

(2013) 06 BOM CK 0124

In the Bombay High Court

Case No : Writ Petition No. 5567 of 2010

Shri Shivram Krishna Wanmore and Others

APPELLANT

Vs

The State of Maharashtra, Maharashtra State Veterinary
Council, Veterinary Council of India and Union of India

RESPONDENT

Date of Decision : 13-06-2013

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), 32
Evidence Act, 1872 — Section 45
General Clauses Act, 1897 — Section 6
Maharashtra Veterinary Practitioners Act, 1971 — Section 15, 18
Veterinary Council Act, 1984 — Section 18, 2, 23, 23(1), 24

Citation : (2013) 4 ABR 1178 : (2013) 5 ALLMR 869 : (2014) 3 BomCR 420 :
(2013) 4 MhLj 889

Hon'ble Judges : A.S. Oka, J;A.R. Joshi, J

Bench : Division Bench

Advocate : N.V. Bandiwadkar, for the Appellant; M.P. Thakur, AGP for
Respondent No. 1, Shri Nitin Khambodkar for Respondent No. 2 and Shri Rui
Rodrigues, for the Respondent

Judgement

A.S. Oka, J.—The Petitioners were appointed to the posts of Live Stock Supervisor in the employment of the Government of Maharashtra (first Respondent). While the Petitioners were in service, they completed two years diploma course in Animal Husbandry and Veterinary Science conducted by the Animal Husbandry Department of the first Respondent-State of Maharashtra and they were granted "Diploma in Animal Husbandry and Veterinary Science". The Petitioners are relying upon the provisions of the Maharashtra Veterinary Practitioners Act, 1971 (hereinafter referred to as "the said Act of 1971"). It is contended that the diploma held by the Petitioners was one of the prescribed qualifications incorporated in the schedule to the said Act of 1971 and that is how the names of the Petitioners were entered in the register of the Veterinary Practitioners maintained by the first Respondent State of Maharashtra in accordance with Section 15 read with Section 18 of the said Act of 1971. It is

pointed out that the Indian Veterinary Council Act, 1984 (hereinafter referred to as "the said Act of 1984") was enacted by the Parliament. The State Legislature repealed the said Act of 1971. The said Act of 1984 was enforced in the State of Maharashtra with effect from 1st August 1997. It is pointed out that the Veterinary Practitioners' Association of Maharashtra filed Writ Petition No. 4619 of 1997 in this Court. A Division Bench of this Court by a judgment and order dated 26th April 2006 held that the non-graduate veterinary practitioners who were already registered under the said Act of 1971 prior to repeal of the said Act of 1971 have been duly protected under Sub-section (1) of Section 23 of the said Act of 1984 and they need not be covered by limitations put u/s 30 of the said Act of 1984. Only one prayer in the Writ Petition was granted. However, another prayer for declaration that the diploma holders or non-graduate veterinary practitioners should be allowed to be enrolled as veterinary practitioners under the said Act of 1984 was rejected. The Petitioners in the said Petition filed a SLP No. 11880 of 2006 for challenging the judgment and order dated 26th April 2006 to the extent to which the second prayer [prayer clause (b)] was rejected. There was another Petition being Writ Petition No. 4 of 2005 directly filed before the Apex Court under Article 32 of the Constitution of India for challenging the validity of Section 30 of the said Act of 1984. The contention of the Petitioners in this Petition is that while rejecting the Writ Petition and the Special Leave Petition, the judgment of this Court in Writ Petition No. 4619 of 1997 was specifically upheld by the Apex Court. The cause of action for filing the present Petition is that the Petitioners have learnt that the second Respondent the Maharashtra State Veterinary Council has not renewed the registration of the Petitioners.

2. The learned counsel appearing for the Petitioners has taken us through the judgment and order dated 26th April 2006 in Writ Petition No. 4619 of 1997. His submission is that the Division Bench held that the diploma holders who were duly registered under the said Act of 1971 were entitled to the protection of Sub-section (1) of Section 23 of the said Act of 1984 and the prohibition u/s 30 therein shall not apply. He submitted that the State Government did not challenge the judgment of the Division Bench to the extent to which the aforesaid relief was granted to the Petitioners therein but the Petitioners therein had challenged the judgment of the Division Bench to the extent to which the other prayers were rejected. He has taken us through the common judgment and order of the Apex Court in the SLP filed by the Petitioners in Writ Petition No. 4619 of 1997 as well as the Writ Petition directly filed before the Apex Court. The said decision is in the case of Udai Singh Dagar and Others Vs. Union of India (UOI) and Others, . He submits that the judgment of the Division Bench stands and, therefore, the Petitioners who are the diploma holders, who have been registered under the said Act of 1971, are entitled to practice as veterinary practitioners by virtue of Subsection (1) of Section 23 of the said Act of 1984 and that the prohibition u/s 30 shall not apply.

3. The learned counsel appearing for the second Respondent submitted that in

view of the decision of the Apex Court in the case of Uday Singh Dagar and Others (supra), the Petitioners are not entitled to practice inasmuch as the qualifications held by them are not "recognized veterinary qualifications" under the said Act of 1984. He, however, pointed out that by virtue of Notification dated 27th August 2009 issued by the State Government, the Petitioners will be entitled to render minor veterinary services under the supervision and directions of a registered veterinary practitioner. The learned counsel appearing for the third Respondent, the Veterinary Council of India also supported the submissions of the learned counsel appearing for the second Respondent. He pointed out several paragraphs in the decision of the Apex Court in the case of Uday Singh Dagar and Others (supra). By way of rejoinder, the learned counsel appearing for the Petitioners submitted that the second and third Respondents are bound by the directions issued by this Court in Writ Petition No. 4619 of 1997 and, therefore, the Petitioners are entitled to renewal of registration and the grant of reliefs sought in terms of prayer clauses (b) and (c) in this Petition.

4. We have carefully considered the submissions. Section 15 of the said Act of 1971 provides that the State Government shall prepare and maintain a register of veterinary practitioners for the State. Sub-section (1) of Section 18 of the said Act of 1971 reads thus:-

18. Persons entitled to be registered.-(1) Subject to the provisions of this Act, every person shall, if he holds any of the qualifications included in the Schedule, be entitled on application to be registered, on payment of such fee as may be provided by regulations and on giving evidence to the satisfaction of the Registration Officer or the Registrar, as the case may be, of his possession of a qualification entitling him for registration.

5. There is no dispute that with effect from 1st August 1997, the said Act of 1971 stood repealed and the said Act of 1984 became applicable to the State of Maharashtra. It will be necessary to make a reference to the provisions of the said Act of 1984. Clauses (e), (f) and (g) of Section 2 of the said Act of 1984 read thus:

(e) "recognized veterinary qualification" means any of the veterinary qualifications included in the First Schedule or the Second Schedule.

(f) "register" means a register maintained under this Act.

(g) "registered veterinary practitioner" means a person whose name is for the time being duly registered in a register.

6. Sub-section (1) of Section 23 of the said Act of 1984 reads thus:

23. Indian veterinary practitioners register.-(1) The Council shall, as soon as may be after the commencement of this Act, cause to be maintained in such form and in such manner as may be provided by regulations a register of veterinary practitioners to be known as the Indian veterinary practitioners register which shall contain the names of all persons who possess the recognized veterinary

qualifications and who are for the time being enrolled on a State veterinary register of the State to which this Act extends.

7. Sections 24 and 30 of the said Act of 1984 read thus:-

24. Registration in the Indian veterinary practitioners register.-The Secretary of the Council may on receipt of the report of registration of a person in a State veterinary or on an application make in such form and in such manner, as may be provided by regulations, by any such person, enter his name in the Indian veterinary practitioners register;

Provided that the Secretary is satisfied that the person concerned possesses a recognized veterinary qualification.

30. Right of persons who are enrolled on the Indian veterinary practitioners register.-No person, other than a registered veterinary practitioner, shall-

(a) hold office as veterinary physician or surgeon or any other like office (by whatever name called) in Government or in any institution maintained by a local or other authority;

(b) practise veterinary medicine in any State:

Provided that the State Government may, by order, permit a person holding a diploma or certificate of veterinary supervisor, stockman or stock assistant (by whatever name called) issued by the Directorate of Animal Husbandry (by whatever name called) of any State or any veterinary institution in India, to render under the supervision and direction of a registered veterinary practitioner, minor veterinary services.

