

State Vs. Umashankar Krupashankar

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Court : Mumbai

Decided On : Dec-20-1956

Reported in : (1957)59BOMLR373

Judge : Mudholkar and ;Kotval, JJ.

Appeal No. : Criminal Appeal No. 289 of 1956

Appellant : State

Respondent : Umashankar Krupashankar

Disposition : Appeal dismissed

Judgement :

Mudholkar, J.

1. The respondent, Umashankar, was prosecuted for an offence under Section 3 of the Central Provinces and Berar Regulation of Couching Act, 1944, but was acquitted by the trying Magistrate. The State Government feeling themselves aggrieved by the. decision have come up in appeal.

2. The only question in this appeal is whether the respondent who is registered as a medical practitioner under Section 16 of the Central Provinces and BerarAyurvedic and Unani Practitioners Act, 1947, could be deemed to be a 'registered practitioner' within the meaning assigned to the term in the Central Pro-

vices and Berar Regulation of Couching Act, 1944. Section 2 of that Act says that the expression 'registered, practitioner' shall have the meaning assigned to it in the C.P. and Berar Medical Registration Act, 1916. The latter Act defines 'registered practitioner' as follows:

3(5) 'registered practitioner means any person registered or deemed to have been registered under the provisions of this Act.

Section 14 of the same Act lays down that every person who is a resident of Madhya Pradesh and who is for the time being registered or qualified to be registered under the British Medical Act, or is possessed of any of the qualifications described in the schedule to the Act shall be entitled to have his name registered. It is common ground that the qualifications of the respondent do not fall within Section 14 read with the schedule to the Act. The question then is whether in the circumstances the respondent can be said to have contravened the provisions of Section 3 of the C.P. and Berar Regulation of Couching' Act. That section reads thus

Whoever, not being a registered practitioner or not possessing a professional qualification entitling him to be registered under the Central Provinces and Berar Medical Registration Act, 1916, couches or attempts to couch or agrees or offers by physical means or interference with the eye to give vision to a person suffering from cataract, with or without that person's consent, shall, on conviction, be punishable with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

3. On behalf of the State Government it is argued by Shri Pendharkar that only a person who is registered under the C.P. and Berar Medical Registration Act, or who possesses the qualifications entitling him to be so registered is competent to perform an eye operation, and that if anyone else does so, even though he may be a registered medical practitioner under some other Act, he will fall within the prohibition contained in this section, unless, of course, he possesses the qualifications entitling him to be registered under the C.P. and Berar Medical Registration Act.

4. On the face of it, there seems to be some substance in this argument; but there is one more provision of law which has a bearing on this point, and, therefore, it has to be considered, it is Section 19(a) of the C.P. and Berar Ayurvedic and Unani Practitioners Act. It reads:

19. Notwithstanding anything contained in any law for the time being in force (a) the expression 'legally qualified medical practitioner' or 'duly qualified medical practitioner' or any word or expression importing a person recognised by law as a medical practitioner or as a member of the medical profession shall in all Acts of the Legislature of Madhya Pradesh and in all Central Acts in their application to Madhya Pradesh in so far as such Acts relate to any of the matters specified in List II or List III of the Seventh Schedule to the Constitution, include a registered practitioner;

Now, the words used 'any word or expression importing a person recognised by law as a medical practitioner or as a member of the medical profession' clearly provide that in the definition of registered practitioner contained in Section 3 of the C.P. and Berar Medical Registration Act as adopted by the Regulation of Couching Act we shall have, for the purposes of the latter Act, to read also the words 'any person who is registered under the G. P. and Berar Ayurvedic and Unani Practitioners Act, 1947 (IV of 1958).' The petitioner being such a person is not disqualified by Section 3 of the Regulation of Couching Act from performing an eye operation. We would, however, like to make it clear that it is not our view that a person registered under the B.A.U.P. Act is also entitled to be registered under the Medical Registration Act.

5. In this view we hold that the Court below was right in acquitting the respondent. The appeal is accordingly dismissed.