

(2014) 03 UK CK 0051

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1754 of 2013

Ved Prakash Tyagi

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Indian Medicine Central Council Act, 1970 — Section 27, 27(1), 27(2)

Citation : AIR 2014 UC 31 : (2015) 110 ALR 763 : (2015) 1 UC 217

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : R. Venkatramani, Sharad Sharma, Sr. Adv., M.C. Pant, Om Prakash, Advocate for the Appellant; B.P.S. Mer, Standing Counsel, K.P. Upadhyay, Paresh Tripathi, Shivanand Bhatt, P.K. Chauhan, Tasmeen Ahmadi, Mehmood Pracha, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J.—The petitioner before this Court is a practitioner of Ayurveda and Unani system of medicines. In short, he is an "Ayurvedic" Doctor. He is aggrieved by orders dated 06.05.2013 (including its amendment dated 07.05.2013) and dated 09.05.2013 passed by Controller Board of Indian Medicine Uttarakhand and also order dated 19.07.2013 passed by respondent No. 3 i.e. Principal Secretary, Department of Medical Education & Ayush, Dehradun. Lastly, by an amendment in the writ petition he has also challenged the notification of the Ministry of Health and Family Welfare, Government of India dated 27.07.2013 by which his "seat" has been declared vacant. The petitioner was initially registered as an Ayurvedic Doctor with the State Board of Indian Medicine Rajasthan. He later on got a temporary registration with the Bhartiya Chikitsa Parishad Uttarakhand (hereinafter referred to as "Board"), after getting "No Objection Certificate" from the counter part of Rajasthan. His registration was valid only till 11.10.2011. Later a complaint was moved before the Board against the petitioner wherein it was alleged that the petitioner has obtained

registration in Uttarakhand fraudulently and by concealment of material facts. On the basis of such complaint the "Board" passed an order on 06.05.2013, deciding not to extend the registration of the petitioner any further. The reasons shown are that the petitioner was registered with both Rajasthan Board as well as the Board at the same time, and that he got his registration with Board by concealing material facts. Against the order dated 06.05.2013 the petitioner moved a representation before the Board and the Board vide its order dated 09.05.2013 holding that the petitioner has obtained registration with the Uttarakhand Board by way of "deceit", cancelled his registration. The petitioner moved an appeal against the said orders before the State Government u/s 43 of the United Provinces Indian Medicine Act, 1939 (hereinafter referred to "State Act"). Vide order dated 20.05.2013 the State Government set aside the orders of the Board on the grounds that they are in violation of the principles of natural justice as fair play.

2. The above order (dated 20.05.2013) was challenged before this Court by one Dr. Vinod Kumar Chauhan in WPMS No. 1149 of 2013 which was disposed of by a learned Single Judge of this Court on 31.05.2013 by passing following order:-

"Mr. Manoj Tewari, Senior Advocate with Mr. Pradeep Kumar Chauhan, Advocate for the petitioner.

Mr. Paresh Tripathi, Addl. Chief Standing Counsel for the State/respondent nos. 1 & 2.

Mr. R. Venkatramani, Senior Advocate and Mr. Sharad Sharma, Senior Advocate with Mr. Ram Ji Srivastava, Mr. Om Prakash, Advocates for respondent No. 4.

Heard learned counsel for the parties and perused the record.

Without entering into other arguments advanced by the learned counsel for the parties, this Court is taking into account only this question, whether before passing the order dated 20.05.2013, the Principal Secretary, Medical Health and Ayush granted opportunity of hearing to the Bhartiya Chikitsa Parishad, Uttarakhand.

From perusal of the order impugned, it is clear that the Bhartiya Chikitsa Parishad, Uttarakhand was not heard.

Considering this fact alone, I set-aside the order dated 20.05.2013 passed by respondent No. 1 and remand the matter for reconsideration. The Principal Secretary, Medical Health and Ayush, Govt. of Uttarakhand shall pass order afresh in the appeal, after hearing the Bhartiya Chikitsa Parishad, Uttarakhand also. Such order shall be passed within a period of two weeks from the date of production of a certified copy of this order. Till the disposal of the appeal, status-quo as on today shall be maintained.

