IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 4619/2003

Date of decision: 9th August, 2010

DR.JAIPAL & ANR. ..... Petitioners
Through Mr.Arvind Gupta with
Mr.Bipin Singhvi and
Mr.Ankit Chaudhary, Advocates

versus

GOVT. OF N.C.T. OF DELHI & ORS ..... Respondents
Through MS.Meera Bhatia, Adv. for GNCTD
Mr.Ashok Mahajan, Adv. for R-3.
Mr.T.K. Joseph, Adv. for R-4

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether reporters of the local papers be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

DIPAK MISRA, CJ

By this writ petition preferred under Article 226 of the Constitution of India, the petitioner has prayed for declaring Section 17(5) of the Delhi Bhartiya Chikitsa Parishad Act, 1998 (for short 'the 1998 Act') as ultra vires Articles 14, 19(1)(e), 19(1)(g) and 21 of the Constitution of India and Sections 17(3)(b) and 29 of the Indian Medicine Central Council Act, 1970 (for brevity 'the 1970 Act') and further to issue a mandamus to the respondents not to give effect to Section 17(5) of the 1998 Act. That apart, a prayer has been made to issue a writ of certiorari to quash the order dated 26th June, 2003, Annexure P-3, passed by the Delhi Bhartiya Chikitsa Parishad, the respondent No.3 herein, by which the said Parishad had declined to register the petitioner No.1 at Delhi.

2. At the very outset, it is imperative to state that with the efflux of time, the questions that have emerged for consideration at one point of time, if we allow ourselves to say so, have gradually melted into insignification. We say so as two decisions, namely, Pradeep Kumar & Ors. v. ,Govt. of NeT of Delhi & Ors. 128 (2006) DLT 753 (DB) and Rajasthan Pradesh v: S. Sardarshahar & Anri v. Union of India & Ors. JT 2010 (6) SC 306 have come into existence. In view of the aforesaid, we need not refer to the entire facts that have been adumbrated in the writ petition and the stand and stance put forth in the counter

affidavit and the rejoinder affidavit. We think it apt to refer to the basic facts which are necessitous for the purpose of adjudication of the lis in question.

3. It is not in dispute that the petitioner No. 1 passed Ayurved Bhaskar from Gurukul Ayurveda Maha Vidhyalaya Jawalapur, Haridwar, D.P. in the year 1975 and got himself registered with the Board of Indian Medicine, Lucknow, U.P. on ih August, 1976. The petitioner No.2 passed in the year 1978 and got himself registered with the aforesaid Board on 1st January, 1979. Both the petitioners applied for registration in Delhi on 25th May, 2001 but the said benefit was declined as a consequence of which the present writ petition came to be filed.

4. Before we advert to the issue relating to the constitutional validity as prayed for, we think it apposite to delineate whether the petitioners are entitled to the benefit as claimed by them. Section 17 of the 1970 Act reads as follows:

> "17. **Rights of persons possessing qualifications included in Second, Third and Fourth Schedules to be enrolled**.- (1) Subject to the other provisions contained in this Act, any medical qualification included in the Second, Third or Fourth Schedule shall be sufficient qualification for enrolment on any State Register of Indian Medicine.
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> (2) Save as provided in Section 28, no person other than a practitioner of Indian Medicine who possesses a recognized medical qualification and is enrolled on a State Register or Central Register of Indian Medicine,--
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> (a) shall hold office as a Vaid, Siddha, Hakim or Physician or any other office (by whatever designation called) in Government or in any institution maintained by Local or other authority ;
>
> (b) shall practice Indian Medicine in any State.
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> (c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner;
>
> d) shall be entitled to give evidence at any inquest or in any court of law as under Section 45 of the Indian Evidence Act, 1872 (1 of 1872) on any matter relating to Indian Medicine.
>
> (3) Nothing contained in the sub Section (2) shall effect-

(a) 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 this Act, he does not possess a recognized medical qualification;

(b) the privileges (including the right to practice 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;

(c) the right of a person to practice 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 practicing Indian Medicine for not less than five years.

