

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CWP No.12887 of 2014**

**Date of Decision:08.09.2017**

**Pradeep Mahendru**

**.....Petitioner**

**vs.**

**Union of India and others      .....Respondents**

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN**

Present:      Mr. Hemen Aggarwal, Advocate for the petitioner.

Mr. Karinder Singh, Advocate for respondent No.1.

Mr. Saurav Mohunta, DAG, Haryana.

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**Rakesh Kumar Jain (Oral)**

The petitioner has prayed for the issuance of a writ in the nature of certiorari for quashing the order dated 27.12.2013 by which his request to include him as a “medical practitioner” in the definition of Section 2(m) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short, ‘the Act’).

In short, the petitioner is the proprietor of M/s Anand Mediscan and Research Centre at Yamuna Nagar. He is BAMS and is registered with the Board of Ayurvedic and Unani System of Medicine, Haryana under the provisions of Indian Medicine Central Council Act, 1970. The petitioner had earlier filed CWP No.6139 of 2011 to challenge the decision of the State of Haryana dated 27.09.2010 by which his claim to use ultra sound machine was turned down by observing that the use of Ultra-sound Machine or Sonography by a BAMS (Ayurvedic) Degree holder has been expressly banned by the State Government vide notification dated 12.04.2004. The said writ petition was dismissed by the Division Bench of this Court along

with three writ petitions bearing Nos.1688 of 2012, 1689 of 2011 and 1730 of 2012 held as under:-

“6. The petitioner's contention is that only those medical practitioners who possess recognized medical qualification as defined in Clause (h) of Section 2 of the Indian Medical Council Act, 1956 and whose names are entered in a State Medical Register, have been recognized as “registered medical practitioner” under the PNDT Act, which amounts to hostile discrimination with BAMS Degree holders, hence the above-reproduced definition does not stand to the touchstone of Article 14 of the Constitution of India.

(7) We have given our thoughtful consideration to the contention raised on behalf of the petitioner.

(8) The petitioner does not plead or allege fault with the inclusion of medical practitioners who are qualified under the Indian Medical Council Act, 1956, amongst those who are recognized by PNDT Act. He, while questioning the definition of “registered medical practitioner” under the PNDT Act, in a way, seeks a mandamus to rewrite the said definition so as to include “medical practitioners” recognized/registered under the Indian Medicine Central Council Act, 1970 also. No such writ, in our considered view, in exercise of jurisdiction under Article 226 of the Constitution, can be issued.

(9) The MBBS or any other similar qualification based upon modern medical science is totally distinct and different from the Ayurvedic system of medicines as is imparted in the BAMS degree course. Whether BAMS degree-holders are professionally capable to use Ultra-sound Machines or not is

essentially a question which falls within the domain of the subject-experts. The fact that the legislature in its wisdom did not include in the 'registered medical practitioners' under PNMT Act except those who are possessing recognized medical qualifications under the Indian Medical Council Act, 1956, is a decision based upon intelligible criteria and satisfies the test of reasonable classification.”

The decision of the Division Bench, rendered against the petitioner in CWP No.6139 of 2011, was admittedly not challenged by him further before the Apex Court. Be that as it may, the petitioner still served a legal notice to the respondents and this time, he requested that the degree of BAMS be also included in the definition of Section 2(m) of the Act. The said legal notice was not decided by the authority concerned and hence the petitioner filed a writ petition in this Court bearing CWP No.20974 of 2013 which was disposed of on 20.09.2013 with a direction to the concerned authority to look into the legal notice and decide the same as early as possible, preferably within a period of three months. Consequently, the Government of India, Ministry of Health and Family Welfare, Department of AYUSH passed the order on 27.12.2013 declining the prayer of the petitioner made in the legal notice and also made a reference of the earlier writ petition i.e. CWP No.6139 of 2011. The petitioner has then challenged the said order dated 27.12.2013 by way of this writ petition and raised the same plea that the BAMS Doctors be also included in the definition of Section 2(m) of the Act. Counsel for the petitioner has argued that the cause of action in the present writ petition is different from the cause of action in the earlier writ petition No.6139 of 2011.

On the other hand, learned counsel for the respondents has

submitted that the petitioner is misusing the process of law as he is filing the same petitions time and again. They have submitted that the cause of action in the present petition is the same because the petitioner has obtained the degree of BAMS under the provisions of the Indian Medicine Central Council Act, 1970 whereas the Division Bench of this Court in CWP No.6139 of 2011 has specifically held that “in a way seeks a mandamus to re-write the said definition so as to include “medical practitioners” recognized/registered under the Indian Medicine Central Council Act, 1970 also.”

I have heard learned counsel for the parties and after examining the record, am of the considered opinion that this petition is totally unwarranted as the petitioner had already lost his case before this Court when he had filed the CWP No.6139 of 2011 and is still filing one writ petition after the other, misusing the process of law. Thus in such circumstances, this petition is dismissed and for misusing the process of law, exemplary costs is imposed upon him of ₹2 lakhs which shall be paid by him by depositing in the Registry of this Court within a period of one month. In case the cost is not paid, the High Court shall take appropriate action against the petitioner by moving an application for contempt in the present petition as the direction is issued to the petitioner to pay cost.

**September 08, 2017**  
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**(Rakesh Kumar Jain)**  
**Judge**

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| Whether Speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |