SUPREME COURT OF INDIA

Kerala Ayurveda Paramparya Vaidya Forum

Vs.

State of Kerala

C.A.No.897 of 2009

(R.K.Agrawal and Mohan M.Shantanagoudar,JJ.,)

13.04.2018

JUDGMENT

R.K.Agrawal,J.,

1. The above appeals have been filed against the judgment and order dated 08.01.2003 passed by the Division Bench of signature N,,.ve4he High Court of Kerala at Ernakulam in O.P. No. 24109 of 2001 and connected matters whereby the High Court had dismissed the petitions filed by the appellants herein.

2. Brief facts:

(a) In the State of Kerala, a number of persons are practicing in Sidha/Unani/Ayurveda system of medicine called as "Paramparya Vaidyas' and passing their knowledge and experience to their descendants by way of training and practice. Normally, almost all the descendants in the family get training in the same field and adopt this as a profession and means of livelihood.

(b) Kerala Ayurveda Paramparya Vaidya Forum (in short 'the Forum') - the appellant herein is an association of 'Paramparya Vaidyas' in Travancore-Cochin, registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955. The main objective of the Forum is the welfare of its members and to render assistance for practice in indigenous medicines.

(c) Pursuant to the enactment of the Travancore-Cochin Medical Practitioners Act, 1953 (in short 'the Act'), the 'Paramparya Vaidyas' were debarred from practicing modern /homoeopathic/ayurvedic/siddha /unani-tibbi medicines unless registered under the Act. Subsequently, three Central Acts, viz., The Indian Medical Council Act, 1956, The Indian Medicine Central Council Act, 1970 and the Homoeopathy Central Council Act, 1973 with regard to modern medicine, indigenous medicine and homoeopathic medicine respectively came into force.

(d) Being aggrieved by the enactment of the Act, Akhila Kerala Parambarya Vaidya Federation as well as the persons practicing as 'Paramparya Vaidyas' filed a number of petitions before the High Court. Learned single Judge of the High Court, taking note of an affidavit filed by the State Government stating that the question of granting registration to practice medicines to the 'Paramparya Vaidyas' can be considered at the time of enactment of Kerala Medical Practitioners Bill, by order dated 17.06.1997 in O.P. No. 118 of 1991 and other set of petitions, disposed of the original petitions while directing the State Government to have a serious consideration of the circumstances expeditiously.

(e) Several petitions were filed before the High Court by the 'Paramparya Vaidyas' claiming that the methods had been in vogue for a considerable long period of time. The Division Bench of the High Court, vide order dated 08.01.2003 dismissed the petitions filed by the appellants herein.

(f) Aggrieved by the order dated 08.01.2003, the appellants have preferred these appeals by way of special leave.

3. Heard the arguments advanced by learned senior counsel for the parties and perused the records. Since a common question of law and facts arise in these appeals, they are being disposed of by this common judgment.

Point(s) for consideration :-

4. The sole point for consideration before this Court is as to whether the persons who do not fulfill the prescribed qualification and are not duly registered under the relevant Statute, be permitted to practice as 'Paramparya Vaidyas'?

Rival Submissions:

5. Learned senior counsel for the appellants contended before this Court that in the State of Kerala, a large number of persons are practicing in Sidha/Unani/Ayurveda system of medicines known as 'Paramparya Vaidyas', which are in vogue for a long time. They have acquired knowledge and experience from their gurus and parents and by continued practice over a long period of time they have acquired the requisite expertise. After the enactment of the Act, Section 38 empowered the State Government to regulate the qualifications and to provide for the registration of practitioners of modern medicine. It took within its ambit the homeopathic and indigenous systems of medicine as well. Learned senior counsel further contended that due to the promulgation of the Act, the appellants, who were not registered under the Act, were prevented from practicing as 'Paramparya Vaidyas'. Learned senior counsel further contended that unlike modern systems, medicines for each patient is being prepared after diagnosing the patient according to his requirement considering his age, place, etc. and there is no side effect in the treatment by these systems of medicines. Finally, it was stressed upon by learned senior counsel for the appellants that it is the custom that was developed in the community that the 'Vaidyas' practicing in these systems must pass their

knowledge and heredity to another in the family. So as a custom of the community, the existing vaidyas have to preserve their old and indigenous systems to retain their heredity and custom. It was also contended that so many vaidyas practicing Ayurveda, Siddha, Unani Tibbi had applied to the government for licence in compliance of the provisions of the Act but the State Government did not take any positive steps with regard to the same instead the police and other authorities have been harassing them for practicing in respective system of medicines without obtaining licence or exemption as per the provision to Section 38 of the Act.

6. He further contended that the High Court, therefore, erred in approaching the issue on the basis that after the coming into force of the Act only those persons who were possessing recognized qualification have the right to practice medicine. He further contended that it is settled law that any mandatory prohibition has to be in express or unambiguous terms and the alleged prohibition under Section 38 is to be understood in the context of Section 32 of the Act.

7. Per contra, learned counsel for the State contended that there are several persons in the State of Kerala practicing Indian System of Medicine without any qualification or registration which is in flagrant violation of Section 38 of the Act and Section 17 of the Indian Medicine Central Council Act, 1970 (in short 'the IMCC Act'). It was further stressed upon that this unauthorized practice is a great threat to the health and life of the people of the State as the practitioners are producing alcoholic preparations and such preparations are being misused without any licence or registration in the guise of prescribing Indian System of Medicines. Learned counsel further submitted that the IMCC Act does not take into account the traditional practitioners or paramparya vaidyas. The concept and practice of medicine by tradition was not recognized by the Parliament at the time of the enactment of the IMCC Act. It was further submitted that the Parliament did not give any option to any person to commence practice and continue to practice Indian System of Medicines without proper qualification and registration as provided under the IMCC Act and the only exemption is under Section 17(3)(c) of the said Act which provides that a person who had been practicing Indian System of Medicine for five (5) years at the commencement of the IMCC Act could continue to practice provided there has been no State Register maintained in that State.

8. Learned counsel further submitted that the modus operandi of such practitioners in the State is to register an Association under the Societies Registration Act or the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, with an object to enroll members and to issue certificates in order to enable them to practice Indian System of Medicine in the guise of 'Paramparya Vaidyas'. Learned counsel for the State further contended that in most of these cases, there is no tradition or paramparayam for any of the members of such registered Association and most of them continue in the field of practice with bogus certificates, degrees and diplomas. Learned counsel finally contended that the bogus practitioners, without having requisite qualification and registration, should not be allowed to play with the lives of the people and to practice the Indian System of Medicine in the State of Kerala.

Discussion:

9. Traditional or indigenous systems of medicine like Ayurveda/Sidhha/Unani-Tibbi have largely evolved out of sporadic and random processes of research and discovery attributable to various self styled practitioners of these systems of medicines. With a view to bring about an organized development of these systems and standardize the mode of treatment by the practitioners of these systems, legislations have been framed by both the State Governments as well as the Central Government. The legislative field for framing legislation on these aspects is relatable to Entry 26, List III of the Seventh Schedule of the Constitution of India. On these lines, the Travancore-Cochin Medical Practitioners Act, 1953 was enacted with an object to regulate the qualifications and provide for the registration of practitioners of modern medicine and to enact a law relating to medical practitioners generally in the State of Travancore-Cochin.

10. With this background, it is relevant to reproduce Section 17 of the IMCC Act as well as Sections 23 and 38 of the Act which are as under:-

> The Indian Medical Central Council Act, 1970
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> 17. Rights of persons possessing qualifications included in Second, Third and Fourth Schedules to be enrolled. -
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> (1) Subject to the other provisions contained in this Act, any medical qualification included in the Second, Third or Fourth Schedule shall be sufficient qualification for enrolment on any State Register of Indian Medicine.
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> (2) Save as provided in section 28, no person other than a practitioner of Indian medicine who possesses a recognized medical qualification and is enrolled on a State Register or the Central Register of Indian Medicine,-
>
> (a) shall hold office as Vaid, Siddha, Hakim or [physician or Amchi or] any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority;
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> (b) shall practice Indian medicine in any State;
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> (c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner;
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> (d) shall be entitled to give evidence at any inquest or in any court of law as an expert under section 45 of the Indian Evidence Act, 1872 (1 of 1872), on any matter relating to Indian Medicine.
>
> (3) Nothing contained in sub-section (2) shall affect,-

(a) the right of a practitioner of Indian medicine enrolled on a State Register of Indian Medicine to practise Indian medicine in any State merely on the ground that, on the commencement of this Act, he does not possess a recognized medical qualification;

(b) the privileges (including the right to practice any system of medicine) conferred by or under any law relating to registration of practitioners of Indian medicine for the time being in force in any State on a practitioner of Indian medicine enrolled on a State Register of Indian Medicine;

(c) the right of a person to practise Indian medicine in a State in which, on the commencement of this Act, a State Register of Indian Medicine is not maintained if, on such commencement, he has been practicing Indian medicine for not less than five years;

(d) the rights conferred by or under the Indian Medical Council Act, 1956 (102 of 1956)[including the right to practice medicine as defined in clause (f) of section 2 of the said Act], on persons possessing any qualifications included in the Schedules to the said Act.

(4)Any person who acts in contravention of any provision of sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.
Travancore-Cochin Medical Practitioners Act, 1953

23. Eligibility for registration.-

(1)Subject to the provisions of sub-sections(2) and (5).-

(i) every holder of a recognised qualification and every practitioner holding appointment under the Government at the commencement of this Act, and

(ii) every person who, within the period of one year or such other longer period as may be fixed by the Government from the date on which this Act come into force, proves to the satisfaction of the appropriate council that he has been in regular practice as a practitioner for a period of not less than five years preceding the first day of April, 1953. shall be eligible for registration under this Act:

Provided however that no practitioner shall be registered under clause (ii) after the expiration of one year, or such other longer period as may be fixed by the Government, from the date on which this Act come into force.

(2) Applicants for registration under clause (ii) of sub-section (1) shall produce a certificate in Form I as set forth in the schedule. The certificate shall be from an

officer of the Revenue Department not below the rank of a Tahsildar or any other person authorized by the Government in this behalf.

(3) The Government may, after consulting the appropriate council, permit the registration of any person who shall furnish to such council proof that he is possessed of a medication degree, diploma or certificate of any University, medical school or college approved by such council other than those mentioned in the Schedule.

(4) The Government shall have power to direct the registration of any practitioner who, at the time of registration under this section, is employed in a hospital, asylum, infirmary, clinic surgery, lying in hospital, sanatorium, nursing home, dispensary, vaidyasala or dharmasala managed by any corporate body:

Provided however that no such practitioner shall be registered under this sub-section after the expiration of one year, or such other longer period as may be fixed by the Government, from the date on which this Act comes into force.
(5) No person shall be eligible for registration under sub-section (1), sub-section (3), or sub-section (4) if he is subject to any of the disqualifications mentioned in clause (a) to (e) of Section 7.

38. Persons not registered under this Act, etc., not to practice.- No person other than (i) a registered practitioner or (ii) a practitioner whose name is entered in the list of practitioners published under Section 30 or (iii) a practitioner whose name is entered in the list mentioned in Section 25 shall practice or hold himself out, whether directly or by implication, as practising modern medicine, homoeopathic medicine or ayurvedic medicine, siddha medicine or unani tibbi and no person who is not a registered practitioner of any such medicine shall practise any other medicine unless he is also a registered practitioner of that medicine: Provided that the Government may, by notification in the Gazette, direct that this section shall not apply to any person or class or persons or to any specified area in the State where none of the three classes of practitioners mentioned above carries on medical practice:

Provided further that this section shall not apply to a practitioner eligible for registration under this Act who, after having filed the application for registration, is awaiting the decision of the appropriate council or of the Government in case of appeal:

Provided also that this section shall not apply to a practitioner eligible for registration under this Act until the period prescribed for application under Section 23 expires.

11. As per the statement of objects and reasons of the IMCC Act, the Central Council was to evolve uniform standards of education and registration of practitioners of the indigenous systems of medicine and for that purpose a Register was to be maintained under the IMCC Act in order to ensure that medicine is not to be practiced by those who are not qualified. The IMCC Act does not contemplate any exemption from the provisions in the Act regarding

qualification or registration of practitioners in the various branches of indigenous medicine, viz., ayurveda, siddha, unani etc. However, Section 17(3)(c) of the IMCC Act has a provision for protecting persons who had been practicing Indian system of Medicine for at least five years as on the date of commencement of the Act. Such persons could continue their practice provided there had been no State Register maintained in the State on the commencement of the IMCC Act.

12. In *Dr. Mukhtiar Chand and Others vs. State of Punjab and Others*[1] this Court has held as under:-

> "17. Before adverting to these questions, it would be useful to notice various systems of medicine in vogue in India and the statutes regulating them:
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> The systems of medicines generally prevalent in India are Ayurveda, Siddha, Unani, Allopathic and Homoeopathic. In the Ayurveda, Siddha and Unani systems, the treatment is based on the harmony of the four humours, whereas in the Allopathic system of medicine, treatment of disease is given by the use of a drug which produces a reaction that itself neutralizes the disease. In Homoeopathy, treatment is provided by the like.
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> 18. Of the medical systems that are in vogue in India, Ayurveda had its origin in 5000 BC and is being practised throughout India but Siddha is practised in the Tamil-speaking areas of South India. These systems differ very little both in theory and practice. The Unani system dates back to 460-370 BC but that had come to be practised in India in the 10th century AD (Park: Textbook of Preventive and Social Medicine, 15th Edn., pp. 1 & 2). Allopathic medicine is comparatively recent and had its origin in the 19th century.
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> 42. Here it may be necessary to refer to the development of law with regard to Indian medicine. In the pre-constitutional era, each province of India was having its own enactment regulating the registration and practice in Indian medicines like the United Provinces Indian Medicine Act, 1939, the Punjab Ayurvedic and Unani Practitioners Act, 1949, etc. After the coming into force of the Constitution, many State legislations were enacted to regulate the practise of Indian medicine, Ayurvedic and Unani like the Punjab Ayurvedic and Unani Practitioners Act, 1963, etc. However, on the model of the 1956 Act, Parliament enacted the Indian Medicine Central Council Act, 1970 (for short "the 1970 Act"). The schemes and provisions of the 1970 Act and the 1956 Act are analogous. "Indian medicine" is defined in Section 2(e) of the Act to mean the system of Indian medicine commonly known as Ashtang Ayurveda, Siddha or Unani Tibb whether supplemented or not by such modern advances as the Central Council may declare by notification from time to time. In Section 2(j), the expression "State Register of Indian Medicine" is defined 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 Indian medicine. The Act contemplates having separate committees for Ayurvedic, Siddha and Unani medicines. Section 17 enables,

inter alia, the persons who possess medical qualifications mentioned in the Second, Third or Fourth Schedule to be enrolled on any State Register of Indian Medicine. A perusal of the Second, Third and Fourth Schedules shows that they contain both integrated medicine as well as other qualifications. So a holder of a degree in integrated medicine is entitled to be enrolled under Section 17 of the 1970 Act. Section 22 authorises the Central Council to prescribe the minimum standards of education in Indian medicine required for granting recognized medical qualifications by universities, Boards or medical institutions in India. The Central Council is enjoined to maintain the Central Register of Indian Medicine containing the particulars mentioned therein and Section 25 lays down the procedure for registration in the Central Register of Indian Medicine. The counterpart of Section 15 of the 1956 Act is Section 17 of the 1970 Act. We shall quote it here:

"17. (1) Subject to the other provisions contained in this Act, any medical qualification included in the Second, Third or Fourth Schedule shall be sufficient qualification for enrolment on any State Register of Indian Medicine.

(2) Save as provided in Section 28, no person other than a practitioner of Indian medicine who possesses a recognised medical qualification and is enrolled on a State Register or the Central Register of Indian Medicine,—

(a) shall hold office as vaid, siddha, hakim or physician or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority;

(b) shall practise Indian medicine in any State;

(c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner;

(d) shall be entitled to give evidence at any inquest or in any court of law as an expert under Section 45 of the Indian Evidence Act, 1872, on any matter relating to Indian medicine.

(3) Nothing contained in sub-section (2) shall affect,—

(a) the right of a practitioner of Indian medicine enrolled on a State Register of Indian Medicine to practise Indian medicine in any State merely on the ground that on the commencement of this Act, he does not possess a recognised medical qualification;

(b) the privileges (including the right to practise any system of medicine) conferred by or under any law relating to registration of practitioners of Indian medicine for the

time being in force in any State on a practitioner of Indian medicine enrolled on a State Register of Indian Medicine;

(c) the right of a person to practise Indian medicine in a State in which, on the commencement of this Act, a State Register of Indian Medicine is not maintained if, on such commencement, he has been practising Indian medicine for not less than five years;

(d) the rights conferred by or under the Indian Medical Council Act, 1956 [including the right to practise medicine as defined in clause (f of Section 2 of the said Act], on persons possessing any qualifications included in the Schedules to the said Act.

