

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 139 of 2016**

AYUSH Medical Association (A National Organisation of Registered Ayurveda, Yoga and Naturopathy, Unani, Sidhdha and Homeopathy) Doctors], Chhattisgarh State Council, Office at New Sarkanda, Bandhwapara in front of Maharana Pratap Bhawan, Bilaspur, Chhattisgarh, Through Its State General Secretary Dr. Prince Jaiswal S/o Shri Sant Kumar Jaiswal, Aged about 31 years, R/o Beside PHC Pondi, (Bhachra) Police Station Khadgawan, District Korea, Chhattisgarh.

---- Petitioner**Versus**

1. Union of India, Through Secretary, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi.
2. State of Chhattisgarh, Through Secretary, Health and Family Welfare Mahanadi Bhawan, Capital Complex, Naya Raipur, Chhattisgarh.
3. Central Council for Indian Medicine, Through its Secretary, 61-65, Institutional Area, Janakpuri, New Delhi.
4. Medical Council of India, Through its Secretary, Pocket 14, Sector 8 Dwarka Phase 1, New Delhi.
5. Chhattisgarh Board of Ayurvedic and Unani System of Medicine and Naturopathy, Through its Registrar, Ayurvedic College Hospital Bulding, GE Road, Raipur, Chhattisgarh.
6. Chhattisgarh Medical Council, 1st Floor, Dr. Balmukund Sharma Clinic, Near Nigam Ayurvedic Hospital, Raipur, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Sachin Tamrakar, Advocate.
For Respondent/UoI	:	Shri Narendra Kumar Vyas, Assistant Solicitor General.
For Respondent No. 3 & 4	:	Shri Ranbir Singh Marhas, Advocate.
For Respondent/State	:	Shri UNS Deo, Government Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Order on Board

Per Navin Sinha, Chief Justice

20/01/2016

1. The Petitioner is an association of Doctors possessing qualification of Ayush (Ayurved, Yoga and Naturopathy, Unani, Sidhdha and Homeopathy) registered under the Societies Registration Act.
2. Learned Counsel for the Petitioner submits that the members of the association possess qualification of Bachelor of Ayurvedic Medicine and Surgery (hereinafter referred to as 'the BAMS') and they are duly registered under the Chhattisgarh Ayurved, Unani, Prakritik Chikitsa Vyavasayi Adhiniyam, 1970. The State Government has issued a notification dated 23.3.2004 under Rule 2(ee)(iii) of the Drugs and Cosmetics Rules, 1945 (hereinafter called 'the Rules') permitting practice and prescribing of allopathic medicines by those holding the qualification in Bachelor of Ayurved with Modern Medicine and Surgery. The Association has represented on 7.3.2014 that persons possessing the qualification of BAMS be also permitted to practice and prescribe allopathic medicines. The representation has not been considered compelling filing of the writ petition. It was next submitted that notwithstanding the notification dated 23.3.2004, the State Government was permitting those holding qualification of BAMS and working in Government hospitals or dispensaries to prescribe allopathic medicines also. The action of the State is therefore arbitrary and discriminatory.
3. Learned Counsel for the State submitted that according to the Petitioner themselves, the qualifications are different in the two courses. There are no pleadings with regard to the course content and equivalence of qualification etc. These are matters of expertise best left to persons possessing requisite knowledge and experience in the particular field. Prescription of medicines to an ailing person is a serious matter and cannot be left in the hands of an unqualified or those not

entitled to do so under the law. With regard to the allegations of discrimination, it is submitted that without instructions, he is not in a position to make any submissions with regard to the same.

4. We have considered the submissions.

5. If the State Government has issued a notification under Rule 2(ee)(iii) of the Rules limiting the right to practice in allopathic medicines to persons possessing Bachelor of Ayurved with Modern Medicine and Surgery to the extent of training received by them in modern medicine, the Court cannot issue any mandamus for extending the notification by inclusion of persons with BAMS qualifications. There are no pleadings with regard to equivalence of the two qualifications, course content and other relevant factors. These, in our opinion, are matters to be examined by experts in the field of indigenous medicine, the Central Council of Indian Medicine or such other appropriate authority prescribed by law. Moreover, we are also satisfied that these are matters of policy for the Government to decide and we cannot issue any mandamus at this stage with regard to the same.

6. If the Government has permitted prescription of allopathic medicines by those who may not be eligible to do so under the notification dated 23.3.2004, the Petitioner cannot seek a mandamus to perpetuate the illegality. If what the Petitioner contends be correct, it may require examination and remedial action, if any, by the Government but certainly cannot be a ground for issuance of mandamus as Article 14 of the Constitution does not operate in negativity.

7. It is expected that the representation of the Petitioner shall be considered and disposed by a reasoned and speaking order at the earliest.

8. The writ petition is disposed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE