HEAD NOTES

Appeal before Supreme Court- Held, protection of section 17(3) was not available to those who obtained degrees after commencement of 1970 Act- Appellants held not entitled to protection of section 17(3)-Decision of High Court upheld.

Policy decision-What constitutes proper education and requisite expertise for a medical practitioner-Should be left to proper authority- Having requisite knowledge.

CIVIL APPELATE JURISDICTION : Civil Appeal No. 7441 of 1997.

From the Judgment and Order dated 2.2.93 of the Delhi High Court in C.W.P.No.2791ofl992.

WITH Civil Appeal No. 7442/97.

SUBJECT

Indian Medicine Central Council Act, 1970 :

Section 17(2) and (3)-Scope of-Medical practice-Hindi Sahitya Sammelan Prayag-A ward of degrees of `Ayurved Ratna' and ` Vaid Visharad'- Notice issued by Indian Medical Central Council-Notice stating that registration obtained by any person on the basis of such degrees would be recognised only upto 1967-Appellants who obtained such degrees after coming into force of 1970 Act-Challenge to notice before High Court- Dismissal of petitions by High Court-Ground that under the 1970 Act said degrees had not been recognised after 1967

JUDGEMENT

PETITIONER:
DELHI PRADESH REGISTERED MEDICAL PRACTITIONERS ETC., SWAROOP

Vs.

RESPONDENT:
DELHI ADMN. DIRECTOR OF HEALTH SERVICES

DATE OF JUDGMENT: 17/10/1997

BENCH:
G.N. RAY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

THE 17TH DAY OF OCTOBER, 1997

Present:

Hon'ble Mr. Justice G.N.Ray

Hon'ble Mr. Justice G.B.Pattanaik

O.P.Sharma, Sr. Adv., Mrs. Sona Khan, Moh. Sajid Arun Kaushal, Goodwill Indeevar, S.K.Mehta, D.Mehta, Fazlin Anam, Ms. Shobha Verma, R.C. Gubrele, Mrs. Sarla Chandra, K.R. Gupta, Vivek Sharma, and Ashok Sudan, Advs., with him for the appellants.

P.P.Malhotra, Sr. Adv., Rajeev Sharma, D.S.Mehra, Dive Singh, Devendra Singh, D.K. Garg, Satpal Singh, Advs with him for the Respondents.

O R D E R

The following order of the Court was delivered:

AND

CIVIL APPEAL NO. 7442 OF 1997

(Arising out of S.L.P. [c] No. 8103 of 1993

Leave granted in both the matters. Heard learned counsel for the parties.

The propriety and validity of the public notice issued by the Director, Health Services, Delhi Administration indicating that the Indian Medicine CentralCouncil had recognised Ayurved Ratna and Vaid Visharad degrees awarded by the Hindi Sahitya Sammalan Paryag, Allahabad only upto 1967 and The certificate of Ayurved Ratna and Vaid visharada given by the said organization after 1967 not being

recognised under the said Act registration obtained by any person as a medical practitioner on the basis of such degrees therefore would not be recognised and any person having such qualification would not be entitled to practice in Delhi are impugned in these appeals. It was also indicated in the said public notice that no Indian University or Board conducts one year's course for giving the bachelor's degree in Ayurvedic Medicine or through correspondence course no M.D. Degree in Ayurved was conferred by any university or Board. The Public at large was cautioned by the said public notice published in the newspaper about such position in law.

The Delhi Pradesh Registered Medical Practitioners' Association moved a writ petition before the Delhi high Court Challenging the validity of he said public notice issued by the Health Services, Delhi Administration. Similar Writ Petition was moved by Dr. Swarup Singh and others challenging the said public notice. Such writ petitions were dismissed by the Division Bench of the Delhi High Court by indicating that as in the Indian Medicine Central Council Act 1970 the said degrees had not been recognised after 1967 and the writ petitioners before the High Court had obtained such degree from the said Hindi Sahitya Sammalan Prayag long after the said Indian Medicine Central Council Act, 1970 was enforced they were not entitled to practice on the basis of the degrees obtained from the said Hindi Sahitya Sammalan Prayag. Therefore there was no occasion to interfere with the direction contained in the public notice and the writ petitions were accordingly dismissed.

Mr. S.K. Mehta the learned counsel appearing in the appellants in the appeal arising out of SLP [C] No. 8103 of 1993 has submitted that the Hindi Sahitya Sammalan Prayag is an old and reputed institution and such institution had been giving the said degrees of Ayurvedic Ratna and Vaid Visharada from a long time and such degrees awarded by the said institution had been recognised in various states. Dr. Mehta has further submitted that about the qualifications of the Medical Practitioners in various disciplines, namely, Homeopathic, Unani, Ayurvedic etc. both the State Govt. and Central Govt. have competence to legislate because the subject is in the concurrent list. Various States have recognised the degree awarded by the said Hindi Sahitya Sammalan and on the basis of such degrees, large number of practitioners in the discipline of Ayurved have been registered in various States including Delhi and have been successfully practicing in the discipline of Ayurved. The writ petitioners also got themselves registered in the State of Delhi and they had been practicing in the State or Delhi and they had been practicing as Medical Practitioner in the discipline of Ayurved on the strength of such registration. Therefore their registrations could not be held as invalid or liable to be cancelled. In this connection. Mr. Mehta has submitted that even under the said act of 1970 there was

no bar for the writ petitioners or persons similarly circumstanced to get themselves registered and practice in the discipline of Ayurved. He had drawn out attention to the provisions of Section 17(3)(a)(b) and [c] of the said Central Act 1970. it is appropriate to refer to the said provisions for appreciating true legal import of such provisions.

17 (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 practice 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 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 practitioners 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 a such commencement he has been practicing Indian Medicine for less than five years.

It has been contended by Mr. Mehta that although a bar has been imposed under Section 17(2) to practice in India in the discipline of Ayrveda if the practitioner did not possess the qualifications enumerated in the schedules under the Indian Medicine Central Council Act, 1970 but sub-section (3) of Section 17 has carved out an exception to the provisions of Section 17(2) of the said Act. if a practitioner in the discipline of Ayurveda is enrolled and registered as a medical practitioner in any state in India, or such practitioner was already in the field practicing in Ayurveda or such person had a right to be enrolled then, such person was protected and his rights or privileges as a medical practitioner cannot be affected because according to Mr. Mehta Clause (b) of sub-section (3) of Section 17 protects the privilege including the right to practice any system of medicine conference the right to practice any system of medicine conferred by or under any law relating to the registration of practitioners of Indian Medicine for the time being enforced if in any State practitioner of Indian Medicine is enrolled on a State register. Mr. Mehta Has

submitted that as the concerned practitioners havebeen registered as the practitioners in the discipline of Ayurveda, they have right to practice in such discipline as registered medical practitioners and privileges which a registered practitioner has have been protected by sub-section (3) of Section 17. Therefore, notwithstanding non recognition of the said degrees conferred by the said Prayag Hindi Sahitya Sammalan after 1967, the right to practice as registered medical practitioner and consequential privileges of a registered practitioner cannot be taken away. The public notice, therefore was misconceived and illegal and the Delhi High Court has failed to appreciate the true legal import of sub section (3) of Section 17 of the said Act and has erroneously held that the writ petitioner are not entitled to practice in Delhi because of the bar imposed by the Indian Medicine Central Act, 1970 for not possessing the requisite qualification as enumerated in the said Act.

We are, however, unable to accept such contention of Mr. Mehta, sub-section (3) of Section 17 of the Indian Medicine Central 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 practicing for five years or intended to be registered and was also entitled to be registered, the right of such person to practice in the concerned discipline including the privileges of a registered medical practitioner stood protected even though such practitioner did not posses 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:-

> '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 practice 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 enrolled on a State Register, under any law in

force in that State, and (iii) the right to practice in a State of those practitioners who have been practicing 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 and 1970 or on the date of enforcement of provisions of Section 7(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 Sammalan 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, then ban imposed to 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 appals therefore are dismissed without any order as to costs.