

Gaikwad RD

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2884 OF 2020**

The Registrar, Maharashtra Council of Homeopathy	...Petitioner
<i>Versus</i>	
The State of Maharashtra & Ors	...Respondents

Mr Rajaram V Bansode, *with Sheetal Ubale, for the Petitioner.*
Mrs PN Diwan, AGP, *for Respondent No.1-State.*
Mr Siddharth S Chapalgaonkar, *with Nihar Chitre & Aadarsh
Pandey, for Respondent No.3.*
Mrs Purnima Awasthi, *for Respondent No.4-NCH.*

**CORAM G.S. Patel &
 Neela Gokhale, JJ.**
DATED: 9th June 2023

PC:-

1. We issued Rule on 6th April 2023. Our order of that date sufficiently sets out the nature of the controversy. The order reads thus:

“1. The Petitioner is the Registrar of the Maharashtra Council of Homeopathy. The challenge is to an order dated 31st October 2019 passed by the Maharashtra State Human Rights Commission in Case No. 823 of 2016 filed by the 3rd Respondent. By that order, a copy of which is at page 28, the learned Commissioner has directed the Petitioner to issue a registration in favour of the 3rd Respondent to

practise homeopathy. There is a reference to Articles 19 “and 19A” of the Constitution of India. We assume the second reference is an inadvertent error. The Commission also passed directions to the Petitioner to issue the necessary registration within a period of four weeks, and this is apparently said to be in accordance with the provisions of Section 18(e) of The Protection of Human Rights Act, 1993 (“**Human Rights Act**”) and Regulations 23 and 24 of the Maharashtra State Human Rights Commission (Procedure) Regulations, 2011.

2. On behalf of the Petitioner, Mr Bansode submits that the State Human Rights Commission has no jurisdiction whatsoever. The entire field is occupied by a statute and there are statutory remedies. Even assuming that some statutory provision has not been followed, or the impugned action is contrary to the statute, this does not in itself generate a cause of action under the Human Rights Act or confer jurisdiction on the Human Rights Commission. Human rights are defined in Section 2(1)(d) of the Human Rights Act to mean rights relating to life, liberty, quality and dignity of the individual guaranteed by the Constitution and embodied in international covenants and enforceable by Courts in India. But this does not mean that there is conferred on the State Human Rights Commission a jurisdiction or power as wide as Article 226 of the Constitution of India or that the State Human Rights Commission can direct even a statutory authority to act in the manner not contemplated by the statute itself on the ground that there is an alleged human rights violation. The statute in question, namely, the Maharashtra Homeopathic Practitioners Act, 1960 (“**MHP Act**”) has adequate provisions for registration, removal from the register and cancellation of registration. The fact that a person is affected by an action taken under that Act does not mean that there is automatically a violation of human rights. The

Constitutional right to practice a profession does not mean that any person or citizen has a right to practice or to be registered to practice *de hors* the governing statute. No one has a 'fundamental right' to practice homeopathy or to be registered as a homeopath without regard to the MHP Act. If the action taken — of de-registration or refusing to register — is *under and within* the MHP Act, then there can be no question of 'violation of human rights'.

3. In any case, the impugned order only says that the 3rd Respondent is at liberty to apply again after obtaining the necessary clarifications from the Central Council. Even if the 3rd Respondent is already registered with the Central Council, his remedies lie elsewhere.

4. We have today in a separate judgment in Writ Petition No. 3468 of 2022 dealt with a similar case of non-registration or refusal of registration but that was in a Writ Petition that was brought before us by the individuals affected. They did not go to the Human Rights Commission.

5. The question however in this Petition is not one of the merits but of a jurisdiction which goes to the root of the matter. The 3rd complainant has not filed a Writ Petition before us assailing the decision of the Petitioner. He maintains that the State Human Rights Commission's impugned order must be implemented and that the Petition must be dismissed. He seeks to place reliance on two decisions, one of the Allahabad High Court and one of a Full Bench of the Madras High Court. We will consider those decisions.

6. However, *prima facie*, there is substance to Mr Bansode's case about the lack of jurisdiction. In fact, as he puts it, if this approach is to be accepted then there is not a single branch of public law in which the State Human Rights Commission would not have jurisdiction entirely

overlapping that of the Writ Court under Article 226 of the Constitution of India.