Explanation.--"Minor veterinary services" means the rendering of preliminary veterinary and, like, vaccination, castration, and dressing of wounds, and such other types of preliminary and or the treatment of such ailments as the State Government may, by notification in the Official Gazette, specify in this behalf;

(c) be entitled to sign or authenticate a veterinary health certificate or any other certificate required by any law to be signed or authenticated by duly qualified veterinary practitioner;

(d) 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 veterinary medicine.

8. Perusal of the first schedule to the said Act of 1984 shows that the diploma obtained by the Petitioners is not a recognized veterinary qualification within the meaning of the said Act of 1984. On plain reading of Sub-section (1) of Section 23 of the said Act of 1984, it is apparent that the names of all persons who possess the recognized veterinary qualifications and who were for the time being enrolled on a State Veterinary Register shall be included in the Indian Veterinary Practitioners Register. Mere enrollment in a State Veterinary Register is not

sufficient to attract Sub-section (1) of Section 23 of the said Act of 1984 inasmuch as such person enrolled on a State Veterinary Register must possess the recognized veterinary qualification within the meaning of Clause (g) of Section 2 of the said Act of 1984. In the present case, the Petitioners do not possess the recognized veterinary qualifications as aforesaid though they are holding a Diploma which is included in the schedule under the said Act of 1971. Therefore, on a plain reading of Sub-section (1) of Section 23 of the said Act of 1984, mere registration in the State Veterinary Register will not give the Petitioners benefit of Sub-section (1) of Section 23 of the said Act of 1984 unless they hold recognized veterinary qualifications.

9. At this stage, it will be necessary to make a reference to the prayers made in Writ Petition No. 4619 of 1997 which read thus:

(a) the declaration that non-graduate Veterinary Practitioners who are registered under the Maharashtra Veterinary Practitioners Act, 1971 (for short to be referred as "the State Veterinary Act") are eligible to practice Veterinary medicine in the same manner and on such conditions as they were prior to coming into force of the Indian Veterinary Councils Act, 1984 ("Central Veterinary Act" for short) in the State of Maharashtra;

(b) to declare that non-graduate Veterinary Practitioners who are eligible to be registered under the State Veterinary Act will be permitted to practice Veterinary medicine in the same manner and on such conditions as they were prior to the coming into force of the Central Veterinary Act in the State of Maharashtra; and

(c) for directions to renew the registration of non-graduate Veterinary Practitioners in the register maintained by the State Council under the State Veterinary Act till the coming into force of the Central Veterinary Act.

10. The Division Bench of this Court in Writ Petition No. 4619 of 1997 in Paragraph 6 of its judgment held thus:

We, therefore, cannot entertain the second prayer made in this petition i.e. for a declaration that the diploma holders or non-graduate holders should be allowed to be enrolled as veterinary practitioners and the relief sought in prayer (a) as reproduced hereinabove is covered by the provisions of Section 23(1) of the Central Veterinary Act and we have already upheld that the existing registered veterinary practitioners whose names appear in the register Part I maintained by the State Veterinary Council are duly protected as such even on enforcement of the Central Veterinary Act in the State of Maharashtra from 1st August 1997.

7. The writ petition is thus allowed partly in terms of the above clarifications and it is dismissed for the relief prayed for in terms of clause (b) above.

(Underlines added)

11. From perusal of the judgment of the Apex Court in the case of Uday Singh Dagar and Others (supra), it appears that the challenge in the SLP filed by the

Petitioners in Writ Petition No. 4619 of 1997 was to the extent to which the prayer clauses (b) was rejected by this Court. Along with the said Special Leave Petition, the Apex Court also decided a Writ Petition directly filed by the Petitioners therein under Article 32 of the Constitution of India for challenging the validity of the Section 30 of the said Act of 1984. It will be necessary to make a reference to the decision of the Apex Court. The Apex Court quoted the prayers made in the Writ Petition No. 4619 of 1997. The Apex Court has made a reference to Section 18 of the said Act of 1971 and in fact the said section has been specifically quoted therein. In Paragraph 20 of the decision, the Apex Court noted the contentions raised before it. Relevant part of the paragraph 20 reads thus:

20. The contention of the writ petitions inter alia is that having regard to the fact that the veterinary practitioners who were possessing "diploma in veterinary science" or "certificate in veterinary science" which were recognized by the State of Maharashtra and some other States they could not have been divested of their right to practice by reason of the Central Act on the premise that they having the requisite qualification had a fundamental right in terms of Article 19(1)(g) of the Constitution to carry on veterinary practice or continue to be in the service of the State and any restriction placed on such rights should not only be a reasonable one but also in public interest. The Central Act, insofar as it purports to take away such right to practice or to be continued in service, thus, imposes an unreasonable restriction interfering with their fundamental right inasmuch as the degree holders alone cannot serve the rural areas.

