



VP-244-2018

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 244/2018

(Raju s/o Wadguji Lanjewar & Ors. Vs. State of Maharashtra & Ors.)

WITH CRIMINAL WRIT PETITION NOS. 34/2017, 201/2015,
235/2015, 256/2017, 254/2022, 476/2016, 584/2017, 713/2014,
663/2016, 664/2016, 810/2014, 841/2014, 917/2014 AND
864/2016

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

CRIMINAL WRIT PETITION NOS. 244/2018, 34/2017,
201/2015, 235/2015, 256/2017, 254/2022, 476/2016,
584/2017, 713/2014, 810/2014, 841/2014 AND 917/2014

Mr. Sanket Walde h/f Mr. S.R. Narnaware, Counsel for the
petitioners.

CRIMINAL WRIT PETITION NOS. 663/2016, 664/2016 AND
864/2016

Mr. Nilesh Nagapure h/f Mr. A.V. Band, Counsel for the
petitioners.

Mr. A.B. Badar, A.PP for the respondent/State.

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CORAM : ANIL L. PANSARE AND
RAJ D. WAKODE, JJ.
DECEMBER 24, 2025

The petitioners claim themselves to be the medical practitioners on the basis of degrees issued by the State Ayurvedic and Unani Medical Council, Bihar, governed and regulated by the Bihar Development of Ayurvedic and Unani Systems of Medicine Act, 1951 (for short "Act of 1951"). The petitioners have, however, not placed on record copy of degrees. What is placed is a certificate saying that their names are registered as medical practitioners at Patna in terms of the Act of 1951.

2] The petitioners have approached this Court under Article 226 of the Constitution of India seeking

declaration that they are covered by the definition of 'registered medical practitioner' entitled to keep all allopathic medicines by virtue of their degrees and registrations in the State of Bihar in terms of order dated 29/7/1998 passed by the Hon'ble Supreme Court in the case of *State of Haryana Vs. Phool Singh [Criminal Appeal No. 369/1994]*, which reads as under :

"For the last few days, we have heard a batch of civil matters in which sub-clause (iii), clause (ee) of Rule 2 of the Drugs and Cosmetics Rules, 1945 has been the subject matter of debate in its widest spectrum. Prima facie conclusions drawn therefrom make us fould that the judgment of the High Court cannot be faulted with. The respondent does come within the definition of a registered medical practitioner entitled to allopathic medicines on virtue of his degree and registration in the State of Bihar. We thus find nothing to interfere in this appeal. The appeal is therefore dismissed."

3] Thus, the Supreme Court has, on *prima facie* basis, opined that the conclusions drawn by the High Court cannot be faulted with. The Court then held that the respondent therein comes within the definition of 'registered medical practitioner' entitled to allopathic medicines on virtue of his degree and registration in the State of Bihar.

4] Subsequent thereto, the Supreme Court, in the case of *Dr Mukhtiar Chand And Others Vs. State of Punjab and Others [(1998) 7 SCC 579]*, took an altogether different view, which reads as under :

"49. The upshot of the above discussion is that Rule 2(ee)(iii) as effected from 14-5-1960 is valid and does not suffer from the vice of want

of legislative competence and the notifications issued by the State Governments thereunder are not ultra vires the said Rule and are legal. However, after sub-section (2) in Section 15 of the 1956 Act occupied the field vide Central Act 24 of 1964 with effect from 16-6-1964, the benefit of the said Rule and the notifications issued thereunder would be available only in those States where the privilege of such right to practise any system of medicine is conferred by the State law under which practitioners of Indian medicine are registered in the State, which is for the time being in force. The position with regard to medical practitioners of Indian medicine holding degrees in integrated courses is on the same plane inasmuch as if any State Act recognizes their qualification as sufficient for registration in the State Medical Register, the prohibition contained in Section 15(2)(b) of the 1956 Act will not apply.”

5] Thus, the Supreme Court held that benefit under Rule 2(ee)(iii) of The Drugs and Cosmetics Rules, 1945, will be available only in States, where privilege of such right to practice in system of medicine is conferred by State law under which practitioners of Indian medicine are registered in the State.

6] The relief sought by the petitioners will have to be, therefore, considered in light of the provisions of the Maharashtra Medical Practitioners Act, 1961 (for short “Act of 1961”), as amended from time to time, including Amendment Act of 1979.

7] Section 33 of the Act of 1961 commences with *non-obstante* Clause and provides that no person other than a medical practitioner, whose name is entered in the register maintained under the Act; or the register or list prepared and maintained under the Bombay

Homeopathic and Biochemic Practitioners' Act, 1959 or under any other law for the time being in force in relation to the qualifications and registration of Homeopathic or Biochemic Practitioners in any part of the State; or the register prepared and maintained under the Maharashtra Medical Council Act, 1965; or the Indian Medical Register prepared and maintained under the Indian Medical Council Act, 1965, shall practice any system of medicine in the State.

8] Admittedly, the petitioners herein do not fall within any of the Clauses of the Amendment Act of 1979 and, therefore, are not entitled to practice in the State of Maharashtra. The petitioners, therefore, are not entitled for the relief as of right.

9] The argument, however, is that the petitioners are rendering services in rural part of the State and, therefore, should be allowed to keep allopathic medicines to effectively treat patients.

10] This plea, in our view, can only be considered by the State Government in terms of proviso to Section 1 of Section 33 of the Act of 1961, which empowers the State Government to relax any condition to enable a person to practice in the State.

11] The respondent/State, therefore, may consider the request of the petitioners, if otherwise there is no impediment. The petitions shall be, accordingly, treated as representations. The respondent/State shall consider the same in accordance with law. The decision

shall be taken as expeditiously as possible, and preferably within four months from today.

12] With the aforesaid directions, the petitions are disposed of.

(JUDGE)

(JUDGE)

Sumit