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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3468 OF 2022

- 1. MANMOHAN PASHUPATINATH UPADHYAY,**
Age 50 years, Occupation: Doctor,
Hindu, Indian Inhabitant, having his
address at A-Wing, Hemraj Yadav
Chawl No.1, Bakipada, Kaju Plot,
Naigaon East, Palghar 401 208.
- 2. RAKESHKUMAR AMRITLAL YADAV,**
Age 52 years, Occupation: Doctor,
Hindu, Indian Inhabitant, having his
address at Siddhivinayak CHS, Vaibhav
Nagar, Janupada, Thakur Village,
Kandivali (East), Mumbai 400 101.
- 3. ANIL KUMAR ARJUN YADAV,**
Age 43 yaers, Occupation: Doctor,
Hindu, Indian Inhabitant, having his
address at Shakti SRA Bldg No.1, Flat
No. 106, Bhabrekar Nagar, Near Shakti
Mandir, Charkop, Kandivali (West),
Mumbai 400 067.
- 4. BASANTLAL VISHWNATH YADAV,**
Age 50 years, Occupation: Doctor,
Hindu, Indian Inhabitant, having his
address at Room No.2246, New Vasti
Shivaji Nagar, Salwad Boisar, Palghar
401 504.

5. **GHANSHYAM JAWAJIR YADAV**,
Age 49 years, Occupation: Doctor,
Hindu, Indian Inhabitant, having his
address at Pashupatinath Dubey Chawl,
Gaondevi Road, Kajupada, Poisar,
Kandivali (East), Mumbai 400 101.
6. **SITARAM DEVIDIN
VISHWAKARMA**,
Age 52 years, Occupation: Doctor,
Hindu, Indian Inhabitant, having his
address at Ganesh Kripa CHSL, Wadar
Pada Road No.2, Hanuman Nagar,
Kandivali (East), Mumbai 400 101.
7. **SHYAMDHAR RAMADHAR
YADAV**,
Age 49 years, Occupation: Doctor,
Hindu, Indian Inhabitant, having his
address at Charkop (1), Shantiniketan
CHS, Plate No.238, Sector No.2, Room
No.5, Kandivali (West), Mumbai 400
067.
8. **PARSHURAM MOTILAL
DALBHANJAN**,
Age 47 years, Occupation: Doctor,
Hindu, Indian Inhabitant, having his
address at Room No.6, Narendra
Bhavsar Chawl, Mahatama Plule Nagar,
90 Feet Road, Sakinaka, Mumbai 400
072.
9. **UGRASEN INDRAMANI YADAV**,
Age 48 years, Occupation: Doctor,
Hindu, Indian Inhabitant, having his
address at R.B. Yadav Chawl,

Narsipada, Hanuman Nagar, Kandivali
(East), Mumbai 400 101.

10. **INDRA PRAKASH YADAV,**
Age 42 years, Occupation: Doctor,
Hindu, Indian Inhabitant, having his
address at Sai Bhakti Apartment, Shop
No.13, Shirdi Nagar, Bhayander East,
Thane 401 105.

...PETITIONERS

~ VERSUS ~

1. **MAHARASHTRA COUNCIL OF
HOMOEOPATHY,**
Building No.235, 3rd Floor, Peninsula
House, DN Road, Fort, Mumbai 400
001.
2. **NATIONAL COMMISSION FOR
HOMOEOPATHY,**
A statutory body under the Ministry of
AYUSH, Govt of India Jawaharlal
Nehru Bhartiya Chikitsa and
Homoeopathic Anusandhan Bhawan,
61-65, Institutional Area, Opp. 'D'
Block, Janak Puri, New Delhi 110 058.
3. **MINISTRY OF AYUSH,**
Govt of India AYUSH Bhawan, B
Block, GPO Complex, INA, New Delhi
110 023.
4. **MINISTRY OF HEALTH &
FAMILY WELFARE,**
State of Maharashtra through Govt
Pleader, High Court (O.S.), Mumbai.
5. **THE VICE CHANCELLOR,
BABASAHEB BHIMRAO
AMBEDKAR BIHAR STATE**

UNIVERSITY,
(B. R. A. Bihar University),
Muzaffarpur, Bihar 842 001.

6. MUNICIPAL CORPORATION OF
GREATER MUMBAI,
Public Health Department, P-North
Ward, Liberty Garden, Malad (W),
Mumbai 400 064.

...RESPONDENTS

APPEARANCES

FOR THE PETITIONER	Ms RC Nichani, <i>with VK Gupta.</i>
FOR RESPONDENT NO.1	Mr RV Bansode.
FOR RESPONDENT NO.2-NCH	Mrs Purnima Awasthi.

CORAM : G.S.Patel &
Neela Gokhale, JJ.

