
(1992) 05 CAL CK 0012
In the Calcutta High Court

Subhasis Bakshi and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 15-05-1992

Acts Referred:

Bengal Medical Act, 1914 — Section 15, 18, 20
Constitution of India, 1950 — Article 14, 226

Citation : (1993) 1 CALLT 272

Hon'ble Judges : Khwaja Mohammad Yusuf, J

Bench : Single Bench

Advocate : Arun Prokash Chatterjee and R. Bhattacharyya, for the Appellant; U.C. Ukil and Chabbi Das, for the Respondent

Final Decision : Allowed

Judgement

Khwaja Mohammad Yusuf, J.—The writ petitioners, 55 in number, have underwent the Diploma course of Community Medical Service in Medical Institutions duly recognized by the State Medical Faculty of West Bengal, namely, the Institute of Community Medical Services at Purulia, Midnapore, Behrampur, Darjeeling, Jalpaiguri and Balurghat. Their case is that they underwent a period of certified period extending over two years and nine months of academic study from the date of the commencement of their study of the subjects comprising the medical curriculum to the date of completion of the examination followed by three months" compulsory internship at a recognized Health Centre. The first nine months were occupied in the study of the Phase-I group of subjects and the rest was occupied in the study of Phase-II group of subjects. A Notification dated 10th October, 1980 issued by the Department of Health, Government of West Bengal, published in the Calcutta Gazette Extraordinary of 15th October, 1980 contained Article 6F under Part-III of the Statute of the State Medical Faculty, West Bengal, providing that the students who would undergo and complete the requisite course of studies in medicine/medical science as defined and detailed in the annexed regulations for the Diploma course in Community Medical Service in the Medical Institutions duly recognized by the State Medical Faculty shall be

admitted into the examinations in the subjects laid down in the said Regulations and students passing the examinations shall be granted diploma with abbreviation "Dip. CMS" by the governing body of the State Medical Faculty. It is also provided that the governing body should maintain a register of such diploma holders with a view to regulating, supervising and restricting their practice for the present. The petitioners state that initially in the regulation the form of diploma was given in Appendix VII with the recitation "and we accordingly grant him this Diploma in Medicine for Community Physicians of this Faculty." But the amendment by Notification dated 10th October, 1980 changed it as Diploma Course in Community Medical Service (Dip. CMS). The petitioners were awarded the Diploma in Community Medical Service but in spite of that the petitioners were not permitted to treat diseases among rural population in terms of clause I(iv) of the Regulations for the Diploma Course in Community Medical Service. The petitioners moved a writ application before the Hon'ble Mr. Justice Suhas Chandra Sen being CO. No. 7052 (W) of 1989 and on 11th July, 1989 His Lordship passed an order when Mr. Ukil stated before the Court that the petitioners would be granted diplomas in Appendix VII as amended by Notification dated 10th October, 1980 as Diploma in Community Medical Service and assured the Court that the successful candidate would be provided with jobs in accordance with the State Policy of the Government. On the basis of the submission made by the learned Government Pleader the application was disposed of. The petitioners preferred an appeal being F.M.A.T. No. 2111 of 1989. The Division Bench consisting of Chief Justice P. D. Desai and Shyamal Kumar Sen, J. disposed of the appeal. In the said appeal the Secretary of the State Medical Faculty filed an Affidavit making the following statement in paragraph 4 thereof :

"I state that such corrigendum and/or change in the nomenclature will not change the rights and privileges enjoyed by the Diploma Holders under the scheme introduced for the appellants/petitioners by the State Medical Faculty of West Bengal."

2. Their Lordships held that paragraph 4 held out an assurance that the persons holding the Diploma and employed to man .the Health Centres and Subsidiary Health Centres would be competent to treat any diseases among rural population including communicable diseases, malnutritional states, snake bites, insecticidal poisoning, etc. as provided in sub-clause (iv) of the Schedule to the Regulations. It was also stated by Their Lordships that the learned Government Pleader stated that this precisely was intended to be conveyed by the aforesaid averment. Their Lordships then held that :

"In our opinion, in the light of clarifications made by and on behalf of the State Medical Faculty and the State-respondents in the course of this affidavit tendered in the Court today, there should be no reason for the appellants to entertain any kind of apprehension with regard to their being able to perform functions and duties which they are entitled to do under the Regulations as amended vide

notification dated October 10, 1980."

3. One of the grievances of the appellants was that there was no Register of the Diploma Holders maintained as required by Statute 6F. The learned Government Pleader's stand was no such register was being maintained. The learned Government Pleader submitted before the Division Bench that the Register will be prepared and maintained in accordance with and in terms of Statute 6F and that necessary formalities would be completed before 31st March, 1990, but at the same time he made it clear that the mere maintenance of Register and giving of the registration number would not entitle the Diploma Holders to undertake private practice as Physicians. Thereupon Their Lordships held :

"The Court has noted aforesaid assurance and directs the preparation of the Register in terms of the Statute 6F of the notification dated October 10, 1980 on or before March 1990. The Register would be opened to all the Diploma Holders for inspection and they would be permitted to note the serial number at which their names are registered."