(4) Any person who acts in contravention of any provision of sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."

A perusal of the provisions extracted above shows that sub-section (1) prescribes qualifications considered sufficient for enrolment on any State Register of Indian Medicine. Sub-section (2) ordains that all persons except those who possess a recognised medical qualification and are enrolled on a State Register or the Central Register of Indian Medicine, are prohibited from doing any of the acts mentioned in clauses (a) to (d) of that sub-section.

Sub-section (3), however, carves out an exception to the prohibition contained in sub-section (2). Clause (a) thereof saves the right to practice of any medical practitioner of Indian medicine who was not having recognised medical qualification on the date of the commencement of the 1970 Act but who was enrolled on a State Register to practise that system of medicine; clause (b) protects the privileges which include the right to practise any system of medicine which was conferred by or under any law relating to registration of practitioners of Indian medicine for the time being in force in any State on a practitioner of Indian medicine who was enrolled on a State Register of Indian Medicine; clause (c) saves the right of a person to practise Indian medicine in a State in which no State Register of Indian Medicine was maintained at the commencement of that Act provided he has been practising in Indian medicine for not less than five years before the commencement of the Act and clause (d) protects the rights conferred by or under the 1956 Act including the right to practise modern medicine possessing any qualification included in that Act. In other words, under clause (d) the right to practise modern scientific medicine in all its branches is confined to only such persons who possess any qualification included in the Schedules to the 1956 Act. In view of this conclusion, it matters little if the practitioners registered under the 1970 Act are being involved in various programmes or given postings in hospitals of allopathic medicine and the like.

43. It will be appropriate to notice that the 1970 Act also maintains a similar distinction between a State Register of Indian Medicine and the Central Register of

> Indian Medicine. Whereas the State Register of Indian Medicine is maintained under any law for the time being in force in any State regulating the registration of practitioners of Indian medicine, the Central Register of Indian Medicine has to be maintained by the Central Council under Section 23 of that Act. For a person to be registered in the Central Register, Section 25 enjoins that the Registrar should be satisfied that the person concerned was eligible under that Act for such registration. Keeping this position in mind, if we read Section 17(3)(b), it becomes clear that the privileges which include the right to practise any system of medicine conferred by or under any law relating to registration of practitioners of Indian medicine for the time being in force in any State on a practitioner of Indian medicine enrolled on a State Register of Indian Medicine, are not affected by the prohibition contained in sub-section (2) of Section 17."

Section 23 of the Act provides for eligibility conditions for registration of medical practitioners. Under sub-Section (1), a holder of a recognized qualification or holding appointment under the government at the commencement of the Act and every other practitioner who has been in regular practice for 5 (five) years preceding 1st April, 1953, if applies within one year have been made eligible for registration. However, by Section 38 of the Act, persons not registered under the Act have been prohibited from practicing various types of medicines. The first proviso empowers the State Government to exempt any person or class of persons from undergoing registration. It is also evident that the Government of Kerala had granted exemption to some traditional practitioners like those who belonged to the renowned Ashtavaidya families.

13. The capacity to diagnose the disease would depend upon the fact as to whether the practitioner had the necessary professional skill to do so. Acquisition of professional skill is again a regulated subject and the measure thereof is the possession of a prescribed Diploma or Degree awarded by a recognized Institution. What one might enquire with regard to the right to practice medicine in the light of the above is as to whether the appellants are equipped with such a professional qualification. The answer is, obviously, in the negative, as admittedly, the appellants do not possess any prescribed Diploma or Degree from a recognized institution for that purpose. Even a person who has acquired the prescribed Diploma or Degree from a recognized institution would not be entitled to practice medicine unless he is so registered under the provisions of the IMCC Act.

