

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No.7058 of 2010

Shrikant Tiwari, S/o Radheshyam Tiwari, Aged about 30 years, R/o
Patel Ward No. 15 Near Budhwari Bridge, Po Dongargarh, Distt.
Rajnandgaon, CG **---- Petitioner**

Versus

1. State Of Chhattisgarh, Through the Secretary, Department of Health and Wealth Ministry of Chhattisgarh Mantralaya, DKS Bhawan Raipur (CG)
2. The Registrar/Secretary, Chhattisgarh Para-Medical Council Mantralaya, DKS Bhawan Raipur (CG)
3. The Vice Chancellor, Allahabad Agricultural Institute Deemed University Allahabad (UP)
4. The Director, Indira Gandhi National Open University Maidan Garhi, New Delhi 110068
5. The Secretary, Uttar Pradesh State Medical Faculty 5, Sarvapalli, Mall Avenue Road Lakhanow, UP **--- Respondent**

For Petitioner	:	Mr. Vipin Tiwari, Advocate
For State/Respondent	:	Mr. Alok Bakshi, Additional A.G. with Mr. Aditya Bharadwaj, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order on Board

08/01/2020

Heard.

1. By this petition, under Article 226 of the Constitution of India, the petitioner calls in question correctness and validity of decision communicated to the petitioner vide letter dated 18.08.2010, by which, his prayer for grant of registration with Para Medical Council for the State of Chhattisgarh has been rejected.
2. The petitioner has averred in the writ petition that the petitioner obtained degree of Bachelor of Medical Laboratory Technology from Allahabad Agricultural Institute, which is a deemed University as notified vide notification dated 15.03.2000 of Government of India declaring Allahabad Agricultural

Institute as deemed to be University. The petitioner applied for grant of registration in the Para Medical Council of Chhattisgarh, which has been constituted under the Chhattisgarh Chikitsa Parishad Act, 2001 (for short 'the Act No.25 of 2001'). The petitioner's application was, however, rejected vide impugned communication stating that the petitioner would be entitled to reciprocal registration only after getting registration from Uttar Pradesh Medical Faculty. It is this communication and the decision communicated thereunder which is under challenge in this petition.

3. Learned counsel for the petitioner made pointed submission that under the Act No.25 of 2001, a person possessing a recognized qualification shall be eligible for enrollment on the State Register on furnishing to the Registrar proof of such qualification and on payment of such fee as prescribed therein, as per the provision contained in Section 39 of the Act No.25 of 2001. He would submit that the petitioner is possessed of recognized qualification, as defined in Section 2 (d) of the Act No.25 of 2001. Therefore, he was entitled to be registered. Learned counsel for the petitioner further contended that imposition of certain conditions for grant of registration which are otherwise not provided under the law is clearly illegal and arbitrary and could not be made a basis to reject his application.

4. On the other hand, learned State counsel would submit that the petitioner has not obtained any degree from the State of Chhattisgarh but he has obtained degree from so called deemed University under a Distance Education Programme from the State of Uttar Pradesh. Therefore, it cannot be treated to be a recognized qualification. He would further submit that proforma of application prepared by the respondents, in which, petitioner submitted his application provides in clause 7(ii), certain preconditions subject to which registration could be granted. As the petitioner does not fulfill the said condition, his application has been rightly rejected.

5. Registration in the State Register of Para Medical Council is governed by provision contained in Section 39 of the Act No.25 of 2001 which reads as under :

S.39 - Registration and State Register -(1) Every person possessing a recognized qualification shall be eligible for enrolment on the State Register on furnishing to the Registrar proof of such qualification and on payment of such fee not exceeding five hundred rupees as may be prescribed and different fee may be prescribed for different qualifications.

(2) The Council shall cause to be maintained a State

Register of Paramedical Practitioners in such form as may be prescribed by regulation.

(3) It shall be the duty of the Registrar to keep and maintain the State Register in accordance with the provisions of this Act and of any order made by the Council and from time to time revise the Register and publish it in the Gazette and in such other manner as may be prescribed.

