
(2014) 07 BOM CK 0218
In the Bombay High Court
Case No : Writ Petition No. 11959 of 2013

Suren Vijay Thenge

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 15-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 8, 8(3)

Citation : (2014) 6 ABR 507 : (2015) 1 ALLMR 130 : (2015) 4 BomCR 815 :
(2015) 1 MhLj 972 : (2014) 2 MhLj 873

Hon'ble Judges : Abhay Shreeniwas Oka, J;A.S. Chandurkar, J

Bench : Division Bench

Advocate : Ajit R. Pitale and S.S. Tigde, Advocate for the Appellant; M.P. Thakur, AGP, Advocate for the Respondent

Final Decision : Dismissed

Judgement

A.S. Chandurkar, J.—By this Writ Petition under Article 226 of the Constitution of India, the petitioner challenges circular dated 07.10.2013 issued by the Commissioner of Transport, Maharashtra State to the extent it bars medical practitioners having the qualification of Bachelor of Ayurvedic Medicine and Surgery-B.A.M.S. from being authorized to issue medical certificate of fitness in terms of Rule 5 of the Central Motor Vehicles Rules, 1989.

2. The petitioner who has obtained the degree of B.A.M.S. has been duly registered with the Maharashtra Council of Indian Medicine and has been issued a certificate of registration in that regard. According to the petitioner as per notification dated 25.11.1992, the State Government has held Ayurvedic practitioners eligible to practice modern system of medicine known as allopathic system of medicine. In view thereof, medical practitioners holding the degree of B.A.M.S. were entitled to issue a medical certificate in terms of Rule 5 of the Central Motor Vehicles Rules, 1989 (hereinafter referred to as "the Rules of 1989"). According to the petitioner by a circular dated 17.10.2012, registered

medical practitioners holding the degrees of B.H.M.S. & D.H.M.S. were held ineligible for issuing medical fitness certificate under Rule 5 of the Rules of 1989. The said circular was challenged in this Court vide Writ Petition No. 144 of 2013 and by order dated 15.04.2013, the challenge in that regard was turned down. Thereafter, on 7.10.2013 the respondent No. 2 issued a circular by which registered medical practitioners holding degrees of G.F.A.M., B.A.M.S. and D.A.S.F. were held ineligible to issue medical fitness certificate under Rule 5 of the Rules of 1989. The said circular is put to challenge in the present Writ Petition.

3. Shri Ajit Pitale the learned Counsel appearing for the petitioner submitted that the circular dated 7.10.2013 which bars registered medical practitioners holding the degree of B.A.M.S. from issuing a medical certificate of fitness is contrary to the provisions of Section 8(3) of the Motor Vehicles Act, 1988 (for short, "the said Act") as well as Rule 5 of the Rules of 1989. It is submitted that the petitioner being a registered medical practitioner by virtue of being issued a requisite certificate of registration by the Maharashtra Council of Indian Medicine and he being entitled to practice modern system of medicine in terms of provisions of Section 8(3) of the said Act read with Rule 5 of the Rules of 1989, the petitioner was entitled to issue a medical certificate as stipulated. The learned Counsel for the petitioner submitted that the respondent No. 2 while issuing the impugned circular has not given proper consideration to the aforesaid legal position and as a result of issuance of said circular the right of a registered medical practitioner holding the degree of B.A.M.S. to issue such medical certificate has been taken away. According to the learned Counsel, the same is not permissible in law. It is further submitted that as registered medical practitioners were competent to practice modern system of medicine, they were eligible to issue aforesaid certificate. The impugned circular had the effect of curtailing the right of the petitioner to practice modern system of medicine despite being a registered medical practitioner. It was, therefore, submitted that the said circular to the extent it held registered medical practitioners holding the degree of B.A.M.S. ineligible to issue a medical certificate for the purpose of Rule 5 of the Rules of 1989 was thus required to be set aside.

4. Ms. M.P. Thakur, the learned AGP appearing for respondent Nos. 1 to 6 on the other hand supported the impugned circular. It was submitted that a similar issue with regard to ineligibility of registered medical practitioners holding B.H.M.S. and D.H.M.S. qualifications being held ineligible to issue such medical certificate was turned down by this Court in Writ Petition No. 144 of 2013. It was submitted that considering the aforesaid judgment, the respondents were of the opinion that other registered medical practitioners possessing the degrees of G.F.A.M., B.A.M.S. and D.A.S.F. were also ineligible to issue such medical certificate as opinion with regard to details of eye sight, colour blindness etc. was required to be given. It was submitted that the State Government was within its authority as conferred by Rule 5 of the Rules of 1989 to declare which type of registered medical practitioner would be eligible to issue necessary medical certificate. It

was, therefore, submitted that the impugned circular had been issued in accordance with law. It was further submitted that merely by holding such registered medical practitioners, as the petitioner ineligible to issue medical certificate, the right of such medical practitioners to practice modern system of medicine was not taken away. The learned Counsel, therefore, prayed for dismissal of the Writ Petition.

