

Before Surya Kant & Rajesh Bindal, JJ.

Dr. BALKAR SINGH—Petitioner

versus

UNION OF INDIA AND OTHERS—Respondents

CWP No. 15096 of 2012

October 8, 2012

A. Constitution of India, 1950- Art. 19(G) 226, 248, Concurrent List- List II & III, Entry 25 & 26 - Union List - List I, Entry 66 - Punjab Ayurvedic and Unani Practitioners Act, 1963 - S. 15(1) - Bihar Development of Ayurvedic and Unani Systems of Medicines Act, 1951 - Indian Medicine Central Council Act 1970 - Chap. III - Vires of 1970 Act challenged on ground that it was passed by Parliament without possessing legislative power at the relevant time as Entry 25 in List III added w.e.f. 03.01.1977 - Held, Entry 26 in List III, Concurrent List, and Entry 66 in List I, Union List, are sufficient to clothe Parliament with power to enact 1970 Act - Besides Parliament has residuary powers under Article 248 of the Constitution

Held, that the argument, in our considered view, is wholly misconceived for variety of reasons. The petitioner has not pointed out any specific Entry in List II - State List which was in existence at any point of time empowering the State Legislature to enact laws on the subject in issue. In our considered view, the Entry-26 in List-III - Concurrent List comprising "Legal, Medical and other Professions" was sufficient enough to clothe Parliament with the power to enact the 1970 Act. Assuming there was no Entry like Entry 25 in the Union or Concurrent List prior to 1977, still the competence of Parliament to make such law in exercise of its residuary powers under Article 248 of the Constitution, is inarguable.

(Para 10)

Further held, that the Parliament could also enact the subject law in the year 1970 even on the strength of Entry 66 of List I - Union List.

(Para 11)

B. Constitution of India, 1950 - Art. 19(1)(g) - Indian Medicine Central Council Act 1970 - Chap. III, Second Schedule - Whether violative of Article 19(1)(g) of Constitution - Bihar Development of Ayurvedic and Unani Systems of Medicines Act 1951 - Punjab Ayurvedic and Unani Practitioners Act 1963 - Petitioner registered as Vaidya in Bihar in 1984 - Sought change of address in Registration Certificate to an address in Punjab - Started Clinic-cum-Nursing Home in Punjab without obtaining registration from Board of Ayurvedic and Unani Systems of Medicines, Punjab - Ayurvedic Ratna - Recognition of-obtained from Hindi Sahitya Sammelan after 1967 or BAMS Degree from Varanasi Sanskrit Vishwavidhyalaya not recognised under Second Schedule of 1970 Central Act nor under 1963 Punjab Act - Held, Petitioner has no right to practise medicine on basis of said degrees.

Held, that the Degree in "Ayurveda Ratna" obtained from Hindi Sahitya Sammelan after the year 1967 or the BAMS Degree obtained from Varanasi Sanskrit Vishwavidhyalaya are neither recognized under the Second Schedule of the 1970 Central Act nor under the 1963 Punjab Act. The petitioner, therefore, has no claim whatsoever to claim right to practice medicine on the basis of afore-stated unrecognized Degrees.

(Para 16)

Further held, that the issue is no longer res integra. This Court has already turned down similar claim firstly in *Dr. Swaran Singh Dardi v. State of Punjab* AIR 1981 P&H 87 and again in *Mohamad Azam v. State of Haryana* 1994 (2) SCT 621 (DB). The controversy has been finally set at rest by the Hon'ble Supreme Court rejecting a similar claim in *Rajasthan Pradesh V.S. Sardarshahar and Anr. v. Union of India & Ors.* AIR 2010 SC 2221.

(Para 17)

Raghuvinder Singh, Advocate, for the petitioner.

SURYA KANT, J.

(1) The petitioner assails constitutional validity of the Indian Medicine Central Council Act, 1970 especially its Chapter III and Second Schedule, the same being violative of Article 19(1)(G) of the Constitution. He also

seeks quashing of the orders dated 10.04.2007, 21.08.2007, 31.08.2007 and 17.04.2009 (Annexures P8, P9, P10 & P14, respectively) being violative of provisions of the Bihar Development of Ayurvedic and Unani Systems of Medicines Act, 1951 and the Punjab Ayurvedic and Unani Practitioners Act, 1963.