This disposes of the writ petition."

3. Meanwhile, a writ petition filed by the petitioner (WPMS No. 1232 of 2013)

was also withdrawn by the petitioner in view of the above order in WPMS No. 1149 of 2013.

4. Under these circumstances, the matter went before the State Government once again which was now to hear the appeal of the petitioner against his cancellation. Section 43 of the State Act under which appeal lies before the State Government, reads as under:-

"43. Appeals to State Government from decision of Board--

(1) An appeal shall lie to the State Government from every decision of the Board under this Act except a decision made by the Board as an appellate authority.

(2) Every appeal under sub-section (1) shall be preferred within three months of the date of such decision."

5. After giving a detail hearing to the petitioner as well as to the Board, the Principal Secretary, Government of Uttarakhand rejected the appeal of the petitioner on the ground that he obtained the registration in Uttarakhand by fraud and deceit as at that time he was also registered as an Ayurvedic doctor with the Rajasthan Board, a fact which was not shown to the Board at Uttarakhand. Hence, the Principal Secretary, Government of Uttarakhand came to the conclusion that the registration was obtained by fraud and deceit it has rightly been rejected by the Uttarakhand Board. The State Government rejected the appeal of the petitioner on the ground that registration of an Ayurvedic doctor in two State Boards is not permissible and the petitioner had withheld this material fact from the authorities of Uttarakhand while obtaining the registration in Uttarakhand and, therefore holding that his registration has been rightly cancelled by the Board.

6. In pursuance of the two orders passed by the Uttarakhand authorities, the Central Council of Indian Medicine (in short CCIM) in Delhi, which is the Apex body in such matters "struck off" the name of the petitioner from its list u/s 27(1) of the Indian Medicine Central Council Act, 1970 (hereinafter referred to as "Central Act"), which reads as under:--

"27. Removal of names from the Central Register of Indian Medicine

(1) If the name of any person enrolled on a State Register of Indian Medicine is removed therefrom in pursuance of any power conferred by or under any law relating to registration of practitioners of Indian medicine for the time being in force in any State, the Central Council shall direct the removal of the name of such person from the Central Register of Indian Medicine."

7. All the same, before this Court it is not simply a matter where registration of a Medical Practitioner has been cancelled and that cancellation is under challenge, but what complicates the matter is that the petitioner in his capacity as a doctor, registered with Board in Uttarakhand, got elected as a representative to Central Council for Indian Medicine (from hereinafter referred to as "CCIM") and

thereafter was also elected as the "President" of CCIM. It was while he was functioning as a "President" of CCIM that a notification was issued by Government of India, which says that in view of the fact that his registration has been cancelled by the authorities in the Uttarakhand, the petitioner's seat is declared vacant. It is the notification (dated 27.07.2013) which is also under challenge. The petitioner, therefore, as of now ceases to be the President of CCIM.

8. The petitioner alleges mala fide on the part of the respondents and the powers that be. He also alleges that the due process of law has not been followed in his case and that a grave injustice has been done to him. But before petitioner could start his arguments on the merits of the case, a preliminary objection has been raised by all the respondents i.e. the Government of India, CCIM, Board as well as State of Uttarakhand. The objection is as to the maintainability of the writ petition at this stage, in view of the statutory remedy available to the petitioner u/s 27(2) of Central Act, which reads as under:-

"27. Removal of names from the Central Register of Indian Medicine

(1).....

(2) Where the name of any person has been removed from a State Register of Indian Medicine on any ground other than that he is not possessed of the requisite medical qualifications or where any application by the said person for restoration of his name to the State Register of Indian Medicine has been rejected, he may appeal in the prescribed manner and subject to such conditions, including conditions as to the payment of a fee, as may be prescribed, to the Central Government whose decision, which shall be given after consulting the Central Council, shall be binding on the State Government and on the authorities concerned with the preparation of the State Register of Indian Medicine."