The appeal was disposed of by the above order.

4. The petitioners' grievance is that in spite of the order of the Appellate Court the Government did not implement the order. The petitioners were not allowed to treat at the Health Centre common diseases among rural population as was indicated in the Appellate Court's order and their names were not entered in any register in terms of Statute 6F nor such Register was opened. The petitioners made a representation before the Health Secretary on 27th July, 1990. On 21st November, 1990 the Director of Health Services by Memo dated 21st November, 1990 prescribed job description of the Community Health Officers but the order of the Division Bench was not complied with.

5. An application for contempt for violation of the Division Bench's order was filed against the Secretary, Department of Health and Family Welfare, Government of West Bengal, and the Secretary, State Medical Faculty and State Medical Council. The Department of Health and Family Welfare assured the Court that in place and stead of Memo dated 21st November, 1990 a fresh instruction would be issued on or before 10th December, 1990 in terms of the observation made in the judgment of the Appeal Court dated 26th February, 1990. The Appellate Court was pleased to clarify on 23rd November, 1990 as under :

"The fresh instruction will clarify that the persons holding the diploma in question and employed to man the Health Centres and Subsidiary Health Centres would be competent to treat common diseases among rural population including communicable diseases, malnutritional states, snake bites, insecticidal poisoning etc. as provided in sub-clause (iv) of the Schedule to the Regulations. It would be clarified at the same time that the Diploma Holders would not be entitled to undertake private practice as Physicians and to give treatment for the aforesaid diseases as such."

The Secretary of the State Medical Faculty and the State Medical Council assured the Court that a new Register would be prepared in terms of the order of the Appellate Court on or before 18th December, 1990 and it would be produced before the Court on 20th December, 1990.

6. The contempt application was ultimately assigned to the Hon'ble Mr. Justice Ajit Kumar Sengupta and the Hon'ble Mr. Justice Shyamal Kumar Sen and the Joint Director of Health Services by order dated 6th March, 1991 "cancelled the Director's order dated 10th December, 1990. Their Lordships finally disposed of the matter on 7th May, 1991 by holding that under the Statute of the State Medical Faculty no form has been specified for Register to be maintained for Diploma Holders like the petitioners and the Court directed that the State Medical Faculty should maintain Register in Form No. iv (vide Rule No. 1) given in Appendix to the Rules under clause (h) of sub-section 2 of Section 33 of the Bengal Medical Act, 1914. In this connection the petitioners referred to the State Medical Faculty which was established by resolution dated 11th August, 1914 adopted by the Govern or-in-Council. It is the further case of the petitioners that by Notification dated 17th May, 1915 of the Government of Bengal, Financial Department, recognized the examination of the State Medical Faculty by the Bengal Council of Medical Registration it provided that the title, certificate of qualification, diploma or licence of the State Medical Faculty awarded to any person subject to the provision of the Act entitled the holder of such title, certificate of qualification, diploma or licence to have their names entered in the Register of Registered Practitioners and in this connection the petitioners referred to Sections 15 and 18 of the Bengal Medical Act, 1914, During the hearing of the contempt application, that it was submitted that in accordance with Section 15 read with Section 18 of the said Act and the Notification dated 17th May, 1915 the petitioners were entitled to have their names entered in the Register of Registered Practitioners maintained by the Bengal Council of Medical Registration but Their Lordships observed that they could not give to the petitioners the relief wanted in the contempt jurisdiction. The petitioners' contention is that they have secured from the High Court their right to treat common diseases among rural population including communicable diseases, malnutritional states, snake bites, insecticidal poisoning, etc. It is contended that the petitioners have also secured consequential right of giving certificates of sickness and even of death from snake" bite which was sought to be taken away from them by Notification dated 21st November, 1990 but item 17 of the said Notification was ultimately cancelled.

7. The case of the petitioners now is that they are entitled to have their names registered in the Register of Registered Practitioners maintained by the Bengal Council of Medical Registration u/s 15 of the Bengal Medical Act, 1914 but it is denied to them. On their representation the Registrar of West Bengal Medical Council wrote to them on 21st January, 1988 that the Council has not received any proposal from the State Government for recognition of Diploma in Community Medical Service (Dip. CMS) qualification for the purpose of

registration under the Bengal Medical Act, 1914 as amended. The petitioners have moved the writ application for relief by directing the respondents to have their names as well as of all other holders of Diploma in Community Medical Service entered in the Register of Registered Practitioners maintained u/s 15 of the Bengal Medical Act, 1914 and to implement the Notification dated 17th May, 1915 issued under clause (i) of Section 18 of the Bengal Medical Act.

8. Mr. Arun Prokash Chatterjee appearing for the petitioners submitted that the main reliance of the petitioners is on the Notification dated 17th May, 1915 issued by the Government of West Bengal, Finance Department. u/s 18(i) of the Bengal Medical Act, 1914. According to the aforesaid Notification the Governor-in-Council was pleased to direct that a Title, Certificate of Qualification, Diploma or Licence, granted by the Governing Body of the State Medical Faculty, to any person shall entitle the holder of such title, certificate of qualification, diploma or licence, to have his name entered in the Register of the Registered Practitioner maintained u/s 15 of the Act. The petitioners have been granted Diploma in Community Medical Service by the State Medical Faculty and, accordingly, the names of the petitioners must be entered in the Register of Registered Practitioners maintained u/s 15 of the Act. The respondents cannot avoid the obligation imposed by the Notification of 17th May, 1915 because it is still valid and has not been rescinded or modified. On this submission itself, Mr. Chatterjee said, the Rule is bound to succeed. Now it will be better to place the defence argument and thereafter the reply thereto by Mr. Chatterjee which was quite exhaustive.

9. Mr. Subodh Ukil, the learned Government Pleader, did not file Affidavit-in-Opposition but made a forceful defence submitting that the Schedule underlined qualifications entitling to registration under the Act and under "Qualifications" specified in the undermentioned list and under item 2 thereof contains various descriptions of the qualification upto 6-E. This description would undergo to mean that all candidates who have been practising western system of medicine i.e. Allopathy, their names were required to be registered in the Register of Registered Practitioners u/s 15 of the Bengal Medical Act, 1914. The amendment through Notification dated 10th October, 1980 was done by inserting Article 6F. According to Mr" Ukil 6F contains that the students would undergo and complete the requisite course of studies in Medicine/Medical Science for the Diploma Course in Community Medical Science recognized by the State Medical Faculty and after passing the examination they would be granted Diplomas with the abbreviation "Dip. C.M.S." by the Governing Body of the said Faculty ; and that the Governing Body should maintain a Register of such Diploma Holders with a view to regulating, supervising and restricting the practice for the present. It is further submitted that the Register of the Diploma Holders is completely different from the Register of the Registered Practitioner. The petitioners are not seeking the right of private practise as appeared from the judgment of the Division Bench headed by Chief Justice Desai in F.M.A.T. No. 2111 of 1989. Accordingly the submission is that on that very account the petitioners were not entitled to be

registered in the Register of Registered Practitioners. The further submission is that u/s 17 of the Act any of the qualification referred to in the Schedule of the said Act should be subject to the provision contained and on payment of the fees one should be entitled to have his name entered in the Register of Registered Practitioners. The qualification of the writ petitioners were not referred to in the Schedule to the said Act and as such they are not entitled to have that benefit under 6F. Section 18 of the Act provides that the Medical Council should be satisfied that any qualification certified by any University, Medical Corporation, Examining Board or other Institutions, was sufficient guarantee to the person possessing such qualification and skill required for efficient practice of medicine. The Council if think fit they would direct publication, of a Notification in the Calcutta Gazette that possession of such certificate entitled any person to have his name entered in the said Register of Registered Practitioners. On the contrary the West Bengal Medical Council at its meeting held on 9th August, 1988 decided that the Council regretted medical registration to the candidates who passed the Diploma in Community Medical Service Examinations which was exclusively connected with the Community Health Care with preventive bias. The resolution further said that the Government should arrange upgrading of their status in the service on the basis of performance in the field of Preventive and Community Health Care. Mr. Ukil set out during his submission six objectives of the Notification dated 10th October, 1980 published in the Calcutta Gazette Extraordinary on 15th October, 1980 and those are quoted as under :

"Objectives :

(i) To produce medical training to a group of personnel to man the Health Centres and Subsidiary Health Centres.

((ii) Emphasis is to be given on comprehensive Health Care of the Community including promotive preventive and curative aspects.

(iii) A candidate after successfully completing the course of studies will act as a Team Leader of various categories of Field Workers.

(iv) Training in curative medicines to be imparted in such a way that after completion of training the trainees can treat common diseases among rural population including communicable diseases, malnutritional states, snake bite, insecticidal poisoning etc. Instructions on diseases requiring sophisticated treatment not practicable in Health Centres will be restricted to the barest minimum. However such candidates should learn to recognise signs and symptoms of more serious diseases requiring special treatment at referral hospitals (e.g. Sub-divisional or District Hospital) so that such patients may be sent early to these institutions.

(v) The training in promotive and preventive aspect of Health Care including Family Planning and Child Care should be undertaken by actual participation in the field work under the supervision of their teachers along with the field workers.

(vi) A substantial part of the training will be conducted in Health Centres where they will reside along with their teacher in each term of their course so that they are exposed to the field condition from the beginning of their course."

10. According to the submission of the learned Government Pleader it appeared that the petitioners after completion of the course of studies would act as Team Leaders of various categories of Field Workers not entitled to private practice as it was not the intention of the Government. The intention of the Government was to provide medical training to man the Health Centres and Subsidiary Health Centres for assisting the doctors of the Centres and to do the field work and to act as Team Leaders of various categories of Field Workers. They were also required to learn to recognize symptoms of serious diseases which required special treatment at Sub-Divisional or District Hospital so that the patients might be sent earlier to Hospital. It is further contended that the writ petitioners accepted the said terms and conditions of study including the condition that after completion of study and granting of the Diploma their names would be entered in a Register meant for the Diploma Holders with a view to regulating, supervising and restricting their practice. It is further submitted that from the Division Bench decision presided over by the Hon'ble Mr. Justice Ajit Kumar Sengupta the writ petitioners could not get any relief in the contempt application save and except a direction upon the State Medical Faculty to maintain the Register of Diploma Holders in term of Article 6F in the form indicated in the said order. Mr. Ukil further submitted that the State Government issued job description of Community Health Service Diploma Holders on 21st November, 1990. In the said job description the details of responsibilities to be performed by the Diploma Holders were to be done and over all supervision of some Medical Officers. The job description was mainly for the control of communicable diseases in the villages and to assist B.M.O.H. or any other Medical Officer. The said Notification of 21st November, 1990 of the job description was partially modified to the extend that the Diploma Holders employed to man the Health Centres would be competent to treat common diseases among rural population but they would not be entitled to undertake private practice as Physicians. The learned Government Pleader further submitted that Mr. Chatterjee for the petitioners has relied on the Notification of 17th May, 1915 but the said Notification did not apply to the writ petitioners because (a) the writ petitioners are not Registered Practitioners or Medical Practitioners or Physicians and their qualification is not sufficient for Medical Practitioners as the qualification of the petitioners never satisfy that they possess such qualification and knowledge as required u/s 18 of the Bengal Medical Act, 1914 ; (b) The Diploma or Licence mentioned in the Notification was applicable only to those persons who were granted on the relevant date of the Notification and not thereafter ; and (c) Section 18 provides that the Council if satisfied that the qualification certified by any University, Medical Corporation, Examining Body, etc. that is sufficient guarantee that persons possessing such qualification possessed the knowledge and skill requisite for the efficient practice of medicine. But in the instant case there is no such evidence and unless the

satisfaction comes the said Notification could not be applicable to them. The Government Pleader concluded by submitting that if the writ petitioners are willing to practice like Medical Practitioners in that event they would have to gather and obtain further knowledge and skill of Medical Science by further study like M.B.B.S. course or further medical course which could give them the right to register their names in the Register of Registered Practitioners.

11. III his Reply Mr. Chatterjee exhaustively dealt with the points raised by the learned Government Pleader. With reference to the argument of the State that the petitioners are not Doctors but only passed Para-Medical Course, Mr. Chatterjee referred to the wordings of Article 6F and put a question whether the words indicated therein mean that the course was a Para-Medical one ? He further said that the expression "medicine" u/s 2(b) of the Act of 1914 means modern scientific medicine and includes surgery and obstetrics. In the Calcutta Gazette Extraordinary of 15th December, 1980 Appendix I relates to "Syllabus for the Short Term Course for Community Physicians." The argument is that the word "Physician" has literally no contradiction with the word "Doctor." Both words are interrelated in the profession. The petitioners are therefore Community Physicians and must come under the purview of Section 31 of the said Act. It was argued by the State that "the Registration is meant for Medical Practitioner and not for Dip. C.M.S. On this point Mr. Chatterjee submitted that the Resolution dated 17th May, 1915 entitled the holders of the Diploma granted by the Governing Body of the State Medical Faculty to have their names entered in the Register of the Registered Practitioners under the Act of 1914. It is submitted that a Physician or a Doctor employed in a Health Centre or a Hospital has to do Medical Practice within the Centre or the Hospital although he is debarred from private practice as per Service Rules. But at the same time "medical practitioner" does not mean private practitioner only. Mr. Chatterjee submitted frankly that the petitioners never want to do private practice but only they want Registration Number. The defence that Article 6F is not applicable to the petitioners is without any foundation according to the learned Advocate for the petitioners. The said Article is a part and parcel of the Statute of the State Medical Faculty. The learned Advocate for the petitioners submitted that the Division Bench presided over by Hon"ble Mr. Justice Ajit Kumar Sengupta provided special form to maintain Register for the Diploma Holders but before this Court the prayer of the petitioners is that the Bengal Medical Council be directed to enter the petitioners' names in the Register of Registered Practitioners under Bengal Medical Act, 1914. As such this writ petition has nothing to do with the previous order of the Division Bench headed by Mr. Justice Sengupta. Further the order of the Division Bench was passed in a contempt proceeding because the State as well as the State Medical Faculty and Bengal Medical Council were not implementing the order of Chief Justice Desai and the Hon"ble Mr. Justice Shyamal Kumar Sen dated 26th February, 1990. The order of the Division Bench presided over by Chief Justice Desai to allow the petitioners to treat common diseases with other directions was flouted. It must be made clear that Their Lordships of the Division

Bench consisting of Mr. Justice Ajit Kumar Sengupta and Mr. Justice Shyamal Kumar Sen was pleased to observe that as the entry in the Register of Medical Practitioners maintained under Bengal Medical Act, 1914 was not the subjectmatter of the writ proceeding out of which the contempt had arisen, therefore, the Division Bench could not make any order in this respect in the contempt proceeding. But the petitioners were not debarred to move a fresh writ application for the redress of their grievances.

12. Mr. Chatterjee while concluding his reply cited some hard facts relating to communicable diseases. According to him tuberculosis, typhoid, cholera, malaria, helmenthiasis, jaundice, etc. are communicable diseases which are very common among village people. The Diploma Holders are entitled to treat these diseases and they are required to prescribe medicine as well. Now take the disease of Helmenthiasis or Worm-Infestation which is very common in rural population and to treat this disease anti-helmenthic medicine are prescribed. It is well-known that Mebex Tablet is one such medicine for this particular disease. On the packet of this medicine the following warning is printed :

"Schedule H Drug Warning-

to be sold by retail on the prescription of a Registered Medical Practitioner only."

Now unless and until the petitioners are registered practitioner how they can prescribe this medicine is a logical argument by Mr. Chatterjee. Next the learned Advocate referred to the Pharmacy Act, 1948 wherein by virtue of Section 42 the prescriptions of the petitioners would not be honoured and served by the Pharmacist. This way the object of the petitioners studying the course of Community Physicians shall be frustrated. Similarly, if a snake bite patient died, a petitioner shall not be able to give any death certificate though he is allowed to treat a snake bite case. The question arise if one of the petitioners is to treat a snake bite case then who will issue the death certificate in case the patient is dead. Similarly the question is Insecticidal Poisoning (homicidel or suicidel) can be attended by the petitioners. But the Court of Law may not allow a Diploma Holder to appear as witness without being a Registered Medical Practitioner under the Bengal Medical Act.

13. I have gone through the facts of the case and the contentions of the respective parties. The grievance of the petitioners is that they are holders of Diploma in Community Medical Service and they are entitled to have their names entered in the Register of Registered Practitioners maintained u/s 15 of the Bengal Medical Act, 1914. Section 20 of the Act of 1914 says that every person who applies to have his name entered in the Register of Registered Practitioner (a) must satisfy the Registrar that he is possessed of some qualification referred to in the schedule, as altered by notifications (if any) issued u/s 18. But clause (b) of Section 18 says that any qualification referred to in Article 2 of the Schedule is not a sufficient guarantee as per clause (a). Section 18(i) makes it clear that in case of (b) the possession of such qualification shall not entitle any

person to and in my opinion it is necessary to examine whether there is some conflict between Section 18 and Section 20 of the Act or Article 6F and the Notification of 17th May, 1915 changed the entire situation. Let me quote Article 6F as notified on 10th October, 1980 by the Department of Health and Family Welfare, M.A. Branch, Government of West Bengal and published in the Calcutta Gazette Extraordinary on 15th October, 1980, By this amendment the following Article 6F has been inserted :-

"Students who will undergo and complete the requisite course of studies in Medicine/Medical Science (as defined and detailed in the Schedule to this article and hereinafter called as the said Regulations for the Diploma Course in Community Medical Services) in Medical Institutions, duly recognized by the State Medical Faculty of West Bengal, shall be admitted into the examinations in the subjects laid down in the said Regulations and the students passing the examinations shall be granted Diploma with the abbreviation "Dip. C.M.S.", by the Governing Body of the aforesaid Faculty.

The Governing Body of the aforesaid Faculty shall also maintain a Register of such diploma holders with a view to regulating, supervising and restricting their practice, for the present."

14. It must be borne, in mind that the Regulations for the Diploma Course in Community Medical Service contain certain objectives of which the first four are of vital importance and are quoted hereunder :-

"(i) To provide medical training to a group of personnel to man the" Health Centres and Subsidiary Health Centres ;

(ii) Emphasis is to be given on comprehensive Health Care of the Community including promotive, preventive and curative aspects ;

(iii) A candidate after successfully completing the course of studies will act as a Team Leader of various categories of Field Workers ;

(iv) Training in curative medicines is to be imparted in such a way that after completion of training the trainees" can treat common diseases among rural population "including" (emphasis given) communicable diseases, malnutritional states, snake bite, insecticidal poisoning, etc. Instructions on diseases requiring sophisticated treatment not practicable in Health Centre will be restricted to the barest minimum. However such candidate should learn to recognize sign and symptoms of more serious diseases requiring special treatment at referral hospital (emphasis given) (e.g., Sub-divisional or District Hospital) so that such patients may be sent early to these institutions."

The duration, of course, for every student is two years and nine months of cccademic years from the date of commencement of his study for the subjects comprising the medical curriculum to the date of completion of the examination followed by three months of compulsory internship at a recognized Health Centre. There are Two Phases of group subjects :-Phase 1 consists of Basic

Human Anatomy, Basic Human Physiology and Community Medicine ; and in Phase II the subjects include Medicine including Pathology and Therapeutics ; Surgery including Eye, E.N.T. & Dentistry and Forensic Medicine ; Obstetrics and Gynaecology including F.P. and Child Welfare ; and Community Medicine. Further the subjects which was taught to the petitioners are included in Appendix I of the Syllabus relating to Short Term Course for Community Physicians including demonstration and practical classes. The Gazette Notification of 15th October, 1980 gives an exhaustive description relating to the training and the course to be taught for Diploma in Community Medical Services except Appendix VII where the form of diploma is not correctly put in and which was rectified thereafter by Notification dated 23rd June, published in the Calcutta Gazette Extraordinary of 24th September, 1987 correcting the diploma as "Diploma in Community Medical Service" instead of "Diploma in Medicine for Community Physicians".

15. Section 15 of the Act directs the Council to make orders for regulating the maintenance of a Register of Registered Practitioners, and by virtue of Section 18(1) of the Bengal Medical Act, 1914 and upon the recommendation of the Bengal Council of Medical Registration a Notification dated 17th May, 1915 was issued as under :-

"The Governor-in-Council is pleased to direct that a title, certificate of qualification, Diploma or Licence granted by the Governing Body of the State Medical Faculty, to any person shall subject to the provisions referred to in the said clause entitled the holder of such title, certificate of qualification, Diploma or Licence to have his name entered in the Register of Registered Practitioners maintained u/s 15 of the Act."

It must be borne in mind that the word "diploma" has been used in the Notification of the Government of Bengal, Finance Department, of 17th May, 1915 without any prefix or suffix.

16. The West Bengal Council has been established u/s 3 of the Act as per amendment. The purpose of the Bengal Medical Act, 1914 was to provide for the registration of Medical Practitioners in Bengal and for matters connected therewith. The expression "medicine" has been defined in Section 2(b). The said Section 18 of the Act of 1914 is quoted as under :-

"If the Council are satisfied-

(a) that any qualification certified by any University, Medical Corporation, examining body or other Institution within India is a sufficient guarantee that persons possessing such qualification possess the knowledge and skill requisite for the efficient practice of medicine, or

(b) that any qualification referred to in Article 2 of the Schedule is not a sufficient guarantee as aforesaid, they may make a report to the effect to the Local Government, who may, if they think fit, thereupon direct, by notification in the Calcutta Gazette.

(i) in case (a)-that the possession of such qualification shall subject to the provisions hereinafter contained and on payment of such fee as may be prescribed in this behalf by regulation made u/s 33, entitle any person to have his name entered in the Register of Registered Practitioners, or

(ii) in case (b)-that the possession of such qualification shall not entitle any person to have his name entered in the said register ; and the Schedule shall thereupon be deemed to be altered accordingly."

17. Now the Notification No. 1076 dated 17th May, 1915 issued by the Government of West Bengal, Finance Department, was so done "on the recommendation of the Bengal Council of Medical Registration" and there it was directed :

"that a title, certificate of qualification, Diploma or Licence granted by the Governing Body of the State Medical Faculty, to any person shall subject to the provisions referred to in the said clause entitle the holder of such title, certificate of qualification, Diploma or Licence to have his name entered in the Register of Registered Practitioners maintained u/s 15 of the said Act."

18. Section 15 of the Act empowers the Council to make orders for regulating the maintenance of a register of registered practitioners and such register should be kept in the form as prescribed by Rule u/s 33. Now the entire Section 18 of the Act must be read in the context of the Notification of 17th May, 1915 and is to be seen whether the petitioners should be entitled to get the relief of having their names entered in the Register of Registered Practitioners u/s 15 of the Bengal Medical Act, 1914. It must be borne in mind that the Diploma in Community Medical Service was granted by the State Medical Faculty of West Bengal on being successful in the examination and as such why there should be a bar for such Diploma Holders from entering their names in the Register of Registered Practitioners. The pertinent question is whether the respondents can avoid this obligation imposed by the Notification of 17th May, 1915 which is still valid and not rescinded or modified. As I have pointed out earlier while describing the arguments of the parties that the Regulations for the Diploma Course in Community Medical Service is prepared by the State Medical Faculty of West Bengal and those qualifying for this diploma have to undergo an academic course of two years and nine months plus three months of compulsory internship. In total it comes to three years and the subjects taught have also be noted hereinbefore which includes Basic Human Anatomy, Basic Human Physiology, Community Medicine, Medicine including Pathology and Therapenutics, Surgery including Eye, E.N.T. & Dentistry and Forensic Medicine, Obstetrics and Gynaecology including F.P. and Child Welfare and Community Medicine. The Syllabus of these course of Community Physicians has been termed as "Short Term Course" and Appendix I of the Notification of 15th October, 1980 describes the syllabus in detail which I need not go in detail. In Phase II of the Syllabus it is fascinating to find under the caption "medicine" the following insertion : "systematic instruction in principles and practice of medicine" and a large

number of diseases have been noted thereunder, so is the List of surgery etc. After these two years and nine months of academic pursuit with further three compulsory months of internship the petitioners cannot be called a quack and outright denied the privilege of even giving a prescription or death certificate.

19. Mr. Ukil, the learned Government Pleader, did not file any Affidavit in Opposition nor made any such prayer before the Court but argued the matter in full and submitted a written argument. His four objectives which have been set out earlier have been taken from the Regulations. The phrase "community physician" described for the petitioners in the Regulations means very little to the general public as to the difference between "Physician" and "Doctor" to rural people and even to the urban population is marginal and refers to a particular profession for medical treatment. It cannot be denied that a physician working in Health Centre or Hospital performs the duty of a medical practitioner within the four walls of the Health Centre and the Hospital. It is the definite case of the petitioners that they want their names to be entered into the Register of Registered Practitioners not for the purpose of doing any private practice but only to write prescription and gives death certificates.

20. To qualify for the Diploma Course in Community Medical Service one has to take training to treat common diseases among rural population for communicable diseases, malnutritional states, snake bite, insecticidal poisoning, etc.. etc. Now communicable diseases also include, as Mr. Chatterjee has very rightly pointed out tuberculosis, typhoid, cholera, malaria, helmenthiasis, jaundice, etc. Perhaps Mr. Chatterjee forgot to mention other communicable diseases including small pox and chicken pox. He is very right and I fully agree with him that in the case of helmenthiasis or worm infestation one of the medicines is Mebex Tablets and it contains the statutory warning printed on its packet as follows :-

"Schedule H Drug Warning : to be sold by retail on the prescription of a Registered Medical Practitioner only."

If a diploma holder treats a case of helmenthiasis in any Health Centre where this particular medicine is not available and it required to be purchased from the market by the relatives of the patient then that diploma holder will not be in a position to write the prescription and the patient will have to wait his luck. It is well-known fact that some vital medicines are rarely available even in the Government Hospitals of Calcutta, what to say of Health Centres or Sub-Divisional Hospitals. It is equally right to say that if a diploma holder treats a patient of insecticidal poisoning and if the patient dies, the diploma holder in spite of possessing the Diploma shall not be able to give evidence in a Court of Law without having registration under the Bengal Medical Act, 1914 as Registered Medical Practitioner. The contention of the learned Government Pleader that the petitioners are not qualified doctors and not entitled to registration as claimed by them has no leg to stand on. The facts should speak for themselves and decision must be taken thereon. The decision of the Division Bench presided over by Chief Justice Desai and the Division Bench presided over

by the Hon"ble Mr. Justice Ajit Kumar Sengupta taking over the contempt proceeding arising out of the Division Bench led by Chief Justice Desai were based on totally different reliefs whereas the instant writ petition is on a totally different footing. A comparative study of the reliefs sought in the previous writ petition and ultimately decided by the Appeal Courts will demonstrate the hollowness of the State, argument and the deliberate attempt on the State's part to deprive the petitioners from elementary rights which will in no way adversely affect anybody when even "quacks" have been granted such privileges by law.

21. It will not be out of the way to refer to the Paschim, Banga Ayurvedic System of Medicine Act, 1961 which provides to regulate the teaching and practice thereof. Section 22(2) of the Act of 1961 provides that if any person produces proof that he has been in regular practice for a period of not less than ten years preceding such date (the date of enforcement of this Act) he shall be entitled to have his name entered in the Register on payment of the prescribed fee. Section 35 further gives certain privileges to a Registered Ayurvedic Practitioner of ten years practice. The privileges of (a) granting of death certificate required by any law or rule to be signed or authenticated by a duly qualified Medical Practitioner or Medical Officer ; (b) granting of medical or physical fitness certificate required by any law or rule to be signed or authenticated by a duly qualified Medical Practitioner or Medical Officer ; and (c) giving evidence"at any inquest or any court of law as an expert u/s 45 of the Indian Evidence Act, 1872. Now let us see the Paschim Banga Unani System of Medicine Act, 1979. The object of this Act is to regulate the teaching and practice of the Unani System of Medicine. Section 21(2) of the Act of 1979 entitled one to be registered with only five years practice preceding the date" of enforcement of the Act upon producing such a proof as referred to above and Section 34 thereof specifically points out that a registered Unani Practitioner shall be entitled (a) to grant a death certificate required by any law or rule; (b) to grant a medical or physical fitness certificate required by any law or rule ; and (c) to give evidence at any inquest or in any court of law as an expert u/s 45 of the Indian Evidence Act, 1872. Now just have a comparaitve study of the two Acts on the one hand and the treatment meted out to the petitioners under he Bengal Medical Act, 1914 on the other. According to Paschim Banga Ayurvedic System of Medicine Act, 1961 and the Paschim Banga Unani System of Medicine Act, 1979 those having a dispensary or "proof" of any nature of regular practice were entitled to have their names entered in the Register of Ayurvedic Practitioners or the Register of Unani Practitioners only after ten and five years of such practice, respectively. The provisions in the two Acts of 1961 and 1979 clearly indicate that for those persons there was no condition that they should have any qualification of any nature whatsoever to enter their names in the Register as a qualified practitioner of those Systems of Medicine. Can anybody give a guarantee that those who have been registered under the Ayurvedic Act or the Unani Act were all genuine Ayurveds or Hakims and there were no quacks who infiltrated into the Registers under the two Acts

by procuring some proof somehow or other in a country where honesty is often frowned at. As compared to the position of the Ayurveds and Hakims under the two Acts, let us consider the unfortunate state of affairs of the petitioners who have completed and obtained the Diploma in Community Medical Service under the Regulations framed by the State Medical Faculty of West Bengal. Can they be said to be in any way inferior in position than those who have been allowed and given the licence under the Acts of 1961 and 1979 ? Discrimination is a practice which has been deprecated, condemned and looked down by the Supreme Court in a large number of decisions. Article 14 of the Constitution provides .that the State shall not deny to any person equality before the law. Here it appears that the right of equality has been given a go-bye if the attitude of the respondents are taken vis-a-vis Bengal Medical Act, 1914 on the one hand and the Paschim Banga Ayurvedic System of Medicine Act, 1961 and the Paschim Banga Unani System of Medicine Act, 1979 on the other. The two recent Acts have given unbounded licence even to a quack but the same privileges are denied to those who have undergone rigorous study of two years and nine months plus three months of internship. These unfortunate people are not in a position to issue death certificate, medical or physical fitness certificate or appear before the court of law to give evidence whereas those having no diploma or even a scrap of paper to show their qualifications of any nature whatsoever have been given such rights. This is nothing but sheer injustice. There can be no denying that the guarantee of "EQUALITY of status and of opportunity" as given in the Preamble of the Constitution of India is denied to the petitioners. They have been deprived of the privilege and opportunity given by law to them and thus they have become the victim of circumstances. I have no hesitation to conclude that by virtue of Section 18(a) and (i) and Section 20 of the Bengal Medical Act, 1914 as well as on the strength of the Notification dated 17th May, 1915 the petitioners are entitled to have their names entered in the Register of Registered Practitioners maintained u/s 15 of the Act of 1914. I am also of the view that the other provisions of Section 18 do not apply in the case of the petitioners. After the insertion of Article 6F the situation has changed and Article 6F as amended specifies that the Governing Body of the State Medical Faculty of West Bengal shall maintain a Register of such Diploma Holders (i.e. Diploma in Community Medical Service) with a view to regulating, supervising and restricting their practice for the present. As I have said earlier that the petitioners never want to practise but they simply want the right to have their names entered in the Register of Registered Practitioners under the Act of 1914 so that they would be able to issue or to write prescription or death certificate if such a situation arises and those prescription or certificate must have the legal sanction behind it.

22. In that view of the matter I direct that the respondents and each of them shall have the names of the writ petitioners who are all holders of Diploma in Community Medical Service entered into the Register of Registered Practitioners maintained under the Bengal Medical Act, 1914. I further direct that the petitioners shall be at liberty to issue or to write prescription and death

certificate if and when necessary but shall not be allowed private practice. The respondents are directed to implement the order within two months. The respondents to pay to the petitioners cost assessed at 300 S.M.s,

This order shall be applicable in principle to all similarly placed persons for the ends of justice.

The writ application is accordingly allowed.

Let xerox copy of the Judgment be made available to the parties on usual undertaking and upon compliance of necessary formalities.

23. As I have already given two months time to implement the order. I do not think any stay is necessary. Further, in view of the discussion made in the Judgment, if a stay is granted, the reasons given in favour of the petitioners based on solid grounds will become infructuous. As such I am not inclined to grant the prayer for stay as prayed for by the learned Government Pleader.