5. The requirement to obtain a medical certificate as prescribed, is stipulated by the provisions of Section 8(3) of the said Act. Under sub-section (3) of Section 8 of the said Act, the State Government has been empowered to decide the category of registered medical practitioners eligible to issue such medical certificate. Rule 5(1) of the Rules of 1989 prescribes the manner in which such medical certificate shall be issued by a registered medical practitioner. Form 1-A appended to the Rules of 1989 prescribes that registered medical practitioner has to opine about the vision of the applicant being examined, his opinion as regards colour blindness, night blindness as well as hearing ability. The registered medical practitioner is further required to certify that he had directed special attention to the distant vision of the applicant.

From the above, it is clear that there is an emphasis on various facets of an applicant's eye sight and hearing ability before he is issued the medical certificate.

6. Before considering the challenge to the circular dated 07.10.2013, it would be necessary to refer to the order dated 15.04.2013 passed by the Division Bench of this Court to which one of us (Abhay Shreeniwas Oka, J.) was a party. In the said Writ Petition, circular dated 17.10.2012 holding registered medical practitioners possessing B.H.M.S. and D.H.M.S. qualifications ineligible to issue medical certificate in terms of Rule 5 of the Rules of 1989, was under challenge. In paragraphs-2 and 3 of the aforesaid order it has been observed thus:

2 We have considered the submissions. On plain reading of sub-section 3 of section 8 of the Motor Vehicles Act, 1988, a power is conferred on the State Government to decide the category or class of the Medical Practitioners who can be authorised to give such certificates. We have perused the impugned Government decision. The impugned Government decision records that the Homeopathic Medical Practitioners are not competent to give opinion regarding defects in eye sight, colour blindness and hearing capacity of the person who applies for driving licence. The Commissioner of Transport while taking the said decision has relied upon the opinion of the Law Ministry.

3 We see no legal infirmity in the impugned circular/decision. The State wants to ensure that the Medical Practitioners who do not possess capacity to give an opinion regarding the defect in eye sight, colour blindness and hearing capacity should not give medical certificates. We cannot find any fault in the said Government decision taken in larger public interest. Hence, the petition is rejected.

Perusal of the aforesaid order reveals that the State Government desired to ensure that such category of registered medical practitioners who did not possess the capacity to give an opinion regarding the defect in eye sight and hearing capacity, should not be permitted to issue a medical certificate under Rule 5 of the Rules of 1989.

7. It is true that in view of the notification dated 25.11.1992 Ayurvedic practitioners registered with the State Government were held eligible to practice modern system of medicine. It is further not in dispute that the petitioner is a registered medical practitioner as contemplated by the Maharashtra medical practitioners Act, 1961. As stated above, under the provisions of Section 8(3) of the said Act, the State Government has been empowered to authorize the category of registered medical practitioners who are entitled to issue and sign the medical certificate under Rule 5 of the Rules of 1989. The competency of the State Government to authorize such category of registered medical practitioners to issue the aforesaid certificate is not under challenge. The circular dated 17.10.2012 that was initially issued by the Commissioner of Transport was in respect of registered medical practitioners holding the degrees of B.H.M.S. and D.H.M.S.. The object behind issuing said circular was based on the opinion that insofar as the aspects of eye sight, colour blindness and hearing ability were concerned, registered medical practitioners holding aforesaid degrees were found not suitable to give opinion in that regard. The challenge to the aforesaid circular, as stated above, was negated. The circular dated 07.10.2013 impugned in the present Writ Petition has been issued in view of the order dated 15.04.2013 passed in Writ Petition No. 144 of 2013 and it only seeks to hold registered medical practitioners having the degrees of G.F.A.M., B.A.M.S. and D.A.S.F. ineligible to issue such medical certificate. As the rationale behind issuing aforesaid circular is the order dated 15.04.2013 passed by this Court in Writ Petition No. 144 of 2013, for the reasons, as assigned in paras-2 and 3 of the aforesaid order, there is no legal infirmity in the impugned circular dated 07.10.2013.

8. The next challenge that is required to be examined is whether the impugned circular dated 07.10.2013 has the effect of curtailing the right to practice modern system of medicine by an Ayurvedic practitioner. In this regard, it is to be noted that no right of a registered medical practitioner holding the degree of B.A.M.S. has been taken away by the impugned circular. What has, in effect, been done is that the medical certificate issued by such registered medical practitioner possessing the degrees of G.F.A.M., B.A.M.S. and D.A.S.F. is invalid under Rule 5 of the Rules of 1989. The said circular nowhere bars such aforesaid registered medical practitioners from giving any opinion as regards eye sight, colour blindness and hearing ability. The only thing prescribed by said circular is that a medical certificate issued by such medical practitioner would not be treated as valid for the purpose of Rule 5 of the Rules of 1989. Hence, by no stretch of imagination can it be said that in view of issuance of the impugned circular, the right of a registered medical practitioner holding the degree of B.A.M.S. to

practice modern system of medicine has been affected. The said right to practice modern system of medicine continues. The reason not to accept a medical certificate issued by such a registered medical practitioner is on the basis of the opinions and views obtained by the State Government of experts in the field. It cannot be said that the said circular is either arbitrary or contrary to the provisions of the said Act and the Rules of 1989.

9. In view of the aforesaid reasons, no case has been made out for interference under Article 226 of the Constitution of India. The Writ Petition is, therefore, dismissed with no order as to costs.