9. Mr. Venkatramani, learned senior counsel appearing for the petitioner submits that he is presently has no other remedy, but to approach this Court by way of filing writ petition u/s 226 of the Constitution of India. The appeal, which is visualized under sub-section (2) of Section 27 of the Central Act, is only against a removal of a Medical Practitioner. In the present case, the petitioner has not been removed, as removal would have entirely different factual and legal implications. What has happened in petitioner's case is that his registration has been cancelled and the only remedy in such a case was a remedy by way of an appeal before the State Government, u/s 43 of the State Act, which he has presently availed. Secondly in any case, the learned Senior counsel would argue that petitioner presently cannot avail the remedy of appeal before the Central Government which would technically be a second appeal, as he has already exhausted his remedy of appeal before the State Government (Uttarakhand). Elaborating his arguments on this, he submits that the CCIM has been given powers u/s 6 of the Central Register of Indian Medicine Regulations (in short "Regulations"), which reads as under:-

"6. Appeal for restoration of name in State Register Any person whose name has been removed from a State Register on any ground other than that he is not possess of the requisite medical qualification or where any application by the said persons for restoration of his name to the State Register of Indian Medicine has been rejected, may file an appeal to the Central Government under subsection (2) of the section 27 of the Act, in Form "D" and every such appeal so filed shall be accompanied by a fee of rupees twenty five by a Bank Draft in favour of Secretary, Ministry of Health and Family Welfare, New Delhi.

10. He further argues that an appeal to the Central Government, as per the Regulation--6 of the Regulations, has to be filed in Form "D". He then refers to Form "D" where there is a column/paragraph 5 which has to be signed by the appellant, which reads as under:-

"5. I have not made any appeal to the State Government in this matter."

11. Learned Senior Advocate would argue that the Regulations itself shows that in view of an undertaking which has to be given that only if one has not exhausted the remedy before the State Government can one approach the Central Government u/s 27(2) of the Central Act (read with Regulation 6 of the Regulations). He further argues that in any case since the remedy of appeal before the Central Government is against the removal, whereas his case is against "cancellation" for which he has already exhausted his remedy u/s 27(4) of the State Act.

12. The learned counsel for the petitioner also argued that even assuming there is an appeal u/s 27(2) of the Central Act before the Central Government, the petitioner can well elect where to go in appeal, whether to the State Government (under Section 43 of the State Act) or before the Central Government (under Section 27(2) of the Central Act), and the petitioner having elected to go before the State Government he now cannot be asked to go to the Central Government, as this remedy he has already exhausted.

13. Learned counsel for the petitioner tried to draw the distinction between Section 27 and Section 31 of the State Act whereas Section 27 of the State Act refers to "registration" and "cancellation of registration", which vests with the Board. u/s 31 of the State Act there are powers of the Board inter alia to remove a person from the register. Section 27 of the State Act reads as under:-

"27. Persons entitled to be registered--

(1) Every person possessing the qualifications mentioned in the Schedule shall, subject to the provisions contained in or made under this Act and upon payment of such fees, whether in a lump sum or periodically, as may be prescribed, be entitled on an application made to the Registrar, to have his name entered in the Register. When the name of a person has been registered in accordance with the provision aforesaid he shall be granted a certificate in the prescribed form.

(2) Any person aggrieved by the order of the Registrar refusing to enter his

name in the Register or to make any entry therein may, within ninety days of such refusal, appeal to the Board.

(3) The appeal shall be heard and decided by the Board in the prescribed manner.

(4) The Board may on its own motion or on the application of any person cancel or alter any entry in the Register if in the opinion of the Board such an entry was fraudulently or incorrectly made or obtained, or an application was wrongly refused."

14. Section 31 of the State Act reads as Under:-

"31. Powers of Board to prohibit entry in or, to direct removal from the register, etc.--

(1) The Board may prohibit the entry in, or order the removal from the register of the name of any Vaidya or Hakim-

(a) who has been sentenced by a Criminal Court in British India to imprisonment for an offence declared by Government to involve such moral turpitude as would render the entry or continuance of his name in the register undesirable, or

(b) whom the Board or a Committee specially authorized for the purpose after enquiry (at which opportunity has been given to him to be heard in his defence and to appear either in person or by counsel, Vakil, pleader or attorney, and which may, in the discretion of the Board, be held, in camera, has found guilty of professional misconduct or other infamous conduct by a majority of at least two-thirds of the members present and voting at the meeting.

(2) The Board may direct that the name of any person against whom an order has been made under sub-section (1) shall be entered or re-entered, as the case may be, after having satisfied itself that due to lapse of time or otherwise the disability mentioned in subsection (1) above has ceased to have any force."

15. On the other hand the appeal to the State Government from a decision of the Board is not an appeal only against a cancellation, but it can also be an appeal against removal as the language of Section 43 of the State Act clearly says an appeal shall lie to the State Government "from every decision of the Board" except a decision made by the Board as an appellate authority. Section 43 of the State Act reads under:-

"43. Appeals to State Government from decision of Board--

(1) An appeal shall lie to the State Government from every decision of the Board under this Act except a decision made by the Board as an appellate authority.

(2) Every appeal under sub-section (1) shall be preferred within three months of the date of such decision."

16. It is, however, true that the petitioner's case is that he had appealed against the "cancellation" of his registration and not against "removal".

17. Thereafter the learned counsel for the petitioner has argued that a removal can only be done in a case of professional misconduct and has taken this Court to Regulation 1982 known as "Central Council of Indian Medicine" where professional misconduct has been defined under Regulation 32 under various heads, which does not include cancellation of a registration for whatever reasons it might be. Learned counsel would, therefore, argue that in a matter of cancellation he cannot approach the Central Government u/s 27 of the Central Act.

18. Refuting this argument, learned counsel for the CCIM Ms. Ahmadi submits that in a given situation even a cancellation can amount to a removal of a person, and what has presently happened is that the petitioner has been removed from the list of the Uttarakhand doctors. She further takes this Court to Notification dated 27.07.2013 (Annexure No. 42 to the writ petition) issued by the Ministry of Health and Family Welfare (Department of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy), New Delhi in which at the last paragraph it has been mentioned that "Dr. Ved Prakash Tyagi ceases to be enrolled" which would mean that he has been "removed". She further argues that under the broad scheme of the Central Act as well as the State Act read with the Scheme of the Constitution, and particularly, the powers given to the State Governments and the Central Government under various Entries in Schedule 7 of the Constitution of India, it is the Central Government which is the final authority which can regulate and control Ayurvedic Medical Education, for which the CCIM is constituted. She further submits that Medical Education comes under Entry 25 of List III of Schedule 7 of the Constitution of India, which is in the Concurrent List which has to be seen subject to the provisions of Entries 63, 64, 65 and 66 of List I of Schedule 7 of the Constitution of India, which reads as under:-

"[25. Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.]"

19. Broadly the submission of the learned counsel for the respondent would be that in order to regulate the standard of Higher Education, which would mean "the standard of Ayurvedic Education in the country", the powers are with the Central Government and therefore, it is for this reason that u/s 27(2) of the Central Act has been incorporated making the Central Government, the ultimate authority, to dispense in such matters.