(d) the rights conferred by or under the Indian Medical Council Act, 1956 (102 of 1956) [including the right to practice 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.

(4) Any person who acts in contravention of any provision of sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with a fine which may extend to one thousand rupees, or with both."

5. Be it noted that the various provisions of the Act came into force on various dates. Sections 17 and 23 to 31 (both inclusive) came into force in Delhi with effect from 1st October, 1976. Sections 14 to 16 came into force in all the states except the State of Nagaland and the Union Territory of Delhi on 5th August, 1971. The submission of Mr.Gupta, the learned counsel for the petitioners, is that his case is covered under Sections 17(3)(a) and (b) and this aspect was not considered in the decision rendered in Pradeep Kumar & Ors. v. Govt. of NCT of Delhi & Ors. (supra) inasmuch as in the, said case, the Division Bench was concerned only with Section 17(3)(c).

6. On the contrary, Mr.T.K. Joseph, the learned counsel for the Central Council for Indian Medicines, submitted that the question of categorization of the petitioner into any of the categories does not arise and in fact, he cannot avail the benefit of any exception in view of Section 14 of the Act and the Second Schedule which has been inserted in accord with Section 14 of the Act. It is urged by him that the petitioners, as admitted by them, have passed Ayurved Bhaskar from Gurukul Ayurveda Maha Vidhyalaya Jawalapur, Haridwar, U.P. which was granted recognition from 1950 to 1967 and not thereafter and, therefore, any degree obtained from the said centre is totally unacceptable.

7. To appreciate the rival submissions raised at the bar, we may refer with profit to paragraph 23 of Pradeep Kumar & .ors. v. Govt. of NCT of Delhi & Ors. (supra) wherein it has been held as follows: _

> "23. In our opinion in view of Section 29 of the Indian Medicine Central Council Act, 1970 only those persons registered in the Central Register can practice in any part of India. Sections 17(3)(a) and (b) of the 1970 Act provides exceptions in case of those persons who had enrolled before 1.10.1976 i.e the date of enforcement of the Act. Section 17(3) of the Act provides exceptions to those persons who were already practicing Indian medicine for five years before the commencement of the Act i.e 1976 in a State at that time. Except for the above, there is no other exception and a person must possess the recognized medical qualification under the 1970 Act to practise Indian Medicine. The petitioners' case did not fall under the exception enumerated in Section 17 (c) and hence they cannot practice Indian medicine."

8. The submission of the learned counsel for the petitioners is that the petitioners are covered by Sections 17(3)(a) and (b) of the 1970 Act. To appreciate the submission, it is necessary, nay, imperative, to appreciate the essential features of the core provision, i.e., Section 14 of the Act, which reads as follows:

> "14. **Recognition of medical qualifications granted by certain medical institutions of India**.- (1) The medical qualifications granted by any University, Board or other medical institution in India which are included in the Second Schedule shall be recognized medical qualifications for the purposes of this Act.
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> (2) Any University, Board or other medical institution in India which grants a medical qualification not included in the Second Schedule may apply to the Central Government to have any such qualification recognized, and the Central Government, after consulting the Central Council, may, by notification in the Official Gazette, amend the Second Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the Second Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date."

9. Sections 2(f)and 2(h) of the 1970 Act, which deals with medical institution, reads as follows:

> "2(f) "medical institution" means any institution within or without India which, grants degrees, diplomas or licenses in Indian medicine;"

10. On a perusal of Section 14 read with the dictionary clauses, namely, Sections 2(f) and 2(h), there cannot be any scintilla of doubt that unless a person has a medical qualification as per the Second, Third or Fourth Schedule, he cannot be extended the benefit. In the case of S. Sardarshahar & Anr. v. Union of India & Ors. (supra), the Apex Court in paragraphs 43 to 45 has expressed the view as follows:

> "43. At the cost of repetition, it may be pertinent to mention here that in view of the above, we have reached to the following inescapable conclusions:

(I) Hindi Sahitya Sammelan is neither a University/Deemed University nor an Educational Board.

