

(2016) 04 MP CK 0001

In the Karnataka High Court

Case No : Writ Petition No. 67185 of 2011(GM-RES)

S.C. Nekar

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 22-04-2016

Acts Referred:

Karnataka Ayurvedic, Naturopathy, Siddha, Unani and Yoga Practitioners Registration and Medical Practitioners Miscellaneous Provisions Act, 1961 — Section 34(1)
Karnataka Private Medical Establishments Act, 2007 — Section 3

Citation : (2016) 3 KCCR 2313

Hon'ble Judges : H.G. Ramesh, J.

Bench : Single Bench

Advocate : Sri Ravi V. Hosamani, Additional Government Advocate, for the Respondent Nos. 1 and 3; Sri Ravi V. Hosamani, Standing Counsel, for the Respondent No. 2; Sri R.H. Angadi and Sri Harish S. Nayak, Advocates, for the Petitioner

Final Decision : Dismissed

Judgement

H.G. Ramesh, J.(Oral) - In this writ petition, the petitioner is challenging the notice dated 19.9.2011 (Annexure-B) issued by respondent No. 3 wherein the petitioner has been held to be not qualified to practise medicine, and hence, he is directed to close his medical clinic.

2. The petitioner has also challenged the constitutional validity of the proviso to Section 3 of the Karnataka Private Medical Establishments Act, 2007.

3. This writ petition is almost similar to W.P. Nos. 67132-67133/2011 which is dismissed today by this Court.

4. Learned Counsel appearing for the petitioner submitted that the proviso to Section 3 of the Karnataka Private Medical Establishments Act is unconstitutional as it is contrary to Section 17 of the Indian Medicine Central Council Act, 1970. Therefore, the impugned notice is unsustainable in law.

5. In Karnataka, medical profession is regulated by the Karnataka Ayurvedic, Naturopathy, Siddha, Unani and Yoga Practitioners" Registration and Medical Practitioners" Miscellaneous Provisions Act, 1961 ("the Act"). Section 34(1) of the Act requires to be noticed:

"34. Medical Practitioners not registered under this Act or under certain laws not to practise, etc. - (1) No person other than (i) a practitioner registered under Chapter II of this Act or (ii) a practitioner registered under the Karnataka Medical Registration Act, 1961 or the Karnataka Homeopathic Practitioners Act, 1961 or a practitioner whose name is for the time being borne on the Indian Medical Register maintained under the Indian Medical Council Act, 1956 or (iii) a person whose name is entered in the list mentioned in Section 18, shall practise or hold himself out, whether directly or by implication, as practising for personal gain any system of medicine, surgery or midwifery."

A plain reading of Section 34(1) of the Act extracted above shows that it prohibits all persons, not falling within the three categories referred to therein, from practising any system of medicine for personal gain. It is relevant to state that Medical profession is a matter enumerated in list III (concurrent list) in the Seventh Schedule of the Constitution. As the Act has received the assent of the President on 4 March 1962, the Act will prevail in the State, as laid down in Article 254 of the Constitution, over any law made by Parliament.

6. On being asked by this Court, learned Counsel for the petitioner submitted that the petitioner does not fall under any of the three categories referred to in sub-section (1) of Section 34 of the Act. If that be so, the petitioner is prohibited under Section 34(1) of the Act from practising any system of medicine in the State of Karnataka. Hence, the impugned notice does not warrant interference. The certificates produced as annexures to the writ petition are of no avail to the petitioner in view of the mandatory provision of law extracted above. In view of the above, it is unnecessary to examine the constitutional validity of the proviso to Section 3 of the Karnataka Private Medical Establishments Act. For the foregoing reasons, the writ petition is liable to be dismissed and is accordingly dismissed.

Petition dismissed.