7. Hence, Rule. All Respondents waive service of Rule.

8. Affidavits in Reply are to be filed by the 3rd and 4th Respondent (the latter is the Central Council of Homeopathy) by 28th April 2023. No rejoinder at this stage with leave of the Court.

9. The operation of the impugned order is stayed but only until the next date.

10. List the Petition peremptorily for hearing and final disposal on 9th June 2023 at 2:30 pm.”

2. By consent rule is made returnable forthwith. The impugned order is of 31st October 2019 from pages 28 to 31. The Acting Chairperson of the Maharashtra State Human Rights Commission had before him a complaint that the present 3rd Respondent had cleared the requisite Homeopathy course from the Babasaheb Bhimrao Ambedkar Bihar University, Muzaffarpur during the Academic Year 2012–13. The Petitioner applied for registration to practise in Maharashtra in 2013, but there was no response.

3. The Human Rights Commission proceed on the footing, in our view incorrectly, that there was a violation of human rights within the meaning of the Protection of Human Rights Act, 1993 (“**Human Rights Act**”) and specifically with reference to Section 2(d) of the PHR Act. Unfortunately, there is no discussion in the impugned order of the nature of the human rights or how these are violated. There is no adherence to the procedure prescribed in Chapter IV of the Human Rights Act and especially the provisions

of Sections 17 and 18 of the Human Right Act regarding an enquiry. Section 21(5) says that it may enquire (thus invoking Sections 17 and 18 and Chapter IV) into the violation of human rights only in respect of matters relatable to entries in List II and List III of the VIIth Schedule of the Constitution of India. This necessarily mean that there is a two-level enquiry. First, there has to be an identification that the subject matter is covered by List II or List III. We will proceed on the footing that education is so covered. But that is not all. It must then be shown that in respect of that entry, there is a violation of a human right. Even that is not discussed. The reference in impugned order is to Article 19 and then to 19A of the Constitution. There is no Article 19A. We are told that this is to be Article 19(1)(f). We do not know how we can rewrite orders like this. Without following the procedure and without a discussion found in the impugned order, it is not possible to sustain that order. It must be quashed and set aside. So ordered.

4. However, and perhaps fortunately for the Petitioner, all is not lost. By our judgment and order dated 6th April 2023, the very same date as the order in this matter issued rule, we dealt with a group of Writ Petitions: *Manmohan Pashupatinath Upadhyay & Ors Maharashtra Council of Homoeopathy & Ors*.¹ In that. we considered an identical issue where the Maharashtra Council refused to register the Petitioner on the Maharashtra Council Rolls. The Petitioners then did not dispute that they needed to be entered on the rolls of the Maharashtra Homoeopathic Practitioners Act, 1960. We noted

¹ 2023 BHC-OS:2586-DB.

that there is a Central Council Homoeopathic Act, 1973 as well.

Paragraphs 4 to 14 of that judgment reads thus:

“4. The immediate question in law is whether once a person is registered by the Central Council, such a person is entitled to registration under the Maharashtra Act. We are concerned here only with the Central Council Act, and none before us have contended otherwise.

5. The Central Council Act provides in Chapter III for the ‘Recognition of Medical Qualifications’. Chapter IV deals specifically with ‘the Central Register of Homeopathy’. These are the two relevant Chapters for our purposes. Chapter III has Sections 13 to 20. Section 13 deals with the recognition of medical qualifications granted by certain medical institutions in India. Section 14 has a corresponding provision for States or countries outside India. Then comes Section 15 which says that subject to any other provision in the Act, any medical qualification included in the Second or Third schedule “shall be sufficient qualification for enrolment on any State Register of Homeopathy”. The word ‘State Register of Homeopathy’ is defined in Section 2(1)(i) to mean a register or registers maintained under any law for the time being in force in any State regulating the registration of practitioners of Homeopathy. Section 21, under Chapter IV, deals with a separate register called the Central Register of Homeopathy. It is in two parts. Part (1) has the names of all persons who are for the time being enrolled on any State Register and are possessed of the recognized medical qualifications. Part (2) are the names of the persons other than those in Part (1).

6. Section 23 then deals with registration in the Central Register and says that the Registrar of the Central Council may on receipt of a report of registration of a person in a State Register or on an application made in the prescribed

form by the person enter his name in the Central Register of Homeopathy.

7. The Second Schedule of the Central Council Act sets out the recognized medical qualifications in Homeopathy granted by Universities, Boards or Medical Institutions in India. This is divided State-wise and the institutions within each State are listed. The Babasaheb Bhimrao Ambedkar Bihar University at Muzaffarpur is listed at entry No. 4B in the Second Schedule. There is a list of the various degrees that are recognized including the Bachelor of Homeopathic Medicine and Surgery (“BHMS”), and similar Homeopathic degrees. There appear to be a total of ten such degrees awarded by the Ambedkar University that are recognized in the Central Act.

8. The Maharashtra Act is obviously connected with the Central Act for the reasons that we have already set out above. The relevant portions for our purposes today are to be found in Chapter IV which deals with the Registration of Practitioners. Section 20 is crucial for our purposes. We reproduce the whole of this Section:

“20. Preparation of Register—

(1) As soon as may be after the appointed day, the Registrar shall prepare and maintain thereafter a register of Homeopathic practitioners for the State of Maharashtra in accordance with the provisions of this Act.

(1-A) The register shall contain the names of practitioners, whose names are—

(i) continued on the register under subsection (4); and

(ii) entered in the register under subsection (3) or (5) on or after the date of

commencement of the Bombay Homoeopathic and Biochemic Practitioners' (Amendment) Act, 1985)

(2) The register shall include the following particulars, namely:—

(a) the full name, nationality and residential address of the registered practitioners;

(b) the date of his admission to the register;

(c) the qualification for registration and the date on which he obtained his degree, diploma or any other like award in Homoeopathy if any, and the authority which conferred or granted it.

(d) his professional address and

(e) such further particulars as may be prescribed by rules.

(3) Every person who possesses any of the recognised medical qualifications shall, at any time on an application made in the form prescribed by rules to the Registrar and on payment of such fee as the State Government may, by notification in the Official Gazette, specify be entitled to have his name entered in the register.

(3A)(a) If the courses of study to be undergone for obtaining any of the recognised medical qualifications include a period of training after a person has passed the qualifying examination, and before such qualification is conferred on him, any such person shall, on an application made to the

Registrar, in the form prescribed by the Rules and on payment of such fee, as the State Government may, by notification in the Official Gazette, specify, be granted a provisional registration in order to enable him to practice Homoeopathic system of medicine in the Recognised Institution for the purpose of such training and for no other purpose, for the period aforesaid;

(b) every person who is granted a provisional registration under clause (a) shall be given a certificate of provisional registration in the form prescribed by the Rules, which shall remain in force for such period as may be specified therein.

(4) The register maintained under this section and in force on the day immediately preceding the date of commencement of the Bombay Homoeopathic and Biochemic Practitioners' (Amendment) Act, 1985 (hereinafter in this sub-section referred to as "the Amending Act"), shall be deemed to be the register maintained under the principal Act as amended by the Amending Act and the name of every person whose name is entered in such register shall, subject to the provisions of this Act, continue to be on the register.

(5) Notwithstanding anything contained in any law for the time being in force, every person entitled to be or is enrolled on the register maintained under the Homoeopathy Central Council Act, 1973, but not enrolled on the register maintained under this Act, shall, on an application and on payment of the fee as provided in sub-

section (3), be entitled to have his name entered in the register maintained under this Act.

(12)(a) Every registered practitioner shall be given a certificate of registration prescribed by rules; and shall practice Homoeopathy and the Modern Scientific Medicine (Allopathy) in the State to the extent of knowledge received by passing the Certificate Course in Modern Pharmacology approved by the State Government. The registered practitioner shall display the certificate of registration in a conspicuous place in his dispensary, clinic or place of practice.

(b) Such certificate shall be valid until it is duly cancelled and the name of the practitioner is removed from the register under the provisions of this Act; and every certificate of registration given before the commencement of the Bombay Homoeopathic and Biochemic Practitioners' (Amendment) Act, 1974, which is valid on such commencement shall, subject to the provisions of section 26, be valid likewise, and shall continue accordingly.

(c) Where it is shown to the satisfaction of the Registrar that a certificate of registration has been defaced, lost or destroyed, the Registrar may, on payment of the prescribed fee, issue a duplicate certificate in the form prescribed under clause (a).

(13)(a) Any registered practitioner to whom a certificate of registration is issued before the day immediately preceding the date of

commencement of the Bombay Homoeopathic and Biochemic Practitioners (Amendment) Act, 1985, and such certificate is still in operation, may, at any time, by an application in writing, accompanied by such certificate (in original) and a fee of five rupees, apply to the Registrar for issue of a fresh certificate of registration in lieu of the certificate issued earlier.

