REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 1337 OF 2007

Ayurvedic Enlisted Doctor's Asson.,
Mumbai ...Appellant

Versus

State of Maharashtra and Anr. ...Respondents

(With Civil Appeal Nos.1338/2007, 1339/2007, 1884/2007, Civil Appeal No……of 2008 (Arising out of S.L.P (C) No.19079/2007, 2769/2007, 2807/2007, 2810/2007, 3543/2008, 4064/2007, 4196/2007, 4982/2007

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. In these appeals challenge is to the final judgment of the Bombay High Court dismissing the writ petitions filed by the appellants while

granting the limited relief to those writ petitioners who hold degree or diploma in Electropathy or Homeo-Electropathy. Though their writ petitions were dismissed it was made clear that so far as those who hold degree or diploma in Electropathy or Homeo-Electropathy may practice in Electropathy or Electrotherapy without registration as medical practitioners but they would not be entitled to practice as or claim to be medical practitioners, doctors etc and they were also not entitled to use any title, like Dr. or any abbreviations prefixing or suffixing their names which may indicate that they are doctors or medical practitioners. Three categories of persons filed the writ petitioners before the High Court. They are as follows:

(i) The persons who hold either the degree or diploma of Vaidya Visharad or Ayurved Ratna or some other equivalent degree awarded by Hindi Sahitya Sammelan Prayag or Hindi Sahitya Sammelan Allahabad and some other institutions whose degree and diplomas are not recognised in Schedule II of the Indian Medical Central Council Act, 1970

(ii) The persons who claim to be practicising in Ayurved on the basis of long experience

(iii) The persons who claim to hold degrees or diplomas in Electropathy or Homeo-Electropathy.

3. The present appeals relate to the first and second category. The first category relate to Civil Appeal Nos.1337/2007, 1338/2007, 1339/2007, 1884/2007, Civil Appeal arising out of SLP(C) No.19079/2007, Civil Appeal 2769/2007, 2807/2007, 4196/2007, 4982/2007 and the second category relates to Civil Appeal Nos.3543/2008, 4064/2007 and 2810/2007.

4. Stand of the appellants in essence is that they were registered as practitioners under the Bihar Development of Ayurvedic and Unani Systems of Medicine Act, 1951 (in short the 'Bihar Act') in terms of the Schedule as referred to under Sections 22, 23, 24, 25 and 26. Their names were entered in the register as registered practitioners. Though they did not hold any degree or diploma or certificate of any recognised institution they possess sufficient knowledge and skill requisite for educational practice of medicines, surgery and have acquired certain amount of eminence in the medical science and also fulfill the conditions imposed by the regulations made by the Bihar State Council of Ayurvedic and Unani Medicines (in short the 'Council'). They were practicising in different places mostly in rural places of Maharashtra. Section 21 of the Bihar Act refers to the maintenance of registers. Section 22 deals with persons entitled to be

registered. Under the said provision every person possessing any of the qualifications specified in the Schedule shall subject to the provisions contained in the Bihar Act and on payment of the prescribed fees be entitled to have his name entered in the register subject to such conditions as the Council may impose. Undisputedly, the names of the appellants have been entered in the registers and they have been registered. The Indian Medicine Central Council Act, 1970 (in short the 'Central Act') was introduced in 1970. Prior to that the Maharashtra Medical Practitioners Act, 1961 (in short the 'Maharashtra Act') was enacted and was in force. The appellants claim that they belong to the third category as enumerated in the Schedule. The Presidential assent to the Bihar Act was given on 12th September, 1951. Under the Central Act, the Central registers in terms of Section 2(1)(d) has to be maintained. Section 2(1)(j) refers to the State Register. It is submitted that Section 17 of the Central Act is of considerable relevance. Section 17 (1) refers to possession of medical qualifications included in Second, Third and Fourth Schedules for enrolment in the State Register of Indian Medicine. It is pointed out that Section 17(2) refers to recognised medical qualification. With reference to Section 14 of the Central Act, it is submitted that medical qualifications granted by any University, Board or other medical institution which are included in the Second Schedule shall be

recognised medical qualifications for the purpose of the Act. Section 23 of the Central Act deals with Central Register and it provides that Central Council shall cause to be maintained in the prescribed manner a register of practitioners in separate parts for each of the system of Indian medicine. It shall contain the names of all persons who are for the time being enrolled on any State Register of Indian Medicine and who possess any of the recognised medical qualifications. It is pointed out that merely because the appellant do not possess the requisite medical qualification that cannot in any way disentitle them from practicising as same would be violative of Article 19(1)(g) of the Constitution of India, 1950 (in short the 'Constitution'). Under Section 29 of the Central Act, a person whose name is included in the Central Register is entitled as a matter of right to practice in any part of India. Since the names of the appellants find place in the Bihar State Registers they are, as a matter of right, entitled to be included in the Central Register. It is submitted that the restriction imposed under the Central Act from practicing, unless names appear in the Central Register will be violative of Article 14. With reference to Section 33 of the Maharashtra Act, more particularly, the first proviso thereof, it is submitted that the State is empowered to permit any person to practice on certain criteria being fixed. With reference to Section 37 of the Maharashtra Act

which has been deleted it is submitted that permission was given to those who were practicising in the rural areas, by deleting the section the permission has been taken out and such deletion is not sustainable in law. Even though Section 37 has been deleted, under the proviso to Section 33 the State Government can yet make a provision for giving permission to persons like the appellants. It is pointed out that the Central Government also felt the need for giving protection to persons like the appellants and recommendations were made.

5. It is also submitted that the Madras High Court had given certain directions which are equitable and the same procedure can be followed in these cases in case of appellants. In some of the appeals denial is on the ground that certificates were not found of recognised institutions.

6. Learned counsel for the respondent-State on the other hand submitted that there was no question of any right to practice. As contended the educational qualifications prescribed are regulatory measures and they are reasonable restrictions. It is pointed out that even in the case of Diploma holders in Veterinary Science, this Court had declined to interfere. They, according to the respondents, stood on a better footing than the present

appellants. The stand that the appellants have undergone some process of screening is of no consequence. The prayer that the appellants can be considered in the light of proviso to Section 33 is also mis-conceived.

7. It is necessary to take note certain provisions.

BIHAR ACT:

"21. Maintenance of registers- Subject to any general or special order, which may from time to time be made by the Council, the Registrar shall maintain a register or registers of vaidyas, hakims, surgeons and midwives practicing the Ayurvedic or Unani System of medicine in the State of Bihar in the prescribed form and it shall be the duty of the Registrar to keep the register correct and up-to-date, as far as practicable in accordance with the provisions made by or under this Act.

22. Persons entitled to be registered- (1) Every person possessing any of the qualifications specified in the Schedule shall subject to the provisions contained in this Act, and on payment of the prescribed fees be entitled to have his name entered in the register subject to such conditions as the council may impose:

Provided that an application for entry of the name in the register of a person whose case is not clearly governed by the provisions of this Act or by the rules and regulations made thereunder shall be referred to the Council for such decisions as it may deem fit.

(2) Any person aggrieved by the decision of the Register regarding the registration of any person or the making of any entry in the register may within ninety days of such registration or entry appeal to the Council.

(3) Such appeal shall be heard and decided by the Council in the prescribed manner.

(4) The Council 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 Council, such entry was incorrect or was made on account of mis-representation.

SCHEDULE:

3. Every vaidya or hakim who in the opinion of the Council possesses sufficient knowledge and skill requisite for the efficient practice of medicine, surgery or midwifery and enjoys a certain amount of eminence in the medical science and who fulfils the conditions imposed by regulations made by the Council as to length of practice.

Maharashtra Act

"2(n)- 'Registered Practitioner' means a practitioner whose name is for the time being entered in the register.

17. REGISTRATION OF PRACTITIONERS.

17 (1) As soon as may be after the appointed day, the Registrar shall prepare and maintain thereafter a register of practitioners of Indian Medicine for the State, in accordance with the provisions of this Act.

(2) The register shall be divided into three parts, namely :

(i) Part I containing the names of practitioners who possess any of the qualifications specified in the Schedule;

[(ii) Part II containing the names of practitioners, whose names were included in that part immediately before the 1st day of October 1976;

(iii) Part III containing the names of practitioners, who on the 30th day of September 1976 were enlisted practitioners and

who are on that day deemed to have become registered practitioners under section 18.

Each part shall consist of one or more sections as the State Government may specify in this behalf.

(3) Every person who possesses any of the qualifications specified in the Schedule shall, at any time on an application made in the form prescribed by rules, to the Registrar and on payment of a fee of five hundred rupees be entitled to have his name entered in the register.

(3A) Notwithstanding anything contained in any law for the time being in force, every person enrolled on the register maintained under the Indian Medicine Central Council Act, 1970, but not enrolled on the register maintained under this Act, shall, on an application and on payment of the fee as provided in sub-section (3), be entitled to have his name entered-in the register maintained under this Act.

(4) The name of every person who on the day immediately preceding the appointed day stood registered in any register kept under-

(a) the Bombay Medical Practitioner's Act, 1938, as in force in the Bombay area of the State ; or

(b) the Central Provinces and Berar Ayurvedic and Unani Practitioner’s Act, 1947, as in force in the Vidarbha regon of the State; or

(c) the Medical Act, as in fore in the Hyderabad area of the State;

shall be entered in the register prepared under this Act without such permission being required to make an application or to pay any fee.

(5) Any person, not being a person qualified for registration under sub-section (3) or (4), who proves to the satisfaction of the Committee appointed under sub-section (6) –

(i) that he had been regularly practising the Ayurvedic or the Unani system of medicine in the Vidarbha region or the Hyderabad area of the State, for a period of not less than ten years immediately before the 23rd day of November 1960 ; or

(ii) that he was on the 4th day of November 1941 regularly practising the Ayurvedic or the Unani system of medicine in the Bombay area of the State, but his name was not entered in the register maintained under the Bombay Medical Practitioner's Act, 1938; or

(iii) that his name had been entered in the list kept under section 18 of the Bombay Medical Practitioner's Act, 1938, by virtue of paragraph *(ii)* or *(iii)* of sub-section (1) of section 31C inserted in that Act by the Bombay Medical Practitioner's (Amendment)Act, 1949, and stood included, on the day immediately preceding the date of the commencement of the Maharashtra Medical Practitioner's (Amendment) Act, 1964, in the list maintained under this Act, by virtue of clause *(a)* of sub-section (2) of section 18,

shall, on an application made in the form prescribed by rules, accompanied by a fee of ten rupees and such documents as may be prescribed by rules, on or before the 31st day of March 1965, be entitled to have his name entered in the register.

(6) All applications for registration under sub-section (5) shall be considered by a Committee of three members of the Council appointed by the State Government. The Committee shall make enquiry in such manner as may be prescribed by rules. The Committee shall not entertain any further application from a person, if an application made by him under clauses *(i)* or *(ii)* of sub-section (5) has already been decided by it.

(7)(a) Any person aggrieved by the decision of the Committee appointed under sub-section (6) may, within a period of one month from the date of which such decision is communicated to him, on payment of a fee of five rupees, appeal to the appellate authority constituted by the State Government in this behalf. The appellate authority shall consist of a Chairman who has for at least seven years held judicial office not lower in rank than that of a District Judge, one member elected by the Council, and the Director of Ayurved shall be the ex-officio member. The decision of the appellate authority shall be final.

(b) Notwithstanding anything contained in clause *(a)* any person aggrieved by such decision of the Committee, who has not already appealed to the appellate authority aforesaid before the date of the commencement of the Maharashtra Medical Practitioners' (Amendment) Act, 1964, may on or before the 31 st day of March 1965, on payment of a like fee of five rupees, appeal to the appellate authority.

(7A) If on an application for registration made under clause *(iii)* of sub-section (5) or on appeal under sub-section (7), a person is found eligible for registration, then on his name being included in the register the entry of his name in the list shall be cancelled.

(8) The register shall include the following particulars, namely:
(a) the full name and residential address of the registered practitioner;

(b) the date of his admission to the register maintained under this Act; and if he, be a person who was registered on the day immediately preceding the appointed day, in a register kept under any of the Acts referred to in sub-section (4), the date of his admission to that register;

(c) the qualification specified in the Schedule possessed by him, if any, and the date on which he obtained the qualification and the authority which conferred or granted it; and

(d) such further particulars as may be prescribed by rules.

(9) When the register is prepared in accordance with the foregoing provisions the Registrar shall publish a notice in the *Official Gazette* and such newspapers as the Council may select, about the register having been prepared, and the register shall come into force from the date of the publication of such notice in the Official Gazette.

(10)(a) Every registered practitioner shall be given a certificate of registration in the form prescribed by rules. The registered practitioner shall display the certificate of registration in a conspicuous place in his dispensary, clinic or place of practice.

(b) Such certificate shall be valid until it is duly cancelled and the name of the practitioner is removed from the register under the provisions of this Act; and every certificate of registration given before the commencement of the Maharashtra Medical Practitioners (Amendment) Act, 1972 which is valid on such commencement shall, subject to the provisions of section 23A, be valid likewise, and shall continue accordingly.

(c) Where it is shown to the satisfaction of the Registrar that a certificate of registration has been defaced, lost or destroyed, the Registrar may, on payment of the prescribed fee, issue a duplicate certificate in such form as may be prescribed.

Section 33: Prohibition of medical practice by persons not registered-(1) Notwithstanding anything contained in any law for the time being in force or in any judgment, decree or order of any Court, no person other than a medical practitioner whose name is entered in--

(i) the register maintained under this Act; or

(ii) the register or the list prepared and maintained under the Bombay Homoeopathic and Biochemic Practitioners Act, 1959 (Bom. XII of 1960) or under any other law for the time being in force in relation to the qualifications and registration of

Homoeopathic or Biochemic Practitioners in any part of the State; or

(iii) the register prepared and maintained under the Maharashtra Medical Council Act, 1965 ; (Mah XLVI of 1965), or

(iv) the Indian Medical Register prepared and maintained under the Indian Medical Council Act, 1956 (CII of 1956). Shall practice any of medicine in the State:

Provided that the State Government may, by Notification in the Official Gazette, direct that subject to such conditions as it may deem fit to impose and the payment of such fees as may be prescribed by Rules, the provisions of this Section shall not apply to any class of persons, or to area, as may be specified in such Notification.

(2) Any person, who acts in contravention of any of the provisions of sub-section (1) shall, on conviction be punished-

(a) for the first offence, with rigorous imprisonment for a term which shall not be less than two years but which may extend to five years and with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees; and

(b) for a second or subsequent offence, with rigorous imprisonment for a term which may extend to ten years and with the fine which may extend to twenty-five thousand rupees:

Provided that, when the contravention continued after the order of conviction a further fine which may extend to five hundred rupees, for each day of continuation of such contravention, may be imposed.

Section 37- Liberty *to practice in rural* areas-Notwithstanding anything contained in this Chapter, a person may practice medicine in any rural area

(i) if he has commenced practice in any village in the said area prior to a date on which a practitioner registered under the Bombay Medical Act, 1912 (Bom. VI of 1912) or under the Bombay Medical Practitioners' Act, 1938 (Bom. XXVI of 1938), (or any law corresponding thereto) or under the Bombay Homoeopathic Act, 1951 (Bom. XLVIII of 1951), (or other law in relation to the qualifications and registration of Homoeopathic or Biochemic Practitioenrs) for the time being in force, has commenced, and is in regular practice of medicine in that village, and

(ii) so long as he continues to practice in that village as his principal place of practice.

Explanation- For the purposes of this Section, "rural area' means-

(i) any local area in the Bombay are of the State, which was not within the limits of a municipal corporation, municipality, cantonment or notified area Committee on the 1st day of March 1939; and

(ii) any local area in the rest of the State, which is not within the limits of a municipal corporation, municipality, municipal committee, town committee, cantonment or notified area committee on the date of passing of this Act.

irrespective of any change in the designation or description of such local area at subsequent date."

CENTRAL ACT:

2(1)(d)- 'Central Register of Indian Medicine' means the register maintained by the Central Council under this Act.
2(1)(h)- 'recognised medical qualification' means any of the medical qualifications, including post-graduate medical qualification, of Indian Medicine included in the Second, Third or Fourth Schedule.

> 2(1)(j)- 'State Register of Indian Medicine' means a register or registers maintained under any law for the time being in force in any State regulating the registration of practitioners of Indian medicine."

8. So far as the claim that once the name is included in the register of a particular State there is a right to practice in any part of the country is not tenable on the face of Section 29 of the Central Act. The right to practice is restricted in the sense that only if the name finds place in the Central Register then the question of practicising in any part of the country arise. The conditions under Section 23 of the Central Act are cumulative. Since the appellants undisputedly do not possess recognised medical qualifications as defined in Section 2(1)(h) their names cannot be included in the Central Register. As a consequence, they cannot practice in any part of India in terms of Section 29 because of non inclusion of their names in the Central Register. Section 17(3A) of the Maharashtra Act refers to Section 23 of the Central Act relating to Central Register. Section 17(1) relates to the register for the State. In any event, it is for the State to see that there is need for having qualification in terms of Second and Fourth Schedule. The claim of the appellants is that they have a right to practice in any part of the country. In terms of Article 19(6) of the Constitution,

reasonable restriction can always be put on the exercise of right under Article 19(g). In Dr. A.K. Sabhapathy v. State of Kerela and Ors. (1992 (3) SCC 147) the case related to Section 38 of the Travancore-Cochin Medical Practitioners Act, 1953. The Statute is almost in pari materia with provision to Section 33 of the Maharashtra Act. Though in that case the State Government had granted exemption, this Court observed that same cannot be granted. The State Act in that sense was repugnant to the Central Act in the background of Medical Council Act, 1956.

9. In Veterinary Science, this Court in Udai Singh Dagar v. Union of India (2007 (10) SCC 306) inter-alia observed as follows:

> "41. We, therefore, are of the opinion that even in the matter of laying down of qualification by a statute, the restriction imposed as envisaged under second part of Clause (6) of Article 19 of the Constitution of India must be construed being in consonance with the interest of the general public. The tests laid down, in our opinion, stand satisfied. We may, however, notice that Clause (6) of Article 19 of the Constitution of India stands on a higher footing vis-à-vis Clause (5) thereof. We say so in view of the celebrated decision of this Court in *State of Madras* v. *V.G. Row (AIR 1952 SC 196)* wherein it was stated: (AIR p.200, para 15)
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> > "15 … It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or

> general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the Judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable."

> **42.** The tests laid down therein viz. the test of reasonableness as also general public interest, however, may not ipso facto apply in a case involving Clause (6) of Article 19 of the Constitution of India."

10. So far as the degrees and diplomas of non-recognised institutions are concerned this Court had occasion to deal with the issue in Delhi Pradesh Registered Medical Practitioners v. Director of Health, Delhi Admn.

Services and Ors. (1997 (11) SCC 687). It was inter-alia observed as follows:

> **"5.** We are, however, unable to accept such contention of Mr Mehta. Sub-section (3) of Section 17 of the Indian Medicine Central Council Act, 1970, in our view, only envisages that where before the enactment of the said Indian Medicine Central Act, 1970 on the basis of requisite qualification which was then recognised, a person got himself registered as medical practitioner in the disciplines contemplated under the said Act or in the absence of any requirement for registration such person had been practising for five years or intended to be registered and was also entitled to be registered, the right of such person to practise in the discipline concerned including the privileges of a registered medical practitioner stood protected even though such practitioner did not possess requisite qualification under the said Act of 1970. It may be indicated that such view of ours is reflected from the Objects and Reasons indicated for introducing sub-section (3) of Section 17 in the Act. In the Objects and Reasons, it was mentioned:
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> > "The Committee are of the opinion that the existing rights and privileges of practitioners of Indian Medicine should be given adequate safeguards. The Committee in order to achieve the object, have added three new paragraphs to sub-section (3) of the clause protecting (*i*) the rights to practise of those practitioners of Indian Medicine who may not, under the proposed legislation, possess a recognised qualification subject to the condition that they are already enrolled on a State Register of Indian Medicine on the date of commencement of this Act, (*ii*) the privileges conferred on the practitioners of Indian Medicine enrolled on a State Register, under any law in force in that State, and (*iii*) the right to practise in

> a State of those practitioners who have been practising Indian Medicine in that State for not less than five years where no register of Indian Medicine was maintained earlier."

As it is not the case of any of the writ petitioners that they had acquired the degree in between 1957 (*sic* 1967) and 1970 or on the date of enforcement of provisions of Section 17(2) of the said Act and got themselves registered or acquired right to be registered, there is no question of getting the protection under sub-section (3) of Section 17 of the said Act. It is to be stated here that there is also no challenge as to the validity of the said Central Act, 1970. The decision of the Delhi High Court therefore cannot be assailed by the appellants. We may indicate here that it has been submitted by Mr Mehta and also by Ms Sona Khan appearing in the appeal arising out of Special Leave Petition No. 6167 of 1993 that proper consideration had not been given to the standard of education imparted by the said Hindi Sahitya Sammelan, Prayag and expertise acquired by the holders of the aforesaid degrees awarded by the said institution. In any event, when proper medical facilities have not been made available to a large number of poorer sections of the society, the ban imposed on the practitioners like the writ petitioners rendering useful service to the needy and poor people was wholly unjustified. It is not necessary for this Court to consider such submissions because the same remains in the realm of policy decision of other constitutional functionaries. We may also indicate here that what constitutes proper education and requisite expertise for a practitioner in Indian Medicine, must be left to the proper authority having requisite knowledge in the subject. As the decision of the Delhi High Court is justified on the face of legal position flowing from the said Central Act of 1970, we do not think that any interference by this Court is called for. These appeals therefore are dismissed without any order as to costs."

11. Above being the position, the High Court was justified in dismissing the writ petitions. However, the prosecution was lodged in terms of Section 33 for alleged violation of provisions of the Maharashtra Act. Considering the peculiar facts of the case we direct that the prosecution shall not be continued in respect of the past infractions. However, from today onwards, it is open to the authorities to act as provided in the Statute. The appeals are dismissed subject to the directions relating to the prosecution. Costs made easy.

……..…….J.
(Dr. ARIJIT PASAYAT)

……..……J.
(Dr. MUKUNDAKAM SHARMA)

New Delhi:
February 27, 2009