14. In *Dr. A.K. Sabhapathy vs. State of Kerala and Others*[2], the provisions of Section 38 of the Act and Sections 15 and 21 of the Indian Medical Council
Act, 1956 came up for consideration before this Court wherein it was held as under:-

> "16. We are, therefore, unable to agree with the view of the High Court that the Central Act does not lay down the qualifications for registration of a medical practitioner. We may in this context refer to sub-section (1) of Section 15 which postulates the holding of a recognised medical qualification by a person for being registered in the State Medical Register so as to entitle to practise modern scientific medicine in the State and sub-section (1) of Section 21 which provides that the Indian

> Medical Register that is required to be maintained by the Medical Council of India shall contain the name of persons who are for the time being enrolled in the State Medical Register and who possess any of the recognised medical qualifications. These provisions contemplate that a person can practise in allopathic system of medicine in a State or in the country only if he possesses a recognised medical qualification. Permitting a person who does not possess the recognised medical qualification in the allopathic system of medicine would be in direct conflict with the provisions of the Central Act. We are, therefore, of the view that the first proviso to Section 38 of the State Act insofar as it empowers the State Government to permit a person to practise allopathic system of medicine even though he does not possess the recognised medical qualifications for that system of medicine is inconsistent with the provisions of Sections 15 and 21 read with Sections 11 to 14 of the Central Act. The said proviso suffers from the vice of repugnancy insofar as it covers persons who want to practise the allopathic system of medicine and is void to the extent of such repugnancy. Practitioners in allopathic system of medicine must, therefore, be excluded from the scope of the first proviso and it must be confined in its application to systems of medicines other than the allopathic system of medicine. We, however, wish to make it clear that we have not considered the impact of the provisions contained in the Indian Medicine Central Council Act, 1970 and the Homoeopathy Central Council Act, 1973 on the provisions of the said proviso to Section 38 of the State Act."

Even though the impact of the provisions of the IMCC Act was not considered but the provision of Section 17 of the IMCC Act also provides for recognition of medical qualification included in Second, Third and Fourth Schedules to be sufficient qualification for enrolment on any State Register of Indian Medicine. Thus the same principles as had been laid down in Dr. A.K. Sabhapathy (supra), as reproduced above, will also apply.

15. In the case of *Delhi Pradesh Registered Medical Practitioners vs. Director of Health, Delhi Administration Services and Others*[3], this Court has held as under:-

> "5. We are, however, unable to accept such contention of Mr Mehta. Sub-section (3) of Section 17 of the Indian Medicine Central Council Act, 1970, in our view, only envisages that where before the enactment of the said Indian Medicine Central Council Act, 1970 on the basis of requisite qualification which was then recognised, a person got himself registered as medical practitioner in the disciplines contemplated under the said Act or in the absence of any requirement for registration such person had been practising for five years or intended to be registered and was also entitled to be registered, the right of such person to practise in the discipline concerned including the privileges of a registered medical practitioner stood protected even though such practitioner did not possess requisite qualification under the said Act of 1970. It may be indicated that such view of ours is reflected from the Objects and Reasons indicated for introducing sub-section (3) of Section 17 in the Act. In the Objects and Reasons, it was mentioned:

"[T]he Committee are of the opinion that the existing rights and privileges of practitioners of Indian Medicine should be given adequate safeguards. The Committee, in order to achieve this object, have added three new paragraphs to sub-section (3) of the clause protecting (i) the rights to practise of those practitioners of Indian Medicine who may not, under the proposed legislation, possess a recognised qualification subject to the condition that they are already enrolled on a State Register of Indian Medicine on the date of commencement of this Act, (ii) the privileges conferred on the practitioners of Indian Medicine enrolled on a State Register, under any law in force in that State, and (iii) the right to practise in a State of those practitioners who have been practising Indian Medicine in that State for not less than five years where no register of Indian Medicine was maintained earlier."

As it is not the case of any of the writ petitioners that they had acquired the degree in between 1957 (sic 1967) and 1970 or on the date of enforcement of provisions of Section 17(2) of the said Act and got themselves registered or acquired right to be registered, there is no question of getting the protection under sub-section (3) of Section 17 of the said Act. It is to be stated here that there is also no challenge as to the validity of the said Central Act, 1970. The decision of the Delhi High Court therefore cannot be assailed by the appellants. We may indicate here that it has been submitted by Mr Mehta and also by Ms Sona Khan appearing in the appeal arising out of Special Leave Petition No. 6167 of 1993 that proper consideration had not been given to the standard of education imparted by the said Hindi Sahitya Sammelan, Prayag and expertise acquired by the holders of the aforesaid degrees awarded by the said institution. In any event, when proper medical facilities have not been made available to a large number of poorer sections of the society, the ban imposed on the practitioners like the writ petitioners rendering useful service to the needy and poor people was wholly unjustified. It is not necessary for this Court to consider such submissions because the same remains in the realm of policy decision of other constitutional functionaries. We may also indicate here that what constitutes proper education and requisite expertise for a practitioner in Indian Medicine, must be left to the proper authority having requisite knowledge in the subject. As the decision of the Delhi High Court is justified on the face of legal position flowing from the said Central Act of 1970, we do not think that any interference by this Court is called for. These appeals therefore are dismissed without any order as to costs."

