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Court : Allahabad

Decided On : Jun-25-2004

Reported in : AIR2004All373; 2004(4)AWC3186

Judge : Sunil Ambwani, J.

Acts : [Constitution of India](#) - Articles 19(1) and 21; [Indian Medicine Central Council Act, 1970](#) - Sections 17; Uttar Pradesh Indian Medicine Act, 1939 - Sections 39; Uttar Pradesh Medical Institutions (Acquisition and Miscellaneous Provisions) Act, 1982 - Sections 10

Appeal No. : Civil Misc. Writ Petition Nos. 23232, 23267, 23331, 23350 and 23363 of 2004

Appellant : Charan Singh and ors. Etc.

Respondent : State of U.P. and ors.

Advocate for Def. : J.P. Sharma, S.C.

Advocate for Pet/Ap. : R.K. Tripathi, ;S.P.S. Rathore and ;B.N. Pandey, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

Sunil Ambwani, J.

1. Heard S/Sri R. K. Tripathi, S.P.S. Rathore B. N. Pandey for petitioners and learned standing counsel. This matter has been placed before me in vacations under the Rules of the Court, after nomination by senior Vacation Judge dated 24r6-2004.

2. In Writ Petition No. 23232 of 2004, the petitioners 1 & 4 have passed 'Vaidya Visharad' Examination of Hindi Sahitya Sammelan, Prayag, in the year 1977, and have thereafter worked as Pharmacists at Indian Ordinance Factories at Muradnagar, after getting themselves registered with the State Council Ayurvedic Evam Unani Medicine Bihar Patna, and Haryana and Punjab Ayurvedic and Unani Chikitsa Parishad Board, Shimla respectively. The petitioner No. 2 has passed Vaidya Visharad Examination in the year 1996 and is enrolled with Rajkiya Ayurvedic & Chikitsa Parishad, Bihar, on 5-4-1996, and that the petitioner No. 3 has passed H.M.B.S. Examination (Bachelor of Homeopathic Medicine and Surgery) and is registered with Sathi Homeo Medical College, Laharia Sarai (Bihar) dated 25-7-1983. All the petitioners claimed to be trained, qualified and registered medical practitioners in Indian Medicine and after having changed their addresses from Bihar to Uttar Pradesh, they are practising in Indian Medicine in U.P. at Ghaziabad. They have prayed for a direction in the nature of mandamus directing the respondents not to interfere in their peaceful practice, in their respective clinics.

3. In Writ Petition No. 23267 of 2004, petitioner Nos. 1 and 10 claims to have passed 'Ayurved Shastri' examination in the year 2002, from Ch. Charan Singh Memorial Ayurvedic College Baraut, Bagpat and Rashtriya Ayurvedic College Suhagpur Dhampur (Bijnor) 1987, respectively, vide a certificate issued by Ayurvedic Chikitsa Parishad, U.P. Indira Nagar, Dhampur, Bijnor, U.P. The petitioner Nos. 2, 3, 4, 5, 6, 7, 8 and 9, claim to have passed the Final Examination of Diploma in Ayurvedic Medicine (D.A.M.) from Maharishi Charak Ayurvedic and Unani Medical College Hashimpura, Deoband Saharanpur (all in the year 2002). The provisional certificates issued to them bears a note that the certificate is subject to the final decision of the Hon'ble High Court, Allahabad (U.P.). These

petitioners have deposited Rs. 3000/- towards registration fees for registration with Board of Indian Medicine, U. P. One registration certificate of Aslam Ali Khan, son of Azhar Ali Khan has been annexed as Annexure-3, to establish that a person qualified from the same institution has been registered in U. P. None of the petitioners have been registered by the Board of Indian Medicine, U.P. so far. There is no pleading or proof of the qualifications and registration of remaining petitioners.

4. In Writ Petition No. 23363 of 2004, the petitioner Dr. Rakesh Kumar Gupta claims to have passed 'Vaidya Visharad' from Hindi Sahitya Sammellan Prayag and is enrolled with State Council of Ayurvedic and Unani Medicines Bihar Patna and thereafter got the change of address to Farrukhabad (U.P.), under the Bihar Development of Ayurvedic & Unani System of Medicine Act 1951 on 5-12-2003.

5. In Writ Petition No. 23350 of 2004, all the petitioners claim to have obtained degrees of the Unani System of Medicine and are registered under the Council of Unani Medicine West Bengal Calcutta, with their addresses at Howrah and 24 Pargana, under Section 21(2) of Paschim Bangal Unani System of Medicine Act 1979. All these certificates have been issued on the same date on 8-1-1985. These petitioners are not registered with the Board of Indian Medicine U. P. They have relied upon certain orders passed by this Court, in relation to some other persons directing Board of Indian Medicine U. P. to decide representation for registration. There is no averment in these writ petitions about their qualifications or that the petitioners have applied for registrations to Board of Indian Medicine U.P.

6. In Writ Petition No. 23331 of 2004, all the petitioners claim to have passed a four year degree course from Ch. Charan Singh Memorial Ayurvedic College Baraut and Dayanand Ayurvedic College Vatjewra, Meerut, vide certificates issued by Ayurvedic Chikitsa Parishad U. P. Indra Nagar, Dhampur, (Bijnor) U.P. and have applied for registration with Board of Indian Medicine U. P. at Lucknow. These petitioners have relied upon an interim order dated 7-7-1988 in writ petition No. 13715/1985, by which the Daya Nand Ayurvedic College Sardham Road Bat Jewara (Janjeli) Meerut was permitted to provisionally admit students in first year

course for session 1988-89. In para 8 of the writ petition it is stated that the writ petition was dismissed on 1-4-1998.

7. All the petitioners in this writ petition No. 23331 of 2004 filed a writ petition No. 5506 of 2004 between Shish Pal v. State of U. P. This petition was disposed of on 11-2-2004 with direction to Board of Indian Medicine U.P. to decide their representation regarding registration. By impugned order dated 18-5-2004, the Board of Indian Medicine U.P. 7, Lal Bagh, Lucknow has rejected the representation for registration. The Registrar has relied upon the order dated 1-4-1998, of this Court by which writ petition No. 13715 of 1985 was dismissed and it was held that the petitioners are not entitled to run the institution except after obtaining permission from Central Government. The Registrar found that Ayurvedic Chikitsa Parishad Suhagpur, Dhampur Bijnor is not recognised and approved by either the State Government or Central Government and thus 'Ayurved Shastri' Diploma is not a valid qualification. He has also referred to the Government orders dated 6-8-1999 and 14-9-2001, restraining the Board to grant registration to the persons holding four year Ayurved/Unani diploma holders of these private unrecognized colleges.

8. In D.K. Joshi v. State of U. P. 2000 (5) SCC 80, decided on 25th April 2000, it was found by Supreme Court that the Indian Medical Council in its letter dated 3-5-1991 apprised the Secretary Medical Health U.P. of the problem of unauthorised medical practice in the State. The Secretary was requested that the 'public may be relieved by taking strict action against unqualified/unregistered practitioners, and institutions which are providing illegal degrees in the Indian System of Medicine.' The State Government was also concerned and that as far back as on 2-12-1995, the Secretary, Health and Welfare Department U.P. addressed a letter to all the District Magistrates and Chief Medical Officers of the State, drawing their attention to the legal provisions for taking appropriate action against such persons. In this letter attention was drawn to Section 15 of the Indian Medical Council Act, 1956, Section 17 of the [Indian Medicine Central Council Act, 1970](#), and Section 30 of the United Provinces Medical Act, 1917. The District Magistrates and Chief Medical Officers were also advised how to initiate action against these unauthorised persons. The Supreme Court observed in para 4 of the report as follows :

'It is distressing to note that in spite of the above direction of the State Government, the District Magistrates and the Chief Medical Officers did not take effective steps to stop this menace which is hazardous to human life. As indicated above, the Chief Medical Officers only forwarded the names of such unauthorised medical practitioners to the District Magistrates and no follow up action was taken.'

