

Emperor Vs. Joseph D'silva

Emperor Vs. Joseph D'silva

SooperKanoon Citation : sooperkanoon.com/333532

Court : Mumbai

Decided On : Feb-14-1946

Reported in : AIR1947Bom310; (1947)49BOMLR6

Judge : Leonard Stone, Kt., C.J., Lokur and Gajendragadkar, JJ.

Appeal No. : Criminal Application in Revision No. 517 of 1945

Appellant : Emperor

Respondent : Joseph D'silva

Judgement :

Leonard Stone, Kt., C.J.

1. This is an application in revision from the decision of Mr. Ahmed I. Rahimtoola, Presidency Magistrate of the Sixth Additional Court, Mazagaon, Bombay, who convicted the applicant under Sections 32 and 34 of the Bombay Medical Practitioners' Act, 1938, and inflicted upon him a fine of Rs. 25. The question involved is of considerable Importance, since we are informed that it may affect the position of a number of persons practising medicine in this Province.

2. Part III of the Bombay Medical Practitioners' Act in which both Sections 32 and 34 appear came into operation on November 1, 1944. Section 34 provides :

Any person who acts in contravention of the provisions of Section 32 shall, on conviction, be punishable with fine which may extend to Rs. 100 for the first offence and to RS. 500 for every subsequent offence after his conviction for such first offence.

And Section 32 is as follows:-

No person other than (i) a practitioner registered under Part II of this Act or (ii) a medical practitioner registered under the Bombay Medical Act, 1912, or (iii) a person whose name is entered in the list mentioned in Section 18 shall practise or hold himself out, whether directly or by implication, as practising for personal gain any system of medicine, surgery or midwifery :Provided that the Provincial Government may, by notification in the Official Gazette, direct that the provisions of this section shall not apply to any class of persons or in any specified area.

3. To these sections there are, however, certain exceptions which are set out in Section 36 which provide that nothing in Section 32 or 34 shall apply to any person:

(a) who limits his practice to the art of dentistry, or

(b) who being a nurse, midwife or health visitor registered, under the Bombay Nurses, Midwives and Health Visitors Registration Act, 1935, or a Dai attends on a case of labour, or

(c) who is entitled to registration under Section 18(1) of this Act or Section 7 of the Bombay Medical Act, 1912, or

(d) who is a British subject domiciled in the United Kingdom or India who, by virtue of a medical diploma granted to him in the United Kingdom, or a British subject domiciled in Burma who, by virtue of a medical diploma granted to him in Burma or the United Kingdom is, or is entitled to be registered in the United Kingdom as a qualified medical practitioner '.

4. Sub-section (e) exempts those who practise homoeopathy and who have got certain qualifications therein mentioned. It should be observed that Sub-section (b)

of Section 36 applies to a nurse, midwife or health visitor 'registered' in the manner therein set out, whereas in Sub-section (c) it is any person who is 'entitled to registration' under Section 16(1) of the Act or Section 7 of the Bombay Medical Act, 1912, and that in Sub-section (d) it is a person who is 'entitled to be registered' in the United Kingdom as a qualified medical practitioner.

5. Before referring to the facts of this case and to the Bombay Medical Act, 1912, attention should be directed to the fact that in the 1938 Act itself a distinction is drawn between a person who is described as being 'entitled to have his name entered in the register' [see Sub-section 16 (1).] a person who is 'qualified for registration' [see Sub-section 18 (b)] on the one hand and a 'registered practitioner' (see Sections 19 and 20 of the Act) on the other.

6. The facts with regard to the applicant are as follows. In the year 1916 he qualified as a Licentiate in Medicine and Surgery of the Bombay University and as such he was in fact registered under the 1912 Act, to which I will presently refer. In September, 1924, his name was removed from the Medical Register, because he was found guilty of infamous conduct, and on June 30, 1925, July 16, 1926, and July 17, 1939, he made unsuccessful applications to the Medical Council to have his name restored to the register. At all material times he has continued to practise and in the year 1945 the police intervened and subsequently the charge in respect of which he has been convicted was brought against him.

7. The short point, though in my opinion one of some difficulty, is whether within the meaning of Sub-section 36(c) of the 1938 Act he is a person 'entitled to registration' under Section 7 of the Bombay Medical Act, 1912. That Act, which was the first of its kind in this Province, as its preamble shows, was enacted because it was expedient to provide for the registration of medical practitioners in the Presidency of Bombay. It set up a Medical Council and after providing for the constitution of such Council, the tenure of office of its members and the time and place of their meetings, Section 5 provided that the Medical Council should appoint a Registrar, and by Section 6 that the Registrar should keep a register of medical practitioners in accordance with the provisions of the Act. After defining how the register is to be kept, Section 6 continues:-

To enable the Registrar duly to fulfil the duties imposed upon him it shall be lawful for him to write a letter to any registered person according to his address on the register to enquire whether he has ceased to practise or has changed his residence, and if no answer is returned to such letter within a period of six months from the sending of the letter, it shall be lawful to erase the name of such person from the register: provided that the same may be restored by direction of the Medical Council if they think fit to make an order to that effect.

8. Section 7 which is the important section is as follows:-

7. (1) Every person for the time being registered under the Medical Acts (that is the English Medical Act of 1858) shall be entitled to be registered under this Act free of charge on informing the Registrar of the date of his registration under the Medical Acts and giving a correct description of his qualifications with the dates on which they were granted.

(1-a) Every person for the time being registered under any Act for the registration of medical practitioners in force in any other province in India with the Medical Council of such province shall, if reciprocity of registration has been arranged with such Council, be entitled, on production of his registration certificate, to have registered under this Act, free of charge, such qualifications entered in the said certificate as are registrable under this Act.

(2) Every person who is possessed of any of the qualifications described in the Schedule to this Act (subject to the provisions of Section 20) shall be entitled to be registered under this Act on payment of a fee of fifteen rupees, and on giving evidence to the satisfaction of the Registrar of his possession of a qualification fitting him for registration.

(3) The Provincial Government may, after consulting the Medical Council, permit the registration of any person who was actually practising medicine in the Bombay Presidency before the 25th day of June, 1912.

(4) The Medical Council may refuse to permit the registration of any person who has been convicted of a cognizable offence as defined in the Code of Criminal

Procedure, 1898, or who, being or having been subject to military law, has been convicted under the Army Act or under the Indian Army Act, 1911, of an offence which is also a cognizable offence as so defined, or who after due enquiry has been held guilty by the Medical Council of infamous conduct in any professional respect.

9. Section 9 gives power to the Medical Council to direct that the name of any medical practitioner who had been convicted of a cognizable offence as therein mentioned 'or who after due enquiry has been held guilty by them of infamous conduct in any professional respect, shall be removed from the register, and may direct that any name so removed shall be re-entered'. Section 10 provides that the expression 'legally qualified medical practitioner' or 'duly qualified medical practitioner' shall, in all Bombay Acts and in all Central Acts in their application to this Province, mean a medical practitioner registered either under the English Medical Act of 1858 or under 'this Act' and Sub-section (2) provides that no certificate as therein mentioned shall be valid unless the person signing the same 'shall have been registered' under the English Act or under this Act. Section 11 prohibits the holding of certain appointments by any person 'unless he be registered' under the English Act or 'under this Act'. In Sections 14 and 18, which provide for exemption from serving on inquests and for certain penalties respectively, reference is again made to persons 'registered under this Act', (It is in my opinion clear from the structure of the Act that two classes of persons are envisaged, viz. persons who are 'registered' and persons who are 'entitled to registration' or 'entitled to be registered', and this distinction is carried forward into the 1938 Act, as is clearly shown from, a comparison of the language used in Section 32 and Sub-section 36(c) of that Act. Indeed the exception contained in Sub-section (c) with regard to Section 7 of the 1912 Act would be wholly redundant, having regard to Section 32, if such were not the case.

10. Now, the argument of Diwan Bahadur Coelho on behalf of the applicant is that every person who possesses the qualifications referred to in Sub-section 7 (2) of the 1912 Act is as a matter of status a person 'entitled to registration' under the Act, and he submits that the payment of a fee of Rs. 15 and the giving of evidence to the satisfaction of the Registrar of his possession of the necessary educational

qualifications fitting him for registration are not conditions precedent to the status of being a person 'entitled to registration'. If it were not so, it is submitted, there would be no practical difference between a person who was 'entitled to registration' and a person who was in fact 'registered', whereas the Act, as I have already pointed out, draws a sharp distinction. For, if it were otherwise, it is pointed out, a person who failed to answer the Registrar's letter inquiring whether he had ceased to practise or had changed his residence under the terms of Section 6 and who accordingly had his name erased from the register would also lose his status as one of the class of persons 'entitled to registration'. In my opinion two class of persons are envisaged by the Acts of 1912 and 1938, that is to say, persons 'entitled to registration' and practitioners who are in fact 'registered'. The Acts give the latter class certain privileges, such as the right to give certificates and freedom from serving on inquests, which are denied to the former, and it can never have been the intention of the Legislature to set up a class of persons entitled to registration limited to those persons who having attained the necessary scholastic qualifications had paid the fee and satisfied the Registrar since upon such satisfaction they would in fact be registered under the Act. This view of the matter is reinforced when the rules and regulations made under the Act of 1912 and which have statutory force are considered. Chapter X of these rules and regulations is headed 'Restoration of a name to the Medical Register'. Rules 92 and 93 are as follows:-

92. Applications for restoration to the Medical Register of a name removed under Section 9 of the Bombay Medical Act shall be entertained at the next Session of the Council only.

93. If any person whose name has been erased from the Medical Register by direction of the COUNCIL, and who (in the case of a Medical Practitioner) still possesses a Qualification entitling him to be registered, makes application to the Council, for the restoration of his name to the Register, the following shall be the method of procedure.

11. There then follows in numbered sub-paragraphs the method of procedure and an appendix containing certain forms, Form No. 1 being a statutory declaration by

an applicant for restoration of his name to the Medical Register, from the terms of which it is clear that this form applies to a person whose name has been removed for misconduct or for his default in answering the letter under Section 6 of the 1912 Act. The important words are 'if any person...who...still possesses a qualification entitling him to be registered, makes application to the Council, for the restoration of his name to the Register'. This clearly indicates that even in the case of a person whose name has been struck off the register, it is the possession of the scholastic qualification which entitles him to registration. The language of the two Acts and the statutory rules made thereunder is not free from doubt, and if it be the intention of the Legislature that the only persons who are entitled to practise are persons who are in fact registered under the Acts, no doubt the necessary amendments will be made. But we are considering a penal section in a statute which referentially brings into its ambit other sections of the two Acts, and where the language is ambiguous, the benefit of the doubt must go to the subject. The applicant has claimed the benefit of the exception contained in e1, (c) of Section 36 of the 1938 Act, that is to say, as being a person 'entitled to registration' under the 1912 Act, and for the reasons stated above it is my opinion that it cannot be said that he has been deprived of that status, curious as the result may be.

12. Accordingly this application succeeds and the conviction and sentence of the applicant must be set aside. The rule will be made absolute and the fine paid will be refunded.

Lokur, J.

13. I agree. This is an application for the revision of an order passed by the Presidency Magistrate, 6th Additional Court, Mazagaon, Bombay, convicting the petitioner under Section 34 read with Section 32 of the Bombay Medical Practitioners' Act, 1938.

14. The petitioner is a medical graduate, having passed the L.M. & S. examination of the Bombay University in 1915, and he got himself registered under Section 7 of the Bombay Medical Act, 1912. He started his practice as a medical practitioner in Bombay, but the Medical Council found him guilty of having issued a false medical

certificate and under Section 9 of that Act it directed that his name should be removed from the Register. Accordingly his name was removed on September 1, 1924, and although his three attempts to have his name re-entered in the Register were unsuccessful, he continued to practise medicine in Bombay as before. Believing that this was not permitted after Part III of the Bombay Medical Practitioners' Act, 1938, came into force, on November 4, 1944, Police Sub-Inspector Gurr sent a pretender to the petitioner to trap him and get from him some medicine for stomach-ache. The petitioner openly received his fees from him and gave him some mixture. A panchnama was drawn up and a complaint was then lodged against him under Section 34 of the Bombay Medical Practitioners' Act, 1938, for having acted in contravention of the provisions c Section 32. Section 32 of that Act provides:

No person other than (i) a practitioner registered under Part II of this Act or (it) a medical practitioner registered under the Bombay Medical Act, 1912, or (Hi) a person whose name is entered in the list mentioned in Section 18 shall practise or hold himself out, whether directly or by implication, as practising for personal gain any system of medicine, surgery or midwifery.

15. The petitioner admits that he does not fall under any of the three categories of the medical practitioners mentioned in Section 32 and that he is still practising medicine for personal gain and has thereby acted in contravention of the provisions of that section, but he claims that he is exempted by Section 36 (c) from the application of Sections 32 and 34. Section 36 (c) says:-

Nothing in Sections 32 and 84 shall apply to any person ...

(c) who is entitled to registration under Section 16(1) of this Act or Section 7 of the Bombay Medical Act, 1912.

16. Section 7(2) of the Bombay Medical Act, 1912, says:

Every person who is possessed of any of the qualifications described in the Schedule to this Act (subject to the provisions of Section 20) shall be entitled to be registered under this Act on payment of a fee of fifteen rupees, and on giving

evidence to the satisfaction of the Registrar of his possession of a qualification fitting him for registration.

17. The qualifications mentioned in the Schedule to the Act of 1912 are educational qualifications and include the L.M. & S degree of the Bombay University. Hence prima facie the petitioner who holds that degree is entitled to be registered under the Act of 1912 and is, therefore, exempt from the application of Sections 32 and 34 of the Act, 1938. But the learned Magistrate says el. (2) of Section 7 of the Act of 1912 should be read along with Clause (4) which empowers the Medical Council to refuse to permit the registration of any person who is convicted of a cognisable offence or found by it to be guilty of infamous conduct in any professional respect, and that by such refusal the petitioner became disentitled to registration.

18. The meaning of the word 'entitled' and the effect of the refusal to permit registration will be better understood if the sections of the two Acts are analysed. Before the Bombay Medical Practitioners' Act, 1938, was passed, any one could practise medicine whether he was qualified or not, but under Section 7 of the Bombay Medical Act, 1912, only those who were registered under any Medical Act or who possessed a qualification mentioned in the schedule could have their names entered in the Medical Register maintained by the Medical Council. Want of registration did not, however, debar any one from practising medicine, although he might be unqualified or might not hold any educational qualification. Registration merely conferred certain privileges on registered medical practitioners. Thus Section 10 (2) authorised only registered medical practitioners to issue valid certificates and Section 11 debarred unregistered medical practitioners from holding certain appointments. Registration was intended to give a recognised status and not to debar unqualified men from practising medicine. In this respect the Act has merely copied the English Medical Act of 1858 (21 & 22 Vic. c. 90). As stated in the preamble to that Act, and as pointed out in Halsbury, Vol. XXII, paragraph 593, p. 313:-

The Medical Acts do not prohibit any person from practising medicine or surgery, but the legislature has declared that it is expedient that those requiring medical aid

should be enabled to distinguish the qualified from the unqualified practitioner.

19. The Schedule to the Bombay Medical Act, 1912, which prescribed the qualifications for registration did not give recognition to Indian systems of medicine so that Hakims and Vaidyas practising Indian systems of medicine could not be registered under that Act, though they were free to practise their own systems. The Medical Practitioners' Act, 1938, was passed to remedy this. As stated in the preamble, that Act was intended to regulate the qualification and to provide for registration of practitioners of Indian systems of medicine with a view to encourage the study and spread of such systems. Before the passing of that Act, there were the following classes of medical practitioners:-

- (1) Medical practitioners who were registered under Section 7 of the Act of 1912.
- (2) Qualified medical practitioners who were entitled to be registered but whose names were not on the Register, and
- (3) Others, consisting of-
 - (a) dentists,
 - (b) nurses, midwives and health visitors, and Dais attending on cases of labour,
 - (c) British subjects domiciled in the United Kingdom or India who were entitled to be registered in the United Kingdom as qualified medical practitioners,
 - (d) Homoeopathists,
 - (e) those who practised western system of medicine without any of the qualifications mentioned in the Schedule, and
 - (f) Vaidyas and Hakims who practised Indian systems of medicine.

20. The Medical Practitioners' Act of 1938 left the practitioners in classes (1), (2), (3) (a), (3)(c) and (3)(d) untouched. It also left untouched the Dais attending on cases of labour as well as dentists, nurses, midwives and health visitors, if they were registered under Act VII of 1935, otherwise they were prohibited from

practising. It wholly prohibited those in class (3)(e) from practising. As regards Vaidyas and Hakims practising Ayurvedic and Unani systems of medicine, falling in class (3)(f), a qualifying examination is prescribed for them by Section 22 and on passing that examination, they become entitled under Section 16 (1) to have their names entered in the register of practitioners maintained under Section 15 (2). Such registered practitioners of Indian systems of medicine are recognized as duly qualified and certain privileges are conferred upon them by Section 19. To accommodate those who were already practising Indian systems of medicine, and do not want to pass the qualifying examination; Section 16 (2) allows them to be registered if they were in practice or were apprentices for ten years before their applications for registration were made. If, however, they were not in practice so long, but were in regular practice in this Province, then Section 18 provides for their names being entered in a separate list. Section 32 prohibits from practising an Indian system of medicine those who have neither passed the qualifying examination, nor got their names registered or entered in the list. Those who have passed the qualifying examination are allowed to practise even without getting their names entered in the Register. Thus Section 32 is aimed at prohibiting untrained persons and quacks from practising any system of medicine. With the exception of those who are registered under any other Medical Act, no one who does not possess any of the qualifications mentioned in the schedule to the Bombay Medical Act of 1912 can practise western system of medicine. If he possesses such qualification, he can practise even without being registered. Similarly, no one whose name is not entered in the list under Section 18 of the Bombay Medical Practitioners' Act of 1938 can practise the Indian system of medicine without passing the qualifying examination. If he passes that examination, he can practise even without being registered.

21. This should not be lost sight of when interpreting the expression 'who is entitled to registration' in Clause (c) of Section 36. 'When a word or expression used in a statute is not defined, it should as far as possible be so interpreted as to be consistent with the scheme of the statute.

22. The learned Government Pleader contends that under Section 7(4) of the Medical Act, 1912 the Medical Council may refuse to register a person found guilty

of infamous professional conduct, although he may be possessed of the necessary qualification, and in that case he cannot be said to 'be entitled to registration'. According to the scheme of the Act they are entitled to be registered, but the Medical Council may refuse to register them for certain reasons. Otherwise, it would be impossible for an unregistered medical practitioner to know at any given time whether he is entitled to be registered or not. If he does not want to be registered, he need not apply to the Medical Council, and it will not be possible to say whether in the opinion of the Council he has been guilty of infamous professional conduct. If such a practitioner is prosecuted under Section 34 of the Bombay Medical Practitioners' Act, 1938, the Court cannot decide what might be the opinion of the Council. Such an uncertain position could not have been intended by the Act. Otherwise, every medical practitioner will have either to get himself registered, or get a certificate before beginning his practice every day that in the opinion of the Medical Council he has not been guilty of infamous professional misconduct during the preceding twenty-four hours.

23. It is further argued that under Section 7(2) of the Bombay Medical Act, 1912, a person possessing the prescribed qualifications is entitled to be registered only if (1) he pays a fee of Rs. 15 and (2) gives evidence to the satisfaction of the Registrar of his possession of a qualification fitting him for being registered, and that one who does not fulfil these two conditions is not 'entitled' to be registered and cannot claim the exemption under Section 36 (c) of the Bombay Medical Practitioners' Act, 1938. This means that to claim the exemption he must apply for registration, pay the fee of Rs. 15, satisfy the Registrar of his qualification and satisfy the Medical Council that there is no reason to refuse registration under Section 7(4) of the Bombay Medical Act, 1912. Then only he can be said to be 'entitled' to registration. If he does all this, his name will of course be entered in the Register, and there would be no reason for him to seek the benefit of exemption under Section 36 (c) of the Act of 1938. The payment of the prescribed fee and the proof of the possession of the necessary qualification form the routine of the procedure to be followed before the name of a person 'entitled to registration' is actually registered. Although a person may possess the prescribed qualification and as such be entitled to be registered, the Registrar may refuse to register him if there be a defect in his application, or if he has not paid the full fee, or if he feels a

doubt about his possessing the necessary qualification, and the Medical Council may refuse to register him for the reasons mentioned in Section 7(4). The Council may say-'No doubt your qualification entitles you to be registered, but for certain reasons we refuse to register you'

24. That the word 'entitled' is used only in this sense is clear from Rule 93 of the Rules and Regulations framed under the Bombay Medical Act of 1912. Section 9 of the Act of 1912 empowers the Medical Council to remove from the Register the name of any medical practitioner who has been convicted of a cognizable offence, or who after due enquiry has been held guilty by them of any infamous conduct in any professional respect, and the Medical Council may direct that any name so removed shall be re-entered. In this connection r. 93 says :

If any person whose name has been erased from the Medical Register by direction of the Council, and who (in the case of a Medical Practitioner) still possesses a qualification entitling him to be registered, makes application to the COUNCIL for the restoration of his name to the Register, the following shall be the method of procedure..

25. This shows that the word 'entitled' is used with reference to the necessary qualifications, and even a medical practitioner whose name is removed from the Register may possess qualifications 'entitling him to registration'.

26. This view derives support also from other circumstances. Under Section 7(3) of the Bombay Medical Act, 1912, a person, though not possessed of the necessary qualification, could be registered if he was practising medicine in the Province before June 25, 1912. But he was not 'entitled' to be registered; the Provincial Government might, after consulting the Medical Council, 'permit' him to be registered. Hence such persons cannot claim the benefit of the exemption under Section 36 (c) of the Bombay Medical Practitioners' Act, 1938, which is available only to those who are 'entitled' to registration.

27. This is further clear from Clause (d) of Section 36 of the Act of 1938 which exempts from the operation of Sections 32 and 34 those British subjects who are entitled to be registered in the United Kingdom as qualified medical practitioners.

The wording of Section 15 of the English Act of 1858 is similar to that of Section 7(2) of the Bombay Medical Act of 1912, and Section 36 (d) could not possibly mean that the word 'entitled' would apply only to those who not only possess the requisite qualification but also have paid five pounds and have produced to the Registrar to the branch council of England, Scotland or Ireland the necessary documents for proof. It obviously means the possessing of a qualification prescribed for registration. In *Ellis v. Kelly* (1860) 6 H. & N. 222 Bramwell B. dealing with the penal Section 40 of the English Act says (p. 226) :

The 40th section is intended to guard the public against being imposed upon by a person pretending to have a qualification when in fact he has none. It applies to the case of a person using a title falsely implying that he is registered or has a title to be registered.

This shows that the expression 'entitled to registration' has the same significance as 'who has a title to be registered', that is to say, who possesses the requisite qualification.

28. In the case of the list kept under Section 18 (a) of the Act of 1938, the proviso says that a person whose name has been removed from the register 'shall not be entitled to have his name entered in the list'. There is no corresponding provision that the name of a person who is entitled to be registered, but whose name has been removed from the Register, shall not be entitled to have his name restored to the Register. On the contrary Section 9 of the Act of 1912 and Section 16 (3) of the Act of 1938 expressly provide that his name may be 're-entered' in the Register. This distinction is made on purpose, because the persons whose names are entered in the list are unqualified, whereas those who are entitled to be registered must possess the prescribed qualification.

29. Section 36 (c) of the Act of 1938 refers to Section 7 of the Act of 1912, and not merely to Section 7(2) and hence it is argued that both sub-ss. (2) and (4) should be read together to determine who is 'entitled to registration'. In the case of those who practise the Indian system of medicine, the exemption under Section 36 (c) of the Act of 1938 specifies Sub-section (1) of Section 16 only and not Sub-section (3). This does not mean that the expression 'entitled to registration' had a wider:

meaning in their case. Sub-section (1) had to be specified in order to exclude those 'entitled to registration' under Sub-section (2). If Sub-section (3) was to be read along with Sub-section (1), it would have been so mentioned in Section 36 (c). It is clear from this that the refusal of registration by the Board does not disentitle a qualified medical practitioner to the benefit of the exemption under that section. That being the meaning of the expression 'entitled to registration' under Section 16(1), that expression in Section 7(2) of the Act of 1912 should be similarly construed. In other words in both the cases, the words 'entitled to registration' mean possessing the title to registration, that is to say, the (educational) qualification prescribed for registration.

30. The petitioner possesses such qualification, and is, therefore, exempt from the application of Sections 32 and 34 of the Act of 1938.

31. Assuming that both the arguments of the learned Government Pleader are accepted, still it makes no difference in the case of the petitioner. He has paid the fee of Rs. 15 and has satisfied the Registrar that he possesses one of the qualifications mentioned in the Schedule to the Act of 1912, as required by Section 7(2). Even if Sub-section (4) be read with Sub-section (2) of Section 7, the Medical Council has not refused his registration under Sub-section (4). His name was entered in the Register, but it was removed under Section 9. Section 36(c) of the Act of 1938 does not refer to Section 9 of the Act of 1912 and that section has not to be read with Section 7(2). Hence even if all the sub-sections of Section 7 be read together, the petitioner is 'entitled to registration' under that section. He is, therefore, exempt from the application of Sections 32 and 34 of the Act of 1938.

32. It follows that he committed no offence by continuing to practise western system of medicine even after his name was removed from the Register under Section 9 of the Act of 1912. If it is intended to prevent those like him from practising, Section 36 (c) of the Act of 1938 should better be deleted, and registration or entry in the list be made compulsory. When a clause or expression in a penal statute is capable of being interpreted either in favour of or against the accused, the former interpretation ought to prevail, and the benefit of the ambiguity ought to be given to the accused.

33. I, therefore, agree that the rule should be made absolute, and the accused acquitted and discharged.

Gajendragadkar, J.

34. The short question which arises for decision in this revisional application is of considerable importance to the medical practitioners of this Presidency. The material facts are few and they are not in dispute. The petitioner has passed the L.M. & S. examination of the Bombay University in 1915 and has been practising medicine and surgery since then for the last thirty years. He applied to be registered under the Bombay Medical Act, 1912, and his application having been granted under Section 7 of the said Act, his name appeared on the register kept under that Act in 1917. In 1924, however, an enquiry was held by the Medical Council against the petitioner and it was found by them that the petitioner had been guilty of infamous conduct in that he had issued a false medical certificate. Thereupon the petitioner's name was removed from the medical register in pursuance of the directions of the Medical Council. Since then the petitioner made three attempts to have his name re-entered in the register, but all of them proved unsuccessful. Notwithstanding the removal of his name from the medical register, the petitioner has been practising medicine and surgery throughout the period. In March, 1945, Sub-Inspector Gurr sent a bogus patient, Mayer Benjamin, to the pharmacy of the petitioner, and it is not disputed that the petitioner examined him and prescribed for him medicine which was dispensed to the patient in the petitioner's pharmacy. On these facts the petitioner was charged with having committed an offence under Section 34 of the Bombay Medical Practitioners' Act, XXVI of 1938. The facts on which the prosecution was based were not disputed by the petitioner. He met the charge by claiming the protection of Section 36 (c) of the said Act. The learned Presidency Magistrate who tried the case against the petitioner took the view that the petitioner was not entitled to the benefit of the exception provided under Section 36(c). Accordingly he held that the petitioner was guilty of the offence charged and sentenced him to pay a fine of Rs. 25. It is this order of conviction and sentence which has given rise to the present revisional application. The short question which the petitioner has raised before us is that he is a person entitled to registration under Section 7 of the Bombay Medical Act of

