
(2003) 05 AHC CK 0174
In the Allahabad High Court
Case No : C.M.W.P. No. 1546 of 2003

Uma Kant Tiwari and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 21-05-2003

Acts Referred:

Indian Medicine Central Council Act, 1970 — Section 14

Citation : (2003) 4 AWC 3016 : (2003) 2 UPLBEC 1613

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : R.K. Jain and Rahul Jain, for the Appellant; B.N. Singh C.S.C and S.C., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed for a writ of mandamus directing the respondents not to interfere with the practicing of the petitioners as Vaidya in Ayurvedic System of Medicine and Surgery in U. P. and to declare the words "to 1967" in fourth column of Entry No. 105 regarding Vaidya Visharad and Ayurved Ratna of Second Schedule Part-I of the Indian Medicine Central Council Act, 1970, as ultra vires Section 14(1) of the Act. The petitioners have also prayed for declaring Section 14 of the aforesaid Act as ultra vires Article 14 of the Constitution and for declaring certain provisions of the U. P. Medicine Act as ultra vires.

2. Heard learned counsel for the parties.

3. In para 3 of the petition it is alleged that the petitioners are medical practitioners in Ayurvedic System of Indian Medicine and some of them have degrees of Ayurved Ratna or Vaid Visharad or both from Hindi Sahitya Sammelan, Allahabad or Hindi Sahitya Sammelan, Prayag from the year 1982 onwards. In para 4 of the petition it is alleged that the petitioners are registered at Vaidyas with Rajkiya Ayurvedic Evam Unani Chikitsa Parishad. Patna, Bihar

under the Bihar Development of Ayurvedic and Unani System of Medicines Act, 1951 and have certificates except the petitioner Nos. 22 to 24 and 27, who are registered with Madhya Pradesh Ayurvedic Tatha Unani Chikitsa Paddhati Evam Prakritik Chikitsa Board, Bhopal and have certificates of registration. In para 6 of the petition it is stated that the petitioner Nos. 1 to 39 except petitioner Nos. 22, 23, 24 and 27 are practicing in different parts of the State of Bihar. The petitioner Nos. 22, 23, 24 and 27 are practicing in the State of Madhya Pradesh. In para 7 of the petition it is alleged that the petitioners want to practice in the State of U. P. as there is more scope of medical practice in U. P. than in the States of Bihar and Madhya Pradesh and most of the petitioners are residents of U. P. or of the adjoining districts of Madhya Pradesh. The petitioners approached the Registrar, Board of Indian Medicines, U. P. Lucknow, to accept their applications for registration as medical practitioners u/s 50 of the U. P. Act, 1939, but the Registrar refused to do so. Photostat copy of the degrees/certificates are Annexures-2 to 40 to the writ petition and details are mentioned in paras 9 to 48 of the writ petition. All these certificates show that the petitioners claim to do medical practice on the basis of the certificates/degrees granted by Hindi Sahitya Sammelan, Allahabad/Prayag which are registered societies. The petitioners have relied on various order passed by the various High Courts copies of which are Annexures-41 to 44 of the writ petition.

4. In our opinion there is no merit in this petition. It has been held by the Supreme Court in Delhi Pradesh Registered Medical Practitioners v. Director of Health Services 1997 (II) SCC 687, that a degree/certificate of Hindi Sahitya Sammelan, Allahabad/Prayag does not confer any right of the persons holding certificates/degrees to do medical practice.

5. A counter-affidavit has been filed by the respondent Nos. 2 and 3. In para 4 of the same it is stated that the Central Council of India Medicine has been constituted by the Government of India under the provisions of the Indian Medicine Central Council Act, 1970, which pertains to the Ayurveda, Siddha and Unani System of Medicines. The Central Council with the sanction of Government of India has prescribed 5-1/2 years degree course in Ayurveda B.A.M.S., Unani (Kamil-e-Jarahat) B.U.M.S. and Siddha (Siddha Maruthyam Arignar) B.S.M.S. The recognized medical qualification has been defined in Section 2(1)(h) of the Indian Medicine Central Council Act, 1970, as follows :

"Recognized medical qualification means any of the medical qualification of Indian medicine included in the Second, Third or Fourth Schedule."

6. In para 5 of the counter-affidavit it is stated that after 1.10.1976 only those persons holding any medical qualifications included in the Second, Third or Fourth Schedules are eligible for registration and practice of Indian Systems of Medicine and entitled to avail the right to practice medicine after enforcement of Section 17 of the Central Act. In para 10 of the counter-affidavit it is stated that the petitioners cannot be permitted as medical practitioners and they cannot use the prefix "Dr" before their name since they do not hold any recognized medical

qualification. It is stated that Hindi Sahitya Sammelan, Prayag and Hindi Sahitya Sammelan, Allahabad, are two different institutions. The degree of Vaidya Visharad and Ayurveda Ratna awarded by Hindi Sahitya Sammelan, Allahabad, is not recognized for any purpose and for any period whatsoever in the Central Act, whereas the degree of Vaidya Visharad and Ayurveda Ratna awarded by Hindi Sahitya Sammelan, Prayag from 1931 to 1967 are included in the Second Schedule to the Indian Medicine Central Council Act, 1970 and these medical qualifications awarded during 1931 to 1967 alone are recognized. Copies of the medical qualifications/ diplomas and registration certificates issued by Bihar and M. P. State Boards are fake, bogus and illegal.

7. In *Delhi Pradesh Registered Medical Practitioners Vs. Delhi Admn. Director of Health Services and Others*, the Supreme Court has held that the degrees awarded by Hindi Sahitya Sammelan, Prayag, were recognized only from 1931 to 1967. The petitioners are holding bogus and fake certificates which are not recognized. The Registrar-cum-Secretary of the Central Council of Indian Medicine instructed the Health Secretaries of all State Governments, Director and Registrar of all State Boards/Councils instructing them that the names of all such practitioners who are not holding recognized medical qualifications should be removed from the State Register and they should not be allowed to do medical practice. No persons can be enrolled on the State Register or is entitled to practice on the basis of such bogus qualification. The police authorities were asked to restrain all such persons from carrying on their practice, which may prove dangerous for the health of the public. In para 12 it is stated that the petitioners managed to get themselves enrolled on the State Registers at their places in Bihar and Madhya Pradesh. It is shocking to note how the practitioners have been practicing since last many years without any recognition or valid qualifications.

8. On the facts of the case, we are of the opinion that the Hindi Sahitya Sammelan, Allahabad is a fake institution whereas Hindi Sahitya Sammelan, Prayag was recognized only from 1931 to 1967.

9. In *Dr. Vijai Kumar Gupta and others Vs. State of U.P. and others*, it was held that a degree from Hindi Sahitya Sammelan, Prayag, acquired after 1967 was not recognized and hence those who obtained the same are not entitled to practice Indian Medicine.

10. We find no unconstitutionality in the impugned provisions.

11. The writ petition fails and is dismissed.

12. We further direct the State Government and the authorities to ensure that such persons holding fake degrees are not allowed to do medical practice in U. P. and strong legal action shall be taken against them.

Let the Registrar General of this Court send copy of this judgment to the Chief Secretary, U. P. Home and Medical Secretaries, U. P. and the Director General of

Police, U. P., who will ensure compliance of this order.