9. The writ petition was disposed of by Supreme Court with following directions :

'The Secretary, Health and Family Welfare Department, State of U. P. shall take such steps as may be necessary to stop carrying on medical profession in the State of U.P. by persons who are unqualified/unregistered and in addition shall take following steps :

(i) All District Magistrates and the Chief Medical Officers of the State shall be directed to identify, within a time-limit to be fixed by the Secretary, all unqualified/unregistered medical practitioners and to initiate legal actions against these persons immediately;

(ii) Direct all the District Magistrates and the Chief Medical Officers to monitor all legal proceedings initiated against such persons;

(iii) The Secretary, Health and Family Welfare Department shall give due publicity to the names of such unqualified/unregistered medical practitioners so that people do not approach such persons for medical treatment;

(iv) The Secretary, Health and Family Welfare Department shall monitor the actions taken by all District Magistrates and all Chief Medical Officers of the State and issue necessary directions from time to time to these officers so that such unauthorised persons cannot pursue their medical profession in the State.'

10. A contempt petition No. 292 of 2001 was filed by Rajesh Kumar Srivastava, Reporter of National Daily 'Rastriya Sahara' drawing the attention of the Apex Court that the directions passed by the Court have not been complied with by the Officials of the State Government. By an order dated 8-10-2001. the contempt petition was dismissed with the following directions.'

'It is appropriate for the petitioner to move the High Court for the relief sought for. The contempt petition is dismissed accordingly.'

11. The petitioner thereafter filed this contempt petition which was registered as contempt petition No. 820 of 2002. Notices were issued by this Court on 21-3-2002 to the respondents namely, the Chief Secretary, Government of U.P., Secretary, Department of Health and Family Welfare, the District Magistrate, Meerut and Chief Medical Officer, Meerut. On 27-7-2002 directions were issued to the Principal Secretary, Medical and Health, Government of U.P. and to all the District Magistrates, Chief Medical Officers as well as Director General of Information and Public Relations Department, Director, Medical Care, Government of U.P. as well as Officiating Director General, Medical Health of U.P. On 5-8-2002 all the District Magistrates and Chief Medical Officers of the State were impleaded as parties and were required to take action.

12. Since thereafter the Court is monitoring the matter. The successive Principal Secretaries, Medical Health, Government of U. P. have filed supplementary affidavits including the action taken reports of the Chief Medical Officers. The Court by its order dated 5-8-2002 also directed the Director General of Police and Director General of Prosecution to submit their reports, Interventions were also made on behalf of D. K. Joshi, Shiba Jose, and Indian Association of Pathologists and Microbiologists Varanasi Forums. These intervenors have also highlighted the reality that the unauthorised/unregistered medical practitioners in thousands are still flourishing in the State of U.P.

13. In the last two years the State has only identified some of the unauthorised medical practitioners. It is only a tip of the ice berg. It is estimated thousands of unauthorised persons playing with the health of the population of the State. In two years the authorities have only been able to identify only 18856 and at some places the names have been published in newspapers. Director of Information, Government of U.P. has expressed his inability to publish all the names. The State Government has put up an excuse that they do not have sufficient funds to comply with the order, and instead of publishing and prosecuting they have caused a few awkward and clumsy advertisements, warning public to visit such unauthorised

persons. The effort made to initiate prosecution only against 4381 persons and charge-sheets only in 440 cases, proves the lack of will and inadequacy of efforts by the respondents.

14. The Court found that in order to demarcate a line and to identify unauthorised medical practitioners in U.P., it is necessary to register the entire authorised private medical care in the State, With the participation of Sri R. K. Mittal, Principal Secretary, Medical Health as well as Sri Amarendra Singh, Director General, Medical Care, and with the help of intervenors and the Medical Council of India, the Court passed a detailed order dated 28-1-2004 in the Contempt Petition, directing the registration of entire private medical care in U.P. upto 30-4-2004. These directions are quoted as below:

(1) All the Hospitals, Nursing Homes, Maternity Homes, Medical Clinics, Private Practitioners, practising medicine and offering medical and health care services, Pathology Labs, Diagnostic Clinics; whether run privately or by firms, Societies, Trusts, Private limited or Public limited companies, in the State, shall register themselves with Chief Medical Officer of the District where these establishments are situate, giving full details of the medical facilities offered at these establishments, the names of the registered and authorised medical personnel practising, employed or engaged by them, their qualifications with proof of their registrations, the Para Medical staff employed or engaged and their qualifications, on a form (for each category) prescribed by the Principal Secretary, Medical Health and Family Welfare, Government of U. P. The prescribed pro forma with true and accurate information shall be submitted, supported by an affidavit of the person providing such medical services of the person incharge of such establishment, sworn before Notary Public. The required information shall be submitted for registration, by all these persons, on or before 30-4-2004.

(2) The principal Secretary, Medical Health and Family Welfare, U. P. shall publish the information requiring all the persons to obtain registrations, along with the directions given in this order, and the prescribed pro forma, in all leading newspapers of the State, at least three times, in the month of February, 2004.

(3) Any change or addition in the particulars submitted shall be notified within thirty days and that the registrations shall be renewed every year before 30th April of the year.

(4) On and from 1-5-2004, all those persons who have not furnished the information and obtained registration with the Chief Medical Officers of the District, shall be taken to be practising unauthorised and that the Chief Medical Officers, shall scrutinize and forthwith report the matter to the Superintendent/Senior Superintendent of Police of the District with information to this Court, to conduct raids and to seal the unauthorised premises/establishments. All the authorised persons/establishments, who fail to obtain registration will have liberty to apply only to this Court to explain the delay and to seek permission to continue with their medical practice/profession.

(5) All those medical practitioners who desire to offer medical services in the State, in future, shall be required to submit the details in the aforesaid pro forma for registration as above with the Chief Medical Officer of the district before they start medical practice.

(6) All the institutions/establishments/ colleges awarding medical degree in the State shall apply and get themselves with the Principal Secretary Medical Health and Family Welfare, U. P. with full particulars of their authorization to confer such degrees/certificates, on or before 30-4-2004.

(7) The news papers and magazines, published in Uttar Pradesh, are restrained from publishing advertisements by and from unauthorised medical practitioners, publishing their claims of quick and magical remedies. They shall require these persons to give proof of their qualifications and registrations. The breach shall be taken to aid and obviate illegal activities violative of Magic Remedies (Objectionable Advertisement) Act, 1954, and other relevant legislation's.

(8) The Principal Secretary, Medical Health and Family Welfare, it is directed, to ensure that no medical officer in the Government Service is posted beyond three years in any District, and that all para medical staff serving in the Primary Health Centre/Community Health Centre/District Hospitals and other hospitals run by

Government of U.P. for more than five years shall be transferred from that centre/hospital. Any doctor in employment of State Government offering their services to the unauthorised medical practitioners shall face immediate disciplinary action by the State Government, and shall be prosecuted for aiding and abetting such unauthorised practice.

15. A Special Appeal No. 320 of 2004 (between Dr. Ravindra Kumar Goel v. State of U. P.) against the order dated 28-1-2004 was dismissed by this Court on 27-4-2004 with only a modification in condition No. 8, by which the Bench directed that the direction to transfer Government Doctors should be treated as recommendation.

16. The registration of the entire private medical care has been concluded. In the XVI counter-affidavit of Sri Pritam Singh, Principal Secretary, Medical & Health Department, Government of U.P. it is reported that almost all the private Doctors, Hospitals, Nursing Homes, Maternity Homes, Medical Clinics, Pathology Labs, and Diagnostic Centres (total 49,107) have been registered in the State. The Chief Medical Officers refused registration of those medical practitioners, who do not have any qualifications and are not registered with the State Medical Council and Board of Indian Medicine, U.P. All the petitioners in this batch of writ petitions have not been registered, the Chief Medical Officers have not entertained their applications as they do not hold any qualifications to be registered as medical practitioners. Aggrieved they have filed these writ petitions.

17. The U. P. Indian Medicine Act, 1939 was entitled to provide for development of Indian System of Medicines and to regulate the practice in the United Provisions. Section 3 provides for establishment of Board of Indian Medicine, U.P. for the purposes of carrying out the provisions of the Act. Section 27 provides that every person possessing the qualifications mentioned in the Schedule shall, subject to the provisions contained in or made under this Act and upon payment of such fees, whether in lump sum or periodically, as may be prescribed, be entitled on an application made to the Registrar, to have his name entered in the Register, and be granted a certificate in the prescribed form. The Schedule can be amended by the Board under the powers given under Section 28 of the Act. The Board as

powers to call for information from any Medical Institution, from applicant for registration and to prohibit entry in, or to direct removal of the name of any Vaidya or Hakim from the Registrar.

18. Section 33 provides for penalty on unregistered person representing that he is registered. Such an offence is punishable by a Magistrate of the First Class with imprisonment which may be extended to six months or with fine which may extend to two hundred rupees or with both. Section 35 provided for publication of names entered in the register of Vaidyas and Hakims. Section 36A provide for Faculty of Ayurvedic and Unani Tibbi Systems of Medicine for proper discharge of duties and function as a teaching and examining body in Ayurvedic and Unani Tibbi Systems of Medicine, and Section 36-B provides powers and duties of the Faculty. Section 39 defines the expression of 'legally qualified medical practitioner' or 'duly qualified medical practitioners', in all the Acts in force in U.P. and all Acts of the General Legislature (in their application to the Uttar Pradesh), in so far as such Acts relate to any of the matters specified in List II or List III in the Seventh Schedule to the Government of India Act, 1935, be deemed to include a registered practitioner. Section 40 was substituted by U.P. Act No. 35 of 1975 and provides that except with the special sanction of the State Government, no person other than Vaidya or Hakim who has qualified himself or herself from an institution affiliated to the Board who holds a degree in Ayurvedic or Unani Tibbi system of medicine from a University established by law in Uttar Pradesh, and is domiciled resident of this State shall be competent to hold an appointment as medical officer of health or as physician or other medical officer in an Ayurvedic or Unani hospital, infirmity, dispensary or lying in hospital maintained by or under the control of the State Government or a local authority. Section 49 provides for State Government to enforce the provisions of Part III of the Act. Section 50 provides for publication of the List of persons in practice belonging to the indigenous system and Section 51 prohibits the persons from practising Indian Medicine other than a practitioner registered under Part II of the Act. Section 55 of the Act prohibits for conferring, granting or issuing diploma, licence, etc. by unauthorised person or institution and Section 56 provides that false assumption or degree, diploma or certificates to be an offence.

19. The U. P. Indian Medical Institutions (Acquisition and Miscellaneous Provisions) Act, 1982 (in short U.P. Act of 1982) provides for the acquisition and management of certain non-Government institutions imparting instruction in Ayurvedic and Unani-Tibbi Systems of medicine, to provincialize education in such systems of medicine, to regulate the imparting of instruction in naturopathy and Yoga Therapy and for matters connected therewith or incidental thereto. It was noticed that a large number of private medical institutions imparting instructions in Ayurvedic and Unani Tibbi Systems of medicine are operating in the State with mercenary motives. Their standard of education, equipment and facility for studies obtaining in these institutions are not up to the mark. Most of the institutions are not affiliated to any University in the State and the fate of students obtaining instructions in these institutions remains uncertain.

20. By this U.P. Act of 1982 Scheduled institutions, namely four institutions provided in Schedule, were vested in the State Government. The administration of these institutions were also vested in the State Government and the teachers and other employees became the employees of the State Government. Section 8 of this Act provide restriction on opening of new institutions, and Section 9 provide restriction on admission of students. Section 10 of this Act, 1982 provide that nothing in Section 8 of Section 9, for opening of new institution and restriction on admission of students, shall affect the right of any minority referred to in Article 30 of the Constitution to establish and administer any educational institutions of their choice 'for imparting instruction in Ayurvedic or Unani-Tibbi Systems or Medicine or Naturopathy or Yoga Therapy'. The Act under Section 13 provide to overriding effect on any other part or decree or order of any Court, tribunal or authority.