DATED : 6th April 2023

ORAL JUDGMENT (Per GS Patel J):-

1. Rule was issued on 5th August 2021. The very limited point in this Petition pertains to the interpretation of Section 20 of the Maharashtra Homeopathic Practitioners Act 1960 (“**Maharashtra Act**”). The ten Petitioners are all homeopathic doctors. For eight of them, i.e., except for Petitioners Nos.2 and 4 annexed to the Petition at Exhibits B1 to B8 are copies of their Registration Certificates by the Central Council of Homeopathy, now the National Commission for Homeopathy. The certificates for Petitioners Nos. 2 and 4 were inadvertently omitted. Leave to amend to include these two copies

as Exhibit B9 and B10 at pages 58A and 58B without need of reverification. Copies of these certificates have been given to the learned Advocate for the 1st Petitioner, the Maharashtra Council of Homeopathy.

2. The 3rd Respondent is the Ministry of AYUSH of the Government of India. The 4th Respondent is the Ministry of Health and Family Welfare of the State Government and the 5th Respondent is the Babasaheb Bhimrao Ambedkar Bihar State University (“**Ambedkar University**”). The Petitioners all say that they obtained their qualifications from a Homeopathic College affiliated to the Ambedkar University and on that basis obtained these Registration Certificates.

3. The complaint in the Petition is that the 1st Respondent, the Maharashtra Council of Homeopathy, has refused to register the Petitioners on the Maharashtra rolls once they sought registration, on the basis of their registration by the Central Council Homeopathy Central Council Act 1973, (“**the Central Council Act**”), now the National Commission for Homeopathy, the 2nd Respondent. The Petitioners do not deny that to practice in Maharashtra they need to be entered on the Register maintained by the Maharashtra Council of Homeopathy. The challenge in the amended Petition is also to a notice dated 15th November 2021 issued by the Public Health Department of the 6th Respondent, the Municipal Corporation of Greater Mumbai (“**MCGM**”). A copy of that notice is annexed. The notice says that because the Petitioners’

names are not recorded by the Maharashtra Homeopathy Council, they are not entitled to practice homeopathy in Maharashtra.

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 sub-section (4); and
- (ii) entered in the register under sub-section (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.

15. It is entirely unclear to us what enquiries were being held and for what purpose. The impugned orders certainly do not make this clear and so we turn to the Affidavit in Reply to see if there is some answer that can be gleaned from that. But we find instead that there is once again a completely misdirected and misplaced emphasis on Section 23 of the Maharashtra Act. Paragraphs 9 and 10 seem to suggest that the Maharashtra Council felt it was authorized to sit in judgment over the manner in which the Ambedkar University in Bihar accepted the qualifications, conferred the degrees and acknowledged the successful completion of the homeopathic courses by the Petitioners. Nothing in the Maharashtra Act persuades us that the Maharashtra Council has authority to sit in judgment and appeal over Central Council registrations.. A faint attempt is made to say that in some other cases there were some instances of fraud. This is not even the pleaded case against these Petitioners.

16. There is a table below Paragraph 10 of all ten Petitioners. Every one of the 'findings', and they are more or less the same, is utterly trivial — such as there being a rubber stamp, a date of a

result not being seen, some mark sheets being in a typed form and so on. A particular observation is that the second and third examinations were passed in the same year and the argument seems to be that the entire course should be of the duration of four and half years without any such telescoping. But that necessarily means that according to the Maharashtra Council the Ambedkar University's degrees are worthless, that the Central Council registration is without effect or consequence, and that the Maharashtra Council is entitled to sit in judgment over those. That simply cannot be. That would run counter to the plain language of Section 20(5) of the Maharashtra Act itself apart from the corresponding provisions of the Central Council Act.

17. Ms Nichani points out that apart from a straight forward Article 14 challenge, the Petition raises questions of State action that violate Article 19(1)(d), 19(1)(e) and 19(1)(g) of the Constitution of India. Her submission is that the decision to refuse to recognize the Central Council registration and on grounds as trifling as are set out in a table below paragraph 10 of the reply is *per se* unreasonable and arbitrary. These are not reasons, in her submission. They are little more than excuses. If the decision violates a statutory provision and nothing is shown by which the Maharashtra Council can act as it did in accordance with law, then the Petitions must, she submits, succeed. We believe she is correct in this submission.

18. Finally, a submission is made before us which we are wholly unable to comprehend, to the effect that if the Petitioners now

apply, the 1st Respondent will consider their application. But that is the reason why the Petition had to be filed in the first place. We do not see what will be achieved by directing the Petitioners to go through the cycle all over again or giving the 1st Respondent yet another opportunity to do the same wrong things once more.

19. We stated earlier that the Central Council, the Ministry of AYUSH and Ambedkar University were all saying repeatedly that the Petitioners registrations were valid and they were entitled to practice all over India. The impugned actions really mean that the Maharashtra Council believes that it can sit in appeal over even the AYUSH certifications and the AYUSH clarifications, i.e., of the Central Government. This is, to put it mildly, the most remarkable proposition, one that we have no hesitation in rejecting outright.

20. Accordingly, the Petition succeeds. Rule is made absolute in terms of prayer clause (c). The Maharashtra Council will by 17th April 2023 proceed to enter the names of the ten Petitioners on the Maharashtra Register. While there will be no order as to costs, we list the Petition on 19th April 2023 for compliance.

(Neela Gokhale, J)

(G. S. Patel, J)