

(2014) 01 BOM CK 0007
In the Bombay High Court
Case No : Writ Petition No. 9255 of 2010

Sudhir G. Mujumdar

APPELLANT

Vs

Registrar

RESPONDENT

Date of Decision : 31-01-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 19(6), 226
Maharashtra State Council for Occupational Therapy and Physiotherapy Act, 2002 —
Section 1(2), 10, 11, 12, 13

Citation : (2014) 3 ABR 436

Hon'ble Judges : M.S. Sonak, J; Abhay Shreeniwas Oka, J

Bench : Division Bench

Advocate : V.M. Thorat i/b. Satyajeet Dighe, Advocate for the Appellant; Nitin Deshpande, AGP, Advocate for the Respondent

Final Decision : Dismissed

Judgement

M.S. Sonak, J.—Rule. With the consent of the learned counsel appearing for the parties, Rule is made returnable forthwith. The Petitioners are Citizens of India. The Petitioners claim to be the residents of the State of Maharashtra. The Petitioners have obtained degree of "Bachelor of Physiotherapy" ("BPT" for short) from Dr. C.V. Raman University set up under the provisions of Chhatisgarh Nijji Kshetra Vishwa Vidyalaya Adhiniyam, 2002.

2. By this Petition under Article 226 of the Constitution of India, the Petitioners question the constitutional validity of Sections 20 and 21 of The Maharashtra State Council for Occupational therapy and Physiotherapy Act, 2002 (hereafter referred to as "the said Act") on the grounds that they violate the provisions contained in Articles 14 and 19(1)(g) of the Constitution of India.

3. In order to appreciate the grounds of challenge, a brief reference to the salient features of the said Act would be proper.

4. The said Act came into force on 12-1-2004 and provides for the Constitution

of "The Maharashtra State Council for Occupationaltherapy and Physiotherapy" for the purposes of co-ordination and determination of standards of education in the field of Occupationaltherapy and Physiotherapy for the maintenance of a Register of Occupational therapist and Physiotherapist for the State of Maharashtra and for the matters connected therewith or incidental thereto.

5. Chapter-I of the said Act deals with preliminaries and Sections 2(h) and 2(i) define the terms Physiotherapist and Physiotherapy respectively. Chapter-II of the said Act, which comprises of Sections 3 to 15, provides for the Constitution of the Maharashtra Council for Occupationaltherapy and Physiotherapy. Chapter-III of the said Act which comprises of Sections 16 to 26 deals with the functions of the Councils. Section 17 provides that no person shall establish an institute for imparting education in Occupational therapy and Physiotherapy in the State of Maharashtra except with the previous permission of the State Government obtained in accordance with the provisions of Section 17 of the said Act. Section 18 of the said Act provides for non-recognition of qualifications in certain cases. Section 20 provides for recognition of qualifications granted by Universities in India or abroad and Section 21 prescribes the effect of recognition. Chapter-IV of the said Act which comprises of Sections 27 to 30A provides for preparation and maintenance of Register of Occupational therapist and Physiotherapist. Chapter-V of the said Act provides for offences and penalties and Chapter-VI provides for miscellaneous matters. Schedules-I and II appended to the said Act provide for list of recognized Institutions along with qualifications, i.e., degree/diploma for the purposes of which the said Institutions have been recognized.

6. In effect the provisions of the said Act provide that only such persons who have obtained the prescribed qualifications from out of the Institutions referred to in the Schedules appended to the said Act, are entitled to practice as Occupational therapists and Physiotherapists in the State of Maharashtra. Conversely, the persons like the Petitioners who have obtained qualifications from University/Institutions other than ones set out in the Schedules are not entitled to practice as Occupational-therapist and Physiotherapist in the State of Maharashtra, unless perhaps their Universities/Institutions apply for and obtain such recognition in terms of the provisions contained in Section 20 of the said Act.

7. In the light of the aforesaid provisions, Mr. Thorat, the learned counsel for the Petitioners submitted that Section 2(h) read with Sections 20 and 21 of the said Act which prevent the Petitioners from practicing as Occupational therapist or Physiotherapist in the State of Maharashtra, despite they possessing degrees in the concerned subject and despite they being residents of Maharashtra, are violative of Article 19(1)(g) of the Constitution of India. The restrictions imposed by the said Act in general and the aforesaid provisions in particular, are virtually absolute and by no means reasonable. The restrictions imposed transcend the permissible limits prescribed by Article 19(6) of the Constitution of India. Secondly, the provisions contained in Section 21(2)(a) of the said Act are

violative of Article 14 of the Constitution of India as they discriminate between citizens of India who have obtained Physiotherapy qualifications in a foreign country and those who have obtained qualifications in any non scheduled Indian Universities/Institutions in the matter of temporary enrollment in the Register of Occupation or Physiotherapists. Thirdly, the provisions contained in Section 20 of the said Act are arbitrary and unreasonable since they do not permit the Petitioners or citizens in a like position to apply to the State for recognition of their qualifications. Rather, such qualification holders have to be at the mercy of their respective Universities/Institutions to apply and over this the Petitioners or citizens in a like position have no measure of control.

8. Mr. Deshpande, the learned AGP submitted that Dr. C.V. Raman University which has been impleaded as the Respondent No. 2 in the present petition can always apply for recognition and if such application is made, there is no reason to presume that the same would not be considered by the State in accordance with law. If recognition is granted, there would arise no question of going into constitutional challenges. In any case, Mr. Deshpande submitted that the said Act is within legislative competence of the State and the provisions contained therein are in tune with Article 19(6) of the Constitution of India. There is no breach of the guarantee of equality as enshrined in Article 14 of the Constitution of India. In the circumstances, the Petition as filed, ought not to be entertained.

9. The rival contentions now fall for our determination.

10. The first challenge is directed against Section 2(h) and Sections 20 and 21 of the said Act, which read as follows:

Section 2(h) "physiotherapist" means a person who possesses physiotherapy qualification obtained from a recognized institution specified in Schedule II and whose name has been enrolled in the Register of Physiotherapists;

Section 20: Recognition of Qualifications granted by Universities Etc., (in India or abroad) for occupational therapy or physiotherapy professionals.--

(1) Any University or other institution in India or abroad, which grants qualifications in Occupational therapy or Physiotherapy and the name of which University or, as the case may be, institutions is not included in the Schedules, may apply to the State Government as provided under sub-section 19(1) to have their names included in the schedules and the State Government, after consulting the Council, may, by notification in the Official Gazette, amend the schedule so as to include the names of the University or institutions in the relevant Schedule and any such notification may also direct that an entry shall be made in the last column of the relevant Schedule against the name of such University or institution declaring that it shall be a recognised University or institution, as the case may be, for the purpose of this Act, only after a specified date.

(2) The qualifications, granted by any University or other institutions in India or

abroad, specified in Schedule I relating to Occupational therapy or specified in Schedule II relating to Physiotherapy shall be recognised qualifications for the Occupational therapists and Physiotherapists for the purposes of this Act.

Section 21: Effect of recognition.--(1)(a) Any qualification in Occupational therapy or Physiotherapy granted by a University or an institution included in Schedule I and Schedule II, respectively, shall be sufficient qualification for enrollment in the register of Occupational therapists or Physiotherapists, as the case may be;

(b) No person shall, after the date of commencement of this Act, be entitled to be enrolled in the register as a Occupational therapist or Physiotherapist unless he holds a recognised qualification:

Provided that, in case of a dispute as to whether a person is entitled to be enrolled, the matter shall be referred to the respective equivalence and Registration Committee which shall consider the reference and make recommendations to the executive Committee whose decision shall be final,

(2) Notwithstanding anything contained in sub-section (1)--

(a) a citizen of India holding a qualification which entitles him to be registered with any Council of Occupational therapy or Physiotherapy in any foreign country, recognised by the Government of that country may, with the approval of the Council, be enrolled temporarily as an occupational therapists or as the case may be, physiotherapist, in the Register till the said qualification is included in the respective schedule.

(b) a person not being a citizen of India who is employed as an occupational therapy or physiotherapy teacher in any hospital or institution in India where such hospital or institution is recognised by the Government of the concerned State or Union Territory, for the purpose of teaching, research or charitable work, may, with the approval of the President of the Council, be enrolled temporarily in the Register, for such period as may be specified in this behalf, in the order issued by the President:

Provided that, such person shall not be allowed to practice as a general occupational-therapist or physiotherapist and such teaching or work shall be limited to the hospital or institution to which he is attached:

Provided further that, no such enrollment under Clause (a) shall be permitted unless the Council satisfies itself that such person possesses the requisite knowledge and skill to practise occupational therapy or physiotherapy by conducting a screening test or such other test or examination as may be prescribed.

11. The conjoint reading of the aforesaid provisions makes it clear that no person is entitled to practice as a Occupational or Physiotherapist in the State of Maharashtra unless he obtains the prescribed qualification from the recognized

Universities or Institutions as may be specified in the Schedules appended to the said Act. The said Act extends only to the State of Maharashtra which position is clear from the circumstance that this law has been enacted by the State Legislature and Section 1(2) of the said Act states in terms that it shall extend to the whole of the State of Maharashtra.

12. The restrictions that may have been imposed upon the Petitioners' right to practice the profession or carry on any occupation, are by no means unreasonable. It is to be noted that the right guaranteed by Article 19(1)(g) is not absolute. This right has to be read and construed in the light of provisions contained in Article 19(6) which provides that nothing contained in Article 19(1)(g) shall prevent the State from making any law imposing, in the interest of the general public, reasonable restrictions on the exercise of the right and, in particular nothing in the said sub-clause 19(1)(g) shall prevent the State from making any law relating to professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business.

13. Thus, Article 19(6) is in two parts. The first, enables the legislature to impose reasonable restrictions in the interest of the general public. The second, enables the legislature to make any law relating to professional or technical qualifications, necessary for practicing any profession or carrying on any occupation, trade or business.

14. There is a presumption of constitutionality which normally inheres legislations. The Court is therefore expected to start with the assumption that the legislature is the best Judge of what is good for the community by whose suffrage it comes into existence. *Pathumma and Others Vs. State of Kerala and Others*, The reasonableness of restrictions is to be determined in an objective manner and from the stand point of the interest of the general public and not from the stand point of the persons upon whom the restriction may have been imposed. *Mohd. Hanif Quareshi and Others Vs. The State of Bihar*, The circumstance that the law operates harshly on some of the citizens does not, only for that reason, render the law unreasonable *Krishnan Kakkanth Vs. Government of Kerala and others*, In such matters it is impermissible to apply any abstract or generalized principles. The Court is required to advert to the object of the law, the extent and urgency of the evil sought to be remedied, the proportionality of imposition and such other relevant circumstances. A restriction which is commensurate with the needs for protection of the public, cannot normally be regarded as unreasonable. A restriction does not become unreasonable merely because the Petitioners or on some occasions the Courts are of the opinion that the objective of the law could have been better achieved by some other means.

15. Applying the aforesaid principles, we are of the opinion, that the restrictions in the present case are both reasonable and in the interest of general public. The purpose of the said Act is to co-ordinate and determine the standards of education in the field of Occupation and Physiotherapy. By this legislation, the

State seeks to exercise some level of control over the institutions which impart qualifications in the Occupation and Physiotherapy, over the standards of persons interested in practicing as Occupation and Physiotherapists. This is obviously so that the Physiotherapists with sub standard qualifications are not let loose upon members of the general public. The said Act does not impose a complete bar upon practice, but merely provides for attainment of specified standards before the Physiotherapist can be enrolled and consequently practice as such, in the State. The provisions, accordingly, impose reasonable restrictions in the interest of general public and are therefore within the protective sweep of Article 19(6) of the Constitution of India.

16. The said Act and the provisions impugned clearly relate to the professional or technical qualifications necessarily for practicing the profession of Occupation or Physiotherapist. As observed earlier, the second part of Article 19(6), in terms provides that nothing contained in Article 19(1)(g) shall prevent the State from making any law relating to professional or technical qualifications for practicing any profession or carrying on any occupation, trade or business. Clearly therefore the said Act and the provisions contained therein are very much in consonance with Article 19(6) of the Constitution of India. The charge based upon breach of Article 19(1)(g) of the Constitution of India, therefore fails and deserves rejection.

17. The Petitioners second challenge is in the context of Section 21(2)(a) which permits a citizen of India holding qualification which entitles him to be registered with any Council of Occupation or Physiotherapy in any foreign country, recognized by the Government of that country, to seek a temporary enrollment as Occupation or Physiotherapist in the Register, till the said qualification is included in the Schedule to the said Act. Mr. Thorat contends that the provision does not prescribe any time period during which such "temporary enrollment" is to continue. There is no obligation upon a qualification holder to ensure or take steps to ensure that his qualification is included in the Schedule. In effect therefore, the enrollment, though styled as "temporary" can continue indefinitely. Mr. Thorat then submits that there is no reason to deny said privilege of "temporary enrollment" to citizens of India, who like the Petitioners may have obtained their qualifications from Universities/Institutions within India. The denial, according to the learned counsel, is both arbitrary and discriminatory. The learned counsel submits, that the provisions contained in Section 21(2)(a) of the said Act, to the extent they deny such privilege of "temporary enrollment" to citizens of India who have obtained qualifications from Universities or Institutions within India, violates Article 14 of the Constitution of India.

18. The provisions contained in Section 21(2)(a) of the said Act have to be read in conjunction with the second proviso to the said sub section which provides that no temporary enrollment under sub-clause (a) shall be permitted unless the Council satisfies itself that such person possesses requisite knowledge and skill to practice Occupational therapy and Physiotherapy by conducting a screening

test or such other test or examination as may be prescribed.

19. An analysis of the aforesaid provisions contained in Section 21(2) of the said Act would indicate that the Council has retained unto itself discretion to enroll temporarily a citizen of India holding a qualification which entitles him to be registered with any Council of Occupational or Physiotherapy in any foreign country, recognized by the Government of that country, till the said qualification is included in the respective Schedule. This is not as if the Council is according recognition to a qualification that may have been granted by some foreign University or Institution. Any citizen of India who may have obtained a qualification from an Indian University, which qualification entitles him to be registered with any Council of Occupational or Physiotherapy in any foreign country, recognised by the Government of that country, may also apply for temporary enrollment. The Council, thereupon is entitled to satisfy itself that such citizen possesses requisite knowledge and skill to practice Occupational or Physiotherapy by conducting a screening test or such other examination as may be prescribed. Only thereafter, the Council may consider temporary enrollment until the qualification is included in the respective Schedule by resort to the provisions of Section 20 of the said Act.

20. There is no reason to presume that the discretion conferred by Section 21(2) of the said Act shall not be reasonably exercised. There is no reason to presume that such enrollment will continue indefinitely. Where no outer limit is prescribed by the legislature, considering the context, concept of "reasonable period" can always be read into the unoccupied interstices of the Statute. In any case all these are hypothetical situations, which need not engage the attention of the Constitutional Courts until some concrete instance presents itself for determination.