(4) The Register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872 (No. 1 of 1872).

6. Section 39(1) of the aforesaid Act clearly and unequivocally provides that every person possessing a recognized qualification shall be eligible for enrolment on the State Register on furnishing to the Registrar, proof of such qualification and on payment of prescribed fee. Except this, no other condition has been prescribed for any other eligibility qualification nor any other condition has been prescribed for getting registration.

7. As to what is recognized qualification, Section 2(d) of the Act No.25 of 2001 provides thus :

2(d). "Recognized Paramedical qualification" means, a degree, diploma or certificate in any Paramedical subject granted by and University established by law or any other institution recognized by the State Government in this behalf;

8. The aforesaid provision shows that a degree, diploma or certificate in any Paramedical subject granted by any University established by law would be treated as recognized Paramedical qualification. The aforesaid provision also shows that if it is not a University established by law then, such degree has to be obtained from Institution recognized by the State Government in this behalf.

9. The petitioner has clearly averred and that fact has not been disputed by respondent by filing return even after 10 years is that the Institution i.e. Allahabad Agricultural Institute wherefrom the petitioner obtained the degree is a deemed University. Otherwise also, the petitioner has placed on record, a copy of notification dated 15.03.2000, which clearly shows that in exercise of powers conferred by Section 3 of the University Grants Commission Act, 1956, the Central Government, on the advice of University Grants Commission, has declared Allahabad Agricultural Institute Allahabad has deemed to be University for the purposes of the aforesaid Act with immediate effect. Therefore, it is clear that the petitioner is possessed of recognized qualification as mentioned in Section 39 read with Section 1(d) of the Act No.25 of 2001.

10. A perusal of impugned communication shows that the petitioner's application was rejected by wrongly treating it to be an application for reciprocal registration. On facts, it is not even the case of the petitioner nor the respondents have come out with

any material to show that the petitioner had actually applied for reciprocal registration. Present is a case where the petitioner is not registered with Para Medical Council of State of U.P.. He has applied for grant of registration in the State of C.G. It is not a case where a person having already been granted registration in another State, has applied for reciprocal registration in the State of Chhattisgarh.

11. This Court also finds that by Executive decision, certain preconditions for grant of registration have been imposed on the basis of some resolution passed in a meeting dated 16.06.2009 of the authorities concerned with the Management of affairs of Chhattisgarh Para Medical Council. The petitioner could not be denied registration on the ground that he does not fulfill certain conditions which are not part of nor stated in Section 39 of the Act No.25 of 2001. Once the conditions of registration are exhaustively contained in statutory provision of State Enactment, imposition of any other conditions for grant of registration is clearly illegal and in excess of authority of law.

12. Learned counsel for the State could not point out to the Court that under the said Act, authority was conferred on State functionaries to lay down conditions of registration in addition to those which have already been exhaustively contained in Section 39 of the Act No.25 of 2001. None of the provisions of the said Act contain any such provision.

13. The submission of learned State counsel that as the petitioner is has been refused a registration in the Para Medical Council of the State of UP on the ground that the University from which he has obtained degree is not recognized by the State, he could not be granted registration in the State of C.G., does not merit acceptance. In the present case, whether the petitioner was entitled to registration with Para Medical Council of the State of Chhattisgarh is to be examined on the basis of the provision contained in Chhattisgarh Act No.25 of 2001. Once, the petitioner fulfills the statutory eligibility conditions and qualifications, his application cannot be rejected on the basis of certain conditions which have been evolved by some executive decisions but not contained in the provision of law.

14. In the result, the petition is allowed. The decision of the respondents to make petitioner's application is held illegal. Let the respondents consider and pass appropriate orders of petitioner's application for grant of registration in the light of the observations made by this Court and in accordance with the provision contained in the Act No.25 of 2001. The decision should be taken within a period of 3 months from the date of receipt of copy of this order.

**Sd/-
(Manindra Mohan Shrivastava)**

Judge