(2) The petitioner is said to have passed his Matriculation from Hindi Sahitya Sammelan, Allahabad in the year 1980, followed by "Ayurveda Ratna" from the same Institute in the year 1982 though the Degree was statedly issued on 5th April, 1985. The petitioner got himself registered as a Vaidya with the State Council of Ayurvedic and Unani Medicines, Bihar in the year 1984. The petitioner thereafter is said to have passed BAMS (Ayurvedacharya) examination from Varanasy Sanskrit Vishwavidhyalaya and a Degree dated 14.07.1992 (Annexure P4) has been issued to this effect.

(3) The petitioner applied to the State Council of Ayurvedic and Unani Medicines, Bihar for change of address in his Registration Certificate and his request was accepted vide letter dated 20.01.1996 wherein his address of village Tewar, Tehsil Kharar, District Ropar (Punjab) was mentioned.

(4) The petitioner and his wife, as it appears from the averments made in the writ petition, started running some Clinic-cum-Nursing Home in Tehsil Kharar (Punjab) without obtaining any registration from the Board of Ayurvedic and Unani System of Medicine, Punjab.

(5) A complaint dated 31st October, 2006 made by one Sadhu Singh of village Jakkar Majra, District Mohali containing serious allegations of Practicing Modern System of Medicine and causing death of an infant, led to a raid conducted at the clinic of the petitioner by team of doctors deputed by Civil Surgeon, SAS Nagar Mohali. A fact finding enquiry was conducted and it appears that the same has culminated into criminal prosecution of the petitioner and his wife.

(6) The petitioner protested against initiation of aforesaid proceedings and pleaded that he was a registered practitioner duly authorized by Bihar Council. He served the Civil Surgeon, Mohali and other Authorities of the State of Punjab with a legal notice to 'recognise' the qualifications possessed

by him. The petitioner then approached this Court in CWP No.7745 of 2008 which was disposed of on 09.05.2008 (Annexure P12) with a direction to the Authorities to take a decision on his legal notice by passing a speaking order. Pursuant thereto, the Civil Surgeon, SAS Nagar Mohali passed the impugned order dated 17.04.2009 (Annexure P14).

(7) The petitioner challenged the above-stated speaking order before this Court in CWP No.8507 of 2009 which he withdrew on 22.03.2011 with liberty to file a fresh one challenging the *vires* of Constitutional amendment.

(8) The relentless petitioner has again approached this Court. We have heard his learned counsel and gone through the record.

(9) The petitioner's first contention is that the 1970 Act *ultra vires* the Constitution as it has been enacted by Parliament without possessing legislative power at the relevant time. It is contended that Entry-25 in List III – Concurrent List has been incorporated w.e.f. 03rd January, 1977 which alone enables the Parliament to enact law on *Education, including.... Medical Education*. The impugned Act was, however, enacted in the year 1970 when no such power vested with the Parliament.

(10) The argument, in our considered view, is wholly misconceived for variety of reasons. The petitioner has not pointed out any specific Entry in List II – State List which was in existence at any point of time empowering the State Legislature to enact laws on the subject in issue. In our considered view, the Entry-26 in List-III – Concurrent List comprising “Legal, Medical and other Professions” was sufficient enough to clothe Parliament with the power to enact the 1970 Act. Assuming there was no Entry like Entry 25 in the Union or Concurrent List prior to 1977, still the competence of Parliament to make such law in exercise of its residuary powers under Article 248 of the Constitution, is inarguable.

(11) The Parliament could also enact the subject law in the year 1970 even on the strength of Entry 66 of List I – Union List.

(12) The first contention of the petitioner thus has no legal basis and hence rejected.

Court rejecting a similar claim in *Rajasthan Pradesh V.S. Sardarshahar and Anr. v. Union of India & Ors. (3)*.

(18) For the reasons afore-stated, we do not find any merit in this writ petition which is accordingly dismissed.

(19) No costs. *Dasti*.