20. Learned counsel for the Board Mr. Paresh Tripathi has also drawn the attention of this Court towards the para 36 of the writ petition, which reads as under:-

"That in these peculiar circumstances, it is submitted with great respect that this Hon"ble Court may consider referring the matter to the Central Government under the "Indian Medicine Central Council (Central Register of Indian Medicine), Regulations, 1979" which vests it with appellate power, as under;

"6. Appeal for restoration of name in State Register--

Any person whose name has been removed from a State Register on any ground other than that he is not possessed of the requisite medical qualification or where any application by the said persons for restoration of his name to the State Register of Indian Medicine has been rejected, may file an appeal to the Central Government under subsection (2) of section 27 of the Act, in Form "D" and every such appeal so filed shall be accompanied by a fee of rupees twenty five by a Bank Draft in favour of Secretary, Ministry of Health and Family Welfare, New Delhi".

21. Though it is not a formal prayer by the petitioner, learned counsel for the Board would argue that it was well within the knowledge of the petitioner that the actual remedy before him is an appeal before the Central Government u/s 27(2) of the Central Act and it is for this reason he is seeking a relief from this Court that the matter be referred to that authority, in other words, it is his own prayer that the matter be referred to the Central Government.

22. On this submission, learned Senior Counsel Mr. Venkatramani (for the petitioner) has argued that this is merely a lapse in the drafting of the petition and has urged this Court to examine only the legal submissions made by the parties and pass an order on the basis of it, as ultimately there would be no estoppel against the law.

23. The State Act is of the year 1939. It is a pre-Independence, pre-Constitution provincial enactment of the State of Uttar Pradesh. At that time when this Act was enacted there was nothing like a Central Council of Indian Medicine, a regulatory body, which now regulates the functions of Ayurvedic doctors and regulate the standards of education in Ayurvedic Medicines. There was also no control of the Central Government on these matters. The Indian Medicine Central Council Act, 1970 for the first time gave powers to the Central Government u/s 27(2) of the Central Act whereby a person whose name has been removed from a State register of Indian Medicine on any ground (other than that he is not possessed of the requisite medical qualifications) can appeal to the Central Government in a prescribed manner. It further says that also a person "whose application for restoration of his name to the State register of Indian Medicine has been rejected" can also appeal in the prescribed manner before the Central Government whose decision "shall be binding on the State Government and on the authority concerned with the preparation of the State register of the Indian Medicine". Therefore, this argument of the petitioner that only a person whose name has been "removed" from the State register on grounds of professional misconduct can appeal to the Central Government u/s 27(2) of the Central Act is not correct. u/s 27(2) of the Central Act a right is also given to a person whose application for restoration of his name to the State register of Indian medicine has been rejected. This is precisely the case with the petitioner, as per his own case. Therefore, this argument that an appeal before the Central Government lies only in a case of removal is not a correct submission in law.

24. The other aspect of the matter is that in a given case a cancellation may also amount to removal of the name from the register. In the present case the name of the petitioner has been removed from the State register on serious charges of deceit and fraud. It is not a cancellation simpliciter. Ultimately, it will all depend upon the net result or the net effect of the cancellation of petitioner's name from the State register. Whether we call it "cancellation" or "removal", the net result is the same.

25. The learned counsel for the petitioner Mr. Venkatramani has also tried to place before this Court various rulings of the Hon'ble Apex Court on the subject, particularly, on the alternative remedy. He has relied upon the following decision of the Hon'ble Apex Court in the The State of Uttar Pradesh Vs. Mohammad Nooh, and has argued that in any case an alternative remedy is not an absolute bar.

26. The fact of the matter, however, is that once it is the clear opinion of this Court that the petitioner has a statutory remedy, the proper course would always be that the petitioner must exhaust that remedy before he invokes the writ jurisdiction of this Court under Article 226 of the Constitution of India. The petitioner has then argued that the issue of alternative remedy was argued before the Court at the initial stage itself when the matter was heard before another learned Judge. However, this is not reflected from the previous orders of the Court.

27. In view thereof, and in view of the language of Section 27(2) of the Central Act being extremely wide, it is clear that petitioner has a statutory remedy by way of an appeal before the Central Government. In view of the above discussion, the writ petition is dismissed on the ground of alternative statutory remedy. Interim order, if any, also stands vacated. No order as to costs.