

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

WA.No. 1979 of 2014 IN WP(C).31720/2013

AGAINST THE JUDGMENT IN WP(C) 31720/2013 DATED 11-07-2014

.....

APPELLANT/PETITIONER :

DR.N.SUKUMARAN
SREEPADMAM, KURUPPANKULANGARA P.O., CHERTHALA
ALAPPUZHA - 688 551.

BY ADVS.SRI.K.BABU RAJAN
SRI.K.JALADHARAN
SRI.T.A.SREE KUMAR

RESPONDENTS/RESPONDENTS :

1. THE TRAVANCORE COCHIN MEDICAL COUNCIL
REPRESENTED BY ITS REGISTRAR RED-CROSS ROAD
THIRUVANANTHAPURAM - 695 035.
2. THE UNION OF INDIA
REPRESENTED BY THE SECRETARY
MINISTRY OF HEALTH AND FAMILY WELFARE, SOUTHBLOCK
NEW DELHI - 110 001.
3. THE CENTRAL COUNCIL OF HOMEOPATHY
REPRESENTED BY ITS PRESIDENT, NEW DELHI -110 001.
4. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY, MINISTRY OF HEALTH
THIRUVANANTHAPURAM - 695 035.

R1 BY SRI.N.RAGHURAJ, SC, TCMC & KNMC
R2 & R3 BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R4 BY GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 20-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**ASHOK BHUSHAN, CJ
&
A.M.SHAFFIQUE, J**

W.A.No.1979 of 2014

Dated this the 20th May, 2015

JUDGMENT

Shaffique, J.

Appellant is the writ petitioner in W.P(C).No.31720 of 2013, which came to be dismissed by the learned Single Judge.

2. The Writ Petition was filed seeking for a declaration and direction to register the appellant as a Homoeo Medicine Practitioner under the category of registration without qualification. According to the petitioner, he has been practising Homoeo Medicine. He has got a Ph.D degree and was working in the Department of Atomic Energy for quite a long time and he had been recognized by various national and international organisations on account of his homoeopathic practising. He was fully engaged in treating persons, but, so far no registration has been granted to him. He had applied for

registration, which was not considered and finally he had to approach this Court by filing W.P(C).No.31665 of 2010, in which a direction was given by this Court directing the Council to consider the petitioner's representation, which ultimately resulted in Exhibit P24 order dated 7.6.2013, by which his application for registration had been rejected. In Exhibit P24 order, it is mentioned that the petitioner is not in possession of any of the certificates included in the schedule to Travancore-Cochin Medical Practitioners Act, 1953 or Central Council of Homoeopathic Act, 1970, which is the pre-requisite for registration with the Council. Though the petitioner had produced various certificates, none of the certificates conforms to the documents which form part of the schedule to the Act and therefore his request was rejected.

3. The learned Single Judge, after having considered the contentions urged on behalf of the petitioner, dismissed the Writ Petition holding that no illegality was committed while passing Exhibit P24 order.

4. Learned counsel for the appellant submits that though the appellant is not having requisite certificates scheduled in the aforesaid Act, still, on account of the experience the appellant was having in respect of the homoeopathic practice he had been undergoing since 1964, the Council ought to have granted him registration. The certificates produced by him include the certificates given by various national and international organisations and it is evident from Exhibit P3 itself issued by the employer that he had been practising homoeopathy since February, 1967. It is also contended that in terms of Section 23(1)(i) or 47 of the Travancore-Cochin Medical Practitioners Act (hereinafter referred to as 'the Act'), it was always open for the Government or the Council to have considered his application for registration. The appellant also points out that in respect of another person, the time specified under Section 23(1)(ii) of the Act had been extended even in the year 1969. No such attempt has been made on the part of the Government as far as the petitioner is concerned.

5. Learned counsel for the appellant referred to the grounds urged in the memorandum of appeal to contend that the learned Single Judge had not appreciated the legal and factual aspects involved in the matter. He also referred to the various documents and certificates produced along with the Writ Petition to prove his bonafides in the matter.

6. We have heard learned counsel appearing for the first respondent also. It is argued that as far as the Council is concerned, it could grant registration only in terms of Section 23 of the Act, which takes into consideration two eventualities. One is possession of sufficient documents and eligibility in terms of the schedule to the statutes and secondly, on account of the practice, which is granted only on certain conditions. In so far as the appellant does not fulfill the said conditions as stated in Section 23(1)(ii) of the Act, the appellant is not entitled to any relief.

7. In order to consider the contentions urged on behalf of the parties, it is useful to quote Section 23(1)(ii) of the Act, which reads as under:

“23. Eligibility for registration,-

(1) Subject to the provisions of sub-sections (2) and (5),-

(i) xx xx

(ii) every person who, within the period of one year or such other longer period as may be fixed by the Government from the date on which this Act come into force proves to the satisfaction of the appropriate council that he has been in regular practice as a practitioner for a period of not less than five years preceding the first day of April, 1953.

shall be eligible for registration under this Act:

Provided however that no practitioner shall be registered under clause (ii) after the expiration of one year, or such other longer period as may be fixed by the Government, from the date on which this Act comes into force.”

8. It is not in dispute that the petitioner has not filed any application within the time specified in Section 23(1) (ii) of the Act. Further, even if any extension of the period of one year specified in Section 23(1)(ii) of the Act is required, it is for the Government to extend the time. But, still the five years practice mentioned in the said provision

is preceding the first day of April, 1953. Admittedly, the petitioner did not start the practice within the said period, therefore, it is apparent that Section 23(1)(ii) of the Act does not apply to the facts and circumstances involved in the matter.

9. Learned counsel for the appellant referred to Section 47 of the Act, which reads as follows:

“47. Alteration of list of recognised qualifications mentioned in the schedule.- If it shall appear to the government, on the report of the appropriate council or otherwise, that the course of study and examinations prescribed by any of the medical schools or colleges or bodies conferring the qualifications described in the Schedule are not such as to secure the possession by persons obtaining such qualifications of the requisite knowledge and skill for the efficient practice of their profession, or if it shall appear to the Government, on the report of the appropriate council or otherwise, that the course of study and examinations prescribed by any medical school or college or body conferring a qualification not entered in the Schedule are such as to secure the possession by persons obtaining such qualification

of the requisite knowledge and skill for the efficient practice of their profession, it shall be lawful for the government, from time to time by notification in the Gazette, to direct that the possession of any qualification entered in the Schedule shall not entitle any person to registration under this Act, or to direct that the possession of any qualification not entered in the Schedule shall, subject to the provisions of this Act, entitle a person to be so registered, as the case may be, and the Schedule shall thereupon be deemed for all purposes to be altered accordingly."

On a perusal of Section 47 of the Act also, we do not find any provision by which the experience gained by the petitioner as reflected in the documents produced by him, would by itself satisfy the conditions for grant of registration and whether it is possible for the Council to take any different view. Section 47 hence does not apply to the facts of the case.

10. It is brought to the notice of this Court that at best the petitioner can only approach the Government in terms of First proviso to Section 38(1) and the first proviso

of the Act for registration. First proviso to Section 38 of the Act reads as under:

“38. *Persons not registered under this Act, etc., not to practice.*- No person other than (i) a registered practitioner or (ii) a practitioner whose name is entered in the list of practitioners published under Section 30 or (iii) a practitioner whose name is entered in the list mentioned in Section 25 shall practice or hold himself out, whether directly or by implication as practising modern medicine, homoeopathic medicine or ayurvedic medicine, siddha medicine or unani tibbi and no person who is not a registered practitioner of any such medicine shall practise any other medicine unless he is also a registered practitioner of that medicine:

Provided that the Government may, by notification in the Gazette, direct that this section shall not apply to any person or class or persons or to any specified area in the State where none of the three classes of practitioners mentioned above carries on medical practice:

xx

xx

xx

11. In fact, Section 38 of the Act is a prohibition restricting any person, who does not have registration under

any of the provisions of the Act whose name is not listed among the registered practitioners or published under Section 25 or 30 to practise the profession. The proviso, of course, says that the Government may, by notification in the Gazette, direct that Section 38 shall not apply to any person or class or persons or to any specified area in the State where none of the three classes of practitioners carries on medical practice. Therefore, on special circumstances if the Government is satisfied that none of the three classes of practitioners mentioned in Section 38 carries on medical practice, it shall be open for the Government to issue a notification in terms of the first proviso to Section 38 of the Act. Under such circumstances, if the petitioner applies to the Government with necessary particulars and satisfies the Government regarding the applicability of the provisions of Section 38, it shall always be open for the Government to consider the same and pass appropriate orders.

12. We do not think that the learned Single Judge had committed any error in dismissing the Writ Petition. We only observe that the petitioner may approach the Government and if he satisfies the conditions specified under the first proviso to Section 38 of the Act, it shall be open for the Government to consider the case of the petitioner and pass appropriate orders.

The Writ Appeal is dismissed.

**Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE**

**Sd/-
A.M.SHAFFIQUE
JUDGE**

//True Copy//

P.S. To Judge

vgs21/5/15