21. There is no discrimination against the Petitioners or citizens in like position. In the event the Petitioners are able to establish that their qualifications entitle them to be registered with any Council of Occupational or Physiotherapy in any foreign country, recognised by the Government of that country, then they may also be entitled to apply for temporary enrollment and there is no reason to presume that the Council would not consider their candidature reasonably and in accord with the provisions contained in Section 21(2) of the said Act. The classification brought about by Section 21(2) is not between citizens of India who may have obtained qualifications from a foreign country and citizens of India who may have obtained qualifications from within India. The classification, if at all, is between citizens of India who have qualifications which may not entitle them to be registered with any Council of Occupation or Physiotherapy in any foreign country and those who have qualifications which entitle them to be so registered. Such classification is obviously based upon an intelligible differentia. Ultimately, it is for the legislature to determine the class of persons to whom it would extend some benefit in the first instance. As long as persons left out cannot legitimately claim that they belong to the chosen class, no question of any discrimination can

arise. Sufficient latitude has to be conceded in favour of the State in the matter of classification. Every classification, is in some degree likely to produce some inequality. But mere production of inequality is not enough to strike down a legislation as being violative of Article 14 of the Constitution of India. Differential treatment per se does not violate Article 14 of the Constitution of India. There is discrimination when, and only when there is no reasonable basis for differentia. The legislation need not always be all embracing. Article 14 does not warrant that legislative classification should be scientifically perfect or mathematically accurate. Reference in this regard may also be usefully made to the provisions contained in Section 21(2)(b) where certain benefits have been extended by the legislature to persons who may not be citizens of India, but employed as Occupational or Physiotherapy teachers in any hospital or institution in India, where such hospital or institution is recognized by the concerned State or Union Territory, for the purpose of teaching, research or charitable work. Such persons may, with the approval of the President of the Council be enrolled temporarily in the register for such period as may be specified in this behalf by the President. Such person shall not be allowed to practice as general Occupational therapist or Physiotherapist and the teaching work shall be limited to the hospital or institution to which he is attached. These provisions make it clear that there is no discrimination as such which can be said to have been practiced against the Petitioners or person in like situations. The charge of violation of Article 14 of the Constitution of India, in our opinion, is unfounded and deserves rejection.

22. The third challenge is that the provisions contained in Section 20 of the said Act enable only Universities and Institutions to apply for recognition of qualifications, but no provision is made to enable the students or qualification holders like the Petitioners to apply for recognition. Mr. Thorat submitted that the Petitioners or persons in like position can have no control over the Universities/ Institutions from where they have obtained qualifications. Until such Universities and Institutions apply for recognition, the Petitioners or persons in like situation may be, for no fault of theirs, deprived of opportunity to practice as Occupation or Physiotherapist in the State of Maharashtra. This position which is brought about by Section 20 of the said Act, according to Mr. Thorat is grossly arbitrary and unconstitutional.

23. We see no merit in the aforesaid contention. As observed earlier, the said Act operates within the State of Maharashtra. There is in fact presumption against extra territorial operation of the State laws. The State law cannot normally legislate in respect of Universities or Institutions in other States. Therefore, Section 20 of the said Act merely provides that it is permissible for the Universities/Institutions from other States in India or abroad to apply for recognition to the State of Maharashtra. As a pre-condition for such recognition, it is possible that the State of Maharashtra may insist upon such Universities/ Institutions fulfilling prescribed standards. This could well be a matter of agreement between the State and such Universities or Institutions. In this manner, the State could perhaps exercise some degree of control. If however,

such a privilege were to be extended to students or qualification holders like the Petitioners, then the State would be in no position to prescribe standards, insist upon maintenance of standards and to exercise some degree of control over the Universities/Institutions, whose qualifications may be considered for recognition. The classification between Universities/Institutions on one hand and students or qualification holders, on the other is a reasonable one. There is ample nexus between the principle of differentiation and the objective of the said Act. In the circumstances, there is nothing arbitrary or unconstitutional in Section 20 of the said Act when it restricts applications for recognition only from Universities and Institutions and not from individuals like the Petitioners. Again, these are matters of legislative policy. As long as the provisions are not ex facie arbitrary or do not result in any hostile discrimination, there is no question of judicial interference. Accordingly, we see no merit in the third challenge as well. In the aforesaid circumstances, we see no merit in any of the challenges raised by the petitioners. The Petition is accordingly liable to be dismissed. Rule is discharged. In the facts and circumstances of the case however there shall be no order as to costs.