

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19282 of 2019

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Ayush Medical Association through its President Dr. Madhurendu Pandey, Son of Shri Ram Narayan Pandey, Resident of Manorama Market, Bangali Akhada, D.N. Das Lane, Langar Toli, P.S.-Kadamkuan, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. The Principal Secretary, Department of Health, Government of Bihar, Patna.
3. The Chairman, Bihar State Ayurvedic and Unani Medical Council, Patna.
4. The Registrar, Bihar State Ayurvedic and Unani Medical Council, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Janardan Pd. Singh, Sr. Adv. Mr. Vivek Anand Amritesh, Adv
For the Respondent/s	:	Mr. A.K. Verma, AC to AAG-9

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 16-08-2022

The present writ petition has been filed for quashing the notice dated 01. 05. 2019, published in a daily newspaper, to the extent the same has introduced 14 types of new fees including renewal fee pertaining to renewal of the registration of the Ayurvedic and Unani Doctors. The petitioner is also aggrieved by the decision of



the Bihar State Ayurvedic and Unani medical council by which it has been stipulated that it would be mandatory for such registered Doctors to renew their registration every five years by making payment of the renewal fees to the tune of Rs. 1000/-. The petitioner is also aggrieved by the subsequent paper publication dated 05.08.2021 whereby and where-under the renewal fees has been increased to a sum of Rs. 1500/-.

2. The learned Senior counsel for the petitioner has referred to the various provisions contained in the Bihar Development of Ayurvedic and Unani Systems of Medicine Act, 1951 (hereinafter referred to as "the Act, 1951"), more particularly Section 3 of the Act, 1951 which defines the constitution of the council, Section 21 of the Act which provides for maintenance of registers of Vaidyas, Hakims, Surgeons and Midwives practicing the Ayurvedic or Unani system of medicine in the State of Bihar, Section 22 which prescribes that any person possessing any of the qualifications specified in the Schedule shall, subject to the provisions contained in the said Act, and on payment of the prescribed fees, be entitled to have their names entered in



the register subject to such conditions as the Council may impose, section 27 which provides for the Registrar to keep the register in question correct and up - to - date as also remove from the register names of such registered practitioners as are dead or write to any registered practitioner with a view to enquire as to whether he has ceased to practice or has changed his residence and accordingly do the needful in that regard and section 29, which vests the Council with the power to prohibit the entry in, or order the removal from, the register, the name of any vaidya or hakim or surgeon or midwife, who has been sentenced by a criminal court and who has been found guilty by the Council of professional misconduct.

3. The learned Senior counsel for the petitioner has further referred to section 43 of the aforesaid Act, 1951 to show the source of the fund of the Council, however, it is submitted that section 43 though shows one of the source of fund to be the sum received as fees on account of registration of vaidyas, hakims, surgeons and midwives, however, there is no provision for receiving renewal fees. Reference has also been made to section 24 which is the



regulation making power of the council with regard to various matter, however, the same does not contain any matter pertaining to renewal of registration. The learned senior counsel for the petitioner has also referred to section 55(2)(n) of the Act, 1951 to submit that the rules can be framed by the State Government, after previous publication, not inconsistent with the act, with regard to fees chargeable under the Act and their application.

4. Thus, in nutshell, the submission of the learned senior counsel for the petitioner is that the council does not have the power to either fix renewal fees or registration fees and the same is vested only with the State Government and that too upon rule being framed by the State Government as per the mandate of Section 55(2) (n) of the Act, 1951. It is further submitted that the aforesaid action of the Respondent Council in determining renewal fees to be paid every five years by the concerned Doctors as also raising the same is purely an administrative order which has been issued pursuant to the meeting of the council, hence is void being in teeth of the provisions contained in the Act, 1951. It is further submitted that the said decision of the council



admittedly does not have any approval of the State Government.

5. Lastly it is submitted that once registration has been done by the Respondent Council and the registration certificate has been issued, the same is perpetual as is apparent from a sample copy of the same annexed as Annexure-8 to the I.A. No. 1 of 2021. It is submitted that a bare perusal of the said registration certificate would show that there is no time limit of its validity and in fact the entire act, 1951 also does not prescribe any time limit with regard to the validity of the registration, once done by the Respondent Council and there is no clause therein which prescribes that the registration is required to be renewed every five years.

6. Per contra, the learned counsel for the Respondent Council has submitted that the Council, in its meeting, has taken a decision for enhancing the fees charged by the council under various heads, as would be apparent from Page no. 27 of the counter affidavit, which prescribes 14 types of fees chargeable by the council. It is stated that considering its bleak financial position, the council had decided in its meeting to increase the fees chargeable by it



and one of the item at serial no. 14 is renewal fees which is to be charged for the purposes of renewal of registration of the Doctors every five years, however, it is not disputed that the same was introduced for the first time in the year 2019. Thus it is submitted that considering the precarious position of the Respondent Council and its requirement for funds, a decision has been taken to introduce renewal fee of a sum of Rs. 1000/-, which has been subsequently enhanced to a sum of Rs. 1500/-, to be charged every five years from the existing registered practitioner.

7. I have heard the learned counsel for the parties and perused the materials on record from which it is apparent that there is no provision in the entire Act, 1951 to charge renewal fee for renewing the registration certificate of the already registered Vaidyas, Hakims, Surgeons and midwives. This Court also finds that Section 55(2)(n) of the Act, 1951 postulates framing of rules by the State Government with regard to fees chargeable under the Act, 1951, however, till date no such rules have been framed and it appears that merely at the dictate of the Council, fees is being charged by the Council arbitrary. It is also clear from the various provisions, as mentioned herein above, of the Act, 1951 that



there is no provision to strike off the name of the registered practitioners after a stipulated time frame, even if he is alive and has not stood disqualified as per Section 29 of the Act, 1951. In such view of the matter, this Court finds that introducing the system of payment of renewal charges for renewing the registration of the already registered Vaidyas, Hakims, Surgeons, midwife, after every five years, is dehors the provisions contained in the Act, 1951, hence the decision of the Respondent Council, as published in the daily newspaper on 1.5.2019 and 5.8.2021, stipulating renewal fees to be paid every five years by the existing registered Vaidyas, Hakims, Surgeons, midwife, being contrary to law as also in teeth of the provisions contained in the Act, 1951 is quashed.

8. At this juncture, the learned Senior counsel for the petitioner has submitted that this Court may also take note of the submissions of the petitioner to the effect that even the other fees being charged by the council, which have been enhanced vide paper publication dated 1.5.2019 and 5.8.2021 are dehors the provisions of the Act, 1951. The said submission made by the learned Senior counsel for the petitioner is taken note of and liberty is granted to the petitioner to bring it to the notice of the Respondent- council,



so that appropriate remedial steps can be taken by the Council.

10. The writ petition stands allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	N/A
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Transmission Date	N/A

