government u/

s 32. That as already stated, he did not do. Not having done so, the order became final and conclusive and no exception can be taken to it thereafter. The application made by the Petitioner on 26-1-51 to the Council has under the circumstances, to be considered as a fresh application. Under the proviso to Section 22(1), "no practitioner shall be registered under Clauses (ii), (iii) and (v) after the expiration of one year from the date on which this Act comes into force." The Act came into force on 1-9-1943 and one year thereafter elapsed on 1-9-1944. The application presented on 26-1-51 being several years thereafter could not have been allowed and if the Council disallowed it, the Council was doing what it ought to have done. The circumstance that the ground given for rejecting the application is not the expiry of the period within which the applicant should have been registered is immaterial. It is very doubtful, whether the applicant could have approached the Council at all with a fresh application when a previous one stood dismissed by it. Assuming a fresh application could have, been made, it could not have been made after the expiry of the period within which, if allowed, his name could be registered.

The rejection of the appeal by the Government was also right. Section 31 under which the order was taken to have been passed is inapplicable to the case. Section 31 would appear to be a provision made for rectifying entries made in the register fraudulently or incorrectly and do not, at any rate, include an instance of a non-entry owing to the rejection of an application for registry.

4. The result is that there is no ground for any complaint by the Petitioner. The orders sought to be quashed are rightly passed. No writ of certiorari nor of mandamus could be issued on the facts of this case. The Original Petition is therefore dismissed with costs and advocate's fee Rs. 75/-.