1912, and that as such the provisions of Section 32 and Section 34 of the said Act do not apply to him.

35. Broadly speaking, three systems of medicines are practised in this Presidency for the Allopathic system, the Indian systems of medicine, meaning the Ayurvedic (including the Siddha) and the Unani Tibbi systems, and the homoeopathic system. Bombay Act VI of 1912 was enacted for the registration of medical practitioners who followed the Allopathic system of medicine. The Schedule to the Act refers to the medical examinations which practitioners had to pass before they could claim to be registered under the Act. Prior to the enactment of that Act there was no provision for the registration of any medical practitioners. This Act provided for the creation of a Medical Council and laid down the terms, as to its tenure and its powers. The Medical Council had to appoint a Registrar, whose duty it was to keep a register of medical practitioners in accordance with the provisions of this Act. Section 7 of this Act enumerated four classes of persons who could be registered under the Act. The Medical Council was given the power to refuse permission for the registration of any person or to remove the name of any registered person under the conditions mentioned in the Act. Persons registered under this Act were entitled to be called the 'legally qualified or duly qualified medical practitioners' and they were given certain privileges and rights. Under Section 10 (2) it was provided that no certificate required by any Act from any medical practitioner or medical officer shall be valid unless the person signing the same shall have been registered under the Medical Acts or under this Act. Similarly, the appointments of medical officers mentioned under Section 11 can be held only by legally qualified medical practitioners. Section 14 exempted the registered medical practitioners from serving on any inquest. Having conferred upon registered medical practitioners these special rights and privileges, Section 18 of the Act provided for penalties in case any practitioner falsely pretended to be registered under this Act, or, not being registered under this Act, used in connection with his name or title any words or letters representing that he was so registered, and the penalty provided by this section can be enforced even though any person was actually deceived by such pretence or representation or not. Thus it is clear that though this Act conferred upon the registered medical practitioners certain specified privileges and rights, it did not make the registration of medical

practitioners compulsory in any sense. In this connection, it may be mentioned that the position under the English Medical Acts is substantially the same.

36. Act XXVI of 1938 was passed 'to provide for the registration of practitioners of Indian systems of medicine with a view to encourage the study and spread of such systems and to amend the law relating to medical practitioners generally in the Province of Bombay.' The first two parts of this Act deal with registration of practitioners of Indian systems of medicine, and the material provisions thereunder are substantially similar to those under the earlier Bombay Medical Act of 1912. Part III of this Act, which applies to the medical practitioners generally, contains the three sections with which we are concerned in this case. Section 32 reads thus:-

32. No person other than (i) a practitioner registered under Part II of this Act or (it) a medical practitioner registered under the Bombay Medical Act, 1912, or (iii) a person whose name is entered in the list mentioned in Section 18 shall practise or hold himself out, whether directly or by implication, as practising for personal gain any system of medicine, surgery or midwifery:

Provided that the Provincial Government may, by notification in the Official Gazette, direct that the provisions of this section shall not apply to any class of persons or in any specified area.

Under Section 34 'Any person who acts in contravention of the provisions of Section 32 shall, on conviction, be punishable with fine which may extend to Us. 100 for the first offence and to Rs. 500 for every subsequent offence after his conviction for such first offence'. These two sections seem to make it obligatory for all medical practitioners to register their names under either of the two Medical Acts. Section 36, however, which is described as a saving section, provides that the provisions under Section 32 and Section 34 shall not apply to any person falling under any of the five classes of practitioners described by Sub-sections (a) to (e) of that section; a person who limits his practice to the art of dentistry; a nurse, midwife or health visitor registered under the Bombay Nurses, Midwives and Health Visitors' Registration Act, 1935, or a Dai attending on a case of labour; a person who is entitled to registration under Section 16 (1) of this Act or Section 7

of the Bombay Medical Act, 1912; a person who is a British subject domiciled in the United Kingdom or India and who is, or is entitled to be, registered in the United Kingdom as a qualified medical practitioner, or a person who practises homoeopathy, provided that such person has undergone a course of training in homoeopathy for such period and in such institutions and has passed an examination as may be prescribed by the Provincial Government, and who does not hold a degree, diploma or licence which is a colourable imitation of a degree, diploma or licence entitling any person to practise western medical science under the Indian Medical Degrees Act, 1916, or any Indian system of medicine under this Act; these being the persons mentioned respectively in Clauses (a) to (e) of Section 36 it is clear that Legislature intended to exempt from the operation of the penal provisions of Section 34 a large body of medical practitioners who are educationally qualified to render medical assistance to the public.