16. It would be relevant to quote the following decision in *Dr. Sarwan Singh Dardi vs. State of Punjab and Others*[4] wherein it was held as under:-

"12. In view of the clear provision in the two Central Acts, namely, S. 15, sub-sec. (2)(b) of 1956 Act and S. 17 sub-sec. (2) (b) of 1970 Act, no person who is not qualified in the system of Modern Medicine and is not registered as such, either in the State Register or the Central Register, is entitled to practice modern system of medicine. Same is the case regarding right to practice the system of Indian medicine namely, that no person who is not possessed of requisite qualification envisaged in the

1970 Act or a like legislation by a State Legislature and is registered as such is entitled to practice the system of Indian medicine."

17. Similarly, in *Ishaq Husain Razvi vs. State of U.P. and Others*[5] it was held as under:-

"10....No doubt the Indian Medicines Central Council may further include degrees and diplomas of other recognized Universities and Institutions in the schedule of the Act, for registration as Ayurvedic/Unani Tibbi medical practitioners. The petitioner has failed to show that he possessed requisite recognized qualification for registration entitling him for practicing in Ayurvedic system of medicines.."

18. In our country, the qualified practitioners are much less than the required number. Earlier, there were very few Institutions imparting teaching and training to the Doctors, Vaidyas and Hakimis but the situation has changed and there are quite a good number of Institutions imparting education in indigenous medicines. Even after 70 years of independence, the persons having little knowledge or having no recognized or approved qualification are practicing medicine and playing with the lives of thousands and millions of people. The right to practice any profession or to carry on any occupation, trade or business is no doubt a fundamental right guaranteed under the Constitution. But that right is subject to any law relating to the professional or technical qualification necessary for practicing any profession or carrying on any occupation or trade or business. The regulatory measures on the exercise of this right both with regard to the standard of professional qualifications and professional conduct have been applied keeping in view not only the right of the medical practitioners but also the right to life and proper health care of persons who need medical care and treatment.

Conclusion:

19. In our country, the numbers of qualified medical practitioners have been much less than the required number of such persons. The scarcity of qualified medical practitioner was previously quite large since there were very few institutions imparting teaching and training to Doctors, Vaidyas, Hakims etc. The position has now changed and there are quite a good number of medical colleges imparting education in various streams of medicine. No doubt, now there are a good numbers of such institutions training qualified medical practitioners at number of places. The persons having no recognized and approved qualifications, having little knowledge about the indigenous medicines, are becoming medical practitioners and playing with the lives of thousands and millions of people. Some time such quacks commit blunders and precious lives are lost.

20. The government had been vigilant all along to stop such quackery. A number of unqualified, untrained quacks are posing a great risk to the entire society and playing with the lives of people without having the requisite training and education in the science from approved institutions. The Travancore-Cochin Medical Practitioners Act, 1953 as well as the Indian Medicine Central Council Act, 1970 were also enacted on the similar lines. Every practitioner shall be deemed to be a practitioner registered under the Act if at the

commencement of this Act, his name stands entered in the appropriate register maintained under the said Act and every certificate of registration issued to every such practitioner shall be deemed to be a certificate of registration issued under this Act. But in the present case, the appellants herein have failed to show that they possessed requisite recognized qualification for registration entitling them to practice Indian system of medicines or their names have been entered in the appropriate registers after the commencement of this Act.

21. In view of the above discussion, we are of the considered opinion that the High Court was right in dismissing the petitions filed by the appellants herein. Consequently, the appeals fail and are accordingly dismissed. Interlocutory applications, if any, are disposed of accordingly. However, the parties are left to bear their own costs.

Judgment Referred.

[1]*(1998) 7 SCC 0579*
[2]*(1992) Supp. 3 SCC 0147*
[3]*(1997) 11 SCC 0687*
[4]*AIR 1987 P&H 0081*
[5]*AIR 1993 All. 0283*