(Underlines added)

12. In Paragraph 21 of the said decision in the case of Uday Singh Dagar and Others (supra), the Apex Court noted the further submissions made before it.

21. The second leaf of argument both in the writ petition as also in the civil appeal arising out of the SLP is that having regard to the provisions of Section 67 of the Central Act, the provisions of Section 6 of the General Clauses Act having been made applicable, the rights and liabilities accrued prior to coming into force of the Central Act must be held to be saved.

13. In Paragraph 24 of the decision, the Apex Court referred to what is held by this Court in the Writ Petition which shows that the Apex Court was fully aware of what was held by the Division Bench in favour of the Petitioners therein which was not challenged. The Petitioners in Writ Petition before the Apex Court were not degree holders. In Paragraph 69 thereof, the Apex Court held thus:

69. We are not beset with such a situation in the instant case. The right of the petitioners to practice in the field of veterinary practice has expressly been taken away. When such a right has been taken away upon laying down an essential qualification therefor which the petitioners admittedly do not possess, the right of the petitioners to continue to practice despite the fact that they do not fulfill the criteria laid down under the Parliamentary Act or the Central Act would not

survive.

(Underline supplied)

14. In Paragraph 71 of the decision in the case of Uday Singh Dagar and Others (supra), the Apex Court held thus:

71. For the reasons aforementioned, we respectfully agree with the view taken by the High Court.

15. However, in Paragraph 82 of the decision in the case of Uday Singh Dagar and Others (supra), the Apex Court held thus:-

82. For the reasons aforementioned, the writ petition and the civil appeal are dismissed, subject to the aforementioned observations and directions. No costs.

(Underline supplied)

16. Thus, rejection of the SLP and the Writ Petition is subject to the observations and directions issued by the Apex Court. Apart from Paragraph 69 which we have already quoted above, in Paragraph 80, the Apex Court observed thus:

80.The right to practice or right to be in service or right to obtain an appointment in government or semi-government organization would, thus, be dependent upon a person's name being registered therefor in the State or Central register, as the case may be. So long their names are not on the register, the question of their acquiring any vested or accrued right does not arise. In a case of this nature, the court cannot confer a right to practice on the certificate holders despite the fact that their names do not find place in the register maintained by the State Council or the Central Council.

17. In view of what is held in Paragraphs 69 and 80 of the decision of the Apex Court in the case of Uday Singh Dagar and Others (supra), the right of the Petitioners to practice as veterinary practitioners after coming into force of the said Act of 1984 has been taken away as the Petitioners do not possess the recognized veterinary qualifications within the meaning of Clause (e) of Section 2 of the said Act of 1984. Thus, in view of the pronouncement of law by the Apex Court, the decision of the Division Bench and in particular, Paragraphs 6 and 7 thereof which we have already quoted in the earlier paragraphs can no longer be read as a binding precedent.

18. However, we may note here that the State Government has exercised powers conferred by the proviso to Clause (b) of Section 30 of the said Act of 1984 and has permitted the persons holding two years' in-service diploma in Veterinary and Animal Husbandry Science conducted by the Department of Animal Husbandry of the Government of Maharashtra to render minor veterinary services under the supervision and directions of the registered veterinary practitioners. The Petitioners can always avail of the benefits of the said Notification dated 27th August 2009. Moreover, Paragraph 81 of the decision of the Apex Court clearly shows that the employment of the diploma holders in the

service of the State or the Semi-Government Bodies or Local Self Government Organizations has been protected. The Apex Court has also taken note of the Notification dated 27th August 2009 in Paragraph 81 of the said decision.

19. In view of the law laid down by the Apex Court, Subsection (1) of Section 23 of the said Act of 1984 is not applicable to the Petitioners as the second condition therein of possessing recognized veterinary qualifications is not fulfilled by the Petitioner. However, the Petitioners will be entitled to render minor veterinary services as provided in the aforesaid Notification dated 27th August 2009. Subject to what is observed above, the Writ Petition fails and the Rule is discharged with no orders as to costs.