37. Now the question which arises for decision in this case is: Is the petitioner a person entitled to registration under Section 7 of the Bombay Medical Act, 1912. Beading Sections 32, 34 and 36(c) together, it is obvious that a distinction has to be drawn between medical practitioners who have been registered under the provisions of either of the two Medical Acts and those who are entitled to such registration, but have not been so registered. The two Medical Acts have provided for the educational qualifications which applicants for registration under the provisions of the said Acts must possess, Prima facie Section 36 (c) would seem to refer to persons possessing educational qualifications contemplated by the said two Acts, On that view medical practitioners who possess the required educational qualifications but who have not been registered under the provisions of either of the said two Acts for one reason or another would appear to fall under Section 36 (c). It has been, however, contended before us on behalf of the prosecution that no person could be held to be entitled to registration under Section 7 of the Medical Act of 1912 unless all requirements of that section are satisfied. It may be convenient at this place to mention the classes of persons eligible for registration under the respective provisions of the two Acts. Under Section 16 of the Bombay Medical Practitioners' Act, 1938, every person who passes a qualifying examination as prescribed under Section 22 shall on payment of a fee of Rs. 10 be entitled to have his name entered in the register. Section 16 (2) of the said Act

provides that every person who, within the period of two years from the date on which this Part comes into force, proves to the satisfaction of the Registrar that he has been in regular practice as a practitioner for a period of not less than ten years preceding the date on which he makes the application for being registered as a practitioner shall be entitled to have his name entered in the Register on payment of a fee of Rs. 10. The proviso to Sub-section (2) contemplates the registration of an apprentice under a practitioner or one who has received training in an institution or has passed an examination, of such apprenticeship, training or examination is in the opinion, of the Board sufficient to qualify him to practise as a practitioner. Such an apprentice would be deemed entitled to have his name entered in the Register on payment of a fee of Rs. 10. Section 16 does not confer upon the Medical Board the right to refuse permission for the registration of any qualified person who pays the prescribed fee of ten rupees on any ground whatever. The Board has, however, been given the power to remove the name of a registered practitioner for reasons mentioned in Section 16 (2). It would thus appear that persons passing the qualifying examinations are automatically entitled to have their names entered in the Register on a payment of Rs. 10. The position with regard to the practitioners and apprentices falling under Section 16 (2) and the proviso is, however, different. In their case registration of their names is subject to their satisfying the Registrar as to certain material particulars mentioned in the section. Section 18 of the same Act provides that a list of medical practitioners should be maintained and under this list persons not being qualified for registration under this Act or under the earlier Act of 1912, but who, within a period of two years from the date on which this Part comes into force, prove to the satisfaction of the Registrar that they had been in regular practice in this Province, on March 10, 1938, of any system of medicine or surgery or midwifery or any of their branches were entitled to have their names entered in this list on payment of Rs. 10. Thus under this Act a register of medical practitioners is maintained under Section 16 and a list of medical practitioners mentioned under Section 18 (6) is also maintained.

38. The position with regard to the persons entitled to registration under Section 7 of the Medical Act of 1912 stands thus: Sub-section (1) and Sub-section (1-a) of Section 7 deal with persons who are registered under the English Medical Acts or

under the Medical Acts in any other province in India and they provide that the names of such persons would be registered free of charge on their giving a correct description of their qualifications with the dates on which they were granted. Section 7(3) provides that practitioners who may not possess the necessary educational qualifications may be registered if the Provincial Government permit such registration after consulting the Medical Council. This concession was made in favour of practitioners practising medicine before June 25, 1912. Section 7(2) provides for persons possessed of the necessary educational qualifications described in the schedule to the Act and it says that such a person 'shall be entitled to be registered under this Act on payment of a fee of fifteen rupees' and on giving evidence to the satisfaction of the Registrar of his possession of a qualification fitting him for registration'. Sub-section (4) gives power to the Medical Council to refuse to permit the registration of any person on any of the grounds mentioned in that sub-section. Thus it would be seen that persons falling under Section 7(1), (1-a) and (2) possess the necessary educational qualifications and are entitled to registration, provided they satisfy the Registrar about their educational qualifications. Persons falling under Section 7(3), however, are not entitled to registration since their names can be registered only with the permission of the Provincial Government which may be granted by them after consulting the Medical Council.

39. It was suggested before us by the prosecution that the words 'any person who is entitled to registration' which occur in Section 36 (c) of the Medical Practitioners' Act, 1938, should be strictly construed in the light of the provisions of Section 7(2) of Bombay Act VI of 1912. The argument is that no person can be deemed to be entitled to registration under Section 7(2) unless he satisfies the three requirements mentioned in that sub-section. He ought to possess the necessary educational qualifications, he ought to pay a fee of Rs. 15 and he ought to give evidence to the satisfaction of the Registrar about his educational qualification fitting him for registration. In other words according to the prosecution all the three conditions must be satisfied before a person can be held entitled for registration. It has further been argued before us that the provisions of sub-s,(4) must be read as a proviso to Section 7 and that it may be necessary that a person claiming to be entitled to registration may have to show that he does not fall within the mischief of

that subsection. On the other hand, on behalf of the petitioner it has been contended before us that a person who possesses the necessary educational qualifications is entitled to registration though before his name is entered on the Register he may have to satisfy the procedural requirements of Section 7(2). The requirements as to payment of Rs. 15 and as to giving evidence to the satisfaction of the Registrar are subsidiary and procedural and they do not affect a person's right to be entitled to registration. If the argument for the prosecution is accepted, it is difficult to see what class of persons can possibly fall under Section 36 (c). The learned Government Pleader who appeared for the Medical Council suggested that Section 36 (c) may cover cases of persons possessing the necessary educational qualifications who have applied for registration and whose applications are pending final decision before the Medical Council. I am unable to accept this suggestion. It is, I think, necessary to remember the distinction between the qualifications which entitle a person to be registered and the procedural steps which may have to be taken before he is actually registered. I am, therefore, disposed to think that Section 7(2) is not capable of the construction sought to be put upon it by the prosecution in this case.

40. Assuming, however, that Section 7(2) can be literally construed as suggested by the prosecution, it is necessary to examine the results which would follow from that construction. The first obvious result would be that all persons desiring to practise medicine must register their names before they start their practice. If that was the object of Section 32 of the Medical Practitioners' Act of 1938, it is difficult to see why it was thought necessary to make any provision like Section 36 (c) at all. Under Section 6 of the Medical Act of 1912 if a registered medical practitioner does not answer letters addressed to him by the Registrar within a period of six months 'it shall be lawful (for the Registrar) to erase the name of such person from the register'. Such a person would cease to be entitled to practise as soon as his name is erased. Similar would be the position of a registered medical practitioner who applies for the removal of his name from the register under Rule 69. The case of persons falling under Section 7(1) and (1-a) would also afford an illustration of the illogical results to which this construction will lead. These two sub-sections deal with medical practitioners already registered under the Medical Acts either of England or of any other Province in India. They would not be entitled to practise

unless they followed the procedure and got their names registered under this Act. In this connection it is significant to note that under Section 10 (2) a certificate issued by medical practitioners registered under the Medical Acts in England would be valid even though such practitioners have not taken steps to register their names under Bombay Act VI of 1912. The case of medical practitioners whose names have been removed from the Register under Section 9 of Act VI of 1912 affords yet another illustration in point. In the case of registered practitioners whose names have been removed under Section 9 the Medical Board have been given the power under the same section to direct that any names so removed shall be re-entered. It is clear that the name once removed can be re-entered only on the basis that the person concerned continues to be entitled to registration in spite of the removal of his name from the Register. Rules 92 and 93 framed by the Medical Council under Section 19 of the Act put the position of such persons beyond all doubt. The said rules provide for applications for restoration. Rule 93 deals with the procedure to be followed in such cases and refers to the medical practitioner whose name has been erased as one 'who possesses a qualification entitling him to be registered.' Similarly the provision made in Section 36 (d) as regards persons who are or are entitled to be registered under the English Medical Acts shows that the interpretation suggested by the prosecution would render the reference to persons entitled to be registered as distinguished from those who are registered meaningless and redundant. Thus the literal construction of the material words of Section 7(2) on which the prosecution relies leads to illogical results and is clearly inconsistent with the plain scheme of the rest of the Act. In such a case it is, I think, the duty of the Court to refuse to adopt such a literal construction. As pointed out by Maxwell in his 'Interpretation of Statutes': 'It is the duty of the Judge to make such construction of a statute as shall suppress the mischief and advance the remedy. Even where the usual meaning of the language fall short of the whole object of Legislature, a more extended meaning may be attributed to the words, if they are fairly susceptible of it. The construction must not, of course, be strained to include cases plainly omitted from the natural meaning of the words. (8th edn., p. 61).

The same principle has been thus enunciated by their Lordships of the Privy Council in *Shannon Realities v. St. Michel, (Ville De)* [1924] A.C. 185:

Where the words of a statute are clear they must, of course, be followed; but, in their Lordships' opinion, where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating.

That being the position, I would not be prepared to construe Section 7(2) as suggested by the prosecution. It seems to me that under Section 7(2) every person who possesses the necessary educational qualifications must be deemed to be entitled to be registered under that Act. The other conditions which he has to fulfil before his name is actually entered in the Register do not, in my opinion, affect his status as a person entitled to registration.

41. Unfortunately, the material sections in the two Acts are somewhat unhappily worded. Section 7 of Act VI of 1912 speaks of persons entitled to be registered, whereas Section 16 of Bombay Act XXVI of 1938 speaks of persons who would be entitled to have their names entered in the Register. On the contrary, Section 36 (c) refers to persons entitled to registration. In construing provisions of penal statutes it is well established that the said provisions must be strictly construed, and if there is any ambiguity or doubt, the benefit of the ambiguity or doubt must be given to the subject. As I have said above, reading Section 7 of Bombay Act VI of 1912 and Sections 32, 34 and 36 of Bombay Act XXVI of 1938 together I feel satisfied that all persons who possess the educational qualifications necessary for registration, but who have not been registered, must be deemed to be entitled to registration. Even if the expressions used in the said sections are regarded as doubtful, I would feel no hesitation in giving benefit of the doubt to the petitioner in the present case. It seems to me that by providing for several exceptions under Section 36, Legislature intended to confine the provisions of the penal Section 34 only to unqualified persons such as those mentioned in Section 7(3) of Bombay Act VI of 1912 and those referred to in Section 16 (2) as well as Section 18 (6) of Bombay Act XXVI of 1938. These persons were given an opportunity to have their names entered either on the register or the list kept under the two Medical Acts. If such persons failed to take steps to get their names entered accordingly, or, if the applications made by them in that behalf were rejected, they were not entitled to practise at all. The object of the penal provision is clearly to protect the public from

such unqualified and unregistered practitioner. That being my view, I think the order of sentence and conviction passed against the petitioner by the learned Magistrate in this case is wrong and must be set aside. I agree, therefore, that he should be acquitted of the offence charged and that the fine if already paid by him should be refunded to him.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com