21. It was noticed that a large number of institutions were functioning without authority, recognition or registration. Only 4 of these institutions were included in the schedule of the Act of 1982, were found to be valid and recognised institutions. By Government Order dated 8-10-1993, the State Government found that about 23 Ayurvedic, and 26 Unani institutions are being run without any authority. Their diploma/degrees are not recognised from any University or Board and that the qualification given by these institutions are not recognised by U.P. Indian Medicine Act, 1939. Consequential directions were issued to close down these institutions.

Sri Maharishi Charak Ayurvedic and Unani Medical College, Deoband Saharanpur filed writ petition No. 8349 of 1994 in which while admitting the writ petition on 3-3-1994, the operation of the order dated 8-10-1993 was stayed. The sheet anchor of the argument of the learned counsel for petitioner in Writ Petition No. 23267 of 2004, is the stay order in this writ petition.

22. The [Indian Medicine Central Council Act, 1970](#) (in short Act of 1970) was enacted by Parliament to provide for constitution of Central Council of Indian Medicine and the maintenance of a Central Register of Indian Medicine and for matters connected therewith. The Statement of object and reasons states that some States have constituted State Boards or Councils either by legislations or by executive orders for registration of various systems of Indian medicines and Homeopathy as well as recognition of their qualifications. There was, however, no central legislation for regulation of practice or for minimum standards for training and conduct of examinations in these systems of medicines on All India Basis, for which Central Council of Health in its 13th meeting in June 1966 recommended setting up of a Central Council. The Act of 1970 provided in Section 3 for constitution of Central Council and recognition of medical qualification granted by certain institution of India included in the Second Schedule, and to be included in the Third Schedule. Section 14 provides that the medical qualifications granted by any University, Board or other medical institution in India which are included in the Second Schedule shall be recognized medical qualifications for the purposes of this Act. Sub-section (2) of Section 14 provides that any University, Board or other medical institution in India which grants a medical qualification not included in the Second Schedule may apply to the Central Government to have any such qualification recognized.

23. The Section 17 is relevant for the purpose of this case. It gives right to the persons possessing qualification included in Second, Third and Fourth Schedule to be enrolled of any State Register of Indian Medicine. No persons other than practitioner of Indian Medicine who possesses a recognized medical qualification and is enrolled on a State Register or Central Register of Indian Medicine shall hold office as Vaid, Siddha, Hakim or Physician or any other office in Government or in any institution maintained by a local or other authority, and shall practice in

Indian Medicine in any State. Sub-section 3(a) of Section 17 protects only those practitioners on Indian Medicine who were enrolled on any State Register of Indian Medicine to practice in Indian Medicine in any State before the commencement of the Act, even if he does not possess a recognized medical qualification. The Sub-section (3) (b) of Section 17 protects privileges (including the right to practice any system or 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. Sub-section (c) of Section 17 protects right of persons to practice Indian Medicine in a State in which, on the commencement of this Act, a State Register of Indian Medicine is not maintained if, on such commencement, he has been practising Indian medicine for not less than five years. The Council is required under Section 22 to maintain minimum standard of education in Indian Medicine. The recognition granted can be withdrawn under Section 21 of the Act.

24. A combine reading of the Indian Medicine Act, 1939, U.P. Indian Medicine Institutions (Miscellaneous and Provisions) Act, 1982 and the Indian Medicine Central Council Act, 1979 shows that only those medical practitioners who hold qualification from the Institutions detailed in the Second Schedule of the Central Act, 1970 and from the Colleges given in the Schedule under U.P. Act of 1939, and U.P. Act, 1982 can be registered after 1970, with the Board of Indian Medicine U.P. and only these qualified persons are entitled to practice in Indian Medicine in the State of U. P.