(b) On receipt of such application, the Registrar shall cancel such certificate and issue a fresh certificate of registration in the form prescribed by rules made under clause (a) of sub-section (12).”

(Emphasis added)

9. Section 20(5) is the provision that falls for analysis. It begins with a *non obstante* clause and that clause is not restricted to other provisions in the Act but extends to any law for the time being in force. That sub-section says that every person “entitled to be” or “enrolled” on the Register maintained under the Central Council Act but not enrolled on the Register maintained under the Maharashtra Act Shall — and the word is not ‘may’ — on an application and on payment of the fee provided in sub-section (3) be “entitled” to have his name maintained in the Register maintained under the Maharashtra Act. The reference to sub-section (3) is only in regard to payment of the fees and does not extend to qualifications.

10. The Petitioners claim that they were all registered under the Central Council Act some time in 2014. At about that time, the 1st Respondent, Maharashtra Council insisted that they apply in Maharashtra for a registration.

The Central Council, the Ministry of AYUSH and the authorities at the Ambedkar University in Bihar all repeatedly clarified that the Central Council registration entitled the Petitioners to practice Homeopathy throughout India.

11. The Maharashtra Council however refused to enter the names of these ten Petitioners on the Maharashtra Register. Hence the challenge in prayer clause (c) at page 31 to these refusals annexed as Exhibits A1 to A8 and the applications C1 to C8. The orders in respect of the two Petitioners are missing but we will take them as covered.

12. We need not go through each one of the rejections in turn. Any one will suffice since they are all more or less in the same terms. For April 6th Petitioner for instance, the refusal is on the basis that he applied for registration with Maharashtra Homeopathic Council on 8th April 2015. We note that the corresponding certificate for the same Petitioner at Exhibit B4 (page 54) is of 19th November 2014. The rejection letter notes that the 6th Petitioner obtained a BHMS Degree in 1983 from the Magadha Homeopathic Medical College affiliated with and recognized by the Ambedkar University. Then there is a reference to some Writ Petitions but the consequences are not stated. The rejection is on the basis only of that dismissal of those High Court Petitions. There is no reference to the provisions of the statute. The letter then says that if the Department of AYUSH takes an independent positive decision, then the Petitioner is free to reapply.

13. We entirely fail to understand what is to be made of this. Section 20(5) is abundantly clear. It speaks of an entitlement, and it speaks of a mandatory obligation when it uses the word 'shall'. It also has a *non obstante* clause.

14. For this reason, the reliance on behalf of the 1st

Respondent on Section 23 can have no application whatsoever. Section 23 of the Maharashtra Act deals with removal of names from a Register. Self-evidently, that cannot apply because a person can be removed from a Register only after he is placed on the Register to begin with. The whole challenge here is to the refusal to enter the names on the Register. There is no question of removal of names if the person is not registered. The argument seems to be that under Section 23(1)(ii)(B) the Maharashtra Council may remove the name of a Practitioner and under sub-sections (4) and (5) it may do so on its own motion or after holding enquiries.”

5. We, therefore, made Rule absolute. Since all the petitioners in that group matter were registered with the Central Council, we directed the Maharashtra Council to proceed to enter their names on the Maharashtra Council rolls

6. In the present case, the 3rd Respondent is registered with the Central Council of Homoeopathy. A copy of his registration certificate is at page 204 of the Affidavit in Reply (repeated at 208). This is certificate No.CCH-5405. It is dated 7th August 2015. In other words, it was obtained after the 3rd Respondent applied for the registration with the Maharashtra Council.

7. But now the entire landscape has changed. The 3rd Respondent is now entitled to apply to the Maharashtra Council on the basis of the Central Council Registration and is entitled to obtain registration. Other than annexing his Central Council certificate to the Affidavit in Reply, the 3rd Respondent does not seem to have

actually made an application to the Maharashtra Council on the basis of the Central Council registration.

8. The learned advocate for the 3rd Respondent states that an application complete in all respect will be made within ten days, i.e., by 26th June 2023. Upon that being received and found to be compete, it will be processed in accordance with our judgment in *Manmohan Pashupatinath Upadhyay* by the Maharashtra Council, the 1st Respondent by 7th July 2023.

9. Rule is thus made absolute in the foregoing terms and the Petition is disposed of accordingly with no order as to costs.

(Neela Gokhale, J)

(G. S. Patel, J)