

Mohmad Azam and others v. State of Haryana and others  
(D. V. Sehgal, J.)

earlier application dated 11th June, 1976 against execution filed by him in which this objection was not raised, had been dismissed on 5th July, 1976.

(10) The learned counsel for respondents Nos. 5 and 6 then contended that after attachment of the residential house of the petitioner, the same was put to auction and has been sold out during the course of pendency of his appeal and revision before respondents Nos. 1 to 3. In my view, attachment of residential house was *void ab initio*. It was incumbent on respondent No. 4 before he passed an order of attachment to satisfy himself that the petitioner's residential house, which was sought to be attached, was not exempt from attachment or sale as is required by sub-section (6) of section 60 of the Code. Since apparently no such satisfaction was recorded and rather on the bald allegation of respondents Nos. 5 and 6 that he had two residential houses, proceedings subsequent to attachment of the house were carried on resulting in sale thereof, the whole proceedings including the sale of his house in auction are void.

(11) Consequently, I allow this petition and quash the orders Annexures P. 2, P. 3 and P. 5 passed by respondents Nos. 4, 2 and 1, respectively. I also quash the sale of the residential house of the petitioner bearing No. 2551 situate at Banga town as described in plan Annexure P. 1 by holding that the same was not liable to attachment or sale in execution of the decree passed against him by respondent No. 4 in favour of respondents Nos. 5 and 6. There shall, however, be no order as to costs.

N.K.S.

Before D. V. Sehgal, J.

MOHAMAD AZAM and others,—Petitioners

versus

STATE OF HARYANA and others,—Respondents.

Civil Writ Petition No. 3760 of 1985.

February 14, 1986.

Punjab Ayurvedic and Unani Practitioners Act (XLII of 1963)—  
Sections 2(i), 2(h), 14, 15 and 29—Indian Medicine Central Council

*Act (XLVIII of 1970)—Sections 17, 23, 24 and 25—Bihar Development of Ayurvedic and Unani Systems of Medicines Act, 1951—Section 39—Ayurvedic and Unani Practitioners registered with the Bihar State Council under the Bihar Act—Their names neither registered nor eligible for registration under the Central Act and the Punjab Act—Such practitioners—Whether entitled to practice in the State of Haryana.*

*Held, that where the Ayurvedic and Unani Practitioners do not possess one of the recognised qualifications mentioned in the IInd, IIIrd or IVth schedule of the Indian Medicine Central Council Act, 1970 and do not come within the fold of sub-section (1) of section 17 of the said Act and were not enrolled on the list under the Bihar Act on the commencement of the Central Act, then for obvious reasons, they are also not covered by clauses (c) and (d) of sub-section (3) of section 17 of the Central Act. No doubt, by virtue of clause (b) of sub-section (3) of section 17 of the Central Act, they are conferred with the privilege under the Bihar Act to practice Indian medicine but this privilege in the context of the Central Act can be availed only within the State of Bihar. If their registration under the Bihar Act without their being eligible for enrolment on the Register of the Central Council is to be construed under clause (b) of sub-section (3) of section 17 of the Central Act to mean that they are entitled to practice Indian medicine throughout India, the very purpose of section 17(2) read with sections 23 to 25 of the Central Act would stand frustrated. Therefore, to practice Indian medicine in the State of Punjab or Haryana the medical practitioner should be registered either under the Central Act or the Punjab Act. (Para 15).*

*Civil Writ Petition under Article 226 of the Constitution of India praying that—*

- (i) records of the case may be called for ;*
- (ii) service of advance notices upon the respondents may be dispensed with ;*
- (iii) filing of the certified copies of Annexures be dispensed with ;*
- (iv) a writ in the nature of certiorari be issued to quash the impugned order Annexure P. 2.*
- (v) a writ in the nature of mandamus or certiorari be issued to the respondents not to restrain the petitioner from practising in Haryana ;*

Mohmad Azam and others v. State of Haryana and others  
(D. V. Sehgal, J.)

(vi) *this Hon'ble Court may also pass any order which this Hon'ble Court may deem fit in the peculiar circumstances of the case;*

(vii) *costs of this petition be awarded to the petitioners.*

*Further praying that during the pendency of this writ petition the petitioners be allowed to practise as Registered Medical Practitioners in Haryana.*

R. K. Malik, Advocate, for the Petitioners.

G. S. Chawla, Advocate, for respondent No. 1.

H. S. Gill, Advocate with N. K. Bhardwaj, for respondent No. 3.

JUDGMENT

D. V. Sehgal, J.—

(1) This judgment will also dispose of C.W. Ps. Nos. 3457, 4758, 5861 and 5887 of 1985 as common questions of law and fact are involved in all these petitions.

(2) The facts of C.W.P. No. 3760 of 1985 in brief are that the petitioners are duly registered as medical practitioners with the Bihar State Council of Ayurvedic and Unani Medicines, Patna, known in Hindi as Ayurvedic Avam Chiktasa Parishad, Bihar. They have been practising as registered medical practitioners at Panipat. They informed the Registrar, Bihar State Council of Ayurvedic and Unani Medicines, Patna, that they wanted to change their addresses and to practice at Panipat and the necessary changes in their address were effected in the record with the said Registrar. A copy of the communication dated 9th August, 1980 to this effect received by petitioner No. 2 is Annexure P. 1.

(3) The Haryana Board of Ayurvedic and Unani Systems of Medicine, through its Registrar, respondent No. 3, informed the petitioners that they could not have their names registered in Haryana nor could they practise in the State of Haryana. A letter to this effect received by petitioner No. 2 is Annexure P. 2. Similar letters were received by the other petitioners also. Respondents Nos. 1 and 2 have appointed a special Squad to check whether any unregistered medical practitioner is practising in the State of Haryana. The local Drugs Inspector also approached them and

warned them against carrying on their practice as medical practitioners in the State of Haryana. The local chemists and druggists have been directed not to issue any medicines to the patients who have been prescribed such medicines by any of the petitioners, who are not registered as medical practitioners in the State of Haryana. Through the present writ petitions, they contend that they having been duly registered as medical practitioners with the Bihar State Council of Ayurvedic and Unani Medicines, Patna, are very much within their right to practise in the State of Haryana. They have prayed for a writ of *certiorari* to quash the letter Annexure P. 2 received from respondent No. 3 by petitioner No. 2 and the similar letters received by the other petitioners. A prayer for a writ in the nature of *mandamus* is also made for a direction to the respondents not to restrain the petitioners from practising as registered medical practitioners in the State of Haryana. Two separate written statements have been filed—one on behalf of respondents Nos. 1 and 2 and the other on behalf of respondent No. 3. It is contended therein that since the petitioners do not possess the qualifications prescribed under the Punjab Ayurvedic and Unani Practitioners Act, 1963 (for short 'the Punjab Act'), or the Indian Medicine Central Council Act, 1970 (for short 'the Central Act'), they cannot be registered as medical practitioners under the Punjab Act and cannot practise in the State of Haryana. It is further contended that the petitioners' enlistment or registration under the Bihar Development of Ayurvedic and Unani System of Medicine (Enlistment of Ayurvedic and Unani Practitioners) Rules, 1976 (for short 'the Bihar Rules'), does not qualify them to carry on their practice as registered medical practitioners in the State of Haryana.

(9) With a view to adjudge the merits of the rival contentions of the parties, it is necessary to set out in brief the different statutory provisions on which reliance has been placed. Section 14 of the Punjab Act lays down that the Registrar of the Board of Ayurvedic and Unani Medicine System, which is constituted separately in the State of Punjab and in the State of Haryana, shall maintain the Register and act as the Secretary of the Board. The Register shall be in the prescribed form and shall contain the names, addresses and qualifications of every registered medical practitioner together with the dates on which qualifications were acquired and shall be divided into the following two parts, namely—

Part I containing the names of persons referred to in subsection (1) of section 15; and

Mohmad Azam and others v. State of Haryana and others  
(D. V. Sehgal, J.)

---

Part II containing the names of persons referred to in sub-section (3) of section 15.

Section 15(1) of the Punjab Act provides that every person possessing any of the qualifications specified in Schedule I shall, subject to the provisions of the Act and on payment of such fees as may be prescribed in this behalf be entitled to have his name entered in Part I of the Register subject to the conditions as may be prescribed. Sub-section (3) thereof lays down that any person not in possession of the qualifications specified in Schedule I but whose name is entered immediately before the 13th day of December, 1963, in the list maintained under section 34 of the East Punjab Ayurvedic and Unani Practitioners Act, 1949, or under section 33 of the Pepsu Ayurvedic and Unani Practitioners Act, 2008 B.K.; or who proves to the satisfaction of the Registrar upto 30th June, 1972, that he was in practice as a practitioner on the first day of November, 1966, and is continuing as such shall subject to the provisions of the Act and on payment of such fees as may be prescribed in this behalf, be entitled to have his name entered in Part II of the Register subject to such conditions as may be prescribed. It is not disputed by the petitioners that they do not possess the qualifications prescribed in Schedule I to the Punjab Act and are, therefore, not entitled to be registered in Part I of the Register maintained by respondent No. 3. It is also apparent from the averments in the petition that the name of none of the petitioners was entered in any of the two Lists mentioned in sub-section (3) of section 15 of the Punjab Act nor any of them was doing practice as a medical practitioner on the 1st day of November, 1966. It is, thus clear that none of them is entitled to be brought either on Part I or Part II of the Register maintained by respondent No. 3 under the Punjab Act.

(5) The State of Bihar has its own legislation known, as the Bihar Development of Ayurvedic and Unani Systems of Medicines Act, 1951 (for short 'the Bihar Act'). In exercise of powers conferred by section 39 of the Bihar Act, the Governor of Bihar made the Bihar Development of Ayurvedic and Unani System of Medicine (Enlistment of Ayurvedic and Unani Practitioners) Rules, 1976. The Bihar State Council of Ayurvedic and Unani Medicines is constituted under the Bihar Act and a Registrar is appointed by virtue of the said Act. A list of practitioners in Ayurvedic and

Unani Systems of Medicine is prepared by the Registrar under subsection (2) of section 39 of the Bihar Act. Any person desirous of getting his name entered in the said list is required to apply to the Registrar in Form 'A' prescribed by the Bihar Rules alongwith the prescribed fee. Under rule 9 thereof every Vaidya or Hakim who in the opinion of the Registrar possesses sufficient knowledge and skill requisite for efficient practice of medicine and who fulfils all the conditions made by the Rules approved by the Government and whose length of practice is not less than 7 years to be supported by certificate issued by—

- (1) A member of the Council or Faculty.
- (2) A Member of the Bihar Legislative Assembly or Council.
- (3) President or Secretary of the Provincial Vaidya Sammelan.
- (4) President Anjuman Atibba Sube, Bihar.
- (5) President of the District Association recognised by the Council.
- (6) Gazetted Officer of State or Central Government.
- (7) Member of Lok Sabha or Rajya Sabha shall be listed under the Bihar Rules. It is under the Bihar Act and the Bihar Rules that the petitioners had been registered as medical practitioners in Ayurvedic and Unani Systems of Medicine.

(6) In so far as the eligibility of the petitioners as registered medical practitioners under the Drugs and Cosmetics Act is concerned, their position is not in doubt. Rule 2(ee) of the Drugs and Cosmetics Rules, 1955 defines a 'Registered Medical Practitioner' thus—

2(ee) : " 'Registered Medical Practitioner' means a person—

- (i) holding a qualification granted by an authority specified or notified under section 3 of the Indian Medical

Mohmad Azam and others v. State of Haryana and others  
(D. V. Sehgal, J.)

---

Degrees Act, 1916 (7 of 1916), or specified in the Schedules to the Indian Medical Council Act, 1956 (102 of 1956); or

- (ii) registered or eligible for registration in a medical register of a State meant for the registration of persons practising the modern scientific system of medicine excluding the Homoeopathic system of medicine; or
- (iii) registered in a medical register other than a register for the registration of Homoeopathic practitioners of a State, who although not falling within sub-clause (i) or sub-clause. (ii) is declared by a general or special order made by the State Government in this behalf as a person practising the modern scientific system of medicine for the purposes of this Act; or
- (iv) registered or eligible for registration in the register of dentists for a State under the Dentists Act, 1948 (16 of 1948); or
- (v) who is engaged in the practice of veterinary medicine who possesses qualifications approved by the State Government."

(7) The petitioners having been entered in the Register maintained by the Bihar Government under the Bihar Act and the Bihar Rules squarely fall within sub-clause (ii) of rule 2(ee) quoted above. A case almost identical to that of the petitioners, decided by D. S. Tewatia, J. [*M/s. Mitjal Trading Agency v. State of Punjab and others* (1)], supports the stand of the petitioners in this regard.

(8) Although in view of the above finding, the petitioners would not be held to be violating the provisions of the Drugs and Cosmetics Act, the contention of the respondents is that since they are not registered medical practitioners under the Punjab Act,

---

(1) CW 6308/75 decided on 10th November, 1982.

they violate the provisions of section 29 thereof, which is reproduced hereunder :—

29. *Prohibition to practice :*

“No person other than a registered practitioner, shall practise or hold himself out, whether directly or by implication, as practising or as being prepared to practise the Ayurvedic System or Unani System.”

(9) So, the crucial question that comes up for consideration in these petitions is whether without their being registered under the Punjab Act the petitioners are entitled to practise Indian medicine in the States of Punjab and Haryana.

Section 2(i) of the Punjab Act defines ‘registered practitioner’ to mean ‘a practitioner, whose name is entered, or deemed to have been entered in the Register.’ ‘Register’ has been defined in section 2(h) of the said Act to mean ‘the new register of practitioners maintained under section 14’. It is on the strength of these provisions that the respondents contend that the petitioners not being registered medical practitioners under the Punjab Act have no right to practise either in the State of Punjab or in the State of Haryana.

(10) Here it is worth to take notice of the provisions of the Central Act. Sections 23 to 25 of the Central Act provide as under :—

“23. *The Central Register of Indian Medicine :*

(1) The 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 to be known as the Central Register of Indian Medicine which 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.

(2) It shall be the duty of the Registrar of the Central Council to keep and maintain the Central Register of Indian medicine in accordance with the provisions of



Mohmad Azam and others v. State of Haryana and others  
(D. V. Sehgal, J.)

---

this Act and of any orders made by the Central Council, and from time to time to revise the register and publish it in the Gazette of India and in such other manner as may be prescribed.

- (3) Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872, and may be proved by a copy published in the Gazette of India.

24. *Supply of copies of State Register of Indian Medicine :*

Each Board shall supply to the Central Council three printed copies of the State Register of Indian Medicine as soon as may be after the commencement of this Act and subsequently after the first day of April of each year, and each Board shall inform the Central Council without delay of all additions to and other amendments in the State Register of Indian Medicine made from time to time.

25. *Registration in the Central Register of Indian Medicine :*

The Registrar of the Central Council may on receipt of the report of registration of a person in a State Register of Indian Medicine or on application made in the prescribed manner by any person, enter his name in the Central Register of Indian Medicine, provided that the Registrar is satisfied that the person concerned is eligible under this Act for such registration."

The above provisions in the Central Act make it incumbent on each Board maintaining the State Register of Indian Medicine to supply to the Central Council three printed copies of the State Register after the commencement of the Central Act and subsequently after the first day of April of each year, and each Board shall inform the Central Council established under the Central Act without delay of all additions thereto and other amendments in the State Register of Indian Medicine made from time to time. The Registrar of the Central Council on receipt of report of registration of a person in a State Register of Indian Medicine is required to enter his name in the Central Register of Indian Medicine provided he is satisfied that the person concerned is eligible under the Central Act for such registration.

(11) No doubt if the petitioners are duly registered with the Registrar under the Central Act, they are entitled to practise Indian medicine as registered medical practitioners throughout India including the States of Punjab and Haryana.

(12) The legal, medical and other professions are covered by Entry 26 of List III—Concurrent List—contained in Schedule VII to the Constitution of India. Article 254 of the Constitution, *inter-alia* provides that if any provision of law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void. The Punjab Act was brought on the statute book in the year 1963. The Central Act was enacted by the Parliament in the year 1970. Thus, any person who is eligible to practise Indian medicine by virtue of the provisions of the Central Act can practise in the States of Punjab and Haryana also.

(13) It is for the petitioners to satisfy this Court that their names are entered in the Register under the Central Act. The learned counsel for the petitioners contended that since their names are borne on the list maintained by the Registrar under the Bihar Act, information in this regard must have been sent by him to the Registrar under the Central Act and it is to be presumed that the same must have been added in the Register maintained under the Central Act. It is, however, not that simple. A reading of sections 23 to 25 of the Central Act makes it clear that before the name of a person is entered in the Central Register, besides being enrolled on a State Register he should possess any of the recognised qualifications, or the Registrar should be satisfied that such person is eligible under the Central Act for registration.

(14) Section 17 of the Central Act provides as under :—

*“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

Mohmad Azam and others v. State of Haryana and others  
(D. V. Sehgal, J.)

or Fourth Schedule shall be sufficient qualification for enrolment on any State Register of Indian Medicine.

- (2) Save as provided in section 28, no person other than a practitioner of Indian medicine who possesses a recognised medical qualification and is enrolled on a State Register or the Central Register of Indian Medicine—
- (a) shall hold office as Vaid, Siddha, Hakim or Physician or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority;
  - (b) shall practise Indian medicine in any State;
  - (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 an expert under section 45 of the Indian Evidence Act, 1872, on any matter relating to Indian medicine.
- (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 practise 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 practise 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 practise 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 practising Indian medicine for not less than five years;
  - (d) the rights conferred by or under the Indian Medical Council Act, 1956 (including the right to practise

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 fine which may extend to one thousand rupees, or with both."

(15) The petitioners admittedly do not possess one of the recognised qualifications mentioned in the IIrd, IIIrd or IVth Schedule to the Central Act. Thus, they do not come within the fold of sub-section (1) of section 17 *ibid.*, They were not enrolled on the list under the Bihar Act on the commencement of the Central Act in 1970. They are, thus, not covered by sub-section (3)(c) *ibid.* For obvious reasons, they are also not covered by clauses (c) and (d) of sub-section (3) *ibid.* No doubt, by virtue of clause (b) of sub-section (3) *ibid.*, they are conferred with the privilege under the Bihar Act to practise Indian medicine, but this privilege in the context of the Central Act they can avail of only within the State of Bihar. If their registration under the Bihar Act without their being eligible for enrolment on the Register of the Central Council is to be construed under clause (b) of sub-section (3) of section 17 of the Central Act to mean that they are entitled to practise Indian medicine throughout India, the very purpose of section 17(2) read with sections 23 to 25 of the Central Act shall stand frustrated. In my view, therefore, to practise Indian medicine in the States of Punjab and Haryana, they should be registered either under the Central Act or the Punjab Act. Since they are not so registered, they are not entitled to the relief claimed for by them in these writ petitions.

(16) Consequently, finding no merit in these petitions the same are dismissed with no order as to costs.

N. K. S.