
(1989) 04 RAJ CK 0020

In the Rajasthan High Court

Case No : Civil Review Petitions No"s. 16 and 17 of 1989

Vaidhya Om Prakash Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-04-1989

Acts Referred:

Indian Medical Council Act, 1956 — Section 2

Indian Medicine Central Council Act, 1970 — Section 17

Citation : (1989) 1 RLW 143 : (1989) WLN 73

Hon'ble Judges : M.B. Sharma, J;I.S. Israni, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This order will dispose of the above numbered two review petitions.

2. Under our order dated 23rd September, 1988 we had disposed of the four writ petitions filed by the Rajasthan Pradesh Vaidhya Samiti through its Secretary Kalyan Chand Purohit and others, the case is reported in 1988(2) RLR 64, we had taken a view that, such of the persons who had acquired qualifications of either Vaidya Visharad or Ayurveda Ratna after year 1967 from the Hindi Sahitya Sammelan are not entitled to be registered in the State Register and are not entitled to practice as Vaidya. We may straight away say that when we made the aforesaid order certain provisions of the Indian Medicine Central Council Act, 1970, (for short, the Central Act), were not brought to our notice and they also escaped our notice. The provision which escaped our notice is Sub-section (3) of Section 17 of the Indian Medicine Central Council Act. The said sub-section is as under:

(3) Nothing contained in Sub-section (2) shall affect;

[a] the right of a practitioner of Indian Medicine enrolled on a State Register of Indian Medicine to Practise Indian Medicine in any State merely on the ground that, on the commencement of this Act, he does not possess a recognised

medical qualification;

[b] the privileges (including the right to practise any system of medicine conferred by or under any law relating to registration of practitioners of Indian Medicine for the time being in in any State on a practitioner of Indian medicine enrolled on a State Register of Indian Medicine;

[c] the right of a person to Practise Indian Medicine in a State in which, on the commencement of this Act, a state Register of Indian Medicine is not maintained if, on such commencement, he has been Practising Indian Medicine for not less than five years.

[d] the rights conferred by or under the Indian Medical Council Act, 1956 (including the right to practise Medicine as defined in clause (f) of Section 2 of the said Act), on persons possessing any qualifications included in the Schedules to the said Act.

3. It is not disputed that the Act came into force in Rajasthan and all other States w.e.f. 1st October, 1976. In the above extracted Section 17(3) of the Act, nothing contained in Sub-section (2) shall affect the right of a Practitioner of Indian Medicine enrolled on a State Register of Indian Medicine to Practice Indian Medicine in any State merely on the ground that on the commencement of the Act, he does not possess a recognised Medical qualification. It also provides that the privileges (including the right to practise any system of Medicine) conferred by or under any law relating to registration of practitioners of Indian Medicine for the time being in force in any State on a practitioner of Indian Medicine enrolled on a State Register of Indian Medicine shall not be affected. Similarly, the right is saved of a person to practise Indian Medicine in a State in which on the commencement of this Act, i.e. 1st October, 1976, the State Register of Indian Medicine is not maintained if, on such commencement, he has been practising Indian Medicine for not less than five years. It will, therefore, be clear that if any Practitioner of Indian Medicine was enrolled on the State Register of the Indian Medicine before 1st October, 1976, his right to continue the practice will not be affected. Therefore, not with standing the Act that the two qualifications viz. Vidhya Visharad or Ayurveda Ratna from the Hindi Sahitya Sammelan, Prayag after the year 1967 are not included in the Schedule to the Act, such of the persons who were on the State Registers and had a right to practice under the Rajasthan Indian Medicine Act, 1953, will continue to have a right to practice in the Indian System of Medicine.

4. Consequently, we allow both the review petitions and clarify our order dated 23rd September, 1988 In a batch of write Petitions, to the effect that those persons who are either Vaidhya Visharad or Ayurveda Ratna even after 1967 and have acquired the said qualifications before 1st October, 1976 and whose names appear on the Slate Registers maintained under the Rajasthan Indian Medicine Act, 1953, shall have a right to practice the Indian System of Medicine despite the fact that above two degrees do not find mention in the schedule to the Act

after the year 1967. We may also make clear that any body who is entitled to practice Indian System of Medicine under the aforesaid Rajasthan Act on 1st October, 1976 and have applied for registration but his application was not disposed of, will have a right to practice on his applications be may allowed. Costs made easy.