

A. T. Zambre

Vs

Kartar Krishna Shashtri

Civil Appeal No. 1572 of 1970

(A. D. Koshal, Baharul Islam JJ)

17.12.1980

### JUDGMENT

A. D. KOSHAL, J. –

1. This is an appeal by special leave against the judgment dated November 8, 1968 of a Division Bench of the High Court of Bombay allowing a petition under Articles 226 and 227 of the Constitution of India and declaring that sub-section (5) of Section 17 of the Maharashtra Medical Practitioners Act, 1961 (hereinafter referred to as 'the Act') is ultra vires Article 14 of the Constitution of India.
2. The facts are not in dispute and may be shortly stated. The respondent hails from Uttar Pradesh. In 1940 he obtained the degree of "Ayurved Shastri" from the All India Adarsh Vidwat Parishad, Kanpur. On November 12, 1940 his name was listed by the Board of Indian Medicine, Uttar Pradesh, in the register of Vaid and Hakims. He practised as a Vaid in Agra thereafter up to 1955 when he migrated to Bhopal where he was registered as an Ayurvedic Doctor by the Medical Council of the Government of Bhopal under the Bhopal Medical Practitioners Registration Act, 1935. He migrated to Bombay in 1962 and started practising there as an Ayurvedic Doctor. However, in the meantime, i.e., on November 23, 1961, the Act came into force, except for Chapter VI thereof which came into operation on November 1, 1966. The respondent's application for registration as a medical practitioner made to the Committee of the Medical Board of Unani system of Medicine under sub-section (5) of Section 17 of the Act (although none of the clauses of that sub-section had anything to do with it) was rejected and his appeal filed to the Board was also dismissed on September 30, 1964.
3. Clause (ii) of the said sub-section (5) with which we are concerned provides that any person not being a person qualified for registration under sub-section (3) or (4) who proves to the satisfaction of the Committee appointed under sub-section (6) "that he was on the 4th day of November 1941 regularly practising the Ayurvedic or the Unani system of medicine in the Bombay area of the State, but his name was not entered in the register maintained under the Bombay Medical Practitioners Act, 1938" shall be entitled to have his name entered in the register on making an application on the prescribed form, on payment of a fee of Rs. 10 and production of such documents as may be prescribed by the rules. The expression "Bombay area of the State of Maharashtra" is defined in sub-section (6) of Section 3 of the Bombay General Clauses Act to mean "the area of the State of Maharashtra excluding the Vidarbha region and the Hyderabad area of that State".
4. A contention was raised before the High Court on the strength of *Rukmani Hoondraj Hingorani v. Appellate Authority under the Maharashtra Medical Practitioners Act, 1961* ((1969) 71 Bom LR 71 : AIR 1970 Bom 10 : 1969 Mah LJ 318) that sub-section (5) of Section 17 of the Act fell foul of Article 14 of the Constitution, and the contention was accepted. We may usefully refer to the

following observations made in the decision just above cited :

Confining our attention, however, to medical practitioners practising in the Bombay area of the State, we find it difficult to appreciate why the right of enlistment should have been restricted to those who were regularly practicing on 4th November 1951, 'in the Bombay area of the State'. Since the object of the legislature was to allow medical practice by those less qualified persons who were too old to choose alternative means of livelihood, it was clearly open to the legislature to provide that a person must have been practising for a certain number of years, or from before a particular date, in order that his name may be included in the list. It was thus open to the legislature to provide that, out of unregistered and unlisted medical practitioners who were practising in the Bombay area of the State, only those would be entitled to have their names included in the list who are practising regularly from before the 4th of November 1951. It is, however, not possible to find any rational basis for the provision that medical practitioners in the Bombay area of the State, in order to be entitled to enlistment, must not only have been practising regularly from 4th November, 1951, but must have been practising on that day 'in the Bombay area of the State'. The provision that medical practitioners must have been practising on 4th November, 1951 in the Bombay area of the State has no rational nexus with the object of the legislature which was to ensure that medical practitioners, who were not fully qualified but who were too old to choose alternative means of livelihood, should not be deprived of their practice.

In order to illustrate the discriminatory nature of the provision contained in Section 18(2)(b)(ii), we shall take imaginary instances of five persons who were all practising in the Bombay area of the State at the time of their applications under Section 18 (i.e., on or before 31st March 1965) and who were not already enlisted and were not entitled to registration under the Act. Let us suppose that one of them, A, was practising continuously in Bombay City from 1950 to 1963, when he applied under Section 18 of the Act. Since on 4th November 1951 he was practising regularly 'in the Bombay area of the State', he is clearly entitled to have his name included in the list. Let us take another person B who practised in Poona from 1950 to 1954 and in Bombay City from 1954 to 1963 when he applied under Section 18. He is also entitled to enlistment because Poona falls in the Bombay area of the State. We may then take the instance of C who practised in Nagpur from 1950 to 1954 and in Bombay City from 1954 to 1963. He would not be entitled to have his name included in the list, because on 4th November 1951 he was regularly practising in Nagpur which, though situated in Maharashtra, is not included in the Bombay area of the State. We will next take the instance of D who practised in Baroda, then a part of the Bombay State, from 1950 to 1954 and thereafter in Bombay city from 1954 to 1963. He is also not entitled to enlistment since Baroda is outside the State of Maharashtra. Similar would be the position of another person E who practised in Bhopal from 1950 to 1954 and then in Bombay City from 1954 to 1963. No rational explanation can be given of why A and B should receive the said concession from the legislature and should be able to continue their practice and why C, D, and E should not receive the concession and should be deprived of their practice.

5. We find ourselves in complete agreement with these observations which were made in relation to sub-clause (ii) of clause (b) of sub-section (2) of Section 18 of the Act. The provisions of that sub-clause being in pari materia with sub-section (5) of Section 17 of the Act, they apply fully to that sub-section which must therefore be held to be violative of Article 14 of the Constitution. Accordingly we have no hesitation in upholding the impugned judgment and dismiss this appeal, but with no order as to costs as the respondent has not appeared before us to contest it.

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