25. Coming to the cases at hand, I find that Maharashri Charak Ayurvedic Evam Unani Medical College, Deoband, Saharanpur is not recognised Medical College for imparting Ayurvedic or Unani Tibbi System of Medicine. It is not included either in the Second or Third Schedule of the [Indian Medicine Central Council Act, 1970](#), or U.P. Indian Medicine Act, 1939. Section 10 of the U.P. Act of 1982 protects the rights of the minority institutions to establish and administer the educational institutions for imparting in Ayurvedic or Unani Tibbi System or Naturopathy or Yoga Therapy. This right flowing from Article 30 of the [Constitution of India](#) does not give a blanket authority to the minority institution to confer degrees or recognition to the course offered by them. The right to establish and administer an

educational institution is different and a distinct right and is not to be confused with the recognition to be granted to the educational institution and the courses to be perused, and the diploma/certificate/degrees to be awarded by such institutions by statutory Councils & Boards. The institutions must be included in the Schedule and the course in the Indian Medicine, even if offered by minority institution, must be recognised by the Indian Medicine Central Council established under the [Indian Medicine Central Council Act, 1970](#) and the Board of Indian Medicine U.P. The interim order in writ petition No. 8349 of 2003 staying the operation of the Government Order, by which the 36 unauthorised institutions were directed to be closed does not amount to grant recognition to these colleges, and the courses offered by such institution. I, therefore, find that Maharshi Charak Ayurvedic and Unani Medical College, Deoband, Saharanpur has no authority in law to conduct the course in Ayurvedic Evam Unani Medicine and to confer certificate/diploma/degrees. The institution and the course is not recognized, and that the persons holding qualifications from these institutions are not qualified and have no right to be registered with the Board of Indian Medicine U.P. and are not entitled to practice Indian Medicine in the State of U. P.

26. The Hindi Sahitya Sammelan is included at item No. 105 in Uttar Pradesh in the Second Schedule of the [Indian Medicine Central Council Act, 1970](#). The degrees of 'Vaidya Visharad' and 'Ayurved Ratna' awarded by Hindi Sahitya Sammelan Allahabad were valid only from 1931 up to 1967. These degrees are no longer valid. The Hindi Sahitya Sammelan has absolutely no authority to continue to confer these-decrees after 1967. These course are not recognised either by Central Act, 1970 or under the U.P. Indian Medicine Act, 1939. The Apex Court and this Court have time and again held that the qualifications of 'Vaidya Visharad' and 'Ayurved Ratna' by the Hindi Sahitya Sammelan are not recognised qualifications after 1967. In *Delhi Registered Medical Practitioners v. Director of Health, Delhi Administration*, 1997 (11) SCC 687 : (AIR 1998 SC 67), *Dr. Ravindra Nath v. State of H. P.*, 1993 (Suppl) 2 SCC 369 (sic) and *Umakant Tiwari v. State of U. P.*, (2003) 2 UPLBEC 1613 : (2004 AIHC 21) the Courts have affirmatively held that the degrees offered by the Hindi Sahitya Sammelan after 1967, are not recognised qualifications. All these persons having obtained registration from Bihar on the basis of these degrees, and have thereafter got their addresses

transferred to U. P. The Board of Indian Medicine Bihar had no authority to register these persons with unrecognized qualification. These persons are not entitled to practice in U.P. The rights of these persons who got themselves registered in Bihar or Haryana have been decided by this Court and their claims have been rejected by the Division Bench in *Indrasen Verma v. Union of India*, 2004 (2) ESC (All) 984. All these persons, therefore, are not entitled to practice in U.P. and thus the reliefs claimed by them to be registered in State of U.P. by Chief Medical Officers, in pursuance of the orders passed by this Court on 28-1-2004 upheld by the Division Bench, in *Dr. Ramendra Kumar Goel v. State of U. P.*, 2000 (2) ESC 976 cannot be granted.

27. The Ayurvedic Chikitsa Parishad U.P. Indira Nagar, Dhampur (Bijnor) U.P. is not a recognised Board under the Central Act of 1970, U.P. Act of 1939 and U.P. Act of 1982. The alleged Colleges imparting courses, diplomas, certificates, degrees by the Ch. Charan Singh Memorial Ayurvedic College Baraut, Baghpat, and Daya Nand Ayurvedic College Vatjewra, Meerut are not recognised institutions. The four year degree course offered by these institutions in Ayurved is not recognised by these legislations. The petitioners holding these qualifications are not qualified to be registered by the Board of Indian Medicine U.P. and are not entitled to practice Indian Medicine in the State of U. P. The Board has rightly rejected their representation on 18-5-2004.