(II) It is a Society registered under the Societies Registration Act.

(III) It is not an educational institution imparting education in any subject inasmuch as the Ayurveda or any other branch of medical field.

(IV) No school/college imparting education in any subject is affiliated to it. Nor Hindi Sahitya Sammelan is affiliated to any University/Board.

(V) Hindi Sahitya Sammelan has got no recognition from the Statutory Authority after 1967. No attempt had ever been made by the Society to get recognition as required under Section 14 of the Act, 1970 and further did not seek modification of entry No. 105 in II Schedule to the Act, 1970.

(VI) Hindi Sahitya Sammelan only conducts examinations without verifying as to whether the candidate has some elementary/basic education or has attended classes in Ayurveda in any recognized college.

(VII) After commencement of Act, 1970, a person not possessing the qualification prescribed in Schedule II, III & IV to the Act, 1970 is not entitled to practice.

(VIII) Mere inclusion of name of a person in the State Register maintained under the State Act is not enough making him eligible to practice.

(IX) The right to practice under Article 19(1)(g) of the Constitution is not absolute and thus subject to reasonable restrictions as provided under Article 19(6) of the Constitution.

(X) Restriction on practice without possessing the requisite qualification prescribed in Schedule II, III & IV to the Act, 1970 is not violative of Article 14 or ultra vires to any of the provisions of the State Act.

44. The instant cases have to be determined strictly in consonance with the law laid down by this Court referred to hereinabove and, particularly, in Ayurvedic Enlisted Doctor's Assn. (supra). The observation made by the Rajasthan High Court to the extent that persons who possessed the certificate upto 1.10.1976 i.e. the date on which the provisions of Section 17 had been enforced in the State of Rajasthan is not in consonance with the law laid down by this Court in the above referred cases. Therefore, that observation is liable to be set aside.

45. In view of the above, Civil Appeal arising out of SLP (C) No. 21043 of 2008 is allowed and it is held that a person who acquired the certificate, degree or diploma from Hindi Sahitya Sammelan Prayag after 1967 is not eligible to indulge in any kind of a medical practice….."

11. In view of the aforesaid pronouncement of law, we are of the considered opinion that the claim put forth by the petitioners is without any substance as they had acquired a certificate from an educational institution which had no recognition after 1967 as noticeable from the Schedule to the Act. Accordingly, the said claim has to be negatived and we do so.

12. The other prayer which we had expressed earlier to address at a later stage relates to the challenge pertaining to the constitutional validity of Section 17(5) of the 1998 Act Section 17 deals with Chapter III of the said Act which provides for preparation and maintenance of a register.

Section 17(5) reads as follows:

"Any person servicing or practicing Indian Systems of Medicine in Delhi shall be registered with the Parishad under this Act. Without registration with the Parishad any person though qualified in Indian Systems of Medicine, shall be liable for action as specified by the Parishad. "

13. It is submitted by Mr. Gupta that the Indian Medicine Central Council Act, 1970 postulates that a person practising Indian system of medicine can practise anywhere in India. It is urged by him that the restriction imposed by sub-section (5) is impermissible. That apart, the learned counsel submits that the same also creates a classification without any kind of intelligible differentia and is violative of Article 14 of the Constitution. It is also propounded by him that it affects the right to livelihood which invites the frown of Article 21 of the Constitution of India. The aforesaid submissions of Mr Gupta ordinarily would have been dealt with but, a significant one, the same do not deserve to be dwelled upon in the obtaining factual matrix as the petitioners herein do not have the requisite qualification under the Central Act to practise the Indian System of Medicine. When the infrastructure is not in existence, as a natural corollary, there cannot be a superstructure. It is well settled in law that a Court of law is not required to decide an academic issue. Hence, we refrain from delving into the facet of the constitutional validity of the provision.

14. Consequently, the writ petition, being devoid of merit, stands dismissed without any order as to costs.

CHIEF JUSTICE

MANMOHAN,J

AUGUST 09, 2010