28. The petitioners having registrations with Council of Unani Medicine, West Bengal, Calcutta on 8-1-1985 have not disclosed their qualifications. They claim that they hold degrees in Unani Medicine. They have not given the names of the institutions/colleges or the courses perused by them. They are as such not qualified and are not entitled to practice Unani system of medicine in the State of U.P. After the enforcement of the Act of 1970 (Central Act), only those persons who hold qualifications from institutions included in Second and Third Schedule are entitled to be registered. This Court is not deciding about their rights to practice Unani system of medicine in West Bengal. In *Indrasen Verma* (supra) this Court has held the right of any person to practice Indian Medicine in any other State enactment, provided he has valid qualifications, cannot give him a right to practice in the State of U. P. Section 17, of the Act of 1970, does not confer any

such right after the commencement of the Act. These petitioners do not possess any recognised medical qualifications and they are not enrolled by the Central Council or the Board of Indian Medicine U.P., to claim benefit of Section 29 of the Act of 1970. They are unqualified and unregistered and are not entitled to practice in the State of U.P.

29. In *Dr. Mukhtiar Chand v. State of Punjab*, (1998) 7 SCC 579 : (AIR 1999 SC 468); *Medical Council of India v. State of Rajasthan*, AIR 1996 SC 2073; *Subhashis Bakshi v. West Bengal Medical Council*, (2003) 9 SCC 269, the Supreme Court has recognised the right to practice medicine of only these persons, who are qualified and are registered on the Indian Medical Register or on any State Medical Register. In *Dr. Mehboob Alam v. State of U. P.*, (2002) Cri LJ 1218), this Court has held that a person qualified and registered in any branch of medicine cannot practice any other branch. A Division Bench of this Court in Special Appeal No. 320 of 2004 *Dr. Ravindra Kumar Goel v. State of U. P.*, (reported in 2004 (55) All LR 807) decided on 27-4-2004 has upheld the directions dated 28-1-2004 in this contempt petition and has insisted upon only the qualifications to practice medicine in the State.

30. The right to practice medicine is subject to reasonable restrictions under Article 19(6) of the [Constitution of India](#). The right to health included under Article 21 of [Constitution of India](#) is to be balanced with the right to practice medicine under Article 19(1)(g) of [Constitution of India](#) and is subject to reasonable restrictions under Article 19(6). Only those persons who hold valid and recognised degree and are registered under the existing legislations can be allowed to practice medicine in the State.

31. The .Court finds that inspite of repeated directions issued by the State Government, the unauthorised institutions awarding certificates/diplomas/degrees in Indian medicine, are still flourishing and are still cheating thousands of students. They are cheating and misrepresenting, innocent persons, and turning them into quacks, playing havoc with the health of general public. Most of these Institutions are running in one or two rooms and are not running any classes at all, and are only doing business of selling certificates. In order to implement the directions of

Hon'ble Supreme Court in D. K. Joshi's case (supra), it is absolutely necessary to close these institutions. The Principal Secretary, Medical Health, Government of U. P., and the Director General, Police, U. P. are directed to take immediate effective steps to close these unauthorised institutions immediately with intimation to this Court. The Principal Secretary, Medical and Health, U.P. and Director General, Police U. P. shall report to this Court within a period of three months in Contempt Petition No. 820 of 2002, with the action taken in the matter. For their benefit the Government Order dated 8-10-1993 had identified 23 Ayurvedic and 26 Unani institutions running without any authority. In the last 11 years they may be many more unauthorised institutions established without any permission and recognition. These must be identified and stopped without any further delay.

With the aforesaid directions all these writ petitions are dismissed. A copy of this order shall be given to Chief Standing Counsel free of charge for compliance.

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